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## *Editorial*

*Dear readers,*



Thank you very much for the overwhelming echo and support to our last, the first, the no. 1 issue of European Union Foreign Affairs Journal. It seems that we have hit the nail on its head – with an independent, interesting, and above all a paper not coming from official sources – which often have a very similar view as we do on the difficult external performance of the European Union and of its role in the world. And this is now more than ever a great subject not only for the EU internally, but also for those who think outside of the Union of their and the EU’s role and of partnership with the EU. We also feel confirmed in the role of this paper as a forum, as a melting pot of all reasonable mainstreams, Member States’ and third countries’ interests. And we are grateful that you, our readers could sometimes smile about several more or less improvised typographic attitudes, as we did smile on them too. But nobody is perfect.

\* \* \*

Let me make, finally, a remark on the new EU Foreign Minister. Right after the earthquake in Haiti, she did not go there. She said (Irish Times, 20.1.2010) she would have “nothing to contribute on the ground other than to take up valuable space” and her presence would be a distraction from the relief effort.

However: if one is for a new, strengthened presence and face of the European Union in the world, one can only agree to Joseph Daul, chairman of the European People’s Party Group in the European Parliament: Baroness Ashton’s decision not to go to Haiti with US Secretary of State Hillary Clinton the weekend before was described as “regrettable”. Still according to the IrishTimes from 20.1.2010, Irish Fine Gael MEP Gay Mitchell said Ms Ashton needed to be “more visible on issues of this kind”, and it was not clear from the relief effort that the EU was the biggest aid donor in the world. The Baroness had explained that, after consulting with UN Secretary General Ban Ki-moon, she had decided “that her role would be best suited to co-ordinating the international response”. But it was the EU Commissioner for Development and Humanitarian Aid Karel De Gucht who went to Haiti “to co-ordinate the response of EU aid agencies“, as reported by TheParliament.com from 20.1.2010.

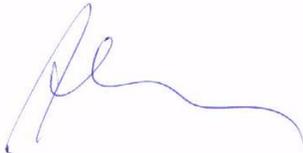
Ms Ashton had told also: The EU has responded quickly, not seeking headlines – correct, but the EU would not have to seek headlines anyway – and: “We resisted the urge to travel to Haiti immediately. That would only have diverted attention and resources away from the relief effort.” Sorry, this is not correct: Haiti is not in the possession of the US Army (which did and

does a great job), and the EU should play an adequate role, also in view of the common language within the *francophonie*. TheParliament.com also reported that she said she hopes that a co-ordinated response from the EU would demonstrate how the new institutions set up under the Lisbon Treaty will work. I think: to demonstrate something, one has to **show** something (the Latin “*demonstrare*” means to show). Not to show anything, means not to demonstrate anything – or to demonstrate other, unwanted impressions.

So, dear Foreign Minister, indeed you have omitted a great chance – also to show millions of Europeans that and how Europe could help. Together with Hillary Clinton, that North America and Europe have a common responsibility in the Carribean, and that Europe jumps immediately on the wagon, if there is a natural disaster like in Haiti. Which is evident not only because Haiti is an ACP Member State: In nowadays Europe, we need a EU Foreign Minister who has the courage to leave sometimes spontaneously; whenever it becomes necessary, all other things – like setting up the EU Diplomatic Service – should be left, and the Foreign Minister should become a *demonstrator*.

In this context, it was regrettable, too, that the President of the Council, Herman de Rompuy, could not attend an important conference: the one of the heads of governments of the Balkan and Slovenia, on 20.3.2010 in Brdo/Slovenia. We should avoid any impression of no-shows by our most important representatives of the EU – despite their agendas which are often extremely busy.

With best regards,



*Hans-Jürgen Zahorka*

29<sup>th</sup> March, 2010

## ***The Commentary: What Is in a Name? The Macedonian Issue at Hand***

By Zhidas Daskalovski<sup>1</sup>



In October, 2009, the European Commission recommended opening negotiations for membership with Macedonia, the southernmost former Yugoslav republic. As at the 2008 NATO Summit in Bucharest NATO leaders refused Macedonia an invitation to join the alliance after Greece de facto vetoed the decision in a dispute over the republic's name, it is not clear when, or if, EU membership negotiations would start. The NATO blockade was made although Greece was obliged by the Interim Agreement signed with Macedonia under the auspices of the UN in 1995 not to block the admission of its northern neighbor to international organizations if it was to apply under the temporary reference used within the UN. The basic dispute between the Greeks and Macedonians concerns which nation may properly use the term "Macedonia." In a dubious legal procedure Macedonia was admitted to UN membership in April 1993 by the General Assembly Resolution 47/225 (1993), under the provision that it be "provisionally referred to for all purposes within the United Nations as the former Yugoslav Republic of Macedonia, pending settlement of the difference that has arisen over the name of the State." Macedonian governments have since committed to adhere to a UN process to discuss a possible solution to the "name dispute" although the additional conditions related to the name of the state constitute violations of the Article 4(1) of the UN Charter as interpreted by the Advisory opinion of ICJ, of 28 May, 1948, accepted by the General Assembly Resolution 197/III of 1948).

The U.N. negotiator, Matthew Nimetz, is trying to reach an agreement and has made various recommendations to the parties involved. Athens insists Macedonia add a 'qualifier' to its constitutional name to differentiate the country from the northern province of Greece bearing the same name. To most Greeks the use of the term "Macedonia" - the name of an ancient kingdom ruled most famously by Alexander the Great and encompassing most of the Hellenistic world - violates the national narrative of Greece and seems to imply an entitlement to

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the entire legacy (and even geography) of historic Macedonia. The Greeks feel their identity and historical and cultural legitimacy is questioned. Macedonians argue that the right to ethnicity, nationality and to identity is a fundamental principle of international law, a central tenet of the international order. Macedonian citizens instinctively know what is at stake, a majority consistently opting against changes of the name even if NATO membership is at stake at various polls conducted since 2008.

For Macedonia, the very future of the republic is dependent on successfully resolving this issue as the local Albanians might become restive watching the state of Albania, already a member of NATO, move forward with European integration. If the EU sides with the Greek position it will amount to declaring the Copenhagen Criteria are not important for the accession of Macedonia to EU, that the most important factor is an additional criterion that has nothing to do with democracy or rule of law. The public opinion will turn against EU. Nationalism and ethnocentrism will be on the rise. As a result this or any subsequent Macedonian government will not have much incentive to continue the needed reforms. On the other hand, the leverage of EU on Macedonian politics will decrease. What is more important, the possibilities for further soft mediation of Macedonian-Albanian political disputes will diminish. Macedonian nationalism will grow but so will the ethnic Albanian one. Radicals among the Albanians have anyways been encouraged by the recent declaration and recognition of Kosovo's independence. Supporting the Greek position signals to nationalists around the Balkans that Macedonia is not yet a "normal" country, a state that has a secure and prosperous future in the EU. With Kosovo's independence, Bosnia-Herzegovina's problems and Serbia's objections already complicating Balkan realities the EU does not need another crisis. Macedonian stability, which brought this country a remarkable freedom of press, is crucial as any new conflict there could cause a wider conflict including Bulgaria, Turkey, and Albania.

# ***Nuclear Disasters in the Developing World and EU Intervention***

by James Higgins<sup>2</sup>, Rachel Kurinsky, and Rocco Casagrande

## **SUMMARY**

Developing nations are investing in the construction of nuclear power plants to reduce reliance on imports of oil and natural gas. However, it is unclear if adequate attention has been given to the safe operation of nuclear plants in developing nations, or to the implications of a nuclear accident in such locales. It is also unclear if many developing countries have the resources to address catastrophic accidents, which may require the evacuation of thousands of exposed persons, the loss of tracts of urban and agricultural land to contamination, and clean-up efforts involving hundreds of workers, construction vehicles, and aircraft.

In the event of a catastrophic accident at a nuclear facility in a developing nation, what should the response be from the developed nations? Because the majority of nuclear disasters to date have taken place in Europe, it stands to reason that European nations have the experience necessary to lead the response to such an accident. However, it is unclear if the European Union's European Security Strategy, the European Defence Agency, or the North Atlantic Treaty Organization (NATO) or whoever as a European structure or institution might contribute have devoted sufficient attention to the political and logistical challenges that would ensue from responding to a nuclear disaster outside the boundaries of the EU. Given that a nuclear disaster may impact EU states located at some distance from the disaster site, it may be prudent for relevant agencies to investigate strategies for intervention.

*The cooling towers of the defunct reactor loomed over the horizon... Higher the four towers rose into the air, and higher. They were huge and impossibly out of scale. It was almost beyond belief that mere human beings had built such things. The land was dead and barren from horizon to horizon. Gullies runneled the soil, leaving behind rocks and baked mud. In the rare puddle or stagnant pond there grew swaths of nameless scum, too simple to be easily killed. An occasional clump of weeds poked out from the rubble remains of a building, spread out, sickened, and died.*

*A length of wall had collapsed on the containment building, swallowing up a slice of roof and whatever doorway might have existed. Twisted, half-melted girders stuck out through the gap. Within, a superheated vapor coiled about crumbling machinery, delicately veiling it from her eyes. And far beyond, visible only as a fierce red light piercing the mist, lay the Reactor's sister, the broken, simmering pool of the original Meltdown.*

*The radioactive slurry within was hot, hotter than the surface of Venus.*

Michael Swanwick, *In the Drift*, Ace Books, 1985

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## Introduction

In his science fiction novel *In the Drift*, author Michael Swanwick envisages an alternate-history United States in 2079, nearly a century after a full meltdown took place at reactor unit 2 at the Three Mile Island facility in Middletown, Pennsylvania. Most of the central portion of the state is a thinly populated wasteland contaminated with lethal concentrations of fallout spewed from the still-burning reactor. The US federal government has collapsed, and the eastern seaboard is a loose assembly of independent states and territorial polities. A large proportion of the population in the eastern US is resigned to early death from cancer and other radiation-induced maladies. All foodstuffs save those imported from the western portion of the nation, or locally grown in special fallout-proof greenhouses, are laced with radionuclides. Travel to the edges of the fallout zone (the 'Drift') requires monitoring equipment, protective filter masks, and disposable protective overclothes.

While they seemed firmly in the realm of fiction when described in Swanwick's 1985 novel, the environmental, political, and public health consequences of a major nuclear accident became very real when, a year later, an explosion occurred at Reactor Number 4 at the Chernobyl nuclear power facility near Pripyat, Ukraine. Suddenly what the nuclear power industry had confidently assured the public as an extremely unlikely event had become likely, and the world was forced to deal with an unprecedented scale and scope of a nuclear disaster.

Today, more than 20 years since the Chernobyl accident, the construction of nuclear power plants in developed nations is a contentious issue, often involving debates about the availability of affordable electricity, environmental quality, and public safety. However, in many developing nations, nuclear reactors are seen as a valid alternative to the use of increasingly expensive fossil fuels for electrical power generation. Within the next decade Iran, Pakistan, India, and China will complete the construction of a number of nuclear reactors, and nations such as Bangladesh, Vietnam, and Indonesia hope to start construction of their own nuclear facilities.

What is being done to ensure the safe and reliable operation of existing and forthcoming nuclear plants in developing countries? What would the public health consequences be for a Chernobyl-magnitude accident in a nation with little experience in handling nuclear disasters? What options would developed nations have for providing assistance to a country confronted with a reactor fire or explosion?

From the perspective of the European Union (EU), we would argue that such questions are by no means hypothetical musings. In our estimation, it is likely that within the next 20 - 30 years, a nuclear catastrophe overseas will require the intervention of the EU states in order to limit contamination of surrounding territories and implement humanitarian aid. Such an inter-

vention possibly may be mediated by an organization such as NATO, or a coalition of forces under the command of the European Union's defence institutions (which may be available then), since military units have been trained to operate in an environment characterized by radioactive contaminants. It is also possible that the United States armed forces (or Russia) may intervene, either on their own, or in conjunction with NATO or the European Union.

In the following article, we review the existing state of nuclear power plant operation and construction worldwide. We also review the historical record of nuclear accidents, particularly those taking place in the former Soviet Union. We examine the status of nuclear power plant safety measures in developing nations, with an emphasis on India and the BARC facility in the suburb of Trombay, Bombay (Mumbai). We then turn to the short-term and long-term consequences of a major nuclear accident taking place in a developing nation. We outline what role the EU or NATO may take in responding to such a crisis, and conclude with recommendations for strategic planning for dealing with such circumstances.

### **World expansion in nuclear plant facilities**

As of February 2009, there were 436 commercial nuclear reactors in operation in 30 nations around the world. When research reactors are added to this total, 56 nations have at least one reactor operating within their boundaries. While most of these are located in the industrialized countries of North America, Europe, and Japan, there is intense interest on the part of many developing nations in constructing reactors.<sup>3</sup>

Table 1 (below) provides information on the scope of nuclear power plant planning and construction for select countries outside North America and Western Europe.

Country	Reactors operating	Reactors under construction	Proposed reactors
Argentina	2	1	2
Armenia	1	0	1
Bangladesh	0	0	2
Brazil	2	0	5
China	11	17	34-90

<sup>3</sup> World Nuclear Association, 'World Nuclear Power Reactors 2007-09 and Uranium Requirements', <http://www.world-nuclear.org/info/reactors.htm>

India	17	6	15 - 23
Indonesia	0	0	2-4
Mexico	2	0	2
Pakistan	2	1	2-4
Thailand	0	0	2-4
Iran	0	1	1- 2
United Arab Emirates	0	0	3 - 11
Vietnam	0	0	2 - 8
Turkey	0	0	1-2
Egypt	0	0	1-2

**Table 1** - Power-generating nuclear reactors operating, or in development, in select nations as of October 2009. Data taken from the World Nuclear Association website: <http://www.world-nuclear.org/info/reactors.htm>

While only eight nations possess nuclear weapon capabilities, thirty currently utilize nuclear power for the purpose of electricity production. As of mid-2009, the United States leads the world with the largest number of plants in operation (104), followed by France (59), Japan (53), and Russia (31). However, the direction of growth of the nuclear power industry is experiencing a change of course. China and Russia lead the world in terms of reactors under construction, with seven reactors underway in each country. India follows close behind with construction on six reactors currently in progress. Wholly nineteen of the 31 reactors under construction in 2007 were located in Asia. Not only are Asian nations constructing more plants than the West, but they are erecting them at a substantially faster rate. It took approximately 18-24 years to bring each of four reactors into operation in Romania, Russia, and the Ukraine. Conversely, China, India, Japan, and South Korea collectively brought each of ten reactors into operational status in an average of only five years.<sup>4</sup>

A corollary to the operation of any nuclear power plant is the disposition of radioactive waste generated by the reactor. According to the International Atomic Energy Association (IAEA), a nuclear power advocacy organization, each year ~ 10 500 tons of metal waste are generated by the nuclear power industry.<sup>5</sup> In addition to solid waste, nuclear facilities also produce sizeable quantities of liquid waste. Both solid and liquid wastes are divided into two categories: ‘low level’ and ‘high level’ radioactive waste. As its name implies, low level waste has li-

<sup>4</sup> *ibid*; World Nuclear Association, ‘Nuclear Power in the World Today’, <http://www.world-nuclear.org/info/inf01.html>

<sup>5</sup> International Atomic Energy Agency, *Nuclear Energy Review 2008*, (Vienna: IAEA press, 2008), p. 12, <http://www.iaea.org/Publications/Reports/ntr2008.pdf>

mitted radioactivity and can be handled without shielding. High level waste contains transuranic elements (such as plutonium) and can emit lethal quantities of ionizing radiation; it requires special handling and storage regimens. Because of the logistics associated with the handling and storage of high level radioactive wastes, they are usually emplaced in proximity to reactor sites.<sup>6</sup>

For nuclear plants concerned with the generation of plutonium for fission weapons (i.e., ‘atomic bombs’), reprocessing high level waste in order to extract the plutonium is of high priority. Accordingly, large quantities (e.g., thousands of liters) of liquid waste may be stored for prolonged periods of time, to permit the more dangerous radioisotopes within it to decay, before the waste can be subjected to processes to selectively recover the plutonium residues.<sup>7</sup>

### **Nuclear accidents: The historical record**

Why should the world’s nations be concerned about the expansion of the nuclear power industry in developing countries? Since the first commercial nuclear plant devoted to generating electricity became operational in 1961 (the ‘Yankee Rowe’ pressurized water reactor in Rowe, Massachusetts), there have been a large number of ‘minor’ accidents officially recorded for reactors and other installations handling nuclear material in North America, Japan, and Europe.<sup>8</sup> Of course, the number of ‘unreported’ accidents could inflate this number appreciably, particularly for accidents taking place in countries which normally do not report events to international governing bodies, or disclose them in the open literature.

There have been five ‘major’ accidents involving nuclear facilities since 1950: the Sellafield (Windscale) reactor fire in the UK in 1957; the explosion of nuclear waste stored at the Mayak facility near Kyshtym in the Soviet Union the same year; the windstorm-mediated dispersal of radioactive sediment from Lake Karachay in the Soviet Union in 1967; the reactor meltdown at Three Mile Island in Middletown, Pennsylvania in 1979; and the explosion and meltdown of reactor No. 4 at the Chernobyl nuclear power plant in Pripjat, Ukraine in 1986.<sup>9</sup>

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<sup>6</sup> Marc Fioravanti and Arjun Makhijani, ‘Containing the Cold War mess: Restructuring the environmental management of the US nuclear weapons complex’ (Case Studies report), (Laurel, Maryland: Institute for Energy and Environmental Research), October 1997, pp. 55 – 58,

<http://www.ieer.org/reports/cleanup/ccwm.pdf>

<sup>7</sup> World Nuclear Association, ‘Processing of Used Nuclear Fuel’, <http://www.world-nuclear.org/info/inf69.html>

<sup>8</sup> Samuel Upton Newton, *Nuclear War I and Other Major Nuclear Disasters of the 20th Century* (New York: Author House, 2007), pp. 211 – 250

<sup>9</sup> *ibid*, pp. 151 – 188

Of all these accidents, those at Mayak, Lake Karachay, and Chernobyl were the most destructive in terms of human casualties and the release of radioisotopes into the atmosphere (Table 2).<sup>10</sup>

Location	Cause of accident	Area of contamination	Amount of contamination	Exposed population	Public health consequences
<b>Mayak (village of Kyshtym, Chelyabinsk Oblast) 1957</b>	explosion of stored nuclear waste	23,000 km <sup>2</sup>	20 million Curies	272,000	unclear, but may include increased incidence of leukemias, lung cancer
<b>Lake Karachay (Chelyabinsk Oblast) 1967</b>	windstorms dispersed radioactive sediment	2,200 km <sup>2</sup>	600,000 to 5 million Curies	42,000	unclear, but may include increased incidence of leukemias, lung cancer
<b>Chernobyl (village of Pripyat, Ukraine) 1986</b>	explosion and meltdown of RBMK reactor	1.3 million km <sup>2</sup>	12 million Curies	> 300,000	documented increase in thyroid cancer in children; possible increase in other cancers, birth defects

**Table 2** - Environmental and public health consequences of major nuclear accidents in the former Soviet Union. Data adapted from Cochran et al. (1993), Goldman (1997), Newtan (2007), Jones (2008), and Nowakowski et al. (2008)

What types of disasters could take place in association with nuclear power plant operations in a developing nation? We envisage four scenarios:

- **a reactor core fire or explosion (akin to that taking place at Chernobyl, Windscale, and Three Mile Island)**
- **an explosion involving stored high-level nuclear waste (akin to that of Mayak)**
- **an accident involving the transport of high-level nuclear waste from one locale to another**

<sup>10</sup> A note on terminology: a (bewildering) variety of units of measurement for radiation, and radiation exposure, are used in the literature. While the Becquerel (Bq) is the current SI unit for radioactivity, most of the literature dealing with historical nuclear accidents uses the Curie (Ci), and to avoid burdening the reader with extensive use of converted values in a general-audience article such as this, we retain the use of this unit. Note that 1 Ci =  $3.7 \times 10^{10}$  Bq. We have chosen to use the currently approved SI term for radiation exposure, the Gray (Gy); 1 Gy = 100 rad. A dose of 1 -2 Gy can cause nausea and vomiting but no mortality; 3 - 4 Gy can lead to acute radiation sickness in exposed persons with up to 50 % mortality in the absence of treatment, and a dose of 6 -7 Gy is usually fatal in the absence of treatment.

- **a natural disaster that damages a nuclear waste storage site (or reactor) and distributes its contents into the atmosphere**

How likely are these types of accidents? The nuclear power industry argues that while these events are indeed part of the historical record, the implementation of modern safety protocols and operator training makes the likelihood of further accidents remote. According to the World Nuclear Association,

*Advances in safety practice are unmistakable. At most plants worldwide, reportable safety-related 'events' are now near zero. National and international insurance laws assign responsibility to nuclear plant operators. In the U.S. for example, reactor operators share in a 'pooled' private insurance system that has never cost taxpayers a penny.*

*Today, nuclear power plants have a superb safety record - both for plant workers and the public. In the transport of nuclear material, highly engineered containers - capable of withstanding enormous impact - are the industrial norm. More than 20,000 containers of spent fuel and high-level waste have been shipped safely over a total distance exceeding 30 million kilometres. During the transport of these and other radioactive substances - whether for research, medicine or nuclear - there had never been a harmful radioactive release.<sup>11</sup>*

According to the US Nuclear Regulatory Commission, reactors have a number of mechanisms in place to reduce the probability of an accident. These include automatic, or operator-mediated, shutdowns of the fission reaction (referred to in the nuclear industry as a reactor 'scram'); redundant systems to provide coolant to the reactor in the event the main coolant delivery channel fails; redundant electrical systems, in case of loss of main electrical power; and a system of multiple, nested containment vessels and structures to retain any radioactive gas or material that should be generated by the reactor in the course of an accident.<sup>12</sup>

In the view of the industry, the presence of these cumulative safety features means that even if something should go wrong with the reactor or its supportive infrastructure, it would be extremely difficult for sufficient heat to build up in the reactor core to initiate a meltdown. Furthermore, any radioactivity released in the course of an accident would be retained within the reactor building, and any quantities released into the atmosphere would be so minute as to constitute a negligible threat to public health.

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<sup>11</sup> World Nuclear Association, 'A Superb Record of Nuclear Safety', [www.world-nuclear.org/why/nucsafety.html](http://www.world-nuclear.org/why/nucsafety.html)

<sup>12</sup> Nuclear Regulatory Commission (U.S.), *Regulator of Nuclear Safety* (NUREG/BR-0164, Rev. 4), (Washington, US NRC, February 2007), pp. 12 - 15, <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0164/r4/br0164r4.pdf>

Opponents of the nuclear industry have a number of counter-arguments. One is that the safe operation of reactors is highly dependent on conscientious behavior on the part of the operators and owners, as demonstrated by regular inspections. However, there are many documented instances of missed or faulty inspections, a practice occasioned by corruption and malfeasance. For example, a serious fire took place in February 2001 at the San Onofre Nuclear Power Plant in San Diego County, California; a faulty circuit breaker was believed to have been the cause.<sup>13</sup> Despite the worrisome implications of this accident, in January 2008, the U.S. Nuclear Regulatory Commission revealed that hourly fire inspections had been falsified by a plant employee from 2001 – 2006.<sup>14</sup>

Such examples of laxity are not limited to the US; in Japan, throughout the 1990s and 2000s there were a dismaying number of fatal accidents and blunders at nuclear plants, as well as revelations of falsification of inspection reports that led to a temporary shutdown in 2002 of all 17 reactors of the Tokyo Electric Power Company (there were cracks in the protective ‘shrouds’ around 13 of the 17 reactors).<sup>15</sup>

Another safety concern is that the fidelity of a reactor’s nested safety systems is highly dependent on the quality of their engineering and assembly. And, while reactor design and construction can incorporate mandated requirements for safe operation in response to any number of scenarios, the likelihood always exists that ‘real life’ scenarios may be more severe, and have unanticipated consequences, than cannot be ameliorated by design stipulations. For example, in Japan, a July 16, 2007 earthquake, measuring 6.8 on the Richter scale, damaged the world’s largest nuclear power station, the Kashiwasaki-Kariwa facility near Niigata. A transformer caught fire, which required two hours to extinguish. There was leakage of radioactive water into the confines of the plant, and into the Sea of Japan (~ 90 000 Bq, or 2.4 µCi).<sup>16</sup>

It is important to note that this water evidently overflowed from the six of the seven spent fuel pools at the facility; in other words, the large holding tanks on-site where disused fuel rods

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<sup>13</sup> US Nuclear Regulatory Commission (U.S.), September 20, 2002, ‘NRC Information Notice 2002-27: Recent fires at commercial nuclear power plants in the United States’, (Washington, US NRC, September 2002), pp. 1- 3, <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/2002/in200227.pdf>

<sup>14</sup> Dan Weikel, ‘San Onofre safety lapses disclosed’, *Los Angeles Times* (local), January 15, 2008, <http://articles.latimes.com/2008/jan/15/local/me-onofre15>

<sup>15</sup> Mycle Schneider and Antony Froggatt, *The World Nuclear Industry: Status Report 2007* (Brussels, The Greens / European Free Alliance, Brussels, January 2008), p. 23, <http://www.greens-efa.org/cms/topics/dokbin/206/206749.pdf>

<sup>16</sup> Hideyuki Ban and Philip White, ‘Kashiwazaki-Kariwa Earthquake: Japan’s Nuclear Safety Shaken to the Roots’, *Citizens’ Nuclear Information Center Newsletter*, July 23, 2007, <http://cnic.jp/english/newsletter/nit119/nit119articles/kkearthquake.html>

from the reactor are submerged underwater (for years) until their emissions reach acceptable levels, and permit the rods to be transported to a remote site for burial. Fortunately, there was evidently sufficient water left in the spent fuel pools even after this leakage to maintain the cooling and shielding function of the pools (if cooling is inadequate, the spent fuel rods will catch fire and melt).

In addition to the discharge of contaminated water into the sea, there were cumulative releases of  $4 \times 10^8$  Bq (0.01 Ci) of radioactive materials ( $^{51}\text{Cr}$ ,  $^{60}\text{Co}$ ,  $^{133}\text{I}$ , and  $^{135}\text{I}$ ) into the atmosphere from the plant's exhaust towers.<sup>17</sup>

The Kashiwasaki-Kariwa reactors were taken off-line and, according to a report by The Greens / European Free Alliance,

*Since the seismic acceleration of the quake detected at one of the reactors was at least 2.5 times as high as the design basis of the nuclear facilities it is unclear whether the units can ever restart.*<sup>18</sup>

However, as of the end of June, 2009, the Japanese Nuclear and Industrial Safety Agency had given the plant approval to renew operations.<sup>19</sup>

As more countries undertake the construction of nuclear power plants, particularly developing countries, it is prudent to ask if adequate oversight of plant operations can be assured. We posit that in many developing countries corruption is even more pervasive and entrenched than in developed countries; this does not bode well for a conscientious operation of nuclear facilities. It is unclear if regulatory agencies from the UN / IAEA will have the necessary freedom to visit such plants and provide an external review of safety practices, particularly if the facility is simultaneously being used for 'strategic' (i.e, weapons development) purposes.

Another factor to be entered into risk calculations and disaster scenarios is the shortage of personnel with experience in the operation of a nuclear power facility. This shortage can potentially hamper expansion of the nuclear industry in first-world countries. But in developing countries, the placement of poorly-trained personnel in critical occupations may have consequences far more serious than the disruption of electrical power generation.<sup>20</sup>

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<sup>17</sup> ibid

<sup>18</sup> Schneider and Froggatt, *The World Nuclear Industry: Status Report 2007*, p. 23

<sup>19</sup> Anonymous, 'Nuclear agency OKs commercial operation at Kashiwazaki-Kariwa plant', *Japan Today*, June 29, 2009, <http://www.japantoday.com/category/national/view/nuclear-agency-oks-commercial-operation-at-kashiwazaki-kariwa-plant>

<sup>20</sup> Schneider and Froggatt, *The World Nuclear Industry: Status Report 2007*, p. 12

## **Problems in the safe operation of nuclear facilities: India**

A sizeable obstacle to efforts to characterize the risk of a nuclear disaster in a developing country is the paucity of information in the open literature about nuclear power operations in developing countries.

Most of the scientific literature on the topic of reactor accidents is narrowly focused on the mechanical and technical features of safeguarding and troubleshooting reactor operation and nuclear waste storage, rather than addressing broad-ranging extrapolations of the public health and environmental consequences of reactor failure.

In terms of problems with reactor operation in developing countries, much of what can be found in the open literature is scant, and consists of reports in news media, particularly magazines featuring investigative reporting, and websites maintained by private organizations devoted to environmental advocacy, rather than formal scientific and technical literature. While these sources of information obviously have limitations, we of necessity have used them to inform our analysis of the consequences of reactor disasters in developing countries.

As an example of the coverage afforded nuclear plants in developing countries, we have chosen the Dhruva reactor at the Bhabha Atomic Research Centre (BARC) in Trombay, a suburb of Bombay (Mumbai). The Dhruva is the largest reactor in India: a 100 MW ‘pool-type’ fast breeder reactor; i.e., the reactor core is suspended in a pool of ‘heavy water’ (deuterium-enriched water, or  $^2\text{H}_2\text{O}$ ) that serves as a coolant and a moderator. The Dhruva reactor became operational in August 1985. A 2007 article in an Indian newspaper mentioned that the Dhruva makes ‘even the Americans quake in awe’.<sup>21</sup> Unkind observers may attribute this ‘quaking’ to the fact that soon after becoming operational, the reactor had a serious accident involving excessive vibration due to water flow through the fuel assemblies; 4 metric tons of heavy water overflowed from the reactor core. Operation was suspended until January 1987, and the reactor did not generate its full power until January 1988.

According to the Nuclear Threat Initiative,

*Safety standards at BARC have come under question after the revelation in 1991 that Dhruva was operated for nearly a month with a malfunctioning emergency coolant system. Also in October 1989, a reactor technician was accidentally locked inside a shielded room at Dhruva. The technician saved his life only by repeatedly shutting*

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<sup>21</sup> T. S. Subramanian, ‘The Damsel of Trombay’, *Frontline* (India), Apr. 21 – May 4, 2007, <http://www.hinduonnet.com/fline/fl2408/stories/20070504002210400.htm>

off the coolant pump to the reactor, causing the reactor to repeatedly shut down. The technician was found by chance an hour after the incident.<sup>22</sup>

An article by A. Gopalakrishnan (1999) in India's 'Frontline' magazine states:

*There was also an incident of operating the Dhruva reactor for almost one month with an emergency coolant system valve closed tight. The bursting of underground pipelines carrying radioactive fluids within the BARC campus, which has contaminated hundreds of tonnes of subsoil, and leaky tanks holding lakhs [i.e., thousands] of litres of highly radioactive fluids not being replaced or repaired are some of the other instances.*<sup>23</sup>

It is unclear from a survey of the open literature if BARC suffers from more, or fewer, operational problems than the other reactors currently operating in India. According to a article by Ashwin Kumar (2007) of the Centre for Interdisciplinary Studies in Environment and Development, Bangalore,

*An examination of the safety record in India's nuclear facilities reveals poor practices and routine accidents, ranging from leaks of oil to complete loss of power in a reactor causing all safety systems to be disabled. Although as yet in India, there has not been a severe accident leading to core meltdown or large radiation exposures to the public, on measures of occupational exposure to workers, India's nuclear facilities perform poorly.*

*For example in the 1980s, for which data is available, radiation exposures to power plant workers were ten times the world average for each unit of electricity and twice the world average for each monitored worker. As recently as 2003, there have been accidents involving high radiation exposures to workers.*<sup>24</sup>

It should be noted that the international nuclear power community has a number of bureaucratic organizations devoted to accident response, such as the IAEA's 'Inter-Agency Committee on Response to Nuclear Accidents' (AICRNA), and periodic exercises are conducted to evaluate cooperative responses to a nuclear accident.

These measures were undertaken as a response to the reticence of the former Soviet government about the Chernobyl disaster; like so many international administrative entities, it is difficult to ascertain what the impact of its role would be in the event of a nuclear disaster, particularly one involving a facility with strategic implications.

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<sup>22</sup> Nuclear Threat Initiative, 'Country Overviews: India, Nuclear Facilities, Dhruva Research Reactor' (2003), [http://www.nti.org/e\\_research/profiles/India/Nuclear/2103\\_2601.html](http://www.nti.org/e_research/profiles/India/Nuclear/2103_2601.html)

<sup>23</sup> A. Gopalakrishnan, 'Issues of Nuclear Safety', *Frontline* (India), Mar. 13 - 26, 1999, <http://www.flonnet.com/fl1606/16060820.htm>

<sup>24</sup> Ashwin Kumar, 'Nuclear safety: A poor record' *India Together*, March 30, 2007, <http://www.indiatogether.org/2007/mar/env-nukesafe.htm>

## Public health implications of a nuclear disaster in a developing country

What should we expect if a nuclear disaster took place in a developing country ? What would the effects be on the populace located in proximity to the disaster site?

One of the more 'fortunate' aspects of the Mayak and Chernobyl accidents was that they took place in comparatively underpopulated areas. The Mayak facility, as a weapons development plant, was deliberately located in a remote area of the Chelyabinsk Oblast by the Soviet authorities in order to preserve secrecy. The Chernobyl site was located in an agricultural district with few population centers (the nearest major city is Kiev, nearly 70 miles to the southeast). The city of Pripyat (45 000 – 50 000 inhabitants prior to the accident) was primarily constructed to house the plant workers, rather than a metropolitan area existing prior to the introduction of the nuclear facilities.

However, it is unclear if existing, and planned, nuclear power plants in developing countries will be able to be sited at a distance from highly populated areas. For smaller nations such as Bangladesh, Azerbaijan, or Jordan, it is difficult to see how any site could be found at a 'safe' distance from major population centers (i.e., where fallout from a reactor or waste tank explosion would primarily descend on sparsely inhabited territory). Thus, it is likely that a nuclear accident at a facility in a developing country will involve a correspondingly higher number of individuals than the historical accidents taking place in the former Soviet Union.

Casualties from a reactor explosion per se would be small (i.e., presumably < 100 people) and restricted to personnel located in close proximity to the blast. Depending on the location of workers relative to the reactor, their injuries would result from the heat and physical force of the explosion. Only a small proportion of these casualties would receive immediately lethal doses of radiation. For example, at the Mayak disaster, personnel close to the explosion were estimated to have been exposed to 100 rad (~ 1 Gy) and few, if any, succumbed to acute radiation sickness (ARS).<sup>25</sup> At Chernobyl 134 individuals were diagnosed with ARS, but only 28 of these died in the 'short term' (i.e., 2 months after exposure) after receiving total body doses of gamma radiation estimated to be  $\geq 6$  Gy.<sup>26</sup> It should be emphasized that the relatively high survival rate among Chernobyl ARS victims was due to rapid and intensive medical care by personnel trained in radiation medicine; whether survivors of a reactor explosion in a developing nation will receive equivalent care is uncertain.

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<sup>25</sup> T. B. Cochran, R. S. Norris, and K. L. Suokko, 'Radioactive contamination at Chelyabinsk-65, Russia', In *The Annual Review of Energy and the Environment*, vol. 18, 1993, p. 521

<sup>26</sup> Fred A. Mettler, Angelina K. Gus'kova, and Igor Gusev, 'Health Effects in Those With Acute Radiation Sickness from the Chernobyl Accident', *Health Physics*, vol. 93, no. 5, November 2007, pp. 462 – 469

The greater proportion of injuries resulting from a nuclear accident will result from sub-acute radiation exposure, as fallout from the explosion or fire descends from the atmosphere onto surrounding territories. The larger of these ‘hot’ particles, i.e., those 10 µm in size (or about 1/100th the length of a millimeter), will tend to settle in the immediate area of the accident, while smaller particles (< 2 µm) will be dispersed for greater distances (hundreds or thousands of km). The majority of these particles will contain gamma- and beta- emitting radionuclides such as <sup>90</sup>Sr, <sup>134</sup>Cs and <sup>137</sup>Cs, and isotopes of iodine such as <sup>131</sup>I. If the accident involves a reactor explosion, then components of the core such as <sup>144</sup>Ce, <sup>95</sup>Nb, and <sup>95</sup>Zr may be represented.<sup>27</sup> Settling of these radioactive particles on exposed persons can lead to superficial skin burns due to beta radiation, and cataracts as a result of irradiation of the eye. Of greater concern are the health effects ensuing from the ingestion and inhalation of radioactive particles. It is well- documented that radioisotopes can bioconcentrate in certain tissues and organs (for example, <sup>133</sup>I in the thyroid gland and <sup>90</sup>Sr in bone). Increased rates of thyroid cancer among Chernobyl accident victims are considered to have been caused by the uptake of <sup>133</sup>I into the thyroid.<sup>28</sup> With regard to short-term symptoms and medical needs, most of the individuals exposed to fallout in the aftermath of a nuclear accident would suffer ailments related to low-dose (i.e., ≤ 1 – 2 Gy) radiation. These individuals would have episodes of vomiting, headache, and fever. Individuals receiving medium- dose exposure (i.e., 2 – 4 Gy) may also display transient diarrhea.<sup>29</sup>



*Cooling towers of the Metsamor Nuclear Power Plant, Armenia*

The main public health consequences will relate to long term (i.e., years and decades post-exposure) manifestations of sub-acute radiation exposure and are not only hard to predict, but the subject of controversy among nuclear power advocates and detractors. The particulars of their debate are beyond the scope of this

article, but we present some potential health complications (that have been validated by epidemiologists<sup>30</sup>) in Table 3:

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<sup>27</sup> B. Salbu, T. Krekling, D. H. Oughton G. Ostby, V. A. Kashparov, T. L. Brand, and J. P. Day, ‘Hot Particles in Accidental Releases From Chernobyl and Windscale Nuclear Installations’, *Analyst*, vol. 119, January 1994, pp 125 - 130

<sup>28</sup> M. Goldman, ‘The Russian radiation legacy: Its integrated impact and lessons’, *Environmental Health Perspectives*, vol. 105, suppl. 6, December 1997, pp. S1385 – S1391

<sup>29</sup> Mettler, Gus’kova, and Gusev, ‘Health Effects in Those With Acute Radiation Sickness from the Chernobyl Accident’, pp. 462 -469

<sup>30</sup> E. S. Gilbert, C. E. Land, and S. L. Simon, ‘Health effects from fallout’, *Health Physics*, vol. 82, 2002, pp. 726 – 735; Goldman, ‘The Russian radiation legacy: Its integrated impact and lessons’, pp. S1385 – S1391;

Injury Category	Remarks
acute radiation sickness	casualties will be highest among first responders and nearby residents
sub-acute radiation sickness	manifesting some years (i.e., decades) after exposure; thyroid cancers predominating
radiation-associated, non-malignant injuries	includes genetic instabilities, altered sex ratios in infants, mental retardation, and other developmental disorders
non-radiation associated illnesses	primarily infectious diseases and malnutrition encountered during evacuation and resettlement campaigns; high child mortality rates

**Table 3** - Categories of short- and long-term potential health problems afflicting populations involved in a nuclear power plant or nuclear waste storage facility accident. Adapted from Gilbert et al. (2002), Koenig et al. (2005), and Weisdorf et al. (2006), and Scherb and Voigt (2007)<sup>31</sup>

We note a factor present in developing countries that may enhance morbidity and mortality in a population exposed to fallout: the impoverishment, and malnourished status (particularly in

children) of many residents of large urban centers, such as Bombay.<sup>32</sup> For example, according to a study of body mass parameters of Bombay inhabitants, the average resident was 12 cm (4.7 in.) shorter, 24 kg (53 lb) lighter, and had a body mass index (BMI) 4 kg/m<sup>2</sup> lower than that of the UK or USA population.<sup>33</sup>

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Richard S. Nowakowski and Nancy L. Hayes, 'Radiation, retardation, and the developing brain: time is the crucial variable', *Acta Paediatrica*, vol. 97, 2008, pp. 527 - 531

<sup>31</sup> E. S. Gilbert, C. E. Land, and S. L. Simon, 'Health effects from fallout', pp. 726 - 735; Kristi L. Koenig, Ronald E. Goans, Richard J. Hatchett, Fred A. Mettler, Thomas A. Schumacher, Eric K. Noji, and David G. Jarrett, 'Medical Treatment of Radiological Casualties: Current Concepts', *Annals of Emergency Medicine*, vol. 45, 2005, pp. 643 - 652; Daniel Weisdorf, Nelson Chao, Jamie K. Waselenko, Nicholas Dainiak, James O. Armitage, Ian McNiece, and Dennis Confer, 'Acute radiation injury: Contingency planning for triage, supportive care, and transplantation', *Biology of Blood and Marrow Transplantation*, vol. 12, 2006, pp. 672-682; H. Scherb and K. Voigt, 'Trends in the human sex odds at birth in Europe and the Chernobyl Nuclear Power Plant accident', *Reproductive Toxicology*, vol. 23, 2007, pp. 593 - 599

<sup>32</sup> Neeraj Hatekar and Sanjay Rode, 'Truth about Hunger and Disease in Mumbai: Malnourishment among Slum Children', *Economic and Political Weekly*, vol. 38, no. 43 (Oct. 25-31, 2003), pp. 4604-4610

<sup>33</sup> H. C. Shukla, P. C. Gupta, H. C. Mehta, and J. R. Hebert, 'Descriptive epidemiology of body mass index of an urban adult population in western India', *Journal of Epidemiology and Community Health*, vol. 56, 2002, pp. 876 - 880

Because radiation sickness can involve vomiting, diarrhea, mouth sores, and other ailments that affect caloric intake, individuals with limited body fat reserves may require more prolonged periods of healing, and are more vulnerable to those complications associated with radiation exposure, that would be absent in well-nourished populations.

With regard to developing countries, limited financial resources would prevent many residents from receiving timely cancer screening and treatment; their malnourished condition would result in compromised immune status, enhancing susceptibility to infectious diseases.

We also consider it unlikely that mass distribution of potassium iodide (or other prophylactic measures) to such a large number of exposed people will be feasible, thus, cancers of the thyroid may be prevalent in the exposed population. In light of these observations, we feel that cancer morbidity and mortality may be high despite the relatively low dose of ionizing radiation (i.e, 1 – 2 Gy).

### **Social and environmental implications of a nuclear disaster in a developing country**

Environmental contamination with radionuclides will be a phenomenon intrinsic to any accident at a nuclear power plant or nuclear waste storage facility. As we mentioned above in the context of public health implications, many developing nations interested in pursuing nuclear power do not have the ‘luxury’, so to speak, of stationing such facilities in underpopulated territories primarily devoted to agricultural development. Indeed, for nations such as Jordan, Bangladesh, and Armenia, it is highly likely that significant amounts of fallout from a nuclear disaster would descend on neighboring countries.

If the events of Mayak, Chernobyl, and Windscale are any portent, depending on the scale of the explosion and / or fire, radioisotopes may be discharged over hundreds, or even thousands, of km<sup>2</sup>. At Mayak, for example, the explosion generated by the underground waste storage tank is estimated to have been equivalent to the detonation of 75 tons of TNT, and discharged 20 million curies (Ci) (approximately 740 gigabecquerels) into the atmosphere.<sup>34</sup>

The resultant plume of radioisotopes traveled some 300 km downwind of the site and contaminated an area of 15 000 – 23 000 km<sup>2</sup> with an estimated 270 000 inhabitants. The major radionuclides deposited in the soil were <sup>90</sup>Sr / <sup>90</sup>Y, <sup>95</sup>Zr / <sup>95</sup>Nb, and <sup>144</sup>Cs / <sup>144</sup>Pr (note that

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<sup>34</sup> T. B. Cochran, R. S. Norris, and K. L. Suokko, ‘Radioactive contamination at Chelyabinsk-65, Russia’, pp. 520 - 522

some of these, such as  $^{95}\text{Nb}$  and  $^{144}\text{Cs}$ , have short half-lives and dissipated in the days following the accident).<sup>35</sup>

In the immediate aftermath of the accident 1 154 people were evacuated. Over the course of the next 6 - 12 months, as the severity of the fallout became clearer, another 9 576 residents were also evacuated from what would ultimately be a 'contamination zone' measuring 105 km long x 8 – 9 km wide. Approximately 20 km<sup>2</sup> of pine trees and 5 km<sup>2</sup> of birch trees, within the contaminated territory died as a result of receiving lethal amounts of radioactivity. The incorporation of strontium ( $^{90}\text{Sr}$ ) into the soil, and then into crops raised in the soil, meant that much of the affected region's agricultural land (~ 100 000 hectares) could not be tilled. Harvesting of fish and other aquatic fauna from the 30 lakes in the fallout zone also was prohibited.<sup>36</sup>

Today, the Chelyabinsk district remains one of the most environmentally hazardous regions on the planet, but the extent of its contamination does not (arguably) constitute a major threat to the population of Russia, or neighboring nations. However, if a disaster of equivalent magnitude should take place in Bangladesh (for example), it obviously would have a much greater impact on social and environmental parameters.

Given that the population of Bangladesh was estimated to approach 150 million in mid-2007, with a population density of 2 600 per sq mile, then the deposition of fallout would lead to the exposure of a large number of people and the contamination of a sizeable proportion of national territory.<sup>37</sup> Even if the concentration and extent of fallout was one-half, or one-third, that experienced at Mayak, the consequences still would be severe. We outline these effects in Table 4 (below):

<b>Fallout Effect</b>	<b>Consequences</b>	<b>Remedial Efforts</b>
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<sup>35</sup> Goldman, 'The Russian radiation legacy: Its integrated impact and lessons', pp. S1385 – S1391; Steve Jones, 'Windscale and Kyshtym: a double anniversary', *Journal of Environmental Radioactivity*, vol. 99, 2008, pp. 1 – 6

<sup>36</sup> T. B. Cochran, R. S. Norris, and K. L. Suokko, 'Radioactive contamination at Chelyabinsk-65, Russia', pp. 520 – 522; I.I. Kryshev, G. N. Romanov, L. N. Isaeva, and Yu. B. Kholina, 'Radioecological state of lakes in the southern Ural impacted by radioactivity release of the 1957 radiation accident', *Journal of Environmental Radioactivity*, vol. 34, no. 3, 1996, pp. 223-235; I.I. Kryshev, et al., 'Environmental contamination and assessment of doses from radiation releases in the Southern Urals', *Health Physics*, vol. 74, no. 6, June 1998, pp. 687- 697

<sup>37</sup> Peter Kim Streatfield and Zunaid Ahsan Karar, 'Population Challenges for Bangladesh in the Coming Decades', *Journal of Health, Population and Nutrition*, Vol. 26, No. 3, September 2008, pp. 261-272

soil contamination	prohibitions on crop cultivation in affected soil; long-term reduced food / fiber crop production	plowing or burial of topsoil layers; administration of ammonium-ferric hexacyano-ferrate fertilizers; ban on agricultural use of affected land
urban contamination	coating of vehicles, homes, industrial facilities, parks, and highways with fallout may render them inoperable or uninhabitable	washing fallout off contaminated objects; disposal of contaminated material in specialized burial pits
water contamination	potable water sources made non-potable; restrictions or bans on harvesting fish from affected waters	extended ban on utilization of contaminated water for drinking or fishing
vegetation die-off	radiation-mediated death of existing crops, ground- and tree- cover; enhanced soil erosion	replanting of affected areas
economic losses	long-term reduced food / fiber crop production; reduced forage for livestock grazing; loss of livelihood for farmers	increased government financial aid to affected farmers; increased importation of foodstuffs
social disruption	mass migration of 'contaminated' refugees; social and economic shunning of such individuals; political instability	mass resettlement campaigns; long-term financial assistance and health monitoring of affected populations

**Table 4** - Social and environmental consequences of fallout resulting from a nuclear accident. Data adapted from Alexakhin (1996), Cox (2005), and Large (2006)<sup>38</sup>

We feel it is unlikely that a country like Bangladesh would have the financial resources to address many of the possible remediation strategies provided in Table 4. Indeed, we anticipate that in the aftermath of a nuclear disaster, many affected individuals will simply decide to remain in their homes, regardless of the health implications of exposure to fallout. These people, their livestock, and wild animals will ingest crops and water contaminated with various radionuclides. They may attempt to market crops, meat, fish, and fiber products that have bioconcentrated radionuclides.

Alternately, a significant proportion of exposed people may choose to flee the contaminated areas. Obviously, the sudden, panic-inspired movement of thousands, if not millions, of people under these circumstances will present unusual challenges to governments. Housing the refugees, feeding them, providing potable water, medical care, and replacement clothing

<sup>38</sup> R. M. Alexakhin, S. V. Fesenko, and N. I. Sanzharov, 'Serious radiation accidents and the radiological impact on agriculture', *Radiation Protection Dosimetry*, vol. 64, 1996, pp. 37-42; G. Cox, et al., 'Identifying optimal agricultural countermeasure strategies for a hypothetical contamination scenario using the strategy model', *Journal of Environmental Radioactivity*, vol. 83, 2005, pp. 303 - 397; John H. Large, *Chernobyl- a nuclear catastrophe 20 years on: A review of the present situation in the Ukraine* (London: Large and Associates, 2006), pp. 5 - 26, <http://www.nirs.org/c20/chernobyllargereportfinal.pdf>

and personal goods would severely tax even a comparatively affluent, developed nation; whether Bangladesh, Armenia, or Jordan would have the capacity to do so is uncertain.

### **Transnational responses to a nuclear accident in a developing nation: What role for the European Union?**

The Soviet government needed *13 days* and a massive effort by 300 000 – 600 000 military and civilian personnel to extinguish the fire at Chernobyl (at one point the government used oil-drilling equipment to inject liquid nitrogen into the ground below the reactor in order to prevent the melting core from reaching the water table).<sup>39</sup> Hundreds of vehicles (including armored personnel carriers designed for operation in NBC environments), and a number of helicopters, were used to combat the reactor fire by burying the core under a variety of inert materials. Following the extinguishing of the reactor fire, these vehicles also were used in the months-long decontamination effort; mobile cranes, bulldozers, dump trucks, and other types of construction vehicles were employed to build the containment vessel / sarcophagus around the damaged reactor, as well as to gather contaminated construction materials and topsoil and bury them underground. Practically all of these vehicles, civilian and military, were later discarded because they had become heavily contaminated with radionuclides.<sup>40</sup>

Complicating logistical efforts to deal with the reactor fire and decontamination, more than 116 000 people resident within the contaminated areas were evacuated by September 1986.<sup>41</sup>

Today 7 500 workers tend to approximately 800 dump sites (estimated to comprise a total volume of anywhere from 1.5 - 21 x 10<sup>6</sup> cubic meters), within and without the ‘Exclusion Zone’, that hold contaminated materials retrieved from the accident site. Comprehensive information on the location and contents of many sites is lacking, since many of them are little more than unlined trenches and pits. In addition to these dump sites the Ukraine government must confront the remediation of the 22 km<sup>2</sup> ‘cooling lagoon’, sited on the flood plain of the Pripyat River. Originally built to provide water for the reactors, it was heavily contaminated with fallout, as well as serving as the recipient of the radioactive water pumped from the basement of reactor No. 4.<sup>42</sup>

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<sup>39</sup> Zhores Medvedev, *The Legacy of Chernobyl* (New York: W.W. Norton, 1992), p. 59

<sup>40</sup> Large, pp. 5 – 26

<sup>41</sup> Goldman pp. 1- 6

<sup>42</sup> Large, pp. 5 – 26



Chernobyl: Rusting boats near Pripyat; they are considered too radioactive to be worth salvaging. Photograph courtesy of George Kourounis

The magnitude and scope of the responses necessary to deal with the Chernobyl accident , which occupied a significant portion of the military, medical, and civilian resources of the Soviet Union, have worrisome implications for plans to combat an accident of equal (or even lesser) severity in a developing country. For example, we offer a scenario of a nuclear disaster – a fire and / or meltdown of a reactor core, or alternately the explosion of a container of high-level radioactive wastes – taking place in a small nation such as Jordan.

An immediate concern would of course be the movement of fallout onto neighboring nations; obviously, dispersal would be dependent on prevailing winds, but it is unlikely that either nation would escape at least some degree of contamination. In the case of a nuclear accident taking place in Jordan, we surmise that Israel, Syria India, and Saudi Arabia would not take kindly to the discovery that portions of their adjoining territory have been rendered uninhabitable by the deposition of fallout for decades (if not centuries).<sup>43</sup>

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<sup>43</sup> Jordan is negotiating with a Canadian firm to build a Candu-6 reactor for power and desalination purposes on the Red Sea coast near Aqaba; construction may start in 2013, with the plant operational in 2020. World Nuclear Association, <http://www.world->

Another complication is the movement of refugees from the affected region across international borders. It is unclear how Jordan's neighbors would respond to the spectacle of thousands, perhaps millions of radionuclide-contaminated, fearful refugees attempting to cross their borders. We suspect that severe (perhaps violent) measures would be taken to prevent a massive influx of such displaced persons.

If Jordan is unable to contain a reactor fire, or a fire associated with waste storage facilities, then over the succeeding days considerable quantities of fallout would be generated and dispersed towards neighboring countries. This obviously would create unprecedented diplomatic, humanitarian, and environmental crises demanding a response from international bodies.

Under such conditions, intervention (perhaps unilateral) by outside agencies would be mandated. Here, we contemplate a role for the EU and / or NATO.

### **Why the EU and NATO?**

*Quite simply, the military branches of EU and NATO member states are the only organizations capable of effective intervention in the event of a nuclear disaster in developing countries that may not be able to mount an adequate response of their own.*

The military units of the armed forces of EU and NATO states provide expertise in the following areas:

- **dosimetry and monitoring:** In the event of a nuclear disaster, monitoring exposure of responding personnel to ionizing radiation will be of critical importance in governing activities such as extinguishing a reactor core fire, constructing containment facilities, and gathering contaminated material for disposal.

For example, the U.S. Army Dosimetry Center (ADC) is specifically charged with conducting research and evaluation of dosimetry technologies, including the new Thermoluminescent Dosimeter (TLD). The ADC operates a deployable dosimetry laboratory (DDL) with as many as 10,000 TLD devices for on-site monitoring efforts.<sup>44</sup> In the event of a nuclear accident, the Army Dosimetry Center units may be deployed, either as part of a unilateral United State response, or under the umbrella of a NATO response.

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nuclear.org/info/default.aspx?id=326&terms=Jordan

<sup>44</sup> <http://www.globalsecurity.org/military/library/news/2009/09/mil-090902-arnews03.htm>

As another member state of NATO, we note that e.g. the German or the British Army can deploy 'Fuchs' ('Fox') Nuclear, Biological, and Chemical Reconnaissance System (NBCRS) armored vehicles, which are designed for detection of radionuclides in soil, air, and water. In the event of significant ejection of radioactive material from the site of an explosion or fire, such vehicles will be able to demarcate zones of contamination without exposing personnel to hazardous quantities of radiation.<sup>45</sup>

- **treatment of radiological injuries:** NATO has the capacity to deploy substantial mobile 'field' hospital capabilities overseas. For example, in the aftermath of the earthquake in the Kashmir region of Pakistan in October 2005 (which killed more than 74,000 people), NATO members and EU states responded with a variety of aid and support functions. Among the nations represented in the relief effort were Spain, France, Poland, Luxembourg, Great Britain, the Czech Republic, and the Netherlands. NATO Mobile medical teams treated more than 3,000 patients, while a field hospital near the community of Bagh treated nearly 5,000 patients.<sup>46</sup>

In addition to mobile medical and field hospital units, some NATO support teams are expressly designed to address injuries resulting from exposure to ionizing radiation; for example, the US Army maintains a Radiological Advisory Medical Team (RAMT) at Walter Reed Army Medical Center in Washington, DC; the RAMT is capable of rapid deployment, and offers personnel and facilities trained in the treatment of radiation-associated casualties.<sup>47</sup>

- **engineering capacity:** Again using the relief operations in the Kashmir region of Pakistan as an example, NATO deployed substantial engineering resources for myriad purposes, including removal of debris; construction of field hospitals, shelters, latrines, and water lines; and road repair. More than 3,000 (English) tons of needed supplies were delivered to the region by more than 150 air flights from Europe.<sup>48</sup>

For purposes of our scenario of a nuclear accident, such units can provide heavy construction vehicles and experienced operators that can conduct efforts to mitigate contamination, such as the construction of containment facilities and the disposal of radioactive wastes.

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<sup>45</sup> <http://www.army.mod.uk/equipment/defence/1542.aspx>

<sup>46</sup> Anonymous, 'NATO mobile medical teams treated more than 3000 patients', January 9, 2006, <http://www.nato.int/shape/news/2006/01/060109a.htm>

<sup>47</sup> Mark L. Miello and Ken K. Groves, 'Resources for nuclear and radiation disaster response', *Nuclear News*, September 2006, pp. 29 - 34

<sup>48</sup> Anonymous, 'Commander DJTF/NATO Disaster Relief Team, Air Commodore Walton, said NATO is planning to wind down relief ops', January 16, 2009, <http://www.nato.int/shape/news/2006/01/060116a.htm>



The massive concrete and steel 'sarcophagus' that was constructed around the damaged reactor No. 4 at Chernobyl - Photograph courtesy of George Kourounis

- **providing support for security and law enforcement:** one possible consequence of a nuclear accident will be a disruption in the social order as refugees flee the site of the accident, and law enforcement and security personnel find themselves occupied with managing the logistics of responses to the crisis.

In this type of scenario, it may be necessary to deploy troops from the EU or NATO for purposes of managing evacuations, preventing looting, assisting with the movement of response forces to the accident site, and securing property.

### **Transnational responses should be a part of disaster policy – with a role for the EU and NATO**

Obviously, the Chernobyl disaster of 1986 had a profound impact on the public health and economy of Europe. Presumably, more timely disclosure of the accident by the Soviets to other European states would have enabled many nations to better implement responses to the presence of fallout. Whether active assistance by other states would have speeded up the process of extinguishing the reactor fire and the subsequent cleanup operations is unclear, but the fact remains that, for a variety of reasons, the Soviet Union did not solicit such assistance.

By the time the reactor fire was extinguished, fallout generated from the reactor explosion and fire had been deposited on large tracts of Central and Western Europe.<sup>49</sup>

Should another nuclear disaster take place, this time in a developing nation, the knowledge of the toll taken by the Chernobyl incident will surely guide consideration of responses to made by other states. Depending on the severity of the accident, prompt intervention – with or without the invitation of the host nation – may be required in order to prevent further movement of fallout onto neighboring territories.

Our survey of the open literature does not indicate that the EU or NATO have dedicated strategic programs in place to deal with a nuclear disaster taking place in a non-member state. Indeed, a survey of the open literature reveals that at present most developed nations have focused their response strategies on scenarios involving the detonation of nuclear weapons by terrorists. While our article certainly does not wish to minimize the formidable threats to life and property posed by a terror attack involving a nuclear blast, it is clear that responses tailored for such scenarios are not optimized for dealing with a reactor accident. Nuclear disasters associated with reactor operation, fuel storage disposal, and transport of hazardous material require responses tailored for the circumstances unique to these events.

While it is accurate to state that in a nuclear detonation, initial casualties and property destruction are quite high, fallout tends to be more localized and the area affected by contamination more circumscribed. In a reactor accident akin to that taking place at Chernobyl or Kyshtym, initial casualties may be comparatively low. However, the lesson from Chernobyl is that a reactor fire is capable of steadily discharging radionuclides into the atmosphere even when sacrificial measures are taken to try and extinguish the fire. Consequently, the scope and intensity of fallout may be much more severe than for a nuclear blast, and a larger group of people may be exposed to levels of radiation capable of generating long-term health problems.

Given the high population densities of many developing nations, particularly in Asia, and the location of nuclear plants in proximity to major metropolitan areas, we predict that accidents would have much more severe consequences than those experienced at Mayak or Chernobyl. Mortality and morbidity from a nuclear disaster would be exacerbated by the limited resources some developing nations would possess to treat victims, and conduct post-accident cleanup and environmental monitoring.

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<sup>49</sup> A. P. Moller and T. A. Mousseau, 'Biological consequences of Chernobyl: 20 years on', *Trends in Ecology and Evolution*, vol. 21, 2006, pp. 200 - 207

It is unclear if many developing nations have the infrastructure and resources to see to the needs of a large population of ‘nuclear refugees’. The effects of a nuclear disaster on the host nation economy, and the economies of neighboring countries, may be catastrophic. More developed countries may be obligated to intervene, perhaps in a forceful manner, in order to limit further dispersal of radioisotopes.

This article proposes that efforts to deal with a nuclear disaster overseas are best served by the *de novo* creation of protocols and programs that are specifically tailored for responding to this type of accident. For EU and NATO member states in particular, designing such protocols may require an intense degree of cooperation among military, civil defense, disaster response, and public health departments and agencies. We recognize that much of the administrative and managerial aspects of devising a response strategy are undoubtedly complex, and will present special challenges to the participants. However, in the event of a ‘blue glow’ rising in the skyline of a metropolis in a developing country, such a response strategy may mean the difference between life and death for a stricken populace.

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*The publisher, editors and authors would like to thank George Kourounis for permission to reprint his photographs of Chernobyl and Pripyat. More of his photographs of these sites are available for viewing at: [www.stormchaser.ca/Stormchaser.html](http://www.stormchaser.ca/Stormchaser.html)*

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### ***Gryphon Scientific Information***

*Gryphon Scientific, located in Takoma Park, Maryland, USA, is a consulting business that applies rigorous scientific analysis to some of the most critical challenges facing the United States today, such as maintaining public health in the face of emerging infectious diseases and the threat of bioterrorism, ensuring public safety and homeland security as the incidence of terrorism rises, and promulgating sound scientific policy as biotechnology challenges regulatory and ethical boundaries.*

*There is also added a core strength in life science studies with a special focus on biological analysis. The result is a unique capability to examine a problem from several critical angles - economic, behavioral, and biomedical.*

*To support the research and evaluation practice, there is a range of implementation services provided - program management, training and technical assistance, social marketing and communications, and conference and logistics management. Although the services are diverse, all share a single objective: to make lasting contributions to knowledge and practice on issues of health and homeland security.*



A discarded child's toy lies in the courtyard of an abandoned building in the city of Pripjat, located near the Chernobyl site. Photo courtesy of George Korrounis

# NEHEMIA UNIVERSITY

Nehemia University is a new, private university in **Pogradec/Albania**, ashore Macedonian-Albanian Lake Ohrid. Since the early 1990s, Bavarian aid organisations bogged down in Albania, where they set up a group of kindergartens, elementary schools (also for underprivileged children), secondary schools, medical and rural development projects – and now also a university. The Chairman of Nehemia Foundation, Arnold Geiger, obtained in 2008 the Federal Cross of Merit from the German Ambassador, for the “construction works” – for which already the old Nehemia was famous in the Middle East.

The University offers a **Master in European Studies**, besides Bachelor presence studies e.g. for a B.A. in Business Administration. The Master programme runs 24 months in “blended learning”, with distance studies (27 course units) and homework tasks, a Project Study (1<sup>st</sup> year), a Master Thesis (2<sup>nd</sup> year), Skype conversations between students and lecturers, and four presence courses of four days and one of two weeks. A team of altogether 35 lecturers from many countries is at the disposition of the students. The Lecturers love their job – for it includes also discussions with intelligent students from countries

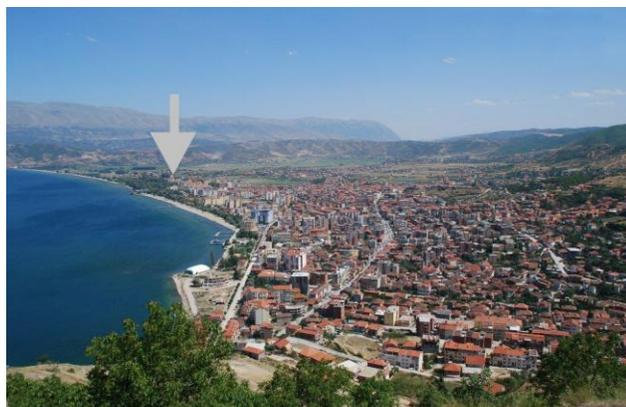


who are in Europe or in other parts of the world. Everything can be overseen – also the group size in the presence modules, where the size of a group will be between 5 and 9 students. In the presence modules skills and debates are in focus, skills like negotiation techniques, international project management, European policy and values communication, and many topical subjects from European policymaking.

Here are some pictures of a part of the Campus (with a modern Adidas sports field) and of the panorama with the Lake Ohrid at the left and Macedonian mountains in the background. Albania is becoming interesting, aspiring for

EU accession, with many young, clever people, who are eager to learn and to work with their fellow students from other countries. You need just a Bachelor degree to be able to continue your Master studies. And students can enrol **at any time**.

The Rector of Nehemia University, Prof. Dr. Alexander von Freyhold (formerly Rector of Dual University Baden-Württemberg in Mosbach/Germany), takes the time to discuss with the students personally their problems, and the Course Coordinator for the Master in European Studies, Hans-Jürgen Zahorka, has prepared a Curriculum and online course material, which is always at the newest level, he coordinates also the Master in European Studies faculty. Accreditation is envisaged in Germany, the courses are following the EU Bologna principles, and tuition fees are very competitive. Students from all over the world are welcome – as Nehemia University is small, they are individually taken care of. This is part of our familiar climate. More: [www.nehemia-uni.org](http://www.nehemia-uni.org)



# *The Anti-Counterfeiting Trade Agreement (ACTA) – An overview*

By Priscilla Serafini<sup>50</sup>

## 1. Introduction



Intellectual Property Rights (IPR) can today be considered as a main pillar of a knowledge-based economy, for its importance to research and development (as a mean of investment return for the IPR holders), and to its competitiveness and international expansion. However, the wealth and innovation brought by the IPR faces a constant and everlasting threat: counterfeit. In fact, counterfeiting has plagued all branches of the world's economy, having reached a considerable percentage of the international trade (between 5 and 9%), while the United States (US) report a \$272.2 million<sup>51</sup> seizure of counterfeit goods by the customs and the European Union (EU) reports 178 million<sup>52</sup> articles detained by customs, both relating to 2008.

The international dimension of counterfeiting is heightened due to differences in IPR regulation and enforcement, which tend to affect international trade: as shown by the EU and US custom statistics, certain trade partners like China, India or Hong Kong represent the origin of the majority of seized counterfeit goods. Being a global problem, counterfeit requires an also global solution and cooperation, which can make up for the lack of progress of other international IPR institutions, such as the World Intellectual Property Organization (WIPO). Certain countries, like Japan and the US, had the initiative in the international *fora* to propose additional measures at the 2005 Gleneagles G8 Summit, which resulted in the adoption of the G8 document 'Reducing IPR Piracy and Counterfeiting through more Effective Enforcement',

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<sup>51</sup> Available at [http://www.iacc.org/resources/08\\_annual\\_seizures.pdf](http://www.iacc.org/resources/08_annual_seizures.pdf)

<sup>52</sup> Available at

[http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2009\\_statistics\\_for\\_2008\\_full\\_report\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2009_statistics_for_2008_full_report_en.pdf)

and consequently working groups were set up and the OECD study on the implications of counterfeiting and piracy has been elaborated.

Even though a wide international agreement is clearly unachievable, a multilateral agreement between certain countries and relating to the enforcement of the IPR is still desired, and has begun to be elaborated by what is now called the Anti-Counterfeiting Trade Agreement (ACTA).

**i) What means “Counterfeiting”?**



What is Counterfeiting and what are its consequences? Counterfeiting consists in the reproduction of either physical or digital media in violation of IPR, taking advantage of a certain brand or specific knowledge with the ultimate goal of deceiving a third party, usually the consumer.

Who is not tempted by – see left in front – a Guccie tie for a couple of euros only, or a Lacoste T-shirt, or a LVMH bag. See here just one catch of airport customs.

It creates a wide-impact distortion which affects governments, consumers and firms alike. According to the OECD<sup>53</sup> report on counterfeiting certain socio-economic

impacts have been already identified, such as a reduced innovation and growth, due to lack of R&D returns from the IPR holders and decreased foreign investment; encouragement of criminal behavior due to low risk/sanctions of IPR infringement; pollution and other environmental damage due to the destruction of counterfeit goods, and the use of hazardous and uncontrolled counterfeit products. Governments tend to have decreased tax revenues and increased costs with the prevention and other legal actions towards IPR crimes, besides an encouragement of other government-specific felonies such as IPR-related corruption.

<sup>53</sup> Organisation for Economic Co-operation and Development, Paris

Consumers, on the other hand, harvest both benefits and risks with counterfeiting: even though counterfeiting provides consumers with lower cost products, these can represent health and safety risks as one cannot assure that the product complies with basic manufacturing regulations. The danger represented by counterfeit medicine, poor quality electrical appliances, and skin contact cosmetic products can cause certain health damages which will be almost impossible to repair or indemnify.

Companies also have their loss with counterfeiting, as it reduces the volume of sales and, therefore, the amount of income that would be used to reinvest in further R&D. The use of trademarks and brands in counterfeit products can also vulgarize their value and distinction, and damage the firm's reputation.

## **2. The Anti-Counterfeiting Trade Agreement**

The above mentioned Anti-Counterfeiting Trade Agreement (ACTA) is a plurilateral trade agreement under negotiation. The current countries involved are Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. One can realize that the Agreement's parties are quite diversified and represent both developed and developing countries as they share a common interest: the effective enforcement of IPR, as a factor of competitiveness and also as an attraction to foreign investment.

As has been incessantly advertised by the Agreement's parties, the purpose of ACTA is to provide an international response to the counterfeiting and piracy problem on a commercial scale and, to reach it, a 3-goal<sup>54</sup> plan has been designed for ACTA: building international cooperation, establishing common enforcement practices and creating a strong modern legal framework for the IPR. From the summary of key elements released<sup>55</sup> by the European Commission, the contents being discussed in the ACTA negotiations can be summarized as follows:

- a) Civil enforcement – including remedies, such as the destruction of counterfeit goods and the definition of adequate damages for liability purposes; and provisional measures to judicial authorities, in order to allow injunction orders or seizure of goods.

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<sup>54</sup> See [http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc\\_141203.pdf](http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_141203.pdf)

<sup>55</sup> Available at [http://trade.ec.europa.eu/doclib/docs/2009/november/tradoc\\_145271.pdf](http://trade.ec.europa.eu/doclib/docs/2009/november/tradoc_145271.pdf)

- b) Border Measures – such as actions and procedures to ensure IPR holders the right to intervene and retain suspected counterfeit goods from crossing borders, as well as enabling customs and other competent authorities to seize and suspend the entry of these goods ex officio (without the notification or request of the IPR holders).
- c) Criminal enforcement – deals with criminal procedures and penalties, defining which actions are enough to constitute a crime and providing proper authorities with additional power to order searches, seizures, forfeiture and destruction of all IPR infringing goods.
- d) IPR enforcement in a digital environment – the necessary enforcement to repress IPR infringements in the digital environment, like the internet. Certain provisions are already expected such as third party and Internet Service Providers liability (notwithstanding other exceptions or limitations), or sanctions and procedures dealing with the circumvention of technological protection measures such as Digital Rights Management (DRM) technologies.
- e) International cooperation – contains the necessary provisions to implement multi-lateral coordination through the expansion of widespread communication and collaboration between State authorities, such as sharing relevant information and statistical data, and the mutual evaluation on best practices by all the Parties.
- f) Enforcement practices – which must be commonly established throughout the international scene, so as to promote an increasing protection and effectiveness of the IPR. By promoting enforcement practices it is expected that certain countries with weak IPR protection will be pressured to comply with the standards already established by the more IPR developed countries.



*"Europe has always been at the forefront of global attempts to protect intellectual property rights and fight counterfeiting. A new international anti-counterfeiting treaty will strengthen global cooperation and establish new international norms, helping to create a new global gold standard on IPR enforcement." Peter Mandelson, EU Trade Commissioner (2004-2008)*

It was initially expected that ACTA negotiations should come to term by the end of 2008, two years after the preliminary talks launched by the United States and Japan. But it was only after the EU got the mandate<sup>56</sup> to participate that the first rounds<sup>57</sup> of negotiations started. At the moment, the main goal of the Parties is to conclude the Agreement as soon as possible, still in

<sup>56</sup> The Commission is negotiating in coordination with the Council and Member States.

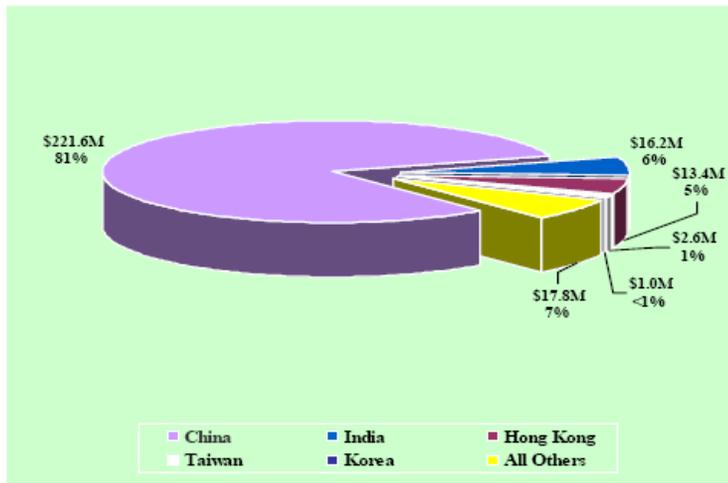
<sup>57</sup> First round: Geneva 3 and 4 of July, 2008; second round: Washington D.C. 29 to 31 July, 2008; third round: Tokyo 8 and 9 October, 2008; fourth round: Paris 15 to 18 December, 2008; fifth round: Rabat 16 and 17 July, 2009; sixth round: Seoul 4 to 6 November, 2009; seventh round: Mexico, January 2010.

2010 – with this purpose in mind, the Parties have agreed in proceeding the negotiations without letting third parties join, postponing the signature of the Agreement by third parties to a date after its conclusion.

Following this, **several critiques** have pointed out the inability for interested third parties to join the agreement, and mainly the fact that such an Agreement must play a global role in international trade so as to fulfill its true function and expected effectiveness. The stakes go even higher when taking into account that large emerging economies, such as China and Russia, which still need to develop their IPR regulation, must willingly accept the then concluded Agreement. Some of these countries represent a great percentage of the counterfeit export and, as source countries (See *Graph 1*), have been considered by certain IP policies of the EU<sup>58</sup>, as priority target countries, vital to an incisive IPR enforcement.

Taking into account the Parties' interest in achieving a wider flexibility/acceptance to pursue their objectives and goals (which also explains why the Agreement isn't being negotiated in an intergovernmental organization – such as WTO or WIPO), the decision to shut out third parties for the time being is quite justified, if one has in mind that each new Member State

would represent one further challenge to the finishing of an effective agreement. However, this decision prevents a broader negotiating environment that could be enriching to



**Graph 1: Countries of origin. Source: US Customs and Border Protection**

the final text and does not deal with the need to of international acceptance for an effective IPR enforcement. One thing is certain: though useful, a small group agreement won't change today's IPR/counterfeit reality

i) **Secrecy of Negotiations**

Another major criticism towards ACTA has been for the secrecy of its negotiations, in fact, no official document has been officially released about the Agreement, and all information re-

<sup>58</sup> EC Official Journal C 129, 26.05.2005, p.14

quests by third parties have been denied. Most of the intelligence still comes from leaked texts, which have been quickly demoted to unofficial texts that don't even constitute drafts.

This degree of secrecy tends to be usual in the initial stage of this kind of international negotiations, as it creates a better environment for information exchange and discussion on complex issues.

The negotiations in this type of international agreements develop on general proposals to all parties, which are then analyzed and debated, before acceptance or counterproposal. So when the parties declare that there is no base draft text from which the agreement is developed, they actually mean that, since negotiations develop on a proposal-analysis-counterproposal basis, there is no pattern text to be followed yet. Hence the hasty rejection of any leaked text, as it does not necessarily reflect the position of all parties within the negotiations.

Still, European Parliament members have called on the basic principle of democracy and transparency, so that the Commission would release the Agreement's documents, so that a proper scrutiny by the Institutions and other stakeholders could take place.

Further, an attempt has been made to try and reach out to other interest groups or organizations: the stakeholder's consultation meeting took place on 23 June 2008, and was open to the general public. However, only the meetings schedules and the above mentioned Agreement's general structure have been revealed to date, with no draft texts being released for the moment.

It should not be forgotten the role of other stakeholders in the effective non-legal enforcement of IPR, which should ensure certain public awareness practices and transparency. Perhaps, since the Parties seem so wishful of finishing the Agreement still this year, a wider information disclosure policy would be at hand.

ii) **Other ACTA related issues**

a) **ISP Liability**

The role of internet service providers (ISP) within the context of IPR infringing digital content has been vindicated by the IPR holders groups: as intermediaries in the consumer-internet chain, these organizations have a vital role in the transmission of infringing content throughout the internet and, therefore, throughout the world.

Both the EU and the United States have already started providing towards such liability in certain cases: the E-Commerce Directive (2000/31/EC) and the Digital Millennium Copyright Act (DMCA) have addressed this issue, stating an obligation by the ISP to disable access to such content upon knowledge or awareness of it, and creating the basis for “notice and take down” procedures. These measures are a result of considering certain ISP content storage services as actively hosting and making available the said content, in such a manner that when prompted by an authority or an IPR holder the ISP must cease or terminate the transmission, or face liability.

But what really made the ISP react was the possibility of imposing a general monitoring obligation of online content, as it would not only jeopardize privacy rights, but also be impossible to be fully operational, as it would be impossible for the providers to know if a certain content is copyrighted or not and become such a burden that would damage the free and speedy access to online. This possibility has already been expressly rejected by the E-Commerce Directive, Article 15, and it seems unlikely that, besides the IPR holders pressure, the EU will accede to it in the ACTA negotiations.

#### **b) Internet access**

Related to the ISP content supervision, ACTA’s internet provisions also generated a heated discussion in the media, over the regulations on cutting off internet to IPR infringing consumers. This issue began in 2009 with the French HADOPI law, or “3-strike law”, which provided for authorities to cut off internet without a previous court decision. Although the matter was solved by the Constitutional Council of France, stating that those decisions which affect the consumer’s right to freedom of expression must have a previous court ruling, it was also brought up within the approval of the Telecoms Package by the Council and the European Parliament.

In the U.E. this possibility is already a reality. Indeed, the Telecoms Package, approved in November last year, includes provisions for the implementation by national legislators of rules that require disconnection of Internet users who infringe the copyright laws.

Even with this directive, the French proposal would not be implementable for violating the guarantees given to citizens of the union. Indeed, the Directive leaves room for countries to decide whether and how to implement this measure, countries may also decide whether the measure will be enforced by a court or any other institution. In any case, this measure should always respect the community principles of law of proportionality, necessity and appropriateness in the context of a democratic society and should be subject to procedural safeguards.

The directive is not explicit about the need for a judicial decision to enact the measure, but it stressed that there must be give to the citizens the opportunity to comment in his defense before the implementation of such a measure – making it impossible to apply this measure automatically.

There is a need to a fair and specific procedure to follow in order to apply such penalty. Restrictions may only be imposed when there is real evidence that it was committed an offense. This procedure should also be based in the presumption of innocence until proven otherwise.

Thus, even if a provision of this kind is included in the ACTA, its impact within the EU territory will always be restricted through the already existing regulations.

### **c) Border Searches and *de minimis* clause**

The provisions relating to border searches have already been much discussed by the negotiating parties and by the media as well, due to their possible impact on individual citizens, rather than in large scale transactions.

It has been said that ACTA may allow custom authorities to conduct random searches to travelling individuals so as to check for copyright infringing material, such as carrying fake digital media within laptops, I-pods and similar instruments. An idea which may have originated within the already existing US regulations that allow random searches on electronic devices when a large scale organized crime is at stake.

A couple of questions arise from this situation: first, if such a provision would even be viable to perform within the actual customs and international transactions traffic, and technically doable due to the information stored within digital files; and secondly, whether counterfeiting within a personal scale, can be so grave as to justify disrespecting certain basic human rights. It seems that these measures would be quite impossible to apply, as it may be impossible do distinguish a legitimate music file copy from another file in disrespect of copyright; not to mention the manpower it would be needed to ensure effective application in international travelling traffic.

The EU has already confirmed that such a situation won't take place within its territory and for various reasons: first off, since custom authorities are already busy taking care of serious crimes, such as drugs, weapons or trafficking in persons, they won't waste manpower and time with questions of minor importance such as travelers carrying illegal copies for private use, or not in part of a large scale traffic; and secondly, it is not the scope of the Agreement to

negatively affect consumers, whose civil liberties will always be respected as regulated by the Data Protection Directive and the Directive on privacy and electronic communications. To ensure this a *de minimis* clause has been already referred as being part of the Agreement, exempting such travelers from border checks for the low importance of their violation – a safeguard towards individual rights and a clear sign that this is not ACTA’s target.

### **3. Conclusion**

As statistical data demonstrates, counterfeiting represents an increasing loss to world economies, and only a multilateral response, such as ACTA, can provide both developed and developing countries with enough mechanisms to prevent it.

Most of the accusations on ACTA’s content have proven themselves unreasonable, at least within the EU – since most of those issues have already been dealt with by Community provisions which guarantee minimal protection standards towards individual citizens and do not overburden online service providers with monitoring obligations.

On the grounds of the Agreement’s accession, the future signature of major trade partners remains unknown. To that end, ACTA’s probable provisions on reservations and exceptions will certainly weigh on the number of future signing countries. Since no information has been disclosed until now about these provisions, no assumptions can yet be made both on the Agreement’s future flexibility and acceptance.

Only the final ACTA text, due to be concluded within this year, will permanently solve these uncertainties.

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## *The EU and the Balkans: historical parallels, the level of integration and questions unanswered*

By Edval Zoto<sup>59</sup>

### Recently

I was fortunate enough to attend a friendly meeting with a well-known figure in the fields of international law, business and the regional politics of one of the regions which has contributed most to the formation of the Italian Republic, Piedmont. As well as conversation provoked by his impressions of a visit to Albania, the discussion also touched upon the “daily



bread” of any sports-loving individual – football. It would inevitably have been a heated debate, with the parties being completely divided despite sitting amicably around the table. But the focus became really polarised when this charismatic man was asked to express his opinion of the sport most loved by Albanians. The reply which he gave to his friendly audience, mainly Albanians, diverted attention away from football, allowing the speaker to make his sound and incisive argument. “If you’d like to do something for Albanian football, don’t ask for Italian money and assistance to provide balls and trainers for the athletes; ask for Italian assistance to send instructors, and not football instructors but football coach instructors, who can train Albanian footballers to Italian standards. Albania in general doesn’t need passive assistance. It needs constructive assistance.”

### Old memories

This intervention brought to mind the amateur footage of ships carrying international aid anchored in the ports of Durres and Vlora during the difficult times of the 1990s. Ships bearing tons and tons of food, clothing and pharmaceutical industry products from Italy, Germany, France etc. It evoked images of those “nicely dressed” soldiers from the United Nations and NATO who hurried to distribute aid throughout the communities in dire straits in the four

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<sup>59</sup> This is an updated version of the contribution the author wrote to obtain the European Young Journalist Award 2008 for Albanian participants, organized by the European Commission. The author works at NAIMI – Editing and Publishing House, Tirana and as a freelance journalist. After a military career in Albania he graduated in 2008 in Strategic Sciences at the University of Torino, Italy, and currently is following his MA studies in European Studies and Diplomacy. He is also President of the NGO "Association for European Journalism", in Tirana, Albania.

corners of the Balkans. In anarchic Albania, blood-soaked Bosnia and in chaotic Kosovo, not to mention other Balkan territories. But it also brought to mind those memorable black and white images of post-Second World War Europe. It brought to mind the many, mostly American planes that carried out the biggest airlift operation in the world; an airlift which breathed fresh life into the worn-down and starving people of Berlin, destroyed by the war. It brought to mind the big green lorries with the black star stamped alongside the letters US ARMY which were familiar to every poor, illiterate Italian, Frenchman or Greek. It brought to mind the speeches of Secretary of State George Marshall and the photographs outlining the signing of major western economic, political and military pacts.

### **New realities**

But, except for the symbolic importance of both sets of images, there remained a fundamental difference between the memories and contemporary feelings that they provoked. 60 years ago a devastated Europe was surrounded by destruction. 10 years ago the Balkans were surrounded and continue to be surrounded by blossoming economies, social harmony and the enticing well-being of European neighbours. Those “colour” images can still easily be found on Internet search engines by any Albanian, Bosnian, Kosovar Albanian, Serbian and Macedonian teenager, as well as those from France, Germany, or rather, Europe. And they still induce enormous regrets, especially when the memories of family members come to mind. But in today’s world, the Balkans are seeking to be accepted by the family that broke away from them. Greco-Illyrian cultures, together with those of the Slavs and Turks, are making a forceful effort to rediscover the essence that make up the European “organism”: the rationalisation, justice, democracy, freedom, laity, tolerance, co-operation and peace brought about by 60 years of well-being.

### **A tough challenge**

To speak of such principles in Albania (with the highest level of emigration in the region), divided Bosnia, the newly-declared independent Kosovo, artificially demonized Serbia and Macedonia with its myriad of political problems, requires a considerable leap of mental faith. But such thinking does inevitably hark back to the words of the renowned George Marshall when he was explaining the basis of the European Recovery Programme and stated that: “the programme should be a joint one”. The need to attach conditions to cooperation, and to consider the unique setting of the Balkans in terms of the standards that must be met to fuel the process of European integration, is one of the most important factors to be understood. Just as 50 years ago a resurgent France alongside a weak Germany did not solve the problem of Europe’s development, changing the level of development of Croatia alongside Bosnia, of Albania alongside Kosovo, of Serbia alongside Montenegro does not resolve the historical backwardness of the Balkans. Nicknamed the “powder keg” of Europe, the Balkans are widely

perceived as a “constantly burning fuse”. Traditional rivalries and hidden interests have always favoured a hierarchy of power in the Balkans, where territorial, economic and political supremacy is viewed as essential for maintaining the ethnic hotchpotch of “the one on top”.

### **The international dimension**

Today, more than ever before, the Balkan states enjoy a status of virtually equal importance on the international stage, brought about precisely through the delicate nature of the inter-Balkan political equilibrium. There is also a marked similarity between the free trade agreements between Balkan states and the major Europe-wide agreements which united the states of Europe (economic community agreements over steel and aluminium, nuclear energy, agricultural policies etc.) Both were aimed at achieving a spirit of co-operation which would negate using force to achieve individual country’s objectives. In the same vein is the formation of joint blocks of countries desiring to join the most important western organisations. For example, the A3 Group (Croatia, Albania, Macedonia) has been waiting before the doors of NATO. Coincidentally the decision was taken at a summit in Bucharest, the capital of another Balkan state. Other acts of political co-operation should not be ignored either. Most notable is the initiative to lift visa requirements (for citizens of Montenegro, Macedonia and Serbia from 19.12.2009), enabling free movement of citizens within the peninsula, which could be seen as a “Balkan Schengen” agreement. In a comparable spirit, there is a wide spectrum of joint initiatives, collaborations, and commitments designed to foster implementation of the principles established as the condition for acceptance into the European community.

### **The European approach**

In the 1990s alone the Balkans benefited to the tune of around 5 billion euros of European assistance. But these funds could not prevent the violent break-up of Yugoslavia, the war in Bosnia-Herzegovina, the political unrest in Albania, the war in Kosovo and the socio-political conflicts in Macedonia. The Balkan experience changed the face of European action. It was understood that a strong, united Europe was needed; one which would hold sway in this region, which would see a future in Europe as its salvation and the solution to its many problems. The European strategy for the Balkans is the only desired solution for some, but other international players see it as an imposition. In a period when the international landscapes, and international organisations, are going through a critical phase and when, more than ever, the need for reform is felt, only the EU can deal with the integration of the Balkans into European politics. In addition to constructive assistance Europe, with its institutions, has embarked upon an honest course of action in creating prospects for development in the area and for integration of the fragile Balkan states. The most recent examples of this are the relaxation of the visa regimes, the replacement of the UN mission in Kosovo with the EU’s EULEX mission, co-operation in strengthening security, combating trafficking, strengthening the rule of

law and the numerous attempts to persuade Serbia to relinquish its centuries-old Kosovo dream.

### **Urgent need for stability**

Of course today's Balkans do not have an outstanding statesman such as a De Gasperi, a Schuman, an Adenauer or a Monnet. But there is no question that they are tired of instability. There is a need for the Balkans to be re-energised and more than anything else they want to become a part of Europe. As with every initiative there are obstructive factors, such as the current situation following Kosovo's declaration of independence. Scenes relayed by the media recalled the violence, intolerance and characteristic pig-headedness of the traditional Balkans. Serbia is also once again trying to turn back the clock of the European integration process for other states by 10 years. As well as rocking the fragile economies of the Balkan countries, today's tensions diminish international faith in the region's willingness to move forward.

Statements by leaders of the Serb state regarding their non-recognition of Kosovo's independence, whilst also not abandoning their European prospects, seem absurd and illogical. Serbia knows full well that two of the key conditions for acceptance into the EU are the requirement for rigorous mutual recognition of state borders, and respect for the rights of ethnic minorities. A number of analysts hold the view that Serbia, or to be more accurate, its proponent on the international stage, Russia, is using Kosovo to artificially inflate the price for their recognition of its independence.

### **Slowing the process**

However, the artificial nature of this policy is contributing to the slowing down of the integration process for the whole of the Balkans. If they wished to demonstrate their European credentials, the Serbs would recognize Kosovo's independence in expectation of the opening of borders following the two countries' entry into the EU - given that it justifies its claim to Kosovo on the basis of national cultural and religious factors. Was it not Tito himself who proposed the creation of a Balkan confederation to the authorities in Moscow? And didn't he promise Enver Hoxha that Kosovo would join with Albania in this confederation? Why then is it not acceptable for Serbia to join with Kosovo within the European Union, just as Albania has aspired to for years?

There is very little credibility in discussions of nationalism, "cradles of culture" and centres of civilisation from a bygone millennium. These are, if anything, subjects which should be of interest to academics, anthropologists, historians and ethnographers, and not senior politicians in the 21st century.

### **Action not words**

The Stabilization and Association Agreement cannot be held back by a “war of words”, a “witch-hunt” or by burning down the offices of diplomatic missions. It goes without saying that the detachment of a part of a state’s territory is not an insignificant act, and it is the newly re-sized state which usually feels most aggrieved. But is the limiting of the sovereignty of EU member states not the main factor in having guaranteed the unity of the European Union itself for years? If Serbia sees a European future on its horizon, it will have to accept far greater limitations to its state sovereignty than the recognition of the independence of a state which will be its closest neighbour and confidant. And it is barely worth even mentioning the pointlessness of European Greece’s complaints over the issue of the constitutional name of the Republic of Macedonia. It is a concept that is discussed ridiculously in terms of the origin of a name long lost in the mists of time. And there is no doubt that, if it is always said that the Balkans have produced more history than they have consumed, it is now time for the Balkans to consume ready-made a little of the history produced by the EU itself.

### **Positive moves**

However, there is room for positive thinking. April 2008 saw the staging of the Bucharest NATO Summit, at which the acceptance of Albania and Croatia (however not yet Macedonia, for the name issue opposed by Greece) into NATO was decided. The EULEX mission started to work in Kosovo. Macedonia is – hopefully and soon - expected to reach an agreement with Greece over its constitutional name. There is visible economic progress, despite the fact that the price of energy and basic food products has continually increased in the Balkans since the “War of Words” over Kosovo. And the Balkan coastal states are excitedly planning their tourism drives for the next summer seasons. There is “A lot of noise” as the Mayor of Tirana said in a song which, a few years ago, became his election campaign anthem. But, as Winston Churchill said, “better jaw-jaw than war-war.”

### **The road forward**

Finally, let’s return to the meeting with my Italian friend. The meeting ran through a series of key points, ranging from the progress made by Albanian students in Turin in their studies, to the independence of Kosovo, the impressive restaurants and bars of Tirana and the “unavoidable subject” of football, whatever team anyone happened to support. But it concluded with a significant observation by my friend from Piedmont. Taken aback by the presence of so many cranes on the Tirana skyline, he enthusiastically described our capital city as the biggest building site he had ever seen. And if he had visited Skopje, Podgorica, Zagreb, Sarajevo, Belgrade and last, but not least, Pristina, how would he have described them? The progress may be slow, but thankfully it does seem to be gathering pace.

# ***Albania in the EU: European Integration and Institutional Democratisation***

**By Dhurata Milori<sup>60</sup>**



*This paper aims at exploring the process of European integration of Albania including the political and institutional reforms. The author tries to evaluate the process of integration into the EU, the way the process of Integration has helped in the democratization of the institutions, the processes of transition and democratization of Albania, its efforts towards joining the EU and the standards that Albania has to complete to become a member of this club. The prospective of joining the EU is perceived as a strong stimulus for democratisation and progress in Albania. The paper investigates if the EU, because of the political conditionality and the financial aid at the same time, has a positive impact on domestic reforms and transformations.*

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### **CONCLUSION**

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### **LIST OF ACRONYMS**

CAP	Code of Administrative Procedures
CSC	Civil Service Commission
EBRD	European Bank of Reconstruction and Development
EC	European Commission
EU	European Union
HIDAA	High Inspectorate for Declaration and Audit of Assets
GoA	Government Office-Office of Prime Minister
IPA	Instrument for Pre-accession Assistance
NPISAA	National Plan for the Implementation of the Stabilization and Association Agreement
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
TAIEX	Technical Assistance Information Exchange Office
TIPA	Training Institute of Public Administration
WB	World Bank

## INTRODUCTION

Albania inherited an extreme isolation from the communist regime. When the first opposition came in power in 1992, the establishment of relations with other states seemed like the establishment of a new state. During the fifty years of the communist regime Albania had interrupted unilaterally diplomatic relations with the West, keeping just some symbolic relations with France and Italy. Parallel with the categorical refusal from the regime to develop diplomatic relations with the West, Albania went gradually in the reduction of the relations with the communist camp countries too. In the 1970's after breaking the relations with China Albania seemed like an isolated island in the Europe.

The Albanian aspirations to join Europe started immediately after 1990, after the change of the regime into a government. It is very significant that for the Albanians the idea of the change was gauged with joining of the big European family, through the well-known sound "We want Albania like all the Europe".

For the first non-communist government the restoration and strengthening of the relations with the West were the only way to rebuild the economy and develop the country. Where is Albania with the reforms, how has the country made progress and what else is left to do? Which remain the main challenges?

How has the process of integration and conditionality affected the democratization of the Albanian institutions, with a main focus on the legislative, the creation of the new institutions, public administration? This paper aims at responding to these questions mentioning also that the integration into the EU is the most useful way to fulfilling the goals the country has consensually agreed upon.

At the foundation of the entire reform package that serves as the framework of the Albanian integration process to EU and NATO, undertaken and approved by the Albanian government, lies the democratization and governance of the country through the strengthening and improvement of democratic institutions, a better use of human and administrative capacities, guaranteeing of basic freedoms, strengthening of the rule of law, consolidation of market economy, guaranteeing the basic freedoms and human rights, guaranteeing the stability and economic-social development, strengthening of the fight against corruption, organized crime and illicit trafficking and the free movement through open, but safe borders (Kastriot Islami, 2005).

The European integration course of the country can be best characterized by a process of speeding up and setbacks. Examples of the latter include the 1997 collapse of the pyramid schemes which were followed by a period of political instability, and the war in Kosovo which affected Albania considerably, too. On the other hand, progress has been made concerning the stability of political institutions, democratic decision-making and the rule of law, contributing to gradual developments in the relationship between the EU and Albania. The final goal of reaching membership will still require considerable efforts in modernization and aligning with EU legislation (Vrumo, 2008).

## **1 HISTORICAL BACKGROUND**

### **1.1 History of Albanian European Integration efforts, revolution and democratic transformations**

One of the elements of the isolationist policy of Albania during the communist period was the lack of participation in international relations, reflected in the non-presence of international organizations in the country until 1990. After 1975 Albania withdrew completely from the international system and all organizations of which it was a member. The only organization in which it remained a member was the UN. So one of the challenges, when Albania started to open up to the world was establishing its ties with political, military, economic, international organizations and institutions, and becoming integrated into their networks.

Orienting its domestic developments and external relations towards the EU was one of the first and most important priorities. Since 1991 successive Albanian governments have placed European integration at the top of their political agendas.

Relations between Albania and the European Union started in 1991; in 1992 a „Cooperation and Trade Agreement” was signed and established mainly to encourage trade and democratization with Albania, but it was also a response to the humanitarian crisis of 1991 (Bogdani and Loughlin 2007, 116). With this agreement, Albania became eligible for funding under the EU’s Phare programme.

At the beginning of 1995, Albania officially asked for the opening of the negotiations for an accession agreement with the EU. An evaluation taken by the Commission on the possibilities of free marketing of goods, services and capital in Albania, concluded that a „classic“ Agreement like those that most countries have with the EU about their membership would be a premature step for Albania (Meksi 2003; 13).

In January 1996 the EU Council of Ministers asked the Commission to compile a proposal for a new agreement that would strengthen Albania-EU relations. Because of the events that followed the same year with the disastrous parliamentary elections in May 1996 and a year later after the collapse of pyramid schemes, there was a serious question mark over Albanian democracy and the readiness of the country to the progress towards integration (Bogdani and Loughlin, 2007).

In 1997 the EU Council of Ministers established political and economic conditionality for the development of bilateral relations, the so-called Regional Approach

In 1999 a very important step was undertaken by the EU: the European Commission proposed a SAP for five Balkan countries including Albania (European Commission 2003:1). This was endorsed by the Fiera Council in 2000, which confirmed that the EU's goal was the fullest possible integration of all Western Balkan countries into the economic and political mainstream of Europe and recognized them as potential candidates for EU membership (European Commission 2001:5).

The 2000 Zagreb Summit was an important step in the commitment of the EU to the Western Balkans. It was there that the SAP was established by concluding with all countries of the region an agreement to a set of conditions for accession to the EU. The summit set up an EU/Albania High Level Steering Group with the objective of setting up cooperation, identifying and supporting the reforms to be carried out by the country in preparation for the negotiation of a SAA.

After the Zagreb Summit Albania made considerable progress in fulfilling the commitments for opening negotiations, which was reflected in the report prepared by the Steering Group. Draft negotiations directives were submitted to the Council in December 2001 and an EU-Albania consultative Task Force was set up with the objective of assisting Albania to prepare for the negotiations of a SAA. In November 2001, the president of the Commission, Romano Prodi, declared in Tirana that the opening of the negotiations would be in March 2002, but the political stability of the country was made a condition for this to start (Milo 2002:298).

The Council adopted the directives for opening the negotiations of the SAA with Albania at its meeting in Luxembourg in October 2002. The negotiations were officially launched on 31 January 2003.

Since beginning in March 2004 the negotiation meetings were held every six weeks, with the pattern of one political round followed by two technical rounds.(Bogdani and Loughlin 2007; 117).

Three years of negotiations on a Stabilization and Association Agreement with the EU were brought to a formal conclusion on the 18 February 2006, while commission president Barroso and Enlargement Commissioner Rehn were in Albania with the initialling of the Agreement: “It is an important step forward on the road to Europe. We now plan to take Albanian’s relationship with the European Union to the next level“ (Barroso, Council of Ministers, 2005).

June 2006 is connected with the signature of the Stabilization and Association Agreement (SAA) at the General Affairs and External Relations Council in Luxembourg, and in December 2006 the Interim Agreement entered into force. In January 2008 the Visa Facilitation Agreement entered into force.

The procedures of ratification of the Stabilization and Association Agreement between the Republic of Albania and European Union and its Member States were completed by all member states in January 2009, and on the 1<sup>st</sup> of April 2009 the Stabilization and Association Agreement entered into force

The SAA represents a turning point because for the first time a concrete path was offered to Albania in its rapprochement with the EU. It establishes a comprehensive framework for reform progress and is an important milestone on Albanian’s path towards the EU focusing on

- political dialogue,
- enhanced regional cooperation,
- the establishment of a free-trade area

between the EU and Albania within ten years and a gradual approximation of the Albanian legislation to the EU acquis.

The SAA offers stronger incentives for pushing ahead with the reform process but also creates more demanding political and economic conditions for the country. But rather than pressures they should be considered more as opportunities that Albania can take or leave (Bogdani and Loughlin 2007; 119).

## 1.2 The Stabilization and Association Agreement

### How did the idea of the Stabilization and Association start?

The developments in the late 1990's in the Balkans, the Kosovo crisis, the ethnic conflict in Macedonia, this all made the European Union to pay a high attention to the Balkan Peninsula. The countries of the region as well as Albania had a slow progress towards strengthening democracy and economic development in contrast to their counterparts in Central and Eastern Europe. In order to avoid tensions in this part, the European Union decided to provide a regional approach for the Balkans countries, the Stabilization and Association Process.

The need for supporting the economic and political stability in Southeast Europe and the need for promoting reforms to establish the rule of law, institutions and sustainable economy made the European Union think critically and it finally opened the potential prospect of EU membership and support for the Balkan Countries by proposing the Stabilization and Association Process and Agreement.

Stabilization and Association Agreement is not a promise for integration. It stresses the stabilization of the situation in relevant countries in order to achieve a special relationship with the European Union. SAA encourages the European Union's fundamental values for the Western Balkans as democracy and rule of law, protection of human rights and respect of national minorities, a market economy and social justice. This Agreement aims to promote economic development of the country, supported by aid programs to help these countries to fulfill the obligations of the agreement.

The European Integration of the country happens in two levels:

- 1- The technical level, which has to do with the Agreement as a legal framework compatible with the EU system,
- 2- the reform of the political and economic system in Albania. This is a practical task. The capability to bring changes in this level is the real challenge of the Integration.

Until now all the Stabilization and Association Agreements among all parties have been negotiated, and the Albanian government and Brussels have agreed upon all the chapters. According to the second level, the reforms which are essential for integration, there is little progress, however.

Somehow the process of integration has been misunderstood in two directions:

- 1- The process has been reduced just in the technical level, when in fact it has to do with the success of the political and economic reforms
- 2- It has been misunderstood in the stakeholders' view. The government and the Ministry of Integration are thought to be the only responsible actors of the integration

### **1.3 The EU's role in the Albanian state building**

In the last eighteen years, mostly in the last five or six years, the role of the EU in Albania's political and economic transition has grown very important:

The role of the EU has been an agent of political legitimacy for the Albanian political system and as a state-builder in post-communist Albania. The relation between Albania and the EU has been the most useful way to fulfilling the goals the country has consensually agreed upon (Rakipi, 2006).

European Union accession is constantly featured high on the political agenda in Albania. Gradually drawing closer to EU membership constitutes a vital incentive for democratization and modernization in the country.

Governmental structures have been designed to deal with relations with the EU having signed the Stabilization and Association Agreement (SAA), management capacities as well as an institutional setup have been brought in line with the new requirements of aligning Albanian legislation with the EU *acquis communautaire*<sup>61</sup>.

The Stabilization and Association Agreement was finally signed on the 12th June 2006 and six months later its trade related provisions – the Interim Agreement – entered into force. Albania received significant financial resources from the European Union to assist its pre-accession phase.

Along with the other candidate and potential candidate countries, Albania is a beneficiary of the new Instrument for Pre-accession Assistance (IPA) that covers the period of 2007-2013. EU conditionality has impacted the Albanian political processes and what are the future prospects in this regard.

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<sup>61</sup> Under *acquis communautaire* (original from the French language) the sum of all achievements the EU made up to now is understood (i. e. the whole primary and secondary legislation, but also political achievements like the European Monetary Union for which there is no general opt-out any more, the Schengen system etc.). It can be translated into English as “[European] Community achievements”, coming from a time when there existed a European “Community” (now: Union).

Conditionality is examined separately as it is believed to be an instrument that has a significant impact on the domestic democratization processes by granting benefits in return for the fulfillment of certain conditions (Vrumo 2008). For most of the CEEC's, the need to satisfy the challenging conditions for membership in the EU and NATO has acted as an "anchor" of democratization and other reforms (<http://www.stormingmedia.us/31/3189/A318974.html>).

EU strengthens Albanian democracy by providing a source of political legitimacy. EU conditionality has 'forced' the political establishment to get back to the democratic rules of the game whenever they have strayed too far from them. In Albania, the scale of foreign and especially EU intervention in internal politics has been relatively higher than in other countries but that is because local elites see politics as a zero sum game which erodes the minimal consensus necessary for democracy.

That perception is independent of EU and would remain true even without the country's European perspective. It is thanks to EU and other actors' intervention that consensus has been reestablished at critical junctures in Albanian politics.

The EU is also building or rebuilding state institutions which work in favor of democratic consolidation. Democracy cannot function beyond the rule of the law. And it was the EU that is helping to bring the law back into Albanian lives (Rakipi, 2006).

## **2 THE NEW EU PRINCIPLES AND THE ALBANIAN INSTITUTIONS**

### **2.1 Conditionality**

Conditionality is believed to be an instrument that has a significant impact on the domestic democratization processes by granting benefits in return for the fulfillment of certain conditions (Vrumo, 2008). Conditionality as an institutional arrangement represents a norm, a standard of behaviour which links a set of perceived benefits with the fulfillment of certain conditions (Karen Elizabeth Smith, 1997).

Within this framework, a clear definition of the "supply" (incentives) and "demand" (EU membership bid) side of a conditionality relationship is vital for this instrument to instigate the expected impact in the governance / policy-making process of a non-EU country (Vrumo, 2008).

## 2.2 The EU's Conditionality 1992-1999 (the Pre-SAP Period)

The first contractual relationship with the EC was the 1992 Agreement. That agreement was essential for the country to overcome the economic difficulties in the early stages of its transition. It was also an element to pave the way towards its final goal, the EU membership. The 1992 Agreement made a clear definition of the conditions to be met by the country in terms of its EU membership prospects such as approximation of legislation and other specific requirements as in the case of the Europe Agreements. It is somehow impossible to speak about typical conditionality in the relations with the EU in this period, that because of the level of Albania's economic and political development or democratic traditions conditioning its political commitment. Until the late 1990s the European Union had made no clear commitment as regarding the Western Balkan region's membership prospects (Vrumo 2008; 54).

Starting from 1996, and as a consequence of the war in the former Yugoslavia, the EU launched for the first time the conditionality approach in its relations with Western-Balkan countries. A new regional approach was introduced which finally called for a more firm involvement from European countries in order to stabilize the Balkans (European Council, 2000).

The General Affairs Council described the purpose of conditionality in the context of "developing a coherent EU strategy for its relations with the countries in the region" and it outlined a list of obligations (economic and political requirements) to be addressed by these countries. From 1997 to 1999 the European Commission had issued four Conditionality Reports on the compliance of Western-Balkan countries (Vrumo 2008; 56-57). The General Affairs Council Conclusions from 8<sup>th</sup> and 26<sup>th</sup> April and 27<sup>th</sup> May 1999 recognized the EU's responsibility in addressing the immediate instability and for the first time mentioned the perspective of EU membership on the basis of the Amsterdam Treaty, once the Copenhagen criteria have been met by these countries. This marks a historic turning point in the EU's relations with the Western-Balkan countries, while it consequently completes the framework of a more efficient conditionality relationship (General Affairs Council Conclusions, 1999).

The launch of the Stabilization and Association Process as the new approach towards the Western Balkan Countries was reinforced at the Zagreb Summit (24<sup>th</sup> November 2000). EU leaders explicitly underlined that "prospect of accession is offered on the basis of the provision of the Treaty on European Union, respect for the criteria defined at the Copenhagen European Council in June 1993 and the progress made in implementing the stabilization and association agreements, in particular on regional cooperation" (European Council, 2000).

### 2.3 EU's conditionality under the Stabilization and Association Process

The impact and the EU's policy towards the Balkan region was modest until 1999. The EU had to define more clearly the obligations and the conditions to be met by Western Balkan countries, as well as the framework of the process. According to Heather Grabbe, EU accession conditionality represents an evolving set of conditions for membership which have been progressively expanded to cover a wide range of policy outputs, and imply a role for the EU in policy-making of countries aspiring for EU membership (Heather Grabbe, 1999).

The conditions that SAP countries have to meet were rooted in the general Copenhagen and Madrid criteria (political, economic, administrative capacity and *acquis*-related) and also on country-specific aspects outlined under the regional approach in 1997. The SA process was then aimed to assist Western Balkan countries to move towards EU membership through introducing values and principles such as democracy, rule of law, respect for human rights, protection of minorities, regional cooperation and a market economy.

Albania entered the new process of rapprochement with the European Union at a time when it was facing an urgent need for restoring security and public order, rule of law and the authority of state institutions in its territory. Furthermore, political tensions were still a "normal" feature of the stabilizing efforts even following the events of 1997-1999.

However, a number of challenges to achieve minimum standards of a functioning democracy, reform institutions and economic development remained.

The role and influence of the EU at the outset of the SA process were following an increasingly intense stream which was conditioned by the post-1997 situation and the country's needs for development, while further reinforced by the prospects being offered under the SAA process. In this course, the EU appears to be largely perceived as the most important strategic partner for the country, while Albania's EU membership ambition started to be backed with a more firm commitment and concrete measures by the political elite, both of the opposition and of the ruling coalitions. The Stabilization and Association Process is the highest point as regarding the EU conditionality with Albania. The SAP as a comprehensive framework that clearly identifies all essential elements of an efficient conditionality relationship (such as actors, obligations, incentives and risks) notes the beginning of an intensive effort committed to reforms which involves both the ruling elite and the opposition (Bogdani and Loughlin, 2007).

In the period between 1997 and 1999 Albania introduced some changes in the institutional setup in charge of EU integration matters. It also adopted the Strategy for European and Euro-Atlantic Integration. This is a structured approach towards the country's strategic goal. The Albanian process of European integration was not very fast due to the consequences of the 1997 crisis and the situation in Kosovo.

The changes of the institutional and governmental bodies in charge of the EU integration process as well as the development of a more structured approach in this process which took place between 1998 and 2000 represented a kind of response to the SAP and EU conditionality.

Naturally, the EU's conditionality and the progress-oriented attitude in the relations with Albania were also a key factor for the progress achieved in the parliamentary elections in 2005. This was coupled in addition with internal pressure by the opposition and more importantly, by the general public and the civil society structures that made clear that this was the last chance for Albania to change attitude and start addressing pressing concerns and thus move forward in the integration process (Vrumo, 2008).

The experience of Albania shows that not only the lack of a clear conditionality relationship but also the use of conditionality in the absence of the involvement of non-political stakeholders (civil society, media, business sector and other interest groups) in the policy-making processes, may well prove inefficient in bringing about enhanced commitment and tangible results in national reforms (in perspective, however, it can be claimed that both the alignment with EU requirements as well as the involvement of societal actors' in the decision-making processes is slowly but firmly developing in the country). Consequently, a harmonized approach between EU conditionality, non-political actors' involvement and continuous real political commitment may best serve the purposes of the EU integration process. Furthermore, such a harmonized approach that takes into consideration role of these elements would undoubtedly ensure an upward and sustainable development of social, political and economic advancement of Albanian society (Vrumo 2008; 66).

#### **2.4 Democratization and EU Approximation of Laws**

The democratization process has no meaning without the democratization of the domestic law as the only way to establish the rule of law, to guarantee an open market economy and to ensure full protection and respect for human rights (Rakipi, 2007).

The democratization of domestic law means:

- The acceptance of supremacy of international rules over domestic law;
- Direct or indirect application of international rules into domestic law system;
- The continuing approximation of domestic legislation with the rules of international law;
- **The approximation of understanding and enforcement of the rules of International Law. In case of Albania, the constitutional framework provides the necessary legal framework for the democratization of the domestic legislation. The democratization process of the country and particularly of the domestic law system has begun in the 1990s with the fall of the communist regime and the establishment of the political pluralism, restructuring of economy, with the guarantee of human rights and fundamental freedom. This was a new era for the relationship between the rules of international and domestic law (Attorney Mr. Jordan DACI).**

In the context of EU integration, the terms “approximation” or “harmonization” refer to the process of adapting the legal systems of associated countries to the *acquis communautaire* and, as previously mentioned, it involves not only the adaptation of laws but also their actual implementation. This on the other hand requires a certain level of socio-economic development and a sound record of performance of democratic institutions in order to allow for an efficient rapprochement process (Vrumo 2008; 21).

A very important EU requirement is to incorporate the *acquis communautaire* into national legislation and also ensuring its effective application increasing implementation and enforcement capacities through administrative and judicial structures. The *acquis* which is the body of laws and regulations developed from the European Treaties is composed of 35 chapters, each of which focuses on a specific sector or issue area.

The establishment in 1999 of the Directorate for Approximation of Albanian Legislation with the *acquis communautaire*, in the Ministry of State for Legislative and Institutional Reform, was an important step forward in the process of approximation.

By the time the first Stabilization and Association Report was issued (2002) Albania had a generally positive score only on the (basic) legal framework regulating the private sector’s operations, on which account the main emphasis was put in implementation aspects. Recommendations for further legislative improvements in most of the areas of the SAP reports were continuously put forward by the European Commission also in the subsequent years (European Commission Regular Report 2002).

Yet, despite the shortcomings of the adoption of new legislation in specific areas and adjustment of the existing ones, the EC reports were increasingly focusing on implementation aspects. The 2004 SAP Report concluded that with regard to anti-corruption measures “the problem in Albania is not the absence of strategies and legislation, but rather deficiencies in their implementation and enforcement“ (European Commission Rapport 2004).

The Albanian government has completed the „National Programme for the Approximation of Legislation with the Community Legislation and Implementation of the SAA“, an initiative supported by the EU technical assistance. The National Plan for the Implementation of the SAA has already been updated in accordance with the new developments. Public institutions still cannot efficiently respond to the deadlines outlined therein. It is therefore evident that there is need for further improvements in this aspect. While the existing institutional setup in charge of EU integration matters has been largely acknowledged as an efficient experience, additional adjustments are needed especially now – following the new stage of this process with the Interim Agreement in force and in view of the forthcoming challenges. Permanent working groups focusing and performing in accordance with a set of guidelines and rules on approximation of legislation may provide the necessary shift to speed up the process (Vrumo 2008; 51).

Albania has been included in TAEIX (Technical Assistance Information Exchange Office), a programme of the European Commission, which aims to provide technical assistance in adaptation and implementation of the legislation. It points out the importance that the European Commission is giving to the implementation of the SAA through the adoption of community norms into internal law (Ministry of Integration of Albania 2008)

Even though in a lot of areas Albania has developed a new and contemporary legal framework, the problem lies in the implementation and enforcement of laws. Photocopying of European laws is not enough, the laws must be understood and put into effect. Therefore there is a need to move on from the formal adoption of legislation to the development of capacity to implement it (Shekulli, 2005).

The 35 negotiation chapters of the *acquis communautaire* are:

- 1-Free movement of goods
- 2-Freedom of movement of workers
- 3-Freedom to provide services
- 4-Free movement of capital
- 5-Public procurement

- 6-Company law
- 7-Intellectual property
- 8-Competition policy
- 9-Financial services
- 10-Information society and media
- 11-Agriculture and rural development
- 12-Food safety
- 13-Fisheries
- 14-Transport
- 15-Energy
- 16-Taxation
- 17-Economic and monetary union
- 18-Statistics
- 19-Social policy and employment
- 20-Enterprise and industry policy
- 21-Trans-European networks
- 22-Regional policy and structural funds
- 23-Judiciary and fundamental rights
- 24-Justice, freedom and security
- 25-Science and research
- 26-Education and culture
- 27-Environment
- 28-Consumer and health protection
- 29-Customs union
- 30-External relations
- 31-Foreign, security, defense policy
- 32-Financial control
- 33-Financial and budgetary provisions
- 34-Institutions
- 35-Others

The last EC reports note a steady progress in approximating Albanian horizontal legislative framework to the *acquis communautaire* in several sub-areas of the “economic criteria” – internal market and sectoral policies. However, serious deficiencies in this field have been often linked also to lack of progress in other areas such as the judiciary reform which still remains a central concern. A generally good progress has been acknowledged by the EC 2007 Progress Report in the field of State Aid which is essential for strengthening the competitiveness of the Albanian economy (Albania Progress Report 2007).

The effective implementation of the NPISAA requires concerted efforts by all stakeholders involved in both alignment of legislation and its actual implementation. This is essential in order to create an acceptable record that may justify support to an advanced relationship with the Union and thus, a “negotiation chapters-based approach” for future EC reports. The NPISAA’s structure in fact has employed a similar approach. However, it should be understood that it is actual progress and not the choice of the document’s structure that matters when it comes to preparations for an advanced relationship with EU (Bogdani and Loughlin, 2007).

## **2.5 The Institutions responsible for the EU Relations**

Albania has experimented with a number of institutional setups that also reflected the stage of its progress in the Stabilization and Association Process (SAP) as well as in its internal political developments (Vrumo, 2008).

From 1999, when the prospect of accession started to become a reality, relevant institutional mechanisms have been created to facilitate the pre-accession and integration process. The importance and priority given to this process is reflected in the evolution of structures in charge of European Integration, from a General Directorate of Euro-Atlantic Integration at the Ministry of Foreign Affairs to the Secretary of State for European Integration and finally to the establishment of a fully-fledged institution, the Ministry of European Integration. Created in 2004, it is currently the body with the central role in the European Integration Process of the Republic of Albania with the European Union, through the approximation of domestic legislation with that of the EU, formulation of integration policies, coordination of financial aids and information of the public about the process (European Enlargement Documents, 2006).

The decision of the Albanian Government establishing a separate Ministry for EU Integration followed the opening of the negotiations with the European Commission (EC) on a Stabilization and Association Agreement (SAA). The decision not only finalized the efforts (which began in 2001) to reflect the new stage the country was entering in its EU integration process, but it also brought under a single and direct institutional umbrella various departments at governmental (Department for European Integration) and ministerial level (such as the Department for Approximation of Legislation at the Ministry of Justice). Under the current organizational structure of the Ministry of European Integration, the work of the Department for Approximation of Legislation (formerly under the Ministry of Justice) is covered by two Directorates:

- Directorate of Justice and Home Affairs,
- Directorate of Internal Market.

The strengthening of governmental structures dealing with the EU (State Minister and the Department for European Integration) was continuously suggested by the EC during the Task Force Meetings and also in the first and second EC Progress Report.

Prior to 2004, the Albanian Government had established a State Minister for Integration and a special Department for European Integration in 2001 which would represent the country in the bilateral negotiations with the EC and coordinate and monitor the EU integration process soon to enter the phase of the SAA negotiations (Vrumo, 2008).

At present, the governmental structures dealing with the process of European Integration are well-developed and they reflect the stage that the country has entered on its road towards the EU:

The Ministry of European Integration represents the official positions of Albania in the high level EU – Albania meetings (Order of the Prime Minister No. 33, from 02/04/2007).

Some of the main competencies and functions of the Ministry of Integration involve:

- the coordination and monitoring of the Stabilization and Association Process (SAP);
- coordination and monitoring of the process of addressing the SAP objectives and obligations;
- coordination, monitoring and implementation of the process of approximation with the EU *acquis communautaire*;
- representation of the country in the joint EU-Albania consultative meetings;
- monitoring of the work and performance of various working groups (inter-ministerial) in the framework of the SAP;
- negotiation, programming, coordination and monitoring of the implementation of EU assistance (under CARDS and the Instrument for Pre-accession Assistance - IPA);
- promotion of the European integration process and raising public awareness (Vrumo, 2008).

Another important governmental body deeply involved in the European integration process is the Albanian Negotiators Group which is led by the Minister of European Integration and involves high representatives of line ministries and other central level institutions. This body is in charge of coordination, monitoring and implementation of all sector-based activities related to the SA process. The Ministry of Foreign Affairs and particularly the European Integration Department has the duty to promote and support Albania's EU integration efforts on high political level within the EU (Ministry of European Integration 2008).

In addition to the above described (macro-level) structures, the Albanian Government also established specialized European Integration Units (EIU) in all line ministries to act as focal points for EU-related assistance, reporting and monitoring. The Decision of the Council of Ministers No. 179, dated 22/2/2006 outlines the responsibilities of these units, which involve:

- a) internal coordination, ensuring direct links and cooperation with the MEI and other line ministries regarding the obligations the country has assumed with the SAP;
- b) internal institutional coordination and coordination with the MEI and other line ministries regarding the approximation of legislation and reporting on legal acts adopting the *acquis communautaire* under TAIEX;
- c) internal institutional coordination regarding the preparation of reports on the process of European integration;
- d) monitoring and reporting within the ministry on EU integration matters;
- e) data sharing on the EU integration process between the ministry, the MEI and EIUs in other line ministries;
- f) assessing the performance of the institution in the process of European integration; propose functional mechanisms facilitating sectoral reforms, implementation of the SAA through approximation of Albanian legislation with the *acquis communautaire* and strengthening the administrative capacities;
- g.) recommending priorities, planning of activities and human resources for the institutional support of the European integration process (Council of Ministers, 2007)

The GoA (Government Office - Office of Prime Minister) plays the main role in the European Integration process of Albania. In particular, the Prime Minister has a primary role. An Inter-ministerial Committee for European Integration is the structure that endorses the integration policy and strategy and leads the stages of integration and negotiations. It also represents Albania in the Stabilization and Association Council and approves the National Plan for the Implementation of the Stabilization and Association Agreement (Ministry of Integration, 2008).

An Inter-Institutional Coordination Committee for European Integration, a rather technical structure, meets twice a month. This Committee is responsible for the implementation of tasks identified by the Inter-ministerial Committee for European Integration, monitors the process, prepares and finalizes documents, evaluates the impact of legal approximation and so on. This Committee is chaired by the Minister of European Integration and is composed of the deputy-ministers, secretary generals and general directors of line ministries. Both these Committees were established pursuant to the Prime Minister's Order No 46 from 11 April 2009.

All negotiation positions and materials of the Stabilization and Association Council are coordinated among institutions by the Ministry of European Integration in the case of technical

issues, and by the Ministry of Foreign Affairs in the case of political issues. These positions require the approval of the Inter-ministerial Committee for European Integration chaired by the Prime Minister.

## **2.6 Recommendations**

The implementation of the Interim Agreement and other SAA obligations call attention to the need for better administrative capacities, enhanced coordination and continuous consultations not only within the governmental matrix, but also with other institutions (Parliament, oversight institutions etc.) and civil stakeholders (Vrumo, 2008).

The establishment of the Ministry of European Integration however is the beginning of the consolidation of governmental structures' dealing with the integration process, which is a continuous process itself. While critiques and strong recommendations continued to be delivered to Albania by the EC, the setting up of the Ministry and its improved role in the SA process were underlined as positive developments in the EC 2004 report (European Commission Report 2004).

The reports (2005 – 2009) of the European Commission on the Albanian SAP confirm that the Ministry of European Integration, as an institutional solution, has improved this process. But the new phase in which Albania's EU integration process has entered, requires further consolidation of both MEI's and other line ministries' capacities.

## **3 THE ALBANIAN EU INTEGRATION CHALLENGES**

The progress made by Albania towards meeting the Copenhagen Criteria is a determined factor in its way towards the European Union. It requires:

1. Stability of institutions guaranteeing democracy,
2. The rule of law,
3. Human rights and respect for and protection of minorities.
4. It also monitors regional cooperation, good neighborly relations with enlargement countries and Member States, respect for international obligations.

### 3.1 Fight against corruption

Corruption refers to the arbitrary exercise of power and the supply of goods and services not sanctioned by law (Bogdani and Loughlin 2007; 152). The high and regular occurrence of corruption and other abuses of power slow down and have serious effects on the process of democratization.

One of the reasons that make corruption difficult to fight in Albania is the weak judicial system. It is not just weak and lacking in independence, but is itself plagued by corruption. Another reason is related to institutional mechanisms. Certain institutions which can contribute in this issue have not been effective (Bogdani and Loughlin 2007; 154).

Albania has made some progress to adapt its legislation to EU standards in the field of anti-corruption but the enforcement and the strengthening of rule of law still remain big challenges. There are some positive steps taken by the Albanian government during the last two years, such as the reform in the procedures of admissions to the public universities, the new procedure on e-procurement, the decentralized procedure for the registration of new business entities and efforts to reduce fiscal evasion (Kujtim Morina, 2009).

The Albanian governments have, however, failed to implement civil service law. The established Department of Public Administration and the Civil Service Commission have been under the pressure and influence of the executive.

Combating corruption and strengthening public administration in Albania are challenges and preconditions for European integration and the rule of law. Albania signed the Stabilization and Association Agreement (SAA) with the EU on 12 June 2006 and became member of NATO on 4 April 2009 at the Strasbourg-Kehl Summit. The articles of the SAA which are directly related to corruption and public administration are the following ones:

- Article 78 on reinforcement of institutions and rule of law,
- Article 85 on fighting corruption both in the private and public sector in particular linked to non-transparent administrative procedures and against fiscal fraud,
- Article 111 on efficient and accountable public administration, the implementation of transparent and impartial recruitment procedures and human resources management at the central and local levels.

According to all surveys conducted so far with Albanian citizens, corruption is very high.

The officials who come to power through politically motivated appointments justify corruption practices and abuse of power with the fact that after the next power rotation they will not be in these positions anymore, regardless of their work performance. The experience after the 1990s has indicated that the most severe punitive measure against state employees accused of corruption has been their job dismissal. The public sectors most affected by corruption are the health sector, the judiciary, police, property agencies, licensing and registration services and utilities (Kujtim Morina, 2009).

A Report of Transparency International published in September 2008 assesses that Albania has made significant improvement with regard to the fight against corruption compared to 2007. “In Albania, where the CPI [Corruption Perceptions Index] score rose from 2.9 in 2007 to 3.4 in 2008, an official task force created to fight corruption and economic crime has increased the number of officials prosecuted and sentenced for corruption, also building confidence among the public that corruption can be punished in Albania” (Transparency International, 2008).

The strengthening of state institutions and the rule of law is still in a critical stage in Albania. Apparently, there is political will to make reforms, but in practice the law is not fully enforced and informal relations are still highly influential (Kujtim Morina, 2008).

### **3. 1. 1 Strategies of fighting the corruption**

The National Plan for the Implementation of the Stabilization and Association Agreement (NPISAA) 2007-2012 gives in detail the measures to be taken by the Albanian government to fulfill the conditions of the SAA. The Ministry of Integration is the main institution coordinating and monitoring the National Plan. The other ministries and central state institutions are to report at the beginning of every month on the implementation of this Plan to this ministry. The NPISAA dedicates a special chapter to the fight against corruption and defines the legal and institutional framework, addressing priorities and the responsible state organs. The National Strategy for Development and Integration 2007-2013 (NSDI) identifies challenges, vision and strategic priorities and policies in the anti-corruption field and public administration (Kujtim Morina, 2008).

In the medium term (2007-2010), the recommendations made in the 2005 evaluation report by the Council of Europe Group of States against Corruption will be followed up;

- Legislation will be approximated with all the standards enshrined in the conventions against corruption of the Council of Europe and the United Nations;

- Administrative barriers will be gradually reduced;
- The power to discover and punish corruption cases will be strengthened (Council of Ministers, 2008).

### **3. 1. 2 Institutions fighting the corruption**

1. The Anti-Corruption Task Force is led by the Prime Minister and is composed of members of the Council of Ministers and representatives of the dependent institutions that cover mainly the management of public finances, control and audit. According to a decision of the Council of Ministers, the Anti-Corruption Task Force should be convened every two months. The Internal Administrative Control and Anti-Corruption Department is an internal control mechanism for the Council of Ministers and its subordinated institutions (Council of Ministers, 2005).

The main functions of the Anti-Corruption Task Force are:

- a) determine strategic priorities and concrete measures to fight and prevent corruption;
- b) to ensure inter-institutional cooperation for the fight against corruption and the implementation of good governance programmes.

2. A Special Anti-Corruption and Economic Crime Unit (Joint Investigation Unit) reporting to the General Prosecutor's Office became operational in September 2007 with the assistance of the European Commission and the USA. This Unit was established by a Cooperation Agreement among the General Prosecutor's Office, the Ministry of Interior, the Ministry of Finance and the National Intelligence Service. Currently, the office facilities of the Unit are located in the Tirana Prosecution Office. The duties and responsibilities of the Unit include the prevention, investigation and prosecution of about 50 penal offences related to corruption, abuse of power, falsification of documents, money laundering, fiscal evasion (Ministry of Interior, 2008);

3. The High Inspectorate for Declaration and Audit of Assets (HIDAA), established in 2003, is the main responsible authority for the implementation of the law on the declaration and audit of assets of elected persons and certain public officials and the law on prevention of conflict of interests in the exercise of public functions (Law no 9049 from 10.04.2003).

The general number of relevant persons (elected persons, public officials on duty and former public officials) that have declared their private interests has increased constantly.

4. People's Advocate

5. Civil Service Commission

6. General Directorate on the Prevention of Money Laundering Competition Authority

Institutions which used to exist before 2000:

- 1- Department of Public Administration
- 2- State Supreme Audit
- 3- Internal Audit Units

The Progress Report of the European Commission on Albania for 2008 appraised the further efforts of the Albanian government against corruption as compared to 2007: "Perception of corruption has improved; nonetheless, corruption remains a particularly serious problem in Albania. The government has had some success in the fight against petty corruption and bribery. A number of low to middle-level officials were dismissed for bribery." However, a more systematic approach is needed to tackle corruption overall, particularly widespread bribery in the judiciary, police, health and customs sectors (Albania Progress Report 2008).

The SAA establishes that the parties shall cooperate on fighting and preventing criminal and illegal activities, such as corruption, both in private and public sectors, in particular linked to non-transparent practices and fiscal fraud (Art 85) (Council of the European Union, 2006)

The fight against corruption is considered to be one of the fundamental criteria that enables the consolidation of the rule of law and market economy and consequently allows for progress to be made in the process of European integration.

A clear vision capable of addressing the problems related to corruption, however, is missing in Albania.

The main problems in the framework of the fight against corruption as identified in recent years are:

- A major involvement of justice institutions in the fight against corruption (Monitoring Report Albania in the Stabilization and Association Process, 2008)
- Failure to have concrete and objective indicators in the Anti-corruption Strategy adopted by the Government; (European Partnership with Albania Brussels, 2007)
- Shortening the list of officials with immunity (Priorities under the European Partnership with Albania, 2007)

The preventive measures that restrict spaces for corruption as provided for in the strategy, including those related to transparency, internal and external control, access to decision making and the monitoring role of civil society, local communities and media, continue to be not implemented because:

- There are no clear monitoring indicators for any of the provided measures;
- The measures are general and do not clearly identify the persons who are responsible for implementing them;

There is no cooperation among institutions charged with implementing them; even cooperation on information exchange is missing (Monitoring Report Albania in the Stabilization and Association Process, 2008).

Regarding the state institutions mandatory to fight corruption in Albania there could be considered two options; either to establish a new special state institution against corruption or to grant more competencies to the Department of Internal Administrative Control and Anti-Corruption (Kujtim Morina, 2009).

Since corruption has become a threatening phenomenon not only for the economy but also for the stability of the country, the challenges for the government are to take effective measures to ensure increased institutional capacity to investigate and prosecute corruption, measures against bribery of public officials and the adoption and enforcement of a new law on the declaration of assets of politicians and officials (Bogdani and Loughlin 2007; 155).

### **3.2 The Public Administration**

The public administration inherited from the communist period lacked a managerial class, qualified decision-makers and competent civil servants who would be able to manage the challenges of the transition period.

The politicization of the public administration institutions has been one of the major problems throughout the transition period. One of the worst has been that every political party that comes to power replaces previous employees with its own loyal members or supporters. This phenomenon has damaged the institutional memory thus weakening the stability and continuity of the institutions and undermining the legitimacy and the efficiency of the institutions of public administration (Bogdani and Loughlin 2007; 47).

The bureaucracy is large, inefficient and lacking a culture of efficient administration. Equipment and infrastructures have improved over the years, but are still insufficient to carry out the tasks required. The main problem remains the quality of the human resources.

Salaries and other forms of benefits and rewards of civil servants are relatively low. The situation gets worse when it comes to comparing their salaries with those in top of positions such as ministers and deputy-ministers, general secretaries and directors (Bogdani and Loughlin 2007; 49).

The improvement and implementation of clear guidelines for the recruitment, transfer and dismissal of all civil servants is defined as one of the short-term priorities in the European Partnership with Albania.

An increasing number of civil servants have been trained by the Training Institute of Public Administration (TIPA). A positive development has been the recent joint initiative of this institution with the Department of Public Administration and Ministry of European Integration to provide trainings relating to the EU issues.

Considerable efforts remain necessary to restrict political appointments to the appropriate levels, improve salaries and career structures, and introduce performance management to raise the effectiveness of the public administration (European Commission 2005; 11).

### **3. 2. 1 The legal framework of the public administration**

The current legislation pertaining public administration is at a satisfactory level, the main problem consists in its enforcement (Kujtim Morina, 2009):

1. The Law on the Status of Civil Servants approved at the end of 1999 laid down some good foundations for strengthening the public administration. The work relations for some categories of state employees are regulated by certain laws like the ones on the state police, diplomatic service, local government authorities, army, state intelligence service etc.

The Law on the Status of Civil Servants oversees the establishment and functioning of the Civil Service Commission, functioning of the Department for Public Administration, classification of civil servants and hiring of the civil service (Law no 8652 from 31.07.2000).

2. The Code of Administrative Procedures (CAP) stipulates the right to complain through an informal request against an administrative act or refusal to issue this act initially to the direct supervisor or to the institution that has made the violation within thirty days of being informed about the violation (Code of Administrative Procedures of the Republic of Albania no. 8485, from 12.05.1999). The state institutions including the independent organs have not fully utilized their competence to issue sub-legal acts inherent to the CAP. Probably this is related to the deficiencies in its enforcement.

3. The Law on the Prevention of Conflict of Interests was amended twice during 2006. After the right-wing government came into office at the end of 2005, the newly appointed directors of the state institutions were conditioned to give up from their owned businesses in order to obtain public functions.

4. The law on the Right to Information over Official Documents approved in 1999 provides that the public authority decides whether or not to accept the request for information within 15 days from its submission and informs in writing the interested person (Law no. 8503, from 30.06.1999).

### **3. 2. 2 Institutions of the Public Administration**

The Department of Public Administration (DPA) is the main responsible state authority for developing civil service policies, organizing the recruitment procedures for civil service, restructuring of the central state institutions and issuing general instructions related to performance appraisal, job description, and salary structure. The DPA was initially established within the Prime Minister's office in 1994 by a special decision. Its activity was regulated by the civil service law later in 1999. At the end of 2005, the government transferred the DPA to the Interior Ministry on the grounds of a better management (Decision no. 443 of the Council of Ministers).

The performance appraisal system of the civil servants and state employees in general is not fully in place yet. The deficiencies in this regard are accepted by the Department of the Public Administration as well.

The promotion in duty, demotion and other disciplinary measures of civil servants or other state employees in many cases does not take in consideration regular performance appraisals but is based mainly on other criteria like informal relations, political connections, immediate appraisals and verbal deliberations (Kujtim Morina, 2009).

The Training Institute of Public Administration (TIPA) was established in June 2000 and runs its activities under the direct supervision of the DPA. The structure of the TIPA includes three departments of General Training, Fiscal Training and Local Governance Training; the latter was established in March 2008 (Order no. 19 from 18.02.2008 by the Albanian Prime Minister).

The Civil Service Commission (CSC) is a supervisory body for the implementation of civil service law addressing complaints of the affected civil servants. The Civil Service Commission started its functioning with the full staff of 5 members and the Technical Secretariat as an administrative body in February 2001 (Law no. 8549 from 11.11.1999).

The political rotations in Albania bring consequently the change of the head of CSC as it was the case in 2007. This has a negative impact on the performance of this institution (Civil Service Commission, 2007).

A lack of trust in the Civil Service Commission is present; therefore many cases of dismissal are addressed directly to the court.

The institutions of Civil Service Commission and Department of Public Administration should be strengthened and freed from political interferences. The amendment of Civil Service Law is required in order to include at the maximum extent other categories of state employees outside its jurisdiction. Another idea can be to award more autonomous power to the Department of Public Administration (Kujtim Morina, 2009).

Some of the Albanians priorities regarding the public administration are:

- Ensure that the sectors of the administration responsible for implementation of the SAA provisions and those involved in implementation of the EC financial assistance are adequately trained and equipped to carry out their duties,
- Introduce results-oriented management and training for civil servants,
- Design and implement a civil service salary structure which allows both proper budgetary planning and a motivating career structure,
- Ensure the sustainability of reforms in the public administration (Monitoring Report Albania in the Stabilization and Association Process, 2008).

### **3.3 The rule of law**

The rule of law is a basic element of liberal democracy and a fundamental value of the EU, essential for a democratic stability and a necessary pre-condition to improving the socio-economic context. The attitude of many Albanians is that the rule of law and its enforcement are something negotiable rather than obligatory (Bogdani and Loughlin 2007; 50).

From the point of view of EU accession the state of the rule of law is one of the major criteria for evaluating the progress of Albania joining the EU.

The rule of law includes:

- The functioning of the judicial system
- The fight against the organized crime and corruption

Albanian's juridical system and structures have undergone deep transformations and reforms over the last 17 years, in order to be adapted to a liberal-democratic system.

But still the juridical system, which should play the most critical role in the fight against corruption and organized crime, is weak and ineffective. Its personnel are poorly paid and trained and seem to be at least partially corrupt. This affects also the enforcement of the new laws, in particular with regard to serious crimes (Council of Europe, 2004).

The Albanian State Police does not properly fulfill its functions to contribute to the general development and respect for the rule of law.

The main challenges of the rule of law are to increase the capacity and improve the functioning of the judiciary, to increase the independence of the judicial system from policies and organized crime, and to ensure the proper prosecution of serious crimes. Cooperation between all law enforcement bodies continues to require substantial improvement (Bogdani and Loughlin 2007; 52).

### **3.4 Albanian brain drain**

Emigration has been one of the hottest social issues in the post 1990 Albania. Emigration rates from rural to urban areas and from Albania to other countries have been the highest in the Eastern Europe.

The loss of skilled labour, the overburdened infrastructure of urban areas and the depopulation of sections of the countryside stand witness to the social havoc wreaked by this phenomenon. Within the massive emigration flows of this period the „brain drain“ has materialized as a particularly important factor hampering the creation of a high-skill labour market that matches the Albania’s needs (Albanian Institute for International Studies 2005; 9).

The mixed report cards on the process of integration in the Euro-Atlantic structures continuously point to the need of strengthening the administrative and technical aspects of governance. Weaknesses in institutional capacities have emerged as the primary barrier in the road to integration. Existing human resources are poorly utilized and even more poorly cultivated. One tool that would be effective is changing this situation in a national strategy on attracting foreign-educated Albanians in the civil service, education system and the private sector (The Guardian Weekly, 2004).

Despite its negative impact, Albania’s brain drain is also an opportunity that may bring considerable benefits to the country. Albania has passed the emergency stage in its economic development – a simple liberalization of the market no longer suffices for maintain high growth rates. The increase complexity of economic relationships and the obligation of the state institutions in formulating and maintaining specific legal frameworks for economic growth demands a highly specialized work force to make the necessary changes possible and a higher capacity to internalize best experiences abroad.

Increasing the rate of return and professional integration of the target group would, in its turn, aid the integration process itself because of the skills and ideas which these students would bring with them while the very process of accommodating them would mean a more professional civil service with transparent and universal human resource management practices - in itself a requirement of the countries’ European future (Kauffman, A.Kraay, and M. Mastruzzi, 1996).

### **3.5 Prospect and Priorities**

The priorities listed in this European Partnership have been selected on the basis that it is realistic to expect that Albania can complete and take them substantially forward over the next few years.

#### **Key Priorities:**

- Strengthen administrative capacity in preparation for implementing Stabilization and Association Agreement (SAA) and Interim Agreement (IA) commitments;

- Promote constructive dialogue between political parties and with stakeholders on the implementation of reforms;
- Increase the independence and transparency of the justice system, including by fostering the constitutional protection of judges, appointing judges and prosecutors on the basis of competitive examinations, establishing merit-based performance evaluation for prosecutors and setting objective rules for allocation of cases to judges;
- Implement the 2007-2013 anti-corruption strategy and the recommendations made in the 2005 evaluation report by the Council of Europe Group of States Against Corruption and investigate and prosecute cases of corruption in the police and the judiciary with due vigor;
- Implement the recommendations made by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on elections, in particular by improving voters' lists and amending the electoral code in line with the Venice Commission recommendations, in good time for the next parliamentary elections;
- Further strengthen public-sector governance by improving the quality and impartiality of public administration staff and strengthening the Department of Public Administration;
- Achieve further tangible results in the fight against organized crime, in particular by making full use of intelligence-led policing and ensuring effective judicial follow-up (Council Decision 2006; 4-5).

The progress of Albania in its democratization and transformation is undoubtedly linked to the prospect of joining the EU. Since 1991, all Albanian governments have considered European Integration a priority at the top of the political agenda. The prospect of EU membership for Albania and other Western Balkan countries became concrete and possible through a special regional policy, the Stabilization and Association Process (SAP). From 2000 Albania committed itself to the goal of EU accession, but to achieve this it has to fulfill the Copenhagen criteria (Bogdani and Loughlin 2007; 241).

It is important that all segments of society are in favor of joining the EU. A high percentage of the Albanian population is in favor and identifies the EU with democratic values and civilization, economic benefits and the inclusion of the country in the European Acquis which will bring the free movement of people, a right denied to Albanians for 50 years under the communism and still continuing today.

The EU remains the primary destination of Albania's efforts in managing the difficult period of transition and its goals for the future, and it seems to be the biggest guarantee of democratization and progress in Albania.

## **Conclusions**

The EU is for sure the greatest guarantee for democratization of institutions, reforms and progress in Albania. But to be able to join this club Albania has to meet the Copenhagen criteria.

The EU is committed to help Albania and bring it closer to the European Community. This is reflected in the process of SAP and SAA, which are the Albanian steps towards EU membership. The Copenhagen criteria, which provide fundamental principles relating to the rule of law and democratic governance, as well as settling the technical standards for the development of a market economy, serve as big motivating factors for the domestic actors and speed up the reforms.

The progress depends of course on Albania's ability to fulfill the requirements and face the serious challenges, for example the fight against corruption and organized crime or the strengthening of its institutions such as judicial system and public administration. If the government continues to pursue accession to the EU, as it is now, it must be active in implementing the reforms required of it by the EU.

The government must eliminate the continuing instability that plagues the institutions, most of it due to the polarized political atmosphere.

As Romano Prodi said in his speech to the Albanian Parliament, "I have already said this once but I will say it again: The Union will be at your side. Today and in the future, dialogue must pave the way for developing a closer, more transparent and more reliable partnership."

However, despite achievements, a lot remains to be done. In particular, Albania should concentrate on the following areas: Preserving political stability, reinforcing democracy and ensuring free and fair electoral processes, improving the upholding of human and minority rights, intensifying the fight against fraud, corruption, organized crime and trafficking, substantially increasing implementation and enforcement capacities (notably through an enhanced public administration and judiciary).

Reinforcing the structures directly involved in the implementation of a future SAA. Government must be very active for implementing international financial assistance, improving fiscal sustainability, completing the privatization process in all strategic sectors, properly addressing the energy crisis, resolving the land property-related issues and developing an efficient land market.

One the biggest thing holding Albania back is that the politicians are too involved with their individual interests. The parties need to preserve the integrity of democracy and avoid resorting to hostilities against the opposition.

It is also important that the government ensures that the rule of law is respected, as is required by the EU. There is a good basis present in Albania, but the law needs to be further extended to all of society through the implementation of necessary infrastructure and adequately trained officials. With widespread enforcement of laws, it will be much easier for the government to combat the corruption and organized which destabilizes the society

On top of all these, the government should attempt to develop a functioning market economy. The economy will one day need to be strong enough to survive the competition of the other EU countries.

From this point of view the prospect of EU membership is a strong driving force for carrying out domestic reforms.

The EU is the main provider of the multilateral assistance to Albania, which operates under democratic conditionality. The current financial program CARDS is a very important component of the SAP.

This financial and technical support has covered many sectors including humanitarian aid, public administration reform, judiciary and law enforcement fighting organized crime, political stability, trade, macro-financial assistance, public order, infrastructure, agriculture, health and education, fraud and corruption.

Through this economic support and conditionality EU gives a good example and helps in the reforms of democratization of the country in all the fields. EU is the only element of consensus that unites all political parties and all social groups. This remains a very positive fact in Albania. This leads to believe two types of pressures: the external one from the EU and from other international organizations, and the internal pressure from the various domestic actors

and the aspirations of the Albanian people who are interested in progress and EU membership.

Pressure from both sides will help Albania democratize more her institutions and achieve the objective of joining the EU. All these facts bring new ideas and wills for transforming and reforming the country along western democratic lines, making it part of the Big European Family.

## **Bibliography**

Albert Rakipi (2006) *Albanian Euroscepticism? The wrong debate in the wrong place at the wrong time*, Tirana Times Newspaper

Albanian Institute for International Studies 2005, *Albanian Brain Drain, Turning the Tide* 2005, 9

*Albania - Stabilization and Association Report*, (Brussels: European Commission, 2008-2009)

*Albania - Stabilization and Association Report*, (Brussels: European Commission, 2007-2008)

Attorney Mr. Jordan DACI, *The democratization of Domestic Law as a Condition for the European Integration of the Western Balkans*, Marlin Barleti University and Wisdom University, Tirana

B. Kajsiu, A. Bumci, A. Rakipi: *Albania - A Weak Democracy, A Weak State*. AIIS: Tirana, 2002

Commission of the European Communities, *Albania 2008 Progress Report*, Brussels 05.11.2008, COM (2008) 674, 10-11

Council of the European Union, 8164/06, COWEB 76, *Stabilisation and Association Agreement between the European Communities and their member states of the one part and the Republic of Albania of the other part*, Brussels 22.05.2006, 80

Code of Administrative Procedures of the Republic of Albania, *approved with the law no 8485 from 12.05.1999*

Civil Service Commission, *2007 Annual Report*, Tirane 2008, 3,

Council Decision *on the principles, priorities and conditions contained in the European Partnership with Albania and repealing*, Decision 2006/54/EC, 4-5

European Commission, SEC 2007, 1429, 30-31, Brussels 2007

Decision no 443 of the Council of Ministers “*About the creation of public administration*, European Council, *Final Declaration of Zagreb Summit, 24 November 2000* (Brussels: European Council, 2000)

European Commission, “*Albania Progress Report 2007*” Commission Staff Working

European Council, *Presidency Conclusions: Santa Maria da Feira European Council, 19-20 June 2000*, Brussels, European Council, 2000)

European Commission, “*Albania Stabilization and Association Report 2003*” Commission Staff Working Document (Brussels: European Commission, COM 2003 139, 5

Elliot Larry: “*Stop the brain drain*“, The Guardian Weekly, December 17-23, 2004

Gjergji Vrumo (2008), *Relations of Albania with the EU*, Institute for Democracy and Mediation

General Affairs Council Conclusions of the 21<sup>st</sup>-22<sup>nd</sup> June 1999

Gligorov, V. (2001) “*European Union Enlargement and the Balkans*”, Vienna: WIIW

Heather Grabbe (1999) , “*A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants*”, European University Institute, Florence: Robert Schuman Centre Working Paper 99/12, 1999.

<http://www.mie.gov.al> (accessed in April 2009)

[http://europa.eu.int/comm/enlargement/docs/newsletter/latest\\_weekly.htm](http://europa.eu.int/comm/enlargement/docs/newsletter/latest_weekly.htm) (accessed in June 2008)

<http://eiop.or.at/eiop/> European Integration on-line Working Papers (accessed in May 2009)

<http://eiop.or.at/erpa/> - part of the European Research Papers Archive (accessed in June 2009)

<http://europa.eu.int/comm/enlargement/docs/research/archives.htm>  
Enlargement Research Bulletin (accessed in December 2009)

[http://wiiwsv.wsr.ac.at/Countdown/f\\_insti.html](http://wiiwsv.wsr.ac.at/Countdown/f_insti.html) (accessed in October 2009)

Karen Elizabeth Smith (1997), “*The Use of Political Conditionality in the EU’s Relations with Third Countries: How effective?*” EUI Working Papers, SPS No.97/7, 1997)

Kastriot Islami speech (2004)*The European orientation of Albania and the Western Balkans*

Kujtim MORINA 2009, Paper “*Corruption and the Functioning of Public Administration as Challenges for European Integration of Albania*“, Political, Economic and Social Challenges of the Balkan Countries in the Process of European Integration, Tirana, Albania

Law no. 9049, date 10.04.2003 “*On the declaration and audit of assets, financial obligations of elected persons and certain public officials*”, amended with the law no 9367, date 07.04.2005, law no 9475, date 09.02.2006 and with law no 9529, date 11.05.2006

Law no 8652, date 31.07.2000, *on the organization and functioning of local government*

Law no 8549, dated 11.11.1999, “*On the status of civil servants*”, 6, the competencies of the CSC

Meksi, E. (2003), “*The Albanian dimension of Integration*”, in *Debating Integration*, AIIS

Milo, P. (2002), “*Bashkimi Europian*” Tirana, Albpaper

Mirela Bogdani and John Loughlin (2007), *Albania and the European Union*, I.B. Itarus, London-New York

Monitoring Report 2008, *Albania in the Stabilization and Association Process*

Order of the Prime Minister No. 33, dated 02.04.2007

Order no 19, date 18.02.2008, of the Albanian Prime Minister *on the establishing of Local Governance Training Department within ITAP*

Parliament of Albania, *law no 8503, date 30.06.1999 on the right to information over the official documents*

*Partnership with Albania*, Brussels, 06.11.2007 COM(2007) 665, 3.1. Short-term priorities/Political Criteria/Anti-Corruption Policy, 7

Pridham, G. (2000), *The Dynamics of Democratization: A comparative approach*, London and New York; Continuum

Prime Minister Order No 46 of 11 April 2009.

Priority under the European Partnership with Albania, Brussels 06.11.2007 COM(2007) 665, 3.1. *Short-term priorities / Key priorities page 6./Political criteria /Anti-corruption Policy, 7*, problems identified in the 2004, 2005 and 2006 Progress Reports

Rama Sh. (2005) “*Pjesmarresit ne levizjen studentore jane te gjitha fitimtare*” *Gazeta Politika*, Tirana, 8.12.2005

Republic of Albania, Council of Ministers, *National Strategy for Development and Integration 2007-2013*, March 2008, 13

Romano Prodi, “*Albania’s European destiny*,” Albanian Parliament, Tirana, January 31, 2003

Ruli G and Belortja S. (2003) “*Albania- the difficult road towards lasting growth*” in *Monitoring Albanian’s path to European Integration*, Friedrich-Ebert-Stiftung

Shekulli June 23 , 2005

The Decision of the Council of Ministers No. 179, dated 22.2.2006

Transparency International, *Persistently high corruption in lowincome countries amounts to an “ongoing humanitarian disaster”*, Berlin, 23 September 2008, 23

The Decision no 794, date 19.12.2005 of the Council of Ministers “*On the establishing of Anti-Corruption Task Force*”

United Nations Development Programme, *Human Development Report 2004*. New York: Oxford University Press, 2004

Vucetic, S. (2001) “The Stability Pact for South Eastern Europe as a Security Community-Building Institution” in *Southeast European Politics*, Vol. II, No.2: 109-134

USAID in Albania, Millennium Challenge Corporation Albania Threshold Agreement, 2008, at [http://albania.usaid.gov/gj2/41/category/MCC\\_Albania\\_Threshold\\_Agreement.htm](http://albania.usaid.gov/gj2/41/category/MCC_Albania_Threshold_Agreement.htm) (accessed in December 2009)

## ***One of the Scandals Right besides the EU which Can Be Solved Easily - Little Cheer for Roma IDPs and Refugees***

**By Bernard Rorke and Zeljko Jovanovic<sup>62</sup>**

Tarmis Urmin fled from Klina in Kosovo in 1999 and now lives in the Roma settlement of Borca in Belgrade. Three times he has made the 150 km trek to the registration office in Krajevac in vain attempts to obtain documentation. He explained "My wife has no documents and therefore our four children cannot get documents either. When I brought my youngest child to be vaccinated the medical staff demanded 2000 dinars (about 25 euro). I had no money and could not afford it. They shouted at me and my family that if we know how to make children we should know how to get documents." His family's desperate plight as forgotten casualties of the Balkan wars is all too common and official indifference towards undocumented and displaced Roma remains all too persistent and pervasive across the Western Balkans.

Back in 1998, more than a year before the outbreak of war in Kosovo, Roma writer and activist, Orhan Galjus warned of the perils facing the Roma, caught between the official Serbian and the clandestine Albanian state structures. He predicted that "if there is war in Kosovo, Roma will again be blamed for non-participation, just as they were in the Serbian-Croatian-Bosnian conflict. They will be stigmatised as deserters and traitors". And so it came to pass. A wave of brutal reprisal and terror targeting Roma followed the formal cessation of hostilities. So-called 'reverse ethnic cleansing' which included murder, rape and the burning and looting of entire mahali prompted mass flight and displacement. Before the war, the Roma population in Kosovo was estimated at 150,000. By the end of the conflict, less than 50,000 remained. In addition to those who fled to Western Europe many more sought refuge in the neighbouring territories of Serbia, Montenegro and Macedonia. Ten years after the final Balkan war, across the republics of the former Yugoslavia many thousands of Roma lack basic documentation, remain displaced, their status uncertain and unresolved. Non-persons in the eyes of the authorities, they are effectively deprived of the very basic right to have rights.

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From Kumanovo, activist Asmet Elezovski, Director of the National Roma Centrum (NRC) estimates that some 4000 Roma in Macedonia do not possess personal documentation, as many as 2000 refugees from Kosovo and Serbia, a high percentage of them children. He stated that "Civil registration is a fundamental prerequisite for access to civil, political, economic, social and cultural rights". He finds it "very sad that children born this year and last remain unregistered" and that the problem is aggravated by complex and expensive administration procedures. Since 2007, as part of a long-running campaign 'Empower the Woman: Empower the Community' supported by Open Society Institute's Roma Initiatives, NRC has successfully registered about 490 people with 96 cases currently pending. Among the factors Elezovski identified inhibiting Roma from registering their children is a lack of awareness that registration of all new-borns is obligatory; additional costs and complex procedures for registering children after the statutory 30-day period from the date of birth; refusal by hospitals to issue documents for Roma mothers not covered by health insurance. For children born abroad, once 'returned' it is difficult, complicated and expensive to access the necessary documents; those born in time of war and flight, amidst the chaos and collapse of bureaucratic administrations face similarly costly, lengthy and legally complex obstacles.

Sarita Jasarova of NGO LIL has also been actively campaigning on behalf of the undocumented for nearly five years in 4 settlements near to Skopje. She stated that the lack of birth certificates, identity cards or other legal documents prevents many Roma from acquiring citizenship or residence permits, and denies them access to the most basic services "without which a normal life cannot be imagined." As part of wider efforts to combat school dropouts, Jasarova persuaded one local school to accept 20 children informally while the necessary papers for enrolment were being processed and proudly announced that in the past year, in the four settlements, every newborn Roma child was delivered in a hospital and registered at birth. The team at NGO LIL works tirelessly, canvassing Roma settlements, coping with a stream of urgent and desperate clients, alternatively badgering and mediating with local authorities, frequently commuting between Skopje, Pristine and Belgrade to sort out and resolve complicated cases. In their work to date with Roma from Kosovo, they have obtained the necessary documentation for 61 families to enable them to acquire Macedonian citizenship.

According to Belgrade-based Roma researcher Nadja Rakocevic, in addition to the 23,000 Roma officially registered as Internally Displaced Persons (IDPs) from Kosovo, Serbia is facing a new influx of returnees, the most vulnerable of them Roma. In addition to being impoverished, some 60-70% have incomplete documentation. Many IDPs and domiciled Roma living in Belgrade slums are unable to register for their residence permits, and face the prospect of homelessness when irregular settlements are demolished by the city authorities. In May 2008 UNHCR launched the first comprehensive free legal aid program for Roma com-

munities as part of a wider EU-funded regional program for Social Inclusion and Access to Human Rights of Roma, Ashkali and Egyptians in the Western Balkans. The main goal is to enable Roma communities gain free registration in birth registers leading to issuance of personal documents and improved access to social, health, education, housing and employment services. What's missing from the government's side, according to Rakocevic, is "joined up and efficient cooperation between different ministries responsible for this issue: to this day procedures remain lengthy, expensive and complicated." As is the case right across the continent concerning Roma, the issue is further aggravated by the lack of reliable, ethnically disaggregated data. As Director of the Forum of Roma IDPs, Mensur Haliti explained: "According to the Deputy Minister of Labour and Social Policy, about 10% of the Roma population in Serbia lack personal documents. According to the official census this would be about 10,000 people; according to the estimates the total of undocumented could be as many as 40,000."

Earlier in December 2009 Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, called upon European governments to stop concluding or applying readmission agreements for returns to Kosovo and declared that "the time is not right for returns in general let alone forced returns". He followed this with a letter on December 15, 2009 to Germany's Chancellor Merkel calling for a halt to forced returns of Roma to Kosovo "as long as the situation there does not guarantee a safe and sustainable life for returnees." Hammarberg expressed particular worry that those Roma already expelled had to return to the lead-contaminated camps of Cesmin Lug and Osterode in northern Mitrovica and repeated his call for an immediate closure of the camps. He described Kosovo as a post-conflict society still struggling to come to terms with the consequences of the armed conflict: "It has not the infrastructure that would allow a sustainable reintegration of refugees. This goes all the more for Roma, the biggest minority in Europe subject to wide and systematic discrimination."

The pity of it all is that Hammarberg's appeal for basic decency will likely go unheeded, and the process of forced returns will proceed unhindered. But this need not be: 2010 marks the mid-point of the Decade of Roma Inclusion, and next 8<sup>th</sup> April 2010, the Spanish European Union Presidency will host the 2nd EU Roma Summit. The plight of Roma returnees, refugees and IDPs needs to be placed high on the agenda. Political expediency need not trump respect for human dignity. There is time for the governments of Western Europe and the Western Balkans alike to make it their resolution to heed Commissioner Hammarberg's words that 'return' is not a purely technical administrative act: "it means to receive and re-integrate returning people and families in dignity and security, and in a sustainable way".



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# ***EU Accession Process Helps Birds to Survive: An Assessment of Bird Hunting in Albania, Bosnia- Herzegovina, Croatia, Montenegro, Slovenia and Serbia***

By Martin Schneider-Jacoby and Annette Spangenberg<sup>63</sup>

*The journey across the Adriatic Sea and the search for appropriate resting areas is like running the gauntlet for migratory birds. The situation is tense – but there is still reason to hope as the following study compiled by EuroNatur shows.*

*Based on answers to questionnaires sent out to NGO partners in all countries along the Adriatic Flyway as well as on findings of 20 years of joint field work conducted by local NGOs, protected area managers, bird watchers and EuroNatur, the organization compiled an assessment of bird hunting along the Adriatic Flyway. This assessment gives an estimation and valuation of the current situation concerning fowling in the countries along the Adriatic flyway.*

## **Introduction and Range of the Assessment**

The size of the total study area is 255'000 km<sup>2</sup> and covers the countries of former Yugoslavia – Bosnia-Herzegovina, Croatia, Montenegro, Slovenia and Serbia - plus Albania. In all these countries, EuroNatur has established long-term contacts and cooperates with both GOs and NGOs in the implementation of conservation projects since 1987 (see [www.euronatur.org](http://www.euronatur.org)). Macedonia - which was also part of former Yugoslavia - was not included, as it is not situated inside the NE-SW migration corridor of the so-called Adriatic Flyway (see below).

Despite the fact that the Kosovo is located along the Adriatic Flyway, the country has not been included in this study due to the recent political and administrative changes. The existing data on hunting for Kosovo are often still summarized under Serbia in international reviews<sup>64</sup>.

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<sup>64</sup> <http://www.face-europe.org/>

According to our knowledge though, the most urgent actions in regard to bird conservation are to review the current Kosovar hunting legislation, to stop poaching and to include the protection of resting sites for birds as soon as possible in the Important Bird Area programme in Europe.



Killed Shelduck at Solana Ulcinj, Montenegro, April 2008. One of the last remaining breeding individuals along the entire Adriatic East Coast  
Photo: © EuroNatur

Beside Slovenia, no country has entered into the EU yet, thus it is very interesting to see how the different countries of former Yugoslavia and Albania have improved their hunting laws concerning bird hunting in regard to a future membership in the EU in general and the EU Birds Directive specifically. For example, Croatia has the status of an accession country and is well prepared to join the EU.

This assessment is also meant to provide a discussion platform among hunters and conservationists with the aim to improve the actual situation in the respective countries. It is also a first benchmark for the EU accession process - which is either currently ongoing (Croatia) or will eventually start in the other countries assessed - and its positive influence on nature conservation and hunting management.

Another objective of the study was to check whether international standards of the Bern, Ramsar or Bonn Conventions are implemented and if bird populations are properly protected according to the above mentioned Conventions.

## Importance of the Adriatic Flyway

For water birds, Wetlands International identified three important flyways for Europe: the East Atlantic, the Black Sea and Mediterranean as well as the West Asian-East African Flyway<sup>65</sup>. Only the Black Sea and Mediterranean Flyway crosses the Mediterranean Sea in NW–SE direction, while the other two corridors follow the coastal zones of West respectively East Africa. While those water birds flying along the East Atlantic and West Asian-East African Flyways mainly use the coastal wetlands and follow the coast line of Africa on both sides, the Central and Eastern European water birds use the Black Sea and Mediterranean or the flyway referred to as Central European Flyway. They then cross the Mediterranean Sea after their flight over the European continent and winter in North Africa, e.g. in Tunisia, or in Central African Niger Basin. Along this flyway, resting sites throughout the journey over the European continent and the Mediterranean Sea are limited. Typical bird species using this flyway are the Common Crane (compare the poster on [www.UNEP-AEWA.com](http://www.UNEP-AEWA.com)), Great-white Egret, Garganey or the European Spoonbill which cross the Balkan Peninsula and the Adriatic Sea. We call that specific section of the Black Sea and Mediterranean Flyway or Central European Flyway running over the Balkan Peninsula and the Adriatic Sea the “Adriatic Flyway” (Schneider-Jacoby 2008) to point out the specific importance and threats of this passage.



No comment.  
Photo © EuroNatur

In comparison to the huge Eurasian breeding areas and the size of the wintering areas in Africa, the Adriatic Flyway is a real bottleneck section along the Central European Flyway with

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<sup>65</sup> <http://www.wingsoverwetlands.org/>

limited resting sites and many obstacles such as the Adriatic Sea and the Dinarid Mountains. While other areas along the Central European flyway (e.g. Malta and the Strait of Messina) are described as bottleneck areas already for a long time, bird migration over the Balkan Peninsula was difficult to assess due to lack of data and recent political changes including war. For example, Yugoslavia collapsed during the preparation of the first edition of “Birds in Europe” (Grimmet & Jones 1989) and Albania was still a politically isolated country. Therefore, the situation in the region could not be assessed thoroughly.

During the preparation of the second edition (Heath & Evans 2000) armed conflicts and mine-fields hindered bird monitoring in large parts of former Yugoslavia.



Killed Garganey and Grey Heron in a hunting hide at Buljarica, Montenegro Coast, 13 March 2009  
Photo: © EuroNatur

Number of Waterfowl during the international census (IWC) in the six countries is not higher than one million water birds based on the national reports. Key resting sites are the lowlands of Danube, Drava, Mura and Sava in the Pannonian Plain. During hard winters though, the birds have to leave these riverine wintering sites. Then, the coastal areas of Dalmatia become important alternative wintering sites. Key resting sites are then the Neretva Delta, Vransko Jezero, Bojana-Buna Delta, as well as the large wetland system Lake Skadar and the lagoons and deltas in Albania and Montenegro. The number of birds wintering in the littoral of the sea is yet unknown (Mikuska in lit). Currently, EuroNatur explores the capacity of the Karst Poljes as stop over and resting sites during spring and autumn migration (Stumberger in prep.). First information gathered in Livanjsko Polje show a great potential as resting sites for different species of migrants (Schneider-Jacoby et al. 2006).

But not only for water birds the Adriatic Flyway is of great importance. Migratory raptors are typical guests along the whole Adriatic East Coast and need resting sites as well. For example, with eight globally threatened and near threatened migratory raptors, Croatia and Serbia & Montenegro (today two countries) reach the highest number of endangered migratory raptors which has been found in the African-Eurasian assessment for all countries in a study of the Bonn Convention (Tucker & Goriup 2005). In addition, many species of the cultural landscape such as Quail and Wood Lark use the resting site along the Adriatic East Coast.

## Background and Method

To compile the assessment, questionnaires were distributed to all countries and answered by NGO partners. Based on the answers and the compiled information, this assessment was prepared and bird hunting in the countries was rated based on the EU Birds Directive and the status of birds in Europe<sup>66</sup>. Rating is done on a 1 to 5 scale with 1 being the lowest and 5 the highest rating (1 - Poor 2 – Insufficient 3 – Fair 4 – Good. 5 – Excellent). *Good solutions and practices rated with 5* being the best or most highly recommended.

In addition, the assessment considers the findings of 20 years of joint field work in the countries along the Adriatic Flyway, conducted by local NGOs, protected area managers and bird watchers in cooperation with EuroNatur. The data collected during the field work served to prepare different reports such as a report on hunting and its negative impacts on birds which was prepared for Croatia (EuroNatur 2003). In 2003 and 2004, a rapid field assessment to evaluate the ecological importance of the Bojana-Buna Delta (MNE/AL) was conducted by EuroNatur (Schneider-Jacoby et al. 2006). This assessment also included the monitoring of bird hunting in the area.

Since 2006, regular bird monitoring is organised in the Bojana-Buna Delta (MNE/AL), Lake Skadar (MNE), Neretva Delta (HR) and Livanjsko Polje (BiH) as well as in other important areas for birds in the region such as the old salinas “Solila” near Tivat in Montenegro (Sackl et al. 2006). This field work revealed intolerable conditions for the protection of birds in most countries along the Adriatic Flyway as hunting of birds is common and not controlled in most cases.

In 2006, EuroNatur started a project called “Adriatic Flyway Project”. One goal of this project is to minimize bird hunting pressure in the different project areas.

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<sup>66</sup> [http://www.birdlife.org/action/science/species/birds\\_in\\_europe/index.html](http://www.birdlife.org/action/science/species/birds_in_europe/index.html)

To be able to take effective measures though, it is necessary to better understand the country specific situations and regulations concerning (bird) hunting to have a sound basis for the development and implementation of solution approaches.

For that purpose, a questionnaire was developed, based on other international programmes dealing with the reduction of excessive, indiscriminate and illegal hunting of (migratory) birds. The questionnaire contained questions related to

- the legal framework and its implementation
- the number of hunters and their organisational structures
- the hunting activities and practises
- the socio-economic importance of hunting
- possible alternatives to hunting and
- possible best practise models.



Redshank wounded in Solana Ulcinj, Bojana-Buna Delta, Montenegro, March 2004. Photo: © EuroNatur

The above questions were to be answered for the whole country. In addition, a second set of questions dealt with hunting in protected areas, the priority site identified within the Adriatic Flyway Project, respectively.

The questionnaire was filled in by the NGO partners in the respective countries and evaluated by EuroNatur. For the evaluation, the situation in each country was rated in relation to the EU Birds Directive<sup>67</sup>, taking also in consideration the status of birds in Europe<sup>68</sup>.

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[http://europa.eu.int/comm/environment/nature/nature\\_conservation/focus\\_wild\\_birds/sustainable\\_hunting/pdf/hu](http://europa.eu.int/comm/environment/nature/nature_conservation/focus_wild_birds/sustainable_hunting/pdf/hu)

## Evaluation of Bird Hunting

According to our estimations, **each year, far more than 2 Million birds are shot along the Adriatic Flyway. Assumed reasons for that are intensive hunting activities by more than 200'000 hunters plus many poachers and guests**, inadequate legal frameworks concerning bird hunting in most countries as well as insufficient control of the existing laws in the countries located along the Adriatic Flyway. The only exemption is Slovenia.

Main aim of the following assessment was to analyse the current legal frameworks as well as the actual situation concerning bird hunting in all countries located along the Adriatic Flyway, namely Albania, Bosnia-Herzegovina<sup>69</sup>, Montenegro, Serbia, Croatia and Slovenia in order to verify the above assumption and to gain a clear picture about the respective standards in each country.

The following table briefly summarizes the results of the assessment (Tab. 1). The overall ranking shows that the only country along the Adriatic Flyway corridor which has good standards in bird hunting is Slovenia (total rating 4), a country which implemented the EU Bird Directive in an exemplary manner and protects all migrating birds. In Slovenia, according to the recent hunting law, only six bird species are still open for hunting.

Croatia has reached the second place in the rating, but was only given a 2 (insufficient) as there are still many deficits compared to the standards defined in the EU Birds Directive. Main deficits are for example that hunting is allowed during the breeding and return period which has very negative effects – both direct as well as indirect - on bird populations. In addition, there are huge problems with illegal bird hunting even in protected areas in Croatia, e.g. in the Neretva Delta. This also lowered the total score considerably.

Montenegro and Serbia were also ranked as insufficient (2) while the other two countries assessed, Albania and Bosnia-Herzegovina, were even rated as poor (1). In five out of six countries assessed, the actual legislation is problematic concerning bird hunting. Long hunting seasons are impacting birds both during the breeding season and the return period to their rearing habitats.

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[nting\\_guide\\_en.pdf](#)

<sup>68</sup> [http://www.birdlife.org/action/science/species/birds\\_in\\_europe/index.html](http://www.birdlife.org/action/science/species/birds_in_europe/index.html)

<sup>69</sup> BiH is politically decentralized and comprises two governing entities, the Federation of Bosnia and Herzegovina and Republika Srpska. Both entities have different legal frameworks, also for hunting. In the following, if not specified, with BiH both entities are referred to.

**Tab.1.: Evaluation of the State of Bird Hunting**

Countries Entity	AL	BiH Fed	RS	MNE	SRB	HR	SLO
Control of hunting	1	1	1	1	2	3	4
Monitoring of quantity of birds shot	1	1	1	1	1	1	4
Length of Hunting Season	1	1	1	1	1	2	3
Hunting during stages of reproduction	2	1	1	1	1	1	3
Hunting during the return	1	1	1	1	1	2	5
Number of bird species open for hunting	1	1	1	2	2	2	4
Impact on endangered bird species	1	1	1	1	1	1	5
Illegal bird hunting	1	1	1	1	1	1	4
Hunting Ban Areas	2	2	2	3	2	3	3
Trend Analysis	1	1	1	4	2	4	5
Trade in Birds	1	1	1	1	3	4	5
	1,18	1,09	1,09	1,55	1,55	2,18	4,09

5	excellent
4	good
3	fair
2	insufficient
1	poor

The number of species open for hunting includes both protected species as well as many species which look similar to threatened and endangered species which in many cases – due to lack of knowledge of species – leads to the kill of rare species which use the same habitats. For example, the fate of the Slender-billed Curlew, a species which is threatened by extinction worldwide, is most probably decided at the Adriatic Flyway (Cleeves et al. 2008).

In addition, there are no programmes for hunting ban areas in these countries in order to protect resting sites and important habitats of national and international importance. And - even

worse - in several protected areas with great importance for birds, illegal hunting is wide spread. Illegal bird hunting poses a huge problem and hunting organisations as entities officially responsible for hunting in many cases in Albania, Bosnia-Herzegovina, Croatia, Montenegro and Serbia do not counteract this problem sufficiently. Often, illegal hunting is performed very blatant, e.g. in the Neretva Delta in Croatia and Bosnia-Herzegovina, at Skadar Lake in Montenegro as well as along the whole Montenegrin and Albanian coast. In some cases it is even documented in publications such as the promotional DVD about “Hunting of Geese and Ducks” (Golden Audio Video 2008) in Serbia which is available even in supermarkets in Montenegro. Illegal hunting activities are well known to the local hunters, but not stopped. In some cases, even hunting guards are involved in these activities, especially when foreign hunters are shooting. In the worst cases, the managers of protected areas even know about the problems and are not able to react and stop them.

The trend during the last years is in many ways heterogenous. On one hand, there are some improvements in Croatia and Montenegro in the legal framework, but also very negative developments in Albania, e.g. with the decision taken in 2008 to prolong spring hunting in 2008. Also, the new hunting laws in both entities of Bosnia-Herzegovina<sup>70</sup> are worse than the former Yugoslavian laws and difficult to read and to understand. On the other hand, Slovenia is a good example and demonstrates how the former Yugoslavian hunting laws can be adapted to international standards. Also, the ban of hunting in the coastal area of Montenegro – 5’800 ha in size – since 2008 is a very positive trend. Other good examples for the establishment of important stop over sites are the National Park Lake Skadar at the Albanian-Montenegrin border, the Nature Parks Vransko Jerzero and Lonjsko Polje in Croatia and the special reserve Slano Kopovo in Serbia, managed by the local hunters association.

### **Bird Hunting and Tourism**

No information about the economy of bird hunting tourism could be obtained in the countries. Fees paid by the foreign hunters per day are small, e.g. 100 € per day in Montenegro. In Slovenia, the shooting of a Mallard costs 10 €, a Pheasant 15 € or a Partridge 25 €.

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<sup>70</sup> Please refer to the first foot note of this article

The impact of hunting on eco-tourism is huge though. All countries along the Adriatic Flyway would offer great possibilities for bird watchers, but as birds are extremely shy in all countries



along the Adriatic East Coast due to the high hunting pressure it is - beside a few exceptions - very difficult to observe birds. Countries as Montenegro are aiming to prolong the tourist season and want to increase nature tourism, but there is nothing much to show to the guest except the landscape. The wild animal populations are very small and too shy to be seen by tourists.

Pile of left over shells in the hunting ban area Nature Park Hutovo Blato, Bosnia-Herzegovina, February 2009.  
Photo: © EuroNatur

## Conclusions

Until now, out of the six countries assessed, only Slovenia has joined the EU. This affects the respective legal framework concerning bird protection and hunting in the country, because as EU Member, Slovenia is obliged to implement the EU Birds Directive (Council Directive 79/409/EEC of 2 April 1979)<sup>71</sup> which they do in an exemplary manner.

Consequently, Slovenia is a very positive example along the Adriatic Flyway, while the analysis revealed an alarming situation in the other countries assessed with Albania and Bosnia-Herzegovina being the countries with the weakest hunting laws and, in addition, the worst implementation and control of the existing laws. **All countries but Slovenia have not implemented the minimal standards of bird preservation as agreed for example in EU Bird Directive and illegal hunting is wide spread.**

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[http://europa.eu.int/comm/environment/nature/nature\\_conservation/focus\\_wild\\_birds/sustainable\\_hunting/pdf/hunting\\_guide\\_en.pdf](http://europa.eu.int/comm/environment/nature/nature_conservation/focus_wild_birds/sustainable_hunting/pdf/hunting_guide_en.pdf)

This suggests that

- with EU membership, the respective national legal framework for bird hunting as well as control of bird crime improves (example of Slovenia)
- the EU accession process leads to a step by step improvement of bird preservation and hunting (example of Croatia).<sup>72</sup>

## References

Cleeves, T., N. Crockford & P. Köhler (2008): Die Suche nach dem Dünnschnabelbrachvogel. *Der Falke* 55, 419 - 428

Gold Audio Video d.o.o. (2008): Lov na guske i patke. DVD, Beograd

Grimmett, R. & Jones, T.A. (1989) Important Bird Areas in Europe. ICBP Technical Publications (9).

Heath M. F. & Evans, M. I. (2000) Important Bird Areas - Priority sites for conservation. BirdLife Conservation Series. Vol 2 (8) Cambridge.

Sackl, P. M. Schneider-Jacoby & B. Stumberger (2006): The importance of the salt-pans of Tivat (Montenegro) for migrating and wintering waterbirds, with notes on Passerines. *Annales ser.his.nat.* 16 : 267 – 278.

Schneider-Jacoby, M. (2008): How many birds migrate over the Adriatic Sea? *Acrocephalus* 29 (136): 1–3

Schneider-Jacoby, M., Rubinić, B., Sackl, P. & Borut Stumberger (2006): A preliminary Assessment of the ornithological importance of Livanjsko Polje (Cetina River Basin, Bosnia and Herzegovina). *Acrocephalus* 27: 45 –57

Schneider-Jacoby, M., U. Schwarz, P. Sackl, D. Dhora, D. Saveljic and B. Stumberger (2006): Rapid assessment of the Ecological Value of the Bojana-Buna Delta (Albania / Montenegro). Euronatur, Radolfzell.

Tucker, G & P. Goriup 2005 ASSESSMENT OF THE MERITS OF A CMS INSTRUMENT COVERING MIGRATORY RAPTORS. Status report on raptors and owls in the African – Eurasian region, Defra Publications, London.

[http://www.cms.int/bodies/meetings/regional/raptors/pdf\\_docs/Inf\\_08\\_Status\\_Report\\_Raptors\\_AERegion.pdf](http://www.cms.int/bodies/meetings/regional/raptors/pdf_docs/Inf_08_Status_Report_Raptors_AERegion.pdf)

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<sup>72</sup> The authors want to thank all partner organisations and active bird watchers from the Adriatic Flyway countries for their contributions. The Report has been compiled by EuroNatur within the Frame of the Project “Protection of Priority Wetlands for Bird Migration (Adriatic Flyway) in the Dinaric Arc Ecoregion through Integrated Site and River Basin Management”; this project is supported by the MAVA Foundations. The full version can be downloaded from the EuroNatur website <http://www.euronatur.org/Facts-and-Figures.936.0.html>

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## *Strategic Maneuvering in Eurasia*<sup>73</sup>

By Jean Dufourcq<sup>74</sup>

*The following discussion is an attempt to demonstrate that the current crisis gripping the European Union in its search for a genuine strategic position is the result of the confusion which reigned 10 years after the Cold War. Even after the enlargement of NATO and of the European Union, the two did not adopt separate strategic positions but remained linked in their Cold War's positions. One enrolls now the other. This anomaly persists and continues to undermine relations between the United States of America and the European Union.*

The French strategist Castex best describes the importance of upstream strategic maneuver, maneuver to create a favorable situation<sup>75</sup>. He presented this notion as an artistic feat appealing to all the treasures of the mind: intelligence, knowledge, will and imagination. It requires the careful determination of a “primary objective” to which everything is subordinated, including national security<sup>76</sup>. The aim is to pursue a security which must not be underestimated, be too demanding or lightly treated as this would jeopardize the achievement of the target or even replace it.

In the world after the Cold War and in the war against terrorism, tough questions are being asked about the strategic maneuverings of both Europe and the Atlantic alliance. Many<sup>77</sup> have identified haphazard strategic planning as leading to a risky “Euro-Atlantic” strategic posture, a position created by incessant tactical maneuvering. This disturbing reality can be illustrated by using two examples that affect us now in 2010.

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<sup>73</sup> These reflections come from a contribution for the special issue of « Revue défense nationale et sécurité collective » in July 2009, dedicated to the French Ecole militaire and its strategic orientation ([www.defnat.com](http://www.defnat.com))

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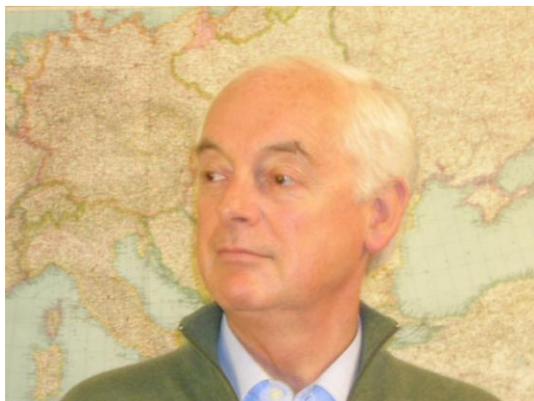
<sup>75</sup> See “Théories stratégiques” vol. II, La manoeuvre stratégique, Paris 1939 (2<sup>nd</sup> ed.), in : Société d’Editions géographiques, maritimes et coloniales. All quotations refer to this edition.

<sup>76</sup> See footnote 64, page 2

<sup>77</sup> See footnote 64, page 13: “La sûreté est par conséquent l’âme de la manoeuvre, et ce n’est que lorsqu’elle est obtenue que l’on peut prétendre à posséder sa liberté d’action, en raison du lien intime qui existe entre les deux notions. C’est là un principe fondamental. La sûreté est l’une des bases essentielles, l’une des conditions nécessaires à la liberté d’action ».

Firstly, the European Strategic Maneuver. It began immediately after World War II with the primary objective of putting an end to the tragic history of continental Europe, scene of many endless conflicts leading to two world wars and its ruin. Whilst the initial design of this maneuver was touched up in the 1950's, the original maneuver was roughly sketched in 1947 with the Western Union. It was outlined more clearly in the episode of the European Defence Community (EDC) 1952 and the Paris agreements of the WEU in 1954, finally materializing in the Treaty of Rome in 1957. The maneuver involved in reality a double move comprising a response and a bet<sup>78</sup>. The response was to look closer to the base, to the economic, social and political integration of the continental enemies of yesterday into a caring and prosperous community. The bet was to postulate that the general European interest would always prevail over national interests. For the maneuver to succeed in the context of a very tense situation, security was needed. This came in the form of a combined guarantee from Washington by the Marshall Plan and the Atlantic Alliance or NATO. This combination brought economic and military security to the free people of the European continent.

This European strategic maneuver lasted over 40 years. It even appeared to be reaching its end as the Cold War ended and in 1991 the EU consolidated into 15 member states assuring each member of its individual security<sup>79</sup>. This was indeed its main objective. However, things got progressively more disorganized undoubtedly because NATO had not considered in advance the consequences of a security victory. A “cold victory” without combat against the



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Soviet system which had been the fundamental reason for cohesion and validated the methods used to ensure European security. The European Union which had been based on fate and interests as an appropriate response to the national divisions of continental Europe of the 19<sup>th</sup> and 20<sup>th</sup> centuries and had betted on a common future, now had to consider sharing with countries of Central and Eastern Europe subjugated by the USSR. The simple questions about European borders, of East and West, of overall governance and the nature of the power required to sustain this new union were carefully kept in the shadows as the union was not prepared for the opening. At the same time, the security provided by NATO had secretly changed its centre of gravity and also its nature. In a move to

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<sup>78</sup> See « La crise de la planification stratégique », in : Agir n° 32 (2007)

<sup>79</sup> See « Vers l'Europe stratégique », in: Stratégique n° 86/87

exploit the cold victory, the Atlantic Alliance would leave the ocean of the same name and move to the borders of Asia. The European strategic maneuver was greatly affected and the freedom of action of the Union was seriously curtailed.

The Atlantic strategic maneuver was diverted after the demise of the USSR as another main objective loomed, the containment of the rising Chinese power, a strategy elaborated in Washington. The partnerships developed in central Asia were one arm of the pincers of which the other was the alliance of North-East Asia (Japan, South Korea, and Taiwan). In this new maneuver that had not altered but only delayed the surprise attack of the 11<sup>th</sup> September, 2001, the issue of Central Europe faded fast. The European Union that had been the subject of the initial maneuver found itself brutally enrolled through its security guarantor, NATO, to be the object of another maneuver with multiple variations designed elsewhere. It entailed a battle against strategic disrupters (the challenge of “aggressive sanctuary” with nuclear proliferation was raised in Brussels in 1994) also the Euro-Atlantic integration just steps away from the Russian Federation and of the security of major energy reserves in Central and Eastern Asia. Then came GWOT, the “global war against terrorism” and political modernization forced by a greater Middle East and deployed from Nouakshott to Peshawar and placed on the route from Florida to China.

Today, this multi-faceted second maneuver has replaced the first and eroded the results and has stopped the former maneuver from perfecting its results on Continental Europe (the European Security and Defense Policy – ESDP - is having difficulties in achieving the completion of the European edifice and the question of EU enlargement remains suspended on the Turkish issue which is mostly being discussed elsewhere).

This maneuver has also affected by extension the military security as NATO who was yesterday victorious without passing the test of combat with the USSR, is today weakened by serious operational difficulties encountered outside its normal scope in Afghanistan where its military capacity and authority is heavily undermined.

The changing of the main objective assigned to the “Euro-Atlantic” strategic maneuver will eventually help to undermine the two multinational instruments forged for the success of the initial operation, NATO and the European Union. It was in this context rather than to show solidarity and with a certain candor that France chose the recent summit in Strasbourg-Kehl to resume its full military role in an integrated NATO, thus contributing to definitively linking the original principal objective, a strategic Europe and the security which was necessary for it, but with NATO remaining subordinate to help creating Strategic Europe.

It is understandable that some may consider the French move to be anachronistic and naïve. It was seen as unnecessarily altering the structure of Europe and causing a rift in the Atlantic Alliance<sup>80</sup>. The main objective of change made in the late 1980's, without sufficient strategic analysis by the European side today, weighs heavily on the scope and ambition of the European Union now subject to external maneuvers that do not directly serve its cohesion and stability and do not necessarily satisfy its interests.

But back to Castex and the strategic maneuver that he so shrewdly conceptualizes by taking care to illustrate it through the recurring strategic posture taken by all Russian rulers. It is the object of his brilliant essay "Genghis Khan to Stalin or the Vicissitudes of a Strategic Maneuver (1205 to 1935)"<sup>81</sup>. It is a historical reflection that reminds us of the crucial importance of geopolitical factors, history, geography and culture in the strategies of nations. It reveals the continuing sway of Russia between East and West, Asia and Europe. It is in the same way that the current Masters of the Kremlin are divided today, between the same necessities to articulate in both areas and to be assured enough in one area in order to face the other. Whilst the Russian territory was carefully consolidated in the 19<sup>th</sup> Century up to the Pacific coast, the vast majority of the inexorably declining population lives to the West of the Urals. The gains that were enabled by the traditional sway between East and West are increasingly uncertain.

But reading Castex means understanding, that the main objective of any strategy in Russia since Genghis Khan is ultimately a determined action to support the West whilst having security in Asia, mainly in China<sup>82</sup>. Today, after having scored three brutal shots at Western companies in its traditional strategic space<sup>83</sup>, Russia's Medvedev and Putin seem to be, relatively speaking, preparing a new strategic maneuver of great magnitude towards the West. This will permit Russia to combine its principally Western identity with its mainly Asian positioning in the division of responsibilities, interests and strategic resources from Vancouver to Vladivostok.

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Will we know how to offer a response to the Russian Federation by way of a new European strategic maneuver? One that is sufficiently ambitious to articulate to the East the relationship between the Atlantic alliance and North America, in Eastern Europe the pan-European devel-

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<sup>80</sup> See « L'alliance relative », in: Revue de la défense nationale et de sécurité collective (April 2009)

<sup>81</sup> See there pp. 316 et al.

<sup>82</sup> See the detailed description by Castex on the Soviet security action towards the East from 1919 to 1925, ranging from Turkey, Persia, Afghanistan, India, to Japan. See there pp. 329-335. One can find there analogies to the preoccupations of the Kremlin of nowadays.

<sup>83</sup> See "Trajectoires stratégiques", in: Points de vue (December 2008), [www.cerems.fr](http://www.cerems.fr)

opment from the Atlantic to the Urals and in the South the Mediterranean Union with all the residents of North Africa. Should we not be preparing a new architecture where Europe would be the pivot, a new maneuver to consolidate the continent and the puzzle of globalization through the successful experience of regional integration? What would be the safety of such a maneuver? Vis-à-vis the South, would it be to the East with a new OSCE? Vis-à-vis the East, how would freedom of action be consolidated?

This is the line of thought for tomorrow!

## ***A Voice from Armenia: Linked but Separated, This Armenian-Turkish<sup>84</sup> Reconciliation Process***

**By Hovhannes Nikoghosyan**

### **Background**



The Armenian-Turkish reconciliation process, which truly has been labeled as historic, has been keeping us in a certain tension since mid-August 2008. Although semi-secret talks between officials begun in January-February 2007 in Bern and Vienna, the kick-off was made by the well-known statement and follow-up letter by Armenian President Serzh Sargsyan just in the beginning of his term, June 2008. Of course, it is noteworthy that the pushing-point was the murder of prominent Armenian journalist Hrant Dink in Istanbul (January 19, 2006) at the hands of a young nationalist O.S., an alleged member to Ergenekon gang network.

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Nevertheless, as a logical stopover of talks, initialed protocols (May 2, 2009) about establishing diplomatic relations and normalization, were signed on October 10, 2009. The process of signing itself was quite hard for all.

The last-minute statement-checks nearly ruined all efforts of mediators. The parties were ready to go home with no result, as Armenian Foreign Minister Edward Nalbandian refused to stand points mentioned in the Turkish official statement. However, thanks to U.S. Secretary of State Hillary Clinton's flexible diplomacy and Russian Foreign Minister Sergey Lavrov "friendly-message" ("Edward, agree upon a ceremony without statements. 19:35") it became possible to escape a true catastrophe. The protocols and the annex (i.e. the road-map) were signed, but God knows when they will be ratified and enter into force.

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<sup>84</sup> Can also be called, of course, Turkish-Armenian Reconciliation Process

Right after Oct. 10, 2009, the actual time for full-scale negotiations began. Today is the best moment to show whose diplomacy is better equipped with professionals – Armenian or Turkish. Of course, this is not a zero-sum game, and the outcome should be in Win/Win logics, but much depends on the actual process which is now in the round of “legal debate”. In the meantime, the local political landscape is growing tense on both sides. Dashnaktsutyun party, a traditional political unit in Armenian history, a long-time ally of the incumbent President, now blackmails Sargsyan’s Administration, saying if the Parliament ratifies the protocols as they are, they “will struggle for the change of authorities” (Nov. 24, 2009). Nearly the same situation is there in Turkey, plus the well-known developments with the Kurdish issue.

### **Pacta sunt servanda**

Two recent statements by Armenian President Serzh Sargsyan pushed forward the actual start of next round of the game: **the legal debate**. Those statements about the ongoing process around the Zurich Protocols represented two quite different approaches to the Armenian-Turkish rapprochement process. At first, in a statement at the 12th convention of the ruling Republican party of Armenia (Nov. 28, 2009) the President reminded about the principle of “sensible timeframe” which was employed in the Protocols: “If Turkey protracts the process of ratification, Armenia ... will take without delay corresponding steps envisaged by international law”. The second statement, with an additional explanation to the previous one, came out during the press-conference with his Latvian counterpart Valdis Zatlers (Dec. 10, 2009). Then he said that Armenia «...*is ready to ratify and implement the Protocols ... in accordance with our international obligations in a sensible timeframe...*». In the meantime, as the President noted, he «instructed the corresponding state bodies to draft amendments for national legislation pertaining to the signing, ratification and abrogation of international agreements». Legally, these protocols are described as «international treaty», as of Article 2.2 in Republic of Armenia's Law on International Treaties (2007).

As Armenian PM Tigran Sargsyan told Hurriyet Daily News & Economic Review (Dec. 18, 2009): «*If Turkey comes up with preconditions, Armenia would be free to do so as well itself*».

What comes to mind first - both parties are now eager to make specific reservations while ratifying the Zurich Protocols, under Article 19 of Vienna Convention on the Law of Treaties (1969), which says that “a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation”. A bold target for such action from Armenian side can be the much controversial sub-commission on the historical dimension which the Armenian

Parliament is eager to cancel. On the other hand, in a response to an open letter by the president of the International Association of Genocide Scholars, William Schabas (Oct. 13, 2009), Serzh Sargsyan wrote: “..it is not a (sub-)commission of historians. The purpose of that (sub-) commission is to give an opportunity to Armenian and Turkish peoples to find common grounds for mutual trust and dialogue... [and to contribute] to the elimination of the consequences of the Genocide... and the fact of the Genocide itself can in no way become a subject of discussion...”

Turkish side, hand in hand with her minor ally Azerbaijan, is much expected to make a special comment on the 3rd paragraph of the Protocol on the Establishment of Diplomatic Relations linking the phrase of “non-intervention in internal affairs of *other* (i.e. third states – remark by the author) states, territorial integrity and inviolability of frontiers” to her own understanding of *still unresolved legal issues of de-facto independent entity of Nagorno Karabakh*.

While these are just ideas from the top of the head, now we are at a certain stage of procedural ratification of the Protocols by both parties. According to national legislation, Turkey’s PM Recep Tayyip Erdogan sent the documents to the Parliament, and President Serzh Sargsyan, according to the Article 27 of the Rep. of Armenia (RA) Law on International Treaties (2007), appealed to the Constitutional Court to decide on the Constitutional validity of the obligations referred to in the Protocols. And here we see a challenge. Under the Article 29 of the RA Law on International Treaties, in case the Constitutional Court (judge in charge - VI. Hovhannisyan) will come up with a legal conclusion (on January 12, 2010) that if the Protocols contain any obligation incompatible with the Constitution, they will not be sent to the Parliament at all. Then the President can initiate a second round of negotiations with Turkey instead, having in mind the legal conclusion by the Court. All these procedures of rejecting or declaring the international treaty null and void are clearly described in Articles 27-32 of the Law.

### **Nagorno Karabakh process**

Legally, the most curious thing is that Turkey has already been actively violating the Protocol on the Establishment of Diplomatic Relations which says that the parties “...reiterate their commitment to refrain from pursuing any policy incompatible with the spirit of good neighbourly relations”. By no means, Turkish high-ranking officials’ statements on Nagorno Karabakh peace process are viewed in Yerevan and Stepanakert as failing to show any commitment.

The most recent statements came from PM Erdogan's side in Washington DC in early December. However, as he put it the same day, there was no precondition behind the Protocols when signing them in Zurich: «*When we signed the protocols with Armenia, there were no preconditions. However, in our Parliament, the adoption of these documents requires some conditions*». (Regnum, Dec. 8)

By and large, experts, who deliver their opinion about the process, can be divided into two categories depending how they link/separate Nagorno Karabakh peace talks issue to Armenian-Turkish reconciliation process. A nice wording could be noticed last month: In an interview to A1+ Armenian News Agency ([www.a1plus.am](http://www.a1plus.am); Nov. 23, 2009) Hamlet Harutyunyan, an MP from ruling Republican party, said: “Of course, they (i.e. Armenian-Turkish rapprochement and Nagorno Karabakh issue) are naturally interconnected. Azerbaijan and Turkey have the same foreign policy”.

In early December, at a meeting in Athens about security-related issues in South Caucasus, Turkish *Ambassador Unal Cevikoz, who is most likely to become the first-ever Ambassador to Yerevan*, said that Turkish MPs would make their mind how to vote on the Zurich Protocols depending also on the situation around the Karabakh conflict. Then a question arose whether there is also any connection between Turkey's relations with Georgia with Georgia-Russian relations. Ambassador Cevikoz stood firm saying “Our [i.e. Turkish] understanding is that these [i.e. Nagorno Karabakh and Armenia-Turkey] are two separate processes but they impact each other”.

In the same logics nearly all authors, writing about this topic, restarted to count the meetings between Armenian and Azeri presidents from September 2008, when President Gul visited Yerevan. “It will be the number N presidential meeting since Turkey and Armenia began reconciliatory talks” – this is the template sentence. Citing another opinion, by MP Metin Yilmaz from ruling AK Party ([www.day.az](http://www.day.az); Nov. 25, 2009), in a moment it seems strange that the Turkish foreign policy rests on the following principle: “If Ilham Aliyev says everything is OK, we will bring the Zurich Protocols on the agenda”.

At least in public level, now we can observe how Nagorno Karabakh negotiations are turning into a specific point where war seems to be a natural next-step after politics, in a manner of Clausewitz. Shortly before the meeting in Munich, Azeri President Aliyev said his country was well-prepared and ready to use military force against Armenia if ongoing negotiations round failed to produce notable results. The unprecedented military rhetoric of Mr. Aliyev II was assessed by the co-Chair states as being «negative». In order to ease tensions the parties decided to adopt a joint statement at OSCE Ministerial Council in Athens recalling to contin-

ue the negotiations. But, to my mind, despite all efforts, the Moscow Declaration and the era of Russian-headed mediation has been neglected once and for all since the parties could not follow their commitment to refrain from military rhetoric.

In short, both processes are now a bit comatose. Today both processes arrived at the point where neither party is ready for any assignment, and therefore to a compromise solution. This sounds absolutely non-alternative to the Karabakh peace settlement. It is impossible to imagine such a level of legitimacy of the authorities both in Armenia and Azerbaijan, so that they could afford, respectively, to give any territory back or to recognize the independence of Nagorno Karabakh. In Turkish dimension the process of ratification of the signed documents seems at an impasse. It was a courageous step of signing the two protocols, but the so-called political will is still insufficient for the successful outcome of the "football diplomacy".

# ***Strategy Options for Central Asian Integration – For a Central Asian "Cecchini Report"***

**By Hans-Jürgen Zahorka<sup>85</sup>**

## **1. The landscape of integration and Regional Trade Agreements (RTA) worldwide**

*After World War II the European Union took the initiative, upon a proposal of the French Foreign Minister Robert Schuman in a famous speech on 9.5.1950 and at first restricted to a common market of coal and steel products<sup>86</sup>: The six founding members France, Italy, Belgium, Netherlands, Luxemburg and Germany took the initiative for step-by-step integration, which has progressed since then in a considerable way:*

*The EU grew from 6 to now 27 members, and there are yet many applications discussed and forthcoming. There is a high probability that there will be in about 20-30 years around 45 European countries which will be part of the European Union<sup>87</sup>.*

*Almost all countries which follow an active foreign policy and do not suffer of isolation syndromes are nowadays part of some kind of integration. The question is only, when and under which circumstances the Central Asian countries will enter any kind of integration among themselves.*

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<sup>85</sup> This article is a further developed version of a Paper for the International Conference on "Institution Building and Economic Development in Central Asia", at the International School of Economics (ISE) – the Kazakhstan branch of the London School of Economics – in Almaty, 5-6 June 2008. The author has to thank Nazira Toktalieva, candidate for Ph.D. at the Kyrgyz Diplomatic Academy, Bishkek, for her valuable support in setting up and presenting this paper. Equally, Prof. Dr. Heiko Fritz from ISE Almaty has to be thanked for his initiative to accept it for presentation at the conference.

<sup>86</sup> The European Community for Steel and Coal (ECSC), founded in 1952, has been between 1953 and 1957 the predecessor of the European Economic Community (EEC). Later, in the 1980s, the EEC changed partially into EC (European Communities, later European Community), until 1990 when the European Union Treaty as part of the future (consolidated) Treaty of Lisbon has been created. Since the Constitution discussions some years ago it was mostly spoken of EU (European Union), which is now the official expression in context with the Treaty of Lisbon, which is valid since 1<sup>st</sup> December 2009, after successful completion of the Irish ratification process (which at first defeated the Treaty of Lisbon in Europe's only referendum) and the helter-skelter with the Czech President's signature under the Czech Implementation Law. The ECSC Treaty, by the way, has found its end by a sunset clause at the end of 2002.

<sup>87</sup> This at least is assumed by many observers and analysts, to which also the author of this article can be counted. There will be yet in 2010 a comprehensive study by LIBERTAS – European Institute on further enlargements of the EU.

There are numerous definitions of “integration”, which at this place shall not be discussed<sup>88</sup>. As the smallest common denominator, integration is a cooperation where new structures – e.g. an integration structure secretariat or similar – are set up. In the other extreme, integration reaches until a supra-national government, i. e. not any more on national (or state) level but on a higher, supra-national level. The European Union is today considered as partly supra-national (e.g. with a judiciary institution binding also Member States, or with decision-making based upon majority rule, or a “qualified majority” between simple majority and unanimous vote, or even based on unanimity). It is important to note that these modern integration attempts follow the lines of democracy, human rights, the rule of law, (social) market economy and voluntary principles, and they are not imposed by anyone.

Since the creation of the WTO in the early 1990s there are now many new Regional Trade Agreements (RTA) in most parts of the world. Regional Trade Agreements (RTAs) are a prominent feature of the multilateral trading system (MTS)<sup>89</sup> in the world. The World Trade Organisation has established an RTA Section in its secretariat. While in the 1950s-1980s only a steady and slow flow of new RTAs was created, it now has become an important trade policy tool for virtually all WTO Members. The RTA number and the share of world trade covered by them have been always increasing since the existence of the WTO in the early 1990s. This trend is going on; there are many RTAs proposed and under negotiation.

RTAs offer challenges and opportunities at the same time: On one hand free trade is promoted through preferential agreements with the result of further trade liberalization and also by the integration of developing countries into the world economy, but the emergence of complex networks of trade relations not based only on the most favoured nation principle may increase discrimination and be counterproductive regarding predictability and transparency of international trade. This is one of the most prominent tasks of this section within the WTO. RTAs should not damage multilateral trade but complement it.

In this context, countries in Asia e.g. like Japan, South Korea, North Korea, China are not primarily member of integration associations like ASEAN, but there is a clear tendency of association to these structures, and even to membership in bigger structures like APEC between Asian and American states.<sup>90</sup>

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<sup>88</sup> There is e.g. the theory of (flexible) cooperation (see e.g.: Harald Müller: Die Chance der Kooperation – Regime in den internationalen Beziehungen, Darmstadt 1993)

<sup>89</sup> See in detail: Discussion Paper No 12 - The Changing Landscape of Regional Trade Agreements: 2006 Update, by Roberto V. Fiorentino, Luis Verdeja and Christelle Toqueboeuf (WTO Secretariat), Regional Trade Agreements Section, Trade Policies Review Division, World Trade Organization, Geneva, Switzerland

<sup>90</sup> However, it must be noted that from a European point of view, many integration structures can be considered

That leads also the discussion, e.g. in international public law, on a new defined definition of sovereignty, parallel to the discussion at present in the United Nations about the legitimacy of a “humanitarian intervention”. This sovereignty discussion implies that there is much lesser traditional sovereignty in a globalized world and that modern communication and interaction between the agents of economy lead to the detriment of traditional actors like states.

In this context, also the Central Asian states should ask themselves if any kind of integration would not improve their economic perspectives. History – like in the EU – shows also that one of the “spin-off effects” of integration is also peace, due to a proper dynamism of integration, once a critical mass is reached.

## 2. Attempts for Central Asian integration since 1990 and the perspectives

Common language at least of a *lingua franca* with Russian, cultural and regional aspects and a certain approach of emancipation from the core of the former Soviet Union in the early 1990s have led to a certain number of regional structures covering Central Asia<sup>91</sup>.

But neither Shanghai Cooperation Organisation (SCO) nor EurasEC (Eurasian Economic Community) nor Economic Cooperation Organisation (ECO)<sup>92</sup> have a dynamic orientation; above all they all have participants also outside of a possible regional market of Central Asia. Some of them have also been set up **primarily** anchored in external security policy and foreign policy, but not in economic policy.

There may lack an integration framework, with a dedicated legal structure, which takes into account the experience of the EU in its own history, with the goal of “four Central Asian freedoms” – freedom of goods, of services, of capital and of persons. It has to be kept in mind that some or even many of these elements are already there, out of a common heritage in the former Soviet Union.

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as not too efficient, due to the unanimous voting principle in their internal decision-making. This, however, has been changed with the Treaty of Lisbon which entered into force on 1.12.2009 – 51 years after the Rome Treaty.

<sup>91</sup> See also: Uwe Halbach: Regionalorganisationen in Zentralasien zwischen Integrationstheater und realer Integration, in: Zentralasien-Analysen Nr. 01 from 30.01.2008, pp. 3 et al., edited by Deutsche Gesellschaft für Osteuropakunde e.V. Berlin and Forschungsstelle Osteuropa Bremen

<sup>92</sup> The other programmes like e.g. CAREC or SPECA do not have a too high impact either; for space reasons they are not dealt with here.

But there is a certain unawareness, mistrust towards big partners from outside, and mistrust among each other within Central Asia regarding integration. However, the EU showed after World War II how former enemies became today the best friends and partners. Are the EU recipes applicable in Central Asia?

The EU recipe may lie in – at first – a restriction to economic policy, i. e. trade policy, infrastructure, energy, environment, transport policy etc.<sup>93</sup> Economic policy is least subject to non-pragmatic considerations, and other elements of integration can be based upon this without problems; see the EU history.

One of the perspectives for a kind of permanent “peer review” might be in a strengthened EU policy towards Central Asia, beyond all considerations of energy etc. The EU can – and probably will, although the framework of this is not yet defined – introduce a kind of “European Neighbourhood Policy II” or “ENP plus”. The fact that there is now a more or less Mediterranean Union, launched on French initiative, and that there were calls for a “Eastern European Union”, launched by Poland and Sweden in May 2008 (together with calls for further enlargement), which ended in the launch of a likewise “Eastern Partnership”, underlines the tendency of the EU to see more and more regions<sup>94</sup> and not only states in its future foreign policy. Central Asia for sure can and will be a part of this European Neighbourhood Policy II, but how this can be finalized is not yet solved. In this context the Central Asian Strategy from Spring/Summer 2007 during the German Council presidency of the European Union has been only a beginning. There were in the following intensive efforts, like the opening of own European Union Delegations in all Central Asian countries.

### **3. Proposals for a future Central Asian integration**

#### **3.1. Possible participants**

Although Central Asia normally is clearly outlined with five states (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan) the question is whether e.g. Mongolia, Afghanistan, Iran, Russia, Azerbaijan or Turkey should be included.

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<sup>93</sup> There are right now considerations between different think-tanks to a research project on Central Asian and Caucasus integration (started by LIBERTAS – European Institute). News can be called regularly from ECTIS (European Centre for Transnational Integration Studies) under [www.libertas-institut.eu](http://www.libertas-institut.eu) (ECTIS). The project started only in 2009, and it is open to all interested sides (any co-financing is welcome). For 2011 a bigger workshop with research institutions, political personalities and business leaders is envisaged, probably in Kyrgyzstan.

<sup>94</sup> This can be seen also in the long-term trend from e.g. global treaties with the ACP region (Africa-Caribbean-Pacific) where 80 states and the European Union take care of their privileged relations, and where now regional agreements of zones within the ACP countries were concluded. It is also visible in the tendency to have more and more “Special Envoys” of the EU for regional questions in third countries.

There can always be found solutions for inclusion below a member status, or informal cooperation or association. But the purpose of any further integration in Central Asia should at first be the enhancement of economic win-win situations as they were visible during the creation of the EU Single Market in the 1980s up to 1992 and in the following years.

If other countries would like to jump on this train, they should not be rejected. MERCOSUR, for instance, has now besides its core members also several associated countries<sup>95</sup>, and the EU has enlarged the Single Market with the EFTA (European Free Trade Agreement) Member States Norway, Iceland and Liechtenstein<sup>96</sup>, which is more or less also the case with Switzerland which has concluded the so-called Bilateral Agreements with the EU<sup>97</sup>.

Of the countries mentioned above **Mongolia** has an economic, social and legal structure which implies to include it in other Central Asian integration attempts; there speak also very many historic reasons for this.

### 3.2. “Top-down” and / or “Bottom-up” Approach?

There are several models for Central Asian integration which have been written not only by academics but by practical political personalities.<sup>98</sup> Should there be a top-down approach, “imposed” to the citizens, or will there be an automatic bottom-up approach from and between the citizens and economic actors, e.g. in case of mistrust between the governments – or will there be a combination of both?

There are some encouraging attempts, e.g. by the Kazakh President, but also refusals for integration, e.g. by the Uzbek President. Both represent the antagonistic wings of approaches in Central Asia. But on the long term, this can be predicted, also the Uzbek leadership will have to commit a swing towards more integration, maybe reluctantly, but for the sake of their economy. Above all, the Uzbek external policy has often turned out to surprisingly pragmatic. This implies that a “slow mix” of the top-down and bottom-up approach will emerge in the next years in Central Asia.<sup>99</sup>

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<sup>95</sup> like e.g. Chile or Venezuela, in addition to the core members Brazil, Argentina, Uruguay and Paraguay

<sup>96</sup> By an agreement on creating the European Economic Area (EEA), with at present 30 members (27 from the EU and the 3 mentioned above). This Single Market extension does however **not** include the common market for agricultural products.

<sup>97</sup> These four EFTA countries are also Schengen Zone member states (Norway, Iceland, because of the Nordic Passport Union) or became it from 1.11.2008 (Switzerland, Liechtenstein).

<sup>98</sup> E.g. Murat T. Laumulin: Die EU als Modell für die zentralasiatische Integration?, ZEI Discussion Paper C 29, Bonn 1999, Center for European Integration Studies (University Bonn)

<sup>99</sup> In a certain way, the situation was similar when NAFTA was created, the North American Free Trade Agree-

### 3.3. The “Cecchini” approach of the European Union as an example?

In the EU there was the “Cecchini Report” in the early 1980s (“The costs of non-Europe”)<sup>100</sup>. Paolo Cecchini, a former leading civil servant of the European Commission, is today often unknown even to younger EU civil servants, although he was at the beginning of the giant operation “European Single Market” in the early 1980s.

Is this report (still) applicable on Central Asia, and what might be its results which in the case of the EU led to the Single Market, and subsequently to Monetary Union?

First of all, it has to be noted that an automatic transfer of the Cecchini Report is not possible – the basic conditions are too different.

But as far this report means an evolutionary approach and on the fight against costs which incur if integration would not be the case<sup>101</sup> it might be an example, at least in principle. Although there are studies e.g. on high transport costs in the CIS (not only for the lack of integration, but also this)<sup>102</sup> there is not yet a comprehensive study on the question in which field people would gain how much of integration.

The Cecchini Report was a paper of 20 volumes (with several annexes) in which around 2000 EU and Member State civil servants, research institutions staff and consulting companies were cooperating. It was the basis of the about 300 EU directives and regulations<sup>103</sup> for the Single Market.

This Single Market had insofar far-reaching consequences, as it entailed the

- Schengen Agreement, which has led to a situation that in virtually all EU Member States there are no passport controls any longer for domestic travelers,
- European Monetary Union, which led to another world currency besides the US Dollar, the Euro,

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ment. See also: Frederick Abbott: Law and Policy of Regional Integration – The NAFTA and Western Hemispheric Integration in the World Trade Organization System, Martinus Nijhoff - Kluwer, Dordrecht/Boston 1995

<sup>100</sup> Paolo Cecchini: Europa 92 – Der Vorteil des Binnenmarktes (together with Michel Catinat and Alexis Jacquemain), Nomos, Baden-Baden 1988

<sup>101</sup> Therefore this report also was called “About the Costs of Non-Europe“

<sup>102</sup> United Nations Economic Commission for Europe (UNECE): Review of the implementation of OSCE commitments in the economic and environmental dimension – Integration, Trade and Transport, 13<sup>th</sup> OSCE Economic Forum, 24 May 2005, Prague

<sup>103</sup> Framework laws and laws, in the EU-own legal language

- Further increase of intra-trade within the European Union, which led the EU to survive the financial and economic crises from 2008/2009 better than expected, although the EU had to learn a lot of new policies and instruments which were not yet implemented so far,
- Further Treaties following the Single Market and Monetary Union landmark Treaty of Maastricht, namely the Treaties of Amsterdam, Nice and Lisbon, the latter entering in power on 1.12.2009.
- The most remarkable result is, however, that the EU which is often said to be boring, bureaucratic etc. increased their number of Member States from 6 to 27 – and a lot of countries are waiting at the doors.

These are not all possible effects of the Single Market, but some of them which are undoubtedly remarkable. In a certain way, Central Asia has all opportunities to do the same – it is just necessary to follow a common direction. Also for Central Asian governments, parliaments and analysts – at least, not to mention enlightened citizens – it must be clear that the region has also a part on the world stage, at least for economic reasons.

### **3.4. Possible transnational institutions**

In Central Asia, discussions about integration have to be conducted in a cautious way. One possibility might be the creation of small supra-national sectors for which the institutions might be e.g. weather service, cross border railways, regional environment, water or energy institutions, if the governments can't unite on other "classical" elements (e.g. to counterparts of the EU Commission, EU Council, European Parliament, EU Court of Justice etc.). In these policy sectors, a parity-staffed independent court could be a suitable watchdog, but also in Central Asia should be thought of the election of a common parliament.

At present, the Republic of Kazakhstan is the only country endowed with enough political and economic stability to "tow" other Central Asian countries into the direction of integration. Kazakhstan is well-known for a relative reasonable and pragmatic policy genesis<sup>104</sup>

### **3.5. Economic and legal advantages for the people**

In this region, integration was part of everyday's life in the Soviet Union. But it was an integration imposed from the outside, unlike the European integration which is a voluntary

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<sup>104</sup> See also its commitments as presidency of the OSCE in 2010, despite all other deficiencies in rule of law as well as "closed policy" traditions in many domestic policy fields. But this is no reason to omit courageous attempts for integration, which on the long term can result in more rule of law implementation.

and democracy-based process. From a modern and effective integration, Central Asian citizens can harvest a lot of possible advantages:

- economic and legal, depending how far this would reach, according to the economy of scale principle and without turning back the wheels of history,
- a higher legal security for the people
- a higher legal security for business and Foreign Direct Investment
- a so-called “peace dividend”, as other examples show that lasting peace has overlaid possible conflicts (water, enclaves, border lines etc.).

In the EU, the Cecchini Report has been attacked many times in the time 1984-1994, but there was a broad consensus from industry, small and medium businesses, freelance professions and trade unions that it induced an overall win-win situation. Today, more than 25 years after the release of the idea, the Single Market is generally considered as part of the core regulations for the EU, having also brought common rules like the Schengen Agreement and the European Monetary Union, but unlike those binding for **all** Member States<sup>105</sup>. There are social, legal and economic factors which as a whole induce an inevitable movement towards a kind of regional integration, if no country wants to remain standing alone which is assumed, or does not want to link up with one or two larger neighbouring states.

In the EU, there was made excellent experience with partial integration; in the most significant cases several years after further integration steps were made by some countries only, these steps were adopted as general integration policy by all of the Member States. This is an experience which could also be followed in Central Asia.

**Parallel to the many Regional Trade Agreements and in general the world-wide trend to integration structures, but not necessarily as far going as in the EU, therefore the Central Asian region will for sure develop a kind of integration structure, which can go much further than economic issues, in view of the many “acquis” provisions stemming from the time of the Soviet Union (visa free travel etc.).**

This Central Asian integration structure should and will not be directed against any of the larger neighbouring countries, like China or Russia. This would be against WTO rules, although at present only Kyrgyzstan is a WTO member, and in the contrary it helps all sides if e.g. China or Russia would have to negotiate in trade questions only with one institution than

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<sup>105</sup> e.g. the Schengen Agreement has not been signed by the UK and Ireland, the introduction of the Euro is not implemented by UK, Sweden (which had a negative referendum on this question, but one which is nowadays more contested than ever) and Denmark (which will probably introduce the Euro in some years).

with several governments, and this also would support the negotiating strength of the Central Asian countries<sup>106</sup>. This development follows the economic principle of synergy creation by cooperation<sup>107</sup>.

### **Recent Developments: the New Customs Union**

However, it would have to take into account recent developments: On 27.11.2009 the establishment of a Customs Union between Russia, Kazakhstan and Belarus has been signed and sealed in the CIS capital of Minsk, Belarus.<sup>108</sup> By 1.7.2010 already a harmonized customs code as well as common customs tariffs should enter into force. This seems to be a logical prolongation of some CIS achievements, like the Eurasian Economic Community (EEC).

Arguments that the new customs union might end up in new protectionist measures had been heard also in the EU when it created the EU Single Market. Today in the EU nobody speaks of “Fortress Europe”, as this phenomenon had been called. But the Single Market of the EU is not only a customs union, and the three member countries are not EU Member States. The more a pluralist, controversial discussion will be possible about the pro and cons of single tariffs or measures, the smaller is the possibility that it might end up as “fortress”, although there have been qualified warnings (Institute of World Economy and International Relations, Moscow)<sup>109</sup>.

The question is also a possible enlargement of the future customs union. There are three members out of eleven in this customs union – not more. However, there is in general cautioned not to enlarge too fast. The general position is that the customs union member states should “wait and see” if it works well, before others e.g. from Central Asia could join.

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<sup>106</sup> See e.g. the gas price negotiations between Russia (Gazprom) on the one side and Kazakhstan, Turkmenistan and Uzbekistan together on the other side, from March 2006

<sup>107</sup> This principle has led e.g. in the EU to a completely new legal form for cooperating companies, the EEIG (European Economic Interest Grouping), where at least two members from different EU Member States work together (see also [www.ewiv.eu](http://www.ewiv.eu)). Also members from third countries, i.e. from outside of the EU, can be included as associate members. This legal form is determined by an EU Regulation (2137/85). The EU has since the introduction of the EEIG, of which approx. 2200 exist in the EU binding altogether about 15-16.000 enterprises or other institutions, introduced several other legal transnational forms, like the S.E. (European Company), the S.C.E. (European Cooperative) and prepares actually several other legal forms, among which a European limited company (S.P.E.).

<sup>108</sup> EURASIANET.org - Business & Economics, 3.12.2009, Sergei Blagov: “Russia: Moscow Embraces New Initiative to Forge Post-Soviet Trade Bloc”

<sup>109</sup> see footnote 36 (quote by Vladimir Yevseyev, IWEIR Researcher)

The three participating states have a GDP of about 2 trillion USD; the trade turnover among them amounts to around 900 billion USD. There are very serious Kazakh sources who indicated that, while the new group of states in the global integration concert may emerge a major oil and grain exporter, and that Russia may boost its trade turnover by approximately 400 billion US\$, and Belarus and Kazakhstan of about 16 billion US\$ each. By the abolition of trade barriers as planned, the three involved states can achieve up to 15-17% growth of GDP until 2015 altogether, according to forecasts of Sergei Glaziyev, CIS Customs Union Commission.

Most of the invited countries, like Kyrgyzstan or Tadjikistan, are still examining the consequences for themselves; the proposal had encountered certain skepticism, maybe because it was proposed from Russia, which holds an extremely quantity- and quality-wise distance to the economic figures of most of the possible members.

Kazakhstan had reservations insofar, as it first had to clear by its Constitutional Court in November 2009 whether it could join the Customs Union; the problem was the precedence over Kazakhstan's domestic legislation. Belarus hesitated as well; the President Alexander Lukashenko on November 24, 2009 doubted the benefit of this customs union, saying "that it appeared largely geared toward bolstering the Russian economy".<sup>110</sup>

Russia called, by its first Deputy Prime Minister Igor Shuvalov, to set up the customs union until the beginning of 2012. While this date cannot be excluded, the whole operation seems to be a bit unilateral, as the common customs tariffs are based to a large extent on the Russian system of import and export duties.

After all, any newly created Central Asian integration is not directed against this kind of customs union. A customs union is regularly less than an economic integration which can reach further. There are many examples of overlapping integration, among which only some – those concerning the EU – are mentioned:

- the Nordic Union and the EU; the Nordic Union members are partly in (Sweden, Finland, Denmark), partly out of the EU (Norway, Iceland; also the Finnish Åland Islands),
- the Benelux agreements between Belgium, Netherlands and Luxemburg – all three also EU members,
- the EFTA countries (4 in total now) who have (for 3 of them) a European Economic Area (EEA) with the EU Single Market of the 27,
- Switzerland (as EFTA, but not as EEA member), having far-reaching bilateral agreements with the EU.

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<sup>110</sup> See above footnote 108

It would, all in all, make sense – geopolitically, but also economically, if the Central Asian states could work closer together. The main beneficiaries would be its citizens. How much their profit is, would have to be found out with a “Cecchini II” study.

#### ***What can the EU do in favour of CA integration?***

*The EU maintains Partnership and Cooperation Agreements (PCAs) with all CIS countries including Central Asia’s Five. Many of the relevant laws in these five countries have been or will be approximated to EU standards, i. e. investment, procurement, company laws etc. These laws are often coincident between the CA countries, but there is in general relatively small coordination between the different PCAs, as they have been regarded mainly as national matter of the CIS partner countries. They have been set up from the early 1990s as the EU’s reply to the dissolution of the Soviet Union, and their main focus are economic and related legal relations. There are e.g. yearly meetings between the PCA implementation teams, but reports of national achievements and on project management do not replace a targeted coordination. There is e.g. a lack in workshops e.g. on the orientation of legal approximation or other subjects. And if e.g. a line ministry asks for special assistance e.g. in constitutional affairs, then sometimes it is a problem to do so, for some European Team Leaders see their competences in a very restricted way. In some (ENP) countries these tasks have been taken over by “PLACs” = Policy and Legal Advice Centres.*

*There is also a bilateral approach between the EU and the PCA partner country, but no multilateral one between the EU and all or all regional definable PCA partner countries, which had not been foreseen in the first round of agreements. The EU should coordinate actively the implementation of the future new PCAs under regional auspices; technically this would be no problem for the respective project teams.*

#### **4. Conclusions**

Any action from the European Union regarding Central Asia suffered often under the fact that there was no “regional approach” in the EU’s policy. In only one country – Kazakhstan – there was for a long time a EU Delegation, which was also responsible for other states<sup>111</sup>.

Other countries, like Uzbekistan and Turkmenistan, had no Delegation. This will now change slowly<sup>112</sup>.

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<sup>111</sup> The European Union Delegation in Kazakhstan was also covering Kyrgyzstan and Tajikistan, although there are already “semi-autonomous” EUDs. They will be soon converted into “autonomous” EUDs.

While “Cecchini” Report-like programmes in the EU are now outdated there, it should be thought of setting up a comprehensive study of advantages by Central Asian integration<sup>113</sup>. In the EU it was argued on the amount saved every year by the population through the Single Market, but the result shows clearly that it didn’t really matter if the population saved 200, 300 or more billion EUR on an annual basis. Of course, existing links – and the customs union with Kazakhstan inside has not yet started! – must be taken in account, but are no obstacle for the examination of a further proceeding.

Even without economic quantifications it can be assumed that any real integration which goes beyond cooperation will bring many millions of EUR into the pockets of Central Asian citizens, as well as more legal security, a competition between the administration concerning “good examples” in various fields – and the inevitable “peace dividend” between the participating states although at present there are no major external conflicts visible.

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<sup>112</sup> A European Commission Delegation should be set up in Uzbekistan by November 2008, one in Turkmenistan later (only in 2010/2011). In the meantime, so-called “Europa Houses” coordinate the EU policy and technical assistance, besides direct EU projects.

<sup>113</sup> Any cooperation of economic institutions, universities, think-tanks or NGOs on the economic impact but also on all other issues of Central Asian integration would be highly welcome. They should turn themselves to LIBERTAS – European Institute, which publishes also this journal.

## *The Integration of Countries into Globalization by the WTO – The Example of Azerbaijan*

**By Abdulla Alikhanov**



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The World Trade Organisation (WTO) is one of the main global institutions that deal with enforcement of trade laws and regulations to settle trade disputes among member countries. The main purpose of this organization is to maximize trade liberalization and ensure predictability as much as possible. Now the WTO controls 95% of international trade. Recognizing the fact that the WTO polices trade agreements, the initial creation of this organization derived from long forums and agreements. It is a place and forum where countries negotiate with each other about their trade problems and try to settle trade disputes. The WTO appeared as a result of the Uruguay Round (1986-1994) and negotiations under the General Agreement on Tariffs and Trade (GATT).

The WTO is currently the framework of new negotiations under the “Doha Development Agenda” established in 2001. The main discussion is that countries which faced trade barriers want to lower these problems, after all, these negotiations have helped to liberalize trade. However, in some circumstances and conditions its established rules support maintaining trade barriers. For instance, to protect consumers or prevent the spread of diseases are well known patterns of these barriers.<sup>114</sup> It is a set of rules (documents, contracts) that makes governments to keep their trade policies within certain agreed limits. The goal of these documents is to help producers, exporters and importers to manage their business, associated with government’s social goals. In these documents it is mentioned that eliminating undesirable side-effects is necessary for economic development. This means that removing obstacles will help entrepreneurs, companies and governments and gives them additional confidence that there

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<sup>114</sup> WTO Report “Trading into the Future”, Geneva

will be no abrupt changes in trade policy. Transparency, accountability and predictability are the main required elements of these rules.

Though the WTO was founded in 1995 and it is young, its history lasts about half a century: As one of the world's youngest organizations (it entered life only on 1<sup>st</sup> January 1995) it represents General Agreement on Tariffs and Trade (GATT) which had provided trade rules and evolved several negotiation rounds since 1948. The last and the largest GATT round was the Uruguay Round that lasted from 1986 till 1994 and led to the creation of the WTO. The GATT was involved in by trade rules in goods, but the WTO now deals with all trade - in goods, services, investment, intellectual property etc. Its agreements deal with agriculture, banking, government purchases, industrial standards and product safety, international negotiations, food sanitation regulations, intellectual property, and many more.

### **The status of membership**

The status in the accession process is a very important issue for the acceding country. There are three development statuses for WTO members: developed, developing and least developed countries. It is obvious that Azerbaijan may not be recognized as a least developed country. We should be found among the developing countries. However, there is a considerable amount of advantages and privileges for poorly developed countries and therefore, in an accession process, countries try to enter under this status. When Kyrgyzstan, Georgia, Moldova, and Armenia were accepted to WTO, these countries were labeled as countries with "transitional economies".

It must be stressed that the most disputable issue at the negotiations held during the process of membership to WTO is agriculture. ACC/4 (Chart of Internal Assistance in Agriculture) is one of the required documents to be submitted to the WTO Secretariat during the procedure of accession to the WTO. This document presents the current situation about the agrarian sector and the subsidization of the export of agricultural products.<sup>115</sup> In the membership process agricultural agreements include three possible baskets: "green", "yellow", "red". The red basket restricts subsidies in agriculture. The green basket allows to maintain agricultural scientific-research institutes conducting theoretical and practical research on protection of the agricultural sphere, including agricultural products in context with diseases and other negative environmental impacts, and infrastructure subsidies to agriculture. The yellow basket includes subsidization of cereal seeds, and it allows direct subsidies up to 10% within the sector.

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<sup>115</sup> The World Bank Group, WTO Accession, 2005

Here the role of the WTO in Azerbaijan's economy should be mentioned. Azerbaijan's accession to the WTO is one of the most important and widely discussed topics in the country since July 1997. Therefore, this issue involves many economists into long lasting debates and through these debates we can understand that the WTO provides both an opportunity and a challenge for our country.

Because of the significance of this institution in trade and its enormous role in globalization, most of the countries in the world are the members of this organization. However, it is still a very arguable issue and open question whether WTO has positive or negative influences on the world economy, especially on small and emerging economies. Each of the small countries tries to take into account that the globalization is an indispensable part of the world economy and it is unavoidable. Instead of avoiding it, these countries seek ways to trace this globalization "stream", which is good for Azerbaijan also. Azerbaijan's government declared its long-term economic strategy as integration in the world economy. Therefore, the fulfillment of this target must come together with WTO membership.

It has to be emphasized that our country has to enter WTO under such conditions that will not injure our agriculture and new established industries. However, we should not omit the fact that Azerbaijan's accession to the WTO will give us big advantages to pass several obstacles and to join the developing countries with great success. The WTO membership means free trade, and how entrepreneurs gather, manage and use information (new technologies) will decide whether they win or lose the competition. In this article WTO's advantages and disadvantages for Azerbaijan shall be analyzed, and I will also concentrate on WTO's role in international peace over the world. I think that there are more advantages than disadvantages of Azerbaijan's accession to the WTO.

According to the requirements of the Agreement on Agriculture, Azerbaijan has undertaken an obligation to avoid introducing **subsidies** in future.

Advantages of WTO for Azerbaijan are the following:

- ✓ *The system contributes to international peace<sup>116</sup>*
- ✓ *The WTO's system is based on rules not on power. The WTO makes life easier for all member countries*
- ✓ *Free trade cuts the cost of living (e. g. food and clothes are cheaper)*
- ✓ *The WTO's rules reduce opportunities for corruption and improve the transparency*
- ✓ *Efficient financial and bank system*

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<sup>116</sup> Ten benefits of the WTO trading system, WTO Secretariat

- ✓ *Good Governance to support competition and increase effectiveness*
- ✓ *To develop investment environment and financial tools*
- ✓ *To minimize government's intervention in financial sector*
- ✓ *Growth and jobs opportunities*

As global organization the WTO also plays a significant role in the peace process in the world. Most of the current and historical experiences show that most of the wars among countries happened because of resources, misunderstandings and lack of collaboration relationship among the countries. On the other hand, to achieve global peace has ever been the main concern of the whole world historically. Peace is an outcome of two of the most fundamental principles of the trading system: helping trade to flow free and providing countries better opportunities for dealing with disputes in trade. One of the examples was the trade war of the 1930s when countries competed in raising trade barriers in order to protect domestic producers and turned against each others' barriers. This was one of the parts of the Great Depression which by its European form and exaggerations finally led to the outbreak of World War II.

Two developments that have immediately been taken after World War II helped to avoid a repeat of these trade tensions and disputes. Recognizing the fact that the main reason for great wars was wrestling in influence on coal and steel, it is needless to say that these problems had to be solved. Therefore, international cooperation developed in coal and steel (e.g. in the predecessor of the European Union). Eventually also the General Agreement on Tariffs and Trade (GATT) was created. Both of these steps were so successful that these organizations are now considerably expanded — one has become the European Union, the other the World Trade Organization (WTO).

Moreover, in a world as uncertain as ours, we need continually to build a climate for peace. WTO's contribution is best seen in creating a rules-based system to help trade flow smoothly and a constructive and fair process for countries dealing with trade related disputes. The architects of the post-second war system had firmly believed that the more countries trade, the less likely they are to go to war with each other. This vision has proven to be correct. Today there are "trade wars", but these conflicts are fought out in the meeting rooms of WTO. The Doha Development Agenda which is about providing the world's poorest countries a hospitable economic climate is an opportunity for the entire world. What is at stake in Doha is beyond trade. It is about working to build a stronger global economy, reducing instability and uncertainty.

Issues related to development of the World Trade Organization (WTO), which is distinctive with its leading role and activity in increasingly economic globalization, as well as new acces-

sions in this context are considered a subject at issue that involves and concerns not only researchers, but also economic analysts and launches practical debates at different levels. Since then the WTO, by making significant contributions to international trade liberalization, promotes the efficient administration of trade flows and provides openness of member countries in foreign trade regimes through free market access principles. The WTO is not the only international organization dealing with the global rules of trade between nations, but also contributes from a positive point of view the relationship among the countries and their future peace development. It plays a role of administering transnational trade relations based on the multilateral trading system — the WTO's agreements, negotiated and signed by a large majority of the world trading nations.

The WTO's overriding objective is to maximize international trade liberalization and to establish its sound foundation, thus leading to economic development and advance in the cost of living. In order to achieve these undertakings, WTO's primary duty extends to administering commercial and economic relations among member governments according to the Package of Agreements resulting from the Uruguay Round trade talks (1986-1994)<sup>117</sup>.

The WTO's overriding objective therefore is to help trade flow smoothly, freely, fairly and predictably:

- Establishing “the most favorable regime” policy and therefore working for international peace (establishment of an equal, non-discriminatory trade environment for member governments)
- Establishing a “national regime” policy (inadmissibility of discrimination between imports and services with local goods)
- Providing advantage over tariff methods in trade controls
- Lowering technical trade barriers
- Achieving openness and transparency in trade policy
- Maintaining internal markets under WTO rules only
- Creating favorable conditions for free competition

Virtually all decisions in the WTO are taken by consensus among all member countries and they have sometimes to be ratified by the members' parliaments. A majority vote is also possible but it has never been used. Although debates on goods, services, and intellectual properties and exemption from liabilities are accepted by a three-fourths majority, a two-thirds majority is needed for a new membership, as well as timely corrections to members' rights and duties. Virtually in this case priority is given to consensus.

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<sup>117</sup> [www.wto.org](http://www.wto.org)

Naturally, in addition to the benefits from Azerbaijan's integration into the world economy through the WTO, it may sustain possible losses as well. These losses can be grouped as following:

- adaptation regress occurs in the production of non-competitive goods and the provision of services due to competitiveness development in the national market;
- revenues from customs duty and tax items reflected in the state budget are reduced, and its expenditure item faces problems for short-term and sometimes mid-term periods;
- commission fees paid for the use of patents on technologies imports increase industrial expenditures, thus lowering their benefit of price competition;
- direct and indirect subsidies the government gives for the purpose of protecting the local industry cease, and these sectors go through a crisis of adaptation;
- adjustment of values with world prices increase consumers' expenditures, and its social disturbance threatens transition economies and politically sensitive powers;

The Government of the Azerbaijan Republic submitted a Memorandum on its Foreign Trade Regime on 22 April 1999. Later on, the Permanent Mission of the Republic of Azerbaijan had provided replies to additional questions submitted by Members on the Memorandum on the Foreign Trade Regime - Australia, Japan, the European Union Member States, and the United States. The first meeting of the Working Party was held in Geneva on 3-7 June 2002.<sup>118</sup>

The first meeting with the Members on the Memorandum on the Foreign Trade Regime advised Azerbaijan to submit the following documents:

- Proposals on customs tariffs (not applied tariffs, but their higher rates to be applied)
- Proposals on internal assistance and import subsidies in the agrarian sector
- Proposals on service trade related measures
- Information on technical barriers to trade and application of sanitary and phytosanitary measures
- Information on trade-related aspects of intellectual property rights

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<sup>118</sup> [www.wto.az](http://www.wto.az)

## Conclusion

Because Azerbaijan has a small domestic market and needs to have access to the world market and handles problems and barriers in order to integrate global world economic system, a WTO membership is very important for the country. In conclusion, we found out that there are more advantages than disadvantages of Azerbaijan's accession to the WTO. The picture, though cautious, is optimistic. All what has been mentioned in this article can contribute to the conclusion that Azerbaijan's accession to the WTO has both negative and positive impacts on Azerbaijan's economy, and especially the negative impacts should be seriously taken into account. The negative impacts of the WTO accession on small producers, the agriculture sector and farmers and on the service sector have to be particularly considered.

But we should emphasize that the positive effects of membership weigh much more than the negative ones. Moreover, some researchers claim that the impacts of Azerbaijan's accession to the WTO on Azerbaijan economy are marginal. The idea is that domestic firms have not enough capacity to compete with foreign companies and by opening up the borders the country will face to myriad amount of import goods. Others accept as true that Azerbaijan will significantly get benefits from the WTO Accession. WTO membership will increase predictability of Azerbaijan by imposing "bound tariffs". It will open more opportunities for business sector. Finally, it will contribute Azerbaijan to be very close within economic and political relationship with other countries and consequently increase the overall prosperity of Azerbaijan.

## References

Anne O. Krueger, WTO as an International Organization, University of Chicago Press, 2006

IMF Working Paper, Regional Trade Integration and WTO Accession: Which is the right sequencing, An Application to the CIS, IMF Washington, 2005

World Trade Report 2006, WTO publication

Paper: A comparative analysis of CIS countries' WTO accession; V.Bayramov

Deepak Bhattasali, China and the WTO: Accession, Policy Reform, and Poverty Reduction Strategies, World Bank Publications, 2004

WTO and the Globalization of Enterprises <http://www.jstor.org/stable/4407990>

Bulletins of WTO and Trade Strategy Center, KDI School of Public Policy and Management, 2005

## ***Former Soviet Nations Aren't Banking on the Dollar Local currency or euro viewed as most profitable***

In an analysis of Gallup in Washington D.C., USA, its two authors, Julie Ray and Neli Esipova, elaborate as a result that the US Dollar is “not king in most former Soviet nations”. In its place, Gallup surveys this year show residents in 12 of 15 countries are more likely to view their own local currency or the euro as the most profitable and safest to keep their money in. The main question was:

*In your opinion, which currency is the most profitable and safe to keep money in: (local currency), dollars, or euros?*

	<b>In (local currency)</b>	<b>In dollars</b>	<b>In euros</b>	<b>In several currencies (volun- teered)</b>	<b>It is not profitable to have money savings (volun- teered)</b>	<b>Don't know/ Refused</b>
	%	%	%	%	%	%
Turkmen-istan	79	12	3	3	1	2
Azerbaijan	69	17	9	2	2	2
Armenia	53	14	18	1	4	10
Kazakhstan	41	12	12	8	6	21
Kyrgyzstan	40	21	11	2	3	22
Tajikistan	34	29	7	3	2	26
Russia	33	4	16	10	13	23
Uzbekistan	32	41	2	1	12	12
Moldova	32	7	36	9	2	13
Ukraine	27	10	19	10	9	25
Georgia	20	24	38	1	3	14
Latvia	19	7	53	5	6	11
Lithuania	17	4	56	3	7	13
Belarus	13	17	21	22	7	21
Estonia	10	7	47	11	8	17

Surveys conducted April-August 2009

GALLUP

Many years the world's reserve currency has been the US\$, and in many cases, in particular in many Soviet countries the US\$ has been preferred to the own currencies – an apartment to rent, a car to buy was just indicated in US\$, even if this was an “inofficial” pricing result. The survey which was made in April-August 2009 showed very clear that due to the dollar's weakness during the last years this currency had become less interesting. Only the citizens of Uzbekistan, Belarus and Tadjikistan were not among those in the former Soviet Union considering their own currency or the Euro as safer than the US\$. In Kazakhstan and Armenia citizens tend to develop a higher affection towards the currency of their country, even if they saw certain losses in the past.

However, one has to take into account that in the aftermath of the financial and economic crises the US\$ went up from 1 EUR = approx. 1,55 US\$ to 1 EUR = approx. 1,34 USD. But it has to be taken into account that the first ratio EUR/US\$ from the 31.12.1998 was 1 EUR = 1,17 US\$ (and the EUR went once down to 0,82 EUR = 1 US\$ in the time between 1999 and 2002). But people in cash-oriented economies develop often a certain myth for the currencies, in particular the US\$ - the EUR is seen more pragmatically, in general.

### **Which country has the highest confidence in its own currency?**

Gallup finds that “although residents in most former Soviet countries surveyed tend to see their own currencies as the most profitable and safe to keep their money in, support levels vary tremendously within the region. Turkmens are the most likely of those surveyed to say their currency is safest and most profitable (79%), with the dollar placing a distant second (12%) and the euro a remote third (3%).” This might also be due to the closed doors behind which this country has been kept even in the last years, so that the interfaces with the euro are way behind in this particular country.

Belarusians and Estonians, on the other end of the spectrum, are the least likely to say their own currencies are the safest and most profitable. Nearly half of Estonians (47%) choose the euro, while 1 in 10 or fewer choose their own currency (10%) or the dollar (7%). In Belarus, which devalued its currency this year and pegged its money to the ruble, dollar, and euro, results are understandably more mixed -- a relatively high percentage (22%) says keeping money in several currencies is most profitable and safe.

*In your opinion, which currency is the most profitable and safe to keep money in: (local currency), dollars, or euros?*

	<b>In (local currency)</b>
	<b>%</b>
Turkmenistan	79
Azerbaijan	69
Armenia	53
Kazakhstan	41
Kyrgyzstan	40
Tajikistan	34
Russia	33
Uzbekistan	32
Moldova	32
Ukraine	27
Georgia	20
Latvia	19
Lithuania	17
Belarus	13
Estonia	10

Surveys conducted April-August 2009

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### **Baltic EU Member States, Moldova and Georgia prefer the EUR**

Citizens of “Lithuania, Latvia, and Estonia -- European Union (EU) member states that maintain their own currencies -- show a strong preference for the euro over their own local legal tender and the dollar. They are the most likely of all surveyed to pick the euro, with about half of residents in each country choosing this currency as the most profitable and safe”, write the Gallup authors. This is evident, as the Baltic countries like all other accession states did not sign an opt-out possibility for the euro – this means that once the criteria are suitable, these countries will come into the euro. The first might be, by the way, Estonia, and it could be already in the beginning of 2011. This will be discussed and decided still in the first half of the year 2010.

Moldova and Georgia who are not in the EU “have grown closer with the European Union in recent years. Possibly reflecting these warming relations, Georgians are also more likely to identify the euro (38%) as the safest and most profitable currency to keep their money in over

their own (20%) and the dollar (24%). In Moldova, residents notably are as likely to choose the euro (36%) as their own currency (32%)”, writes Gallup on this survey. Both countries are frontrunners in the former Soviet republics, whenit concern the people’s desire tojoin above all an economic bloc. The table on the euro:

*In your opinion, which currency is the most profitable and safe to keep money in: (local currency), dollars, or euros?*

	<b>In euros</b>
	<b>%</b>
Lithuania	56
Latvia	53
Estonia	47
Georgia	38
Moldova	36
Belarus	21
Ukraine	19
Armenia	18
Russia	16
Kazakhstan	12
Kyrgyzstan	11
Azerbaijan	9
Tajikistan	7
Turkmenistan	3
Uzbekistan	2

Surveys conducted April-August 2009

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### **The US-Dollar prevails in Uzbekistan**

The Central Asian country of Uzbekistan had although it had also some currency irritations in 2009 an unbroken tendency to adopt the US\$ by her citizens. As Gallup pointed out, the country belongs to those “in which residents are more likely to say the dollar is the best to keep

one's money in. Forty-one percent of Uzbekistanis choose the dollar, while 32% pick their own currency as the most profitable and safe.” This is the US\$ preference table:

*In your opinion, which currency is the most profitable and safe to keep money in: (local currency), dollars, or euros?*

	<b>In dollars</b>
	%
Uzbekistan	41
Tajikistan	29
Georgia	24
Kyrgyzstan	21
Belarus	17
Azerbaijan	17
Armenia	14
Kazakhstan	12
Turkmenistan	12
Ukraine	10
Latvia	7
Estonia	7
Moldova	7
Lithuania	4
Russia	4

Surveys conducted April-August 2009

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Gallup’s findings are that “overall, trust in the dollar is highest in Uzbekistan, and roughly one-quarter or more in Georgia (24%) and Tajikistan (29%) choose the dollar as the most profitable and safe currency. Further, in most former Soviet countries in Central Asia, residents are still more likely to pick the dollar over the euro.”

### **The Megatrend: International dependency on the US\$ will decrease**

Gallup sees the following megatrend, which is also shared by most of the European analysts, that “although the U.S. dollar has strengthened recently, Gallup data suggest that international

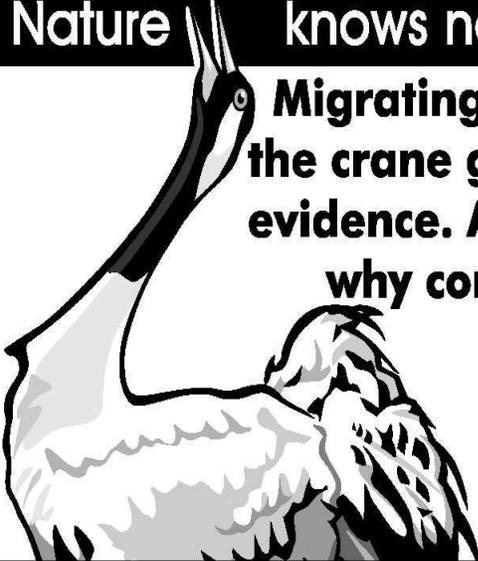
dependency on the U.S. dollar -- in terms of its perceived strength on a global stage -- is in doubt.” The further tendency, namely that people “in many former Soviet countries are more likely to see their local currency or the euro as the most profitable and safe, which may make them more receptive to the idea -- floated by Russia, China, and others earlier this year -- of replacing the dollar as the world's reserve currency with a supernational currency”, can be underlined to 100% for the first part – whether the Russian-Chinese proposal to create a new reserve currency will have success, remains for many Europeans, however, uncertain. Most of the European analysts would prefer a basket including the EUR. There will be things to verify in a couple of years!

***Survey Methods applied by Gallup:***

*Results are based on face-to-face interviews with between 500 and 2,000 adults, aged 15 and older, conducted April-August 2009 in Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Kazakhstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error ranges from  $\pm 2.8$  percentage points in Russia to  $\pm 5.3$  percentage points in Lithuania. The margin of error reflects the influence of data weighting. In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.*

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# ***Public Benefit Foundations in Albania and their VAT treatment***

By Elis Tarelli<sup>119</sup>

## **1 Introduction**

Not-for-profit organisations (“NPOs”) are continually assuming a larger and growing role in delivering much needed services to people around the world. Out of charity and selflessness NPOs are becoming agents of social change especially in those countries where governments lack the resources and capacities to offer their citizens sufficient and qualitative social services.

NPOs are important legal vehicles through which needed financial and material resources are dedicated to achieving goals related to activities in the common good and in the public interest. As such, the State is interested to support the activities of NPOs because it is in principle equally concerned for the well-being of its citizens, especially in areas where the State does not have much to offer. Tax treatment is only one of the instruments, a very important one though, how States choose to support the activities of NPOs. “The tax treatment is the barometer of the high or low esteem in which States hold the voluntary sector”.<sup>120</sup> Tax privileges are understood to be a reward for services provided by NPOs often to the most vulnerable and needy members of the community, and an encouragement to continue to do so in the future.<sup>121</sup>

While in Albania it is the norm that donations to NPOs are exempted from income profits with the view to encourage philanthropy, and incomes from business activities are taxed with the view to avoid unfair treatment of business organisations, the current treatment of NPOs for value added tax (“VAT”) purposes seems to have no justification. The recent changes in

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<sup>120</sup> Dr. Hondius, F. “An Enabling Fiscal Climate for NGOs – The Role of Europhil Trust” in Bater, Hondius and Lieber, *The Tax Treatment of NGOs: legal, fiscal and ethical standards for promoting NGOs and their activities*, (2004), p. xi

<sup>121</sup> *Ibid.* p. vii

the VAT legislation were aimed at providing a special treatment to NPOs for VAT purposes by introducing the “public benefit” status for carrying out publicly beneficial activities. However, are the goals related to promoting public benefit activities better achieved by granting the public benefit status to NPOs? Is the public benefit status beneficial also to NPOs? Public benefit activities are usually exempt for VAT purposes. Therefore NPOs do not need to charge VAT for such services to their “customers”. But is this a good or a bad news to NPOs? Is the VAT system after all a system that encourages and supports the activities of NPOs, or are NPOs being discriminated under the current VAT rules?

*Albania is on its way to membership into the European Union. Part of the membership process is also the approximation of the Albanian legislation with the EU law. In this regard, understanding the tax treatment of NPOs under EU law is relevant when discussing tax treatment of NPOs under Albanian law. Although Albania is not yet required to transpose EU legislation into local law, EU acquis nevertheless represents the model of how Albanian law is to be developed and approximated before acquiring full membership into the EU. Therefore the question that arises is whether tax treatment, and more specifically VAT treatment, given to NPOs under Albanian law is comparable with VAT treatment given to NPOs under EU Law.*

The scope of this paper is defined primarily to comprise non-governmental not-for-profit organisations of public benefit, and more specifically foundations. The treatment of other forms of NPOs (such as associations and centres) falls outside the scope of this paper. References to NPOs in this paper should therefore be read in the narrow sense as references to not-for-profit public benefit foundations.

## **2 The legal framework for the establishment and operation of foundations in Albania**

The right of every person to organise collectively for any lawful purpose is a fundamental right guaranteed in the Albanian Constitution.<sup>122</sup> This right can be exercised in a variety of ways, including through the establishment of organisations following public benefit and non-profit goals.

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<sup>122</sup> Article 46 of the Constitution of the Republic of Albania as adopted by Law no. 8417, date 21.10.1998 “Constitution of the Republic of Albania”, as amended (published in the Official Journal no. 28, December 1998, at [www.qpz.gov.al](http://www.qpz.gov.al))

The Albanian Civil Code (“ACC”), as amended, and the Law No. 8788, date 07.05.2001 “On not-for-profit organisations” (“NPO Law”), as amended, govern the establishment<sup>123</sup> and operation of not-for-profit organisations in Albania.

Pursuant to the above legislation, three types of NPOs may be established in Albania, namely *associations, foundations and centres*.<sup>124</sup> For the purpose of this paper, the legal requirements for the establishment and operation of foundations in Albania are explained by looking at the way how the main features<sup>125</sup> defining a foundation are regulated pursuant to the Albanian legislation on not-for-profit organisations. These main features include the following:

- 1) Foundations as non-membership based organisations established following an original deed;
- 2) Foundations as private and non-governmental entities, as well as self-governing entities with separate legal personality;
- 3) Foundations as non-profit-distributing entities; and
- 4) Foundations as entities serving public benefit purposes.

## **2.1 Foundations as non-membership based organisations established following an original deed**

According to Albanian law, foundations are legal persons without membership established to pursue lawful goals by utilising their property for the common good and in the interest of the public.<sup>126</sup> They may be established by one or more physical or legal persons, either *inter vivos* or *mortis causa*. A person wishing to establish a foundation needs to fulfil three requirements before submitting a request to have the foundation registered with the competent registration authority: i) the creation of a foundation deed; ii) the creation of the foundation’s statutes; and iii) founding assets.

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<sup>123</sup> The term “establishment” in this context implies the founding and registration of the foundation with the competent authority for the purposes of obtaining legal personality.

<sup>124</sup> Article 2 para. 3 of the NPO Law. Foundations and centres are non-membership organisations. The difference between a foundation and a centre is not clear in the Albanian legislation. However, it is understood that a centre carries a more limited and focused activity than a foundation.

<sup>125</sup> Reference is made here to the five characteristics of a public benefit foundation as defined in the Annex G to the Final Report of the Feasibility Study on a European Foundation Statute launched by the European Commission in 2007 and published in 16 February 2009. For more details on the Feasibility Study see [http://ec.europa.eu/internal\\_market/company/docs/eufoundation/feasibilitystudy\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/eufoundation/feasibilitystudy_en.pdf) (“Feasibility Study 2009”).

<sup>126</sup> Article 54 of the ACC

If a foundation is created *inter vivos*, the ACC requires that the foundation deed be made in written in the form of a public deed by a notary public. Whereas if a foundation is established *mortis causa* the legally required form for a testament is accepted as a foundation deed.<sup>127</sup>

Details required to be contained in the foundation deed include the foundation's goal and object of activities, name of foundation and identity of founder/s, whether the foundation is established for a limited or unlimited period of time, as well as the source and the value of assets necessary for the fulfilment of the foundation's goals.

The foundation's statutes or charter is the main documents setting out in detail the internal organisational structure, the organisation's governing and executive bodies and their competencies, the procedure for amending the statutes and the foundation deed, as well as the procedure for the transformation or liquidation of the organisation. Both the foundation deed and the statutes have to be signed by the founder or founders and be made before a notary public.

The third requirement for establishing a foundation is the assets with which a foundation is endowed in order to be able to fulfil its statutory goal. Neither the ACC nor the NPO Law prescribe a specific amount as to the value of the assets. Article 16 of the NPO Law requires only that the foundation's deed should state the value of the necessary assets for the fulfilment of the organisation's goal. However, courts in Albania have accepted as a minimum value of assets for the establishment of a foundation a value equal to 100.000 ALL (Albanian Lek) or approximately 770 Euro<sup>128</sup> by referring to the amount of minimum capital that was required to be subscribed by a private limited company before commencing business operations in Albania. Such reference is now useless due to the new Albanian company law<sup>129</sup> which set the amount of minimum capital for a private limited company to 100 ALL or approximately 0,77 Euro. Nevertheless, despite the new requirements for commercial companies regarding minimum capital, the unofficial level of 100.000 ALL as a minimum value of assets for the establishment of a foundation has not changed. Further, the Albanian legislation on foundations does not prescribe capital maintenance rules regarding the assets of the foundations. This can be explained with the fact that foundations are subject to *non-distribution* constraints, and therefore capital maintenance rules would be unnecessary.

Subject to the fulfilment of the three requirements explained above, the establishment (including registration) of a foundation in Albania is finally effectuated by the decision of a sole judge in the Court of First Instance in the Judicial District of Tirana. Registration of founda-

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<sup>127</sup> Article 55 of the ACC

<sup>128</sup> Exchange rate as of 24.06.2009: 1 Euro = 129.85 ALL ([www.bankofalbania.org](http://www.bankofalbania.org))

<sup>129</sup> Article 70 of Law no.9901, date 14.04.2008 "On Traders and Commercial Companies"

tions for the purpose of gaining legal personality is centralised and take place only in this court. However, the authority registering foundations is not also the authority supervising foundations' activities. Supervision of a foundation's activities is done by the state bodies or institutions which regulate or supervise the activities in which a foundation is engaged.

## **2.2 Foundations as private non-governmental entities, as well as self-governing entities with separate legal personality**

Foundations are private legal persons, which gain legal personality, separate from that of its owner or founder, upon registration with the competent authority.<sup>130</sup> The separate legal personality of foundations is a consequence of their organisational independence, and it includes the full capacity of foundations to engage in transactions for taking over rights and obligations as well as the legal privilege of limited liability. Foundations are liable for damages up to the amount or value of their assets.<sup>131</sup>

Foundations are structurally and institutionally separate from government or governmental institutions. They may be established by governments, but nevertheless they enjoy separate legal personality from the government and are managed by their internally set up structures. As such, the government is not liable to cover liabilities of foundations or *vice versa*.<sup>132</sup>

Further, foundations are managed by their own governing bodies whose activities and competencies are stipulated in the foundation' statutes. The governing bodies, namely the decision-making and the executive bodies of the foundation, are to act in the interest of the organisation and for the fulfilment of the statutory goals. The corporate governance rules and internal organisational procedures of the foundation are set out in the statutes and the governing bodies are to act and make decisions respecting these rules and procedures. Members of the governing bodies enjoy autonomy when making decisions, but the primary goal should be the fulfilment of the statutory goals of the organisation.

## **2.3 Foundations as non-profit-distributing entities**

Foundations in Albania may not carry out "for-profit activities".<sup>133</sup> Article 56/1 of the ACC does not give any indication of what is to be considered "for-profit activities". However the Law on NPOs defines the opposite term, namely "non-profit activities" to mean "any economic or non-economic activity subject to the condition that incomes or properties of

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<sup>130</sup> Article 26 of the ACC

<sup>131</sup> Article 32 of ACC

<sup>132</sup> Article 33 of ACC

<sup>133</sup> Article 56/1 of the ACC

not-for-profit organisations, if available, are to be used only for the realisation of goals as described in the statutes of the organisation.”<sup>134</sup> The principle of the *non-distribution of profits*, which constitutes one of the main pillars of the identity of NPOs, implies that income and/or properties, resulting from economic as well as non-economic activities of the organisation, are not to be distributed in any way or form neither to members of the organisation or of the governing bodies, nor to the organisation’s employees.<sup>135</sup> Nonetheless, the organisation may use its financial means to meet obligations in the form of salaries, remuneration as well as other payments that derive from employment and/or similar contracts.<sup>136</sup>

Under the NPO Law, foundations may engage in economic activities without having to establish a separate legal vehicle in the form of a commercial company.<sup>137</sup> However, neither the NPO Law, nor any other piece of legislation give a definition on “economic activity”. From the reading of the Albanian VAT Law<sup>138</sup> it is understood that the carrying out of commercial activities, such as the taxable supply of goods and services shall constitute “economic activities”. Yet, it is not clear from the text of the law whether the supply of goods and services has to be *active, frequent* or *continued* in order to be considered “commercial activity” and therefore also “economic activity”, or would also an *irregular, isolated* or *occasional* sale of post-cards during the Christmas season be considered “commercial” and therefore “economic”. There have however been efforts by legal scholars to define what should be considered “economic activity” in order to distinguish them from activities, which although “economic” in nature, i.e. generating profits, cannot be considered “economic activity” for tax purposes. Thus, “economic activity” is defined by some authors as “any *active* commercial or business activity pursued on a *permanent* and *regular* basis”.<sup>139</sup> Some other authors define “economic activity” as “*regularly* pursued trade or business involving the sale of goods or services and not involving activities excluded under some distinct tradition”.<sup>140</sup> In the Feasibility Study 2009, “economic activity” is “where a trader provides goods or services on a *continuing* basis in return for valuable consideration on an economic basis”.<sup>141</sup> All definitions mentioned above point to the aspect of *regularity, continuity* or *activeness* of a trade or business activity in order to be considered “economic activity” for taxation matters. In this sense, it would have served to the correct interpretation of the NPO Law and other taxation laws in Albania if the lawmaker had made a clear reference to the three aspects of “economic activity” when legis-

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<sup>134</sup> Article 2, para.4 of the NPO Law

<sup>135</sup> Article 35. para. 3 of the NPO Law

<sup>136</sup> Article 35, para.2 of the NPO Law

<sup>137</sup> Article 36 of the NPO Law

<sup>138</sup> Article 17 of Law no.7928, date 27.04.1995 “On Value-Added Tax”, as amended (“VAT Law”)

<sup>139</sup> Ibrahim *et al*, *Komentari: Ligjet për Organizatat Jofitimprurëse*, (2003), pp.134-135

<sup>140</sup> International Centre for Non-for-Profit Law, “Economic Activities of Non-for-Profit Organisations” in *Regulating Civil Society*, Conference Report (Budapest, 1996), pp.6-7

<sup>141</sup> Feasibility Study 2009, *supra*, note 6, p.86

lating on the issue of economic activities pursued by NPOs. The ambiguity of what is to be considered “economic activity” may allow scope for misinterpretation of the law and therefore unfair treatment of NPOs.

Engagement in economic activities by foundations is however not without limitations. Article 36, para.2 of the NPO Law sets out four limitations that NPOs must observe when pursuing economic activities:

i) The activity has to be related to the statutory goals of the NPO: This requirement lays down the *relatedness* principle, meaning that an NPO may not pursue any economic activity that it sees fit, but rather economic activities which relate to the statutory goals and serve their fulfilment. For example, an organisation promoting the protection of human rights may not engage in fishing activities, because this activity, in the view of the NPO Law, would be considered unrelated to the statutory goals of the organisation.

ii) The activity has to be declared as a source of income: The *related* economic activity must be stated in the statutes of the organisation as a source of income. This condition apparently serves to the growth of transparency and to the avoidance of abuse with the legal form of an organisation for unlawful purposes or tax evasion.

iii) The activity shall not be the primary purpose of the NPO: NPOs are established and operated *primarily* for purposes other than private gain. In this view, economic activities should not be the primary purpose of the main activity of NPOs, but rather incidental or auxiliary activity.

iv) Incomes from economic activities are to support statutory goals: This condition goes hand-in-hand with the *non-distribution* principle. Should incomes be generated through economic activities pursued by NPOs, they should be used solely to support the fulfilment or achievement of the statutory goals of the organisation.

Thus, at a very basic level, the ability of NPOs in Albania to act as *for-profit* organisations is limited by the laws governing their registration and operation, which require not only that they be organised as *not-for-profit* organisations as defined by law, but also that they comply with the *non-distribution* principle. Compliance with the *non-distribution* principle is one of the key elements in the Albanian law for determining whether an organisation is for- or not-for-profit.

This principle implies that all profits, derived from economic or non-economic activities, must be retained to support NPO's activities, and may not be distributed as such to any person, except in the form of *reasonable* salaries or similar payments. Thus the Albanian law permits NPOs to engage in and earn income from economic activities, but imposes the limitation that the organisations use the income from economic activities to support their statutory goals.

## 2.4 Foundations as entities serving public benefit purposes

As already stated in section 2.1 above, foundations are private organisations serving public purpose. According to the ACC, the lawful goals or purposes of a foundation have to aim at the realisation of the common good and public interest.<sup>142</sup> The concept of 'the common good and public interest' implies activities that support i.a. the development of spiritual and humanitarian values, the protection of human life and health, activities that provide public and social services as well as help and assistance in the event of disasters, activities that protect the environment and promote its further development, activities that support and develop cultural traditions, education, science, sports, as well as any other activity that furthers public interests.<sup>143</sup> This definition includes activities<sup>144</sup> that are typically characterized as 'publicly beneficial'.<sup>145</sup> In this view, private or family foundations may not be established pursuant to Albania law because the "public purpose" concept implies that a foundation engages itself in the realisation of the common good and interest of a broad category of persons without setting apart a limited or narrowly defined group or category of persons. Although the Albanian law does not specify how large, in terms of numbers, should the "public" be, it is understood that the public should be more just the members of a family or a close circle of beneficiaries.

To summarize, foundations in Albania share many legal similarities and features with foundations in the EU.<sup>146</sup> Some of these similarities and features are: 1) foundations have separate legal personality from that of their owners or founders, and possess legal capacity to take over rights and obligations and carry out legal transactions related to their goals and activities; 2) foundations are non-membership organisations and it is their founder or owner who deter-

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<sup>142</sup> Article 54 of the ACC

<sup>143</sup> Article 2, para.6 of the NPO Law

<sup>144</sup> See Moore *et al* "A Comparative Overview of Public Benefit Status in Europe" (2008) 11 International Journal of Not-for-Profit Law 1, p. 11. ("Moore *et al*, 2008")

<sup>145</sup> However, as it will be shown below, the concept of 'public benefit' found in the Albanian legislation on the value added tax is much more limited and includes a very limited number of activities from those included in the concept of the "common good and in the interest of the public". Therefore, these two concepts as defined in the Albanian legislation should not be regarded as synonym concepts.

<sup>146</sup> See legal features and similarities shared by foundations established on the Member States as described in the Feasibility Study 2009, *supra*, note 6, p.103

mines the foundation's goals and statutes; 3) the procedure of their establishment requires the production of a foundation deed and statutes, as well as necessary assets for the fulfilment of the foundation's statutory goals; 4) they are equipped with the autonomy and necessary organs to self-govern and are subject to supervision by state authorities; 5) their goals aim the achievement of the common good and public interest; 6) foundations may engage in economic activities which do not constitute the primary purpose of the organisation, but are rather ancillary to the foundation main goal. Any income generated from such activities may not be distributed to the founder, owners or members of the governing bodies, except in the form of reasonable salaries and similar compensations. The non-distribution of profit principle implies that incomes of the organisation have to be applied to the foundation's basic mission.

### **3 VAT treatment of NPOs**

#### **3.1 Introduction into the tax system in Albania**

Tax legislation in Albania consists of international treaties on the field of taxation, tax laws as well as other related legal acts issued for the implementation of tax laws and treaties. Taxes and duties in Albania are national and local. National taxes and duties include the value added tax, income and profit tax, the excise tax, etc., whereas local tax and duties include i.a. tax on immovable property or buildings and tax on small business.

The collection of taxes and duties in Albania is based partly on the mechanism of "withholding at the source", and partly on the mechanism of "self-declaration".

All persons, physical or legal, performing economic activities in Albania, generating or earning incomes from the supply of goods or services are obliged to register with tax authorities and pay tax accordingly. Natural persons are subject to withholding tax on incomes through employment, dividends, interests and other similar types of income distributions. Other fees and duties for services received by natural or legal persons are subject to payment at the time the service is rendered.

#### **3.2 General overview of tax treatment of NPOs in Albania**

NPOs in Albania, as any other type of legal persons, either for-profit or not-for-profit, are subject to taxes and duties in accordance with the Albanian tax legislation. NPOs are generally required to register with tax authorities. Upon registration, NPOs receive a unique identi-

fication number which they can refer to when paying taxes. NPOs are subject to national and local taxes, and because of their “not-for-profit” nature, they may claim tax exemptions subject to the fulfilment of conditions specified in the law. Some of the taxes NPOs are subject to include:

#### *Profit tax on income from business activities*

As already explained above, the NPO Law provides that a foundation may engage in economic activities with the view to fulfil the goal and object of its activities, as well as to manage and maintain its property. However, economic activities may not be the organisation’s primary purpose. The types of activities in which the organisation may engage is generally not limited as long as it complies with the organisation’s statutory goals, it has been registered with the competent authorities and required permissions or licenses have been obtained. Pursuant to the Income Tax Law, incomes from business activities are subject to profit tax at a current level of ten percent.<sup>147</sup> The law provides however for the exemption of certain items of income from the profit tax. Thus foundations engaged *only* in religious, humanitarian, charitable, educational and scientific activities are exempted from profit tax provided that their property or profits are not used for the benefit of their founders or members.<sup>148</sup> Thus partial exemption is granted for those items of income which are effectively generated by entrepreneurial activities of a public benefit nature carried out by foundations.

#### *Tax on incomes from passive investments*

Foundations are permitted under the NPO Law to earn income from the investment and/or management of their assets subject to the use of such incomes for the realization of the statutory goals and for asset maintenance. However, income from dividends, bank interests, as well as income from copyright and intellectual property, leases and rents are considered as taxable income for the purposes of the Income Tax Law and are taxed with a rate of ten percent.

#### *Tax on immovable property and property transfers*

Not-for-profit organisations in Albania are also subject to tax on immovable property, including land or premises. This is a local tax and varies on the location and purpose of use of the property. Under the current Law on Local Taxes<sup>149</sup>, only a very limited number of entities are exempted from the payment of the tax on immovable property, among which are religious communities or organisations. Thus, if NPOs are engaged in religious activities they may

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<sup>147</sup> Article 28 of Law no.8438, date 28.12.1998 “On income tax”, as amended (published in the Official Journal no. 32, January 1999, at [www.qpz.gov.al](http://www.qpz.gov.al)). (“Income Tax Law”)

<sup>148</sup> Article 18 of Income Tax Law

<sup>149</sup> Article 22 of the Law no. 9632, date 30.10.2006 “On local taxes”, as amended (published in the Official Journal no. 123, November 2006, at [www.qpz.gov.al](http://www.qpz.gov.al)) (“Law on Local Taxes”)

claim exemption from the immovable property tax. In any other case, NPOs are subject to the standard tax rate.

Regarding tax on the transfer of immovable property, any person donating immovable property directly to an NPO is exempted from the tax on property transfers when the donation is related to those activities of an NPO that are not-for-profit. The same exemption applies in case of property donations among NPOs. In case of sale of immovable property, foundations are subject to a full rate tax on property transfers which currently stands at a level of ten percent of the difference between the sale and the purchase price of the property.

#### *Other taxes and exemptions*

Foundations are also subject to the payment of social and health insurance contributions for their employees.<sup>150</sup>

Apart from exemptions explained above, foundations are also exempted from tax on incomes in the form donations and membership fees<sup>151</sup> as well as from custom taxes on the import of goods used for humanitarian or charitable purposes and for that part of their activities which is not-for-profit.<sup>152</sup>

### **3.3 VAT system in Albania and the position of NPOs in the system**

The VAT treatment of physical and legal persons subject to the value added tax is primarily regulated by the VAT Law as well as other sub-legal acts issued pursuant to the law.

According to the VAT Law the value added tax is a general, broadly based consumption tax levied on the value added to goods and services supplied against *consideration in money or in kind*. It applies more or less to all goods and services that are bought and sold for consumption in a country. Therefore, goods which are sold for export or services which are sold to customers abroad are normally not subject to VAT. As a corollary to that, imports are taxed at

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<sup>150</sup> The level of these contributions is respectively fifteen and 1.7 percent of the gross salary of the employee. See legislation on health and social insurance in Albania.

<sup>151</sup> Article 40 of the NPO Law. However, when donations are given upon the condition that the donor receive back a consideration in money or in kind, or services (e.g. advertisement services) these donations will be considered as taxable supplies and will be subject to value added tax at full rate. See Paragraph 8.5. of Instruction no.17, date 13.05.2008 "On Value Added Tax", as amended, ("VAT Instruction") published in the Official Journal no. 64, May 2008 at [www.qpz.gov.al](http://www.qpz.gov.al).

<sup>152</sup> Exemption from custom taxes in imports is subject to a permission or exemption statement issued by the Director General of the Customs Services.

full rate to keep the system fair for producers of the (importing) country so that they can compete on equal terms with suppliers situated outside the importing country.

Subject to the VAT are all physical and legal persons independently carrying out economic activities, the yearly turnover of which exceeds 8 million ALL.<sup>153</sup> Further, all persons engaged in the importing of goods are also subject to VAT regardless of the yearly turnover.<sup>154</sup> Therefore, also NPOs engaged in economic activities (exceeding the threshold of the yearly turnover) or engaged in the importation of goods are obliged to register with tax authorities for that part of the activities which is VAT taxable. Upon registration, taxable persons obtain a unique identification number for VAT purposes. A person, whose economic activity does not exceed the threshold, does not need to register with tax authorities for the purpose of paying VAT and that person does not have to charge VAT on his sales. Nevertheless, any person wishing to register for the payment of VAT may opt voluntarily to do so.

The VAT is charged as a percentage of the price, with the actual tax burden visible at each stage of the production and distribution chain through the *invoice credit method*. The VAT is collected fractionally via a system of partial payments whereby taxable persons (i.e. VAT-registered persons) deduct from the VAT they have collected the amount of tax they have paid to other taxable persons on purchases for their business activities. As in other countries applying the tax, VAT is an indirect tax on *final consumers* who pay the tax as part of the price for the goods or services purchased.

The VAT system in Albania is in principle based on the *destination* approach, in that it requires that the VAT paid on supplies of goods be determined by the rate levied in the jurisdiction of its final delivery or consumption, whereas the VAT on the supply of services is paid at the place where the service has been provided.<sup>155</sup>

The taxable base for the payment of VAT is the yearly turnover of taxable supplies, whereas for imported goods, the taxable base is the customs value of the goods including custom duties.<sup>156</sup> Under the current VAT regime, there are two VAT rates applicable in Albania:

- i) twenty percent standard rate applied to domestic transactions and on imported goods;
- ii) zero percent rate applied to exports and some other supplies explicitly listed in the law.<sup>157</sup>

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<sup>153</sup> Approximately 62,000 Euro with an exchange rate of €1=129.85 ALL as of 10.05.2009 ([www.bankofalbania.org](http://www.bankofalbania.org))

<sup>154</sup> Article 1 of the VAT Law

<sup>155</sup> *Ibid.* Articles 14 and 15. Different rules apply however for the supply of certain services, such as for example the supply of services related to immovable property.

<sup>156</sup> *Ibid.* Article 26

The VAT Law provides also for tax exemptions for a category of supplies including i.a. supply of financial services, postal services, supply of newspapers, magazines and books as well as a limited number of supplies by NPOs, which are further elaborated below. The current law provides also for the possibility of tax crediting when the *input* VAT paid by the taxable person on the purchase of supplies is higher than the *output* VAT collected on the sale of supplies.<sup>158</sup> Yet, the crediting of VAT remains a complicated and difficult process in Albania.<sup>159</sup>

The VAT treatment of NPOs has been a matter of considerable debate in Albania after the introduction of the new amendments to the VAT Law during 2007-2008. These amendments limited considerably the kind of activities performed by NPOs which would be exempted from the value added tax subject to the obtainment of the public benefit status.<sup>160</sup> As already mentioned above, NPOs are considered as taxable persons for the purpose of VAT payment, when they conduct economic activities with a turnover exceeding a specified threshold or when they import goods.

For the purposes of VAT payment, an NPO is defined in general terms as a society, institution, association or other organisation which is organised and operated according to the NPO Law, which is not established for the generation of profits or incomes to the benefit of its members, and whose by-laws do not allow distribution of profit or property to its members. This definition is a summary of the definition used in the NPO Law as well as of the principles related to NPOs' organisation and operation contained therein.<sup>161</sup>

NPOs are subject to the standard VAT rate applicable when supplying goods and/or services which are not VAT exempted or which are supplied at full market price. The VAT Law amendments in 2008<sup>162</sup> introduced for the first time the status of *public benefit* for not-for-profit organisations, thus covering also foundations.

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<sup>157</sup> *Ibid.* Article 31

<sup>158</sup> *Ibid.* Article 33

<sup>159</sup> Partners Albania, *Manaxhimi Financiar i OJF-ve – Konceptet Bazë*, (2008), p. 49

<sup>160</sup> Prior to amendments to the VAT Law during 2007-2008, all educational services supplied by public or private organisations, including NPOs, were exempted from VAT. Further, also the supply of goods or services for medical and dental treatment, or for the protection or care of children or elderly people, as well as goods or services for cultural or sports activities were exempted from the VAT when they were offered without charge or for a price lower than what a for-profit supplier would charge.

<sup>161</sup> Paragraph 8.5. of VAT Instruction, *supra*, note 32

<sup>162</sup> VAT Law, *supra*, note 19

### 3.4 The public-benefit status for the purposes of VAT exemption

As private organisations serving public purposes foundations typically produce public goods which are needed by the whole society or by a segment of it. “By addressing social needs they complement or supplement obligations of the state or provide services that are under-supplied.”<sup>163</sup> Therefore, the rationale for introducing “public benefit” status rests with the desire of the state to support particular activities which are to the benefit of the public. The type of particular activities for which public benefit status is granted depends on the needs of the particular country or on the priorities of a particular government. When public benefit status is granted, governments wish to ensure that funds supplied by the government, especially through tax exemptions are channelled to activities that serve the public benefit.

Whereas according to NPO Law, all NPOs must be established with the view to pursue goals *for the common good and in the interest of the public*, i.e. public benefit goals, the granting of the specific status of *public benefit* is only a recent development in the legal environment in which NPOs operate in Albania. The public benefit status was regarded by the Albanian lawmaker as an issue of fiscal regulation and therefore it was regulated within the legal framework of the value added tax.<sup>164</sup> Thus fiscal benefits are linked to the publicly beneficial activities carried out by organisations holding public benefit status. The type of activities that are considered “public benefit” according to Albanian law are set out in the VAT Regulation.<sup>165</sup>

According to the Albanian VAT Law and VAT Regulation, recognising the public benefit nature of an organisation indicates that an NPO has obtained a particular status, i.e. the public benefit status, and not that an NPO has been re-established as a separate legal person with a particular legal form. The obtainment of the public benefit status is *voluntary*.<sup>166</sup> This implies that the right of persons to establish and operate an NPO without having such status is not affected. NPOs wishing to obtain exemption from the payment of VAT for the supply of particular goods and services may apply to be granted the public benefit status. This status is granted subject to the fulfilment of *four* conditions which are the following:

- i) fulfilment of the *principle purpose test*;
- ii) supply of qualifying activities for public benefit status;
- iii) circle of potential beneficiaries;

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<sup>163</sup> Moore *et al*, 2008, p.7, *supra*, note 25

<sup>164</sup> Law no.10003, date 06.10.2008 “On some changes and amendments to Law no.7928, date 27.04.1995 “On the Value Added Tax” as amended” published in the Official Journal no. 164, December 2008, at [www.qpz.gov.al](http://www.qpz.gov.al))

<sup>165</sup> Decision of the Council of Ministers no. 1679, date 24.12.2008 “On the criteria and procedures for determining the public benefit status of non-for-profit organisations.” (“VAT Regulation”) (published in the Official Journal no. 203, December 2008, at [www.qpz.gov.al](http://www.qpz.gov.al))

<sup>166</sup> *Ibid.* paragraph 1

iv) financial requirements for the public benefit activities carried out.

*i) Fulfilment of principle purpose test*

The principle purpose test refers to the extent to which an NPO must be organised and operated for public benefit purposes. According to the VAT Regulation, an NPO wishing to obtain public benefit status must be organised and structured *principally* to engage in specific types of activities, which for purposes of VAT exemption are considered as public benefit activities.<sup>167</sup> Although it is not clear from the provisions of the law what does the phrase “organised and structured principally to engage in public benefit activities” mean, legal literature on this issue suggests that “an organisation is “organised” principally for public benefit when the purposes and activities contained in its governing documents (i.e. act of founding and statutes) limit it to engaging principally in public benefit activities. An organisation is “structured” or “operated” principally for public benefit when its actual activities are principally public benefit.”<sup>168</sup> This however does not prohibit NPOs to engage in activities which are not considered public benefit for VAT purposes. Setting this aside, it remains unclear how will the satisfaction of the “*principle purpose*” be measured by tax authorities in Albania when assessing the activities of an NPO applying for public benefit status. Will the satisfaction of the test depend on how many percent of the activities of an NPO are public benefit activities? Will the satisfaction of the test depend on the number of employees of an NPO engaged in the public benefit activities vis-à-vis the total number of employees of the NPO, or is the portion of budget that public benefit activities take vis-à-vis the total budget of the NPO the decisive factor to determine that the *principle purpose test* has been satisfied?

It is necessary that tax authorities define clear measuring indicators when determining whether an NPO is principally engaged in public benefit activities, although the assessment might be done on a case-by-case basis. Defining clear measuring indicators would help in the consistent application of the law and would avoid arbitrary or discriminatory decisions by tax authorities. It is recommended that for determining whether the *principle purpose* test is satisfied particular attention is given to a combination of factors, such as to the organisation’s statutes defining the goals and object of activities of the foundation to understand the portion or percentage of activities that are public benefit activities, as well as to the portion of assets of an organisation dedicated to public benefit activities.

*ii) Supply of qualifying activities for public benefit status*

The VAT Regulation specifies three types of activities that are to be considered as public benefit activities for the purposes of VAT exemption: namely i) education; ii) health care, and

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<sup>167</sup> *Ibid.* paragraph 1.1

<sup>168</sup> Moore *et al.*, p.15, *supra*, note 25

iii) economical development to the benefit of persons in need.<sup>169</sup> There is no clear explanation why the lawmaker decided to include only these three activities and leave out of the scope of public benefit a large number of activities, such as promotion of civil or human rights, environmental protection, consumer protection, protection of children, youth and disadvantaged individuals, promotion of democracy and much more, which are as beneficial to the public as the three specified activities listed above. Prior to the amendments made to the VAT Law in 2007 – 2008, the number of exempted activities was slightly bigger.<sup>170</sup> The limited number of activities that are considered “public benefit” activities pursuant to the VAT Regulation, has created a dichotomy of public benefit activities as recognised in the NPO Law (a broad category of activities) and public benefit activities as recognised in the VAT Regulation (a rather limited category of activities). As a result, only a limited number of public benefit activities are qualified for VAT exemption.

Further, the list of public benefit activities is exhaustive and restrictive, in that the VAT Law or the VAT Regulation do not contain any “catch all” phrase such as “as well as other activities which are deemed to supplement or complement the specified activities”. The concept of public benefit activities as regulated under the VAT legislation is thus inflexible and discriminates many other activities which are important to the society and in the same time publicly beneficial.

### *iii) Circle of potential beneficiaries*

Apart from the two criteria above, for an NPO to obtain the public benefit status it “should offer important services<sup>171</sup> (related to the education and health care activities) to persons or group of persons in need.”<sup>172</sup> Following this requirement, the scope of what is considered “public” is limited for VAT exemption purposes. Despite the limitation, the target group is considered large enough to constitute “public” in compliance with the legal requirements that an NPO should serve public purposes.

With respect to the requirement that the service provided to the target group be “important services” the VAT Regulation does not contain any clarification or an indication as to what is

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<sup>169</sup> Paragraph 1.1. of VAT Regulation, *supra*, note 46

<sup>170</sup> Changes to the VAT Law during 2007 – 2008 abrogated a provision which exempted the supply of educational services by private or public organisation, for-profit and not-for-profit, from the VAT payment, thus obliging education organisations to either charge the VAT to their students or cover the VAT from their own expenditures.

<sup>171</sup> Paragraph 1.1., *supra*, note 46

<sup>172</sup> According to Law no.9355, date 10.03.2005 “On social assistance and services”, “persons or groups of persons in need” are those who are not able to ensure the fulfilment of living basic needs, the development of personal abilities and capabilities as well as the protection of personal integrity due to limited economical, physical, psychological and social possibilities.

to be considered “important” service in the field of education or health care. Will the importance of the service provided depend on how serious the health problem is, or is the importance depending on how much, in terms of expenditures, does the service cost to the organisation? For some persons, even some basic consultation services on personal hygiene could be an “important” service, whereas for some others, a complicated heart surgery is an important service. What is then the decisive factor for determining whether a service is “important” or not?

Regarding engagement in activities of economic development, these type of activities are to be considered as publicly beneficial *only* if they are *primarily carried out* to the benefit of persons or group of persons in need. Also this provision lacks clarity as to what does the expression “to the benefit of” mean. In order for these activities to be considered as publicly beneficial, should they be *only* intermediated by the NPOs, i.e. by linking persons in need who can produce goods for sale with potential buyers, or could an NPO carry out the economic activity itself and distribute the proceeds from the business to the persons in need? If the second option is also possible, how can this be reconciled with the general prohibition on NPOs to distribute profits other than in the form of salaries or of similar compensations? How about profit tax on incomes generated by economic activities carried out by NPOs to the benefit of persons in need? Is the NPO obliged to pay such tax even though the activity is carried out *to the benefit* of persons in need?

The vagueness of the legal formulations, where considerable freedom is given to the tax officer to interpret the meaning of the legal provisions, causes more confusion and probably brings more problems than solutions to the delicate tax environment of NPOs in Albania.

*iv) Financial requirements for the public benefit activities carried out*

Last but not less important is the financial criterion, which is related to the price with which public benefit services are to be offered to potential beneficiaries. The VAT Regulation requires that for an NPO to obtain public benefit status it should supply the services and/or goods either without charge to the target beneficiaries or for a price that is *clearly* (understand *obviously*) lower than the market price for that particular service or good.<sup>173</sup> A *clearly* lower price is when services and goods are offered for a price which is at least fifty percent lower than the market price (for that service or good) in the area where the services and goods are offered.<sup>174</sup> The provision goes further to require that not only should the supplies be offered with a considerably lower price, but also that incomes generated by the provision of supplies

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<sup>173</sup> Paragraphs 1.1. – 1.2., *supra*, note 46

<sup>174</sup> *Ibid.*

should not cover more than fifty percent of the related expenditures. The rest of the expenditures should be covered by the NPO's own funds.<sup>175</sup>

It is believed that the introduction of this last requirement complicates further the obtainment of the public benefit status. The problem that NPOs and tax officers will immediately face is the determination of the market price for the services and goods offered. The reason for that lies in the fact that often NPOs provide services which either are economically not feasible (because NPOs are motivated by *selflessness* and promote the common good which often cannot be measured in monetary means) therefore impeding the emergence of market producers, or they provide services and goods which due to lack of political support or will keep governments from becoming involved.<sup>176</sup>

When determining the “market value” of the services and goods supplied, the VAT Regulation requires that it be done according to an instruction issued by the Minister of Finance.<sup>177</sup> This instruction however deals with the determination of the market price of goods and services for which there is a market, but might not be helpful in determining the “market” price of goods or services which either cannot be measured in monetary means or are not usually supplied commercially because from a business point of view it would not be economically feasible. Therefore, it is not clear what methodology would the tax authorities use to determine the market price in these cases.

Pursuant to the VAT Law and Regulation, the public benefit status is granted by the Minister of Finance subject to the fulfilment by the organisation of the four criteria above as well as subject to the submission of further documentation showing i.a. evidence or details of public benefit activities carried out or intended to be carried out, target beneficiaries, evidence that the organisation is not insolvent or under liquidation, proof that the organisation has met all tax obligations, and to complicate matters further, proof that it does not and/or it has not been involved in political campaigns or supported financially or otherwise political parties or persons running for political positions, although there is no official state body in Albania that can issue such proof.

Before the status is granted, tax authorities are authorized to verify the accuracy of the information provided by the organisation as well as verify the whole activity of the organisation, and not only the public benefit activities. Once granted, the public status is valid for three

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<sup>175</sup> *Ibid.* Paragraph 1.3

<sup>176</sup> United Nations, *Handbook on Non-Profit Institutions in the System of National Accounts*, (2003) p. 4

<sup>177</sup> Instruction no.24, date 02.09.2008 “On tax procedures in the Republic of Albania” issued by the Minister of Finance (published in the Official Journal no. 64, May 2008, at [www.qpz.gov.al](http://www.qpz.gov.al))

years. The status may be withdrawn by the Minister of Finance when the organisation breaches the rules set out in the VAT Regulation as well as rules set out in other tax laws.

To summarize, one can say that although the public benefit status was introduced as a mechanism to facilitate the work of NPOs involved in public benefit activities, the current legislation regulating the granting of this status contains ambiguous provisions that give to the public benefit concept a very restrictive meaning and seem to bring more confusion rather than clarity to the process.

Moreover, the number of activities considered as public benefit for the purposes of tax exemptions is very limited (including only education, health care and economic activities to the benefit of persons in need) and inflexible. The VAT Regulation leaves out of the concept of “public benefit” a considerable number of activities which are as publicly beneficial as the three ones cited above, and it does not contain any provision stating that the specified list of public benefit activities is subject to regular revision considering the social and other conditions of the country.

Additionally, the law does not contain clear indications or criteria that would facilitate the objective and consistent interpretation of the legal provisions on a number of issues, such as the satisfaction of the *principal purpose test*, what are considered “important” services, as well as criteria for determining the market price for those services and goods which are not commercially supplied. As a result, a lot of leeway is allowed to tax authorities to interpret legal provisions and thus more scope for subjective and inconsistent application of the law.

### **3.5 Difficulties faced by NPOs under the Albanian VAT System**

The public benefit status is the sole mechanism available to NPOs wishing to apply for VAT exemption when supplying goods and services for consideration. When NPOs holding public benefit status provide one or more of the supplies exempted under the VAT Regulation, they do not need to charge VAT when providing the supply to their “customers”. As explained in section 3.4 above, in order to benefit from the VAT exempt benefit, supplies must be offered for a price which is clearly lower than the market price.

The list of VAT exempted supplies contained in the VAT Law and VAT Regulation is exhaustive, in that only the goods and services supplied (against a reduced price<sup>178</sup>) by organisa-

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<sup>178</sup> *Ibid.* See discussion on the financial criteria for providing public benefit supplies, i.e. for a price which is clearly lower than the market price.

tions having public benefit status may be considered VAT exempt. Other transactions by not-for-profit organizations, including provisions of the above goods and services at market or slightly under market rates, are considered activities taxable at standard rate. Despite the perceived positive legal development in allowing NPOs to apply for public benefit status, it is suggested that the number of NPOs receiving the benefit of VAT exemption under the current legal regime might be very limited. This is due not only to the difficulty related to the fulfilment of the four criteria elaborated above, but also due to the burdensome process until the status is granted.<sup>179</sup> Moreover, the status is granted by the Minister of Finances, who represents the state body highly interested in a larger tax base and a higher rate of tax collection. From the date the VAT Regulation on the granting of the public benefit status has entered into force<sup>180</sup> until the moment this is written, we are not aware of any NPO which has obtained public benefit status.<sup>181</sup>

Concerning tax benefits deriving from the public benefit status, exemption of some of the activities of NPOs from the VAT burden does not necessarily speak for the advantage of NPOs. Although the exemption option ensures that NPOs do not have to incur compliance costs<sup>182</sup> for collecting and paying over the output VAT on the goods and services they supply, unfortunately they are also unable to reimburse the input VAT paid for the goods and services they purchased. Thus, NPOs are treated as “final consumers” for the purposes of VAT payment without the possibility to refund the VAT they paid on the purchase of the product. Such exemption without the right to deduct means that either a “hidden” VAT portion will remain included in the price paid by the *real* final consumer, or the whole VAT paid on input will be borne by the NPO. NPOs generally tend to cover the VAT on their own in order to avoid shifting the burden to the targeted beneficiaries, who are often not able to pay at all for the services received. Such a situation might influence the amount, quality and sustainability of goods and services produced and provided by NPOs to their target beneficiaries.<sup>183</sup> Considerable amounts of funds so crucial to the activities of NPOs will be spent for covering VAT rather than for providing needed services to persons in need. Therefore the interests and needs

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<sup>179</sup> The list of documents that an NPO applying for public benefit status must submit contains more than 15 documents. For some of the documents, e.g. evidence that the NPO has not raised funds or conducted political campaigns for political parties, it is not clear where should they be obtained from. Prior to the granting the public benefit status by the Minister of Finances, the General Directorate of Taxes conducts a thorough investigation of the NPO’s activities applying for the status.

<sup>180</sup> Regulation entered into force on 15 January 2009

<sup>181</sup> However, this information could not be confirmed with the Ministry of Finance and the General Directorate on Taxation, despite the requests kindly sent to them for information.

<sup>182</sup> These costs related to accounting and reporting costs that NPO have to incur when being obliged to collect the output VAT. See International Center for Not-for-Profit Law, *Survey of Tax Laws Affecting Non-Governmental Organisations in Central and Eastern Europe*, (2003) (“Survey, 2003”), p. 30

<sup>183</sup> For more on the impact of VAT on production decisions see Ebrill *et al*, *The Modern VAT*, (2001) (“Ebrill *et al*, 2001”).

of the target beneficiaries might not be better served by the introduction of the public benefit status for NPOs, if the later cannot refund considerable amounts of money they spend on VAT when purchasing goods or service, which in turn they offer to their target beneficiaries for a very low price. The same problem exists also when NPOs offer their services without charge, because such supplies would fall outside the scope of the VAT Law, which applies only to goods or services supplied against consideration in money or in kind.

In contradistinction to the VAT *exemption* option, the *zero rate* option provides for a fairer treatment of NPOs. Under this option, which according to the VAT Law it applies to exports, the supplier of the goods and services will collect and pay over nothing on the zero-rated goods and services that they provide. A supplier would nevertheless have to pay the full VAT rate on purchases it makes, but it would also have the right to credit VAT paid on inputs. Applying this option would imply that NPOs are fully integrated into the VAT system and are not subject to exemptions. This option is generally considered a more beneficial option for NPOs<sup>184</sup> because on one hand NPOs would have to pay no or very little compliance costs,<sup>185</sup> and on the other hand they would not be treated as final consumers by having to bear the VAT costs for supplies which they don't consume, but supply further to persons or groups of persons in need. The amounts of money gained back from the reclaimed VAT would be further used for purposes they were first donated or raised for.

#### **4 A brief look into the treatment of NPOs under the EU VAT Directive**

Albania has already signed a Stabilisation and Association Agreement (“SAA”) with the European Communities which constitutes the path that Albania needs to follow and contains a number of obligations that Albania needs to fulfil until full membership in the European Union (“EU”). Part of the process until full membership into the EU is also the approximation of the Albanian legislation with the EU law. Article 98 of the SAA states that parties to the agreement shall establish cooperation in the field of taxation, including measures aiming at further reform of the fiscal system and the restructuring of the tax administration. In view of this obligation, it is without doubt that also the approximation of the Albanian VAT legislation with the EU VAT Law will sooner be part of the process. Although EU Law is not yet mandatory in Albania, it does nevertheless represent the model of how Albanian law is to develop. Therefore, a short evaluation of the treatment of NPOs under EU VAT Law is considered important for the purposes of this paper.

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<sup>184</sup> Survey, 2003, *supra*, note 63, p.30

<sup>185</sup> There would be no or very little compliance costs as the NPOs would charge 0 percent on the supplied goods or services.

## 4.1 The common EU VAT System

Unlike other taxation legislation, the VAT law is subject to comprehensive harmonisation at the EU level. The new EU VAT Directive, establishing the common system of the value added tax<sup>186</sup> is a recast of the EU Sixth VAT Directive and consolidates more than 25 amendments made to it over the years it without altering the substance of the legislation in force. The EU VAT system views the value added tax as a general tax on consumption levied proportionally on every stage, from production to distribution of the goods or services, until the tax is charged.<sup>187</sup>

The Directive applies to transactions carried out for consideration on the territory of a Member State by a taxable person acting out in that capacity. Taxable transactions<sup>188</sup> include in a summarized form:

- i) supplies of goods by a taxable person;
- ii) intra-Community acquisitions in a Member State of goods from another Member State;
- iii) supplies of services by a taxable person;
- iv) imports of goods from outside the EC (i.e. a third territory, or third country<sup>189</sup>).

For the purposes of VAT payment, “taxable person” shall mean any person who, independently,<sup>190</sup> carries out in any place any economic activity, whatever the purpose or results of that activity. The Directive allows Member States to broaden the group of taxable persons after consultations with the VAT Committee.<sup>191</sup>

For the purposes of the Directive, the “chargeable event”, i.e. the event which triggers the payment of the value added tax is the moment when the goods or the services are supplied.<sup>192</sup> Pursuant to the Directive, “supply of goods” shall mean the transfer of the right to dispose of

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<sup>186</sup> Council Directive 2006/112/EC on 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p.1 (“EU VAT Directive”)

<sup>187</sup> Article 1 of the EU VAT Directive

<sup>188</sup> *Ibid*, Article 2

<sup>189</sup> Third territories are stipulated in the Directive, whereas third countries refer to states or territories to which the EU Treaty is not applicable.

<sup>190</sup> The condition that the economic activity be conducted “independently” shall exclude employed persons when they are bound to an employer by a contract of employment or other legal ties creating the relationship of employer and employee.

<sup>191</sup> The VAT Committee is an advisory committee on the value added tax, which consists of representatives of the Member States and of the Commission. The VAT Committee serves as a forum for an exchange of views with respect to the interpretation of the provisions of the VAT Directive. Guidelines issued by the Committee are of consultative nature and therefore do not constitute an official interpretation of the VAT Directive or other Community Law.

<sup>192</sup> Article 63, *supra*, note 67

tangible property as owner.<sup>193</sup> By way of exclusion, any other transaction which is not defined as “supply of goods” shall be considered “supply of services”.

Regarding the place of the taxable transactions, which is important for determining the applicable rate of the VAT on the supplies provided, the Directive takes different approaches concerning the place of an *intra-Community acquisition of goods* and the place of the *supply of services*. Thus, in the case of an intra-Community acquisition of goods, the place of the transaction shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.<sup>194</sup> This approach is in line with the *destination principle*, according to which the VAT rate applicable is the VAT rate in the place of consumption of the goods. Following the recent EC Directive setting new rules as regards the place of supply of services,<sup>195</sup> for determining the place of supply of service to consumers and to business two different approaches are taken. Thus, for business-to-business supplies the new rules require the application of the *destination principle* with tax collected where the consumer is situated, whereas for business-to-consumer supply of services, the *origin principle* is applied with the place of taxation being where the supplier is situated.<sup>196</sup> The reason for the two different approaches applied is rather practical. Thus, it would be rather uncomplicated to identify a business (a taxable person) receiving taxable supplies by its unique VAT identification number which is issued in each Member State. The same cannot be said though for individual consumers, physical or natural persons, who are not obliged to obtain a unique VAT identification number.

As already mentioned above, the collection of the value added tax is made via a system which allows taxable persons to deduct from the VAT they have collected the amount of tax they have paid on inputs for purchases made for their business activities. This system allows the value added tax to remain neutral during the whole production and distribution process until it is finally charged to final consumers. The deduction of the input VAT is done through the *invoicing method*, where at every stage of the added value, an invoice is issued showing clearly the amount of VAT charged to the next taxable person receiving the supply.

The taxable amount on which the VAT is paid includes everything which constitutes consideration obtained or to be obtained by the supplier from the customer.<sup>197</sup> Pursuant to the Directive, the standard rate of VAT is to be fixed by each Member State and shall be the same for

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<sup>193</sup> *Ibid*, Article 14

<sup>194</sup> *Ibid*, Article 40

<sup>195</sup> Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services, OJ L 44, 20.02.2008, p.11 (“Supply of Services Directive”)

<sup>196</sup> Article 2 of the Supply of Services Directive

<sup>197</sup> Article 73, *supra*, note 67

the supply of goods and for the supply of services. However, the standard rate may not be less than fifteen percent until 31 December 2010, after which date the European Council will decide the new standard rate.<sup>198</sup>

The Directive allows also for the application of reduced VAT rates for some particular supplies, which were recently supplemented through a new Directive on reduced rates of VAT which became effective as of June 1<sup>st</sup>, 2009.<sup>199</sup> Member States may apply not more than two reduced rates to a category of supplies stipulated in Annex III to the VAT Directive as amended by the Reduced Rates Directive. Thus, eligible supplies for the application of reduced VAT rates include also the supply of goods and services by organisations recognised as being devoted to social wellbeing and welfare or social security, in so far as those transactions are not exempt pursuant to article 132 of the VAT Directive.<sup>200</sup> The same as with the VAT standard rate, the Member States shall fix the reduced rates applicable in their territories. However, the reduced rate shall not be lower than five percent of the taxable amount.<sup>201</sup>

Regarding exemption from the VAT, as the term suggests, the Directive provides for an extensive category of supplies of “public interest” to be sold to the final consumer without VAT being applied to the sale. The list of exempted supplies is laid down in article 132 of the Directive and includes also supplies which are typically offered by NPOs. Such supplies include hospital and medical care, supply of services and of goods closely linked to welfare and social security work, supply of services and goods closely linked to the protection of children and young persons, the provision of educational services, the supply of sport and cultural services, etc.<sup>202</sup> The Directive instructs that the above supplies be exempted when provided by bodies governed by public law. However, Member States are allowed to grant the same exemptions to bodies other than those governed by public law subject to one or more of the following conditions:

- i) *the bodies in question must not systematically aim to make a profit, must abide to the non-distribution constraint and any surpluses must be invested back into the activity;*<sup>203</sup>
- ii) *those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest in the results of the activities concerned;*<sup>204</sup>

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<sup>198</sup> *Ibid*, Articles 96-97

<sup>199</sup> Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax, OJ L 116, 9.5.2009, p.18, (“Reduced Rates Directive”)

<sup>200</sup> See no. 15 of Annex III of EU VAT Directive as amended by the Reduced Rates Directive

<sup>201</sup> Article 99, *supra*, note 67

<sup>202</sup> *Ibid*, Article 132

<sup>203</sup> *Ibid* Article 133 (a)

<sup>204</sup> *Ibid* Article 133 (b)

- iii) *prices charged by those bodies for the supplies provided must not be higher than prices approved by public authorities or, when prices are not subject to approval, than they should be lower than those charged for similar services by commercial enterprises subject to VAT;*<sup>205</sup>
- iv) *the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.*<sup>206</sup>

It is understood that these conditions are designed to apply to not-for-profit organisations, which usually offer services under the above conditions. Therefore, making use of the exemptions granted under the EU Directive should not be problematic for most of the NPOs, as long as these exemptions are not likely to cause distortion of competition and the NPOs are domestically characterised as “recognised” for the respective public purpose.<sup>207</sup> However, despite perceived advantages as regards to exemptions, NPOs face major difficulties which are related to the financial costs they have to shoulder for irretrievable VAT paid on exempted activities.

## **4.2 Difficulties faced by NPOs under the common EU VAT System**

For the purposes of VAT payment, NPOs are treated in the same way as any taxable person as long as they provide supplies which are considered “taxable” pursuant to the VAT Directive. As already mentioned above, the purpose for providing the taxable supplies, i.e. either to relieve poverty or to maximise profit, is irrelevant for the Directive. Not-for-profit organisations are not given a particular status under the Directive, although they provide services which are of public interest. Instead, as cited in the section above, the Directive has exempted certain activities, which are of public interest, from the payment of the VAT. For the purposes of this paper, the treatment of NPO under the EU VAT system is discussed only from the “exempted activities” point of view.

With respect to “exempted activities” under the common EU VAT system, as also noticed by the EU Commissioner for Taxation and Customs,<sup>208</sup> the main problem that NPOs face is irretrievability of the input VAT they pay when purchasing exempted or non-exempted supplies, which they offer to their “customers” either for consideration or without charge. In either

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<sup>205</sup> *Ibid* Article 133 (c)

<sup>206</sup> *Ibid* Article 133 (d)

<sup>207</sup> See for example Article 132 (1) (b), (g), (h), (i) of the EU VAT Directive, *supra*, note 67

<sup>208</sup> See speech by EU Commissioner for Taxation and Customs, Mr. László Kovács, “VAT for Charities – State of Play and Plans for the Future” held during an international conference on philanthropy organised by the European Charities’ Committee on VAT on 14-15 September 2005

case, NPOs are unable to deduct VAT paid on input. When NPOs provide to their “final customers” services without charge, these supplies fall out of the scope of the VAT Directive.<sup>209</sup> It is ironic that because the supplies are provided freely, NPOs have to pay a tax which cannot be reclaimed under the current VAT system. Further, also when NPOs supply exempted activities for a consideration, they are not able to deduct input VAT on their purchases, thus bearing themselves the added costs to their activities. For VAT purposes, NPOs are as a result treated as “final consumers” rather than as providers of services. In this sense, NPOs are treated less favourably than business organisations, which can pass on the costs of irrecoverable VAT to their customers often in the form of “hidden” VAT. A recent survey by the European Foundation Centre shows that the amount lost on irrecoverable VAT in recent years by 35 European foundations alone amounts to 45 million Euro on an annual basis.<sup>210</sup> Further, it is estimated that in the UK alone, charities and foundations lose approximately 570 million Euro on VAT.<sup>211</sup>

Additionally the accounting requirements pursuant to the VAT Directive seem to be more complicated for NPOs which provide a mix of taxable and exempted or non-business supplies, although the Directive<sup>212</sup> allows Member States to release taxable persons from some or all of the accounting requirements when they pursue *only* exempted supplies listed in Article 132.

Considering the difficulties faced by NPOs under the current common EU VAT system, representatives of the third sector have continuously asked for action at the EU level<sup>213</sup> to tackle the unfair burden of VAT on NPOs. Several options have been proposed by representatives of the third sector as well as of the EU Commission.<sup>214</sup> Such options include solutions within and outside of the VAT system.

Thus, ‘zero-rating’ supplies by NPOs would be a very preferable option for NPOs. Under this option, for zero-rated supplies, the NPO providing the supplies would be allowed to claim back the paid input VAT. Such a solution would lead to zero-rate supplies with no VAT remaining in the final price. Another option within the VAT system would be to abolish exemp-

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<sup>209</sup> The VAT Directive covers only supplies of goods or services for consideration.

<sup>210</sup> See EFC-ECCVAT-Charity Tax Group Information Note on VAT and Foundations “How to improve the VAT system for public-benefit foundations”, 15 May 2008, Brussels at [www.efc.be](http://www.efc.be)

<sup>211</sup> *Ibid* p.1

<sup>212</sup> Article 272, *supra*, note 68

<sup>213</sup> The problems faces by NPOs under the VAT Directive were recognised also by the EU Commission President during a meeting with representative of the European Foundation Centre in April 2009. The President stated that the Commission will conduct a study later in the 2008 “to assess the possibility of a legislative update regarding the relative rules of the VAT Directive.” See “Commission President promises to review VAT rules affecting foundations”, 30 April 2009, [www.efc.be](http://www.efc.be)

<sup>214</sup> See speech by EU Commissioner for Taxation and Customs, *supra*, note 89, p.2

tions completely (thus bringing NPOs within the VAT system) but allowing reduced rates on both input and output. In this way, NPOs would be able to charge VAT on supplies they provide, and thus also be able to deduct VAT on input. However, this option could make the rebate of VAT paid on input complicated due to difficulties that might arise when calculating input and output VAT rates.<sup>215</sup>

A further option would be to address the problem of VAT losses outside the VAT system through the establishment of VAT refund schemes at the national level of Member States. The refund schemes for compensating VAT losses, which seem a more feasible option considering the challenges that could be faced to unify political will needed to change VAT rules at the EU level, have been regarded by the EU Commission as compatible with EU legislation “as long as they are clearly separated from the VAT system itself (since under the current system, VAT can only be refunded if it is connected with taxable supplies) and the scheme does not affect own resources of the Community”.<sup>216</sup> However, the establishment of such schemes would be an individual decision of each Member State, which implies that the VAT treatment of NPOs may vary from country to country.

## 5 Evaluations and Remarks

Is it logical of governments to exempt from taxes donations to non – profit organisations just to tax later on their expenditures? Are the rules on taxation, which are usually aimed at providing fair competition between all providers of goods and services, living up to their goals, if for VAT purposes NPOs are not treated in the same way as for-profit organisations are treated? Shouldn't legal systems provide benefits and incentives to organisations who out of *selflessness* and *charity* provide services and goods to the most vulnerable and needy members of a society?

Tax treatment of NPOs in Albania is regulated through a patchwork of legal acts providing for various exemptions, exclusions but also inclusions of NPOs in the tax system. Although the establishment and management of NPOs is relatively clearly regulated through provisions of the Albanian Civil Code and of the specific law on non-for-profit organisations, tax treatment provisions are scattered in several pieces of legislation.

All foundations in Albania are understood to pursue goals which are for the *common good* and *in the benefit of the public*. However, the public benefit status, as an instrument to grant some

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<sup>215</sup> Ebrill *et al*, *supra*, note 64, p.83-100

<sup>216</sup> *Ibid.* p.3

VAT benefits to NPOs, was only recently introduced. Despite being perceived as a positive development, the granting of public benefit status is subject to criteria which are ambiguous, leaving thus broad scope for the interpretation of the law by the tax authorities. Further, the type of supplies being considered as “public benefit” for the purpose of obtaining the status, namely *important* (whatever this word means) *educational and health care* activities as well as activities aiming the *economical development to the benefit of people in need*, are very limited in their scope. In this way, other publicly beneficial activities are left apparently without the possibility to benefit from the status.

Moreover, the financial and other conditions under which the above publicly beneficial activities must be offered in order for NPOs to obtain public benefit status make it difficult for such organisations to receive the status. Nevertheless, even when receiving the public benefit status, the real benefits to NPOs from such status are questioned.

Exemptions from VAT sound good, but they are not such a good news to NPOs as a matter of fact. The Albanian legislation on VAT treats NPOs providing taxable transactions in the same way as any other taxable person, namely for-profit organisation, for the purpose of paying value added tax. However, this equality in treatment is not so equal when it comes to the reimbursement of input VAT for exempted activities. It is true that for exempted activities NPOs do not need to pay compliance costs by collecting VAT on the supply of goods or services, but this also means that NPOs cannot reclaim the VAT they have paid when buying the supplies which they further provide. Whether they provide the supplies freely or for a low price, this is irrelevant for the law. VAT is designed to be a consumption tax to the final consumer. However, when supplying exempted goods or services, NPOs are treated as final consumers, thus compromising the *destination principle* upon which the Albanian VAT system is based. Although the Albanian VAT Law provides also for a refund scheme for VAT paid on non-exempted supplies, obtaining refund is still difficult due to burdensome procedures.

When looking at the EU law dealing with the VAT treatment on NPOs, the situation is not much more optimistic. NPOs in Europe face almost identical problems as NPOs in Albania when it comes to the issue of irretrievability of input VAT for exempted activities. Whereas the EU VAT Directive provides for a broader list of exempted activities in the public interests, NPOs providing these supplies cannot reclaim VAT paid on input. It is estimated that hundreds of millions of Euro are ‘lost’ yearly by foundations in Europe as a result of VAT payments. The problem rests in the treatment of NPOs as final consumers for VAT purposes, when they supply exempted activities.

The ‘exemption’ instrument, which was thought to bring some release to NPOs, creates as a matter of fact unfair competition by unlevelling the playing field at least between for-profit organisations, which can pass on the costs of VAT to their customers, and not-for-profit organisations, which despite offering services without charge or for a low price, have to bear the costs of VAT themselves.

Thus large amounts of money are spent on bearing the VAT burden, instead of being spent on providing services, which usually governments would be responsible for.

Options to address the problem of irretrievability of VAT related to exempted activities can be found within and outside the VAT system. Whereas options within the VAT system, including the application of reduced rates on input and output or zero-rates on exempted supplies, would require a strong political will at the EU level, options outside the VAT system seem more feasible and realisable. Such options would include establishment of VAT refund schemes to compensate NPOs for VAT losses. Local VAT refund schemes, the establishment of which is in the hand of each Member State, are seen by the EU Commission as in compliance with the EU law, as long as such schemes are clearly separated from the VAT scheme. However, the establishment of local schemes would have the downside of a non-uniform treatment of foundations across the EU. An EU wide refund scheme could also be a solution, but its establishment would probably require a lot of political support from the Member States.

Whatever the solution, it is clear that the current VAT system puts on NPOs not only an unfair tax burden, but also prevents them from maximising the public-benefit impact of their work. A new approach towards VAT treatment of NPOs should not simply recognise the *public benefit* importance of NPOs activities, but also stimulate and incentivise such activities through a fairer tax treatment.

# ***The Challenge of EU Agricultural Policy in Kosovo: The Agricultural Labour Market***

**By Faton Osmani<sup>217</sup>**

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### **ABSTRACT**

*In this work, concentrating upon the case of Kosovo, the latest Western Balkans country embarked on transition (Hashi 2001), we focus on the agricultural labour market by investigating three groups of factors that determine agricultural labour input on-and off-farm: (a) household characteristics, (b) farm characteristics and (c) locational factors.*

*The objective of the study is to see if there are systematic characteristics (household, locational or farm resource characteristics) that can facilitate the up- take of wage or self-employment, and logically, following this, what are the perceptions of households of the barriers to generate on on/off- farm incomes and what are the policy measures that can help them.*

*Our findings provide insights into the extent of some specific problems facing the agricultural labour market in Kosovo. In particular we found only a small number of farms hiring in labour, and a very few cases of labour working on non-own farm, and also a very few cases of family labour being paid. Main driving forces to self- or wage employment are improvement of household's living standard and income generation to invest in personal education. Insufficient available capital and credit represent most impeding factors to self-employment, whilst high regional unemployment and low wages represent main barriers to wage employment.*

## ACRONYMS AND ABBREVIATIONS

AHS	Agricultural Household Survey
ANOVA	Analysis of Variance
CEE	Central Eastern Europe
ETC	European Transition Countries
KCBS	Kosovo Cluster and Business Support
MEST	Ministry of Education, Science and Technology (of Kosovo)
MRS	Marginal Rate of Substitution
MRT	Marginal Rate of Transformation
NHE	New Household (Home) Economics
PPF	Production Possibility Frontier
RIINVEST	Riinvest Research Institute, Prishtina
SEE	South Eastern Europe
SOK	The Statistical Office of Kosovo
SPSS	Statistical Package for Social Sciences
UNMIK	United Nations Mission in Kosovo

## 1. INTRODUCTION

### 1.1 Main Characteristics of Kosovo

Kosovo is a country in transition with around 2 million inhabitants and is characterised by a small territory (10, 908 km<sup>2</sup>), high density of population, high unemployment rate, high percentage of rural people, small agricultural land per inhabitant (0.24 ha), small arable land per household (2.4 ha) and high percentage of agricultural labour. The profile of the economic structure of Kosovo is characterised by a large share of services (60%) and agriculture (25%) in GDP and by approximately 22 % of agricultural labour (Riinvest, 2005).

Also, Kosovo is characterised by high imbalances in its macroeconomic configuration (Riinvest 2005): total consumption exceeds GDP due to remittances, exports cover imports by only 4–5 % and the level of official unemployment is between 40 and 45%. GDP per capita is relatively low (EUR 1,200). The percentage of population living in rural areas is relatively high (about 60%) with the high percentage of labour depending on agriculture. Kosovo's total population continues to grow faster than in neighbouring countries. Kosovo has the highest population density in the region -175 residents per km<sup>2</sup> (UNMIK 2004). The population in Kosovo is one of the youngest in Europe: one third is under 15, and about half is under 24 years of age. Only about 5% of the population is older than 65.

Since 1981 Kosovo has experienced tremendous changes that induced very poor economic performance, particularly in the agricultural sector. The absence of a social security system associated with food security concerns of people, and the fact that around 145,000 workers forcibly lost their jobs in the early 1990s (Hoti 2007), induced labour mobility from industry and other sectors to agriculture. Kosovo is another case where, as Seeth, Chachnov, Surinov, and von Braun (1998), and Leiprecht (1999) argue, agriculture, as a source of income and social security, has played a buffering role during transition, absorbing labour laid-off from other sectors during difficult transition times.

Several studies agree that subsistence farming due to the macroeconomic instability and high general economic risk has expanded during the transition period in the Western Balkans region, including Kosovo (Latruffe, Davidova, Desjeux 2008). But although covering 60 % of the population, as Lingard (2003) states, rural areas in Kosovo do not contribute much to the economic growth. One of the reasons for this situation is that agriculture is stagnating because most of the farms produce only for self- consumption.

The transition process has profoundly affected schooling and labour market decision-making in all transition economies (Hoti 2007). The level of rural people's education in Kosovo is very unsatisfactory, with a relatively low percentage of highly educated rural people (7%).

## **1.2 Proposals of this study**

The main objective of this research is to analyse the rural labour market in Kosovo, on-farm and off-farm work of household members, and factors which influence or impede their decision to participate in the labour market.

Hypotheses are tested by using quantitative analysis of data from the survey I designed for this study which was conducted in spring 2008. The survey was carried out with a sample of 177 rural (agricultural) households, as a sub-sample of Agricultural Household Survey conducted by the Statistical Office of Kosovo (SOK) in 2005, and including all 30 municipalities and 5 regions. In our survey 24 municipalities, including all administrative regions (5) were chosen. The sample was first stratified according to municipality. Within the municipality the households were chosen at random.

The questionnaire was designed following the unitary approach to household behaviour which considers the household as a unit with its own utility, because of its simplicity and because in Kosovo household decisions mostly and traditionally are taken in an authoritative manner by

the head of household. We asked the head of the household to provide all the data including for the individual members of the household.

The research is structured as follows: the next section covers the basic theory and research hypotheses, followed by methodology in section 3 and the analysis of the data in section 4. The final part of this research incorporates the conclusions and policy recommendations from analysis of the results of the survey conducted.

## **2. LITERATURE REVIEW AND EMPIRICS**

### **2.1 Labour market theory**

In neo-classical economics, the labour market operates as the market for commodity. But, its demand is derived demand (Course file 130, 2006): derived from the goods and services which the labour is used to produce. The supply and demand for labour, and the corresponding wage rate as a price for labour are determined by the interaction of labour's supply and demand curves. The economic theory argues that in a perfectly competitive market situation, the supply and demand for labour are equal at a certain wage rate as a clearing price of labour.

But, by being rather imperfect, the labour market leads to market failure. Unemployment is an example of it, usually as a result of excess labour supply and because of high transaction costs incurred both by potential employers and potential employees in seeking each other out. Another reason for the market to fail is if the equilibrium wage rate is below the subsistence level. People value leisure, and there are trade-offs between the marginal benefit from working and the marginal cost of working in terms of leisure time forgone.

The demand for labour in the non-agricultural rural economy depends on: macroeconomic factors (national economic growth, inflation, interest rates, exchange rates, balance of payments), labour market regulations (government policies, laws and regulations, the role of unions), environmental regulations (rural land use and lax environmental regulations), and the rural infrastructure (roads and their quality, transport, telecommunications). In the agricultural sector the demand for labour is determined by the farm land area cultivated, gender roles related to cultural norms and tradition, land distribution patterns and farm size, and climate and its effects on yields.

## 2.2 Household's behaviour models

Various economic theories have treated labour supply and labour mobility, and various economic models have investigated peasant household behaviour according to internal factors (such as, for example, demographic characteristics), and external factors (market price of output, wage rate etc).

The peasant model, first advanced in the 1920s by A.V. Chayanov, presented in Ellis (2000), is a theory of household utility maximisation analysing two opposing utility maximising objectives of the household: an income objective which requires work on the farm (production aspect), and a work-avoidance objective (consumption aspect).

The production aspect, the total income of the family ( $Y$ ), is expressed as a function of only the market prices of output ( $P_Y$ ) and the labour input ( $L$ ).

$$Y = P_Y \cdot f(L) \quad (1)$$

The consumption component of the family household, expressed as a household utility ( $U$ ) is presented as a function of income ( $Y$ ) and leisure ( $H$ ):

$$U = f(Y, H) \quad (2)$$

Chayanov's model assumes that there is no labour market and makes no distinction between men and women in the peasant household. The wage is subjective and access to land is flexible, depending on the household member size. Members of the household derive their utility from income (farm work) and leisure (containing work on the daily maintenance of the household, not simply leisure by doing nothing), preferring leisure to work. Peasant household decisions between farm work and leisure are influenced by the demographic structure of the household of working and non-working members (consumers), expressed by the ratio of consumers to workers in the household called the  $c/w$  ratio. Being not very useful for policy purposes (Ellis 2000) the Chayanov model has been found more useful for explanatory purposes in the African context than elsewhere (Levi and Havinden 1982, Chapter 4)<sup>218</sup>.

Nakajima's model goes further by examining household members' choices between farm work, off-farm work and leisure. This model can be used to analyse the effects of wage rate changes, output price changes or changes in technology (C26 Course file, 2007). But, activi-

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<sup>218</sup> Cited by Ellis (2000).

ties of the household which do not fall into the three above mentioned categories (e.g. food preparation, child care, etc) are explained by New Household Economics.

The New Household Economics (New Home Economics - Ellis 2000), as a branch of micro-economic theory, which originates by Becker (1965), is concerned with the links between household's time allocation and utility maximisation (Ellis 2000). Household economists recognise (Upton 1996) that all households derive utility from purchased commodities ( $Y$  goods), from leisure (labour being an input or  $X$  good) and from home produced items ( $Z$  goods: e.g. cooking, home repairs, raising children, etc). For farm households, the products of subsistence agriculture are  $Z$  goods.

The Barnum and Squire model uses both the Chayanov model and the NHE approach (C35 Course file, 2007) to examine household's utility derived from purchased goods, which can be evaluated as household cash income, leisure which can be evaluated as the market wage (as the opportunity cost of leisure) and home-produced goods ( $Z$ -goods), which can be evaluated at their market value. In total, these make up the full income of the household which, it is assumed, the household is trying to maximise.

In the Low (1986) household model (C35 Course file, 2007) wage rates vary for different categories of labour and between men and women, access to land is flexible, food price is not single (as in the Barnum and Squire), because the farm-gate price of food differs from the retail price at which food can be purchased.

Nicholson (2005), presents the supply of labour by using Simple two-good model based on the assumption that an individual may devote his/her time either engaging in market work at real wage rate or not working (leisure). An individual will allocate his/her time on consumption ( $c$ ) and on leisure ( $h$ ) so as to maximise its utility:

$$\text{Utility} = U(c, h) \quad (3)$$

Individuals have two main constraints: available time spent for either work (making money/income and spending it on consumption) or non-work (enjoying leisure) which has its opportunity cost equal to earnings forgone by not working. The second constraint is related to consumption: goods for consumption can be purchased only by working. As Nicholson argues, given the real wage ( $w$ ), to maximise utility the person should choose to work until the marginal rate of substitution of leisure for consumption is equal to  $w$ . Thus, wage and leisure are negatively related: as wage increases leisure decreases and the demand for leisure increases.

### 2.3 Household's time allocation and empirics

Based on literature on off-farm labour participation and labour supply empirical studies have used farm household models to study farmers' time allocation. There are three dominant approaches to the household behaviour. In the unitary approach the household is considered as a unit with its own utility function. This model is criticised (Klaveren, Pragg, Brink 2006) because it implicitly assumes that there is only one decision maker (usually the head of household) and all household members have identical preferences. Many empirical papers provide evidence that households cannot be seen as single units (Browning, Bourguignon, Chiappori and Lechene 1994, Lundberg, Pollak and Wales 1997, Ward-Batts 2002, and Browning and Chiappori 1998)<sup>219</sup>.

The second non-cooperative approach assumes household partners do not cooperate at all and each partner optimises his or her own utility. It takes the behaviour of the other as given (Leuthold 1968, Ashworth and Ulph 1981; Browning 2000, Cheng and Woolley 2001, and Kooreman and Kapteyn 1990)<sup>220</sup>. The third approach is the collective approach assuming that males ( $U_m$ ) and females ( $U_f$ ) have their own utility function and the household equilibrium is Pareto efficient. This approach has been initiated by Chiappori (1988): the partners behave as if the household  $n$  optimises a collective utility function

$$U_{h,n} = \pi_n \cdot U_{m,n} + (1 - \pi_n) \cdot U_{f,n}, \quad (4)$$

where  $\pi_n$  is interpreted as the power of the male and  $(1 - \pi_n)$  as the power of the female in the household  $n$ .

Most empirical studies of off-farm work and labour supply have used a unitary model of household utility maximisation over consumption and leisure of all family members, subject to time and budget constraints. Taylor and Adelman (2003) indicate that Huffman (1980, 1991, and 2001) used it to study off-farm labour supply, production, and consumption decisions by US farmers. It was used also by Singh and Janakiram (1986), Barnum and Squire (1979), Rosenzweig (1980), Jacoby (1993), Abdulai and Delgado (1999), Taylor (1987)<sup>222</sup>. This model was later extended by Kimhi (1994) (cited by Benjamin and Kimhi 2006) and allows for zero farm work arguing that in a multiple-member household it is not necessarily true that all household members work on the family farm: household utility ( $U$ ) is a function

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<sup>219</sup> Cited by Klaveren et al (2006)

<sup>220</sup> Ibid, pp. 3

<sup>221</sup> Ibid, pp. 3

<sup>222</sup> Cited by Taylor and Adelman (2003), pp. 33

of consumption (C) and time endowment of household members (T) allocated to farm work (T<sub>f</sub>), market work (T<sub>m</sub>), and home time (T<sub>h</sub>):

$$T_f + T_m + T_h = T \quad (5)$$

The household optimisation problem is to maximise  $U(C, T_h; Z_u)$  subject to the time, budget and non-negativity constraints (imposed on market work and farm work of each household member).  $Z_j$  are exogenous shifters of function  $j$ <sup>223</sup>.

Household-farm models differ from consumer models because in the former budget, as endogenous factor, depends on production decisions that contribute to income, whereas in a consumer model budget is assumed to be fixed (Taylor and Adelman 2003).

Trade theory, as a most compact way to illustrate the agricultural household model (Taylor and Adelman 2003) focusing on production possibility frontier (PPF), analyses the market integration of the two good household farm economies in two cases. First case is a Chayanovian case of no market (Figure 1). The household has no access to labour or food markets and the household must supply its own labour to production. In this case there is a trade-off between leisure and work because food output can be increased only by sacrificing leisure and vice-versa. The highest achievable utility is at point A, under budget constraint (PPF), where the marginal rate of transformation (MRT) equals the marginal rate of substitution (MRS) of food for leisure, that is  $MRT = MRS = -\omega/p_f$  where  $p_f$  represents “shadow prices” which can be estimated from the PPF and observed production/consumption bundle.

The opposite neo-classical perfect market case assumes that all markets exist (Figure 2) and market price is an opportunity cost of leisure to work and vice-versa. The household decouples production from consumption decisions, and there is no trade-off between leisure and work since labour can be hired from the market. Taylor and Adelman (2003) argue that in this case households, like countries, are better-off. Unobserved or “shadow prices” are replaced by market prices which represent the opportunity cost of food and time in both production and consumption activities (Taylor and Adelman 2003). The household produces at the point B (Figure 2) where the MRT (in this case the marginal product of labour) is equal to the ratio of market prices for labour and food. Whilst point C represents optimal consumption by using trade, where the ratio of market prices equals MRS between leisure and food produced. The surplus produced is sold in the market for cash and can be used to hire labour. Thus, by producing more the household can hire more labour and have in reversal more leisure. If  $L_f^* > \bar{L}$

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<sup>223</sup> For details see: Benjamin C., Kimhi A. (2006)

(time endowment) the household hires labour, and sells it if  $L_f^* < \bar{T} - C_1^*$  ( $C_1^*$  represents leisure, and  $\bar{T} - C_1^*$  represents the household's labour supply).

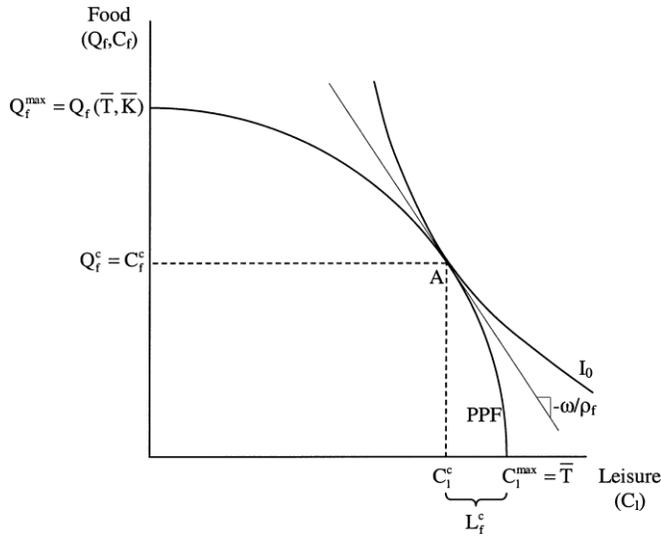


Figure 1 Agricultural household: no markets  
Source: Taylor and Adelman (2003), 40 pp

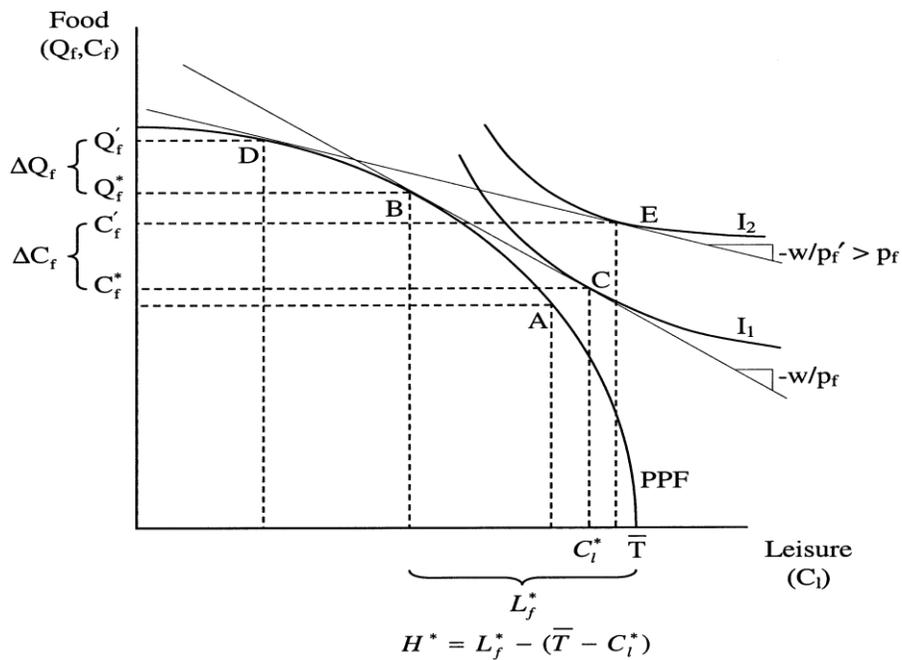


Figure 2 Agricultural household: perfect neoclassical markets  
Source: Taylor and Adelman (2003), 40 pp

Various papers employed some of the theoretical frameworks discussed above to empirically study agricultural labour movement and agriculture's buffer role during transition. Seeth et al. (1998), Leiprecht (1999), Bojnec, Dries, Swinnen (2005) explicitly study the agricultural labour flows in relation to household characteristics such as: gender, level of education, marriage, firm/farm size based on the number of household members employed, number of household members, and the role of human capital in the determination of agricultural labour flows. Benjamin and Kimhi (2006) estimated a discrete-choice model of French farm couples' labour decisions to farm work, off-farm work and hired farm labour, and they pointed out that their results corroborate previous studies indicating that off-farm labour is negatively associated with farm size. Alasia, Bollman, Weersink, Cranfield (2007) investigated off-farm labour decisions of Canadian farm operators in 2001, the role of operator, farm, community and regional determinants, whereas Fall and Magnac (2004) examined how valuable is on-farm work to farmers. Klaveren et al (2006) give empirical estimation results of a collective household time allocation model and argue that the preference for total household production is influenced by family size for the female but not for the male. Wang et al (2007) by developing empirical models analysed households' participation in decisions on hiring in and out of farm, hired labour demand and off-farm labour supply of rural Chinese households. Bratberg, Holgersen, Vardal (2008) explain labour market decisions of Norwegian farm holders as to continuing or quitting farming. Macours and Swinnen (1999) present initial conditions in Central and Eastern Europe countries starting from the importance of agriculture, labour intensity (man/land ratio), farm structure, land ownership, continuing with the analysis of price and trade liberalisation, terms of trade, and labour mobility and opportunity costs.

In Kosovo very little is done to date with regard to issues related to agricultural labour. Selmanaj (2006) refers slightly to the labour market in Kosovo and pleads for a labour market to be established. Some publications (World Bank 2004, IMF 2004) bring insights into the current situation with regard to employment and unemployment, about labour market characteristics and outcomes. Hoti (2007) in his work investigates broadly the determinants of labour supply and the labour market transformation in Kosovo in relation to the system of education.

According to the theory and empirical studies, by employing unitary model of the household's behaviour, some of the relevant factors-variables which influence time allocation within the household, are to be examined in my research in Kosovo's case, such as demographic structure of the household, gender, farm size measured by land area, age, education, and locational factors (distance from the regional road and from the nearest municipality town - city).

Rizov and Swinnen (2004) argue that transition economies are typically characterised by a variety of market imperfections, which imply restrictions on the household's that affect the household's labour allocation.

Kosovo suffers from chronic labour market failure (Hoti 2007), with the unemployment rate at 39.7 % in 2004, as a consequence of structural imbalances, low job creation and large labour inflows. Labour legal framework is incomplete and the Labour Code (Regulation 2001/27) still is not fully enforced, and the influence of trade unions on the labour market is very weak. High transaction costs (monitoring of workers, time, information gathering, transportation of selling and buying food) "endemic to poor economies" also make the market fail and would force the household back to the subsistence point A in Figure 1 (Taylor and Adelman 2003).

We assume that labour market is imperfect, that is there are transaction costs for both employers and farmers to "find" each other, and therefore not many agricultural households participate in the labour market.

### **3 METHODOLOGY**

#### **3.1 Introduction**

For this study a household level survey has been considered as the most suitable method. The survey was done with a sample of 177 rural (agricultural) households, as a sub-sample of Agricultural Household Survey conducted by the Statistical Office of Kosovo (SOK) in 2005. These households represent all administrative regions (5) and 24 municipalities.

The questionnaire was designed and structured to obtain general information, by using the closed type of questions about the household characteristics such as size (number of household members above 16 years), their level of education, gender, age, occupation, land owned (area operated), distance from the municipality and the regional road, participation of the household members in the labour (agricultural and non-agricultural) market (wage and self-employment), hiring in and hiring out labour and the factors which may influence the decision on time allocation, household incomes including remittances. The cut-off point is the year 2007.

### 3.2 Methods used

As studied previously, for the reason of simplicity we employed the unitary approach to household behaviour which considers the household as a unit with its own utility, acting as a single entity, either as the ‘glued-together family’ (Sen 1983a)<sup>224</sup> where individuals are aggregated into households on the assumption that they possess identical preferences based on identical tastes (Deaton and Muelbauer 1980)<sup>225</sup>, or as a ‘despotic family’ in which the head takes all the decisions, so the family behaviour is simply a reflection of the head’s choice function. In Kosovo traditionally household decisions were generally taken by the head of household in an authoritative manner. Nowadays, the head of household still remains very authoritative, but individuals’ preferences are mostly related to their education, usually “higher educated” being more prone to off- farm work.

The survey was carried out using the following important definitions:

- The household is a union of persons who live together and pool their income.
- The definition of an agricultural household is one that possesses and cultivates more than 0.10 ha of arable land<sup>226</sup>.

The total land area of the household includes all land belonging to the household both used and not used and rented land, less land that is given out to rent.

Explanatory variables used in the estimation include the head of household characteristics, household characteristics, farm attributes and locational characteristics.

- The head of household characteristics include age, and education.
- Household indicators include the number of family members above 16 years, gender composition, their education, non-agriculture experience, job engagement characteristics (type of job).
- Farm attributes include number of hectares operated and type of operation of land (with family member only, or with hired workers in addition).
- Locational (or regional) characteristics include distance from the regional road and from the nearest municipal town-city.

Hypotheses are tested by analysing the results of the survey conducted in spring 2008: the sample size achieved was 177 rural (agricultural) households.

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<sup>224</sup> Cited by C35 Course file: Socio- economics of rural livelihoods, course file prepared by A. Dorward, Imperial College London, 2002, reprinted 2007, Unit 5, pp 6.

<sup>225</sup> Ibid

<sup>226</sup> Field, garden, plastic tunnel, orchard, vineyard, meadow

By using SPSS software package, the statistical methods employed for hypothesis testing are: the analysis of variance (ANOVA), descriptive statistics by using cross-tabulation and the Chi-square tests, as well as descriptives of continuous variables and frequency distribution of categorical variables.

## 4 ANALYSIS OF THE DATA

### 4.1 General findings

#### 4.1.1. The household's characteristics

The average size of the household is 6 members with the minimum 2 and maximum of 14<sup>227</sup>. Generally households are young with an average age 38.7, but with a low average level of education (9.6 years)<sup>228</sup> with its minimum of only 4 years. Our evidence is supportive to Hoti's (2007, pp 99) evidence that, "the adult population in Kosovo of age 25-64 compared to the population in other ETCs<sup>229</sup> has a low average level of educational attainment".

The average farm size is nearly 4 hectares per household, bigger than that given in the UNMIK (2003): 2,2ha. But, its minimum (0.10 ha) and maximum (25 ha) are close to those given in UNMIK (2003):1ha and 24 ha respectively.

Total household incomes vary between a minimum of 480 euro and maximum of 109,680 Euros<sup>230</sup> with the average of 10,601 Euros per year. If divided by the number of household members it gives an average of 4.7 Euros a day per household member, which means that *ceteris paribus* households generally are poor.

Results show that 2/5 of total incomes come from self-employment, which is approximately 30% higher than the wage employment incomes with a minimum of 100 and maximum of 15,000 Euros per month. This is not fully consistent with Rutkovski (2006) who argues that while in some countries self-employment is a strategy for providing higher incomes (such as in Central and Eastern European countries), in low-income transition economies (e.g. in South Eastern European countries) it is a last resort for employment and incomes.

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<sup>227</sup> Agricultural Household Survey (2005) gives the average of 7.7, and the Riinvest survey of 6.8 members, but there are included all household members

<sup>228</sup> Secondary school completed in our country means 8 years of schooling

<sup>229</sup> ETCs stands for European Transition Countries

<sup>230</sup> This maximum value represents the outlier, but our estimation did not change while excluding this value.

The average wage is slightly above 500 Euros per month, with the minimum of 100 and the maximum of 6,000 Euros. But half of wage employees declared a monthly salary from 100 to 230 Euros (cumulative percent is 51.3), from which 15.4% have a monthly salary of 200 Euros.

Our evidence shows that most households operate their farm land with their family members only (87%). The small number of cases of hired labour, as stated in AHS (2005), is related to the small size of household farms and the high average number of members per household, providing abundant household labour.

Very few number of farms (7 out of 177) have declared their family members as being paid for their on-farm work, which means that they do not account explicitly for the wage of household members. Thus, any analysis of cost of production in which the cost of labour is presented as very low might be misleading because, as our evidence shows, heads of households do not account for family labour cost. Receiving of remittances has been declared by 29.7% of households.

#### **4.1.2 The head of household characteristics**

As regards the head of household, 95.3% of them are male, with an average age of 52 years (minimum of 17 and maximum of 93). However, it does not represent the gender structure in rural areas, but does represent the gender structure of the head of households, which is supportive to what Hoti (2007, pp 130) argues that, “the society in Kosovo is built on strong extended household units where the male is usually the main breadwinner and the dominant decision maker in the household”.

Their average education is generally low: 84.6 % of them have completed either secondary or high school, while only 8.5 % of them have completed a university degree.

#### **4.1.3 Locational (regional) characteristics**

There are two variables which indicate the Locational characteristics: the distance of household from the regional road (expressed in km), and the distance from the nearest municipality town (km). The average distance from the regional road is 6 km (minimum 0.001 and maximum 50 km), whereas from the municipality town is 9.8 km (1 and 30 km respectively).

So generally speaking, in Kosovo due to the small size of the country we cannot talk about remoteness of households, but we should take into consideration the not very well developed road network as well as the bad quality and bad maintenance of roads. To some extent this is consistent with respondents' responses as regards the factors of importance to start a non-farm business: 39% ranked improved physical infrastructure as a very important (Table 1).

## 4.2 Self employment through a non- farm business

### 4.2.1 Factors of importance that might increase likelihood to start a non- farm business

Respondents were asked to rank the importance of factors to start a non- farm business. Ranking was done from 1 (not important) to 5 (very important). For the reason of simplicity in this analysis ranking from 1-3 is considered rather not important or indifferent, and 4 and 5 both are considered "very important".

Results are produced by using the SPSS frequency analysis and presented in table 1.

Table 1 Factors of importance to start a non- farm business

Factors	Percent of ranking (1-3)	Percent of ranking (4- 5)
a) Better information on business opportunity	26.1	73.9
b) Access to specific consulting services	44.1	55.9
c) Access to low cost finance	52.2	47.8
d) Improved physical infrastructure	60.9	39.1
e) Special development projects	51.3	48.7
f) Remittances from relatives working abroad	60.3	39.7

Source: Author

Nearly 74% of respondents asked for more information on business opportunity, which is, as we will see later, inconsistent with what they declared about the impeding factors, i.e. that they do not lack information.

Most respondents (55.9%) think they need specific consulting services; some are indifferent (30.4%) or think it is not important (13.7%). As regards access to low cost finance more than a half either are indifferent or put low importance on it as stimulating factor, but some

(47.8%) think it is important. Most of them (60.9%) do not put high importance on improved infrastructure and a smaller percentage (39.1%) thinks it is important.

As regards special development projects, nearly half of the respondents think it is important (48.8%). The largest part of respondents (60.3%) thinks remittances are not important to start a non-farm business.

#### 4.2.2 Driving forces to self-employment

This variable is a dummy, with (0) meaning no self-employment and (1) if at least one of household members is self-employed. The total number of households having self-employed members is 43 (24.3%).

Earle and Sakova (2000) argue that an important observation on labour markets in transition countries is the growth of self-employment. Since we operate only with the data from the year 2007 we cannot either accept or reject it, but our evidence shows that the earnings from self-employment on average are 30% higher than the wage employment earnings (See Appendix I).

Table 2 Factors of importance to self-employment

Factors	Percent of ranking (1-3)	Percent of ranking g (4- 5)
a) To use the household's economic capacity in a most effective/productive way	27.0	73.0
b) Identification of market opportunity	49.3	50.7
c) To improve the household's living standard	21.8	78.2
d) Lack of non- farm employment	72.5	27.5
e) Prestige of running own business-increased independence	48.6	51.4
f) To invest available capital	59.9	40.1
g) To invest remittances received	72.1	27.9
e) To generate income to invest in agriculture	66.4	33.6

Source: Author

As the results show, the most important driving factors to self-employment are: improvement of household's living standard and the use of the household's economic capacity in a most

effective way (78.2% and 73% respectively, of respondents have ranked these factors as important or very important). Third is ranked the prestige of running an own business as a way to increase independence (51.4%), while identification of market opportunity is ranked as fourth (50.7%). As regards other factors, respondents are rather indifferent, or think they are not important. Less encouraging factors to respondents are: a lack of non- farm employment (72.5% consider this factor as not important or are indifferent), investment of remittances (72.1%), and generation of income to invest in agriculture (66.4%). Also, investment of available capital is not considered of importance (59.9% are either indifferent or not positive), which suggests either a lack of business/market opportunities or a lack of initiative.

### 4.2.3 Barriers to self-employment

Table 3 Barriers to labour market entry by self-employment

Factors	Percent of ranking (1-3)	Percent of ranking (4- 5)
a) Household income is sufficient/no economic pressure	70.9	29.1
b) Household members prefer agricultural work	71.3	28.7
c) Insufficient time	82.1	17.9
d) Insufficient knowledge or skills	73.9	26.1
e) Insufficient information on starting a business	61.4	38.6
f) Insufficient availability of capital	42.8	57.2
g) Insufficient availability of credit	48.2	51.8
h) Lack of demand/remoteness	62.2	37.8
i) Too many competitors	58.5	41.5
j) Lack of proper contacts (connections)	52.4	47.6

Source: Author

Our results suggest that the most impeding factors to self- employment as declared by respondents are insufficient available capital and credit (57.2% and 51.8% of respondents respectively), and the third barrier is a lack of proper contacts (47.6% of respondents). Surprisingly, 58.5% of respondents are rather indifferent or do not consider competition as a barrier. Even more surprisingly, 73.9% do not consider the role of insufficient knowledge or skills as a barrier and 61.4% do not consider insufficient information as a barrier, which is in contrast with what they said about the importance of factors that might increase the likelihood to start a non-farm family business (73.9 % of them ranked as important and very important better in-

formation on business opportunity and 55.9% asked for access to consulting services). Another “strange” ranking is that related to the lack of demand or remoteness: only 41.5% of the respondents consider it as a barrier, others are rather indifferent or ignore it. 82.1% of the respondents have ranked insufficient time as a very minor barrier, similarly to the preference to agricultural work (71.3% being rather indifferent or treating it as a minor). As expected, 70.9% do not consider the household incomes sufficient and thus as a very minor barrier to self-employment engagement.

### 4.3 Wage employment

#### 4.3.1 Factors of importance to wage employment

Table 4 Factors of importance to wage employment

Factors	Percent of ranking (1-3)	Percent of ranking (4- 5)
a) To ensure the household’s living standard	3.4	96.6
b) To use the household’s economic capacity in a most effective/productive way	38.3	61.7
c) To generate income to invest in agricultural/family business	53.0	47.0
d) To generate income to invest in personal development/education	31.0	69.0
e) Prestige of non-farm work, increase of social status	43.1	56.9
f) To smooth income/unstable returns to agriculture	53.9	46.1
g) Lack of non-farm employment	75.2	24.8

Source: Author

There are 99 households having at least one person wage employed outside the household farm.

For the vast majority (96.6%) wage employment is a very important factor to ensure the household’s living standard, which is in line with the uncertainty and instability of other sources of income, in particular agricultural/farm income. But, interestingly, they are rather indifferent or put a low importance (53.95%) to the effect of wage employment to smooth

income in case of unstable returns to agriculture. Also, most of them (75.2%) consider the lack of non-farm employment not as an important factor to engage in wage employment. Most of them are either indifferent or think that wage employment as a source of income generation to invest in agriculture is not of importance.

Our empirical evidence is consistent with what Alasia et al (2007) argue, that off-farm employment can be a self-insurance mechanism for households associated with an agricultural holding to help stabilise total household income, and to provide sufficient income to cover family living expenses. Off-farm labour may in fact be the primary household employment for small land operated households, or even for rural residents who have chosen a rural life-style.

A second positive factor to wage employment is income generation to invest in personal education (69% of respondents). This is in line with Hoti (2007), who argues that in higher education the number of students has increased since 1999 and is estimated at around 12 percent in 2004 (MEST 2004a). We find our evidence as a sign of positive development in Kosovo.

The use of household economic capacity in a most effective/productive way is of importance for 61.7%; for 56.9% non-farm work is considered as a prestige and an opportunity to increase the social status.

### 4.3.2 Barriers to wage employment

Table 5 Barriers to labour market entry- wage employment

Factors	Percent of ranking (1-3)	Percent of ranking (4- 5)
a) Household members prefer agricultural work	75.9	24.1
b) Insufficient knowledge or skills	72.1	27.9
c) Insufficient information	70.9	29.1
d) Insufficient time	80.0	20.0
e) High age	87.4	12.6
f) High regional unemployment	40.5	59.5
g) Remoteness (difficult access to the labour market)	57.7	42.3
e) Low wages	41.4	58.6
j) Lack of proper contacts (connections)	66.4	33.6

Source: Author

Most (75.9%) do not prefer agricultural work and have enough time to engage in wage employment (80%), and think that these factors are not a big barrier to labour market entry. Also remoteness is not considered as a real obstacle since 57.7% of them are rather indifferent or do not put an emphasis on this barrier. Regional unemployment and low wages are considered as an obstacle to 59.5% and 58.6% respectively, which is in line with the actual economic situation. Lack of proper contacts for 66.4% is either a minor, or not a relevant obstacle, while high age for 87.4% of respondents does not represent a real barrier to engage in wage employment, which might be due to the low age of most of the respondents.

#### 4.4 Remittances and their spending

There are 52 households (29.7%) that have declared remittances received from their household members working abroad with a minimum of 250 and a maximum of 40,000 Euros per year.

Table 6 Spending of remittances

Spent on	Frequency	Valid percent
a) Family house	29	76.3
b) Other household consumption	47	83.9
c) Business investment	9	47.4
d) Household farm	11	55.0
e) Non- farm business	13	56.5
f) Other	18	64.3

Source: Author

Most respondents use remittances for consumption (the total does not add up to 100 because respondents use remittances in multiple ways). Although relatively not many, there are some households that use remittances for investment either in family business or farming (47.4% and 55% respectively).

#### 4.5 Analysis of variance (ANOVA)

Assuming that distribution is normal, we have employed one-way ANOVA by using **dependent variables**: household's wage employment, household's self-employment and households who farm their land with household labour only, and **independent** (continuous) variables: number of household's members (NHHMER), distance from the regional road (DREG\_KM)-km, distance from the nearest municipality town (DSTMUNI)-km, area operated (AREACULT)-number of hectares, household's average age (HHAV\_AG)-years, household's average education (HH\_AV\_ED)-years of schooling, household's average non-agricultural experience (AV\_NA\_EX)-years, household's total incomes (F1\_TOTAL)-thousand Euros/year, household's agricultural/farming incomes (F1A)-thousand Euros/year, household's incomes from self-employment (F1C)-thousand Euros/year, household's incomes from wage employment (F1D)-thousand Euros/year.

Table 7 **Descriptive Statistics**

Variables	N	Minimum	Maximum	Mean	Std. Deviation
NHHMBER (number of hh members)	177	2	14	6.07	2.645
DREG_KM (dist. From the reg. road-km)	172	.0*	50.0	6.033	9.3562
DSTMUNI (km)	167	1	30	9.82	6.128
AREACULT (ha)	177	.1	25.0	3.974	4.3684
HHAV__AG (hh average age)	177	25.8	62.0	38.785	7.1947
HH_AV_ED (hh average education)	177	4.0	14.7	9.620	2.2468
AV_NA_EX (hh non- agricultural experience)	135	0	35	3.25	4.294
F1_TOTAL (Total incomes)	174	480	109680	10601.59	13826.085
F1.A (hh agricultural/farm incomes)	151	0	40000	3290.10	5177.963
F1.C (hh self-employment incomes)	122	0	100000	4079.18	13073.561
F1.D (hh wage employment incomes)	133	0	27500	2185.47	3716.373
E4 (hh wage employment)	156	100	6000	535.19	724.437

Source: Author

\*It is zero because of decimals used. The minimum distance is 0.001 km (1 m).

In the following tables only significant variables are presented.

#### 4.5.1 Household's wage employment

$H_0$  = there is no relationship between the households' wage employment and their average level of education.

$H_1$  = there is a relationship between the households' wage employment and their average level of education.

Although for the other variables  $H_0$  and  $H_1$  are not explicitly stated here,  $H_0$  is always hypothesis the lack of relationship and  $H_1$  evidence of relationship.

Table 8 Descriptives

		N	Mean	Std. Deviation	Std. Error	Minimum	Maximum
HH_AV_ED (years)	0	78	9.006	2.1764	.2464	4.0	14.0
	1	99	10.103	2.1928	.2204	5.0	14.7
	Total	177	9.620	2.2468	.1689	4.0	14.7
AV_NA_EX (years)	0	58	2.39	5.168	.679	0	35
	1	77	3.90	3.387	.386	0	15
	Total	135	3.25	4.294	.370	0	35
F1.A (000 Euros/year)	0	63	4609.68	6493.561	818.112	0	40000
	1	88	2345.40	3743.414	399.049	0	20000
	Total	151	3290.10	5177.963	421.377	0	40000
F1.D (000 Euros/year)	0	41	574.39	1614.407	252.128	0	7200
	1	92	2903.46	4147.038	432.359	0	27500
	Total	133	2185.47	3716.373	322.250	0	27500

Source: Author

Table 9 ANOVA (wage employment)

		Sum of Squares	df	Mean Square	F	Sig.
HH_AV_ED	Between Groups	52.497	1	52.497	10.990	.001 ***
AV_NA_EX	Between Groups	75.810	1	75.810	4.211	.042 **
F1.A	Between Groups	188238468.780	1	188238468.780	7.317	.008 ***
F1.D	Between Groups	153845124.576	1	153845124.576	12.073	.001 ***

Stars denote significant at 1% (\*\*\*) and 5% (\*\*) levels.

Source: Author

#### 4.5.1.1 Household's wage employment and average level of education

Based on the results we reject the null hypothesis, and conclude that generally households' average education is low, but, at 1% level of significance, those who are more educated are more likely to engage in wage employment. Our evidence is in line with what Wheeler (2001) and Findeis and Jensen (1998) argue, that human capital variables, and in particular the level of educational attainment, affect off-farm employment.

Also, we reject the null hypothesis at 1% level of significance as regards wage employment and the total household's income: those who have wage employment are more likely to have higher incomes. The total income from agriculture is significant at 1%: Households with lower agricultural income are more likely to engage in wage employment.

Non-agricultural previous experience is significant at 5%: those who have previous non-agricultural experience are more likely to engage in wage employment.

Surprisingly, other independent variables are not of significance as regards wage employment. We would have expected the distance from the regional road and from the nearest municipality town to be of significance. Wheeler (2001) and Findeis and Jensen (1998) argue that rural areas are more likely to have higher search costs for employment, more occupational mismatches, and fewer job training opportunities.

## 4.5.2 Self- employment

Table 10 Descriptives

		N	Mean	Std. Devia- tion	Std. Error	Mini mum	Maxi mum
DREG_KM (km)	0	132	5.184	7.6891	.6693	.0	38.0
	1	40	8.834	13.2192	2.0901	.0	50.0
	Total	172	6.033	9.3562	.7134	.0	50.0
HH_AV_ED(years)	0	134	9.450	2.2292	.1926	4.0	14.7
	1	43	10.148	2.2453	.3424	5.0	14.7
	Total	177	9.620	2.2468	.1689	4.0	14.7
F1_TOTAL (000 Euros/year)	0	132	8077.71	8160.817	710.308	480	52980
	1	42	18533.76	22557.720	3480.732	480	109680
	Total	174	10601.59	13826.085	1048.153	480	109680
F1.A (000 Euros/year)	0	116	3755.47	5681.164	527.483	0	40000
	1	35	1747.71	2435.111	411.609	0	10000
	Total	151	3290.10	5177.963	421.377	0	40000
F1.C (000 Euros/year)	0	85	489.76	1569.375	170.223	0	8000
	1	37	12325.14	21643.075	3558.100	0	100000
	Total	122	4079.18	13073.561	1183.625	0	100000

Source: Author

Table 11 ANOVA (self- employment)

		Sum of Squares	df	Mean Square	F	Sig.
DREG_KM	Between Groups	408.842	1	408.842	4.773	.030**
HH_AV_ED	Between Groups	15.828	1	15.828	3.174	.077**
F1_TOTAL	Between Groups	3483447407.527	1	3483447407.527	20.250	.000**
F1.A	Between Groups	108385857.445	1	108385857.445	4.127	.044**
F1.C	Between Groups	3610975398.414	1	3610975398.414	25.385	.000***

Stars denote significant at 1% (\*\*\*) and 5% (\*\*) levels.

Source: Author

In the case of self-employment household's distance from the regional road is significant at 5%; those that are farther are more likely to engage in self-employment. The total income is significant at 1%: those who have self-employed members have approximately more than twice higher incomes compared to those that do not have self-employment.

Also, the average level of education is again of significance, in this case at 5%: households with the higher level of education are more likely to engage in self-employment. At 5% level of significance is the total incomes from agriculture: those who have less income from agriculture are more likely to have self-employment. Our evidence is partially supportive to the human capital theory which suggests that the marginal productivity of any self-employed operator will increase with socio-economic factors such as age (i.e. experience) and education (i.e. analytical capacity).

As in the previous case other variables do not show statistical significance relevant to self-employment.

#### 4.5.3 Households who farm their land with household labour only

As in the previous analyses, ANOVA is used to test the null hypothesis of lack of relationship and the alternative hypothesis of evidence of relationship for all variables. Only the significant one are reported below.

Table 12 Descriptives

		N	Mean	Std. Deviation	Std. Error	Minimum	Maximum
DREG_KM	0	20	10.725	12.7367	2.8480	.5	50.0
	1	148	5.352	8.7697	.7209	.0	50.0
	Total	168	5.992	9.4445	.7287	.0	50.0
AREACULT	0	22	6.832	6.1290	1.3067	1.0	25.0
	1	151	3.615	3.9545	.3218	.1	22.0
	Total	173	4.024	4.4023	.3347	.1	25.0
HH_AV_ED	0	22	10.527	2.0272	.4322	6.7	14.7
	1	151	9.514	2.2434	.1826	4.0	14.7
	Total	173	9.643	2.2372	.1701	4.0	14.7
F1.A	0	19	6052.63	9483.267	2175.611	0	40000
	1	130	2916.96	4156.355	364.536	0	20000
	Total	149	3316.81	5205.434	426.446	0	40000

Source: Author

Table 13 ANOVA (family labour only)

		Sum of Squares	df	Mean Square	F	Sig.
DREG_KM	Between Groups	508.594	1	508.594	5.868	.016**
AREACULT	Between Groups	198.708	1	198.708	10.840	.001***
HH_AV_ED	Between Groups	19.693	1	19.693	4.003	.047**
F1.A	Between Groups	162993917.510	1	162993917.510	6.228	.014**

Stars denote significant at 1% (\*\*\*) and 5% (\*\*) levels.

Source: Author

There are four significant variables as regards households who farm their land with household labour only. Area cultivated is significant at 1%: households who farm their land with household labour only have less land on average. It can be linked to the significance of the distance to the regional road. Currently in Kosovo regulations are not enforced and people do build houses and other buildings mainly on agricultural land which is closer to the regional road. Households who are closer to the regional road have less agricultural land.

Of significance at 5% is the household's average education and the incomes from agriculture, showing that those who are less educated and with the lower agricultural income are more likely to farm their land with household labour only.

#### 4.6 Cross-tabulations

Cross-tabulations are done to investigate the relationship of the three dependent variables (wage employment, self-employment and households who farm their land with family labour only), and the independent dummy variables: non-agricultural experience ((0) for not and (1) for having non- agricultural experience), and remittances ((0) for those who do not receive and (1) for those who receive remittances).

The results are used to test the null hypothesis ( $H_0$ ): there is no relationship, and the alternative hypothesis ( $H_1$ ): there is a relationship.

##### 4.6.1 Household wage employment

Table 14 Case Processing Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
NAG_EXP HH_WAGE	159	89.8%	18	10.2%	177	100.0%
REMIT HH_WAGE	175	98.9%	2	1.1%	177	100.0%

Source: Author

Household wage employment and non-agricultural experience

Table 15 Non-agricultural experience

		HH_WAGE		Total
		0	1	
NAG_EXP	0	40	15	55
	1	30	74	104
Total		70	89	159

Source: Author

Table 16 Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	28.110(b)	1	.000		
Continuity Correction(a)	26.358	1	.000		
Likelihood Ratio	28.730	1	.000		
Fisher's Exact Test				.000	.000***
Linear-by-Linear Association	27.933	1	.000		
N of Valid Cases	159				

Source: Author

Household wage employment and remittances

Table 17 Remittances

		HH_WAGE		Total
		0	1	
REMI	0	60	63	123
T	1	16	36	52
Total		76	99	175

Source: Author

Table 18

**Chi-Square Tests**

	Value	df	Asymp. Sig. (2- sided)	Exact Sig. (2- sided)	Exact Sig. (1- sided)
Pearson Chi-Square	4.826(b)	1	.028		
Continuity Correction(a)	4.121	1	.042		
Likelihood Ratio	4.936	1	.026		
Fisher's Exact Test				.031	.020**
Linear-by-Linear Association	4.798	1	.028		
N of Valid Cases	175				

Stars denote significant at 1% (\*\*\*) and 5% (\*\*) levels.

Source: Author

Based on the Fisher's exact test results presented on tables 16 and 18 we can reject the null hypothesis. There is a relationship between non-agricultural previous experience and remittances, and the wage employment as a dependent variable at 1% and 5% level of significance respectively: those who have more non-agricultural experience and who receive remittances are more likely to engage in wage employment.

**4.6.2 Household self-employment**

Table 19 Case Processing Summary

		Cases					
		Valid		Missing		Total	
		N	Percent	N	Percent	N	Percent
NAG_EXP	*	159	89.8%	18	10.2%	177	100.0%
HHSELF_E	*	175	98.9%	2	1.1%	177	100.0%

Source: Author

Household self- employment and remittances

Table 20 Remittances

		HHSELF_E		Total
		0	1	
REMI	0	97	26	123
T	1	35	17	52
Total		132	43	175

Source: Author

Table 21 Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	2.633(b)	1	.105		
Continuity Correction(a)	2.046	1	.153		
Likelihood Ratio	2.544	1	.111		
Fisher's Exact Test				.125	.078**
Linear-by-Linear Association	2.618	1	.106		
N of Valid Cases	175				

Stars denote significant at 1% (\*\*\*) and 5% (\*\*) levels.

Source: Author

According to the Fisher's test presented in table 21 remittances are significant at 5% also as regards household's self-employment. However this result should be considered carefully since the number of observations is too small (17).

Households farming with family labour only

The analysis did not show any significance and it will not be discussed further.

## 5 CONCLUSIONS AND POLICY RECOMMENDATIONS

This report investigates the agricultural labour market with its components: on-farm and off-farm work, hiring-in a hiring-out, by taking into consideration some specifics of Kosovo, in particular with regard to household and farm characteristics.

Our findings provide some insights into the behavioural characteristics of households and their responses to the labour market in Kosovo. These could be used by policy makers to identify priorities, and design and implement policies with regard to agricultural and rural development.

Rural areas in Kosovo are poorly developed and incomes are low. The evidence about household incomes from our primary survey data is consistent with empirical evidence studied elsewhere with regard to Kosovo, namely that the average household remains poor.

Generally households operate their farm land with their family members only (87.3%), and very few of them have declared their family members being paid for their on-farm work. Thus, in any analysis of the cost of production if the cost of labour is presented as very low, this might be misleading because, as our evidence shows, they do not account for family labour cost.

The average level of education is slightly above the completion of elementary school (9.6 years)<sup>231</sup>. These findings are similar to those of Hoti's (2007) empirical work and suggest the need for different policy packages to promote economic development in Kosovo in order to increase the level of education as a factor to alleviate unemployment.

Policy makers and associations which deal with employment/unemployment issues should bring more information to those who are willing to start a non-farm business in order to increase employment opportunities and alleviate unemployment.

Our findings suggest that the least important driving factor to non-farm work (either through self- or wage employment) is the generation of income for the purpose of investing in agriculture which implies tendency of labour flows out of the agricultural sector.

Wage employment is considered as a very important factor to ensure the household's living standard which implicitly tells about the uncertainty and instability of other sources, in partic-

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<sup>231</sup> In Kosovo secondary school implied eight years, now it has nine years of schooling

ular agricultural/farm income. Wage employment is considered as a very important source of income to invest in personal development- education.

Self-employment earnings are around 1/3 higher than wage employment earnings, although the number of wage employment workers is more than double compared to self- employed. Support for rural businesses or seed money for start-up might be more effective in increasing rural incomes than wage employment.

The level of education (measured as an average for the household) , as well as earnings from farming, are closely related to wage and self employment engagement: generally, those who have lower earnings from agriculture and a higher level of education are more likely to engage either in wage or self- employment. It affects positively the total income of the household, being higher in those which have members engaged in wage or self- employment. This is in line with the theory which suggests that human capital variables, and in particular the level of educational attainment, have the expected effects on off-farm employment.

Policy makers should take this evidence into consideration and act mainly in two ways: to bring new incentives to rural areas for off- farm businesses, and to contribute to increasing of the level of education of people who live in rural areas and make it easier for them to stay and live there.

## REFERENCES

Alasia A., Bollman R. D., Weersink A, Cranfield J. (2007) Off-farm labour decisions of Canadian farm operators in 2001: the role of operator, farm, community and regional determinants. *Research paper*, Agriculture and Rural working Paper series, Agriculture Division, Ottawa

Benjamin C., Kimhi A. (2006) Farm work, off- farm work and hired farm labour: estimating a discrete- choice model of French farm couples' labour decision. *European Review of Agricultural Economics* 33 (2) 149- 171

Bojnc S., Dries L., Swinnen F. M. J. (2005) Causes of Changes in Agricultural Employment in Slovenia Evidence from Micro Data. *Journal of Agricultural Economics* 56(3) 399-416

Bratberg E., Holgersen L. P., Vardal E. (2008) Explaining off- farm labour supply: the importance of income, Working Paper No. 44/07. *Institute for Research in Economics and Business Administration*, Bergen

Browning, M., Bourguignon F., Chiappori P. A., Lechene V. (1994) Children and household economic behaviour. *The Journal of Political Economy* 1067-1096.

Browning, M. and P. A. Chiappori (1998) Efficient intra-household allocations: A general characterization and empirical tests. *Econometrica* 1241-1278

- Chiappori, P-A. (1988) Rational Household Labour Supply. *Econometrica* 56 (1) 63-89
- Earle J. Sakova Z. (2000) Business start-ups or disguised unemployment? Evidence on the character of self-employment from transition economies. *Labour Economics* 7 575-601
- Elhorst, J. P. (1994) Firm–household interrelationships on Dutch dairy farms. *European Review of Agricultural Economics* 21 259–276
- Ellis F. (2000) *Peasant Economics, Farm household and agrarian development*. Second edition, Cambridge University Press, Cambridge
- Fall, M. and Magnac, T. (2004) How valuable is on-farm work to farmers? *American Journal of Agricultural Economics* 86 267–281
- Findeis, J.L., and L. Jensen (1998) Employment Opportunities in Rural Areas: Implications for Poverty in a Changing Policy Environment. *American Journal of Agricultural Economics* 80(5)1000-1007
- Hashi, I. (2001) The international experience of privatisation and lessons for Kosovo. *Staffordshire University Business School*, Working paper 2001.12
- Hoti, A. (2007) *Schooling, labour market rewards and emigration decisions: Evidence from Kosovo*. PhD thesis. Staffordshire University
- Klaveren C, Pragg B, Brink H. M (2006) Empirical Estimation Results of Collective Household Time Allocation Model, Discussion Paper No. 210. *The Institute for the Study of Labor (IZA)*, Bonn
- Latruffe, L. Davidova, S., Desjeux, Y. (2008) Perpetuation of subsistence farming in Western Balkans: The role of factor market imperfections, The 82<sup>nd</sup> Annual Conference of the Agricultural Economics Society, *Royal Agricultural College*
- Leiprecht, I. (1999) Sectoral Change out of the Agricultural Sector in Poland. *IFO Institut, München*, unpublished manuscript
- Leuthold, J.H. (1968) An empirical study of formula income transfers and the work decision of the poor, *Journal of Human Resources* 3 312-323
- Lingard, J. (2003) A comparative advantage analysis of Kosovon agriculture. *Post- Communist Economies* 15(3) 565- 579
- Macours K. and Swinnen J. (1999) *Patterns of agrarian transition*. Policy Research Group, working paper 19, Katholieke Universiteit Leuven, Leuven
- MEST (2005a) *Statistical data on education system in Kosova*. Ministry of Education, Science and Technology, Prishtina, Prishtina

Nicholson W. (2005) *Microeconomic Theory: Basic Principles and Extensions*. 9<sup>th</sup> edition, Thomson South-Western, USA

Riinvest (2005) *Kosovo Socio- Economic Profile and Development Challenges*

Rizov M, Swinnen F.M J (2004) Human capital, market imperfections, and labour reallocation in transition. *LICOS Center for Transition Economics and Department of Economics, Katholieke Universiteit Leuven, Belgium*

Rutkowski, J. (2006) Labour market developments during economic transition. *World Bank Policy Research, Working paper 3894*

Selmanaj S. (2006) *Globalisation and Transition- dilemmas and challenges* [Globalizimi dhe tranzicioni-dilemat dhe sfidat], Riinvest, Prishtina

Seeth, H.T., Chachnov, S., Surinov, A. and von Braun, J. (1998) Russian poverty: Muddling through economic transition with garden plots. *World Development* (26) 1611-1623

Sonoda, T. and Maruyama, Y. (1999) Effects of the internal wage on output supply: a structural estimation for Japanese rice farmers. *American Journal of Agricultural Economics* 81 131-143

SOK (2005) *Agricultural household survey*. Prishtina

Taylor J.E, Adelman I. (2003) Agricultural household models: genesis, evolution, and extensions. *Review of Economics of the Household* 1 33- 58

University of London (2007) *C106 Research methods*. Course file, Imperial College London

University of London (2007) *C26 Water resource management*. Course file, Imperial College London

University of London (2007) *C35 Socio-economics of rural livelihoods*. Course file, Imperial College London

University of London (2006) *C 130 Rural Development*. Course file, Imperial College London

UNMIK (2004) *Outlook 2004*. European Union Pillar, Prishtina.

Upton M. (1996) *The Economics of Tropical Farming System*. Cambridge University Press, Cambridge

UNMIK (2003) *The Kosovo Green Book*. A strategy for sustainable agricultural and rural development in Kosovo, Prishtina

Wang X., Herzfeld Th., Glauben Th. (2007) Labor allocation in transition: Evidence from Chinese rural households. *China Economic Review* 18 (2007) 287-308

Wheeler, C.H. (2001) Search, Sorting and Urban Agglomeration. *Journal of Labour Economics* 19(4) 879-899

World Bank (2004) *Kosovo Economic Memorandum*. Poverty Reduction and Economic Management Unit, Europe and Central Asia Region. Report No. 28023-KOS

## **BIBLIOGRAPHY**

Browning, M. (2000) The saving behavior of a two-person household. *Scandinavian Journal of Economics* 102(2) 235-251

Cheng, Z. and F. Woolley (2001) A cournot-nash model of family decision making. *The Economic Journal* 111 722-748

Cherchey, L., Vermeulen, F. (2006) Nonparametric Analysis of Household Labor Supply: Goodness-of-fit and power of the unitary and collective model. *Institute for the study of labor, IZA, Bonn*

Chiappori, P-A. (1992) Collective Labour Supply and Welfare. *The Journal of Political Economy* 110 437- 467

Chiappori, P. A. (1997) Introducing household production in collective models of labor supply. *The Journal of Political Economy* 105(1) 191-209

Hallberg, J. L. Findeis and D. A. Lass (eds) Multiple Job-holding among Farm Families. *Iowa State University Press* 79–111

Hanushek, E. and Kimko, D. (2000) Schooling, labour force quality, and the growth of nations. *American Economic Review* 90(5) 1184-1208

International Monetary Fund (2004) *Kosovo- Gearing Policies Toward Growth and Development*, Office in Kosovo, Prishtina

KCBS (2005) *Business conditions index in Kosovo*, Prishtina

Kimhi, A. (1999) Estimation of an endogenous switching regression model with discrete dependent variables: Monte-Carlo analysis and empirical application of three estimators. *Empirical Economics* 24 225–241

Kooreman, P. and A. Kapteyn (1990) On the empirical implementation of some game theoretic models of household labor supply. *The Journal of Human Resources* 25(4) 584-598

Lundberg, S., R. Pollak and T.J. Wales (1997) Do husbands and wives pool their resources? Evidence from the u.k. child benefit. *Journal of Human Resources* 32(3) 463-480

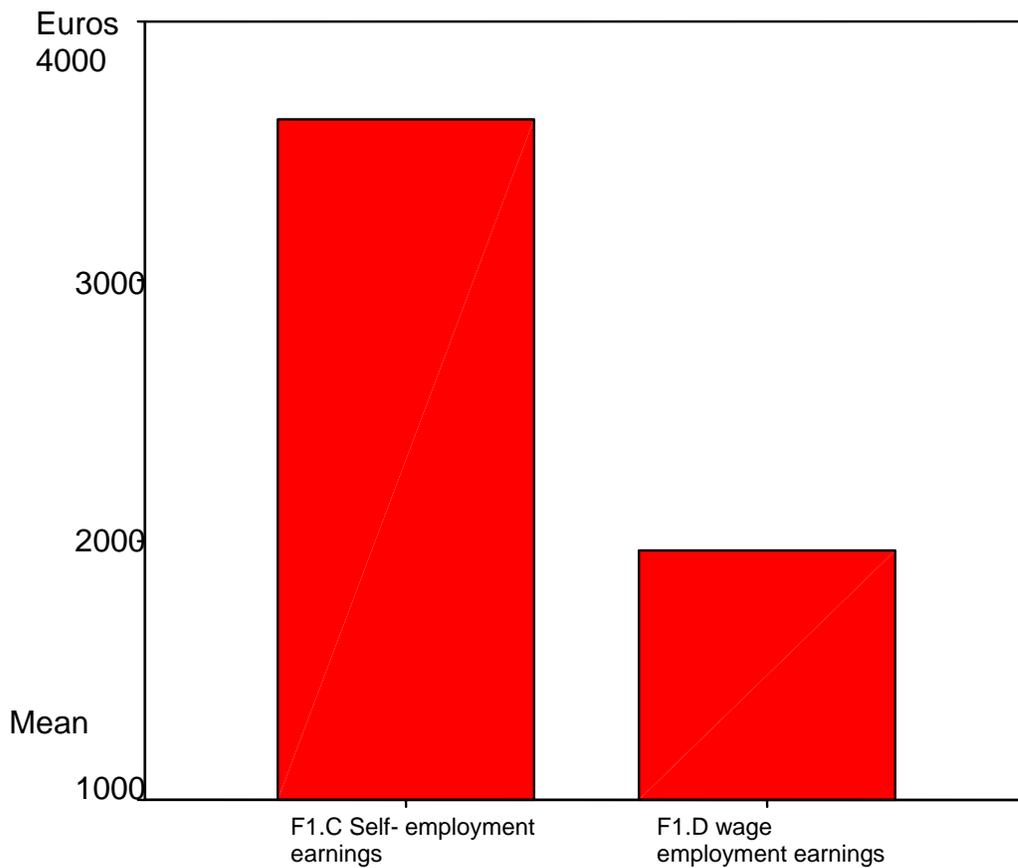
Macours K. and Swinnen J. (1997) *Agricultural labour adjustment during transition in Central and Eastern Europe*. Policy Research Group working paper, Katholieke Universiteit Leuven, Leuven

Riinvest (2002) *Survey of families and the labour market in Kosovo*.

Riinvest (2004) *Rural Development in Kosovo*. Research Report

**APPENDIX - I**

Figure 1 Self-employment earnings (F1.C) and wage employment earnings (F1.D) - in thousand Euros



## APPENDIX II - EXPLANATION OF VARIABLES

**NHHMber** (number of household members): includes only members 16 years old and above.  
**HH\_AV\_ED** the household average level of education: each level of education of each household member was converted into the years of his/her education- schooling, as follows:

Code 1 (No schooling)	zero (0) years
Code 2 (Primary school)	8 years
Code 3 (Middle school)	12 years
Code 4 (High school- agricultural)	14 years
Code 5 (High school- non agricultural)	14 years
Code 6 (University)	16 years

Then, the total number of schooling years was divided by the total number of household members

**AV\_NA\_EX** the household average non-agricultural work experience (years): aggregate number of household members' non- agricultural work experience divided by the total number of household members.

DReg_km	household's distance from the regional road (km)
DistMuni	household's distance from the nearest municipality town (km)
areaCult	total area of the household's cultivated land
HHav_age	= total number of household years/total number of household members
age ratio	= number of household members above 30 years old/total number of household members
RatMale	= number of male household members/total number of household members
agHHhead	age of the head of household
Hhh_gender	gender of the head of household (0=male, 1=female)
NonAgE p	previous non- agricultural experience (household total)
Self-emp	(self- employment)-(binary 0=no; 1=yes) calculated for the household (binary 0=no; 1=yes, if, at least one household member has self-employment)

### **C6. Factors of importance for the decision of the household to start a non-farm (self-employment) business**

- a) To use the household's economic capacity in the most effective/productive way
- b) Identification of market opportunity
- c) To improve the households living standard
- d) Lack of on-farm employment
- e) Prestige of running own business, increased independence
- f) To invest available capital
- g) To invest remittances received
- h) To generate income to invest in agriculture

### **D1 Factors for why no household member currently works self-employed in a non-farm business.**

#### **E.6 The reasons for not taking up wage employment**

- a) Household income is sufficient/no economic pressure
- b) Household members prefer agricultural work
- c) Insufficient knowledge or skills
- d) Insufficient information
- e) Insufficient time
- f) High age
- g) High regional unemployment
- h) Remoteness (difficult access to the labour market)
- i) Low wages

j) Lack of proper contacts (connections)

**F1 Total Household total incomes**

F1 a agricultural/farm incomes

F1 c self-employment incomes

F1 d incomes from wage employment in non-farm sector

**F.3 Where did you spend the remittances?**

a) Family house

b) Other household consumption

c) Business investment

**F.4 If you have used remittances for business investment, where did you invest?**

a) In household farm

b) In non-farm family business

c) Other

# ***The Mobilisation of Market/Non-market Analytic Categories for the Understanding of the Emergence of the Multifunctionality Concept in European Agricultural Public Policies***

By Olivier Cuissard<sup>232</sup>

*There is enough consensus that agricultural activity is no longer being evaluated in mono-functional terms. The societal debate, which is at the origin of the multifunctionality concepts emergence into agriculture, is revealing a productivist system crisis. The maintenance of the agricultural activity implies an increasing public intervention, which takes the form of massive help in the maintenance of the farmers' income. These financial assistances are included in the first pillar of the Common Agricultural Policy (CAP). Since 1992, Member states can reward farmers who, on a voluntary basis, provide environmental, social and cultural services/achievements. Following the Cork declaration in favour of a rural development integrated approach, the Rural Development Regulation in 1999 (RE n ° 1257/1999) provides the framework for public recognition of the agricultural multifunctionality. The European Union made multifunctionality the key objective of its Common Agricultural Policy (second pillar).*

*This new development model aims at multifunctional agriculture and maintaining biological and landscape diversity. Multifunctionality is now understood to be the central starting point for a renewed "social contract" between society and the authorities. Multifunctionality emerges as a redefinition of identities. The underlying question leads us to a political debate about how the market/non-market analytical categories will be used to explain the crises movement within the agricultural activity.*

*Key words : Sector, territory, public policy, multifunctionality, market, identity.*

*JEL classification : E<sub>61</sub>, H, Q, R<sub>5</sub>.*

By the end of the Second World War, the European agricultural production was not sufficient to meet a growing food demand in terms of both quantity and quality. The European political willingness was to give agriculture a sector-based structuring<sup>233</sup> by slotting it into a market economy, and by accumulating and concentrating capital, often through land increments, while the farming

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<sup>233</sup> The sectorial dimension comprises the "constitutive elements empirically spotted within an activity and drew their particularity in the social and historical construction of the sector" (Du Tertre Ch., in Boyer R., Saillard Y., 1995).

labour force strongly decreased. The CAP (Treaty of Rome, 1957) and the agricultural laws of modernisation in France (1960, 1962 and 1966) incorporated the institutional framework in charge of implementing this movement.



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The 1945-1975 period transformed European agriculture into a sector of intensive growth with a sustained advance in its productivity. This model of productivist development, supported by a strong socio-political consensus, perfectly worked until the beginning of the 1980's. Then, the Thirty Prosperous period of productivity growth slowly ran out of steam and the sector entered into a phase of depression in which the sectorial dynamics became less effective. The budgetary weight of the production surplus grew heavy and generated international tensions. The role of the CAP in the policy of European integration was less visible and its successive adjustments could be analysed as a rupture with the productivist referential.

Thus a crisis<sup>234</sup> rose at the beginning of the 1980's, proving that *"the prior compromise established between farmers and society, and that laid on the modernization of the agricultural sector and on the increase of productivity, was put into question in its principles"* (Berriet-Sollic M., 1999, p. 17). The regulatory institutions were then unable to take charge of an agriculture in which multiple functions took shape.

In this context of crisis of the institutional compromises<sup>235</sup>, multifunctionality presents itself as a frame of joint representation from a negotiated referential in order to build new compromises. This crisis distinguishes itself as a transitory stage from a dominating regulation mode<sup>236</sup> laying on the production of low cost food goods, to another emerging mode of regulation in which agriculture represents a section of the rural world, with multiple interwoven functions. The elaboration of the referential and of its negotiation offers a place to enhance value and consideration of non-market goods value through what we will call policies of economic and social identification. Public intervention then appears necessary to produce goods which have no good market quali-

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<sup>234</sup> The crisis must be understood as the moment when a regulatory mode reaches its limits and is replaced by a new arising mode. The crisis in question appears as a rupture in the regulatory mode.

<sup>235</sup> *"The institutionalized compromises are imperative frames in relation to which the population and the concerned groups adapt their behaviour"* (Delorme R., André C., L'Etat et l'économie, 1983).

<sup>236</sup> *"Set of incorporated or explicit norms of the institutions, compensation mechanisms and information systems, which continuously adjust the forecasts and individual behaviours to the overall logic of an accumulation regime"* (Leborgne D., Lipietz A, 1992, p. 349).

ties<sup>237</sup>. We will conduct this research work beginning with the public policies through which the “European agricultural model” is promoted.

Within the public debate, multifunctionality appears on a political level which can be translated in terms of market/non-market analysis categories. Market and/or non-market goods “*are subject to functionalities composed of a set of market and/or non-market relations, that is to say that these functionalities are embedded within social structures, which are themselves, relevant to market and non-market*” (Polanyi research group, synthetic report, 2002, p. 3). As a consequence, we *ex ante* subscribe to the idea that any activity is multifunctional by essence and not by contingency (Barthélemy D. (coord.), Polanyi research group, 2006).

### **1/ The inflexions in the market perception and the apparition of the market/non-market analytic categories.**

The inflexions in the classical version of the market (competition, equilibrium price through the confrontation between supply and demand, anonymous exchanges...) give a glimpse to complementarities which are essential to its functioning. Following a classical merchant logic, an anthropologic approach will develop (substantivist movement), studying the passage from barbarism to market economy. Its particularity is to grant importance to the contents of the exchanges.

In the image of Karl Polanyi (1944), these economists offer the typology of three modes of economic organization and resource allocation : *reciprocity* (i.e. the exchange through donations, bloodline), characteristic of symmetric and horizontal relationships between two clans of comparable power; *redistribution* which assumes the existence of a leader – a king, a chief, a master of the household, of the community ...- who takes over the resources and redistributes them (centralized reciprocity); *exchange*, from which two distinct forms must be distinguished : the exchange at prefixed rates (with institutional prices) and the exchange at variable rates (framed by competition) which is the only one to correspond to the self-regulating market. The first two organizing modes define the economy as a system embedded in a set of values. The economic activity is structured by several regulation principles combining several rationalities (production, exchange, redistribution).

For regulationist economists, market relations are a very precise form of exchange and output ratios respectively, and the market can be understood from the mode of capitalist production which is characterized by “*a very precise form respectively of exchange and output ratios. [...] the exchange ratio takes on the merchant form; at the same time the obligation of money establishes a monetary constraint and a merchant subject*” (Boyer R., 1986, p. 43). Speaking about regulating a production mode “*is searching to express the way in which the society’s determining structure is repeated in its global laws [...] A theory of social regulation is a global alternative*

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<sup>237</sup> The price must be set by the confrontation between an offer and a demand in a market place.

*theory to the general equilibrium theory. [...] The study of capitalism regulation cannot only be the research of abstract economic laws but also the study of the transformation of social relations which create both economic and non-economic new forms*” (Aglietta M., 1976). The exchange ratio takes on the merchant form, established in part by the monetary constraint. Actually, money is *“the highest expression of group cohesion, the social adhesion form of merchant ratios from which anybody can find their way within the economic order. It is the unanimous adhesion to money which integrates the merchant group into a stable society”* (Aglietta M., Orléan A., 2002). The authors go on to say that money *“can only draw its regulatory capacities from its ability to represent values which are the foundation of the community of exchanges. Money materializes a will to adhere to a link between exchanges”*.

A first acknowledgement arises, namely because in our contemporary societies, economic production of goods and merchant services enjoy a privileged status compared to the other modes of production. In a relatively consensual manner, the market approaches make the spatial dimension (link to the territory) and the qualitative character (as many created markets as compared to the number of characteristics of the goods) disappear from the merchant relationship. The nature itself of the merchant relationship prevents it from being aware of space and time for it *“ties an act of exchange between two agents, free in the sense that the settlement of the transaction unties them, and equal in the sense that the merchant exchange operates regardless of their respective particularities, provided that one can offer the good and the other can pay for it”* (Barrère C., Barthélemy D., Nieddu M., Vivien F.-D., 2004, p. 7). The merchant thought process is free from space (made of differentiated territories) and from time (as a result of history) while the non-merchant thought process made space and time its characteristics and justification, what dissolves their physical link in space and their temporal link.

The market is a form of particular social relationships. The merchant relationship is an anonymous and competitive relationship, and constitutes only one of the different social dimensions. These relations are characterized by a movement of abstraction destructing identity (competition, anonymity, individualisation and automation of the actors), though they do not refer to social void, global anonymity or isolation but to an impersonal and minimal social form (Chantelat P., 2002, p. 537). Merchant relations *“are individual and impersonal relationships in the sense that trust doesn’t rest on knowing the personality of others”* (op. cit., p. 534). The market is an under-socialized representation of reality because the behaviour is either a thoughtless implementation of social norms or an automatic reaction to the fluctuation of prices.

The merchant relation is not self-evident but is worked out by market institutions (competition regulation) and non-market institutions (interpersonal relationships) for *“the pursuit of economic objectives usually goes with other objectives of non-economic nature such as sociability, approval, social status and power”* (Granovetter M., 1994). The author continues, pointing out that *“the economic action is socially situated and cannot be explained by mere individual purposes. It*

*is embedded in networks of personal relationships, on top of the fact that it comes from fragmented actors*” (op. cit.). From this fact, even if the markets perfectly regulate the exchanges of agricultural goods, there is no reason for them to correctly regulate the production and consumption of non-market goods. Necessarily, the imperfections of the market do exist. The correction of these imperfections justifies a public intervention in the agricultural market.

One of the results of the Polanyi research group<sup>238</sup> was to highlight the idea that “*thoughts of the market find their origin in an abstract axiomatic in which the market relation is set as absolute. [...] However having only one unit of measurement referring to the market situation, it finds only advantages in a generalization of the merchant situation, unless if ethical or political considerations heteronymous to the scope of analysis it defined, are arbitrarily introduced*” (Barthélemy D. (coord.), Polanyi research group, 2006). The market system integrates the environmental aspects as external to the merchant production. The market thought “*prevent one from seeing that human societies have used and continue to use forms of non-merchant economy, or when its existence is established, it cannot declare them inefficient, for efficiency is only known according to market criteria*” (op. cit.). By definition, the market functioning does not take into consideration the non-merchant universe, which, we believe, is essential to the reproduction of the market system.

As Friedrich Engels (1952, p. 215) said, “*in essence everything is relative (for example positive and negative only make sense when connected, not on their own)*”, and more recently, for Christian Barrère and *ali.* (2004, p. 15) for whom “*a study of the merchant realities cannot overlook the non-merchant realities and forms*”.

## **2/ Representation in the reality of the analytical categories through the processes of economic and social identification, and of merchant abstraction.**

Representation in the reality of the market/non-market analytical categories leads to a distinction between two polar society organisations that German semantic describes as the *Gemeinschaft* (the community) and the *Gesellschaft* (the individualist merchant society).

Non-merchant goods are characterized for not being, either in an imperfect or incomplete way, valorised by the market. When it comes to positive goods and services, their offer may then appear insufficient compared to the wishes of the consumers ; and *vice-versa* for negative goods and services (various harmful effects, agricultural pollution...). The fact that no market exists for these goods and services requires the State’s intervention which can take different forms (creation of a market, monetary transfers, implementation of an adapted institution...).

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<sup>238</sup> The research, of which the Polanyi group is a part of, was under the joint responsibility of the INRA (national institute for agronomic research), the CEMAGREF and the CIRAD, with in particular our participation (Reims University OMI-ESSAI laboratory), and bears the name of “*Recherche and assessment on the multifunctionality of agriculture and rural spaces*”. The title of the research project was “*the agricultural multifunctionality as a link between merchant and non-merchant functions*”.

The recognition of the multifunctional character of agriculture requires the intervention of public policies<sup>239</sup>. Then, the question of the form of the public intervention and of the used means arises.

Categories in the sense of Polanyi	Réciprocity (level of solidarity)	Redistribution	Exchange
Degree of knowing (intimacy) of the exchangers	+ identity (group)	+/-	- anonymity (individual)
Degree of competition	-	+/-	+
Degree of collective organisation	- (group chief)	+/-	+ (State)
Logic of economic functioning	Non-merchant domination	alternative	Merchant domination

+ Present characteristic.

- Absent characteristic.

The State, through public policies and the respect of the law, is constituent of the merchant order. In all the market models presented in economic theories, institutions play more or less a structuring role<sup>240</sup>. The more or less strong implication of the State in non-market management partly depends on the administrations level of development. Reciprocity is the organizational mode when the State is unorganized or absent. Smaller groups form and the head of the group will proceed with the centralization and redistribution operations. On the contrary, when redistribution is centralized within a State (as for example in the European countries), the relation is anonymous. Solidarity is annoyed by the State which, *ex nihilo*, constitutes groups taking over pre-existing groups. The non-market services are taken into account by one or the other forms of organization ; the difference lays in the reference group (the micro group formed from social logic or the centralized State).

In Karl Polanyi's wake, Jean-Louis Laville (1997) offers a reflection from an analysis according to three modes of producing wealth: the merchant and monetary mode (the market), the non-merchant but monetary mode (the redistribution, the State) and the non-merchant mode (reciprocity which dominates in families or associations).

The merchant exchange "*is characterized by a search for equality in contributions, a symmetry secured by the monetary value set on the offer/demand ratio for material or use values*" (Barthélemy D. (coord.), Polanyi research group, 2006). The non-merchant exchange is characterized by social values which create identity. These social values "*are neither innate no given, as sometimes too often assumed to be in these states of embeddedness, [...] but are socially set up and reproduced according to reciprocity and redistribution structures*" (op. cit.). A non-merchant exchange may take place through money, and a merchant exchange "*takes place without requiring the intervention of another social link between the swappers other than the one they form in the very act of the exchange itself*" (Testart A., 2001, p. 727). Market and non-market cohabitate

<sup>239</sup> The idea of public policy is "*one of downward management, a device of reforms imposed on social groups, devised and implemented by an overhanging State, thus following the principle of tutelary modes of governance*" (Commaille J., 2001, p. 16).

<sup>240</sup> Even the Walrasian self-regulated market comprises institutions such as an auctioneer.

in the economic sphere (sphere of the exchanges). On the contrary, non-market non exchange exists in externalities (beyond the economic sphere).

According to Ronan Le Velly “*market relations take place in a context tangled up with interpersonal relations, formal rules, tools and collective representations. [...] These embedded conditions allow market relations*” (2002, p. 37). The market economy is not an innate isolated state for “*it cannot operate without authorities which, foreign to the merchant order, are able to have laws respected [property right, freedom of trade and industry, legal culture of the contract] and to settle disputes*” (Supiot A., 1997, pp. 229-242).

The continuation of the thought process leads us to put into practice the analytical frame in terms of market/non-market in the reality of merchant abstraction and of social and economic identification, according to the terms suggested by the Polanyi research group. The notion of social and economic identification will be used in order to give an exclusive content to the non-merchant scope. The social and economic identification stands out by belonging to a group. The exchange is subject to the principle of identity acknowledgement of the swappers (the principles of mutual acknowledgment and adherence to specific actions). As Ronan Le Velly (2002, p. 48) makes it clear, “*the social dimension is not the scenery but the decor of economic activities*”. The economic activity is not only embedded in the social relations but all the dimensions of reality are tangled up in one another. The movement of social and economic identification, positively characterizing the non-merchant dimension, acknowledges the principle of belonging to a group or to a community, and the mutual recognition within the exchange ; regulation takes place through institutional mechanisms (op. cit.). Non-regulating the non-merchant (without aiming at merchant production) may disrupt the functioning of the market.

On the contrary, policy moving towards the market represents a process of abstraction. We call this merchant abstraction. The movement of merchant abstraction is particularly clear in regions considered as *productive* and undermines the current social organisation. The development of merchant relations has a structuring effect on society. In fact, the reality of the market constitutes a system of resource predation, and of the destruction of social and economic identity. This characterization of the merchant relation makes it efficient but inadequate in ensuring the organization of society relations. The market is a form of peculiar social relations since this latter does not create any identification.

A tendency one way provokes a reaction the other way. “*The merchant development, and its abstraction process, i.e. the loss of identity, results in the necessity for the movement to lean towards a new identification (which cannot be the market because this latter produces individualism which denies identity). And vice-versa, a community which would close itself up to the indefinite preservation of its physical and cultural identity, blocking any change, would provoke an internal reaction of rupture to an opening of the market*” (Barthélemy D. (coord.), Polanyi re-

search group, 2006). We shall start from the hypothesis that in reality there is no situation of pure market economy nor an identifiable closed group. *“Any situation comes as hybrid with more or less pronounced characteristics of market abstraction, and more or less complete and coherent features of the origins and insertion of identity”* (op. cit.). The movement of merchant abstraction is the translation of operating modes (integration and participation in the market, depersonalization of the exchange, movement of individualization, money as instrument of the abstraction process), carried out in the name of a market representation.

We will again take up the assumption that in reality *“goods are simultaneously endowed in a merchant and in an identity dimension”*<sup>241</sup> (Barthélemy D., Boinon J.-P., Cuissard O., 2004). Besides this, we will consider as a postulate one of the results of the Polanyi research group, according to which *“the processes of market participation and those of social and economic identification are of an equivalent semantic level (which means that the propensity to want to set efficiency as a superior norm, in the sense of the market, is deprived of scientific foundation), complementary and opposed, without either of them being definitively able to prevail over the other”* (Polanyi research group, synthetic report, 2004).

### **3/ The birth of a of social and economic identification movement with the use of the notion of multifunctionality in agricultural public policies.**

These elements show evidence of a hybridising of the regulatory forms, both in the market and in public policies. Liberalisation belongs to the merchant universe which is only a part of the reality. This movement leads to a destruction of the social and economic identification (complete or partial questioning of the set institutions and of the modalities of the running public policies). For example environment is an element of social and economic identification which is not expressed in terms of market but through communitarian norms of functioning (Brouwer F., Lowe P., 2000). An identification movement then appears as a limit to the market.

In the present context, it is in the agricultural domain that works on the market/non-market relationship, understood as a dialectical relationship of interdependence, which takes on a significant importance through the debate on the multifunctionality of agriculture. The object of the agricultural multifunctionality becomes the construction of a concept allowing for thought on the structuring of the multiple functions of the activity, intrinsically linked to each other and encouraged through public policies.

The WTO<sup>242</sup> did not choose to retain the term of multifunctionality as a theme of discussion despite the fact that *“all member States acknowledged the existence and the legitimacy of non-market national policy aims, in other words considerations other than of trade order”* (Pingault

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<sup>241</sup> An identity product has at least one characteristic competing products do not have.

<sup>242</sup> World Trade Organisation.

N., in Delorme H., 2004, p. 47). In 1998 the OECD's ministers adopted a definition of multifunctionality according to which *"the act of agricultural production maintains functions of production but also other functions presenting the character of public goods which are rarely remunerated as non-merchant"* (Statement of the meeting of the Committee for Agriculture at the Ministerial level, March 5 and 6, 1998). This approach is qualified as positive in the sense in which *"multifunctionality is considered as a characteristic of the agricultural activity which depends on the existence of multiple products (goods or services), jointly produced by agriculture, and to the fact that some products present characteristics of externality<sup>243</sup> or of goods of public interest, the result being that the markets for these goods does not exist or function badly"* (OECD, 2003, p. 92). According to the positive definition *"an activity is multifunctional if, and only if, production is put together with multiple products and some of these products are externalities or public goods escaping from market laws"* (OECD, 2001).

In this framework, the action of the public policies is appealed to if, and only if, the degree of jointness between basic products and the other products is strong, if the production of the latter has as a cause a weakness of the market and, finally, if the non-governmental actions cannot prove more efficient. *"The creation of a market and of various mechanisms of voluntary supply are preferable insofar as they may correctly reflect the demand for products others than basic products and must be exploited to the maximum before any direct intervention of the authorities"* (OECD, 2003, p. 89). The aim of the OECD is to try to create a maximum of markets for elements which, de facto, do not enter into the market frame.

Gilles Allaire and Thierry Dupeuble (in Barthélemy D. and *ali.* (coord.), 2003, p. 207) question the OECD's idea that bring about externalities market weaknesses. Externalities *"arise through effects that cannot be controlled by prices. What fails is the market system as a whole. [...] one must take into account the fact that the market does not itself issue the rules which insure its functioning [...] and which are thus considered as exogenous to the market theory. And yet the problem of externalities logically implies the reintroduction of these rules (or institutions) into the analysis. Indeed considering externalities essentially as a default of the market is considering that the exogenous institutions are not at fault. But an external action on the price system depends on the institutions [...] and thus the solution offered is one of an institutional change. Therefore, externalities must, in a more general way, be related to regulation weaknesses"*.

The Rome Treaty (Title II of the March 25th, 1957 Rome Treaty, Article 33) lays the foundations of the existence of several functions linked to the main agricultural production of foodstuffs and raw material. *"The Common Agricultural Policy aim is :*

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<sup>243</sup>Externalities *"are (according to the standard definition) implications of a private activity (consuming or producing activity) which affect the activity of other agents and which are external in the sense in which no merchant transaction nor contractual agreement exists between the agents between whom these effects establish a relationship"* (Allaire G., Dupeuble T., in Barthélemy D. and *ali.* (Coord.), 2003, p. 206).

- a) *to increase the productivity of agriculture by developing technical progress, by assuring the rational development of the agricultural production as well as an optimal use of the production factors, in particular labour-force.*
- b) *to insure an equitable standard of living for the farming population, in particular through the increase of the individual level of those working in the agricultural sector, (etc.)”<sup>244</sup>.*

The bi-functional character of agriculture was born with the research for productivity and social cohesion (promotion of the family farm model) (Barthélemy D., Nieddu M., 2002). The multifunctionality of the agricultural activity “*appears belatedly as a notion in the communitarian vocabulary*” for in 1985, “*it implicitly emerged as a social measure of adjustment of the structures expected from the liberalisation of the agricultural markets*” (Delorme H., 2004, p. 11). The notion officially appeared in the CAP in 1997 “*when the Council of Ministers for Agriculture and the European Council in Luxemburg voted in favour of a multifunctional European agriculture, spread accross the whole European territory*” (op. cit. p. 12).

On September 27<sup>th</sup> 1997, the Council of the European Union gave mandate to the Commission to defend the European farm model at the WTO, and especially its multifunctional character (quoted from Waszkiel G., 2002, p. 64). “*The Council asserts its firm will to continue to develop the existing European farm model on the basis of its multifunctional character, [...] and to act to assert its identity both inside and outside the European Union. European agriculture, as well as economic sector, must be multifunctional, lasting, competitive, spread over the whole European territory even in regions facing specific problems. [...] Direct assistance may contribute to some missions of multifunctional agriculture, especially in the domain of rural development. [...] The Council agrees that the result of the negotiations must carry on equilibrium between trading matters and non-trading matters, most of them resulting from the multifunctional role of farming*”.

“*While producing food and farming products, agriculture carries out social functions more or less acknowledged according to the countries : maintenance of the natural habitat, contribution to biodiversity, to territorial occupation, production of cultural goods (landscapes, rural heritage, local products, etc...)*” (Delorme H., 2004, p. 11). This definition, retained for the study, offers a wide acceptance of the term and may define a multifunctional activity as an overall contribution of agriculture to a social and economic development considered as a whole (Laurent C., in Delorme H., 2004, pp. 213-238). The concept of multifunctionality of agriculture, what is a stake in the conflict of redefining farming activity (Perraud D., 2002), appeared during the 1990s in this context of questioning the productivist model as an alternative way in the development of agriculture.

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<sup>244</sup> Underlined by the autor

The agricultural multifunctionality is the angular stone of the European farm model which constructs a competitive, multifunctional and sustainable agriculture in all the regions of the European Union. This means that agriculture shall also be supported in less-favoured areas. From now on, environmental protection shall be a component of Community policies and the regulation acknowledges that farmers have an important function as stewards of the environment and the countryside (Brouwer F., Lowe P., 2000). During the March 1999 Berlin summit of the European Council, the Member States adopted the “Agenda 2000” which reformed the CAP. The aim of this new European policy was to implement an integrated policy of sustained rural development by means of a sole legal instrument which insured a better coherence between rural development and price and market policy. Besides market measures, rural development (regulation (CE) 1257/99, May 17th, 1999) became the CAP’s second pillar. It provided the framework for public acknowledgment of rural multifunctionality whose aim was to favour the production of elements which were not valorised by the market. Regulation n° 1257/1999 is an element of social and economic identification (it concerns marketless products) and therefore play a significant rule in the smooth functioning of the market. It is a matter of constructing and organising the markets by identification mechanisms.

#### **4/ The clash of policies: the Common Agricultural Policy comes up against a global movement of liberalization.**

We notice that the European farm policy differs from practices stemming from the OECD’s recommendations in the implementation of its farming policies.

The positive approach of multifunctionality backed by the OECD operates an undistinguished treatment function by function. The conception of the farming activity is merchant and raises the question on how to deal with externalities (Moreddu C., 2003). The fragmentation of a public policy leads to a division in dealing with the treatments of the functions set by policy. The positive approach advocated by the OECD leads to a segmentation of public policies.

We will favour a normative approach in which multifunctionality represents what is expected from agriculture and the means that society wants to implement. The normative conception does not deal with externalities, for precisely, multifunctionality is a component of the farming activity, a new expression inextricably linked to agriculture.

These two approaches induce the possibility of differentiated policies, with the implementation of divided policies (positive approach) on one hand, and of integrated policies (normative approach) on the other hand. Our research works lead to questioning the OECD’s argument. In fact a segmented policy treats the symptom by marketing the externalities but not its cause, what is a bad allocation of the means of production. This logic grants predominance to the market by giving it a corrective role. The aim of the segmented policies is *“to favour the movement of merchant ab-*

*straction. [...] these policies deal with social identification in a residual manner, and thus marginalize rural households by classifying them in new categories”* (Barthélemy D. (coord.), Polanyi research group, 2006). In this case, non-farmers no longer have control over the farming activity for it precisely becomes segmented.

This perspective coincides with the one offered by Martino Nieddu (2002a, p. 23) according to which *“it is not relevant to completely carry out the operation of separation. In some fragile areas it would be less expensive to maintain a farming activity, and even quite conceivable to produce non-agricultural public goods due to the outrageous cost of its separate production”*.

On the contrary, integrated policy (or sector-based, or unified) includes *“composing elements which are empirically spotted in an activity and which draw their specificity from the sector’s historical and social construction”* (Du Tertre Ch., in Boyer R., Saillard Y., 1995). An integrated policy takes into account the market/social and economic identification articulation. It is run by the State or by the community which intervenes in the structures of production (aim of a market policy) but also on the surviving conditions of the population which constitute the community. The *integrated* agriculture can be distinguished from the *segmented* agriculture by a more global approach of the production system.

In the beginnings of the Common Agricultural Policy, the policy work was integrated for it acted on the operating structures as a whole. Today one cannot describe the CAP policy as an integrated policy. As a fact, in the first pillar, measures such as eco-conditionality that are stemming from the successive reforms of the CAP show that this pillar is not only directed towards the market<sup>245</sup>. Correlatively the second pillar contains elements whose aim is to integrate farmers into markets. The second pillar lays the continuity of structural policies, including measures of establishment incentive, the CANH (Compensatory Allowance for Natural Handicaps), measures for the modernisation of farms (representing roughly half of the amounts linked to the second pillar), the Agri-Environmental Measures (representing roughly the other half) ...constituting a non-merchant accompaniment to a market production<sup>246</sup>. Since 1992, Member states can reward farmers who, on a voluntary basis, provide environmental, social and cultural services. The Rural Development Regulation provides the framework of a public recognition of agricultural multifunctionality. The CAP has become the most important policy framework for the conservation of rural heritage and high nature value farmland/territory, as it obliges member states to implement agri-environmental schemes through its “second pillar”.

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<sup>245</sup> Direct allowance is paid by animal head or by hectare (linked to the surface area) to respect *good farming and environmental conditions*.

<sup>246</sup> Despite all of this, agro-environmental measures and Contracts of Sustainable Agriculture (2nd pillar) are different from eco-conditionality (1st pillar). Agro-environmental measures and Contracts of Sustainable Agriculture favour an increase in the offer of positive amenities when eco-conditionality encourages a reduction of the « offer » of pollution.

This reasoning confirms the idea that a market/non-market duality exists in each phenomenon. Even market policies have a non-market component. The policy which has been run since the 1980s follows a more segmented tendency but brings to light the fact that all the segments of the policy evolve, but not in the same way. The separation into two pillar of the CAP seems not to be justified in the sense that, in reality, we can note that it is hybrid. There is a unity behind the appearance and the division into pillar 1 and pillar 2. For this reason, the CAP stands between integrated and segmented policy.

Two contradictory logics of farming multifunctionality take place ; *“the first aiming clearly at rendering farming more multifunctional by the recognition of some functions [European model], and the other aiming at rendering it less multifunctional by the division between these functions, and indeed even between territories dedicated to farming multifunctionality and to territories dedicated to competition”* (Nieddu M., 2002).

The regional institutions had to adapt to the sector-based and territorial evolutions, generated by the crisis of the productivist model. Their adaptation depends on the characteristics of the agricultural production systems. The policies related to the rural development are differently applied (Muller P., 1990). The particular challenge resides in the fact that regions such as geographical and cultural areas do not necessarily equal areas of administration or a space sharing a common identity. The diversity of these considered territories imposes a differentiated effect on the multifunctional regulation ; a differentiated effect on these territories. Institutions must then manage a multidimensional regulation (multiple functions in different territories).

## Conclusion

Market conception holds an important position in contemporary economic analysis. Despite of this, the characterisation of goods and services that do not have a real price in the market is particularly unclear. As the market does not financially reward the activity's multiple commodity outputs, public policy should step in, filling this gap. Giving back to the market its institutional dimension shows that the market's logic is embedded in a larger social whole. We consider not only the acknowledgement of a questioning of the productivist model of development in farming, but also the outbreak of economic problems. The context leads us to consider reality in a multi-dimensional and complex manner, composed of an economical, political and social dimension, each having an equivalent semantic value. There is a dominating dimension in each reality. The dominating dimension (which is not exclusive to the interaction of various dimensions) of contemporary societies of developed countries is the economic dimension, characterised by market economy, and embedded in a competing global order.

The market and the merchant exchanges have a limit which is set by the embodiment conditions of the market in the social, institutional and cultural networks (Le-Velly R., 2002). The market

logic makes non-merchant elements appear. Both market and non-market spheres are neither dyadic nor complementary but overlapping.

The movement of merchant abstraction gradually destroys the current identity (rural exodus, family relations...). The movement of economical and social identification contributes to composing a new identity through institutional subventions such as the policy of installation, giving money to less-favoured areas... Unlike market and non-market, the processes of market abstraction and of economic and social identification do not hybridize since they do not act hand in hand ; they maintain a continuous movement of confrontation.

The stake of these questions is not only academic and/or theoretic. Indeed, the debate comes up as a denunciation of farming specialization on the sole merchant function. And this despite, Alexander Tchayanov's reasoning (1990 translation, p. 132), "*the essential fact that determines the whole character of the structure of the farm is its degree of insertion in the market, the development of its merchant production*". Public policies play a structuring role in the management of these two processes. The farming institutions shall manage complex systems of interaction between various localized actors (sector-based and/or territory-based). Multifunctionality includes in its definition farming elements of economic and social identification and raises the necessity to take into account the two dimensions.

We are thus able to distinguish the conditions of emergence of the institutions leading a policy of economic and social identification, blocking the dominating logic of growing liberalization of the sector. The State imposes on principles (implementation of legal rules, supply of collective/community services) which globalization merely merchant relations (movement of market abstraction) destroy.

### **Bibliography.**

- AGLIETTA M., 1976, *Régulation et crise du capitalisme*, Odile Jacob, republish Postscript, 1997 ;
- AGLIETTA M., ORLEAN A., 2002, *Réflexions sur la nature de la monnaie*, Lettre de la Régulation, n ° 41, june, free on : [http://www.umpf-grenoble.fr/irepd/regulation/Lettre\\_regulation/lettrepdf/LR41.pdf](http://www.umpf-grenoble.fr/irepd/regulation/Lettre_regulation/lettrepdf/LR41.pdf) ;
- ALLAIRE G., BOYER R., 1995, *La grande transformation de l'agriculture ; lectures conventionnalistes et régulationnistes*, INRA-Economica, Paris, 444 p. ;
- BARRERE Ch., BARTHELEMY D., NIEDDU M., VIVIEN F.-D. (édit.), 2004, *Réinventer le patrimoine : de la culture à l'économie, une nouvelle pensée du patrimoine ?*, L'Harmattan, 337 p. ;
- BARTHELEMY D., NIEDDU M., 2002, *Biens marchands, biens identitaires et multifonctionnalité agricole*, SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, 28 p. ;
- BARTHELEMY D., BOINON J.-P., CUISSARD O., NIEDDU M., 2003, *Approche méthodologique concernant l'étude Allemagne France Royaume Uni*, working paper, Dijon, 7 p. ;
- BARTHELEMY D., DELORME H., LOSCH B., MOREDDU C., NIEDDU M. (coord.), 2003, Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., 922 p. ;

- BARTHELEMY D., NIEDDU M., VIVIEN F.-D., 2003, *Le patrimoine, accumulation d'externalités positives ou régulation de la relation marchande ? Les enseignements de travaux récents sur l'agriculture et l'environnement*, 3<sup>ème</sup> journée d'étude « *Approches économiques et pluridisciplinaires du patrimoine* », Reims University, INRA-ENESAD Dijon, June 12 and 13, 21 p. ;
- BARTHELEMY D., BOINON J.-P., CUISSARD O., 2004, *Etude comparative de l'application du Règlement (CE) n° 1257/1999 favorisant une agriculture multifonctionnelle. Comparaison entre la France (Régions Bourgogne et Champagne-Ardenne), le Land de Hesse (Allemagne) et le Pays de Galles (Royaume-Uni)*, intermediate report, Dijon, mars, 13 p. ;
- BARTHELEMY D., NIEDDU M., 2004, *Multifonctionnalité agricole et production identitaire*, in Les Cahiers de la multifonctionnalité, *multifonctionnalité des activités, pluralité des identités*, INRA-CEMAGREF-CIRAD collaboration, n° 7, November, pp. 41-53 ;
- BARTHELEMY D. (coord.), 2006, POLANYI research group, INRA-Editions, (will be published) ;
- BENKO G., LIPIETZ A., 1992, *Les Régions qui gagnent. Districts et Réseaux : les nouveaux paradigmes de la géographie économique*, Paris, PUF, 424 p. ;
- BERRIET-SOLLIEC M., DAUCE P., 2001, *Développement rural : quelle place pour l'agriculture dans les politiques Communautaires*, in *Nouveaux enjeux pour l'agriculture*, Armand Colin, pp. 125-191 ;
- BODIGUEL L., 2002, *Multifonctionnalité de l'agriculture et territoire : le territoire, un contexte juridique en construction*, in *La multifonctionnalité de l'activité agricole et sa reconnaissance par les politiques publiques*, Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., pp. 355-386 ;
- BOINON J.-P., CUISSARD O., 2004, *Comparaison des politiques publiques agricoles à visée multifonctionnelle en Bourgogne et en Champagne-Ardenne*, Les Cahiers du CERAS, n° 49, October, 39 p. ;
- BOYER R., 1986, *La théorie de la Régulation, une analyse critique*, La Découverte, Paris, 142 p. ;
- BOYER R., SAILLARD Y. (édits.), 1995, *Théorie de la Régulation : l'état des savoirs*, La Découverte, Paris, 518 p. ;
- BROUWER F., LOWE P., 2000, *CAP Regimes and the European Countryside : Prospects for Integration between Agricultural Regional and Environmental Policies*, CABI Publishing, New-York, Cromwell Press, p. 339 ;
- CHANTELAT P., 2002, *La Nouvelle Sociologie Economique et le lien marchand : des relations personnelles à l'impersonnalité des relations*, French Sociology review, n° 43 (3), pp. 521-556 ;
- COMMAILLE J., 2001, *Transformation du statut du droit et nouveaux modes d'action publique*, in Barthélemy D., Facchini F., Nieddu M., Pivot C., Proceedings of the SFER international colloquium, November 25 and 26 1999, *Face au droit rural et à ses pratiques, une approche conjointe des économistes, des juristes et des sociologues*, l'Harmattan, 444 p. ;
- DELORME H. (coord.), 2004, *La Politique Agricole Commune : anatomie d'une transformation*, Presses de la fondation Nationale des Sciences Politiques, Paris, March, 403 pp. ;
- DU TERTRE Ch., 1995, *La dimension sectorielle de la régulation*, in BOYER R., SAILLARD Y. (édit.), *Théorie de la Régulation : l'état des savoirs*, La Découverte, Paris, pp. 313-322 ;
- DU TERTRE Ch., MOUHOU E.-M., MOATI P., PETIT P., 2000, *Secteurs et territoires dans les régulations émergentes*, La lettre de la régulation, n° 33, June, 4 p. ;
- GRANOVETTER M., 1994, *Les institutions économiques comme construction sociale*, in ORLEAN A. (édit.), *Analyse économique des conventions*, Paris, PUF, pp. 79-94 ;
- LAURENT C., 2002, *Le débat scientifique sur la multifonctionnalité de l'activité agricole et sa reconnaissance par les politiques publiques*, in *La multifonctionnalité de l'activité agricole et sa reconnaissance par les politiques publiques*, Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., pp. 253-269 ;

- LAURENT C., REMY J., 2004, *Multifonctionnalité, activités, identités*, in Les Cahiers de la multifonctionnalité, multifonctionnalité des activités, pluralité des identités, INRA-CEMAGREF-CIRAD collaboration, n ° 7, November, pp. 5-16 ;
- LAVILLE J.-L., 1997, *Le renouveau de la sociologie économique*, Cahiers Internationaux de la Sociologie, n ° 103, pp. 229-235 ;
- LEBORGNE D., LIPIETZ A., 1992, *Flexibilité offensive, flexibilité défensive. Deux stratégies sociales dans la production de nouveaux espaces économiques*, in BENKO G., LIPIETZ A., *Les Régions qui gagnent. Districts et Réseaux : les nouveaux paradigmes de la géographie économique*, Paris, PUF, pp. 347-378 ;
- MOREDDU C., 2003, *Les travaux de l'OCDE sur la multifonctionnalité : contexte, approche et résultats préliminaires*, in BARTHELEMY D., DELORME H., LOSCH B., MOREDDU C., NIEDDU M. (coord.), Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., 922 p. ;
- MULLER P., 1990, *Les politiques publiques entre secteurs et territoires*, Policies and Public Management, vol. 8, n ° 3, pp. 19-33 ;
- NIEDDU M., 2002a, *Modèle de la triple hélice et régulation du changement Régional : une étude de cas*, in Geography, Economics, Society review, vol. n ° 4, pp. 205-224 ;
- NIEDDU M., 2002b, *La multifonctionnalité agricole, entre marché et externalités*, Economie Appliquée, n ° 1, tome LV, pp. 105-132 ;
- OECD, 2001, *A synthesis of country reports on jointness between commodity and non-commodity outputs in OECD agriculture, Proceedings of the Workshop on multifunctionality*, Paris, June 2 and 3 ;
- OCDE, 2003, *Multifonctionnalité, conséquences pour l'action publique [Multifunctionality, The Policy Implications]*, 122 p. ;
- PERRAUD D., 2001, *Les politiques agricoles et rurales dans les Régions : une nouvelle organisation des pouvoirs publics en Europe ?*, SFER, Paris, Rural economics, n ° 261, pp. 7-22 ;
- PERRAUD D., 2002, *Les ambiguïtés de la multifonctionnalité de l'agriculture*, in *La multifonctionnalité de l'activité agricole et sa reconnaissance par les politiques publiques*, Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., pp 271-290 ;
- PINGAULT N., 2001, *La multifonctionnalité : caractéristique ou objectif pour l'agriculture*, May 17 and 18 seminar, *Nouvelles questions sur l'avenir de la PAC et le rôle de la multifonctionnalité*, CERI-FNSP, Paris, 18 p. ;
- POLANYI K., [1944] 1983, *La grande transformation : aux origines politiques et économiques de notre temps*, Gallimard, Paris, 420 p. ;
- POLANYI research group, 2004, *La multifonctionnalité agricole comme relation entre fonctions marchandes et non-marchandes*, synthetic report, September revise, 8 p. ;
- TCHAYANOV A., (1925) 1990, *L'organisation de l'économie paysanne*, Librairie du Regard, Paris, 344 p. ;
- TEMPLE D., 1998, *Les structures élémentaires de la réciprocité*, MAUSS review, n ° 12, Paris, La Découverte ;
- TESTART A., 2001, *Echange marchand, échange non-marchand*, French Sociology review, n ° 42-4, pp. 719-748 ;
- WASZKIEL G., 2002, *La multifonctionnalité de l'agriculture : quelques orientations françaises*, Proceedings of the SFER international colloquium, *La multifonctionnalité de l'activité agricole*, Paris, March 21 and 22, Educagri Ed., pp. 63-86 ;

### ***European Security and Defence Policy (ESDP) 10 Years – Challenges and Opportunities***

*The Council of the European Union adopted on 11.11.2009 in Brussels the following paper, which gives a summary view on 10 years of European Security and Defence Policy (ESDP), as well on the perspectives ahead. This paper had been presented to the European Council on 1./11.12.2009 (Council Document no. 15649/09). The following text includes one corrigendum to 15649/09.*

**From:** General Secretariat of the Council

**To:** Permanent Representatives' Committee / Council

**Subject:** ESDP 10 years - Challenges and Opportunities

Delegations will find attached, with a view to transmission to Council via the Permanent Representatives' Committee for endorsement, the Ministerial declaration as agreed by the Political and Security Committee on 10 November 2010.

#### **Ministerial Declaration: ESDP Ten Years – Challenges and Opportunities**

A decade ago, in the aftermath of the conflicts in the Western Balkans, the European Council took the historic decision at its Summit in Cologne in June 1999 to establish the European Security and Defence Policy (ESDP) as a part of the Common Foreign and Security Policy, thereby demonstrating a commitment to jointly enhance the European Union's contribution to international peace and security. This has enabled the European Union to become an ever more active, capable and credible global actor, in line with the European Security Strategy (ESS), allowing it to combine in a comprehensive approach crisis management capabilities with longer term assistance and development policies.

The ESDP has steadily been developed and adapted to an increasingly complex global environment. Along with the successive deployment of 22 ESDP missions and operations in three continents across the full range of conflict prevention, crisis management, and post-conflict peace-building tasks, we have reformed our structures; elaborated and refined our planning capability; improved our crisis management and rapid response capabilities; and increased our cooperation with key partners and contributing Third States.

The development of the ESDP has, at the same time, highlighted the many challenges ahead. The demand for the European Union's actions in crisis management is steadily growing. We must continue to strengthen our collective capacity to promote peace, security and stability in the world. It is clear that these challenges cannot be met without adequate resources. EU decisions have to be based on a common and strategic analysis of the threats and risks facing us.

Based on the ESS, we need to take forward our common goals and strategic priorities, built around our common values of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law in conformity with the principles of the UN Charter and international law. We, in the EU, will develop our joint capacity to pursue policies which can enhance our own security as well as the security of our neighbours and the wider world. To this end, we need to continue to move forward in a number of key areas.

- The entry into force of the Lisbon Treaty will entail a new chapter in the history of the EU's common foreign, security and defence policy by further strengthening its common institutional framework. The new post of a High Representative of the Union for Foreign Affairs and Security Policy, assisted by the European External Action Service (EEAS), will considerably increase effectiveness also in the field of ESDP. We will now work towards ensuring a strong, effective and visible role for the first incumbent of this office. We shall take concrete steps, as appropriate, to implement all provisions and articles of the Lisbon Treaty relevant to CSDP.
- We shall further improve the consistency in our external activities by strengthening our early warning capacity and our capacity to plan and carry out coherent, comprehensive and tailored policies for early action, crisis management and post-conflict development in conflict-ridden areas. When establishing the EEAS, we will also enhance the efficiency of the structures for the planning and conduct of our crisis management missions and operations. The EEAS, under the direction of the High Representative of the Union for Foreign Affairs and Security Policy, will also assure closer links to other European Union instruments and policies.
- We will continue to improve our capacity to undertake effective missions and operations across the entire spectrum of conflict prevention and crisis management tasks in order to enable us to carry out more flexible, complex and robust missions and operations, as well as to carry out several missions and operations simultaneously. We will also improve the way we learn lessons from ongoing and past crisis management missions and operations and exercises.
- We will honour our commitment to provide the European Union with an effective capability to respond rapidly to erupting crises. To this end, we will increase the usability and the flexibility of the EU Battlegroups, in order to make full use of their potential. New parameters for rapid civilian deployment will be established, including the continued development of civilian response teams and the improvement of logistical support.

- We pledge to continue to improve our capacity to provide national and multinational capabilities for the European Union's missions and operations. The growth of ESDP calls for increased availability of civilian and military personnel and equipment. To this end, we will continue to explore further possibilities of the pooling and sharing of resources, specialisation and warehousing. We will also continue to improve effectiveness in the provision of personnel and equipment, continue to share best practices, and further develop our common training and exercising activities.
- We acknowledge that the CFSP budget should be adequate to serve our policy and to respond to current and future challenges.
- We will intensify our efforts regarding civil-military coordination. This will include the enhancement of the civil-military aspects of the planning and conduct processes for new and ongoing ESDP missions and operations, as well as promoting civil-military synergies and dual-use when developing civilian and military capabilities. The Crisis Management and Planning Directorate (CMPD) will have a key role, under political and strategic guidance, in developing more coherent civilian and military strategic planning for ESDP missions and operations. The CMPD will also foster and coordinate work on synergies between civil and military EU capability development.
- We shall continue to strive for more and better coherence in the development of capabilities in support of ESDP. We shall, through the European Defence Agency and competent Council bodies continue to develop our integrated approach to capability development, in close cooperation with the Commission. We should further invest in research and technology in the field of security and defence, and armaments cooperation shall be promoted. A well functioning defence equipment market - based on fair and open competition, a level playing field and security of supply - is a crucial component in strengthening the European Defence and Technological Industrial Base and in the development of European military capabilities.
- Possibilities for the use of the Permanent Structured Cooperation shall be explored in order to enhance defence capabilities, with a view to strengthen the EU's ability to respond to crises.
- We shall maintain the momentum achieved in the integration of maritime surveillance, including through the contribution of the ESDP aspects, and will explore opportunities and synergies that can be achieved by the integrated approach to maritime affairs.
- We will continue to improve and strengthen a human rights perspective in ESDP as well as putting a focus on women, peace and security and the role of women as actors in the international security agenda.

- We shall, notably by establishing closer links between the European Security and Defence Policy and the Policy on Freedom, Security and Justice, as appropriate, work towards improving our ability to counter cross-border challenges such as trafficking in human beings, drugs and goods, illegal migration and transnational organised crime.
- We shall work towards developing further the EU's role in support of mediation and dialogue processes in situations of instability and conflict.
- We will intensify our cooperation with key partners. The effectiveness of our common foreign, security and defence policy will benefit from strategic relationships with partners and good cooperation on the ground. Local ownership is key to sustainable post crisis stabilisation. To this end, we shall strengthen and deepen co-operation between the European Union and the United Nations, NATO, the African Union and other international and regional partners as well as our contacts with non-governmental actors. We shall also pursue the dialogue and cooperation with Third States. Their involvement in ESDP missions and operations strengthens partnerships and their further contributions would be welcome.

The way we deal with these challenges and opportunities will determine our future capacity to contribute collectively to conflict prevention, crisis management, and post-conflict peace-building.

Our common efforts in this endeavour are key to a more secure Europe and a more secure world.



## *Réseau d'analyse et d'informations sur l'actualité internationale*

### *Présentation*

Multipol est un réseau international et interdisciplinaire de chercheurs et d'experts en droit international et relations internationales, provenant de milieux professionnels tels que la justice internationale, la diplomatie multilatérale et bilatérale, la recherche et la formation, la fonction publique internationale.

Sa première et principale réalisation est le site <http://www.multipol.org>, plateforme d'échanges, d'analyses et d'informations en temps réel sur l'actualité internationale. Ce nouveau media se positionne ainsi entre les publications journalistiques, qui manquent parfois de recul et de données précises sur les événements de la scène internationale, et les publications scientifiques, qui paraissent dans un délai souvent tardif.

Multipol est né à Genève, durant l'été 2006, de la rencontre de passionnés de relations internationales. Le réseau est régi par une association de droit suisse, apolitique, non religieuse et à but non lucratif. Il est composé d'une vingtaine de membres spécialisés dans les différentes branches des relations internationales (droit international, science politique, géopolitique, économie internationale, géostratégie, etc.).

### *Objectifs*

- Animer un réseau de chercheurs et de professionnels issus de cultures, de nationalités, de localisations, de formations et d'environnements professionnels différents.
- Proposer un support d'information innovant, rigoureux et gratuit, offrant à la fois des analyses de fond et des brèves d'actualité internationale, publiés par des chercheurs et des experts en relations internationales.
- Permettre aux membres de ce réseau de publier leurs analyses et les informations dont ils disposent dans un délai très court, et susciter des commentaires pertinents de la part des autres membres du réseau et des lecteurs.
- Organiser des colloques visant à diffuser la connaissance du droit et des relations internationales.
- Établir des liens avec des institutions et organismes poursuivant des buts analogues ou voisins.
- Proposer l'expertise scientifique des membres du réseau.

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### *Renewable Energies in the European Union*

**Danyel Reiche (ed.): Handbook of Renewable Energies in the European Union. Case Studies of all Member States**

*In collaboration with Stefan Lange, Stefan Körner, Mischa Bechberger and Graham Johnson. Foreword by Hermann Scheer. Frankfurt am Main 2002, 270 pages, 34,00 EUR. Peter Lang Verlag, ISBN (10) 3-631-39309-1*

In a time when renewable energy becomes not any more a side effect of energy policy, it should be memorized what has been in discussion in the European Union already in 2001/2002. Certainly it is still the “old” EU, before the 2004 enlargement, and the system of this book has been practiced in various other publications: some horizontal, comparative remarks, and then the country reports (e.g. also in Kiril Popovsky, Peter Seibt, Ioan Cohut, editors: Geothermal Energy in Europe – State of the art and necessary actions and measures to accelerate the development, Bitola/Macedonia, September 2000).

Here the first steps of producing renewable energy are mentioned: for Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom. A chapter on relevant associations, websites and journals closes the volume. The disparities in the EU have clearly been worked out, e.g. that in 2002 around 150 x more wind power capacity has been available in Germany than in France, and more solarthermal systems had been installed in Austria than in Italy and Spain. There was also a different definition for renewable energy in each EU member country. The sub-chapters are equal for each country, so comparisons are made easy (definitions, starting position in energy policy, instruments for promotion renewable energy, obstacles).

This booklet is an excellent tool for all those who work on renewable energies, as it shows clearly the national traditions (and neglects) in the “old” EU, which of course in the legal system of the EU has to be considered for the future. Who is e.g. aware that Austria at the end of the 1990s had more than two thirds of its energy from hydropower, Sweden almost half of its energy from the same source, and Finland more than 12% from biomass? This different interest can explain a lot, and whoever deals with today’s renewable energy resources in Europe should be aware of the situation where the countries came from.

## ***Peace in Diversity***



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The creation of the European Union was initiated by France and Germany as a result of the two World Wars. Essential to its growth was the addition of other ancient nations who had themselves been in conflict, mostly with each other, in the past. The primary objective was to achieve mutual cultural respect as well as integrate their differences so as to avoid further crises and numb painful memories in order to achieve reconciliation. One must never forget this element which is essential to understanding the European Union's message of hope: unite to live together in peace.

The European continent and its peoples were influenced, in antiquity, by two great cultures and civilizations: the Greek civilization to begin with and later on the Roman civilization. The Roman Empire has remained in our history as an example of power and unity, of prestige and splendor.

From its early creation, the European Union integrated different cultures: Latin, Germanic, and Anglo-Saxon. By opening to the East we have integrated the Slavic cultures.

Now, the question of Turkey's membership has arisen and, with this, the possibility of the European Union becoming a truly universal model. By integrating this large Muslim country, we would send a potent message of tolerance to the rest of the world. By doing so, we would effectively put an end to the dangerous theory of the "clash of civilizations."

The established coexistence of our 27 member states is already an exceptional feat, never before achieved on our continent except under the rule of an authoritarian empire. Now, it is the nations and their peoples who choose to unite to build a common ground upon which we may live in peace, prosperity, and where we may pursue our happiness.

Now, we must ask ourselves, especially in this time of severe global crisis, about the direction of this political action to better understand this process and to continue it. This union of nations, peoples, and different cultures is currently of great geopolitical importance as there is much talk of multiculturalism worldwide. At the time when Western Europe encountered Eastern Europe and now as the question of going towards the Orient this is ever more present.

At a time when big decisions that will involve all of humanity must be taken, on a global scale, Europe has an important message to propose, void of messianic imperialism and conquest, a message of respect and tolerance toward other civilizations.

During my lectures, I always tell my students that Europe is not only the European Union and I defend the idea that it is the Council of Europe and its 47 states that represent our grand and beautiful Europe: from the Atlantic Ocean to the Ural Mountain range! Europe is as large geographically as the beauty of its humanistic ideals. Is it not in the interest of the Europeans to favor a democratic area with common law, organized around the European Convention for Human Rights? Is it not its goal to promote the cultural identity of Europe and its diversity at the same time?

We cannot hope for a better institution to begin work on a veritable democratic European area and on the construction of a grand European Union!

The clash of civilizations can be avoided as it is a concept, which is way too partial and biased, based on history. The political direction of the European Union must be thought out and organized as a model of universality to which one adheres liberally without exterior constraints.

Let us avoid idealism and technocratic diversions; we must begin by integrating the citizens in projects, not necessarily ostentatious, but foremost aiming to unify collective energies and to share competencies and know-how.

In political action, the question “why?” must regularly be repeated as it provides direction; with no political direction any construction, whichever it may be, is condemned to failure. The direction unites energies and channels the actions of the citizens and the states towards a well defined objective.

The message of “living together” established by the founding fathers of Europe must always be put forward to underline and remember the foundations of the European construction and to better understand the role it plays in the integration of different cultures.

These differences, essentially our differences are an extraordinary wealth and a great challenge for the future. Humanity is one and must imperatively see itself as just that; this is the big project for our still young century.

That is the true message of Europe. No other model has been organized to incorporate so many different cultures. If the European model were to fail, the resulting message to the rest of the world would be catastrophic. Thus, we have the duty, toward our children and the generations to come, to bring to fruition this beautiful and noble construction.

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Appears at the end of April 2010 (see details on the Website [www.libertas-institut.eu](http://www.libertas-institut.eu)):

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