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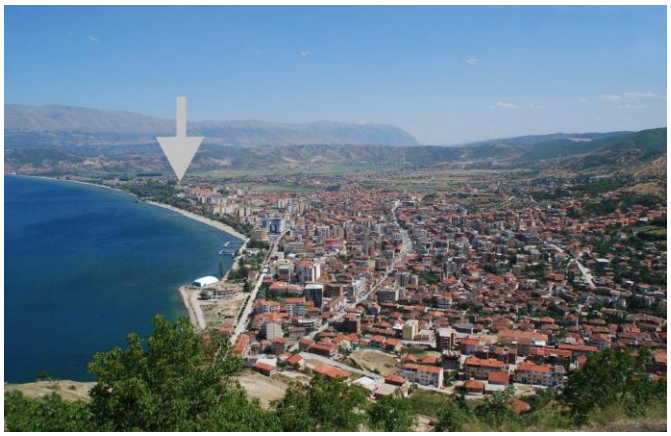
Nehemia University is a new, private university in **Pogradec/Albania**, ashore Macedonian-Albanian Lake Ohrid. Since the early 1990s, Bavarian aid organisations bogged down in Albania, where they set up a group of kindergartens, elementary schools (also for underprivileged children), secondary schools, 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 (1st year), a Master Thesis (2nd 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.

Please see here 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 an interesting country, 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 course material, which, as it is online, 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 the 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 the familiar climate of the Nehemia institutions. More: www.nehemia-uni.org

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Editorial: Finally A Periodical About EU Foreign Policy

Dear readers,

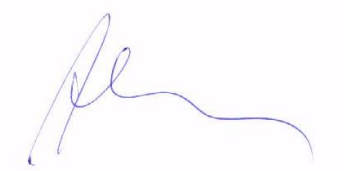
This new online publication has been conceived by Europeans who want to see the European Union stronger and more articulate in international politics and European security policy, and stronger as well as responsible in international development and trade. The appearance of the EU in the international economy is after all rather streamlined, but EU Foreign Policy in the widest context remains a new field, which has been elaborated only in the last years with functional as well as institutional reforms, although since long time being an objective for many Europeans.

Will this journal be at the left, at the right, or at the green, or whatsoever? The people who make this eQuarterly are in general "middle on the road", they are democratic, tolerant, open, curious, balanced, pragmatic and responsible. That does not necessarily mean that all authors think in the same direction. We believe in the capacity to think, to digest intellectually, and in pluralist forums. The publisher, LIBERTAS – European Institute is a company under German law, a pro-European think-tank (which exists since 1992 and therefore has a longer breath than a same-name short-term attempt trying to kill the Lisbon Treaty, with the same name), which does not belong to any bigger company, and we are free of other interests. We are proud of being independent, we are proud of being committed to the European cause, but this – of course – never permits us to neglect the responsibility of Europeans towards Africa, Central and Latin America, Asia, the CIS and the Pacific, as well as to neglect the traditional transatlantic relationship with North America. In general, the people who are responsible for this paper are citizens of the world. And as there are not really many papers on European Union Foreign Affairs, we just started it – without one Cent of taxpayers' money.

This paper is committed to all kinds of integration between states, as the European Union is. After all, we made excellent experience how to do it. It is open to a fruitful dialogue between people of different views, histories and religions in this world, it is committed to Human Rights, it is committed to economic development and equally free trade. And finally it wants to cover issues of security policy for the European Union. All this is a major challenge for European and non-European citizens, policy-makers, administrations, researchers, teachers, students and analysts.

For EUFAJ, we chose a subscription rate which is also acceptable for people and organisations with chronic budget difficulties. Of course, we want many subscribers, and your ideas, suggestions and contributions, too. EUFAJ wants to be more than a mere journal. From time to time, you should look on our website www.eufaj.eu. We also will organise workshops, discussions, lectures, non-periodical publications, visits. And let me finally apologize: EUFAJ exists only in English, although we are fervent partisans of cultural diversity, but pragmatism had to win, with all immanent irregularities.

With best regards,



Hans-Jürgen Zahorka *November 2009*

Europe Should Say "Yes Minister!"to Her

Catherine Ashton, more precise Baroness Ashton of Upholland, was Member of the European Commission in charge of Trade, the successor of Peter Mandelson. That on the evening of the Brussels Summit from 19.11.2009 she was nominated High Representative/Vice President of the EU Commission – a really hybrid role in the complicated structure of the EU – was no surprise; she was on a hot list for many weeks before. As Commissioner, however not too long since the take-off of Mandelson to the British Government, she knows the *couloirs* of power in Brussels, or should know where they are. She is a woman. She is neither Tony Blair nor David Miliband, who had and have highest or high profile government posts in UK, therefore also responsible for British non-shows in Europe – there are many, like Schengen, the Euro, just to name the two most important. She comes from the pink-red colours of the political spectrum, from the British Labour Party. She has a reputation of being a Commissioner loyal to Europe, although nobody has been able to witness an Ashton-led European revolution in UK (but this cannot be really the case in today's Britain). And she had in many EU capitals a reputation that she is not really the political animal who can assert herself - which probably will be wrong, as the future will show.

Europe should say now "Yes" to the "Minister of Foreign Affairs" of the European Union. The action of the very same Government to which she once belonged prevented the person nominated for this post from being called "Minister". This privilege is only to be kept for national government members. Europe can live with this, although memories of a British soap may incline us to say "Yes Minister" to her**.**

Her mere existence prevented long discussions at the Brussels summit of 19.11.2009. This may have had several reasons. Some of them have been mentioned above, and another one was clearly that she was until now not considered as an "alarm factor" or "uncontrollable element" in the Commission or in politics in general. She has experience of several junior posts in the British Government – a 2001 nomination for Parliamentary Secretary of State in the Ministry of Education, a 2004 one into the Constitution Ministry, where she was kept busy with the UK, the English and Welsh National Archive. In 2007 she became Parliamentary Secretary in the British Ministry of Justice, and some weeks later she found herself named the new Speaker of the House of Lords by the new Prime Minister Gordon Brown. A year later, in October 2008 she became the successor of Peter Mandelson as Commissioner for Trade.

What will her impact be? First of all, the HR/VP, as her job is called (High Representative – in the Council/Vice President – of the Commission), will notbe an easy thing to master. It will more be a "mission impossible" job, but one can be confident that she knows to set priorities and to delegate. Furthermore, it may be correct that she was more liked by some power players in the Member State's governments as her previous jobs have all been a bit junior, and she never behaved like a big shot, like e.g. a Chris Patten, a John Bruton, a Joschka Fischer, a Frank-Walter Steinmeier, a Massimo D'Alema, a Juan Angel Moratinos etc. who were all discussed by some sections of European published and public opinion. The Baroness just needs a serious chance, as everybody has the right to grow in their Brussels jobs, and she seems to be tough enough to set up the new EU diplomatic service – where a great visionary who cannot work on staff issues would be a wrong decision. We wish her to grow above the previous trade field, where she could not destroy very much, and she did not. And we hope and wish that she will say something very pro-European to her home country, where then – the time is now ripe – a certain hard core of pro-Europeans should re-emerge. So, Ms. HR/VP (this is the cruelest title which was ever born in Brussels, thanks to your own government) – we wish you a good start. Your new task merits it.

Hans-Jürgen Zahorka

The Future Diplomatic Service of the European Union

By Hans-Jürgen Zahorka

Rationale and History

The calls for a Common European Foreign Policy are very old and became larger and larger in the last years; they have always included calls for a common European diplomacy. In the recent history of the EU, there was a European Parliament resolution of 5 September 2000 on a common Community diplomacy[1], a Commission communication on the development of the external service[2] in 2001 and another European Parliament resolution of 14 June 2001 on this said communication, a European Parliament resolution of 26 May 2005 on the institutional aspects of the European External Action Service, and a workshop held by the EP Committee on Constitutional Affairs on 10 September 2008, just to name some of the EU institutions and not the many papers – public, 'officieux' or secret – which are hovering in the floors of the EU Member States' foreign ministries.

The EU Diplomatic Service, or **European External Action Service (EEAS)** as it is called[3], is not coming from one day to the other, but has been in the pipeline for many years, like the Euro for instance which came in 1999 (as official currency and at the same time as 'bank money') and in 2002 (as physical money, in coins and banknotes), but was discussed in many details for many years before, not only e.g. in the old Werner Plan, named after the former Luxembourg Prime Minister Pierre Werner, but in an Intergroup[4] European Currency within the European Parliament in the mid-1980s, chaired by Otmar Franz M.E.P., even before the Delors Group had been set into action to prepare the masterplan for the EU currency, and this Intergroup was for several years the focus of the European Monetary Union developments in the making[5].

Now, with the Treaty of Lisbon finally coming into power on 1.12.2009[6], there was made a report of the European Parliament Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs and of the Committee on Development[7], tabled by Elmar Brok, a very senior M.E.P. from Germany and the EPP Group, who had been frequently discussed for a post as Commissioner. This has been broadly discussed in several EP Committees and in the plenary of 22.10.2009 and ended in a European Parliament resolution of this very 22 October 2009 on the institutional aspects of setting

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[1] Official Journal C 135, 7.5.2001, p. 69
[2] Official Journal C 53 E, 28.2.2002, p. 390
[3] Again, like with many other Member State equivalents, the EU created this expression to avoid criticism in the Member States, but also to avoid a mix-up between two "Diplomatic Services". This is a common practice within the EU which has many expressions different to the Member States, but equivalent to the functions (like e.g. Commission – Government, Directorate General – Ministry, mission - [incoming] embassy from third countries, delegation – [outgoing] embassy to third countries, directive – [directly applicable] law, etc.)
[4] Intergroups are not official committees; they are due to the initiative of single (or a group of) Members of the European Parliament, and they are not restricted to one party but open to most sides of the European Parliament – this explains their name.
[5] see also Otmar Franz (ed.): European Currency in the Making, Sindelfingen 1989, Libertas, with many contributions by central bankers, European politicians etc. (before there was also a German version of most of the articles, in Otmar Franz (Hrsg.); Europäische Währung – eine Utopie?, Sindelfingen 1988, Libertas)
[6] See the articles of the Lisbon Treaty with relevance to Foreign and Security Policy in full text in the Documentation section of this EUFAJ issue, p. 74
[7] European Parliament Session document 2009-2014 - A7-0041/2009. 20.10.2009, Report on the institutional aspects of setting up the European External Action Service (2009/2133(INI)), Committee on Constitutional Affairs, Rapporteur: Elmar Brok

up the European External Action Service. In the debate the day before, on 21.10.2009, the Rapporteur Elmar Brok pointed out correctly „that at first Member States are interested in organigrammes but not how these principles are to be put into practice. We think that we do not need a new bureaucracy between the Council and the Commission which runs a proper life on a permanent basis with 6.000 to 8.000 people and becomes an uncontrollable kingdom".

Jealousy of the National Level?

For a long time, there have been many jealousies by the national level towards this diplomatic service. It started in the 1980s, when e.g. German federal civil servants from the Foreign Office disguised as "Yassir Arafat" during an opening reception of one of the German Länder offices, linking the regions with Europe, in holding a kitchen handkerchief over their head and saying "You will have as much real power as the Bonn Office of the Arab League" (which was just a liaison office and no embassy). When there was the opening of a Brussels liaison office between the Austrian Land Tyrol and the North Italian region Alto Adige, including South Tyrol, this was the reason for a criminal prosecution of Italian prosecutors against the Italian decision makers in these provinces. These attitudes against the sub-national level based on the allegation that sub-national entities have nothing to do with foreign policy had been driven *ad absurdum* very fast, and today very many regions, big cities – and this not only from the EU Member States! – have their own liaison offices in Brussels, based on the fact that e.g. the overwhelming quantity of EU legislation has to be implemented on the local and regional level, and that of course a fast and reliable direct flow of information alleviated even the national level. Today, in short, **this** deviation from the national level is an accepted rule[8], and **the other one** as well.

Now the national levels tried and will try also in the future, however only to a minor extent as pragmatism should induce a constructive behavior, to decrease the importance of the EU diplomatic service. As time goes by, this will heal out – in most of the EU countries faster than in some others, but it will be no major problem. In contrary, all the Member States can contribute to save lots of taxpayers' money on the national levels and in the foreign ministries' budgets, and the times of a lack of financial space for EU Member States should accelerate this development.

There is no question that the rationale for the EEAS is, in the time of the Lisbon Treaty, a must: the "EU Foreign Minister", may he be called also differently, needs a diplomatic service of his own for the EU and their purposes. Since many years, *de facto* first class diplomats work worldwide in the European Commission Delegations, but *de jure* they are second class. Also this kind of discrimination has faded in the last years at most places, but it is still here, in many brains of EU Member States' diplomats and also within some in the host countries, which may have led in some EC Delegations to a certain indifference for the problems of the hosting states, in any case it was not to the advantage of the work of the EC Delegations.

Finally, this will be changed, within the next years the EEAS will appear, will be trained professionally, will come in practice into synergy with the Member States' diplomatic services and will therefore contribute to a more powerful representation of the European Union abroad.

The Place in the EU Institutions

Not only European Parliament considers the EEAS as consequence of three innovations introduced by the Treaty of Lisbon:

- the election of a non-rotating President of the European Council who is responsible for external representation of the Union at head of state or government level;

[8] See e.g. the review in this EUFAJ issue on p. 95 of Stéphane Paquin: Paradiplomatie et relations internationales. Théorie des strategies internationales des régions face à la mondialisation

- the appointment by the European Council, with the agreement of the Commission President, of the **High Representative of the Union for Foreign Affairs and Security Policy, who will be Vice-President of the Commission responsible for external relations (the VP/HR) – the so-called "European Foreign Minister";**
- the explicit conferral of legal personality on the Union, designed to provide it with complete freedom of action at international level,

Furthermore, the EEAS is indeed the logical extension of the *acquis communautaire* in the sphere of the Union's external relations. Finally, there will be closer cooperation and coordination between the administrative units covering the common approach to the common foreign and security policy (CFSP), and of the Community's external relations conducted in accordance with the Community model. Here the EEAS will *complement* the diplomatic representations of the EU Member States which *will not be called into question*.

However, there will be in the future developments which will have only to begin. We already had in the past attempts of a common French-German diplomatic representation, or of an Embassy building where British and German diplomats worked under one roof – each one of couse in "his" embassy. What could be saved in taxpayers' money, if the copying machines – and not only them! – would be pooled? There are several attempts e.g. of the Nordic countries, for example in Berlin, where they run a common embassy[9]. Maybe it is already in some secludedly handled papers in national capitals, or in Masters' theses in international relations or budget sciences, but with this common "hardware" the EU Member States can really substantially save money. It just needs anyone to give the kick-off, and the EU will be able to induce a positioning of the Member States on the long turn in this direction. This is why in the "whereas" F. of the EP resolution an explicit general reference is made to the EU's contribution "to the avoidance of duplication, inefficiency and wasteful use of resources as regards the Union's external action", although the solution mentioned may go much further than the EP.

The EU needs also strong relations with developing countries, "whereas the EEAS should serve to make the EU more visible as the leading partner of developing nations"[10]. Development cooperation, under the Lisbon Treaty, will be an autonomous policy field, which is intended to be on equal footing with other EU external policies.

Until now, in the EU institutions there have been several agents working in the field of external action: the Commissioner for External Relations, (Benita Ferrero-Waldner), the Enlargement Commissioner (Olli Rehn), the Development Commissioner (for many years the profiled personality of Louis Michel), the EU External Trade Commissioner (Catherine Ashton), and of course the President of the Commission. Then we have also three EU Agencies in the field of defence, as well as Mr. Xavier Solana, the "World Shuttle" of the Council and Chargé d'affaires for foreign policy. If Henry Kissinger would have said, fine, you Europeans managed to obtain somehow a certain foreign policy, and I know now whom to call, he also might have said: "But *whom exactly* I should call then in Brussels?" With the VP/HR this helter-skelter will be over.

With the entry into force of the Lisbon Treaty the VP/HR will be responsible for the coherence of the Union's external action; the VP/HR will, in her capacity as the Commission's Vice-President, co-ordinate the Commission's external relations responsibilities and, at the same time, implement the

[9] „Embassy collaboration speeding up" says the Nordic Council of Ministers (www.norden.org), after which the Nordic foreign ministers (Denmark, Finland, Iceland, Norway, Sweden) will start the process of co-operation between the Nordic embassies around the world (Norden – The Top of Europe, 10.11.2009 – The Nordic Monthly Review – eNewsletter by the Nordic Council and Nordic Council of Miisters). Not only for security reasons (Kabul/Afghanistan attacks at embassies!), but also due to the Stoltenberg Report on Nordic Security and Defence Policies a closer cooperation between the embassies is proposed. Not only in Berlin – already existing – but also in Baghdad/Irak there is a joint embassy in the making, to save money.

[10] See „whereas" G. in European Parliament Report A7-0041/2009

Common Foreign and Security Policy (CFSP) as instructed by the Council ('double hatting'). The VP/HR will make use of the EEAS, "her" part of the Commission's administration, and the EEAS will be staffed by officials of the Council secretariat and of the Commission and by personnel seconded from national diplomatic services,

The EEAS will have rather fast high staff numbers, as there are many Commission Delegations to third countries and to international organisations, and in addition liaison offices of the Council in Geneva and New York to deal with the relations with the United Nations. In the last years, the external activities of the EU have increased, and the EU is empowered to organize their own affairs, already now. The Parliament reminds that the number of approximately 5.000 staff is a solid fundament for the creation of the EEAS, which are the "combined input" of those Commission delegations and Council liaison offices.

The whole complex of organisation and operation of the EEAS will later be established by a decision of the Council. This will require a proposal from the VP/HR, who first has to consult the European Parliament, who keeps a say in this affair, and it requires also the consent of the Commission, after the Treaty of Lisbon has entered into force. Therefore it can be estimated some more big debates and Committee discussions in the European Parliament, but also in some Member States' parliaments which play, in general, a more prominent role now, according to the Lisbon Treaty. The Parliament ist, furthermore, not willing to leave the Council and the Commission much time in setting-up the service, once the VP/HR is appointed.

Budgetary Aspects - and a Slide into Calls for Majority Decisions

It can also be taken as granted, that the Europea Parliament will try to control the EEAS also financially – which has its good sides, for transparency reasons, but also its problematic ones, as in foreign policy while in general everything should be transparent, but not everything can be – and the European Parliament has a long tradition, by just some of its members who want to create a caption, of "revealing" malfunctions within the EU which not necessarily turn out to be objective malfunctions. After all, the Parliament has to be informed about the setting-up of the EEAS, and it wants to be informed at an early stage in order to determine the necessary financial resources.

It is one of the very first requests in the European Parliament report adopted on 22.10.2009 to remind everyone of the Constutional Convention – the Constitutinal Treaty had been defeated in France and the Netherlands and was in general replaced by a "Constitution light", by the Treaty of Lisbon. In this Convention a model was worked out in which the Parliament and the Commission had a big say, and the Parliament reminded of "interinstitutional balance" and of "solutions based on consensus". However, it must be clear that at present the interactions of the national interests are not really defined, as there have only been some attempts –and a limited success - of a Common Foreign Policy.

It might be the case that the smaller the relevant country where human rights are trampled with boots, and the further away from Europe, the more unanimous the decisionmaking process will be – as until now. But sometimes even now, the EU took a very common position, and it depended strongly of the persons who acted and spoke on behalf of the EU. A positive example has been the Georgian-Russian conflict about South Ossetia and Abkhazia, where French President Sarkozy developed a lot of profile for the European Union, which still is present today. There will be a special procedure also in the Treaty of Lisbon:

- the Council acts unanimously, after
- the opinion of the European Parliament, and
- the opinion of the Commission, and
- a proposal from the VP/HR.

This sounds complicated, yes, the EU is a complicated structure, but in foreign policy possible solutions are worked out not during a night but are in the pipeline for a longer time. There are only very few events where a really immediate reaction is needed, and usually it is often in these situations where the position of EU Member States (not the action!) does not constitute a problem. After a couple of times also, the mechanisms will be undertaken in a considerable routine speed. If one or several Member States would slow down the system by their own way of handling it, for sure the EU would find solutions of speeding it up. But altogether one can already say, that the principle of unanimity wil be put into question even in Foreign Policy, and that being after making a treaty – of Lisbon in this case – is being before making a treaty, namely the next one, which could delete these spots of slowness or these hurdles who cannot be overcome. Maybe this is the kick-off or the continuation of procedures according or in analogy to art. 20 Lisbon Treaty (Provisions on enhanced cooperation)? Even if there is not much legal ground at present, it must be assumed that at the maximum of some years there will be some calls to introduce at least a moderate foreign policy quorum instead of having unanimous decisions in the Council on issues of foreign and defense policy. 27 and more Member States find their common denominator not as easy as 6 or even 15.

The Parliament appeals to the European common sense of the Member States – which may be difficult to reach! – as it reminds the Commission of its old ally in supra-national structuring of the EU, the Parliament, asking the Commission to put its full weight behind the "Community model" in the European Union's external relations. This means a supranational approach as far as possible and not any more or less a Council-oriented procedure. It should have the approval of the Parliament. Furthermore, it calls also for reaching a consensus model, including the Parliament, for the budgetary aspects necessary to set up the EEAS.

"The Poison of the Week"

There was a time in the European Parliament, when many M.E.P's tried to "outgreen the Greens" in the Environment Committee and discussed – how it was called at that time – always about "the poison of the week" which should be prohibited. For sure, its composition, the lack of centripetal forces within the Parliament due to the lack of a government-opposition conflict and its continental – even if Europe is quite a small continent – scope let it be one of the most original, broadly oriented and open-fringe parliamentary bodies in the world. By the kind and number of petitions – this is meant to the Parliament in general, not to its Committee on Petitions – it is by far broader than the US Congress, and it has a unique transnational athmosphere, which is nowhere reached in the world. The UN General Assembly is not as open as the European Parliament, so attached to the people, which is also visible that there are 23 official languages – a reason to be proud of the cultural diversity in Europe, and every M.E.P. must be able to address the Parliament in his native language, as matters of concern for his voters can be discussed. In short, the US Congress – just to take another well-functioning parliament in the world, which is clearly based on the principles of a traditional democracy – is by tradition a house of provincialists, in particular the House of Representatives, compared to the European Parliament. Although this sometimes discusses also about things, above all in Question Time, which might be funny, "just sweet", ridiculous[11].

In this unique climate, one has to understand that all moral aspects and those of political correctness determine a European Parliament report on a new part of the EU administration, in particular when it

[11] Although the number of senseless questions to the Commission or the Council, mainly by the British Conservatives, has decreased very much in the last years. Maybe this is also due to the fact that their party in UK has turned out to be reactionary in a European sense, not very proactive for Europe and therefore exercising more "informal social control" towards M.E.P's who otherwise sometimes, with a certain humour, could "play" with their questions (e. g. on the standardisation of Christmas tree needles, on Saint Christophorus as possible Saint for European transport etc.). Now most of them are all less bizarre and a bit more bitter – maybe because they had to change the political group, from the European People's Party (EPP) to an unappetizing conglomerate of Polish "professional catholics", latent anti-semites and suspects of fachistoid positions.

has such a high profile as the EEAS will undoubtedly have. This explains why clauses like the following, as examples, are part of the Report from 22.10.2009[12]:

"4. Recommends that the approach with regard to the EEAS, which will be established in accordance with Articles 18, 27 and 40 of the Treaty on European Union in the version thereof resulting from the Treaty of Lisbon, should evolve in the light of experience; considers that a body such as the EEAS cannot be completely circumscribed or predetermined in advance, but must be put in place based on mutual trust and a growing fund of expertise and shared experience;
5. Recalls that the EEAS must guarantee full application of the Charter of Fundamental Rights[13] in all aspects of the Union's external action in accordance with the spirit and purpose of the Lisbon Treaty; underlines the responsibility of the EEAS to guarantee the consistency between its external action and its other policies in accordance with Article 21(3) of the Treaty on European Union in the version thereof resulting from the Lisbon Treaty;
6. Affirms the following principles and urges the Commission, when making future proposals, to insist on compliance with those principles, in accordance with the spirit and purpose of the provisions of the Treaty of Lisbon and the spirit of the deliberations of the Convention:

a) appointments to the EEAS should be made on the basis of merit, expertise and excellence in appropriate proportions and respecting the geographical balance from the Commission, the Council and national diplomatic services via an open and transparent process, ensuring that the VP/HR can draw on the knowledge and experience of all three in the same way; furthermore, the institutional set-up of the EEAS must include a gender architecture that duly reflects the commitments made by the Union with regard to gender mainstreaming; …"

It is also clear that the EEAS won't be constituted from one day to the other. It all depends of course who will run it, if there is some experience in working with big staff units, etc. It is therefore recommended that the units dealing with external relations in the stricter sense as well as senior positions in the EC Delegations outside of the EU "should be brought immediately under the umbrella of the EEAS". Only in the further development it should be considered what other functions should be assigned to the EEAS, too.

At the same time, the Europea Parliament speaks out against too much of administrative centralism, too fast integration and a too radical reform within the Commission: It is not necessary "to strip the Commission Directorates-General of all their external relations responsibilities; particularly in fields where the Commission has executive powers, the integrity of current Community policies with an external dimension should be preserved". The Commission is requested to avoid duplication and should work out – in the course of time – models for the respective departments[14].

In functional terms, it is pleaded for the military and civilian crisis management units to be placed under the authority of the VP/HR. The organizational and command structure can differ from the one for civilian personnel. Also the intelligence analysis "of players within the EEAS" is said to be of "vital importance in order to assist the VP/HR in fulfilling … (the) mandate of conducting a coherent, consistent and efficient external Union[15] policy".

Furthermore, it is pleaded to form "Union embassies", which are to include Commission delegations, the Council liaison offices, and the offices of the EU Special Representatives where possible.These "Union embassies" should be headed by EEAS staff which has to report to the VP/HR. Where there are specialist advisers from different Commission Directorates-General, these advisers could also be

[12] Underlines by the author
[13] This Charter is valid only within the EU, of course. However, it is the most modern and complete catalogue of fundamental rights in the world and merits to be imitated many times. But the EP did not precise here how and what from the Charter of Fundamental Rights should be applied.
[14] Article 6 c. of the resolution from 22.10.2009
[15] The EP speaks once of „Community policies" (see the paragraph above, with footnote 10), once of „Union policy". This might be even correct, although contestable, but does reflect perfectly the difficulties of wording when many amendments in the committees or the plenary are dealt with.

included in this framework (e.g. by secondment). Finally, the EEAS is called to make sure that special contact points in the EU Delegations (equal to Embassies, in third countries) are appointed to guarantee cooperaton with the European Parliament[16]. This – for example in fostering parliamentary contacts in third countries – may have a positive effect on the Europea Parliament's delegations for third countries[17].

Personnel Issues

The Parliament wants[18] that the EEAS, while being a *sui generis* structure concerning its budget and its organization, should be part of the Commission. The background is that the Commission's activities are subject to a certain control by the Parliament, which hopes for "full transparency". It also proposes the extension of the "double-hatting" – for 1. the EEAS is implemeting the decisions of the Council in the traditional fields of external policy (Common Foreign and Security Policy, common security and defence policy), 2. it has to deal with the decisions of the Commission in common external relations. Normally this can be understood only by insiders, but it has turned out to be part of an inter-institutional conflict between the supra-national elements (Commission) and the prolongation of the national views, quasi as a "federalism" conflict, as it is part of the checks and balances within federal systems[19].

This brings several demands to the Council and the Commission: The EEAS staff should have a unified statute, independent from its origin (Commission, Council, Member States). The rights and duties must be the same. The VP/HR should have all necessary appointing powers regarding staff appointments, promotions, termination of service etc. The European Parliament goes even so far to propose for the EEAS staff a "certain objective independence", ensured by appointments for a certain period (5 years are proposed, with the possibility of extension). With this all pressures should be excluded, e.g. by seconding institutions. It is evident that a EEAS civil servant follows probably less any pressures from seconding Member States when he has a 5 yr contract than a 2 yr agreement. There is also proposed that secondment to the EEAS by Member States' diplomatic services must be part of the career path of those services. In the opinion of many observers, these clauses would not have been thought of in former years, but in the current 're-nationalisation' period of many Member States' policies[20]

The European Parliament seems not to be immune to a certain helter-skelter, when it comes to the substitution regime: Art. 7 h. of the resolution of 22.10.2009 says, that "in his or her absence, the VP/HR should decide on a substitute on a case-by-case basis and in the light of the duties to be performed on each occasion". Two phrases later, in 9 a. it is demanded that "the EEAS should be headed by a Director-General answerable to the VP/HR, that Director-General being able to represent the VP/HR in certain cases". This does not really exclude both possible solutions, but is not very systematic. In the resolution, it is however stressed that the Parliament wants to keep full supervision over the EEAS and not to come in a disadvantageous situation while being fully supportive of the innovation of the institutions.[21]

[16] Article 6 f. of the resolution from 22.10.2009
[17] See also in the Documentation section of this EUFAJ issue, p. 91, the composition of the EP delegations to third countries
[18] Article 7 of the resolution from 22.10.2009
[19] e.g. Germany; but there never was a *serious* conflict between the Bund (federal level) and the Länder (regional level) on the making of foreign policy; insofar the task is really new for the EU
[20] see e.g. the leader of the British Conservatives, David Cameron, who clearly said after the last signature of a Central European head of state that he wold not hold a Lisbon Treaty referendum anymore, but would try to "get back" policies from the EU to his state
[21] Art. 8 of the resolution from 22.10.2009

What the Commission Clarified in the 21.10.2009 Debate of the European Parliament

Foreign Affars and European Neighbourhood Policy (ENP) Commissioner Benita Ferrero-Waldner declared:

[On the status of the EEAS]: Indeed it will be *sui generis* as there is no model to follow. We are building something new. It will neither be intergovernmental nor purely based on the Community method, but we must ensure that the new system has a genuinely European approach inspired by and grounded in the strengths of Community policies, as again was mentioned. The key question for us all is what the EEAS should be able to deliver. This should be our objective. By bringing together the various actors in the field of external relations, we can ensure that our relations with the outside world are clear, coherent and driven by a single set of policy goals. It must carry authority as the core of EU external policy, the place where policy is developed and coordinated. It must also be seen to be such, both from inside and from outside the European Union, and the EEAS will only be effective if it works well with other institutions and fully respects the interinstitutional balance.

[On the role of the European Parliament:] This is why I think it is very important that the EEAS should be set up in a way which allows it to work very closely with the Commission and the Council and to respect the need to be fully accountable to the European Parliament. For the Parliament, the bringing together of external action responsibilities into a single service will, I believe, mean a step change in Parliament's capacity to fulfil its role of scrutinising Union policy. Like the service itself, the way in which Parliament relates to the service and to the High Representative Vice-President will also, in a way, have to be *sui generis*.

[On the question of horizontal services and/or geographical desks:] As for the scope of the service, it needs to have a comprehensive overview of the Union's relations with the rest of the world, so it needs geographical desks as well as horizontal services to cover questions such as CFSP and CSDP, human rights and relations with UN bodies. The aim is to prevent duplication and to ensure that all those responsible for delivering EU external policy work effectively together, and the Commission will also continue to have services responsible for trade, development policy, aid implementation, humanitarian aid and enlargement. It will also, of course, continue to drive the external aspects of the Union's key internal policies, and a central question in the current debate is how to manage the programming of external assistance.

[On EU development policy:] I can assure Parliament that the EU's development policy, including poverty eradication, will be a central part of the Commission's external activities. The High Representative Vice-President and the Commissioner for Development will work extremely closely together on this. The fact that the new High Representative will also be a Vice-President of the Commission, responsible for coordinating all of the EU's external action, will help. The service will also be responsible for the administration of delegations, though the people inside delegations will come, as now, from different services – not just the EEAS, but also the Commission services and maybe other institutions and bodies of the European Union.

[On the future EU delegations:] From the entry into force of the Treaty, Commission delegations will become EU delegations. This will give them new responsibilities, but it will not diminish their role in representing the full range of Commission activities. The EU delegations should be responsible for representation, coordination and negotiation as from the day the Treaty comes into force. In most places, this procedure will go quite smoothly. However, in some, where the workload is particularly heavy, it will be necessary to organise a form of burden-sharing, not only with the rotating Presidency but also with other Member States.

[On a European Diplomatic Academy:] The creation of an entirely new external service is a major undertaking. It will, as your report says, evolve over time. We will learn together. Our first aim must be that during the period between the entry into force of the Treaty and the coming into being of the EEAS, the effective delivery of the EU's external policies is maintained. We and the Council Secretariat will work together with the High Representative Vice-President to ensure that there is no gap. But we need to look further. We will be bringing together officials and diplomats from the different institutions and all the Member States. As we know, a common foreign policy is not just the sum of 27 national policies. We need people within the EEAS who, while not losing their distinctive national ties, think European. We therefore need to create an EU diplomatic culture and an EU *esprit de corps*. For this, training is essential.

The report raises the promising idea of the creation of a European diplomatic academy. In the meantime, we can make good use of the Member States' diplomatic academies. I very recently attended the 10th anniversary of the European diplomatic programme, which has anticipated and shown the way. It is worth remarking that since the 1970s the Commission has already organised training seminars for more than 5 700 diplomats. One of the tasks of the EEAS will be to establish a training strategy to ensure that all members, whatever their background, will be equipped to carry out their tasks. Heads of delegations in particular will have to be able not only to carry out their political role, but also to handle all the Commission activities that are such a substantial part of a delegation's mandate.

In other chapters, the EP demands a division in directorates, like in the other parts of the Commission, following "geostrategically important fields of the Union's external relations"[22], but also security and defence policy issues, civilian crisis management, multilateral and horizontal affairs (e.g. human rights) etc. Also evident is the proposal that the cooperation in the EEAS between the country desks and the delegations should be structured accordingly, and that shere should be no duplication of external services in the Council/European Council. This, of course may be excluded *de jure*, but *de facto* it may remain a certain problem, at least in the first years..

There is also again the budget issue – between the EU and the EU Member States – when it is proposed[23] that the future EU delegations can help to save money to the Member States' consular services by taking over consular services and deal with Schengen visa issues. While the latter is of course right, it has to be mentioned that consular services include many other things beyond visa questions, e.g. certifications, passport issuing and prolongations, apostilles etc. It is not thinkable that any real moneysaving effect takes place without substantial changes of consular law in the EU Member States, including the subsequent laws from citizenship until civil status issues etc. This is of course all desirable, but it can and will not be done by the EEAS. This would require the 'clustering' of Member States' embassies, of transnational training etc. This will be a long process, and while at the beginning considerable savings could be done with less buildings and lots of office costs, it will take a longer time until most or all consular activities are fulfilled by European staff. The proposal of Art. 11 of the resolution that EU 'embassies' in third countries "must whenever necessary … provide logistical and administrative support to the members of all Union institutions" appears to be a bit hyper-actionistic, as normally all EU institutions could always turn to the Delegations.

The Parliament wants also more powers over new appointments in the European Commission (since1.12.2009: EU) Delegations. The VP/HR who supervises them should inform "Parliament's Committees on Foreign Affairs and Development about his/her appointments to senior posts in the EEAS and to agreeing to the committees conducting hearings with the nominees, if the committees so decide"[24]. This seems to be a problem, as the professional civil servant system might be touched; in the US, cabinet members and also e.g. future ambassadors are called into hearings (Senate), but the (future) ambassadors are often far from being experienced and selected only because they were good fundraisers during the last presidential election campaign. Furthermore, certain personalities can be subject of a "demontage" for different reasons (party preference, previous activities etc.). This could also do harm to the EU interests, and the EP should have said which "senior posts" should be concerned.

Besides some minor proposals like the assumption of responsibilities by the EEAS in the fields of consular tasks for nationals of non-member countries and for tasks related to diplomatic and consular protection of EU citizens in third contries (Union Citizenship), the Parliament also proposes that "consideration be given to possibilities for cooperation between Parliament officials and the EEAS". This can be done at any time already now[25], but should indeed be systematized.

For a European Diplomatic College

Finally and towards the end under art. 14 of the EP resolution comes a very important issue: the proposal to set up of a European Diplomatic College. Together with colleague institutions in the Member States, EEAS staff members and future staff members should receive an adequate training, "based on uniformly harmonised curricula including appropriate training in consular and legation

[22] Art. 9 b. of the resolution from 22.10.2009
[23] Art. 10 of the resolution from 22.10.2009
[24] Art. 10 of the resolution from 22.10.2009
[25] For example: the author of this article had initiated in 2008 a – very useful and constructive - workshop between Commission civil servants and advisors from the European Parliament, regarding the "ticklish" subject of Uzbekistan-EU relations. But this is unfortunately not everyday's practice.

procedures, diplomacy and international relations, together with knowledge of the history and workings of the European Union"[26]

After all, the European Parliament has prepared a great report, which of course has also its immanent weaknesses (and not all have been mentioned), which was adopted with a very clear majority going through most of the political groups. The VP/HR is well advised to seek the consent with the Parliament, when details on the organization and *modus operandi* have to be proposed. Political agreement should indeed be reached with Parliament at an early stage in order to avoid valuable time being wasted on political controversies about the form to be taken by the EEAS[27]. The hearings before the final confirmation of the VP/HR in the relevant EP Committees will always refer to this report, and the VP/HR does well to comply with the issues raised, for "his" foreign policy should be backed by as many Europeans as possible.

This Report, submitted on behalf of the Institutional Committee, has been widely pre-determined by an Opinion of the **Committee on Foreign Affairs** of which many wordings have been taken over; Rapporteur has been Ms. Annemie Neyts-Uyttebroeck. In this Committee, the Opinion was adopted with almost 75% on 19.10.2009 (with almost 60 Members present).

Development Policy – the Black Sheep?

Another Opinion from the 19.10.2009 was the one by the **Committee on Development** (Rapporteur: Eva Joly). This Opinion had been adopted with 26:1 votes. This Committee, unfortunately, had not the necessary impact on the overall report. It might be because development policy will be managed by a Commissioner of its own – at present[28] the distribution of working fields in the next Barroso Commission is not yet clear, but the EP could – and should – have set some border stones.

As it was remarked in this Opinion, the EU's development policy "clearly benefits the Union as it contributes to global geopolitical stability, eases migratory pressures and opens up new trading markets, … it is also primarily intended to reduce poverty and to promote the sustainable social and economic development of the developing countries and their citizens".

Then the Committee warns: "… while it goes without saying that the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will work to support the Union's policies in areas such as foreign affairs, trade and security, we cannot take it for granted that the new service will attach equal importance to attaining the EU's development policy objectives and the Millennium Development Goals." It was continued, that "consequently, we consider it vital to refer explicitly to development in Parliament's opinion, more specifically to the EU's treaty obligations under Lisbon to work towards poverty eradication and to ensure policy coherence in the interest of developing countries, as well as the importance of upholding development cooperation as an autonomous policy area, on an equal footing with other policies in the field of international relations, and with the political and administrative architecture to match."

From the Committee on Development came among others the following thoughts:

[26] Indeed, the author was once, in 2004, confronted with the question "Who is Cecchini?" by a high official in a Delegation when he proposed – upon request of the relevant government of the third country which wanted more integration with its neighbours – to make a short masterplan by a so-called Framework Project on the possible transfer of the Cecchini Report to this region. The original Cecchini Report was made in preparation of the EU Single Market in the 1980s and has its merits to have cleared the way for the most evolutionary legislation of the EU, which was the fundament for the Euro and contributed to the fall of the Iron Curtain, too. With some training in EU history and policy this question would have been avoided.

[27] see also art. 15 of the resolution from 22.10.2009

[28] until 25.11.2009

- Under the Lisbon Treaty, EU and Member State development cooperation policies must "complement and reinforce each other"; whereas this should lead to greater clarity between the roles of the Commission and the Member States, less overlap, enhanced donor coordination and a better division of labour, in the interests of greater aid effectiveness and value for money,

- the EEAS should serve to make the EU more visible as developing nations' leading partner and should build on the EU's strong relations with developing countries, founded on its status as the largest donor of Official Development Assistance and humanitarian aid and as the main trading partner of developing countries,

- the EEAS should have a strong development dimension; and whereas the principles of development policy, which are centred around long-term objectives, multilateralism, solidarity, dialogue and reconciliation of interests, would be desirable corner-stones of a future EU foreign policy,

- the Lisbon Treaty singles out development cooperation as an autonomous policy area with specific objectives and on an equal footing with other external policies, in no way subordinated to foreign, security or defence policies, acknowledging the importance both of policy coherence for development and of consistency between different EU external actions, which also requires the **revival of a proper Council of development and cooperation ministers**".

This last proposal has *prima facies* nothing to do with the future EEAS, but is maybe one of the windfall profits of this whole debate. However, it could be superfluous to relaunch this Council, if the VP/HR would effectively cover development policy in one of his departments. According to the Committee on Development, this will not be the case:

- "It is not … necessary to strip the Commission Directorates-General of all their external relations responsibilities; particularly in fields where the Commission has executive powers, the integrity of current Community policies with an external dimension should be preserved; the Commission should provide a specific model for the departments concerned, such as the Directorates-General for trade, enlargement and development and relations with African, Caribbean and Pacific States, EuropeAid, the European Community Humanitarian Office, the department for Human Rights and Democracy, the department for Election Assistance, and the externally oriented units of the Directorate-General for Economic and Financial Affairs;

- An **independent Commissioner for development and humanitarian aid** needs to be a member of the College of Commissioners, on an equal footing with the other Commissioners in charge of other policies in the field of international relations; **this Commissioner must have responsibility both for formulating and implementing development cooperation policy, working closely together with the High Representative,** both in ACP states and other developing countries;

- There must be a single, specific Directorate-General for development at the Commission, with responsibility for policy setting, policy advice and implementation of the Union's development cooperation policy; that Directorate-General, as well as all staff who implement the Union's development policy, both in Brussels and in overseas delegations, must report to the Development Commissioner;

- The EEAS must include a sufficient number of development professionals from national ministries and the Commission Directorate-General for Development; the officials of that Directorate-General should receive their instructions from the Commissioner for Development.

Development policy, therefore, runs danger to be neglected, as it might not hit the headlines as other issues, propelled by the VP/HT, will do. Much will depend of the personality of the Commissioner for Development, and of course of the VP/HR. It will not be a problem of policy, but of teaming up. Under all circumstances, there will be soon some administrative competence problems – as in all admistrations, national or regional.

One must not forget that als the European Union has an administration, a bureaucracy of its own ("the Eurocrats"), which by the way functions often better than its reputation, and which is often closer to the citizens than assumed. It just would be sufficient to seize all the opportunities, but this requires know-how, and the EU institutions can not force 500 millions to know where they can cooperate and co-determine future EU legislation (by Internet auditions, with Greenbooks, with "Have a say in Europe" etc.).

But the hour of birth of a real, profiled European Foreign Policy will come soon. The engine will stutter sometimes, but this is normal, and we are far from living in a perfect world and should not be astonished about this.

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The European Union and Belarus: Five Theses for a Pragmatic Approach

By Peter Liesegang

Belarus, geographically located between Russia and the EU (Poland, Lithuania and Latvia as direct neighbours), since many years plays a prominent role within the EU's external relations. The government has been considered by the European Union in general as being too harsh in its approach to human rights, free elections, democracy, etc. However, in the last time, there were some positive signals, and the European Union included Belarus in its Eastern Partnership.

The author, Peter Liesegang, is an observer of Belarusian politics since many years, has worked there for several years and for 4 times was involved in OSCE/ODIHR election observation there. He is a member of the Board of the German-Belarusian Society (Deutsch-Belarussische Gesellschaft) with its seat in Berlin.

President Lukashenka is in power in Belarus since 1994. Since his reign became more and more authoritarian and the political and human rights situation deteriorated, the European Union, as well as other international actors are attempting to find an appropriate policy to deal with this now EU-neighbouring state.

After the heavily manipulated 2006 presidential election in Belarus, the EU and others imposed travel restrictions on a number of responsible figures on the side of the Belarusian authorities. At the moment these sanctions are suspended; in the second half of November 2009 the EU plans to decide whether to keep them suspended or to re-impose them; either until March 2010 or for a longer period.

Since May 2009 Belarus along with 5 other states of the region neighboring the European Union to the East is a full-fledged member of the EUs Eastern Partnership Program[29].

Also for economical reasons Belarus has an importance for EU policy and industry.

Within the last year the Belarusian authorities seem to be actively trying to find their future position between EU and Russia. The talk of economical and social liberalization is to be seen as a part of this process. It should be stressed that up to now there has been no meaningful or substantial liberalization in the social or political sphere.[30]

[29] See for reference: http://www.eu2009.cz/scripts/modules/diary/action.php?id=3553 ; http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/09/78&format=HTML&aged=0&language=EN&guiLanguage=en ; http://www.pism.pl/zalaczniki/Report_EP_2009_eng.pdf

[30] See BIIM reports: http://www.dbg-online.org/sites/default/files/BIIM%20Monitoring%20October%2009%20Update.pdf ; http://www.democraticbelarus.eu/files/docs/3/BIIM%20Monitoring%20September%20Update.pdf ; http://www.democraticbelarus.eu/files/docs/2/BIIM%20Monitoring%20Belarus%20Feb%20Update.pdf

1. Observe a clear division between economical and political matters

One of the present issues is, whether Belarusian political, social and economical liberalization has gone far enough, so that Western business might get engaged in the country. This kind of question in itself is a trap.

All the sudden it becomes fashionable in some Western circles to make great effort in finding alleged improvements within the democracy related and human-rights conduct of the Belarusian power structures. At times a neutral observer could even have the impression that there is a contest underway: who will be able to find within Belarusian reality the most developments and facts which could potentially be interpreted as improvements.

These tendencies are not restricted to the economical sphere, but have spread to the scientific and political sphere as well. It should be reminded, other than cosmetical improvements there have been none[31].

Would it harm to increase Western business with Belarus while at the same time naming the things as they are? Companies and industries, guided by their supporting- and lobby-organizations may in each case weigh and decide to get engaged or not, while politicians, scientists and any interested individual on the side of the EU (and the so called "West") should assess the situation around human-rights, democracy and liberalization issues in Belarus separated from potential economical interests.

If the Belarusian authorities see the necessity to diversify their economical relations and dependencies, than they will do so regardless whether beforehand somebody has "seen" improvements in Belarus and has stated this publically. If, on the other hand, the Belarusian authorities are not interested in further and enlarged economical contact with the West, they will know to hinder this, also if there have been prior "nice words". Either way, a premeditated and prearranged artificial flattering will, in the medium and long turn not enhance or improve business relations; yet it will have to be paid for in terms of credibility.

A tit-for-tat strategy, in the sense that the one side helps the Belarusian authorities to raise their reputation in exchange for potential business is counter-productive. May the business do what they do best – to assess and react on economical potentialities, but without a premeditated link towards the assessment of the developments in the spheres of human rights and democracy. In the middle and long term a strict division of these spheres will be of benefit for all sides.

2. False considerateness is false

Would one expect a good friend to tell, to remind, to insist on if one fundamentally goes wrong? Of course.

The EU and Belarus should aim at being good friends – seen as a two-way street.

3. Elections

The institute of elections (in the sense as laid down in the relevant OSCE documents) is at the base of a society's long-term potential for development and the foundation for the legitimacy and credibility of state authorities.

[31] See BIIM reports: footnote 2

Xavier Solana, EU, and Foreign Minister Sergej Martinov, Belarus

Belarus has all the necessary technical prerequisites for "free and fair" elections in the sense of ODIHR; a generally well educated electorate, a superbly functioning state administration, an easily manageable territory, access to all regions, good technical means of communications. Belarus, as a member of OSCE, has signed all relevant election related documents. What is missing is free access to free media and the will not only for an electoral law, enabling free and fair elections, but also to free and fair elections themselves. Recently, the Belarusian authorities, including President Lukashenka, have not ceased to state that they want to conduct free and fair elections.

Let this be the test. In some points, though surely not in all points, the effort for "good" elections is rather easily monitored: composition of electoral commissions, free access to free media, possibilities to put forward one's candidature, possibilities to campaign, and very importantly the unimpeded access for media and local observers to all stages of the electoral process, including the vote counting and tabulation at the end (here it should be stressed: being able to observe the vote counting means that one observer is able to see all the marks on all ballots in the respective polling station).

And it should be clear in advance: this test holds valid for both sides. Should the outcome of such truly free and fair elections be that the present authorities receive a majority, than this has to be fully accepted.[32]

4. Don't underestimate Belarus

It is very unfortunate, but not less true: many people in the European Union, especially in the "old", pre-enlargement EU, even up to now have strong miss-conceptions about Belarus. In a way, which sometimes can only be called naïve, they underestimate the administrative, intellectual and industrious capabilities and potentialities of the Belarusian people and the Belarusian authorities. Paradoxically as this may sound, for the Belarusian authorities this fact also entails advantages.

It is in the interest of the European Union and its member states to involve Belarus in a large quantity of EU and national programs. Within these the EU and the member states would be well advised to pay greater attention to the degree and manner in which the Belarusian authorities are involved in the realization of these projects; in certain cases their aims might run along parallel lines, but certainly not in all.

Improving transit infra-structure might be relatively easy in this regard. Strengthening the civil society sector, moving towards "free and fair" elections or enhancing the educational sector in order to move further towards "European" standards, as examples, might not be as easy.

A good intention on the side of the project financer does not always guarantee an effect congruent to his intention. The grant givers might in the future want to rely to a greater extent than up to now on additional (also external) assessments of their project implementation scheme in Belarus, in order to move into the direction of a higher percentage of projects where outcome really matches the original intentions.

And in no way should they underestimate Belarus.

[32] For material on assessment of the elections in Belarus see on http://www.osce.org/odihr-elections/

5. Clearly know, state and act on own interests

To this account there surely has been a lot of movement in the European Union over the last years. Still, it shall be included here that further movement would seem to simplify relations also with Belarus.

As towards other subjects of global politics, also towards Belarus the EU sometimes seems half-hearted and somewhat too "diplomatic" in defining and expressing its own interest.

The European Union and its member states do have their own genuine interests regarding Belarus. These interests might not yet have been formulated entirely, also there might not be full agreement about them in the EU. Yet, out of its own right, the EU interests are fully legitimate and are directed neither against Russia nor against the USA, nor against anybody else for that matter.

Also in relations to Belarus it would simplify things, if these interests would be formulated, stated clearly and would be acted upon in a cohesive, coherent manner.

Soon to Come: New Nordic Information Office in Minsk

All obstacles are now taken away: The Nordic Council (consisting of Denmark, Finland, Iceland, Norway and Sweden, plus the three autonomous territories of the Faroe Islands, the Åland Islands and Greenland) decided with 48:13 votes in favour of the establishment of a Nordic Information Office in Minsk/Belarus.

There was a lively debate in the plenary of this inter-parliamentary institution as the establishment of a new information office in Minsk was called into question because of cost saving considerations. Those who were in favour of setting up an information office in Belarus considered that it would have an important role to play in the democratic development of the country. Such a similar proposal had been taken into account many years ago for the Baltic States (Estonia, Latvia, and Lithuania). A Swedish M.P., Hans Wallmark, believed that the information office would act as a shop window for democracy and openness in Belarus.

Reservations against the establishment of the information office in Minsk came from Lyly Rajala (Conservative Group, Finland) and Bjarne Callis (Centre Group, Finland). They thought that the Council of Europe's newly-established office and the Swedish Embassy in Minsk were already working in the same area. The opponents said that the Nordic Council of Ministers had no real reasons to invest its meagre resources in Minsk and that it should not take part in the political race with the other international organisations and set up its own information office there.

However, the matter of the information office in Belarus received broad support from different party groups from all the Nordic Council member states. Siv Friðleifsdóttir from Iceland and Bente Dahl from Denmark considered that it was particularly important to have an information office in this adjacent area.

There are Nordic Information Offices in Estonia, Latvia and Lithuania, but also in Moscow/Russia. Therefore Minsk/Belarus can be considered to be "the missing gap" (see also www.norden.org).

Belarus:
2009 Situation Analysis and Policy Recommendations

A 2009 Strategy Paper of "Menschenrechte in Weissrussland e.V." ("Human Rights in Belarus")

At the end of October 2009, this NGO with the seat in Berlin (Postfach 330616, D-14175 Berlin, phone +49 30 89096748, fax +49 30 89096675) published this paper, which also criticizes the EU of failures in the visa question. It is headed by a Board, consisting of Dr Hans-Georg Wieck, former OSCE Ambassador to Belarus, Stefanie Schiffer and Christoph Becker. Other coordinates: info@human-rights-belarus.org, www.human-rights-belarus.org.

In October of 2008, the European Union changed its strategy towards Belarus – "Europe's last dictatorship" – from a policy of isolation to an offer of dialogue with the leadership in Minsk. Though the shift was preceded by the release of political prisoners, it also closely followed parliamentary elections that were described by the OSCE as neither fair nor free, the conduct of which had been the subject of a condition for a policy of dialogue.

Due to the absence of public debate on the policy in Europe, this shift in strategy met with incomprehension among large portions of the political opposition in Belarus, which perceived it as a betrayal of the democratic values of the European Union.

In the months that followed, Belarusian responses to EU calls for the opening up of political life there were moderate at best and involved little of substance; still, in May of 2009 the country was invited to take part in the EU's new Eastern Partnership programme along with five other former Soviet countries (Armenia, Azerbaijan, Georgia, Molda-via and Ukraine). In view of this, the active involvement of the civil societies of Belarus and the other Eastern European countries in cooperation within the Eastern Partnership takes on great political and psycho-logical significance.

The Belarusian Administration –
symmetry between the EU and Russia?

The Eastern Partnership will include a "Civil Society Forum". Following a pre-forum conference on 5/6 May, 2009, the forum is scheduled to meet for the first time in Brussels in November of 2009. The Civil Society Forum represents an acknowledgement by the EU of the importance of active civil societies for the process of rapprochement and a response to civil society demands for greater involvement.

What remains unclear is how the Civil Society Forum will actually be structured and what role it is to play within the Eastern Partnership.

Analysis of the situation in Belarus

The change in EU strategy, from a policy of isolation to one of dialogue with Minsk, played out against the backdrop of altered relations with Russia, which had been Belarus' closest ally and with which it is bound by a union treaty.

The gas war in late 2006 / early 2007 marked the publicly visible beginning of the cooling in that relationship. Russia forced through a gradual elimination of its energy price subsidies for Belarus, creating pressure on what had, up to then, been the relatively stable economy of its neighbouring country. The international financial and economic crisis has caused a severe decline in the economic situation there since mid 2008, due to the almost exclusive orientation of Belarus' exports towards the drastically shrinking Russian market. At times, the total volume of Belarusian exports sunk by 50% compared to levels from the previous year; since then currency reserves have been consumed at a very rapid rate. In this situation, Belarus was forced to take on additional foreign debt, coming primarily from Russia and the International Monetary Fund. However, the loans and the budget cuts the government made will be unable to do more than temporarily delay the serious problems on the horizon.

The Georgian War in August 2008 made clear the extent to which Russia is determined to defend its interests and supremacy within the Commonwealth of Independent States, through the use of military force if necessary – in accordance with the five foreign policy principles laid down by Russia's President Medvedev. Belarus saw a challenge to its own independence in Russia's actions – as did other successor states of the Soviet Union – and, despite enormous pressure to do so, did not follow Moscow's lead in recognizing the Georgian provinces as independent countries. In the wake of that omission came verbal attacks on both sides, trade conflicts and the denial of the final portion of a Russian loan that had previously been approved.

By its actions in recent years, Russia has gone from being the guarantor of Belarusian independence to representing a serious risk to it. In these circumstances, Belarus is seeking closer ties with the European Union, hoping that more intense economic cooperation with the EU will enable it to attain greater independence from Russia. However, Belarus' strong structural and economic ties with Russia make a fundamental re-orientation towards the EU all but impossible in the short or middle-term.

The Belarusian policy of opening up to the West can therefore only be understood as relating to a "see-saw policy" intended to create the greatest possible scope for free action with respect to both the East and the West.

In view of this new strategic situation in Europe, **the decision to include Belarus in the European Union's Eastern Partnership can be assessed as strategically correct**. Cooperation in the Eastern Partnership platforms and initiatives – in border security, energy security, and the creation of common standards, economic areas and association agreements – can encourage progress in the processes of democratic transformation and reform in these six successor states of the Soviet Union.

However, if it is to do so, the implementation of the Eastern Partnership must be sustainable, substantial and well-funded, for which the active engagement of the European member states is indispensable. Involvement of the civil society is of primary importance in order to lend the process of

democratic transformation sufficient weight relative to issues of the economy, environment, energy, stability and security within the rapprochement process.

Europe's Belarus policy continues to face a considerable problem that is posed by the absence of a visa facilitation agreement, as international exchange, particularly for the younger generation, is unnecessarily burdened by restrictive visa issue practices and high fees. This also disadvantages Belarus relative to its neighbouring countries, all of which have such agreements in place. The European Union continues to follow the questionable approach of using the prospect of visa facilitation as an incentive for the development of political relations and by doing so, is holding the population liable for the actions of the authoritarian government.

Policy recommendations

The association Menschenrechte in Belarus [Human Rights in Belarus] recommends the following for the European policy towards Belarus:

- *immediately launching negotiations for a visa facilitation agreement independently of developments in political relations;*
- *focussing particular attention within the thematic platforms of the Eastern Partnership on the following issues: legislation governing the media, registration procedures for non-governmental organizations and parties, the rule of law and political abuse of the judicial system;*
- *providing access for civil society organizations to all thematic platforms of the Eastern Partnership and, where appropriate, enabling them provide input;*
- *considering naming an EU Special Representative to coordinate cooperation with the civil society in Belarus in view of the special political situation;*
- *arranging cooperation with the civil society in Belarus under the Eastern Partnership programme independently of approval from the Belarusian government;*
- *supporting systematic election monitoring performed by local organizations in the years to come;*
- *promoting youth exchange for political and occupational education through the creation of exchange programmes;*
- *examining political developments inside and outside of Belarus, for instance, through regularly held Belarus conferences.*

Berlin, October 2009

Dr. Hans-Georg Wieck
Chair

Stefanie Schiffer
Vice Chair

Christoph Becker
Vice Chair

This is a text from the Website of the European Commission Delegation in Belarus, under the headline "What the European Union could bring to Belarus" (http://www.delblr.ec.europa.eu/home.html):

"What can the Belarusian government do?

Unfortunately, at this stage, the policies pursued by President Lukashenko's authoritarian regime prevent us from offering Belarus full participation in our neighbourhood policy. The EU cannot offer to deepen its relations with a regime which denies its citizens their fundamental democratic rights. The people of Belarus are the first victims of the isolation imposed by its authorities and will be the first to reap the benefits on offer to a democratic Belarus.

The EU wishes to share with its neighbours the prosperity, stability and security which its own citizens enjoy. This requires political, economic and administrative reforms from our partner countries. To support our neighbours in these efforts, the EU offers political, economic and trade opportunities as well as financial assistance to countries which respect human rights, democracy, and the rule of law.

These are values to which Belarus has already committed itself, of its own free will, as a member of the United Nations, the OSCE and other organisations, but which the current Belarusian government in practice does not respect. To build the deeper relationship which we wish to have between the EU and the Belarusian people, to end the self-imposed isolation which the Belarusian government has brought upon its country's citizens, we ask that the Belarusian authorities should, first and foremost:

- *respect the **right** of the people of Belarus **to elect their leaders democratically** – their right to hear all views and see all election candidates; the right of opposition candidates and supporters to campaign without harassment, prosecution or imprisonment; independent observation of the elections, including by Belarusian non-governmental organisations; their freedom to express their will and have their vote fairly counted;*
- *respect the **right** of the people of Belarus **to independent information**, and to **express themselves freely** e.g. by allowing journalists to work without harassment or prosecution, not shutting down newspapers or preventing their distribution;*
- *respect the **rights of non-governmental organisations** as a vital part of a healthy democracy – by no longer hindering their legal existence, harassing and prosecuting members of NGOs, and allowing them to receive international assistance;*
- ***release all political prisoners** – members of democratic opposition parties, members of NGOs and ordinary citizens arrested at peaceful demonstrations or meetings;*
- *properly and independently **investigate or review the cases of disappeared persons[2]**;*
- *ensure the **right** of the people of Belarus **to an independent and impartial judicial system** – with judges who are not subject to political pressure, and without arbitrary and unfounded criminal prosecution or politically-motivated judgements such as locking-up citizens who peacefully express their views;*
- *end arbitrary **arrest** and **detention**, and ill-treatment;*
- *respect the **rights and freedoms** of those Belarusian citizens who belong to **national minorities**;*
- *respect the **rights** of the people of Belarus **as workers** – their right to join a trade union and the right of trade unions to work to defend the people's rights;*
- *respect the **rights** of the people of Belarus **as entrepreneurs** to operate without excessive intervention by the authorities;*
- *join the other nations of Europe in abolishing the death penalty;*
- *make use of the support which the OSCE, the EU and other organisations offer to Belarus to help it respect the rights of its people.*

The EU stands ready to renew its relationship with Belarus and its people, as soon as the Belarusian government demonstrates respect for democratic values and for the basic rights of the Belarusian people.

Meanwhile, the EU will continue to provide funding for Belarus to assist regions affected by the consequences of the Chernobyl catastrophe, or to support the fight against human trafficking, in particular the trafficking of women, across European borders.

At the same time, the EU will continue to work to give the people of Belarus access to independent information in order to allow them to hear all sides of the arguments before drawing their own conclusions. The EU will continue to support the written press and the broadcasting of independent TV and radio programmes to Belarus. The EU will also welcome and provide financial support for Belarusian students studying in European universities.

The Energy Security of Europe and the Role of Azerbaijan

By Fazil Zeynalov[33]

On September 20, 2009, Azerbaijan commemorated the fifteenth anniversary of the "Contract of the Century", which marked the start of the implementation of the oil strategy, defined by President Heydar Aliyev, founder of modern Azerbaijan. This has led to the authorities of Baku affirming itself as a regional power. Indeed, after signing of the "Contract of the Century" between the State Oil Company of Azerbaijan (SOCAR) and an international consortium, on September 20, 1994, Western multinational companies have been heavily involved in what is seen as new Eldorado of the Caspian Sea. Although the legal status of the Caspian has not yet been defined by the five bordering States (Azerbaijan, Kazakhstan, Russia, Turkmenistan and Iran), Turkmenistan and Kazakhstan have followed Azerbaijan in exploiting oil and gas resources with the help of Western investors.

It should be noted that the region is of strategic importance as it is situated in the heart of Eurasia, and is a focal point of a geopolitical struggle between great powers. It is clear that the power struggle has moved in to the energy delivery routes where political control has become a major issue. The planned routes for new pipelines to European markets have raised a wide range of issues, including geopolitical considerations and security requirements.

The European Union, devoid of energy resources, has developed an energy strategy, which requires choices to be made in response to the events in the energy area considered as a "matter of great concern."[34] Currently 50% of its energy requirements are imported and this is expected to rise to 70% within 20 to 30 years[35]. The European Commission predicts that the share of imported gas will increase as a result of demand and falling gas production within the EU. At the present, Russia supplies more than 40% of European imports.

While keeping the idea of "transition energy" on the agenda, because natural reserves of oil and gas are finite, the EU wants to reduce its dependence on Russia by diversifying its sources of energy supply. Despite of establishment of a framework for EU/Russian dialogue at the EU-Russia summit in Paris in October 2000[36], the gas crisis with Ukraine on the 1st January, 2006[37] prompted the EU to start looking for new energy sources. After this crisis, the EU has been interested in the Caspian Sea basin which acquired the status of "high strategic importance"[38]. The region has vast reserves of natural

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[33] Doctor of Law (University Pierre Mendès France – Grenoble II, France), Researcher at the Centre for Strategic Studies, Baku, Azerbaijan

[34] Conseil Européen – *Une Europe sûre dans un monde meilleur,* Bruxelles, le 12 décembre 2003.

[35] Commission – *Livre vert : une stratégie européenne pour une énergie sûre, compétitive et durable,* COM (2006) 105 final, Bruxelles, le 8 mars 2006, p. 3.

[36] *Déclaration conjointe,* du Président du Conseil européen, M. J. Chirac, assisté par M. J. Solana et M. R. Prodi et du Président de la Fédération de Russie, M. V. V. Poutine, Paris, le 30 octobre 2000.

[37] VATEL (M) – *La Russie coupe le gaz à l'Ukraine et l'accuse de spolier les clients européens,* Le Monde, le 3 janvier 2006, p. 4.

[38] EU – *PE/Caucase du Sud : l'UE veut développer sa politique de voisinage avec le Caucase du Sud, une zone à « haute importance stratégique », souligne Elmar Brok – Marie Anne Isler Béguin plaide pour la fin de conflits qui durent depuis vingt ans,* Agence Europe, n°9141, le 1er mars 2006, p. 6.

resources[39] and can be seen as particularly important for the diversification of EU energy supplies. Gas production is rising steadily and is expected to reach 170 billion cubic metres by 2010[40].

With this in mind, the "Nabucco" project, which is being supported by the EU, is of great interest. Scheduled to become operational in 2014, this pipeline of 3300 kilometres will be able to carry 30 billion cubic metres of gas from Azerbaijan, Kazakhstan, Turkmenistan, Egypt, and Iraq to Europe. In order to link the countries of Central Asia directly to the "Nabucco" pipeline, it is necessary to build a "Trans-Caspian" pipeline through the Caspian Sea. However, the "Nabucco" project faces three major problems:

1. Absence of agreements with potential suppliers;
2. Difficulties in obtaining financial means for eventual construction;
3. Poor political relations between countries in the region, which prevent the EU from accessing those energy resources.

The problem arising from questions about a pipeline transit route was resolved after negotiations and the signing of the Intergovernmental Agreement on Transit Routes on the 13th of July 2009 in Istanbul, Turkey[41]. However the struggle for final agreement promises to be difficult in a geopolitical environment, which is particularly sensitive to energy issues.

Energy issues

Russia's energy policy is part of a broader strategy aimed at restoring its former power. With this in mind, Russia is strengthening its position over Central Asian natural resources by buying out the bulk of its gas production. The Central Asian countries have no direct access to the EU, so their choices are limited. On the one hand, Russia has a monopoly on the pipeline running through its territory, and on the other hand, there is still no alternative pipeline, bypassing Russia and linking Central Asia to the EU market. The stakes are high for both the EU and Russia. It should be noted that since 2005, the price paid for gas by the giant "Gazprom" has been going up gradually, as a result of a new competition arising from Western interest in the region and Moscow's appeasement strategy of maintaining these markets under its control by accepting the increase of purchase gas prices.

To further strengthen its position, Russia has successfully pursued diplomatic action on two levels: firstly, Turkmenistan signed a long term contract in April 2003 committing itself to selling Russia 80 billion cubic metres of gas per year[42]. Secondly, an agreement was reached on the 12th May 2006, in Ashgabad, between Vladimir Putin and Saparmurat Niyazov, former president of Turkmenistan, on the construction of the "Caspian Littoral Gas Pipeline"[43], to increase the transportation capacity for Turkmen gas across the Russian territory. It should become operational in 2010. Russia needs gas from Central Asia for two reasons: firstly, to satisfy increasing domestic demand and secondly, to ensure an uninterrupted flow of gas exports to the EU. In this context, the "Nabucco" project can probably be understood by Russians as a disadvantage to their advantageous position in this strategic region.

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[39] *Caspian Sea Region: Survey of Key Oil and Gas Statistics and Forecasts,* July 2006, Energy Information Administration, Department of Energy, http://www.eia.doe.gov

[40] Commission – *The development of energy policy for the enlarged European Union, its neighbours and partner countries,* COM (2003) 262 final, Brussels, 13 May 2003.

[41] *Nabucco: accord gazier signé par cinq pays,* Ria Novosti, le 13 juillet 2009, http://fr.rian.ru/business/20090713/122317667.html

[42] Genté (R.) – *Du Caucase à l'Asie centrale, "grand jeu" autour du pétrole et du gaz,* Le Monde diplomatique, juin 2007, p. 18.

[43] Kramer (A.-E.) – *Central Asia on front line in energy battle,* The New York Times, 20 December 2007, p. 1.

The idea of building the "Nabucco" pipeline prompted a launch of a rival project called "South stream"[44], which, according to the Russian press, will become operational in 2015[45]. The agreement for its construction between "Gazprom" and "Eni" (Italy) was signed on November 22nd, 2007[46] with the Kremlin's blessing. "South stream" will split into two branches in Bulgaria, with one branch leading to Greece and Italy and the other branch leading to Austria and Hungary. From this point of view, Bulgaria will become a strategic crossroads and will allow Russia to reduce its dependency on transit countries, such as Ukraine. At the same time, it will strengthen its position in Eastern Europe, where it hopes to increase its market share of gas supply and distribution. Indeed, the long term strategy of "Gazprom" is to "seek direct access to European distribution networks."[47] In this regard, the partnership with the Italian company "Eni" opens new opportunities[48]. If we add to this plan the agreement with Germany on the project "North stream", it can be seen that Moscow will maintain its position and will probably remain the main gas supplier to Europe.

The weakness of the European Union

Unlike the USA, the EU does not have an overall strategic vision[49]. In seeking to become a political-military power, the EU is being forced to procure new sources of energy supply in order to reduce its dependence on Russia. But while promoting the "Nabucco" project, the EU has no desire to enter into a power struggle. The EU wants to ensure that it has a political and economic voice in the region, using "soft" power to establish a framework for dialogue between all countries of the region and Russia. The objectives are to facilitate the diversification of supply through consultation with Moscow, and to encourage Moscow to ratify the European Energy Charter, "and therefore open its energy market to competition." But the EU has difficulties in pursuing a common policy. Let us remind ourselves of the fact that Germany has signed an agreement with Russia to build the "North stream" pipeline, and that an agreement has been signed by Bulgaria and Hungary to build the "South stream" pipeline, re-enforcing speculation that the "Nabucco" project has a very uncertain future. In the same way, the EU objective of increasing gas imports directly from Central Asia is not backed up by a definition of the means of transportation. This is being left more or less to decide itself based on the political stance taken by each country in the region. However, the construction of a "Trans Caspian" pipeline, which is strategically important for securing the future increase of the volume of gas imports to Europe, requires more determination and political will.

The role of Azerbaijan

It should be noted that integration into Europe and its institutions is a national priority for Azerbaijan, which shares European values and defines itself as a European country. In pursuing European integration, Azerbaijan has opted for democracy, which is conditioned by successfully maintaining a policy of stability and sustainable economic growth. The recent book written by Ramiz Mehdiyev, head of the Presidential Administration, demonstrates how stability and economic development have created conditions, necessary to promote the establishment of democracy[50]. Due to this strategy, the country has become the economic and political leader in the region. All regional projects are carried out due to the initiative and the financial and political support of Azerbaijan. Given its geographical

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[44] *Nabucco et South Stream, les deux gazoducs rivaux du « corridor sud »*, Romandie News, le 15 septembre 2009, http://www.romandie.com/infos/news2/090915152555.atkvswsz.asp

[45] With a capacity of 30 billion cubic meters of gas, the pipeline of 2 500 kilometers, 900 kilometers below the bottom of the Black Sea cost between 10 and 15 billion dollars, more expensive than the European project "Nabucco" which cost almost 8 billion dollars.

[46] Dempsey (J.) – *Eni of Italy signs a pipeline deal with Gazprom,* New York Times, 23 November 2007, p. 5.

[47] Jaulmes (A.) – *Sommet germano-russe à l'ombre de Gazprom,* Le Figaro, le 26 avril 2006, p. 6.

[48] *Russia, İtaly agree to build gas pipeline,* Turkish Daily News, 24 November 2007.

[49] ZEYNALOV (F.) and VEDRINE (O.) – *The Oriental Partnership, the geopolitical stakes and Azerbaijan,* Réseau d'analyse et d'information sur l'actualité internationale, le 5 août 2009, http://www.multipol.org

[50] MEHDIYEV (R.) – *Defining the strategy of tomorrow: course towards modernization,* Baku, Ed. "Sherq-Qerb", 2008, 216 p.

position and its political, economic and financial capacity, it is unimaginable to establish a regional project without its participation. Indeed, Azerbaijan has become an indispensable and important player in the region.

In the energy sector, Azerbaijan, which borders the Caspian Sea, is also a major player. Its proven reserves of gas amount to more than 2.5 trillion cubic metres. In addition to these reserves it provides direct access for the West to Central Asian countries, effectively making itself a bridge between Europe and Central Asia. Thus, the presence of President Ilham Aliyev at the summit meeting for the "Nabucco" project in Budapest, which took place on the 26th and 27th of January 2009, was of particular importance to Europe.

Azerbaijan is seeking to ensure the secure delivery of its resources by diversifying the pipeline in several directions. This was the reason why the second phase of the operation of the Shah Deniz field was delayed. This operation alone is expected to produce some 16 billion cubic metres of gas per year. In this context, Azerbaijan which already exports gas to Turkey and Greece will be a vital supplier for the launch of the "Nabucco" pipeline and should be able to provide most of the gas transported by the pipeline[51]. Considering the difficulties and uncertainties in identifying potential suppliers, Europe has

"The Southern Corridor, New Silk Road" Summit in Prague, Czech Republic, on 8th May, 2009 brought together not only Mr. Barroso, President of the Commission, Mirek Topolánek, then Czech Prime Minister and President in office of the Council of the EU, and various CIS and natural gas interested European states, of which should be mentioned in particular Ilham Aliyev, President of Azerbaijan (left) and Abdullah Gül, President of Turkey, who in the same period practiced "football diplomacy" with Armenia which is sandwiched between both countries. Theme of this summit was the development of the Southern Corridor for energy and transport. The Southern Corridor is "expected to be a modern Silk Road that encourages trade and investments, exchange of knowhow and interconnects people from different regions", according to Mirek Topolánek. The first step of the building of such a corridor could be the Nabucco pipeline.

[51] *L'UE s'intéresse au gaz d'Azerbaïdjan pour approvisionner Nabucco,* Romandie News, le 15 septembre 2009, [http://www.romandie.com/infos/news2/090915110100.r35f5nj0.asp]

yet to propose purchase contracts to Azerbaijan. It is struggling to resolve all the technical difficulties related to the pipeline before signing a purchase contract, which is contrary to market principles.
However with the increasing gas production, Azerbaijan needs markets and competitive prices. For the moment, Russia is the only country to take the initiative. During the visit of President Medvedev to Baku on the 29th June, 2009, "Gazprom" signed an agreement with the State Oil Company of Azerbaijan (SOCAR) to purchase 500 million cubic metres of gas starting from January 2010[52]. For Baku this contract is based on commercial considerations with a price of 350 dollars for 1000 cubic metres of gas. For now, the quantity sold is not significantly enough amount to deprive the "Nabucco" pipeline of its first reliable gas supplier. However, the danger is not far off, especially if Europe does not decide the fate of its project soon and rapidly sign purchase contracts with Azerbaijan. Gas importers in both Asia and Europe are courting Baku with an eye on securing future supplies. The waste of time by the EU could effectively put the end to the "Nabucco" project.

Even more important than being a key player in the region, Azerbaijan is also a strategic transit zone for Central Asia, which has the biggest gas reserves on the planet and would be the potential suppliers of "Nabucco." It should be emphasised that the countries of Central Asia are amenable to exporting gas to the EU. Following an explosion on the pipeline between Russia and Turkmenistan in April 2009, the latter is aware more than ever before of its vulnerability due to its dependence on its big Northern neighbour. It is not a co-incidence that the Turkmen authorities are offering new opportunities to Western companies to exploit its hydrocarbon deposits[53].

The geostrategic importance of Azerbaijan is not only due to its enormous energy reserves, but also to its geographical position and its ability to promote the energy corridor and East-West transport. Thus, in recent years major projects were undertaken, such as the Baku-Tbilisi-Ceyhan (BTC) oil pipeline and the Baku-Tbilisi-Erzoum (BTE) gas pipeline to deliver not only Azerbaijani oil and gas to Western markets, but also that of other Central Asian countries. In 2007, work began on another major project, Baku-Tbilisi-Kars (BTK) railway, in order to facilitate the movement of goods. For this project Baku gave a loan of 200 million dollars to Georgia. The implementation of these projects should contribute to regional economic cooperation, create new opportunities for the domestic economy, and ensure good prospects for larger scale cooperation between East and West.

However, the conflict in Nagorno-Karabakh between Armenia and Azerbaijan remains a major threat to regional security: 20% of the territory of Azerbaijan remains under Armenian occupation and over one million people are refugees and Internal Displaced Persons in their own country, waiting to return to their homes. In the early 21st Century, this is an unacceptable situation as it violates territorial integrity and thus constitutes a "crime against peace." The Armenians of Nagorno-Karabakh form a national minority, and from the minorities' rights point of view they are not entitled to question the boundaries of a state in order to have self-determination[54]. So the right of a people to self determination cannot lead to political independence in this case[55]. Azerbaijan is determined to resolve this conflict through negotiation and the principles of public international law. It also appeals to the

[52] *Gazprom signe un contrat avec l'Azerbaïdjan, pied de nez à Nabucco,* Ria Novosti, le 30 juin 2009, [http://fr.rian.ru/world/20090630/122166094.html]
[53] *Turkménistan/gaz : droits d'exploration en mer Caspienne pour l'allemand RWE,* Romandie News, le 16 avril 2009, [http://www.romandie.com/infos/news2/090416093924.haii0isf.asp]
[54] BENOÎT-ROHMER (F.) – *La question minoritaire en Europe,* Ed. du Conseil de l'Europe, Strasbourg, 1996, p 21.
[55] MOREAU DEFARGES (Ph.) – *L'Organisation des Nations Unies et le droit des peuples à disposer d'eux-mêmes,* Politique Etrangère, n°3, 1993, pp. 659-671.

international community to take a firm stand against the current situation, and help re-establish the principles of international law. It should be emphasised that the deteriorating situation in the region could also mean the end of the "Nabucco" project. Azerbaijan is a key player whose stability is vital in order to ensure secure gas supplies for the European pipeline.

This necessitates a high level involvement by the EU in finding a settlement of the conflict in Nagorno-Karabakh. Indeed, the fact that Azerbaijan demonstrates reliable and responsible behaviour in its strategic energy partnership with the EU means that it expects to be treated in a similar manner by the EU. It is seeking support during peace negotiations over Nagorno-Karabakh based on the fundamental principles of international law, especially with reference to its territorial integrity and inviolability of its borders. Azerbaijan is waiting for the Europeans to meet its expectations and contribute to a lasting peace in the region.

In a conclusion of sorts, we must remember that the construction of the "Nabucco" pipeline does not depend on opposition from Russia with its rival projects such as "South Stream" but on the commitment of the EU. Given this configuration and to avoid a possible destabilisation in the region, the EU should involve itself in two fronts: better cooperation with Russia, Azerbaijan and Central Asian countries, and actively contribute to conflict resolution, particularly that of Nagorno-Karabakh. The EU and Russia on the one hand, and the EU and Azerbaijan on the other, have common interests, therefore more coordinated and concerted efforts by all parties could lead to concrete results over energy security and peace in the region. This would allow the EU to better protect its energy interests, assert itself as a political player, and increase its visibility in the region.

Turkmenistan: Still Waiting for the Second Step

By Farid Tukhbatullin[56]

Leading officials in Turkmenistan began a series of meetings this fall with leaders of democratic countries and international organizations, starting with the UN General Assembly in New York. After the death of the dictator and "president-for-life" Saparmurat Niyazov, the new leaders declared a commitment to fundamental change. But all they took was a few first steps before everyone declared Niyazov's successor, Gurbanguly Berdymukhamedov, a reformer.

Turkmenistan isn't the only country in the world with a totalitarian government that promises its people and international partners alike that it will embark on democratic change. These promises — and the several positive steps of the new Turkmen leadership — have made Turkmenistan's international partners optimistic that real change is on the way.

Every time a dictatorial government undertakes such an initiative, optimists rush to say that these are steps toward democracy and human rights. Then international organizations remove sanctions, renew cooperation treaties or approve an important trade agreement.

Once they achieve that "recognition" and obtain certain benefits, these governments either freeze the movement toward democracy or renew their totalitarian policies.

After initial promises and reforms, the Turkmen leadership has backslid considerably. The international community, and particularly the Europea Union and the United States, should make a corresponding shift in its approach to the country.

One Step Forward, Two Back

The government initially promised to broaden Internet use. The first step was to open more Internet cafés and make it possible for people to connect to the Web from their homes. The second step should have been to allow non-state entities to become Internet providers so that Internet access could spread around the country.

But instead, the government's second step was to introduce total control over the Internet by blocking many websites, requiring visitors to present their passports at Internet cafés, and continuing to monitor electronic communications. Instead of opening web access, it introduced new, more restrictive rules for contracts between Internet users and the state Internet provider.

Another first step towards freedom of information was to allow ministries and government agencies to subscribe to specialized foreign periodicals, which are much in demand but banned under Niyazov. People expected that the second step would be to allow everyone to subscribe to foreign newspapers and magazines.

[56] Leader of the Turkmenistan Initiative for Human Rights; lives in exile in Vienna/Austria.

But this never happened, and the situation got worse. Private newspaper salesmen once imported foreign periodicals from neighboring Uzbekistan and sold them at markets. Now border guards confiscate all foreign printed matter. Merchants can only sell media published in Turkmenistan. The government also cracked down on private satellite antennas, which people used to watch foreign television stations.

In education, Berdymukhamedov's "first step" was to lengthen the required number of years of study in secondary and higher education institutions, which had been reduced during the Niyazov era, and to slightly increase the number of slots in higher education and specialist establishments. The government also indicated it would establish relations with educational institutions abroad, an essential move given the piteous state of the education system under Niyazov.

But as its second step, the authorities put up several obstacles to initiate a European Union program to modernize Turkmenistan's professional education, even denying visas to EU staff working on the program. Over the summer, the government barred hundreds of young men and women from leaving the country to study abroad in foreign private universities.

Political Freedoms Curtailed

After Niyazov's death, the government released a few political prisoners and victims of miscarriage of justice. Among them was the former mufti, or religious leader, of Turkmenistan. But there continues to be no information about others who may have been unjustly imprisoned, no effort to re-examine the cases against them, and no access to places of detention for international monitoring groups.

As for other civil and political freedoms, like the development of political, religious, and trade union organizations, the government never bothered to even make any promises regarding this, let alone take any first steps. So despite the promises, Turkmenistan isn't moving forward with democratization. Even in the rosiest light, it's standing still.

Recent indications that Turkmenistan's natural gas reserves are perhaps not as large as initially advertised could persuade energy-hungry Western countries to close their eyes to the human rights violations. But administrations at both sides of the Atlantic have also indicated they want to do the right thing. For instance, Washington should think about inviting Turkmenistan's leader for a high-level and high-profile visit, while setting out certain human rights prerequisites before the visit would take place. Another incentive could be promising to support Turkmenistan in its difficult regional relationships with Russia and Azerbaijan.

This kind of pressure — by foreign governments and international organizations that are Turkmenistan's main partners — can push the country toward taking those "second steps" on the path to human rights[57].

[57] This article has also been published in "Foreign Policy in Focus" (FPIF), USA (www.fpif.org). We thank the editor John Feffer for his colleagual attitude.

Russia is indeed a European country

By Olivier Védrine[58]

Russia is the biggest country in the world stretching over 9.000 kilometres and with a surface area 35 times that of France, namely 17 million square kilometres. Russia has an unmatched wealth of natural resources and a population of over 140 million (eighth most populated country in world rankings). These parameters alone make it a major player on the international geopolitical scene.

73% of the population live in urban areas and 80% of these inhabitants live to the west of the Ural mountain chain and consequently in Europe. Russia boasts one of the best literacy rates in the world (99.5% in 1999) and despite the many ethnic groups speaking more than 70 languages and dialects, most inhabitants are bi-lingual. The fact that Russia is a federation allows it to manage the diverse ethnic groups spread over the vast area of the country. The population is young with 75% under the age of 45, however the death rate currently exceeds the birth rate despite policies introduced which favour the young.

The climate in Russia is subject to extremes between summer and winter months resulting in an average annual temperature of minus 5.5°C. The seasons of spring and autumn are almost non-existent. The lowest recorded temperature of minus 70°C was taken in the town of Verkhoiansk and the average winter temperature hovers at around minus 25°C. Average summer temperatures vary between 20°C in the north and 38°C in the south.

The climate has a direct influence on lifestyle and economic activity. In some areas, the permafrost, which means that the soil sub-strata never de-frosts, creates financial and technical constraints for the construction and petroleum extraction industry.

Since the break up of the USSR in 1990, Russia has had to face two major challenges: the transition from a closed Soviet economy to a liberal capitalist economy and to the acceptance of an economy ruled by the market resulting from supply and demand.

Russia is a member of the G8 group of industrialized countries with its economy ranking eleventh in the world according to the World Bank statistics of 2007.

Russia experienced an average growth in GDP of 6.8% from 1999 to 2004(after a financial crisis in 1998). However its economic performance is based largely on the success of its natural resource industries, especially oil and gas. This has led to the company Gazprom becoming a key element in Russian foreign policy.

90% of Russian oil is extracted from two major basins: Western Siberia (Tyumen area, 2144 kilometres east of Moscow) and the Volga-Ural (the Samara region, 860 kilometres south-east of Moscow and the autonomous Republic of Tatarstan).

Russia is classified as an emerging market but it qualifies as a special case for various reasons:

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Firstly, it is the only country in this category not to be a newly industrialised country: for much of the 20th century it was the ideological and industrial heart of the military superpower, the USSR.

Secondly, it is a country which makes up a part of continental Europe. The capital city Moscow is situated before the Ural mountain range and it shares a common history with other European countries.

Thirdly, Russia, unlike other emerging market economies, has an ageing population in common with its European neighbours. This decline will soon become a problematic issue when considering the growing Chinese presence in Eastern Siberia.

Politically, Russia is governed by a democratically elected government – from a subjective point of view - with a semi-presidential system. The president and the prime-minister both have important roles regarding domestic decision making and in foreign policy.

For many reasons, often unjustifiable, Russia instills fear in Western countries, who would like to see this newly democratized country behaving according to the political norms of the old democracies of Western Europe. We must beware of making ethnically based political judgments of third countries. In the case of Russia, the trials and tribulations of the past 20 years appear to have been forgotten. The end of the USSR brought anarchy and the collapse of Russian influence in the Yeltsin years, a fall in living standards and demographic decline. A new state was created with the election of President Putin heralding a successful return to the international political scene (G8 membership) and real economic success (several years of high economic growth). We must leave it for the Russians themselves to choose their path to democracy and the time to develop their own democratic model. None of the old Western democratic models can be transferred from one state to another. Just imagine imposing French style democracy on the British and vice versa. Russian democracy is targeted repeatedly by Western media, often demonstrating ignorance of Russian history and culture.

This lack of comprehension leads to misunderstandings which can only be negative for Europe as a whole and could lead to a new political barrier running across the heart of Europe. In these times of global geopolitical uncertainty we do not need new divisions in Europe but a tightening of the ranks behind a united front!

The history of Russia began in the 9th century in an area shared today by Ukraine, Belarus, and Western Russia. It was the time of the Kievan Rus', founded by the Varangians, Vikings who came from Scandinavia and who were ruled by the Rurik dynasty. The Kievan Rus' ruled over a federated state of oriental tribes with slave status. In 988 AD, the Grand Prince Vladimir converted to Orthodox Christianity, the religion of the Byzantine Empire. Orthodoxy became the state religion and a major factor in maintaining Russian national unity. The thirteenth century Mongol-Tatar invasion put an end to the Kievan Rus' and began the State of the Golden Horde. This state was founded by the Mongols in the south of the Volga and all the defeated Russian Principalities were forced to pay tribute and recognize Mongol sovereignty which lasted for three centuries. Russia considers, certainly rightly, that its suffering and sacrifice under Mongol rule saved Europe from the Tatar-Mongol Yoke of servitude and allowed Western Europe to enjoy freedom and prosperity giving it the history it has today.

From the 13th to the 16th centuries, one Russian Principality, Muscovy, whose Capital was Moscow, took the lead in the revolt against the Mongols and created Russia. This marked the beginning of the end of Mongol rule and the integration of the independent Russian principalities of Novgorod in 1478 and Pskov city-state in 1510.

Ivan IV. also called Ivan the Terrible was the first prince to call himself Tsar seizing the remaining Mongolian kingdoms and extending the territory of Russia to the East without any obstacle. Ivan IV. considered himself to be the sole heir of Prince Vladimir.

Troubled times followed the end of the dynasty of the descendents of Rurik (dating from the Varangian Princes), until the creation of the Romanov dynasty in 1613. An era of great rulers followed: Peter the Great (1685-1725) who founded St Petersburg and declared it the new capital in 1712, symbolizing the openness of Russia to Europe. Catherine II (1762-1796) called Catherine the Great, enlightened autocrat, patron of the arts, literature and education (based on the Encyclopaedia of Diderot and Alembert). She corresponded with Voltaire and invited Diderot to the royal Court. The Russian nobility became westernized through the influence of German philosophers and the French language. Some were enthusiastic about the ideas of the era of Enlightenment and even by the French Revolution.

Russia entered the 19th century as a great powerful nation thanks to the reign of Alexander 1st who played an important role in the Napoleonic wars and the Holy Alliance. Alexander II. (1818-1881) also referred to as Alexander the Liberator, attempted to reform Russian society by proposing changes to the constitution in order to bring about the abolition of serfdom, reform to the judicial system and the laws of censorship, changes to the electoral system and even the military. He was assassinated for his efforts on the 13th March 1881 before he had realized his dreams. Alexander III. ascended to the throne following the assassination of his father and led a series of contra-reforms in reaction to his father's violent death. During his reign, industrialization of Russia grew rapidly thanks to foreign investment and the expansion of the rail network to over 30.000 kilometres of track by 1890. Russia continued to expand its sphere of influence covering China and Korea right up to Japan.

The defeat suffered by Russia in the war against Japan triggered the first Russian revolution in 1905. Nicholas II. (1868-1918) who became Tsar in 1894 was obliged to seek other opportunities for expansion of its sphere of influence.

Russia entered the war against Germany and the Austro-Hungarian Empire in 1914 in defence of its Serbian ally. The Russian forces attacked Eastern Poland and suffered humiliating defeat. Social unrest erupted in February 1917 leading to the abdication of Tsar Nicholas II and the declaration of a Russian republic. The October Revolution triggered by the Bolshevik political party on the 25th October 1917 led to the execution of the Royal family on the 17th July 1918 at Yekaterinburg. A civil war between the Bolsheviks and the White Russians (Republicans or Monarchists) lasting three years ended with victory for the Bolsheviks on the 22 December 1922. The Union of Soviet Socialist Republics was established with Russia as a member state.

In the ensuing period, the USSR became a world power and one of the victors of the Second World War. With end of the war in 1945, the USSR and the USA divided the world into two powerful political spheres. The battle of Stalingrad (January 1943) was a key turning point in the war bringing the Soviet army to Berlin. Europe was divided in

It is not easy to be the Russian President. Will Dmitri Medvedev be able to foster the Strategic Partnership with the EU – with which finalities? And will he be able to foster a policy as displayed in November 2009, criticizing heavily the system as it is now?

two and the so called Iron Curtain remained in place until the fall of the Berlin Wall in 1989. On December 21st 1991 the CPSU was dissolved by Mikhail Gorbachev and the Soviet Union collapsed. As the main successor of the USSR, Russia has its place in International Institutions and a permanent seat at the Security Council of the United Nations. A political and economic union, the CIS was created in 1991 in an attempt to retain ties between former members of the USSR.

The election to power of President Putin in 2000 brought about a Russian revival and a return to the world political scene, after the period of political and economic collapse marked by the Yeltsin years.

Today we see Russia re-instated as a great nation participating in international decision making and an important player in geopolitics.

During the 1990`s, the West was judged to have hurt the feelings of the Russian people by underestimating them as a nation. With the arrival of Putin in 2000 a deep distrust developed towards the European Union mostly as a result of the "Colour Revolutions" and the ensuing encroachment on the traditional Russian sphere of influence. Before this time, the Kremlin had been seeking an arrangement with the EU to counter American influence in Europe especially concerning the missile shield project, which had served to deepen the humiliation felt by Russia after the collapse of the Warsaw pact. The limits of Russian tolerance were reached with the case of Georgia and Ossetia, where the Georgian President Saakachvili was under the illusion that he could act with impunity due to alleged re-assurances of support from third countries. The Russian response was rapid and meant to send an unequivocal warning to the USA and to certain European countries. Russian emerged from this political crisis with its place in the Caucasus firmly repositioned and its political role as the dominant player in the area reaffirmed. It is without any doubt the first combined military and political success story for Russia since the collapse of the USSR.

If we wish to avoid a face-off between the European Union and Russia and a new rift dividing Europe, we must seek to define a mutually agreeable space to work in together. Failure to do so will weaken the influence of Europe as a player on the stage of world geopolitics and give pleasure and advantage to our political and economic competitors.

We need to work together to build a strategic partnership using a model of the project based on the four "Common areas". Following the Saint-Petersburg Summit in May 2003, Russia and the EU made a joint declaration for the creation and establishment of four common areas relating to, Economics, freedom, justice and security, external security and research. The road maps of the four areas were adopted at the Moscow Summit on the 10th May 2005 due to the personal involvement of the Russian President Vladimir Putin.

These were for Brussels and Moscow real working documents, less restrictive than International treaties and brought an important political dimension to co-operation between Russia and the EU. Whilst certain criticisms have been directed at these roadmaps, they do nonetheless serve as a starting point for the building of a truly Pan-European shared space in economic, political and cultural issues - a Europe reflecting the vision of General Charles de Gaulle: From the Atlantic to the Ural, passing through the axis of Paris-Berlin-Moscow.

Competition in Albania

By Evis Pertafi[59]

Abstract
Albania is the last country in South-East Europe that applied the principals of free market economy after the great changes in its political system. Considering the population, the GDP and the approach towards EU, Albania is the ideal example of applying the Competition Policy objects in a small and relatively informal economy. At the same time, the policy and decision makers related to the implementation of the law and competition policy may find a difficult balance between economic efficiency and profits from the economies of scale on one side and the application of the Competition Policy law on abuse of market power.

This material introduces a brief history of the first developments of Albanian competition policy and law, in the context of a free market economy and its application, competition policy in combination with other policies and the challenges for the Albanian Competition Commission in putting the law into practice.

All these developments are seen in the context of the characteristics of a small economy and of the Albanian economy – providing some realistic proposals for the implementation of Competition Policy in Albania and other countries of the region with a similar economy in terms of size and in a similar competition policy implementation phase. This article comes in a time when the European Commission starts a 20 month project of supporting the Albanian Competition Commission in a crucial phase of approximation of legislation and further compliance to the acquis communautaire of the EU.

1. Competition in Albania

1.1. Brief history of the Law and Competition Policy in Albania

The application of the free market economy after 1990 required a legal framework to enable all new private enterprises and the state companies to enjoy all market freedom and the protection of their rights. This legal framework was to create an environment for companies to operate under an efficient competition with clear and fair rules for all the parties. On the other side, the new legislation should also consider to protect the consumers' interests.

Thus, in December 1995, the Albanian Parliament approved the first law on competition: Law no. 8044, "On Competition". This law was applied when the Albanian economy was dominated by the state sector. It dealt mainly with monopolies and the dominant position, as well as with the unfair practices. However, it should be emphasized that this law enabled the institutionalisation of competition policy. For the first time, a Competition Commission was created under the Ministry of Economy and Trade with the authority of implementing the law in Albania.

The changes in the Albanian economy after 2000, such as the increase of the macroeconomic stability, liberalisation of trade and the quick privatisation of state enterprises and the fact that the existing law excluded some important sectors from its application, created the necessity for a thorough revision of the existing law and its amendment.

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Another important factor for the amendment of the law was the beginning of the negotiations for the Stabilization and Association Process with a special emphasis on competition and the adaptation of the legislation to the *acquis communautaire*.

The purpose was to achieve a similarity, especially with articles 81 and 82 of the Treaty of Nice[60] to establish a solid legal basis for an efficient implementation of the competition rules by the companies operating in Albania.

For this purpose, the Albanian Parliament approved on 28 July 2003 the Law no. 9121 "On the Protection of Competition", which entered into force on 1 December 2003. This law reflects the European legislation on competition focusing on three main pillars: prohibited agreements, abuse of a dominant position and merger control. This law sanctioned the creation of a public and independent institution responsible for the implementation of the law and Competition Policy in Albania. Thus, the Competition Commission gathered for the first time on 3 March 2004 – the date when the Albanian Competition Authority was founded.

1.1.1. The evolution of the regulation of competition during the transition period - Competition during 1990-1995.

The approval of the Law no. 7491, dated 29.4.1991 "On the Main Constitutional Provisions" should lay the foundations of the modern Albania. The main provisions of this law are articles 2, 3 and 4 which sanction the acceptance and support of market economy, private property and economic freedom. The approval of the Law no.7512 dated 10.08.1991 "On the sanctioning and protection of private property, free economic activity and privatisation"should also be very important.

The purpose of this law is to establish a new economic order to enable the transition from a centralized economy to a new economic system based on the free market principle. Encouraging and respecting economic freedom requires respect for a free and honest competition between the new private owners. During 1991-1995, some other laws were approved which sanctioned and encouraged the privatisation process as the only way toward market economy.

The new Albanian state was fragile and it was supported by the Western governments, but it did not have the adequate economic and political expertise. All the laws approved during this period sanctioned the protection and respect of economic freedom, but they did not sanction the structures and mechanisms that would guarantee their implementation.

1.1.2. Competition during 1995-2003

Law no. 8044, dated 07.12.1995 "On Competition" was the first step of dealing with monopoly issues, dominant position and dishonest competition. It should be mentioned that from the approval of the Law "On Competition" until 28.07.2003, when the Albanian Parliament approved the Law no. 9221 "On the Protection of Competition", this law had been only partially implemented. The reasons why the structures envisioned in this law were not implemented do not relate to the content of the law, but rather to the lack of will from the state and political institutions to respect it.

However, the Law no. 8044, dated 07.12.1995 "On Competition" is the first cornerstone of building and strengthening the so-called "Right of Competition". Several problems were noticed during the implementation phase such as the privatisation of enterprises in strategic sectors (Savings Bank, Alb-Telekom) as well as the liberalisation of these sectors. As a result, it deemed necessary to draft a new legislation on competition in conformity to the European legislation[61]. This necessity was even more evident after the beginning of the negotiations on the Stabilization and Association Process (the SAA

[60] Identical with the art. 101, 102 et al. of the Treaty of Lisbon (2nd part) which is in power since 1.12.2009
[61] The rationale prepared for the draft-law "On the protection of Competition", May 2003

- Stabilisation and Association Agreement), which gives great importance to the chapter on free and effective competition (articles 71-72 of this agreement) and the adaptation of our legislation to the *Aquis Communautaire*.

The main sources used for drafting the Law "On the Protection of Competition", which nullified Law no. 8044 "On Competition" and entered into force on 1.11.2003, were the Treaty of Nice, the European Commission Regulation on the horizontal and vertical agreements on the control of concentrations and the procedures to be followed by the Competition Authority.

The basis of the new Law "On the Protection of Competition" are: the agreements, abuse of a dominant position and mergers.

- Agreements are reflected in article 81 of the Treaty of Nice which envisions agreements that may have a great impact (Cartels)[62].
- The emphasis of the Law no. 8044 will no longer be on the dominant position, but on the abuse of a dominant position.
- Law no. 8044 states that mergers which affect or strengthen a dominant position or monopolies will not be allowed.
- The position and the relationship of the Competition Authority with the regulatory bodies of strategic sectors were regulated during the privatization process and after it, along with the role of the Competition Authority in case of competition restriction by the governmental regulations.
- The sanctions chapter was changed in order to foresee more efficient and adequate sanctions for the current development phase.
- The Competition Authority was given the status of an independent public institution.

These were some of the main pillars of the Law "On the Protection of Competition`` which was approved by the Albanian Parliament on 28.07.2003.

Despite the autonomy of the Competition Authority and its financing by the state budget, nothing else has changed in the purpose of the two laws – protection of the free and effective competition[63] in the respective fields.

Considering the importance of free and effective competition in the market economy, we may say that the law "On the Protection of Competition" should be considered as one of the main laws for a market economy system.

1.1.3. The structure and content of the Law "On the Protection of Competition"[64].

As it was mentioned above, for the drafting of the Law were consulted the Treaty of Nice and the European Commission Regulations on the Horizontal and Vertical Agreements on the Concentrations Control and the procedures to be followed by the Competition Authority, as well as the European

[62] The annual report of the Ministry of Finances 2003, the law "On Competition" and the adaptation to the European legislation, pg 60

[63] Competition means that the enterprise tries to gain advantage over its competitors through a better quality and lower prices; the consumer should have the freedom to choose between the providers of goods and services. Competition may be restricted in various ways such as through anti-competitive agreements between enterprises, especially agreements whose object and/or result is to set fixed prices, divide the market according to territories and setting fixed sale volumes or prices. Competition is also restricted by anti-competitive practices of a monopoly or by the strengthening of the market structure due to concentrations of independent companies (competitors).

[64] The structure and content of the law "On the protection of Competition" is reflected by the rationale on the draft law "On the protection of competition", May 2003

Commission notifications, instructions or recommendations and the respective laws of the EU member states or candidates.

The first part, "General Provisions", states the purpose, the implementation field and some important definitions of the Law "On the protection of competition". This Law "On the protection of competition" aims at supporting free and effective competition in Albania and is to be implemented by all the enterprises or mergers which impact the market and that violate, restrict, or distort competition through their behaviour, regardless of these actions happening in Albania or abroad. Thus, the new Law "On the Protection of Competition'' is to be implemented by all the economic sectors.

Article 3 aims at providing a better description of the law's content. Thus, the term 'enterprise/company' is a private individual or legal entity carrying out an economic activity. Since this law does not differentiate between private and public entities, both the public administration and the local authorities can be considered as enterprises if they are engaged in some sort of economic activity.

The second part deals with competition restrictions. Article 4 prohibits all horizontal and vertical agreements whose object or consequences are the restriction or distortion of competition. Horizontal agreements may be excluded from this rule if they meet the criteria set out in article 5 and the vertical agreements if they meet the criteria set out in article 6. The exclusion from the rule is not allowed in case of price setting or territory restrictions. These are considered as cartel agreements with a negative impact on the market (Hard Core Cartels).

The licensing agreements (article 7) generally have less serious impact on competition compared to the other agreements (articles 5 and 6). Thus, the law "On the Protection of Competition" proposes to regulate the exclusion procedures. The agreements stated in article 5 and 6 may be excluded from the prohibition only through a decision of the Competition Authority; the licensing agreements are allowed unless the Authority prohibits them within three months.

This law gives priority to the measures on the control of companies with a dominant position in the market. The articles 8 and 9 of this law – contrary to the law "On Competition", state that it is not the dominant position to be prohibited but the abuse of this position. Therefore, a company with a dominant position in the market due to its profitable activity is punished only when it abuses of its dominant position, impeding the other competitors and threatening the consumers' interests. The Law "On the Protection of Competition'' in addition to determining the dominant position of one or more companies in the market, also states the criteria of its evaluation.

Chapter III of Part II, articles 10-17 related to the control of concentrations serve to determine competitive structures in the market. The new law does not allow concentrations of companies that create or strengthen a dominant position or limit competition in long term. There is a new method of declaring the turnover of a company, and exceeding this obliges companies to make a request for merging to the Competition Authority. As regards financial or credit institutions, there are some special elements used to determine the value based on which concentrations are controlled (article 17).

Part III of the Law "On the Protection of Competition'' deals with the structure in charge of monitoring the implementation of the law and the administrative procedures to be followed for this purpose. Competition is a system which is continuously threatened to be restricted or distorted due to the special interests of the participants in the market. The competition system would be undermined if the Authority was pressured to take decisions based on criteria other than those of free competition. Competition is more efficient compared to other economic systems because it promotes rationalisation and innovations and it is the public that gains the most from it.

The Authority comprises the Competition Commission – the decision-making body - and the Secretariat, the executive body. To highlight the autonomy of the Authority, the Commission consists of five members appointed by the Parliament for a five year period and it shall act as a permanent structure.

Chapter II of Part III states the procedures to be followed; during the investigation in addition to the special procedures also the provisions of the Administrative Procedures Code can be used. The procedures on the provision of information are detailed and aim at not allowing information delays as well as at ensuring that the actions carried out by the Competition Authority inspectors are legal and transparent.

The law also states that the Competition Authority, on its own initiative or through a request by the Parliament, may carry out general investigations in various economic sectors. This initiative may be taken when the price setting situation or other circumstances suggest that competition has been restricted or distorted.

Part IV of the Law "On the Protection of Competition" foresees that the companies or individuals may file claims directly in a court for the elimination or prohibition of competition restrictive practices, demand a compensation for the damage caused in this case or return of the illegal profit.
The requests for exclusion from the prohibition of agreements and the concentration control procedures are outside the court jurisdiction because they should first be reviewed by the Competition Authority.

Part V deals with the cooperation with other institutions. The efficiency and the quality of implementation of the competition law, in addition to the tasks of the Competition Authority require the cooperation of other structures such as central and local administrative structures, regulatory bodies, courts, counterparts in other countries, etc. This law formally regulates the cooperation mechanisms between these structures.

The law aims at providing a legal basis to force all central and local administrative structures which issue regulations, to request the opinion of the Competition Authority for those regulations which may restrict competition, threaten the consumers' interests and/or the freedom of competition, prior to their approval.

Part VI of the Law "On the Protection of Competition" regulates sanctions, and foresees penalties by the Competition Authority based on the turnover of the previous financial years, thus not allowing discrimination between various subjects in the market and at the same time the efficiency of such measures. The sanctions may be categorized in two groups: the first group includes sanctions on breaches of procedures such as refusing to provide information, providing inaccurate information, etc. In such cases a penalty of not more that 1% of the total turnover of the previous financial year is possible. The second group includes sanctions on serious violations such as cartel agreements and abuse of a dominant position, against which is set a penalty up to 10% of the total turnover of the previous three financial years. The penalty is determined on the base of each individual case, depending on the importance and duration of the violation. There are also individual penalties which are very important in case of serious violations such as carter agreements.

The law envisions also a mechanism on the full or partial facilitation of fines in case the companies cooperate with the Authority to discover the cartel agreements. This mechanism is a new practice of the European Commission which serves to urge companies to reveal cartel agreements because they not only damage the market, but also are very hard to be identified.

Part VII finally details the final provisions which aim at eliminating any potential gaps until the implementation of the new law.

2. The organisation structure and the functioning of the Competition Authority

The Competition Authority structure is approved by decision of the Albanian Parliament no. 182 dated 12.05.2008. The organization structure consists of two main parts: the Competition Commission and the Competition Authority Secretariat, and it is detailed as following:.

2.1. The Competition Commission

The Competition Commission voted by the Albanian Parliament currently has four out of five members as envisioned by the Law 9121 dated 28.07.2003 "On the protection of competition" (amended by Law 9499, dated 03.04.2006). The multidimensional activity of the Commission is expressed in the structure and content of the 30 decisions taken during the last year which shall be detailed in the next chapter. The vision of the Competition Commission is to implement the mission of the Competition Authority, set out in the Law "On the protection of competition". The objectivity, professionalism and transparency are the main characteristics of the activity and decision making process of the Commission during 2008.

2.2. The Secretariat

The Competition Authority Secretariat is the structure entitled to monitor, study, and supervise the market based on the investigation procedures. The Secretariat consists of three Directorates and the Analysis Sector. The Secretariat monitors the market conditions, carries out administrative investigations and drafts reports on the investigations, as well as presents them to the Competition Commission – a decision-taking body. The Secretariat supports also the decisions taken by the Competition Commission in the court system. The Secretariat employees have the status of civil servants.

2.3. The Market Supervision Directorate

The Market Supervision Directorate studies and supervises the behaviour of the operators in the market and the conditions of the functioning and development of the market mechanisms according to the Law "On the protection of competition" and the National Competition Policy. This Directorate consists of three sectors nominated according to the three main pillars reflected by the law: the sector of abuse of a dominant position, the anti-cartel sector and the concentrations sector.

2.4. The Judicial and Procedures Directorate

The Judicial and Procedures Directorate works on the judicial argumentation of the products resulting from the Secretariat's activity, drafts the regulations according to the Law "On the protection of competition" and represents the Authority in court when charges are pressed against the decisions of the Commission. This Directorate consists of two sectors:

- the legislation and procedures adjusting sector whose responsibility is to adjust the secondary legislation to the EU legislation and to follow up the obligations of the Competition Authority rising from the SAA set out in the National Plan on the Implementation of the Stabilization and Association Agreement (NPISAA);
- the Judicial Sector – responsible for preparing and representing the decisions of the Competition Commission in court.

2.5. Internal Services Directorate

The Internal Services Directorate is the supporting structure of the Competition Authority in achieving its mission. This administrative unit manages the human resources according to the requirements and procedures of the Law no. 8549, dated 11.11.1999 "On the Civil Employee Status", programmes capacity building through training, using all possible sources such as OECD, International Competition Network, RCC, ITAP, Tirana University, etc. Another task of this directorate is to cover the financial activity of the Authority and being responsible for all the drafting and administrating procedures of the budget in conformity with the legislation on the management of the state budget.

2.6. The study and analysis sector

According to the decision no. 96 dated 30.04.2007 on the approval of the Competition Authority structure and organs, the mission of this sector is to observe the conditions and carry out economic analysis of the market structures. Its main task is to identify anti-competitive behaviours, according to the Law no. 9121, dated 28.7.2003 "On the protection of competition" and its regulations. By gathering periodical information, evaluating it and carrying out analysis, this sector aims at providing a general outlook of the market and the information gathered by this sector shall help the other sectors with their further investigation of the anti-competitive elements.

Despite the distribution of employees in different sectors/directorates, the main characteristic of the Competition Authority is group work. Thus, the work groups for each case consist of employees from different sectors/directorates.

3. Special issues faced by the Competition Authorities in small economies

According to different authors, small economies may spend more than large economies in terms of the GDP, financial and human resources for the creation and function of the Competition Authorities. On the other side, the objectives and instruments of the Competition Law and Policy are adapted both for small and large economies because the world economy is becoming more open and global which makes even more indispensable the application of the same set of policies in different economies.

Albania is one of the first countries of the South-East Europe which has applied an *anti-trust* law in conformity with the European legislation. Regardless of the small size of the economy, where GDP is evaluated to be 979 billions ALL[65] (about 10 bn USD), the objectives of the Competition Law and National Politics are the same as the ones in large and developed economies. From this point of view, the Competition Commission has based its decision on the main principals of the protection of free and efficient competition to prosper the economy and the social wellbeing in general. However, the application of the *anti-trust* law in small economies should be considered carefully due to the combination of Competition Policy with other policies (industrial, monetary or fiscal), and due to the size of the companies with a dominant position or the effect of a prohibited agreement (cartel) in the respective market or the entire economy.

The first complications from the implementation of the law relate to the differences between the objectives of Competition Policy to those of other policies (industrial policy). The Competition Commission has requested once to nullify a decision of the Executive which, due to the industrial development policy in a certain sector and region, clashed with the principals of free and efficient competition.

Another important implication resulting from the 'geographical isolation' and unawareness of the law was a prohibited agreement which increased and set the price of a product in the outlets of a certain

[65] Preliminary evaluation from the Albanian Ministry of Finances, source: Instat and Bank of Albania

city. Viewed in the context of the effect it has on the economy and the consumers' wellbeing, not neglecting the high degree of informality (not declaring the activity) of some competitors that were not part of the agreement, the Competition Authority reviewed the issue carefully penalizing only its initiator.

Another challenge faced by the Competition Authorities in small economies, such as Albania, is dealing with productivity efficiency (in terms of economies of scale) with what is distributed to consumers (the level of market concentration) when concentrations are notified (mergers). On one side, the Commission should prohibit *a priori* the concentrations which create or strengthen the dominant position (according to the dominance test), but on the other hand, based on the best contemporary practices a notified concentration is evaluated based on its efficiency in the market and the consumers' benefits. Therefore, the challenge of small countries in terms of GDP and income per capita, where the number of competitors is relatively smaller than large and industrialized economies, is to find a balance between the power of one or some enterprises and the 'optimal' number of competitors 'accepted' by the small markets still in development.

3.1. The definition and aspects of the "small economy"

Economic literature has no authentic definition of a small economy. This text considers small those economies which due to the population size or surface area and the size and economic power of the firms operating in them, have a relatively low level of GDP and depend to a certain extent on foreign markets. In general these economies try to attract foreign investments to develop their economies.

This should not create the risk of having their markets depend on imports because if these imports were from more efficient markets with larger firms it would easily push the domestic firms out of the market.

Thus, the Competition Policy should reflect a healthy appreciation of the objectives of trade and the investments policy in a small economy. Even in the Albanian economy, Competition Law and policy should be applied not only for the domestic firms but also for foreign firms operating in this market. A careful implementation of the law is required to meet the objectives in the trade and investments field, and also to promote an environment where domestic firms may effectively compete with foreign firms.

On the other hand a firm's ability to compete depends on the structure of the market where it operates. The market's structure is affected by the natural conditions of the market: the concentration level and entry barriers. Both these conditions are more serious in the small economies than in large ones and as a result many industries are characterized by a relatively small number of firms. These characteristics should be considered when applying the law on competition both in the concentration control and in the agreements or abuse of a dominant position.

High concentration of markets affects the implementation of competition policy in its three pillars: agreements between enterprises, treatment of enterprises that enjoy a dominant position and control of concentrations between enterprises. If the competition policy on horizontal agreements that fix the prices should be the same as the policy pursued at international level, the analysis of competition limitations and weighting of positive and negative consequences should take into account the characteristics of small economies.

Vertical agreements that have as a result the isolation and separation of the Albanian market from the regional and European one have serious consequences in small countries. On the other hand, in a concentrated market, horizontal agreements can boost the possibility of cooperation between enterprises, but, simultaneously, can boost the economic efficiency, in particular the production efficiency.

Specialization agreements allow specialization and production cost reduction in a country which lacks specialized assets and where technologies need time to enter the market. These agreements make it possible to improve the production and distribution process of the enterprises that exert their function in Albania, most of which represent small and medium enterprises.

Especially in new markets, where traded goods or new products, analysis of consequences of the competition takes into account and evaluates the risk for small and medium enterprises: In this case, the agreements that coincide with a more or less important market share, can be seen as permissible, except when they lead to the establishment of a joint pricing or in the allocation of territories or clients.

The need to achieve a minimum scale of production facilitates the creation of enterprises that have a strong position in the market. Provisions of the law on protection of competition, addressing the abusive practices can be applied more frequently, precisely because of market concentration. If the law allows reaching large parts of the market for a long time, it does not allow achieving and protecting them through means that do not coincide with competitiveness due to merit. The law provides for the prohibition of exploiting practices, as well as the prohibition of practices that result in the exclusion of competitors from the market or prevent market entry.

The problem of scale and barriers to entry requires a careful analysis and prior control of concentration between undertakings. However, when obstacles at the entrance are small, which implies reaching a regional geographic market, concentrations between undertakings risk, in rare cases, to create or strengthen a dominant position.

3.2. Free trade and competition

The Republic of Albania is a member of the World Trade Organization (WTO) since 2001 and has signed free trade agreements with countries in the region. Even earlier, the Albanian government has pursued a policy that has favored opening of the Albanian market to foreign products, to increase quantity and reduce price in the market. On the other hand, it creates opportunities to companies that perform their activity in Albania to extend it to other countries, thus enabling such a scale production that allows operating with lower cost, which is necessary for a small economy like Albania. The policy followed to free trade with other countries reduces the tariff and non-tariff barriers in entry for goods and foreign services, increasing competitiveness pressure in country. In this regard, opening of markets coincides with the promotion of competition in Albania. More specifically, the opening of the Albanian market prevents local companies in a dominant position to abuse with it.

Also, in markets open to imports, concentrations of companies create less competition problems. In general, opening markets to international trade increases competition in the country. From this perspective, competition policy, understood as a set of rules that oversee the conduct of companies, aims to ensure positive effects of opening markets. Competition policy would enable the integration of the Albanian market with the Balkan, European and world markets and, in turn, would prevent isolation and separation of the Albanian market from the conduct of companies in the market. Free trade agreements with regional countries contain special provisions that intend to protect competition, when the conduct of the enterprises of signatory countries limits the trade between these countries. These rules include provisions for prohibited agreements and for the abusive practices of companies that have a dominant position in the market, provisions that comply fully with the relevant provisions in the law for the protection of competition and its purpose. The Competition Committee, within his powers, will support the state authorities that should implement these agreements in the interpretation and implementation of these provisions. Although these agreements do not contain provisions for the control of concentrations, competition law enforcement is sufficient. Prior control of concentrations that have consequences in the territory of Albania, will aim at the oversight of market structure, allowing the increase of competition in the domestic market, which will improve the productivity and competitiveness of enterprises abroad.

In the framework of free trade and opening markets an important role is played by foreign investments, which enable the introduction and marketing of goods or new products to market, the increase of the supply of existing ones, and the spread of new technologies. Competition policy aims to ensure the same conditions for all companies operating in Albania, thus defending the competition in the market. On the other hand, this policy will take into account positive effects of increased supply, diversity and innovation introduced in the market, by also analyzing the needs of the enterprises to ensure investments.

3.3. Promoting SMEs and Competitiveness

Protection of competition serves to the policy of the promotion of small and medium enterprises. Protection of competition in the market will serve to the small and medium enterprises, because they, due to low negotiating power, are more vulnerable to abusive practices, from agreements that limit competition, and from the creation of companies with a dominant position as a result of a concentration. On the other hand, these companies rarely fall in the scope of the law. Besides horizontal agreements on prices and quantities, as well as vertical agreements for prices, other agreements that limit competition can be justified for economic efficiency reasons. Also, rules for abusive practices are implemented only if these companies have a dominant position in the market. Finally, taking into account the accomplishment of the turnover about the concentrations announcements, in the majority of cases these rules do not apply to SMEs.

3.4. Instruments for the implementation of competition policy

3.4.1. Investigative procedures

The very law establishes best procedures to be followed by the Competition Authority on their own initiative or through the request of the Parliamentary Commission of Economy, to conduct general investigations in certain sectors of the economy and, based on findings of the investigation, decide the appropriate measures. The Authority has established procedures and investigative tools for every case of violation of the law on agreements for abuse of dominant position, as well as regarding decisions about the concentrations notification provided by law. Along with procedures determined in the investigation of a case are also applicable the provisions of the Administrative Procedures Code.

All enterprises have the obligation to provide required information to the Authority, failure to provide such information may be penalized up to a progressive fine.

3.4.2. Fines as an instrument of competition policy enforcement

One of the main tools in law enforcement and enhancement of the role of the Competition Authority for the protection of free competition in the market is the penalization of companies for breaches of the law. Penalties are divided into two categories:

a) Penalties for minor violations; the fine ranges from 0,1 -1% of total turnover of the previous financial year. These include all procedural violations, such as refusal to provide information or providing incorrect information.

b) Penalties for serious violations; the fine ranges from 2 to 10% of total turnover of previous financial year. These include violations of enterprises, such as horizontal limitations through cartel agreements aimed at fixing the prices, production quotas or sales, allocation of markets, and other unfair trade conditions, reduction of imports or exports and other practices, which jeopardize the functioning of the market itself. This includes the abuse of a dominant position (refusal to supply, discrimination, exclusion, sensitive reduction of prices), held by a company in a dominant position to kick out competitors from the market.

In both cases, the Competition Authority has implemented the deployment of the fine for light violation. Within each category and, in particular, in case of serious violations, the proposed degree of the fine measure would enable various treatments for enterprises, in accordance with the nature of the violation committed. As a rule, it is taken into account:
• effective economic capacity of the offenders to cause serious damage to other companies, in particular to consumers, by establishing penalty measures to ensure that they have adequate effect,
• the fact that large companies usually have economic and legal opportunities and such an infrastructure, which enables them to understand if their behavior is a violation of law, and be aware of the consequences that derive from it. The measure of the fine varies from case to case, according to importance and duration of the violation. Moreover, the Authority applies the establishment of progressive fines, which can reach up to 5% of average daily turnover of the previous financial year, when companies do not comply with the decision within the deadlines given by the Authority. Establishment of such fines is necessary, especially in executing the decisions of taking provisional measures or decisions that adopt enterprises commitments.

3.4.3. Fines relief program

The relief program is a general framework for full or partial reduction of the penalties set for companies that interact with the Competition Authority in the investigation of prohibited agreements. Provisions include secret agreements between two or more enterprises that aim fixing the prices, production or sales quotas, markets share, including irregular tenders, or import and export limitations. The detection of these agreements serves to general public interest and specifically to the consumers, because only competition can serve the latter.

Enterprises involved in these kinds of agreements may end their participation and avoid the fine, by providing evidence on the case under investigation. As part of its policy, the Competition Authority has also compiled the fines relief regulation.

3.5. The objectives of competition policy for small economies

The main objective of competition policy is to help markets be as much competitive as possible. It serves as an instrument to promote industrial efficiency, optimal allocation of sources, technical progress and the flexibility to adapt to a changing environment. To achieve this objective the main task of the Competition Authorities is to maintain competition and promote effective market competition. Maintaining or promoting effective competition is essential if we consider the restrictions of competition from the private or public sector; for this purpose the competition law prohibits price setting agreements and abuse of a dominant power or concentrations that abuse of market power.

Achieving this objective is a condition to increase economic wellbeing. By developing competition, establishing equal rules of the game, promoting innovation, increasing choice opportunities and the quality of products/services and establishing market equilibrium in order to have realistic prices, the competition policy becomes an important factor for the economic development of the country.

Competition policy in general translates in a strategic plan on economic and social conditions and competition culture in any country, therefore, in addition to its general objectives it also underlines some other objectives, such as:

- protect the freedom and activity of the participants in the market,
- reduce entry barriers in order to create an appropriate environment which promotes enterprises and the increase of small and medium companies,
- maintain honesty and integrity in business relationships.

On the other hand, competition policy must be relevant to the other micro or macro policies, especially to the trade and regulatory policies for various markets, and to the investments policies. But, as it is mentioned above, due to the greater dependency of small countries on foreign trade, the

importance of combining competition policy with trade policies is far greater in economies such as Albania. Liberal policies in these cases are more important for countries like Albania where the trade deficit [66] is very high and because it may reduce the disadvantages of a small economy by increasing exports (using the economies of scale), and imports-increasing competition among importers and between them and domestic producers. While appreciating the need for an open market and free competition, removal or reduction of technical and administrative barriers to entry, creating an attractive market for foreign investments, consolidating the state public partnership through the implementation of joint projects, public participation in the privatization processes and to make them more transparent, should be studied actual market, the forces operating in it, its trends, the level of respect for the game rules, with a view to obtaining measures necessary to ex-ante regulation and its ex-post control.

The market study passes through two phases:

a) Market identification
Simple evaluation of the competition (definition of the relevant market; summary of characteristics for each market; inclusion of a clear reflection about the positive and negative effects in electing every competition policy, accompanied by argumentative explanations)

b) Evaluation of competition
Detailed assessment of the competition includes determining the market affected by regulation, without leaving out the market indirectly affected; understanding of the nature of competition in relevant markets when we use the factors in more details, from the demand and supply of view, market products and competitive processes and determination of direct or indirect impact in competition arising from any policy choice in the regulatory assessment process.

3.6. Coordination of competition policy with public policies in regulated sectors

The Law on protection of competition does not provide any exception for regulated sectors. This law applies uniformly to all sectors of economy, which avoids the distortions of competition from one sector to another. Coordination of law enforcement can happen by applying some simple principles and through formalised cooperation among regulatory entities, Government and the Competition Authority.

In regulated sectors or during liberalization, the competition policy has the same purpose as the special legislation: while the latter is aimed at opening of the market under certain conditions, by using preliminary control mechanism, the competition law is aimed at protecting competition through control of ex-post behavior. The process of liberalization is carried out progressively: the more the market is opened and the more competition is in the market, there is the less need for special rules of prior control. In this regard, the progressive liberalization of markets will enable the transition from implementation of a special legislation to application of general rules only to protect competition. However, in the inception phase of liberalization of markets in which Albania finds themselves, the implementation of sector legislation will have a key role, and also in the near future. When relevant sector laws provide for special measures, such as control of prices or access to physical infrastructure, sector regulatory bodies have the task and primary responsibility to oversee these parameters of competition. The Competition Authority can intervene when sector regulatory bodies cannot or do not act in a timely manner to resolve problems, always within the powers recognized by law about competition and financial resources made available. In regulated sectors, competition law enforcement depends on allowed competition in the market. In principle, if the relevant laws fix the main parameters of competition, such as price and quantity, leaving no room for competition, the law for the protection of competition shall not apply, because the legislation body has decided that the protection of other public interests justifies the reduced degree of competition.

[66] Trade deficit in 2007 was 2,899 billion USD. Source: Statistical Report, Bank of Albania

To avoid the law enforcement for the protection of competition it is necessary that the relevant legislation avoids completely and directly the competition. For example, the price is not fixed when the relevant legislation determines only the manner of its calculation or cost, or when respective legislation sets a ceiling price. Similarly, the price is deemed not fixed by law if companies are free to determine even an irrelevant share of it. In these cases, competition between operators affects the market price, and their behavior is subject to the law on protection of competition. To avoid the application of competition law, price fixing or other competition parameters, should be provided clearly in a formal law voted by the Parliament of Albania, or in a by-law, which is based on a clear delegation of competence provided for in the formal law. This complies with the principle according to which protection of free and effective competition, provided in competition law and its material provisions can not be overlooked, except when such a thing is clearly determined in normative acts of the same constitutional level. If no formal interpretation of the law reveals clearly the power of an authority to set a fixed price, the Competition Authority holds full authority to intervene in the market. When the price specified in bylaw acts or in general decisions (or individual) of central authorities, but without a clear delegation of powers by formal law, intervention of these authorities can be considered without legal consequences: the law for protection of competition can be fully implemented.

As provided in Article 118 of the Albanian Constitution, points 1 and 2, by-laws are issued based on and for implementation of laws by the organs provided for in the Constitution. The law should authorize the issuance of by-laws, determine the competent body, issues to be regulated, and principles, under which these acts are issued. Also, the formal law governing a particular sector should provide the competent body, express clearly that the latter possesses a power of appointment or approval of prices, as well as cases in which the price is determined. Moreover, it is defined that this body should exercise the power, that is should have made a decision on the case.

When a formal law recognizes the competence of an authority to fix or adopt a price, the Competition Authority, in principle, may not interfere through its decision-making, because the law in question, voted democratically by the Parliament of Albania, gives the competence to the concerned authority. The Competition Authority may direct a recommendation to the competent authority for the law enforcement, if the measures taken by it (for example, the price level) are not proportionate to the objective pursued. In this context, the activity of the Competition Authority will focus on the advocacy of competition toward other public authorities.

3.7. Liberalization and competition policy

After the privatization of small and medium enterprises in the early years of the transition, liberalization and privatization in recent years have been directed primarily to public service strategic sectors, such as energy, telecommunications and financial market. Entry of new operators, the expansion of privatization, interventions for vertical and horizontal divisions, technical progress and technical sophisticated regulation have rapidly changed the markets, especially in telecommunications, where developments of competition are significant and unpredictable, although should be still considered insufficient to establish a fully competitive environment.

In general, these sectors are handled by separate regulatory entities, independent, but that have as main objective the promotion of free and effective competition. Although the instruments and ways of intervention, in essence, are different, between the Competition Authority and regulatory entities in specific sectors there are no essential disputes in terms of regulation and intervention in these markets. Regulation determines the specific behavior that companies have to follow in terms of final price and entry fees, whereas the Competition Authority intervenes through general and abstract provisions, applicable to all sectors.

From this perspective, regulation is seen under the optic of economic regulation. Economic regulation relies on the perspective that the market intervention is necessary and profiting only when provides a solution for some natures of market power and, in particular, market failure, which derive from former monopoly structures. Development of analytical framework for the regulation has walked hand in hand with the development of structures market, from the state monopolies into a pro-competitive environment that is being increasingly liberalized. At the same time, the same type of industrial-economic analysis has become common denominator between the economy of competition and economy of regulation. Both perspectives share now a focus of applied micro-economy, industrial organization, and economy of incentives. However it is clear that, despite these developments, Albania has not yet reached the market conditions that would allow us to abandon a prior arrangement (ex-ante). Compared with other sectors of economy, these sectors are still in a transitional period, and need the application of instruments of the competition law, as well as the regulation of special sectors. The shortcomings in the functioning of electronic communication market according to market mechanisms still continue. As long as there are such issues, such as unjustified barriers of entry in basic networks, it remains necessary the ex-ante regulation. However, this strong interference in the market, without doubt, is based on principles of competition law and, thus, is consistent with his instruments.

3.8. The impact of informality, naïve cartels and the implication of law

Here are identified a number of factors which lead enterprises to act formally or informally in a market. The advantage of being 'formal' relates to access in lending, the financial aid programs by the government and the obligations to act formally especially in regulated sectors where the number of competitors is limited. On the other hand, the factors that make enterprises to act informally relate to the financial costs and business registration/licensing costs in terms of time, to the bureaucracy and payment of social insurance and taxes. It is clear that the unregistered activity of companies affects also market competition with firms that act formally. The informal economy and its consequences in the fiscal evasion, distortion of labour market and competition and *cash* payments are the main problems of the Albanian economy[67] and other developing countries. According to one of the schools, consumers benefit from the lower prices offered by high informality economies (which avoid taxes and other registration costs) and these prices become a competition pressure for registered businesses. Another theory claims that formal enterprises are more efficient than informal ones due to the economy of scale, access to capital and technology and the more contemporary production and distribution methods. Therefore, in the long term the competition from informal enterprises reduces competition in general because it limits productivity, access to technology and lending and the expansion of formal enterprises. Thus, in the long term prices would be even lower if the market was to be formalized and competition between formal enterprises would increase.

In most of the cases monitored and/or investigated by the Albanian Competition Authority, the informality problem has been more than evident. Although in theory a certain degree of informality is accepted, in Albania where the informality level is high (from 30-60 %), the Competition Authority has evaluated the impact of the informal economy of the firms subject to investigation or not.

One of the markets where the Competition Authority made investigations is the production and distribution of bread in Fier[68] where the informality level is high.

Based on some information received by the media, the Authority initiated an investigation on an agreement to set a fixed price for bread. Considering article 4[69] of the law "On the Protection of

[67] According to an OECD study, the evaluation of the informal economy for 2002 accounted for 23.4% of the GDP. Some other unofficial evaluations claim that the informal economy in Albania varies from 30-60% of the GDP. Source: OECD – Investments compact

[68] Fier is one the biggest regions in Albania

Competition", it is a prohibited horizontal agreement that sets fixed prices (from 60 - 80 ALL/massive bread). This led to a decision by the Commission based on article 45 of the law to immediately prohibit the agreement and penalize 'automatically' the participants in this agreement from 2-10% of the annual turnover. But, considering the case in more details a new phenomenon resulted: the high probability which in countries like Albania (with little experience in applying free market economy, since 1992) and the short period of time since the entering into force of the law (1 December 2003) make participants unaware of what they were causing to the market competition. In these cases - considered as naïve cartels - the participants in the market do not try to 'hide' the 'cartel' because they are not aware of having violated the law "On the Protection of Competition" and of the consequences of this offence. In this case finding evidence of the naïve cartel was easy, but the investigation was focused on the market, its participants, market share and distribution among the competitors, and other indirect evidences.

The market analysis indicated a high degree of informal economy – small, unregistered businesses selling products in the city neighbourhoods or the villages nearby. This made it more difficult to determine market size and market share because in addition to the formal competitors there were also many informal businesses. This fact was used as an argument by the parties involved in the agreement to identify the difficulties of their business due to competitive prices (lower) of bread from informal firms that did not pay any taxes or other registration costs. This had led to many obstacles for the formal enterprises and to lower revenues or in many cases to losses due to the pressure from the "*underground*" offer.

During the analysis it was considered the fact that 'bakery' is not an industry with a high capital; it had relatively low revenues (with frequent insolvency cases) during this period, and a total unawareness of the 'bakery enterprises' on the restrictions they brought on competition by violating article 4 of the law "On the Protection of Competition". On the other hand, due to the high degree of informality resulting from a high level of the 'grey' economy in Albania and due to the special qualities of this business, in this case it was only the Chairman of the Bakers Association that was penalized, the initiator and organizer of the agreement on increasing the bread price of 20%. The Competition Authority stated that there are no entry barriers and signalled the authorities on the high degree of informality in this market in the region of Fier.

3.9. Efficiency of enterprises and market power (abuse of a dominant position and Concentrations Control);

In evaluating the violations of the competition law it should be considered the enterprise efficiency/market power ratio or the classification of one/some enterprises with a dominant position. The Albanian competition law [70] for the evaluation of a dominant position (which allows or prohibits concentrations) is based on the juridical and economic doctrine and on the decisions of the Commission and the EU courts.

The implications may be reviewed more thoroughly when considering the abuse of a dominant position, especially those whose object/effect is exclusion of competitors from the market. Generally, the dominant position of a firm results from its efficiency and expansion in the market or regulated markets due to privatization (in countries that have transitioned from the centralized economy to a free market economy, like Albania).

[69] Prohibits all agreements whose object is to hinder, restrict or distort competition in the market, especially agreements that directly or indirectly set sale or purchase prices or any other trade conditions

[70] Article 8 of the Law no. 9121 "On the Protection of Competition ", amended

As regards the latter, the Competition Authorities in cooperation with the regulatory bodies must ensure that the regulatory sector policies create no entry/exit barriers in the markets dominated by one/some competitors.

On the other hand, in markets with a limited number of firms due to the nature of the product/service (natural monopolies, utilitarian services) it is necessary for the regulatory bodies to limit the costs of the operators that exercise their activity (through clear and accurate methods of determining costs and not adding artificial costs or reducing them through restructuring).

Nevertheless, costs determining methodologies, and as a result product/services price setting, must be evaluated according to the sectors [71] and to each case.

In evaluating concentrations, the Competition Authority appreciates the mergers of firms as an essential instrument for increasing efficiency through increasing the size of firms (mergers) or strengthening them (control benefit or joint-venture). This happens more often than in large economies where companies have more opportunities to expand their capital or size.

Thus, the potential anti-competitive effects of the concentrations should not be automatically presumed because the concentration level in a market has increased; analysis should be carried out, mainly about the efficiency of the concentration.

4. Conclusions and recommendations

The ideal case for all the Competition Authorities would be to intervene whenever competition is threatened in the right moment, in the right market, in proportion to the violation and taking the right measures to re-establish competition.

At the same time, the intervention of the Competition authority must be conventional to the violation, and the measures taken must have a positive effect on the market.

But, in the real world the restrictions resulting from the human resources and the institutional context, often sink this 'ideal' version. No Competition Authority has the right resources to cover all cases of violating competition in the right time.

In small economies the competition authorities should find a balance between the companies' efficiency and the dominant position in the market.

The intervention of the Competition Authority in the regulated sectors may and should be combined with the sector policies and on the other hand the regulatory bodies should ease as much as possible entrance in the market and should not add the costs of the natural monopolies which in turn would affect prices for the final consumers.

The competition authorities in these sectors may tolerate the attitude of the firms with a dominant position or the attitude of an oligopoly for as long as their attitude creates productive and dynamic efficiencies.

[71] See decision no.582, dated 21.8.2003, of the Council of Ministers "On the approval of the tariffs regulation methodology for powerful firms that offer public telephone services and rented landlines" – landlines tariffs and rented landline tariffs offered by public telecommunication operators considered by ERT as powerful operators will be based on the respective costs of each service item providing a gross profit (including the tax on revenues) not more than 40 %, according to the formula: $K \leq T \leq 1{,}4\ K$ where T = average tariff for each service item, K = average cost for each service item.

During the drafting and implementation of the competition policy, the authorities should consider the other policies, especially the trade policies due to the advantages resulting from the opening of a market in a small economy, both for exports and imports.

Market conditions in small economies favour a reduced number of competitors (esp. in sectors with high entry barriers) and offer more opportunities of coordinating the behaviour in terms of price setting or market share. But, the agreements which do not have pro-competition effects should be strictly regulated by the regulators and dealt with caution by the Competition Authorities.

Nevertheless, some 'restrictions' of competition due to the groupings in associations (the grouping of the small operators in the electronic telecommunication market may increase competition with the main operator) in the small economies are allowed when they have pro-competitive effects.

The evaluation of concentrations in small economies should be tolerated to the extent they have a positive effect on the consumers and increase productivity – regardless of whether the transaction creates or strengthens the market power of the parties involved in the concentration.

The relatively high degree of the informal economy may deform the analysis of the market conditions in the case of anti-competitive practices. Therefore, the competition authorities should closely cooperate with the fiscal authorities to help reduce informal economy – one of the instruments of applying unequal conditions to competitors. The formalization of the 'grey' economy has a positive effect not only on the state budget, but also on the firms which are 'formalized' because it increases their access to information, lending, public funds, and technology and makes them more efficient in the long term.

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Europeanization of Macedonian Regional Policy

The Impact of the EU Integration Process on Local Participation in Regional Policy Making

By Sanja Kostovska

Sanja Kostovska has a Master in European Studies (M.E.S.) from University of Graz/Austria, and a B.A from the Department of Political Science at the University of Cyril and Methodius in Skopje/Macedonia. She has worked at the Center for Research and Policy Making (CRPM), a leading think tank in Macedonia, for more than four years.

Her research and professional focus is EU integration, good governance and migration. This paper has been elaborated during field research on the perceptions of the local level of governance. It can happen everywhere in the Balkan – not only in Macedonia, but in each country which prepares its EU accession.

Introduction

Chapter 22[72] on Regional Policy and Coordination on Structural Instruments does not strictly regulate this area compared to other issues in primary competence of EU. This chapter is quite "thin" compared to the others and does not impose a unified model to be implemented by all Member States. The area of regional policy, in terms of models of regionalization is a Member State competence; hence the European Union cannot decide on the internal arrangements of the Member States. However, the process of European integration has influenced the transformation of the regional policy in all aspirant states for membership.

By 2007, Macedonia did not have anintegrated approach with regard to the regional development policy. This issue had not been in the focus of the political elites, and no political will to address the problem of regional imbalances existed. The regional cleavages became more and more evident during the transitional years.

The approximation of the Macedonian regional policy with the EU standards, and the adoption of new legislative framework, was one of the preconditions for the access to the IPA funds. A new law on balanced regional development has replaced the previous Law on Promotion of Economically Underdeveloped Areas, on 1 of January 2008. The adoption of the new law was welcomed by the European Commission in 2007, and the law was positively assessed, in compliance with the EU standards[73].

[72] The Acquis is divided into 35 negotiation chapters, from Chapter 1 – Freedom of Goods until Chapter 35 – Other Issues.

[73] Commission Staff Working Document, The Former Yugoslav Republic of Macedonia 2007 Progress report, Commission of the European Communities, Brussels, 6.11.2007, SEC(2007) 1432.

This law made an important step ahead, with the introduction of the EU principles on regional development. The principle of programming, co-financing, additionality, concentration, transparency, subsidiarity and sustainability are the pillars on which the Macedonian regional policy shall rely on[74]. Furthermore, planning regions, overlapping the statistical regions at NUTS III level, are established. Thus, new institutional infrastructure responsible for the policy-making in this area is established.

This research aims to provide information on the problems faced at local level as a consequence of the new policy. Initially it will provide an overview of the challenges that the municipalities face with regard to the implementation of the policy on balanced regional development. Another issue of relevance for this research is the local capacity to apply and implement IPA[75] projects; therefore an assessment of the municipal absorption capacity is provided. This could give relevant information on the positive developments of the policy, but also could point out the weakest links of the process that need to be addressed.

Having in mind that this is a new policy and there has been a lack of analyses and data, the research had to turn to alternative primary sources of information. A methodological framework was designed aiming to provide first hand information on the problems the municipalities face regarding the regional policy.

A representative sample of municipalities to be surveyed was defined and a questionnaire was prepared. The questionnaire consists of two parts; the first refers to the local views on the implementation of the policy on balanced regional development, whereas the second part provides inside information on the capacity of the municipalities to absorb the IPA funds. The questionnaire consists of closed questions; however for each of the answered questions deeper explanation was requested from the interviewed persons. Most of the interviewed persons were representatives of the departments on local economic development (LER). However, not all of the surveyed municipalities have established such a department; hence, the person who is the most involved in the local development issues has been surveyed in those cases.

The questionnaire was distributed in 18 municipalities, in all 8 regions in the period from 1 to 15 December 2008. The sample refers to 20% of the total number of Macedonian municipalities. Furthermore, the number of surveyed municipalities per region is proportional to the number of municipalities in each region. The following table presents the number of municipalities per region vs. the number of surveyed municipalities per region.

Table 1

NUTS III region	**Number of municipalities**	**Number of municipalities in the sample**
Vardarski	9	2
Eastern	11	2
South Western	13	3
South Eastern	10	2
Pelagoniski	9	2
Poloshki	9	2
North Eastern	6	1
Skopski	17	4
Total 8 regions	84	18

The sample takes into account several indicators:

[74] Art.4, Official Gazette n.63, 22.05.2007
[75] IPA = Instrument for Pre-Accession Assistance, a financial programme of the EU for applicant countries (Regulation (EU) No. 1085/2006 of the Council from 17.7.2006)

a) **Territorial balance** - All 8 regions have been covered by the survey. The size of the region, i.e. the number of municipalities in one region has been the criterion according to which the number of analyzed municipalities per region has been decided.

b) **Rural/urban balance** - Great attention was paid on the balance of the rural and urban municipalities when designing the sample. The problems the rural on the one hand and the urban municipalities on the other hand face are different. Moreover, the administrative capacity and the absorption capacity of IPA funds are areas where these two categories of municipalities significantly differ.

c) **The size of the municipality** - The size of the municipality has been another important indicator which was considered. The issue of representation of local interests at regional level can be approached only if the experience of all municipalities, bigger, i.e. more "powerful" and smaller i.e. "weaker", is taken into consideration. Moreover, this is an important issue when analyzing the absorption capacity of the IPA funds.

d) **Ethnic background of the majority population living in the municipalities** - The research sample reflects the national statistics regarding the ethnic background of the population living in Macedonia[76].

The local perception on the progress with regard to the implementation of the policy on balanced regional development

The local position and perception of the implementation of the policy on balanced regional development is important and could be very useful in the process of regional policy development. It could serve as useful direction for the central level, which is the "leading party" in the process of policy implementation.

The first part of the questionnaire aimed to point out the local perspective on several key issues. Initially, it refers to the local perception on any improvements in the regional development following the adoption of the law. Secondly, the representation of the local interests at the newly established regional level has been raised as an issue.

Furthermore, since the planning regions financially depend on both the central and the "poor" local level of governance, the question of financing of the new regional institutional layer has been considered. At the end, the first part of the questionnaire referred to the role of the central level in the implementation of the policy on balanced regional development.

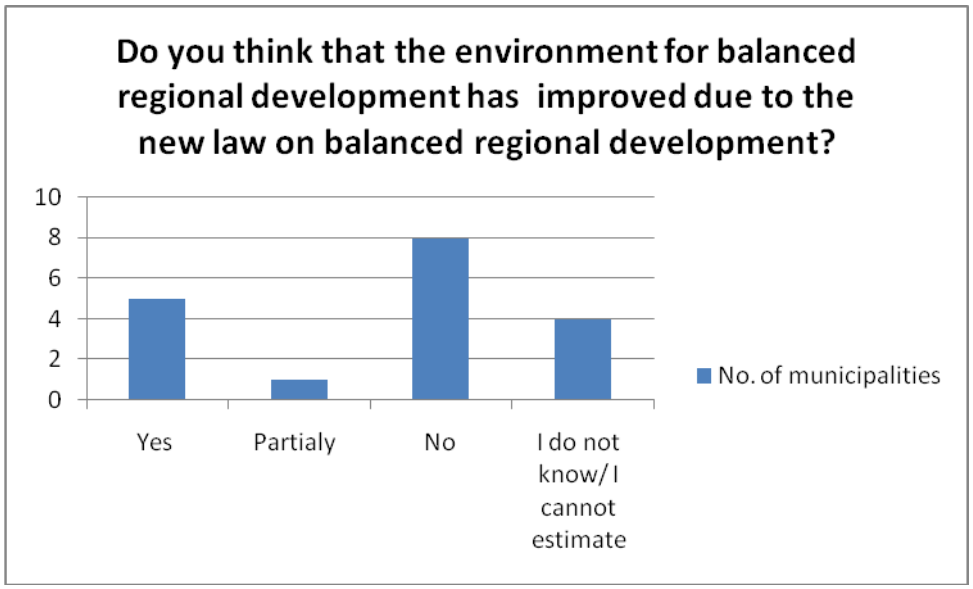
The new Law on Balanced Regional Development aims to introduce a completely new approach in the regional development. The most relevant indicator on the improvements in this area is the difference felt at local level, compared to the situation before the law was adopted.

Most of the surveyed municipalities do not feel any improvement after the adoption of the new law. Smaller, but significant numbers of municipalities feel that the environment for balanced regional development has improved due to the new Law on Balanced Regional Development.

Interestingly, most of the municipalities that answered "Yes" emphasized that they see improvement in the adoption of such an important law, although no major effects are evident on the ground. On the other hand the municipalities that answered "No" were more critical. All of them welcomed the adoption of the law, however are anxious to see the effects of the policy. A fear that budget means for regional development will not be provided to the municipalities was expressed.

[76] Census 2002

Table 2



Furthermore, some municipalities due to political problems within their regions said that they cannot feel any improvements and progress in the policy implementation. Namely, the south-western region faced deadlock in the process due to the decision on the establishment of the regional centre. That has to be the biggest city in the region, according to the law[77]. All regional institutions of the south-western region have been established in Ohrid, which has been disputed by Struga as the biggest municipality. The regional development policy since its start became a hostage of the political disputes between the two biggest cities of the region.

With regard to the second question, a surprisingly high number of municipalities believe that their interests will be adequately and equally represented at the level of the planning region. The main reason for this optimism is that the process at regional level by now was conducted by consultants who according to their methodologies approached equally all municipalities of one region. As a result the strategic regional documents are created on the basis of the input provided by all municipalities.

It is questionable if this will be the result in future when the processes will not be managed by foreign donors and consultant firms, but by the regional institutions themselves. Namely, one of the surveyed municipalities said that the bigger municipalities of the region made efforts to prioritize their interests over the interests of the smaller municipalities; however did not succeed because the process was conducted by the contracted consultants.

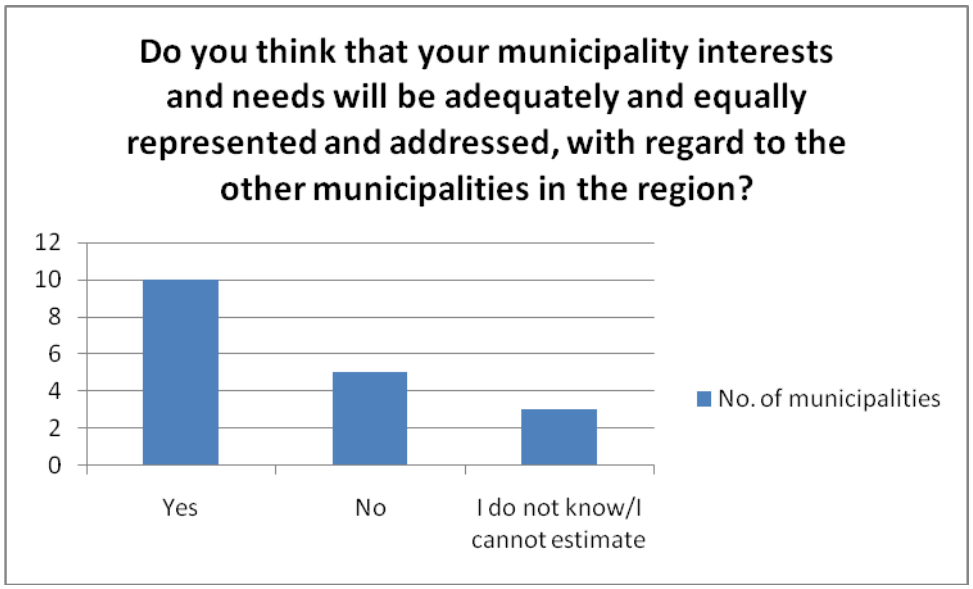
The municipalities that answered "No" fear that the bigger municipalities will impose their interest over the smaller ones and will get more out of this policy. Furthermore, Sveti Nikole feels that the artificial solution for the Vardar region affects and will affect in long term its interests[78].

In addition to that, doubts were expressed that its interests could be adequately represented in the Vardar regional institutions, since this municipality does not have anything in common with that region. The big municipalities who fear that their interests will not be adequately represented at the regional level refer mostly to political disputes as the one mentioned in the south-western region.

[77] Law on Balanced Regional Development, Official Gazette n.63, 22.05.2007

[78] Sanja Kostovska, Europeanization of Macedonian regional policy, *The impact of the EU integration process on the local participation in the regional policy making and on the local capacity actively to apply for IPA*; Master thesis, MEIR, University of Graz, 2009

Table 3



The institutions at the level of the planning region, i.e. the Development Centres of the Planning Region[79] shall be financed by the central and local level (50:50). Having in mind the unfavourable financial situation of the municipalities, the presumption was that this expenditure could be a financial burden for most local self government unities.

Interestingly, the survey presents a completely different image. The majority of the municipalities believe that the financing of the Development Centres would not be a problem for them (some of those municipalities have blocked accounts).

The financing of the regional institutions is an issue decided at regional level. The municipal financial contribution per municipality will depend on its population number and will be calculated on the basis of a unified rate per capita. The rates differ among regions; and the highest noted is 10 denars (around 0,16 EUR) per capita. It is a small amount of money, compared to the expectations the municipalities have of the policy.

At the end, the central level of governance was recognized responsible for the slow dynamic of implementation of the regional policy. Only two of the questioned municipalities positively have assessed the role of the central level. One of them stressed that the government has fulfilled all obligations, and that the only problem was the delay of the National Strategy on Balanced Regional Development[80], which interestingly was not pointed out as a failure of the central level. Most of the surveyed municipalities feel that the central level is too passive in the whole process. In addition to

[79] The Development Centres are bodies responsible to prepare the strategic documents of the region, to stimulate inter-municipal cooperation within the planning region; to implement regional development projects financed by EU funds, provide professional services to NGOs in the process of project proposals for regional development etc.; *Law on Balanced Regional Development, Official Gazette n.63, 22.05.2007*

[80] The National Strategy for Regional Development provides 10 years time frame for the regional development. The National Strategy for Regional Development is adopted by the Parliament on the basis of a Government proposal. However, it is preceded by an agreement within the Council on Balanced Regional Development in the Republic of Macedonia, which is a body consisting of the representatives of 8 ministries, the deputy prime minister, 8 mayors-presidents of the planning regions and representatives of the Association of local self government units (further in the text ZELS).; *Law on Balanced Regional Development, Official Gazette n.63, 22.05.2007*

this, a significant number of municipalities is even more critical by saying that the central level has been more of an obstacle to the implementation and a reason for delay of the process.

Table 4

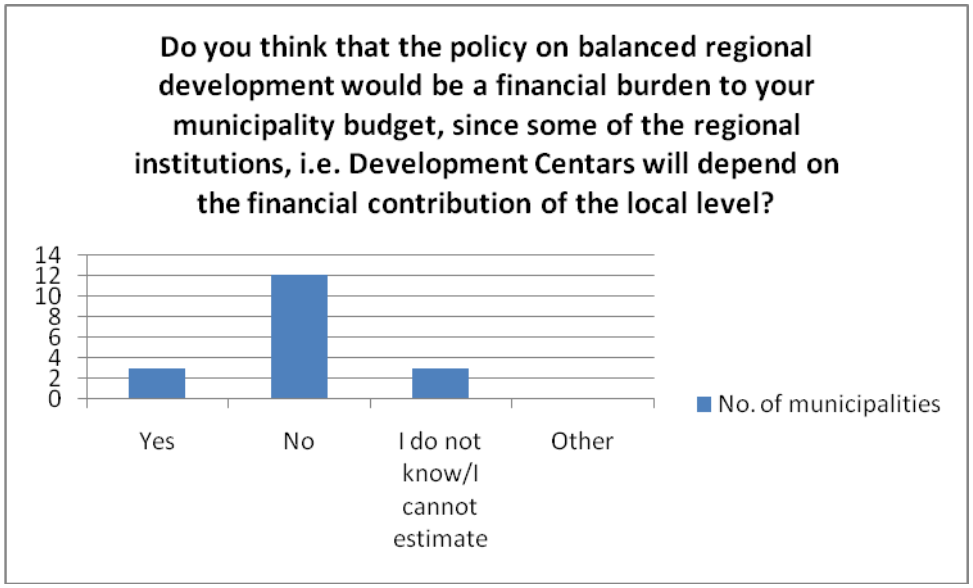
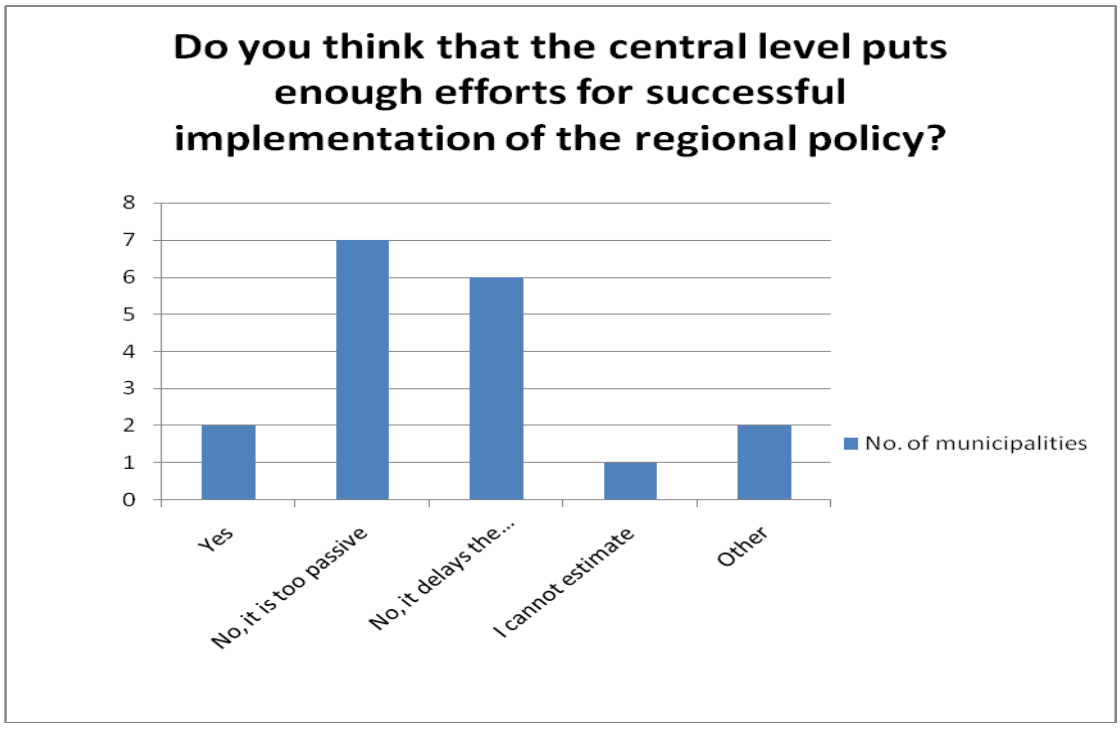


Table 5



Two of the surveyed municipalities provided different answers ("Other") of the options offered. One of them welcomed the establishment of the new institutions of the regional policy; however identified a problem in their functioning. Namely, the National Council on Regional Development has met only two times. It seems as if the central level of government is more interested in technical fulfilment of the EU benchmarks, instead of giving real substance to this policy. This policy is approached by the central level as imposed obligation, rather than an issue emerging from the Macedonian context. The other municipality pointed out that the central level lacks clear concept for the regional development,

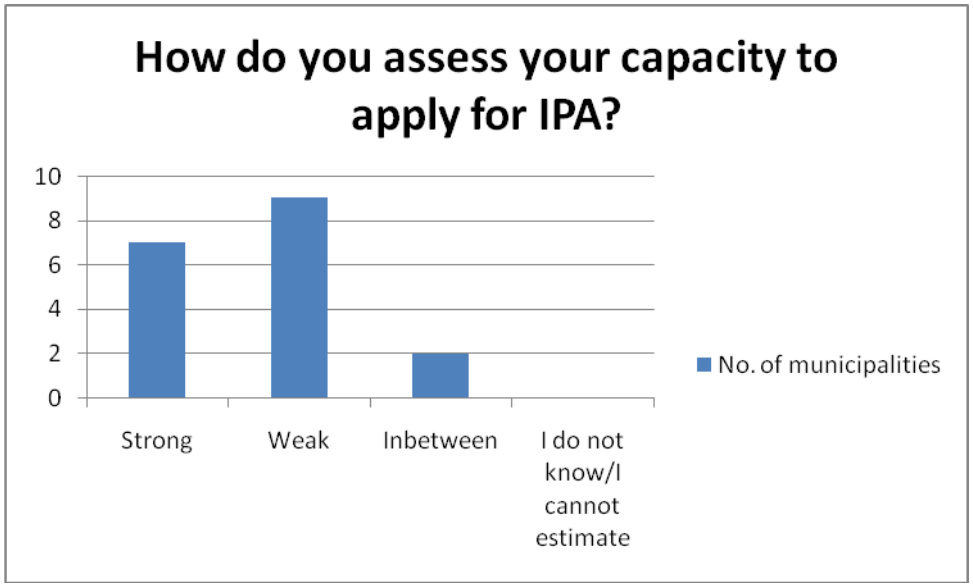
as well as knowledge and experience. Hence, fails in the trap to "copy/paste" European best practices which are not compatible and implementable in Macedonia. Furthermore, the central level competence (of the Bureau on Regional Development) to assess the regional projects financed from the national budget was pointed out as a problematic and potential obstacle in future, since the central level lacks knowledge and experience in project management.

The local perception of the absorption capacity for applying for IPA

IPA will be the biggest test for the absorption capacity of the local level. Nevertheless, the Macedonian municipalities have some experience with EU programmes, which could be a relevant indicator for the future (un)success with IPA. Analyzes of the problems the municipalities face when applying for EU projects are essential for defining a clear strategy for addressing these problems. IPA money could be the key trigger of the regional development; however it depends on the local and regional absorption capacity.

This part will provide assessment of the local capacity based on information gathered from the questionnaire. Thus, the questions in the second part of the questionnaire refer to several issues such as the administrative capacity and main weaknesses, the number and the quality of the trainings organized, previous experience with EU projects and main problems faced in the process of applying for them. As expected, most of the municipalities believe to have low administrative capacity.

Table 6



In addition to that, as the "weakest links", the municipalities have pointed out the following problems:

- Lack of human resources.
- Lack of educated staff. *In addition to this many municipalities, particularly the rural, have lack of administrative staff that has knowledge of the English language.*
- Lack of IPA trainings.
- Lack of financial capacity - *This is a big problem especially in the project implementation phase. Usually the EU funds are not provided on time; however the project implementation must start. This means that the municipalities should provide funds from their budgets for the project implementation, until the EU money is transferred.*
- A Department on Local Economic Development (LER) has not been established in all municipalities.
- The municipalities face enormous financial expenses for preparation of the technical documentation for infrastructural projects.

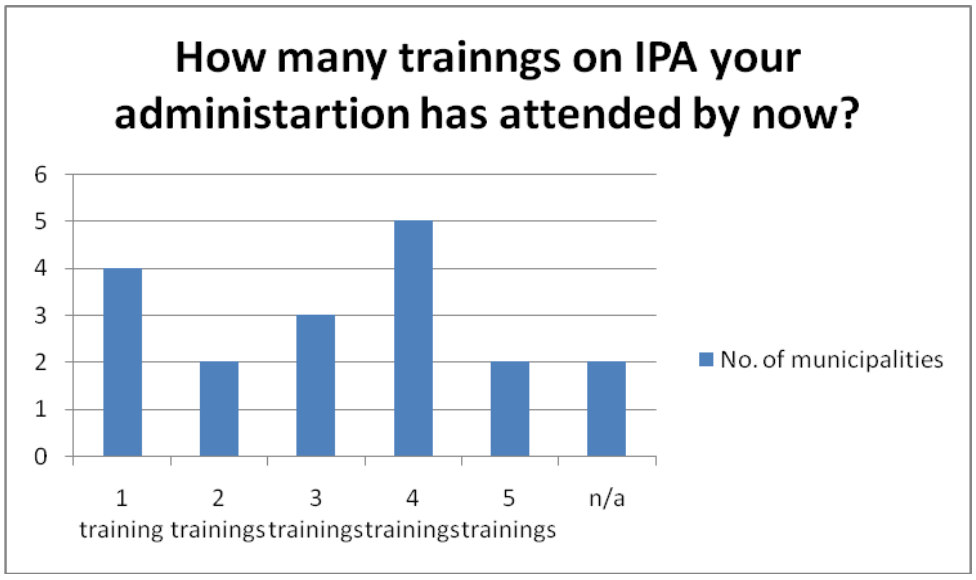
The lack of educated staff is a problem often mentioned, although enormous efforts and funds have been invested in the capacity building of the local staff. In the period of 2004-2007, 30 million EUR have been provided by international donors for the decentralization process, out of which 15-20% were spent on training[81]. This figure presented through the total number of local administration trained (10.000 civil servants) is even more striking. The statistic refers to all types of trainings conducted in the period of 2004-2007 for the local administration.

Importantly, in the upcoming years, IPA will be in the focus of the trainings. Management of the EU Instrument for Pre-accession Assistance (IPA) funds, together with fiscal decentralization are set as a priorities within the Annual Training Programmes[82].

The trainings[83] organized for the municipal administration by now were referring to financial management, urban planning and local economic development. Interestingly, the evaluations conducted by ZELS (The National *Association* of the *Units* of *Local Self-Government)* asking on the type of training the municipalities need to improve their local capacities and administrative performances, the financial management and local economic development again are pointed out as the main areas that need to be addressed. This could imply that the trainings organized have not fulfilled their goal. Two reasons are usually pointed out for the low effects of the trainings:

- Low quality training programs
- Inappropriate selection of civil servants attending the trainings.
- Problem also exists with regard to the IPA trainings. Many trainings on IPA are organized by NGOs and foreign consultants, but without a clear general strategy and coordination. The following table refers to the number of IPA trainings conducted in the surveyed municipalities:

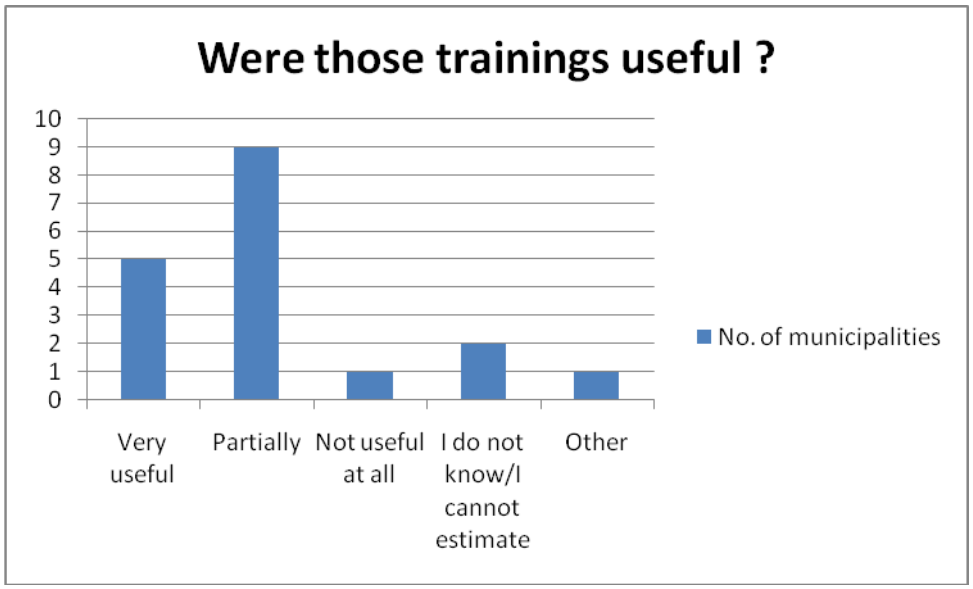
Table 7



Most of the municipalities believe that the trainings have been useful to some extent; however, most of them recognized need for improvement of the training modules and programmes.

[81] Brenda Lee Pearson, An external review of trainings delivered to local government staff 2004-2007, OSCE Spillover Mission in Skopje, October 2008, p. 6
[82] Ibid, p. 15
[83] Interview with Dushica Perishik, Executive director of ZELS, Interview conducted on 19.11.2008.

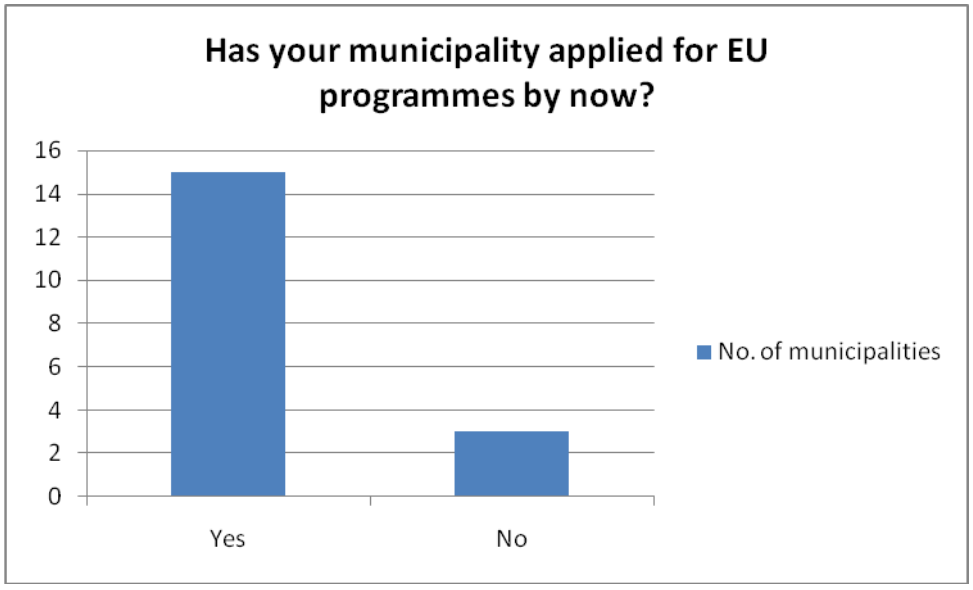
Table 8



The majority of municipalities pointed out that the trainings are too general and provide only general information on IPA. Unfortunately, the training programmes lack practical information and applicable help in the process of project application. In addition, it was said that more training is needed. Interestingly, a representative of one of the questioned municipalities presented another serious problem; in that particular municipality the responsible authorities do not allow the municipal staff to attend training.

Most of the municipalities have some experience with EU projects; the number of those that have never applied for EU projects is small.

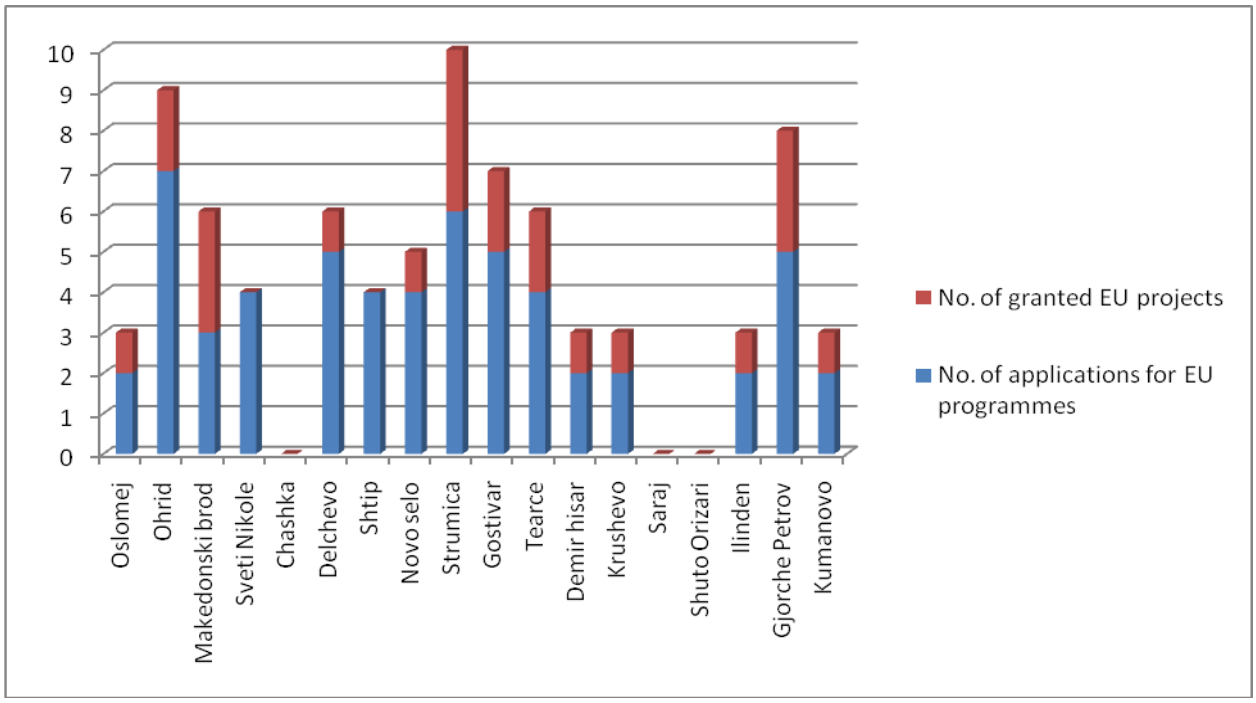
Table 9



Based on this experience, some conclusions and predictions regarding the upcoming challenges and problems could be drawn. The previous experience could be a relevant indicator for the local absorption capacity in the context of IPA.

Hence, the next table on the one hand presents the number of project applications for EU calls for proposals, and on the other hand provides information on the number of EU projects granted to each of the municipalities. In most of the municipalities surveyed, the ratio between the number of applications and the number of projects granted is quite high. This could imply that the project proposals did not comply with the quality level imposed by the strict EU criteria.

Table 10



There are many reasons for this situation, many of them generated from the problems municipalities face when applying for EU projects.

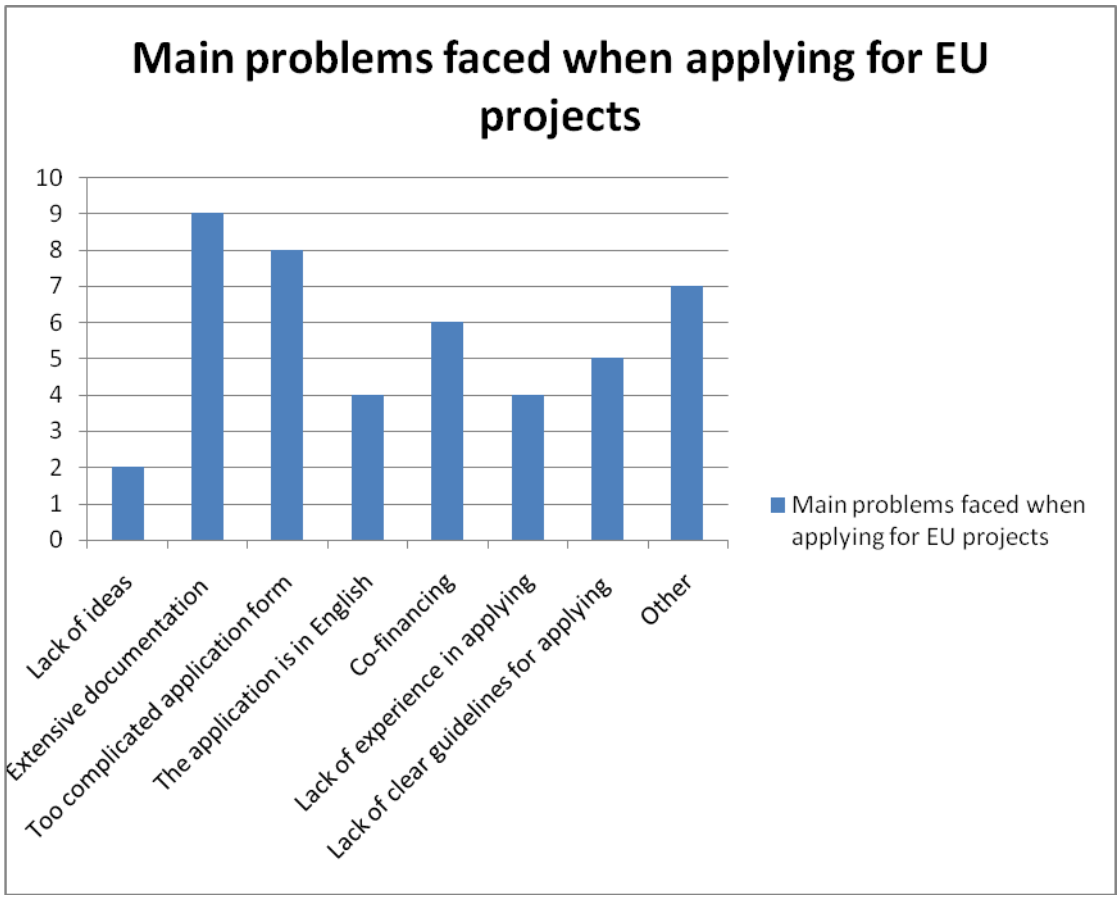
The following question refers to the problems faced by the municipalities in the process of applying for EU projects. More than one answer was allowed for this question; therefore the number of answers is higher then the number of surveyed municipalities. It aims to disguise the problems faced by the municipalities in the process of applying for EU projects. Moreover, it could provide relevant information for any further strategy or IPA training programme.

The most frequent problems pointed out are:

- Extensive documentation
- Complicated application form
- Co-financing
- Clear guidelines for applying

Three out of the four main problems pointed out could be tackled by training. These answers could also serve as the most relevant argument that the trainings organized by now did not accomplish their goal. On the other hand this supports the local governance position, when asking for more practical information provided at the trainings.

Table 11



Additional important information that emerges when analyzing this question is that the rural municipalities face lack of municipal staff that has knowledge of the English language. That is a crucial problem since the application is in English.

Furthermore, a significant number of municipalities pointed out other problems (under the category "Other"), which were not covered by the options offered. The most frequent problem mentioned was the lack of human capacity. Furthermore, the problem of non-educated and trained staff was also stressed as a disadvantage.

The project applications are complicated, time consuming and require serious efforts, thus, according to one of the municipalities, labour and time should be additionally paid. If not, it could be the main reason for lack of motivation among the underpaid municipal civil servants to get into such a serious challenge as an EU project application.

The problem of expensive technical documentation for the infrastructural projects was mentioned as a big problem of financial nature. Such documentation usually amounts over 8.000 euro, which is too expensive for the "tight" municipal budgets.

The role of the central level was again mentioned in a negative context. The central level was blamed for hindering information on many of the EU calls for proposals. Interestingly, the problem of lack of information on EU programmes and possibilities for applying was even previously recognized in the context of the EU cross border programmes[84]. With regard to the information methods in the context of the cross border programmes, the municipalities have different experiences; some municipalities

[84] The Macedonian experience with cross border cooperation programmes; Occasional Paper 14, Centre for Research and Policy Making (CRPM), Skopje 2007

are/were obliged to find the information by themselves on the Internet and other similar resources, thus often they were informed quite late about the call for proposals; some of the municipalities get/got the information though information meetings; other municipalities have their own representatives as participants of seminars on topics related to the programme etc[85].

Nevertheless "the Government of Macedonia and the Secretariat of European Affairs in particular, is responsible for informing the local authorities of the existence of the programme and the possibilities for applying with a project proposal. The method which the Secretariat uses for informing stakeholders is organization of workshops and presentations in one or two bigger municipalities in the eligible area where all the municipalities and non-governmental organizations and associations are invited to participate. The negative aspect of this information method is the fact that presentations are made in few municipalities, not very often and with a minimum participation by the local authorities."[86]

However, the majority of municipalities believe that the real problems are coming when the municipalities are granted an EU project. The EU money usually is late, although the implementation must start and be conducted in the due time set. This requires the municipalities to cover all expenses of the project implementation until the EU money is transferred. Unfortunately, the tight municipal budgets cannot bear such a financial burden. In addition to this the municipalities face legal limitations to reallocate funds from one to another budget line.

Conclusion

The EU integration process has contributed to a more inclusive institutional infrastructure regarding the local level of governance. It provided better environment for "articulation" of the local governance voice. However, the real impact of the local level on the regional policy making, due to the European integration process is limited. The main reason of that is the unwillingness of the central level of governance to change the philosophy of thinking as well as the way of working, by understanding and applying the very essence of the new principle of "partnership".

It seems as if this reform is only conducted to fulfil some technical EU requirements, without paying attention to its substance. Furthermore, the Macedonian municipalities face new challenges due to the European integration process. Many administrative weaknesses of the local level emerged as potential obstacles on the path to the IPA funds. Luckily, the most common and often problems faced at local level could be overcome with clear strategy and quality training programmes. At this point the local administrative capacity is low, nevertheless of the previous experience with the EU programmes. Thus, the successful absorption of the IPA funds remains questionable.

[85] The Macedonian experience with cross border cooperation programmes; Occasional Paper 14, Centre for Research and Policy Making (CRPM), Skopje 2007, p. 20
[86] Ibid.

Ambitious New Free Trade Agreement EU - Korea

On 15th October 2009, the European Commission announced the end of the negotiations and the conclusion of a new Free Trade Agreement with South Korea. It is ambitious, and it opens a possible box of several other Free Trade Agreements, following the global tendency for more and further going Free Trade Agreements (FTAs). It also has been concluded as "second best solution", as a comprehensive WTO agreement on multilateral basis has not yet been possible. What is behind this new agreement?

Exports are an important source of growth and employment in the European economy, making up around 10% of GDP in 2008 and supporting millions of jobs. European companies profit directly from exporting, and also from the positive spill-over effects in the internal market. Key Asian markets offer the potential for significant new opportunities: high growth rates combined, however, in the view of the EU, with high levels of current protection. European businesses have for some time asked for better terms of access to key Asian markets. Responding to these calls, EU Member States authorised the Commission to negotiate new ambitious Free Trade Agreements (FTAs) with India, Korea and ASEAN countries.

In April 2007 EU Member States authorised the Commission to negotiate an ambitious and comprehensive FTA with South Korea. After eight rounds of formal negotiations the two sides have on 15.10.2009 initialed the agreement. It is the most important ever negotiated between the European Union and a third country. The deal, estimated to be worth up to EUR 19 billion in new trade for EU exporters, will remove virtually all tariffs between the two economies, as well as many non-tariff barriers. The agreement will create new market access in services and investment. The deal also makes major advances in areas such as intellectual property, procurement, competition policy and trade and sustainable development. The FTA signals an important upgrade of the EU-South Korea relationship, together with a new Framework Agreement.

Speaking following the initialling in Brussels, EU Commissioner Ashton said: "This is the first 21st Century free trade agreement for the EU, creating deep economic ties with another developed economy. It will create new market opportunities for European companies in services, manufacturing and agriculture. This agreement is particularly important in the current economic climate, helping to fight the economic downturn and create new jobs."

One of the key benefits of the deal for the European Union is the quick elimination of EUR 1.6 billion of duties for exporters to Korea. The agreement also tackles key non-tariff barriers including regulations and standards in industries of European interest, like automotive, pharmaceutical and consumer electronics. Services sectors such as telecommunications, environmental, legal, financial and shipping are expected to see some of the greatest benefits, with substantial commitments from Korea to liberalise these sectors.

The initialling of the FTA signifies the closing of negotiations with a stable legal text, which the European Commission will formally present to EU Member States in early 2010. Following signature of the agreement by the EU Presidency and the Commission, the FTA will be presented to be approved by the European Parliament. Entry into force of the agreement can then be expected in the second half of 2010.

Key elements of the EU-Korea FTA

The FTA will create substantial new trade in goods and services (up to EUR 19 billion for EU exporters, according to one study). The additional market access provided by the FTA will further strengthen the position of EU suppliers in the Korean market. Some key features:

- The FTA will quickly eliminate EUR 1.6 billion worth of Korean import duties annually for

EU exporters of industrial and agricultural products. The EU will eliminate around EUR1.1 billion of duties, which will benefit EU consumers and businesses.

- For example, European machinery exporters will save EUR 450 million annually in duty payments. EU agricultural exporters will save EUR 380 million annually on duties for agricultural products for which Korean duties are currently relatively high. Wine and cheese will enjoy duty free and tariff-free quotas respectively from day one.
- The deal will also tackle non-tariff barriers across all sectors including in industries of specific interest to the EU, such as automotive, pharmaceutical and consumer electronics. Under the FTA, Korea will consider as equivalent many European standards, and recognise European certificates, thus eliminating red tape which so far was a deterrent and a barrier to trade.
- The FTA will provide new opportunities in many services sectors, where the EU is highly competitive. These include telecommunications, environmental services, shipping, financial and legal services.
- The FTA will offer transparency and predictability on regulatory issues such as the protection of intellectual property (including through strengthened enforcement); improved market access in government procurement; as well as a new approach on trade and sustainable development involving civil society in the monitoring of commitments.
- The FTA will offer a high level of protection for EU Geographical indications such as Champagne, Prosciutto di Parma, Feta cheese, Rioja or Tokaji wine or Scotch whisky
- Efficient dispute settlement rules will be set up to ensure enforceability of commitments (arbitration ruling within 160 days, which is faster than in the WTO).
- A protocol on cultural cooperation underlines the special characteristics of this sector.
- The FTA will offer protection via a general safeguard clause. This would allow the re-establishment of so-called "Most Favoured Nation" duties for up to four years in case of a sudden surge in imports. The Commission will monitor closely the evolution of the market in sensitive sectors.
- On rules of origin, rules have been simplified and made more business friendly. At the same time, strict rules apply in sensitive sectors. For instance, for cars, the agreement would only moderately increase the levels of permissible foreign content from 40% to 45%. For textiles, agricultural and fisheries, the EU standard rules of origin will be maintained with only a small number of derogations applying. On duty drawback, the EU and Korea maintain the right to refund duties on imports on parts, in accordance with WTO rules. However, in case of a significant increase of sourcing from countries that have not concluded an FTA with Korea, i.e. where most favoured nation (MFN) duties still apply, a special clause allows for a cap of the refundable duties at a level of 5%.

The EU-Korea trade relationship

Korea's strong economy (GDP per capita of EUR 13,000 and competitive industrial and agricultural imports) have made it our fourth most important trading partner outside Europe (behind the US, Japan and China). EU exports to Korea have averaged a yearly growth rate of 7.5% for the period 2004-2008, reaching EUR 25.6 billion in 2008. Korea exported EUR 39.4 billion of goods to the EU last year. EU-Korea goods trade was worth around EUR 65 billion in 2008.

EU car sales to Korea went up by a total of 78% in unit sales (39% in value) between 2005 and 2008, whilst Korean car exports to the EU have decreased by 37% in unit sales over the same period. EU exports of machinery have grown 33% in total between 2005 and 2008, reaching EUR 4.8 billion in 2008. For products like chemicals, pharmaceuticals, auto parts, industrial machinery, shoes, medical equipment, non-ferrous metals, iron and steel, leather and fur, wood, ceramics, and glass, the EU enjoys a solid trade surplus. Similarly, for agricultural products Korea is one of the more valuable markets globally for EU farmers, with annual sales of over EUR 1 billion.

The EU currently runs a deficit with Korea in goods trade, although trends suggest that the Korean market offers significant growth potential. On services, the EU has a surplus with Korea of EUR 3.3

billion, with exports of EUR 7.2 billion in 2007 and imports of EUR 3.9 billion.

* * *

The case of the German machine industry

Of the 4,8 billion EUR exports in machinery Germany alone covers more than 2.3 billion. No miracle that the German "Verband Deutscher Maschinen- und Anlagenbau" (VDMA) - German Association of Machine and Plant Engineering fought for a quick ending of the negotiations. VDMA estimates that the agreement strengthens the competitivity of European producers also towards their competitors from Japan, China and the United States. Korea is after China and India the third most important market for the machine industry sector from Germany. For the German industry alone VDMA calculates with a potential of up to 4.9 billion EUR (7 bn. USD), that is more than the double of today, based on a PROGNOS study from 2008 on the request of the German Federal Ministry of Economy and Technology (BMWi). This potential may be justified, as the result of the forthcoming decreasing custom tariffs, as these are 8% for some machines (machine tools, packaging machines) and thus rather high.

Documentation

The New Foreign Policy Articles of the Treaty of Lisbon[87]

PREAMBLE[88]

…

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

…[89]

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 42, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

…

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

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[87] See also our article on the Diplomatic Service of the European Union, on page 6 of this issue, which sometimes refers to the Lisbon Treaty. The articles mentioned here are not directly from the "Treaty of Lisbon", as it is called by everyone (also by EUFAJ), but more precisely from the first part of the Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union (OJ C115, 9.5.2008), that is from the Treaty on European Union. Both Treaties are integrated in one, but both are numbered every time from article 1 to their end. This could have been avoided by the Constitution, but was not better feasible in the compromise climate in which the Lisbon Treaty has been produced. This is regrettable, for there are two times the same article umbers in one kind of Constitution-like legal act.

[88] The text written here in Bold has been highlighted by EUFAJ. Please remark that also the other text may be of relevance for all external policies of the EU. The highlighting in Bold serves only to find the relevant core provisions faster.

[89] Where, within an article or other text part there are made omissions – for editorial reasons or why they don't have a primary context with any foreign policy - there is a sign „…". At article numbers there are also sub-headlines; these have been worded and attached by EUFAJ, they are not an official part of the Treaty and should help to find relevant articles faster.

Article 3 – General Objectives (ex Article 2 TEU[90])

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. **In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter**.

Article 8 – Neighbourhood Policy

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Article 15 - European Council – Participation of the "EU Foreign Minister"and Representaton of the EU in Foreign and Security Policy

1. The European Council shall provide the Union with the necessary impetus for its development and shall **define the general political directions and priorities** thereof. It shall **not** exercise legislative functions.

[90] Usual abbreviation for the previous Treaty of the European Union

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. **The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work**

…

6. The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

Article 16 – Council [of Ministers]

1. The Council shall, jointly with the European Parliament, exercise **legislative and budgetary functions**. It shall carry out policy-making and coordinating functions as laid down in the Treaties.
…

3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.
…

6. … **The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.**

Article 17 – Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. **With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation**. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

…

4. The **Commission appointed between the date of entry into force of the Treaty of Lisbon[91] and 31 October 2014**, shall consist of one national of each Member State, including its President **and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents**.

5. As **from 1 November 2014**, the Commission shall consist of a number of members, including its President and the **High Representative of the Union for Foreign Affairs and Security**

[91] 1st December, 2009

Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

…

6. A member of the Commission shall resign if the President so requests. **The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.**

7. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

…

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body[92] to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

8. The Commission, as a body, shall be responsible to the European Parliament. … the European Parliament may vote on a **motion of censure** of the Commission[93]. If such a motion is carried, the members of the Commission shall resign as a body and the **High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.**

Article 18 – Appointment of the "EU Foreign Minister" and Status in the Commission and the Council

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.

2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The High Representative shall preside over the Foreign Affairs Council.

4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

[92] Underlining by EUFAJ
[93] Not of single Commission members, but of the Commission as a whole (*collegium* principle)

TITLE V

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION
AND SPECIFIC PROVISIONS ON
THE COMMON FOREIGN AND SECURITY POLICY

CHAPTER 1

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 21 – Principles of EU Foreign Policy

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters; and

(h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the

Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 22 – Policymaking by European Council and Council

1. On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

CHAPTER 2

SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

SECTION 1

COMMON PROVISIONS

Article 23 – Policy Framework

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.

Article 24 – EU Competence and Member States (ex Article 11 TEU)

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the High Representative shall ensure compliance with these principles.

Article 25 – Conduction of Foreign Policy (ex Article 12 TEU)

The Union shall conduct the common foreign and security policy by:

(a) defining the general guidelines;

(b) adopting decisions defining:

(i) actions to be undertaken by the Union;

(ii) positions to be taken by the Union;

(iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);

and by

(c) strengthening systematic cooperation between Member States in the conduct of policy.

Article 26 – Formulation of Guidelines for the Foreign Policy (ex Article 13 TEU)

1. The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

2. The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council.

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

Article 27 – Mandate of the "EU Foreign Minister", EU Diplomatic Service

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

Article 28 – Council and National Policies (ex Article 14 TEU)

1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of that decision and take the necessary decisions.

2. Decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

3. Whenever there is any plan to adopt a national position or take national action pursuant to a decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow, if necessary, for prior consultations within the

Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

4. In cases of imperative need arising from changes in the situation and failing a review of the Council decision as referred to in paragraph 1, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of that decision. The Member State concerned shall inform the Council immediately of any such measures.

5. Should there be any major difficulties in implementing a decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the decision referred to in paragraph 1 or impair its effectiveness.

Article 29 – Common elements of EU ForeignPolicy (ex Article 15 TEU)

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions.

Article 30 – Right of Initiative, Rapid Decisions (ex Article 22 TEU)

1. Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it initiatives or proposals as appropriate.

2. In cases requiring a rapid decision, the High Representative, of his own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

Article 31- Unanimous and Qualified Majority Decisions (ex Article 23 TEU)

1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

– **when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),**

– **when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,**

– **when adopting any decision implementing a decision defining a Union action or position,**

– **when appointing a special representative in accordance with Article 33.**

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

5. For procedural questions, the Council shall act by a majority of its members.

Article 32 – Common Approach EU Level / Member States (ex Article 16 TEU)

Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach. Before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach.

Article 33 – Special Representatives (ex Article 18 TEU)

The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.

Article 34 – Concertation of Member States in International Bodies (ex Article 19 TEU)

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. In accordance with Article 24(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.

Article 35 – Cooperation of Diplomats of Member States and the EU (ex Article 20 TEU)

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented.

They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty.

Article 36 – Consultation with the European Parliament (ex Article 21 TEU)

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may ask questions of the Council or make recommendations to it and to the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.[94]

[94] Underlining by EUFAJ. These compulsory discussions, much more frequent as in all other cases, will enable

Article 37 – Agreement Competence for the EU (ex Article 24 TEU)

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

Article 38 – Political and Security Committee (ex Article 25 TEU)

Without prejudice to Article 240 of the Treaty on the Functioning of the European Union, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative.

Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 43.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.

Article 39 – Data Protection

In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 40 – No Inner-EU Rivalries (ex Article 47 TEU)

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Article 41- Budgetary Issues (ex Article 28 TEU)

1. Administrative expenditure to which the implementation of this Chapter gives rise for the institutions shall be charged to the Union budget.

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the Parliament to cover topically foreign affairs and institutional issues; this is a real parliamentary instrument of control.

2. Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:

(a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;

(b) the procedures for administering the start-up fund;

(c) the financial control procedures.

When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

SECTION 2

PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY

Article 42 – General Provisons on Common Security and Defence Policy (ex Article 17 TEU)

1. The common security and defence policy shall be an integral part of the common foreign and security policy[95]. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for

[95] To differentiate between Common Foreign and Defense Policy (usually abbreviated as CFDP) and Common Security and Defense Policy (often abbreviated as CSDP) – abbreviations can be different in every official language – does definitely not contribute to the principle of transparency and understandable legal texts. This will be a primary task for the next Lisbon Treaty revision.

peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as "the European Defence Agency") shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 44.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power[96], in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains

[96] This is finally, for the first time, a solidarity clause between the Member States (underlining by EUFAJ).

the foundation of their collective defence and the forum for its implementation.

Article 43 – Catalogue of Tasks, Including Fight Against Terrorism

1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article 44 – Possibility of Entrusting Groups of Member States with Military Tasks

1. Within the framework of the decisions adopted in accordance with Article 43, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary decisions.

Article 45 – European Defence Agency

1. The European Defence Agency referred to in Article 42(3), subject to the authority of the Council, shall have as its task to:

(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;

(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;

(d) support defence technology research, and coordinate and plan joint research activities

and the study of technical solutions meeting future operational needs;

(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article 46 – Participation of Member States in Permanent Sturctured Operations

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 42(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member

State in question has ceased to participate.

6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

The European Parliament Delegations since July 2009

The European Parliament has a considerable network to third countries, in form of interparliamentary delegations, delegations to joint parliamentary committees and delegations to parliamentary cooperation committees and multilateral Parliamentary Assemblies.

The numerical strength of the delegations has been adopted by a European Parliament decision of 14th September 2009, and there are the following 40 delegations:

(a) Europe, Western Balkans and Turkey
Delegations to the:
– EU-Croatia Joint Parliamentary Committee: 15 members
– EU-Former Yugoslav Republic of Macedonia Joint Parliamentary Committee: 13 members
– EU-Turkey Joint Parliamentary Committee: 25 members
Delegation for relations with Switzerland, Iceland and Norway and to the European Economic Area (EEA) Joint Parliamentary Committee: 17 members
Delegation for relations with Albania, Bosnia and Herzegovina, Serbia, Montenegro and Kosovo: 28 members
(b) Russia, the Eastern Partnership States, Central Asia and Mongolia
Delegation to the EU-Russia Parliamentary Cooperation Committee: 31 members
Delegation to the EU-Ukraine Parliamentary Cooperation Committee: 16 members
Delegation to the EU-Moldova Parliamentary Cooperation Committee: 14 members
Delegation for relations with Belarus: 12 members
Delegation to the EU-Armenia, EU-Azerbaijan and EU-Georgia Parliamentary Cooperation Committees: 18 members
Delegation to the EU-Kazakhstan, EU-Kyrgyzstan and EU-Uzbekistan Parliamentary Cooperation Committees, and for relations with Tajikistan, Turkmenistan and Mongolia: 19 members
(c) Maghreb, Mashreq, Israel and Palestine
Delegations for relations with:
– Israel: 22 members
– the Palestinian Legislative Council: 22 members
– the Maghreb countries and the Arab Maghreb Union: 18 members
– the Mashreq countries: 18 members
(d) The Arab Peninsula, Iraq and Iran

Delegations for relations with:
– the Arab Peninsula: 15 members
– Iraq: 12 members
– Iran: 18 members
(e) The Americas
Delegations for relations with:
– the United States: 53 members
– Canada: 17 members
– the countries of Central America: 15 members
– the countries of the Andean Community: 12 members
– Mercosur: 19 members
Delegation to the EU-Mexico Joint Parliamentary Committee: 14 members
Delegation to the EU-Chile Joint Parliamentary Committee: 15 members
(f) Asia/Pacific
Delegations for relations with:
– Japan: 25 members
– the People's Republic of China: 39 members
– India: 20 members
– Afghanistan: 13 members
– the countries of South Asia: 17 members
– the countries of South-east Asia and the Association of South-east Asian Nations (ASEAN): 22 members
– the Korean Peninsula: 14 members
– Australia and New Zealand: 16 members
(g) Africa
Delegations for relations with:
– South Africa: 13 members
– the Pan-African Parliament: 12 members
(h) Multilateral Parliamentary Assemblies

Delegation to the ACP-EU Joint Parliamentary Assembly: 78 members
Delegation to the Euro-Mediterranean Parliamentary Assembly: 49 members
Delegation to the Euro-Latin American Parliamentary Assembly: 75 members
Delegation to Euronest Parliamentary Assembly: 60 members (Euronest = Eastern Partnership, formed of M.P's from Ukraine, Moldova, Belarus, Georgia, Armenia und Azerbaijan)
Delegation for relations with the NATO Parliamentary Assembly: 10 members (which will consist of members of the Subcommittee on Security and Defence)

Liechtensteiner Workshop
zu europäischem Recht und Wirtschaft

Die Europäische Wirtschaftliche Interessenvereinigung (EWIV) im EWR:

eine neue, noch unbekannte, steuerlich günstige, „leichte“ Rechtsform zur Kooperation

Freitag, 29. Januar 2010
13.00 bis 17.00 Uhr

Liechtensteinisches Landesmuseum,
Vaduz/Liechtenstein
(Städtle 43, Vaduz)

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Reviews

International Strategies of Regions – Will a « Sub-national » Foreign Policy Emerge?

Stéphane Paquin: Paradiplomatie et relations internationals. Théorie des stratégies internationales des régions face à la mondialisation
Collection « Régionalisme et Fédéralisme », n° 3 ; Bruxelles 2004, 189 pp., 26,60 EUR, Presses Interuniversitaires Européennes (P.I.E.) – Peter Lang S.A., ISBN (10) 90-5201-225-3). In French language.

It is astonishing that the subject described in this book has not really been of importance to the ligue of political scientists worldwide. Indeed, in the EU of the last 20 years liaison offices of the regions – in the EU a region is always an entity below the national level – became legitimate, after having been at first fought politically, e. g. by the German federal authorities, or legally, e. g. by the Italian government, which sent the prosecutors into the joint office of Italian South and Austrian North Tyrol, when they wanted to set up an office in Brussels. Today, it's normal with the regions, within the EU, and they have since long even their Committee of Regions. In the EU, since long time, there is a trend of "sandwiching" the national level between the supra-national EU and the sub-national regional levels.

Paquin, who studied in Paris and is professor of history in Québec/Canada, has maybe remembered his roots as *québecois* and written something, which at first glance might not be one of the first priorities of many Anglo-Saxon Americans, but it is of relevance for Europe, and this since many years. When the author gave an interview in February 2003 to a Canadian paper (which, *"L'action nationale",* has not the most objective reputation in Canada, but is anyway fully legitimate in and for the province of Québec) he stated many examples in favour of the regions, among which not the smallest is the fact that more than 80% of all wars in the last years were based on ethnic or community reasons and not on nationalism between states.

Stéphane Paquin sets one of his accents for *paradiplomatie* on the commercial, economic field. Indeed this is the motivation no. 1 still today, as he analyzes correctly, in federal or decentralised structures. It may have, after all, its reasons that the city of Lyon in France has nine representatives abroad, from Hongkong to Montréal. However, the Germans, proud for their federalism, will state that (page 95) Lothar Späth never was prime minister of Bavaria (where there was most of that time the bullish Franz Josef Strauss), but of Baden-Württemberg. This book anticipated the jurisdiction of the German Constitutional Court for the Maastricht Treaty as well as for the Lisbon Treaty some years later, the latest in 2009, discussing the role of sub-national entities in many states (mainly in Spain, Belgium, but also Canada and the US), also concerning conflicts in others.

This book which is written in an easygoing style has the big merit to show a mirror of a two-side transatlantic perception, from Canada and Europe – and it seems to be timeless. In its sense, the EU has introduced instruments only recently, for instance in 2007, since when e.g. border regions can set up public entities with their neighbouring regions in the legal form of an European Grouping of Territorial Cooperation (EGTC), which has been preceded, among others, by the Karlsruhe Agreement, where e.g. border regions from Saarland, Rheinland-Pfalz, Baden-Württemberg, the French regions of Alsace and Lorraine and Luxemburg as well as from some northern Swiss cantons have been invited for direct cooperation. Unfortunately, this model has not been seized very often at all, the EGTC goes a bit better. This shows also that *paradiplomatie* is often exercised by people from the sub-national level who feel the necessity of networking. They must be led with a long leash, with

(only) some general rules. For a regional integration, like the EU, depends of contacts between the citizens and not only from top-down.

S. N. Vallard

Monaco and the European Union

Georgia Ulses: Monaco und die Europäische Union – heimliche oder unmögliche Mitgliedschaft? *(Monaco and the European Union – secret or impossible membership?)*
LIBERTAS Paper 55, Sindelfingen July 2004. 73 pp., 15,00 EUR (eBook 12,00 EUR), LIBERTAS – European Institute, ISBN (10) 3-921929-17-2 (in German language)

In this paper Georgia Ulses who worked for many years, as a German, in a French company in Alsace, describes in an instructive way besides history, institutions and economic, budget and taxation structures of Monaco also the bilateral agreements with France. They have made at first impossible any approach towards the EU, which has never been on a list of issues in the microstate between France and Italy. Nevertheless, Monaco became a member state to the Council of Europe in October 2004, only some months after this paper has been finished, where is had an observer plus candidate status, after having made considerable steps towards this objective. The author compares permanently Monaco with other European microstates not being within the EU: Liechtenstein, Andorra and San Marino.

The present relation with the EU are analysed as well as the open questions of discrimination, free circulation of capital, competition questions, taxation, withholding taxes etc. The positions of France towards a possible EU accession of Monaco are elaborated in an exact manner (nothing „official" could be obtained from France), the views from Monaco as well (nothing „official" could be obtained neither), and the objective alternatives for the Mediterranean micro state. This paper is however short and concise, including some expert interviews and voices from business, stemming from a random survey. This text was originally a diploma thesis in economy at a German University of Applied Sciences, being in German. Observers should watch out for the European microstates: if they really want to turn to the EU, there are no big arguments to stop them, but a special form of participation would have to be found for them.

Ukraine and its Far West: Transcarpathia

Peter Jordan/Mladen Klemenčić (eds.): Transcarpathia – Bridgehead or Periphery? Geopolitical and Economic Aspects and Perspectives of a Ukrainian Region
Wiener Osteuropa Studien, Frankfurt am Main 2004, 335 pages, 56,50 EUR, Peter Lang Verlag, ISBN 3-631-50195-1

Transcarpathia ist the most „European" region of Ukraine, bordering Romania, Hungary, Slovakia and Poland. This book covers geopolitical and economic aspects and perspectives of this region. This multiethnic region has after being a part of Hungary for centuries frequently changed political affiliations. Now it is an Ukrainian borderland in the heart of Europe, what was not perceived like this still 20 years ago. The Slavonic majority of Ruthenes or Rusyns, by some perceived as a nation distinct from the Ukrainians, the self-conscious minority of Hungarians as well as the historical Hungarian background and a variety of smaller ethnic minorities give this region a strong identity, and attribute to it the potential function of a Ukrainian bridgehead towards Central Europe and the European Union. In spite of cross-border trade and a quite active role of the Hungarian group in networking across the border, the region plays so far rather the role of an economically weak

Ukrainian periphery. Whether it will be able to escape this situation and profit from EU enlargement will to a larger extent depend on the border regime along the new borders of the EU as well as on the macro-political orientation of the Ukraine: Will she decide herself for getting closer to the EU, or to Russia?

The editors are geographers from Austria with a high profile in the region, who compiled contributions on basic facts about the region, its ethnic structure, history, economy, transportation and the neighbours, as well as – very important contribution – a geopolitical assessment, by European and American scholars and practically-oriented authors. It is interesting that the authors see a potential development, if the Ukraine goes more towards the EU – as wanted by the official Kiev – then Transcarpathia will be an excellent are of interfacing and networking with the EU. If on the other hand Ukraine would tend to go towards the East, then, so the last phrase of the book, "Transcarpathia will be distancing iself from the rest of the country". By the way: an EU expert some years ago had to work for the EU Commission in Romania for the relevant ministry of European Integration, and this on inter-regional cooperation also with Ukraine. The person concerned there with cross-border relations with Ukraine, who was for many, many years a tradesperson for tractor parts, was never and wanted never wanted to go to Ukraine. This region should be understood by its neighbours, not neglected!

S. N. Vallard

A classical compilation about Albania

Peter Jordan, Karl Kaser, Walter Lukan, Stephanie Schwandner-Sievers, Holm Sundhaussen (eds.): Albanien. Geographie – Historische Anthropologie – Geschichte – Kultur – Postkommunistische Transformation *(Albania. Geography – Historical anthropology – Civilisation – Post-communist transformation)*
Osthefte des Österreichischen Ost- und Südosteuropa-Instituts, Sonderband 17, Wien 2003, 416 pages,48,00 EUR, Peter Lang Verlag, ISBN (10) 3-631-39416-0 (with articles partly in German and partly in English language)

19 authors from the scientific and journalistic world contributed to this book which indeed is a classical compilation covering Albania about 12 years after the fall of Enver Hodxa. It also can open the eyes for modern Albania, which at its first glance has nothing to do with the old one from before 1990, but which is a very special country, not to confound with the other Eastern European countries or with the former Yugoslav republics – it has a very distinct history. As the main editors are geographers, it starts with "Space and Population", with the ethnic and religious plurality of the country, with the problems of domestic and external migration, with the environmental problems and the geopolitical role. Very important for Albania is the part on historical issues: In his chapter on legal customs (i. e. the famous *Kanun* which in reality are several) Robert Pichler, a historian from Graz University, points out that the transition from communism to democracy left many Albanians in a personal orientation crisis – of what the country still seems to suffer today, in 2009. Albania's role in the past, its nation building, but also the social role of women are dealt with. The language and its role, the literature and the role of the religious communities follow.

Finally, there are chapters on political transformation, and on the fear of a Greater Albania. Here the author of this chapter, Henriette Riegler from the Austrian Institute of International Policy gives an excellent view on these streams who come mainly from outside of Albania, i. e. Kosovo or Macedonia. She however qualifies as "utopian" a participation of Albania, Macedonia and Kosovo in the European integration process, which must be countered that since 2001 it was clear that Macedonia will submit an application for accession, and also that Albania will submit such an application, as well as Kosovo – this was clear for every think-tank with a somehow objective view, the question was and is only when. But for the whole region a maximum of the year 2020 has been discussed even officially

by the European Commission (EAR). A contribution about the constitutional development since 1990 and one on the economic transformation process close the book. Despite this last chapter this book, which has already more than 400 pages, has – of course – an economic deficit. But one cannot have everything, and this is even an advantage: this book should be a compulsory reading material for every foreign investor or one who wants to enhance commerce with Albania – just to understand a very distinct region of Europe, who once it will be in the European Union will be one of its pillars of its foreign policy.

S. N. Vallard

US-Iran Relations in International Law – A European View

Patrick Terry: US-Iran Relations in International Law since 1979: Hostages, Oil Platforms, Nuclear Weapons and the Use of Force, *LIBERTAS Paper .., 87 pages, 15,00 EUR (electronic version 12,00 EUR), Rangendingen/Germany 2009, LIBERTAS, ISBN 978-3-937642-08-6.*

Iran was in 2009 celebrating the 30th anniversary of the Islamic Revolution, an event not only heralding enormous changes within Iran itself but also resulting in a clear break with the United States, formerly a close ally. Since 1979 bilateral relations between these two countries have veered from crisis to crisis. Occasionally, however, there have been times where improved US-Iran ties just seemed possible. 2009 might just be such a turning point in this fraught relationship. President Obama's more conciliatory approach to relations with Iran and the upcoming elections in Iran in June - with many hoping a reformist candidate, possibly Moussavi, might be elected - could be the last chance to avoid another, potentially extremely dangerous, confrontation between the two states, and the relevant negotiations are going on at present.

Certainly one lesson can be drawn from the bilateral confrontations of the last thirty years: using and threatening to use force has not aided either country in their respective quests to achieve regional and global foreign policy goals. The paper examines US-Iran relations since 1979 under international law aspects, focusing on their most dangerous aspect: the repeated use of force. Despite influential circles in both Iran and the USA openly questioning the existence of any legal rules in international affairs both states have always sought to justify their forcible actions under international law. The story of US-Iran relations in international law since 1979 is thus also a story of ever expanding concepts of self-defence.

Three major crises in the US-Iran relationship resulting or possibly still going to result in forcible action are dealt with in this paper: The hostage crisis of 1979-1981 will serve as a starting point. Iran's justification of its actions and the legality of the American attempt, in 1980, to rescue its nationals will be examined in detail. Then the focus turns to the Iran-Iraq War and the US attacks on Iranian oil platforms. It will be considered whether these actions were justified on the grounds of self-defence. Following the current crisis surrounding Iran's nuclear programme is discussed. Iran's obligations under the Non-Proliferation Treaty and America's controversial doctrine of "pre-emptive" self-defence are examined in some detail.

It will be concluded that the US-Iran relationship – characterized by an intense competition for power and influence in the Middle East - is in practical terms already living up to the ideals espoused by neoconservatives and nationalists in Washington and radicals in Tehran: a foreign policy freed from the shackles of international law. Not one of the forcible actions undertaken by either Iran or the United States, it is argued, was legal under international law. Far from helping these two states pursue their national interests and achieve their regional and global goals – as American and Iranian radicals had hoped - this strategy has, however, resulted in abysmal failure for both.

The paper is based on a dissertation submitted by the author to the University of Kent for the degree of LL.M. in September 2008 but has been updated since. The author is a former career judge in Germany following now postgraduate studies and research in UK.

Minorities in Georgia – described by scientists and these minorities

Dea Elibegova (ed.): Georgian Minorities – Roma, Qists, Assyrians, Ezids.
Contributions by Dea Elibegova, Meqa Khangoshvili, Sergey Osipov, Eka Bitkash, Dimitri Pirbari
LIBERTAS Paper 72, Rangendingen/Germany, August 2009, 56 pages, ISBN 978-3-937642-10-9, 15,00 EUR; electronic version 12,00 EUR

This booklet includes articles on four ethnic groups or minorities - Roma, Qists, Assyrians, Ezids – in Georgia today. This South Caucasus country is today a multiethnic country where different national and ethnic minorities live side by side, and it can hardly be understood without knowledge of their minorities. The preservation of national-historical originality and ethnic self-identification of these groups, while keeping their culture, traditions, history and language is the key issue and a noble task of minorities today as well as the state. The paper serves as first entrance, mainly for non-Georgians, but also for Georgians to be aware of the culture, traditions, history and customs of people living next to the majority population. The importance of the paper is in indicating and identifying key points characterizing the precise ethnic or minorities groups. The paper may become, after all, a useful contribution for European minority research.

By different kind of analysis the originality of each group should be highlighted. While the contribution on Roma is a genuine social science research work, with high empirical content, it states that there are significant differences between the obligations Georgia has signed for in European conventions and the de facto treatment of Roma, for which Dea Elibegova sets up an ambitious – but also self-evident – checklist for the state. She works as Chief Specialist in the Department of Minorities of the Ministry for Reintegration in Tbilisi/Georgia. Her co-author and colleague Meqa Khangoshvili describes the history and mentality of the Qists, a Chechen minority in Georgia, who always were friends of the Georgians throughout their history. Also the other chapters are more culturally and historically oriented, first about the Assyrians, written by Sergey Osipov and Eka Bitkash, both very active in Assyrian organizations, in the case of Sergey Osipov as Deputy Chairman of the World Assyrians Association, in the case of Eka Bitkash as chairperson of the Young Assyrians in Tbilisi. The Ezidism chapter by Dimitry Pirbari also includes specific religious criteria and gives an excellent overview about the habits and customs of Ezidism. After all, this booklet brings valuable insights and an interesting picture of life in Georgia.

Georgia's society before the doors of Europe?

Bernd Schröder (ed.): Georgien – Gesellschaft und Religion an der Schwelle Europas *(Georgia – Society and religion before the doors of Europe)*
Annales Universitatis Saraviensis, 249 pages, Saarbrücken 2005, Röhrig Universitätsverlag, 28,00 EUR, ISBN (10) 3-86110-387-7 (in German language)

In memory of the former German protestant bishop in Tbilisi (1999-2004), Gert Hummel, who died in March 2004 and was before seven years charged with twinning to Georgia at Saarbrücken University, also in Georgia a man of unquestioned profile and a real fried of the country, an interesting book has been edited, with many facets on Georgia: Georgia in the era of Soviet Union, its ethnic diversity, the culture of corruption, and an contribution by Konstantin Saldastanishvili on Georgia approaching the

European Union form the first part on political and social structures. One phrase in the contribution of Konstantin Saldastanshvili, Georgian Ambassador to the EU in 2005, time of the setting-up of this book, is unfortunately not any more valid, as it can be seen from the report by the EU on the reasons of the August 2008 war: "The peaceful settlement of 'frozen conflicts' is evidently the only feasible way for our region". Exactly the same has been taught by the author of these lines, when he trained many young civil servants in Georgia on the Partnership & Cooperation Agreement in special classes in the administration, with the examples of Germany, Cyprus and other divided systems which came together or are to come back soon, but, alas, the formerly promising President of this country was either badly advised or not patient enough to risk – and co-launch – a war with Russia. This shows also, what a short lifespan declarations and proclamations can have in Georgia, and this shows that, up to today, it was probably justified not to take this country with its present government into NATO.

The book continues very interesting about the Georgian Orthodox Church, about religious pluralism, about Lutheran Protestantism with its roots in Germany, about Islam and Jews in Georgia - altogether a peaceful mosaic of religious communities, which gives a lot of hope. Schools and education as well as the history of 1500 years of Georgian literature can show only to a small part that Tbilisi once was considered to be a cultural capital of the wide environment. The "bridge" between Georgia and Germany closes this book, be it with contributions on city twinning between Saarbrücken and Tbilisi, the transfer of science between universities, land management and Georgian-German economic relations (which, of course, exist, but could do much better). For connoisseurs some maps are added, among others one about the Pietistic settlements from Germany in Georgia and Azerbaijan. This booklet is despite all its footnotes not a scientific one, but one written by the drive of the authors for a deepening of relations and understanding of the described country.

Hans-Jürgen Zahorka

Bretagne and France: The future of the Breton language

Wolfgang Köhler: Bretonisch und Französisch im Süd-Finistère. Ein facettenreicher Sprachkonflikt *(Breton and French – A language conflict of many facets)*
216 pages, September 2009, LIBERTAS – European Institute, 40,00 EUR (electronic version 32,00 EUR), ISBN 978-3-937642-09-3 (in German language, with the original quotations in French)

It is interesting what road the regional languages follow within the EU. It is sure that now they have more attention than ever before. One of Europe's declared objectives is to enable its regional language minorities to practice cultural diversity; this was the reason of the 1992 European Charter of Regional and Minority Languages. In a time of national borders stepping back also present national languages are doing the same, as national borders are removing to the background. France has signed this Charter in 1999 und taken its regional languages in July 2008 into its Constitution. However, it has difficulties in recognizing this said Charter which as its Government says is not quite in line with its Constitution. Although there are now quite a lot of Breton publications, radio and TV broadcasting, the question is open how those speaking it stick to their language which had been prohibited in official use some decades ago.

Wolfgang Köhler has written his doctoral thesis at Heidelberg University in Germany on this subject, mainly after holding interviews in the French department of *Finistère-Sud*, South of Brest in Britanny. The author who works as reader for the Wissner publishing house in Augsburg/Germany has asked elder mother language Bretons who before going to school only spoke very little French and are all anchored in a rural environment. The future of Breton is more depending of younger people, the second category of interviewees, the so-called *néo-bretonnants*. These are mother-language French speakers who decided to learn Breton, and who often have now children who visit schools with Breton as teaching language. Thus it can be seen how the language transfer is done from generation to generation. There are very interesting results to be found; one of the conclusions is that the traumatic

past in France would have to be worked off, in view of former prohibitions of the language and the social disadvantages attached to this. Those who read this book – which is basically in German – should be able to read (a simple) French, as the valuable interviews are reprinted in the original language. Not only a very good and very topical book for French or Breton linguists, but also an instructive tool for those who deal with minority and regional languages, including maps etc., this book is once a doctoral thesis which can be red also by a broader public and not only by esoteric circles – what without doubt is an asset for this publication.

S. N. Vallard

One of the First Analyses on the Treaty of Lisbon

Rudolf Streinz, Christoph Ohler, Christoph Herrmann: Der Vertrag von Lissabon zur Reform der EU - Einführung mit Synopse *(The Treaty of Lisbon Reforming the EU - An Introduction with Synopsis)*
2nd edition, 404 pages, München 2008, 35,- EUR. C. H. Beck Verlag; ISBN 978-3-406-56962-3 (in German language)

Now, after the last signature of the Prague President under the Treaty of Lisbon, it came into power on 1.12.2009. One of the first books about this complex treaty has been written by a trio of German university professors from München, Jena and Bayreuth, under the leadership of prof. Streinz. 11 months later as scheduled, this treaty is an objective enigma, although everyone should know more or less what it contains. Both new treaties in the form of the Consolidated Versions of the Treaty on European Union and the Treaty on the functioning of the European Union (OJ C115, 9.5.2008) are on equal footing and describe now the new European primary law.

It gives a precise and valuable introduction in the system of the new treaties (or treaty?). The large synopsis and the tables of concordance help those who would have to work also with comments on the previous Treaty of Nice etc., a need for several years to come, and indispensable for all those who really have to work with the EU treaties. The synopsis shows what is new, what has been changed, and how it has been changed. A first aid kit for the Lisbon Treaty, in German language. It will take a certain time until useable comments and annotations will be on the market – at least until then this book plays its role.

EU State Aid Law - in English and German Language

Christian Koenig, Julia Paul, Tobias Traupel (eds.): European State Aid Law (Texts and Materials in German and English).
424 pages, München 2009, 48,- EUR. C. H. Beck Verlag; ISBN 978-3-406-58097-0

One of the most practical legal fields of EU law is State Aid Law, where numerous EU regulations mark as directly applicable secondary law also any Member State's law on subventions. This is also extremely important for every foreign direct investor from third countries in the EU. State Aid Law is made concrete also by communications and recommendations of the EU Commission, not to forget the new Block Exemption Regulation. This book has the advantage to present synoptically in two languages, English and German, the pillars of EU State Aid Law, as well as an instructive introduction, in these two languages, too. It addresses legal advisors, tax consultants, auditors and legal departments of companies, banks as well as the national, regional and local level in public tenders. Among the texts there are the primary texts of the EC Treaties, regulations on rules for the application of ECT articles, the de-minimis Regulation, the general block exemption regulation from

2008, as well as on regional investment aid and all the recommendations and guidelines for the treatment of SMEs.

In the times of crisis, the Commission guidelines on State Aid for rescuing and restructuring firms in difficulty have a very important meaning. This compilation is a well rounded affair, and it will be particularly useful for people who have to calculate and work with these texts, but from a different original language. It may be extremely useful in German-speaking environment, with English speaking investors – or insolvency negotiators.

Standpoint. *By Olivier Védrine*

Power to Europe's People
(Or: What Allowed the French Revolution to Succeed)

Olivier Védrine, Editor of EUFAJ, lives in Paris/France. He is also Professor at the IPAG Business School where he is Director of an MBA programme, at IÉSEG/Université Catholique de Lille, and other universities. The Lecturer of the European Commission (TEAM EUROPE France) is also President of the Collège Atlantique-Oural. Chercheur associé à la Chaire de recherche du Canada en politiques étrangère et de défense canadiennes (PEDC) de l'UQAM (Université de Québec à Montréal)

From all the questions currently being raised concerning the European Union there is one that needs a top priority response as it will provide the answer to many other questions: We need to ask ourselves if we want Europe to become a real power.

The history of the construction of the Union began over 50 years ago. We have succeeded in constructing an economic union with a common currency but a political Europe remains to be seen. The founding fathers had imagined a more rapid development, **but the real question remains: why this fearful and tepid approach to a political union?**

Traditionally low voter turnout during European elections reflects more a lack of politicization concerning the European debate than a real disinterest on the part of the population, which has historically expressed a lot of interest in its construction. **Today, the European Union stands at a turning point in its history** and its future depends largely on the way it responds to the two great challenges facing it at present.

On the one hand the blockage of the institutions caused by enlargement into Central and Eastern Europe and on the other hand "blockage of the minds" demonstrated by the resounding "No" from France and The Netherlands when asked to vote on the Constitutional Treaty in 2005.

Another challenge arises from differences (economic, political and cultural) between the different societies that make up the Union, these are extremely difficult to resolve as they are perpetuated by a vacuum of ideas and discussion. Is it not this lack of debate that is the reason for our helpless situation?

Conflict and reconstruction in the Balkans has been an excellent test for Europe. The Balkans is a European laboratory where many peoples, religions and cultures are represented in an area of several thousand square kilometres. We have witnessed the disastrous consequences of power hungry nationalists exploiting these differences. It is time to accept our diversity and defend it by finding a model which incorporates our shared values, a model flexible enough to integrate national differences, but sufficiently pro-active to permit Europe to move beyond the current deadlock.

"We, the Peoples of Europe"

It must not be forgotten and we need to remain convinced that our differences are the source of the rich variety of inspirational thought in Europe. Also, the Balkan experience shows us that it is essential to guard against attacks of this kind. **It is important to preserve our cultural diversity** and to ensure that it is no longer used by nationalists to gain power. This is why be should seek to recognize and document this diversity and highlight it in a future European Constitution.

Numerous official documents use the phrase, "We the people…." But in the case of Europe we should not hesitate to state now: "We the peoples of Europe…" This expression does not mean that Europe should abandon its diversity but should build its unity around the wide diversity using a dynamic thought process. **Another pitfall to avoid is a Europe punctually united, expressing solidarity during crises but incapable of uniting in the long term.** The history of our continent is littered with the debris of short term alliances hastily created in times of peril. It is now time to pool our strengths and rise above this feudal legacy that persists in the subconscious of our member states. "We the peoples of Europe" are united precisely to ensure the uniqueness and unity of the European Union based on certain key principles that we will try to define now.

The Driving Engines of a Powerful Europe: The four values

To be a European citizen is to abide by the four values : **Democracy, Dialogue, Human rights and Solidarity**, these are the driving engines of European power. To become a European power capable of counterbalancing the USA, it is necessary to assert ourselves: militarily, economically, technologically and culturally. American power is made up of both Hard Power (most powerful military force in the world) and Soft Power (economic and cultural, with the symbol of Hollywood acting as a true war machine) these combine to make this country into a global power.

This is why the European Union should guard against the brain drain and put policies into place protecting our grey matter! It is worrying to note that research is the sick child of Europe. The cultural aspect is no less serious as it defines who we are. We are not solely an economic entity.

To become a global power, it is necessary to have an overall leader and political unity. The draft Constitutional Treaty offered us the possibility of having a Minister of Foreign Affairs who would not be purely ornamental: whilst we have no overall representative to present to the world we cannot aspire to becoming a dynamic world power.

Finally, what also makes a great power is Society itself: it is the desire to adhere to a model. One speaks of the American way of life: it is up to us to promote the **European way of life**, by delving into our cultures, our philosophers or into what defines us, to find the ideas to create a new social model.

Building a European dream is essential as we cannot create a defence force if we do not have the desire from the beginning to live together with the same objectives. This model needs to be constructed and I think that there is still a lack of debate.

What allowed the French Revolution to succeed? One huge united breath, the momentum given to the world by the ideas of many: "Liberty, Equality, and Fraternity". Men whose status was that of subjects became citizens and masters of their individual and collective destiny. The young Republic was saved by military victories arising from its strong armies and also from the conviction that every soldier was a sword.

A Constitution is therefore needed as a first step in building a European dream made up of our individualities. The renowned "European social model" is a good example of what would be a credible alternative to the American model.

The Brakes on a Powerful Europe

A powerful Europe has certain brakes incorporated into its collective memory or sub consciousness which today can be overcome. "It is time to liberate ourselves of the liberators": Indeed, just as Eastern Europe was liberated from the Soviet Union, we should also free ourselves of all external models and shed this inferiority complex that paralyzes us. Instead of giving up on our future we should take it in hand.

The second obstacle is the return of nationalism and regionalism: the Balkans has seen the loss of hundreds of thousands of lives. Recently, Austria, Rumania and Poland have seen a resurgence of nationalist discourse. France is not an exception with votes for Le Pen in 2002 and a "no" vote against the European constitution in 2005. There exists a tangible fear heightened by the lack of debate. This translates into regional and national isolationism. Fear has won the first battle but it must not be allowed to win the final one.

Despite the obstacles to European power, the fact remains that a number of projects have been successfully deployed within Europe, notably the structural fund. Countries like Spain and Portugal have seen massive improvements in social and economic development because of these funds. We can make a positive assessment of these European projects, especially that they prompted 12 new countries to want to join the economic union. A certain number of "big jobs" still need to be done, in social and political areas. Resources have been allocated to education and training programs but much remains to be done.

The Need for Political Union

The Union confirmed at the Nice summit its willingness to enlarge from the year 2003, admitting new members who met the conditions of accession. We are now 27!
However we must ask ourselves the question that has yet to be answered, what will be the geographical boundaries of Europe? If we do not develop a "hardcore" of members as the vanguard of the political union we will lament the dilution of the Union as it enlarges.

The pressure of enlargement should have made the EU take a qualitative leap by strengthening the common policies, allowing new members to integrate into a reformed institutional framework. Through a **complete institutional shake up** and the creation of **a hardcore** of members we could bypass the blockages accumulated since the signing of the Maastricht treaty and stop condemning Europe to impotence. We could avoid a crisis which reveals our weaknesses and may lead to setbacks or even a collapse of the building which began in 1957.

However the idea of a hardcore of members is not welcome to some countries. Perhaps the new members will be reticent at the thought of integration into a federated Union when they have just escaped from the domination of the Soviet Union. Again, we must initiate a genuine political debate across the EU explaining to and inviting comments from countries and their citizens.

Faced with the strategic challenges of the 21st Century, the construction of a politically unified Europe is necessary. The new challenges cannot be handled by individual states neither by a system of intergovernmental cooperation. The latter showed its limitations in the ex Yugoslavia. **We really need to organize the building of a political Europe in successive steps.**

On centre stage, would be a few states which have chosen to go further in the political union, governed by a constitution. Members of this small group would be members of the EU and share

common policies involving internal security (Schengen) and external security (defence). In addition they would jointly manage foreign affairs and the economy.

In the first outer circle of states would be those interested only in free trade. However some states in this zone could choose to participate in common policies, including security policies (CFSP)
Finally, there is the last group of candidate countries who meet the criteria of a political Europe.
The "hard core" would drive the whole Union. This integration within geometric concentric circles would be a realistic way to construct a political Europe. Each country would be able to prepare in its own time for admission to the federation. There would be a shift from total integration to continued sustained influence.

Europe must propose a federated civilization and the creation of a new society. Its constitution should be included in this approach if it wishes to be better understood and accepted. Everywhere in the world, peoples are searching for an alternative to the American model. This is an historic opportunity to be seized by our continent.

Many nations are beginning to dislike receiving American aid as they feel it puts them under enforced trusteeship with Washington. The war in Iraq has increased this negative sentiment. **There should be several models of development and society in this world** so that everybody can find what suits them. We should propose a project which fights precariousness, respects the environment and allows individual citizens to flourish in the pursuit of happiness. We must accept that realistically, the market economy is the only one that functions, but we can adapt it to suit any economy so as to serve the population and not the other way around.

Let us hope that the destiny of the European Union will be different to that of the Greek League of ancient times, which vanished with the disappearance of the threat from Persia. We have all the means to become a geopolitical power.

The future will demand it if we are to face up to the challenges. We need to build a more humanistic European society whose values give rise to a dynamic federation. A constitution is an essential component to forming any sort of political Union.

Groups of European Thinkers and the Atlantic-Urals College

There is a real lack of Think-tanks in Europe. For a Think-tank to be efficient it should be broad scoped not elitist in order to convey its ideas. Thus, an idea is not imposed but discussed. Think-tanks should exist in Europe as sources of inspired proposals powered by the broad scope of their composition. Broad scope should mean drawing members from all areas, professional, generational, social, political etc. Also broad scoped in the subjects covered (the economy, associations, military matters, academic, artistic etc.)

We should follow the example of Anglo-Saxon think-tanks and draw members from all corners of society, from business leaders to artists.

The Atlantic-Urals College, aims to examine issues related to the challenges of our modern societies through discussions and joint work involving all the human richness of Europe. Several nationalities come together in their shared desire to find a common path drawing from the experiences of every European nation and the nations linked to Europe, to intermingle the diverse cultural perspectives.

Human richness because the College brings together different personalities: employees from industry, military personnel, diplomats, University professors, artists, students…. All are involved in enlarging the project for a common defence policy based on the principle of the "3Ds" (Democracy, Dialogue, Human rights and solidarity) and all are working to better understand the issues, challenges, expectations and possibilities of this vision.

This year the College aims to diversify its activities and make them more current. At this time, it is working to set up a web site. With this system, the college hopes to quickly implement new activities among its members to further enrich its pool of ideas. The college Atlantic-Urals aims to develop into a veritable European "Think-tank", not to impose its views but to consider the complexities and make valid proposals for the Europe of tomorrow.

If Europe was the theatre for the century of enlightenment it was also the setting for two world wars and some still partially unresolved dramas; these experiences should feed our thoughts and help us to develop a new humanist conscience.

As in the drawing rooms of the 18th Century, we would like to debate together with the purpose of envisaging tomorrows' world and take our destiny into our own hands.
