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THE IMPACT OF THE EUROPEAN UNION BUDGET ON THE PUBLIC POLICIES

1. General framework.
2. The concept of European budget.
3. The budget for the time period 2007-2013.

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Abstract

The paper tries to obtain an answer to the impact of the European budget on the present and future development. The historical evolution of the European budget followed the evolution of the European integration.

The growth of the socio-economic complexity across Europe was reflected into the community budget. As a result, we analysed the components of the budget in their dynamics

A distinct part of the paper is focused on the 2007-2013 financial procedure and on the new elements of the European budget, according to the present challenges for the EU.

1. The EU's budget reflects the European priorities and the current policies for every year. It is the document for authorised financing of all community actions and their connected actions.

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In the beginning, the EU operated with three different budgets connected to the European Coal and Steel Community (ECSC), EUROATOM and E.E.C. The financial resources of these budgets came from the Member States' contributions. The European Council had an important role in assuring the budget management.

The EU budget situation changed according to the economic integration growth. The main reasons of this process are the following:

- unification of the budgetary instruments: the ECSC Treaty expired on the 23rd of July 2002. As a result, the EU established a single common budget;
- implementation of an efficient institutional equilibrium: the European Parliament and Council are the budgetary authorities of the EU;
- implementation of their own budget resources system: this system was implemented from 1970, under the Decision on the 21st of April and it was revised in 1988, 1994 and 2000.

The article no. 210 in the Rome Treaty (article no. 269 in the Amsterdam Treaty) stipulated that the European budget has to be fully financed by its own resources. As a result, the Community had to be autonomous and it could use its resources as it wished.

The European Commission presented a measure reform package named Delors' package, which was finished by the Inter-Institutional Agreement adoption in Brussels, in 1988. This package projected the budgetary revenues and expenditures during 1988-1992 time period. The Delors' reform consisted in:

- implementation of the financial framework system during 1988-1992, 1993-1999, 2000-2006. It was preceded by three inter-institutional agreements;
- creation of a new resource based on the Member States' GNP, according to every state ability to pay;
- establishment of a total ceiling for the own resources as a EU percentage from the GNP;
- establishment of a guide ceiling for the agricultural expenditure control;
- introduction of a maximum growth rate for the non-obligatory expenditures which are object of the European Parliament's decisions;
- correction of the VAT resources.

The Edinburgh European Council (1992) adopted the 1993-1999 budget plan, relying on the Delors II package, in agreement with the policies introduced by the Maastricht Treaty.

The 2000-2006 budgetary forecasts were presented by the 2000 Agenda. The present financial perspective (2007-2013) is based on the COM (2004)101 and COM(2004)487 (European Commission, 2004).

2. According to the Financial Regulations of the year 2002, the budget can be defined as the instrument which forecasts and authorises all revenues and expenditures which are necessary for the EU every year (European Council, 2002).

The EU budget allows the observation of the common policy priorities and directions. Its evolution reflects the successive transformations of the European construction. The community budget was 3.6 billion ECU in 1970 (1 Ecu = 1 Euro from the 1st of January 1999) and it covered almost the C.A.P. expenditures.

Nowadays, the same budget is greater than 100 billion Euros and it covers all common policies: C.A.P., regional development policy, R&D policy, education and training policies, international cooperation and so on.

The rules connected to the budgetary procedures, the resources and the budgetary expenditures are stipulated in the Articles 268-280 of the Amsterdam Treaty.

The European Commission has to elaborate a budgetary project draft based on the EU economic needs and politic priorities for the next year. This document is presented to the European Council, which adopts it, after some possible amendments. As a result, the budgetary project draft becomes a budgetary project and it is sent to the European Parliament. The European Parliament can propose changes for the compulsory expenditures (which represent 40% of all expenditures), but the final level of these expenditures is rated by the Council. The European Parliament is able to change the budgetary project for the non-compulsory expenditures. This becomes an EU budgetary authority bearing the most important role.

Since 1998, the yearly community budget is established according to an average-term financial plan, which defines the yearly limits of the community's expenditures.

Under the Agenda 2000 negotiations (1999), the priorities of the 2000-2006 budgetary policy were established. The multiannual budgetary

perspectives are adopted by the European Council and Parliament. The 2000-2006 financial perspective included credits for the EU enlargement.

The European budget has an important redistribution function and it transfers funds from the richer regions to the poorer ones, in order to achieve the convergence (under the structural policy).

The European budget is based on the following principles:

- unity: all expenditures and revenues must be presented together, in the same document. According to the Treaty Article 268, the EU has a single budget. This principle doesn't prevent the European agencies from having their own budgets or the European Development Fund from financing the A.C.P. countries' development.

The general community budget finances the Common Foreign and Security Policy, the Justice and the Internal Affairs, as well. But, it's necessary to realise the distinction between the administrative expenditures (which are placed into the general budget) and the operative expenditures, which can be absent from the general budget, if the European Council makes that decision.

A particular situation is that connected to the Common Foreign and Security Policy and it refers to the military or defence expenditures (the EU Treaty Articles 28 and 42). As a result, the expenditures will be covered by the Member States, according to their GNPs, using a formal statement for every state;

- universality: all budgetary revenues are used to finance all budgetary expenditures;
- revenues - expenditures equilibrium: in order to obtain an equilibrated budget (the Maastricht Treaty Article 269). When the community budget ends on a surplus, that surplus is considered additional revenue and it will be included in the next year budget. As a result, every budgetary surplus may not be used as an economic interventionist instrument (as in the Keynesian theory);
- annularity: the budget covers a calendar year (the Maastricht Treaty Article 272.1).

These above four principles ensure the budget transparency and ease the control activity, as well.

The community budget is important as an absolute value (more than 100 billion Euros), but it has a small percentage of the total European public expenditures (2.5%).

The community budget generated periodical political crisis, but it operated as a stability vector for the European development, as well. The European budget presents a real growth, but it decreased as percentage from the GNP, even if the number of the Member States and the EU politic responsibility grew.

The overall amount of own resources needed to finance the budget and to ensure the EU independence and identity regarding the Member States were defined and implemented in 1970. The amount of budgetary resources owned by the community are defined as revenue taxes allocated to the Community in order to finance its budget and to automatically equilibrate, without any decision of the national authorities (The European Commission, 2001).

The budgetary amount of own resources were redefined in 1998, as the following:

- taxes revenues collected from the C.A.P. and those from the sugar and corn syrup production;
- taxes revenues collected from the Common Customs Tariff the EU external frontiers;
- a specific percentage of the VAT tax collected by the Member States. In order to calculate this revenue, a uniform VAT basis is rated, according to the European legislation. This basis can represent maximum 50% of the Member States' GNP;
- a specific percentage of the Member States' GNP. This rate was introduced in 1988 and it tries to equilibrate the community budget.

All these resources are collected by the Member States and transferred to the EU budget. The Member States may deduct 25% as collecting costs.

The idea of a European tax for all community citizens was proposed because the European citizens are not able to distinguish between the national and community taxes. The European taxes should cover the carbon dioxide emissions, tobacco, alcohol and mineral oil excises, corporations' revenues, communications and personal revenues, as well.

Another proposal is focused on a greater contribution from the GNP. Moreover, the European Commission suggested greater taxes on energy consumption and corporations' revenues.

The European policies have to be efficiently implemented, in order to ensure the necessary added value. The European Commission is in the

main responsible for the financial resources being used and ready to prove that the budget can be highly managed according to the standards.

The main aspects of this process are:

- equilibrium between the financial support and the concentration of the disposable funds: the concentration on a small number of political objectives can favour the scale economies and can sometimes realise national budget savings. Nevertheless, this approach deprives other domains of their financial support;
- equilibrium between the centralised and decentralised budgetary management: 22% of the European Funds are covered by the centralised management (by the European Commission). 76% of the same funds are managed by the Member States. 2% of the funds are managed together with the international organisations or other countries;
- simplification and consolidation of the applying instruments: refers to the principle "one fund one program" and the new equilibrium between the EU programs accessibility and an efficient specific management;
- resources mobilization: the budgetary management can support the EU budget to find supplementary resources, using the European Investment Bank, the national, regional and local expenditures the private sector's contribution;
- the use of the executive agencies: these specialised agencies operate under the European Commission authority and use specialised labour for the European Fund management;
- co-financing: represents a partnership between the community, national and regional actions in order to realise the European policies. It is a supplementary stimulus for the complementarity between community and national actions. The obligatory co-financing from the Member States represents an essential characteristic of the European structural and rural development policies. These policies cover 40% of the 2007-2013 programme expenditures;
- total transparency and visibility: are connected to the responsibility in the community budget management, in order to guarantee the legitimacy and the European citizens' confidence;
- flexibility: allows the budgetary resources to be reallocated inside and between the budget entries. As a result, the financial support can be oriented to the most efficient programs, according to the absorption capacity observed.

The EU total revenues have to set equalisation for the total expenditures, which cover 1.31% of the Gross National Product for the commitment appropriations and 1.24% of the Gross National Product for the payment appropriations.

Nowadays, the main financing source for the European budget is that based on the Gross National Product of every Member State. This resource will cover 74% of the European financing in 2013. Other financial resources will cover 13% (taxes collected under C.A.P. and Common Customs Tariff systems) and 12% (under the VAT system).

The contribution of the different budgetary resources changed as in figure 2.

The EU budgetary financing sources and mechanisms have to ensure an adequate financing for the European policies. These should be evaluated using the following parameters: economic efficiency, equity, stability, visibility and simplicity, administrative costs efficiency and financial autonomy. There isn't yet a financial budgetary source which covers all these principles.

The Member States analyse the European policies and initiatives using the national contributions as profit.

Every year, the budgetary funds finance all the European policies. The expenditures are diversified and have a great coverage. The European budget reflected the essential steps of the integration. The year of 2008 opened a new step of this evolution, because the economic growth and labour policies will benefit from the greatest budgetary funds.

At the integration beginning, the first European budget was very small and it covered only the administrative expenditures.

The expenditures under the C.A.P. covered 35.7% of the 1965 community budget. They grew to 70.8% in 1985. During 1988-1992, the expenditures under the C.A.P. decreased to 60.7% of the common budget. In 2013, these expenditures will decrease to 32%, excepting the rural development expenditures.

On the other hand, the Cohesion Policy covered only 6% of the community budget in 1965 and 10.8% in 1985. The European Single Act development focused on the socio-economic cohesion and it was followed by an increase in the community cohesion expenditures. The structural reform expenditures will grow to 35.7% of the European budget in 2013.

The energy efficiency financing programs, the foreign actions and the rural development were limited from the very beginning. It represented

only 7.3% of the community budget during the first financial framework, growing to 26% in 2013 (10.2% for efficiency, 6.3% for the foreign actions and 7.3% for the rural development).

During the years 2007-2013, the expenditures policies are focused on the economic growth, employment, freedom, security and justice.

The challenge is to elaborate a future budget which will be able to anticipate the future problems in a very dynamic world. The changes in the political situation can entail the European budget capacity to adapt in order to produce optimal results and to enhance the political reaction.

The budgetary procedure represents a legislative process in which are involved the European Commission, the European Parliament and the European Council.

The European Council and the Parliament adopt the main decisions and the European Commission has to prepare a budget draft in order to subsequently implement it.

The European budget is calculated only in Euros. The procedure is complex and steady. Different steps follow some, which are exactly graded in time, so that the new budget will be adopted before the 1st of January every year. The budgetary procedure is presented in figure 3.

There are a few mechanisms which ensure the coordination and the cooperation between the community institutions during the budgetary procedure implementation. The European Council and the Parliament have bilateral conciliation meetings and trilateral meetings with the European Commission.

3. The 2007-2013 financial perspective decreases from 8 to 5 chapters. This new element makes the system more rigid and allows the more efficient use of available resources. During 2007-2013, the budgetary revenues will be 1025 billion Euros and they will cover the following objectives:

- sustainable growth: covers the structural funds, research and education and will benefit from 382 billion Euros. This objective is focused on two components: efficiency and cohesion, connected to the economic growth and employment;
- resources preservation and management: cover the financing of the C.A.P. and the environment policy and will benefit from 371 billion Euros;

- citizenship, freedom, security and justice: will benefit from 10.7 billion Euros and this allocation will cover the exchanges between young men, twin cities and the press and culture European dimension, as well;
- EU as a global actor: the developing countries, the human rights, the common foreign and security policy and the supporting of the neighbour countries will benefit from 49.5 billion Euros;
- administration (including the translation services): will have 5.75% of the total budget (49.8 billion Euros).

The 2007-2013 financial perspective is analysed in table 1 and figure 4 (Financial Perspective, 2005).

During the latest years, the EU accelerated the change rhythm and developed their own agenda for the future, which is able to define the main priorities for the next decade and on a longer-term.

The EU has to promote its values under the diversity and change growth and a complex global evolution. The competition for resources and markets becomes tight. The opening of new enormous markets creates multiple possibilities for the Europeans, but it will test the EU capacity to adapt to the structural changes and to manage their social consequences.

The globalisation encourages the scientific and technological progress. As a result, the EU can promote the knowledge, the mobility, the efficiency and the innovation. The EU can promote excellence and enhance development. As a result, the European budget has an important role, but the budgetary procedures are yet difficult. The European Commission ask for the budgetary procedure simplification, according to the Lisbon objectives (Sapir et.al., 2003).

The simplification of the budgetary procedures would represent a significant contribution to the EU working into a crucial moment of its evolution.

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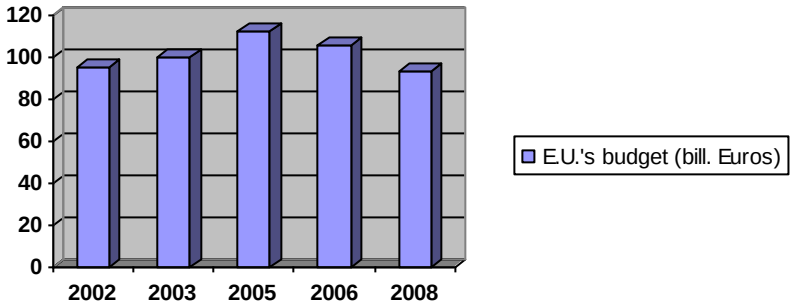

Figure 1: The European budget evolution (billion of Euros)

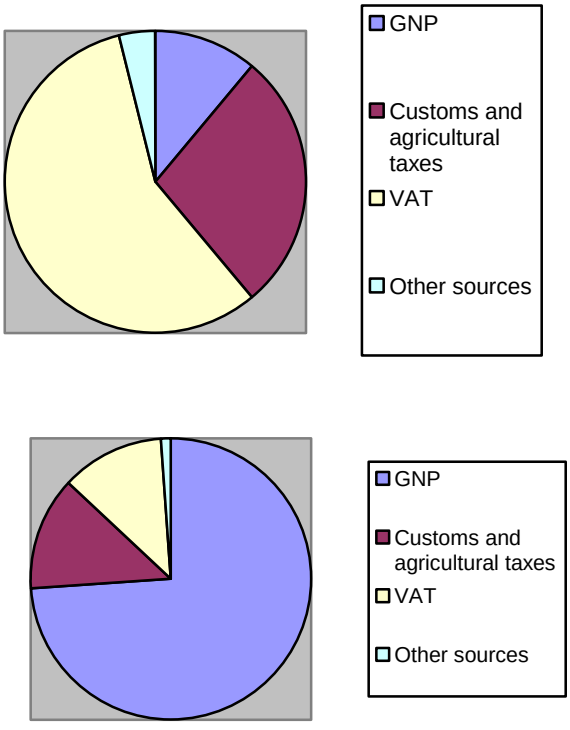

Figure 2: The EU budget revenues evolution % (1988-2013)

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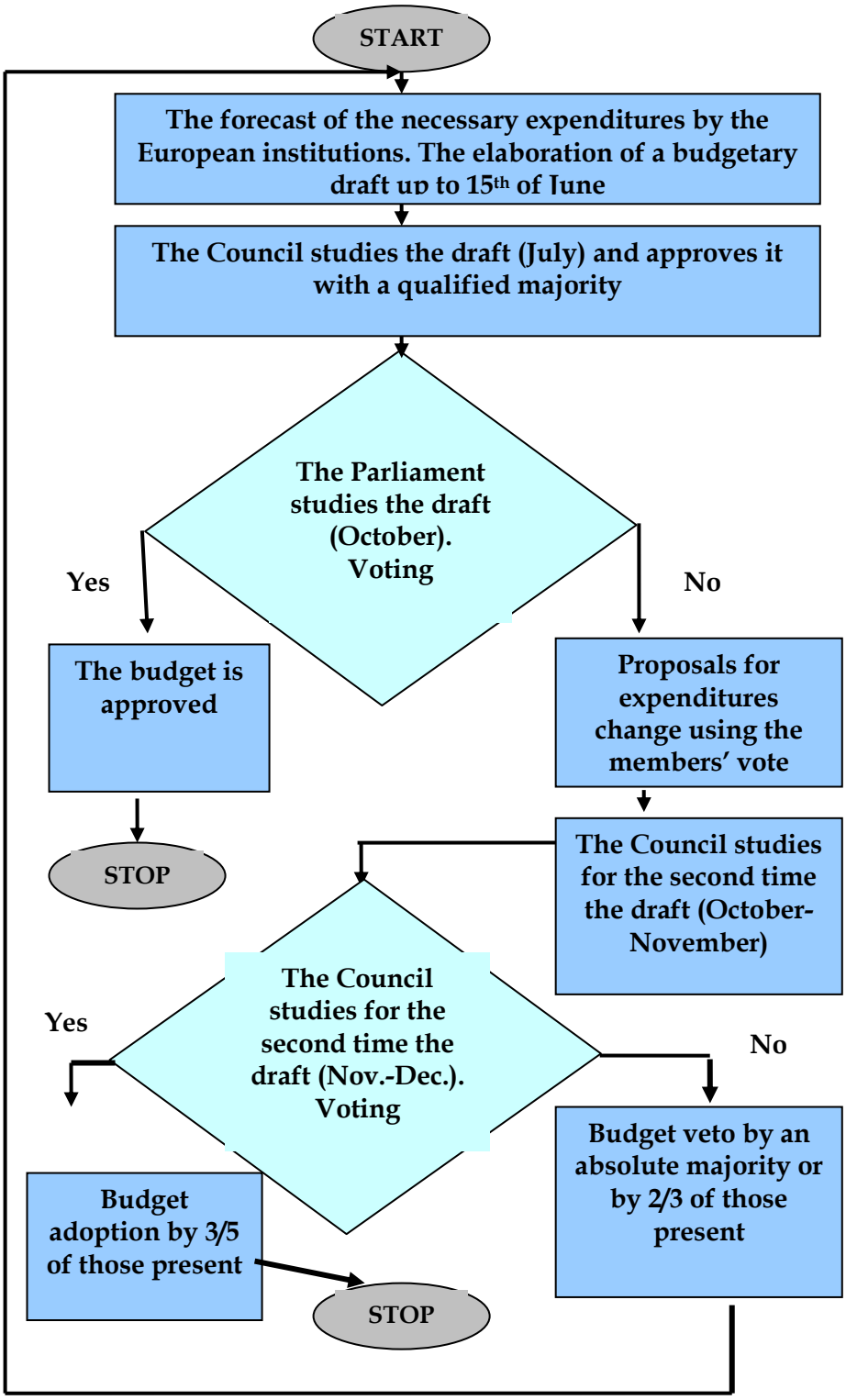

Figure 3: Budgetary procedure

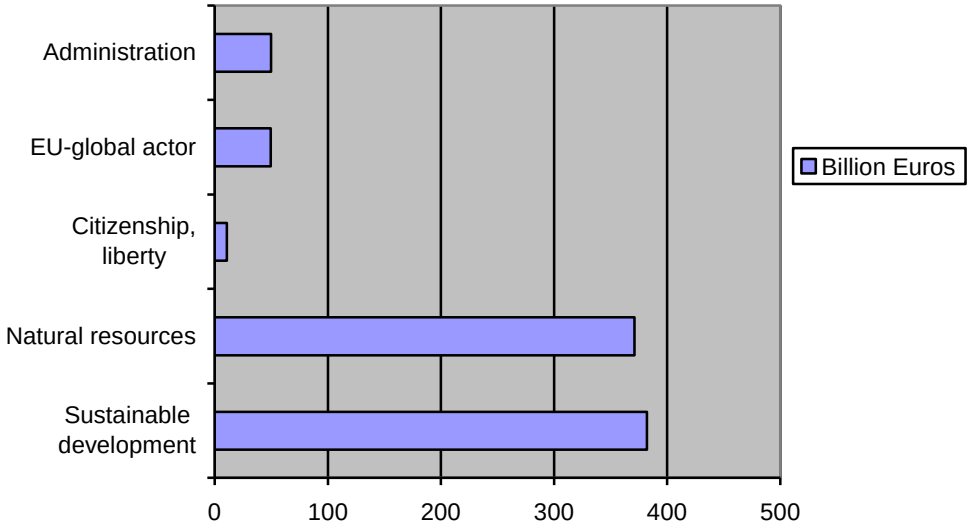

Figure 4: The objectives of the 2007-2103 financial perspective

Table 1: The 2007-2013 financial perspective (bill. Euros 2004)

Commitments to pay and payments	2007	2008	2009	2010	2011	2012	2013
Sustainable development	58.735	61.875	64.895	67.350	69.795	72.865	75.950
Natural resources management	57.180	57.900	58.115	57.980	57.850	57.825	57.805
Citizenship, freedom	2.570	2.935	3.235	3.530	3.835	4.145	4.455
EU- global partner	11.280	12.115	12.885	13.720	14.495	15.115	15.740
Administration	3.675	3.815	3.950	4.090	4.225	4.365	4.500
Setoffs	0.120	0.060	0060	0	0	0	0
Total	**133.560**	**138.700**	**143.140**	**146.670**	**150.200**	**154.315**	**158.450**

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TAX BURDEN AND COMPETITION IN THE EUROPEAN UNION – DOES IT CHANGE ?

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Abstract [2]

Enlargement of the European Union and the globalization process significantly affect tax systems and fiscal policies of individual countries. The level and structure of tax burden is often discussed in the European Union, as well as what is more profitable – keeping tax competition or tax harmonization. Tax environment and tax burden are significant factors when deciding about investment allocation. For international comparison, the easiest way is to use statutory tax rates but the result may be rather inaccurate. More convenient way of comparison is comparing implicit rates where we may express impact of taxes on economic activities according to their functions. The paper first summarizes basic theoretic approaches to tax competition. Then it is followed by an analysis of level and structure of tax burden in the European Union in the period of 1995 to 2006. There is emphasis on the dissimilarity of results depending on the type of tax rates used, namely statutory and implicit. The aim is to verify the hypothesis that value of tax burden (measured by tax quota) falls in time and that indirect taxes outweigh direct taxes in the tax burden of the European Union.

Keywords: *tax competition, tax burden, tax quota, implicit tax rate*
JEL Classification: *H2, F2, E62*

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1. Introduction

Tax burden has always been and always will be a subject of expert and lay discussions as it concerns every citizen as an individual living in the given country and it is also a significant factor for investors. Every state—in order to fulfill its basic functions—must concentrate financial means in the form of public revenues. With growing globalization and internationalization, the level of tax burden is also discussed, as well as what is more profitable – keeping tax competition or tax harmonization. Although there are various opinions on taxes and level of tax burden, tax revenues usually remain the most significant income of public budgets. To put it in a simplified way, in the field of taxes we evaluate positively everything that makes it easy for free movement of goods, services, persons and capital within the single internal market as well as those things that correspond to principles of optimal taxation.

The paper first summarizes basic theoretic approaches to tax competition. The analysis is based on work with expert studies published so far. It is followed by an analysis of tax burden in the European Union in the period of 1995 to 2006. There is emphasis on the dissimilarity of results depending on the type of tax rates used, namely statutory and implicit. The aim is to verify the hypothesis that value of tax burden (measured by tax quota) falls in time and that indirect taxes outweigh direct taxes in the tax burden. The primary source of data is publication Taxation trends in the EU published by the European Commission (2008). This report contains a detailed statistical analysis of the tax systems of the member states of the European Union.

2. Economic Theory and Tax Competition

In economic theory there are two basic opinions of level of tax burden and approaches to tax competition, namely:

- positive—putting an emphasis on so-called tax game;
- negative—claiming that tax competition is actually harmful because decrease in tax revenues leads to providing public estates lower than the socially optimal level[1].

[1] For details see Szarowská (2009)

Followers of the first trend - like Tiebout (1956, pp. 416-424) - claim that tax competition is an optimal conception for organization of tax systems and leads to increase in wealth of all individuals in the society as it has positive effects on economic growth of individual countries, on more effective allocation of resources, on increasing efficiency of government activities and public expenditures and more effective providing of public estates and services. Positive evaluation of tax competition is mainly connected to more effective use of public resources and limiting non-productive activities, such as rent-seeking that are linked with the decision-making in the public sector. The stream starting with Tiebout theorem claims that competition enlarged by mobile households (or mobile companies) increases wealth of the society and thus, it is effective. Tax competition lies in the idea that government must have taxes low enough in order to attract sufficient number of citizens (or companies) but at the same time to provide sufficiency of public estates[1], otherwise citizens use the choice of "voting with the feet" and move to an area that is more convenient for them.

On the contrary, according to Stiglitz (1997), there are many reasons to be skeptical of this hypothesis. The main reason lies in his limited fiscal competition between units, because their number is limited in each division, and other authors also argue that in reality is "voting with the feet" difficult, since there are language barriers, administrative, family ties, etc. It is also necessary to mention the fact that the collected taxes (property, local, income and sales taxes) make distorsion effects, which can together with externalities lead to inefficiencies of allocation decisions at local level.

Tiebout´s hypothesis further elaborated Richter and Wellisch (1996, pp. 73-93), when extended model of so-called mobile companies, which may behave similarly and also can "vote with their feet". From this perspective, the concept of tax competition is positive and there is no reason to change it.

[1] One of the reasons should be mechanism of decision of a voter, taxpayer and citizen of a certain region (town or village) according to their real preferences towards public estates on the one hand, and according to their will to pay taxes (local) on the other hand. Tiebout´s hypothesis assumes competitiveness and competition between communities when finding citizens´ preferences.

On the other hand the representatives of the second trend - such as Oates (1973, pp. 188-191) - claim that tax competition is basically harmful as the decrease of tax revenues leads to providing public estates lower than the socially optimal level. This approach mainly examines the impact of capital mobility on the level and structure of tax rates. The authors emphasize negative impact of capital mobility on tax rates of capital and level of public expenditures.

Also Grifith and Klemm (2004) confirm that tax competition may lead to a "race to the bottom" and the lack of provision of public goods and services from the state - the result is the sacrifice of welfare state, and illustrate their argument using the example of countries such as France, Germany and Sweden, which are due to existing tax competition forced in recent years to reduce the scope of the "welfare state".

More generally, the question of tax competition between governments and its impact conceived as a question of size of the state of the economy, the size of the different levels of power, to the extent desired redistribution processes. These two opposing views concerning the issues of tax competition between different degrees of economic integration, including integration in the European Union. Oates points out that the result of tax competition may be a tendency towards ever-lower efficiency provision of local public goods. Reduced if the local government taxes to attract mobile capital, public expenditures below the level where the marginal social benefits of these programs equal marginal costs. This can occur especially in programs that do not directly benefit the local business climate. Oates concluded that such conduct is inefficient governments, is based on the argument that no government eventually fails to win this fight competitive advantage (principle of prisoner's dilemma). Result of tax competition, therefore, is that all communities are worse off than if the political leaders used the normal maximization rule (the marginal benefits equal marginal costs).

Other sources indicate that competition among governments may lead to the fact that the government stop providing certain public goods. As points Wilson (1999, pp. 269-304), concept of "harmful" tax competition to attract investment was later applied to labor and environmental standards, reducing social security and competition in indirect taxes on cross-border consumer . Oates´s concept of harmful tax competition was supported by a number of models that describe the consequences of

behavior noncooperating regional governments. The success of any single government in attracting the tax base in the form of new residents and businesses leads to erosion of the tax base in other regions. The resulting negative fiscal externalities are reflected in particular in export tax when the government taxed income non-residents, or erosion of the tax base, thus moving the actual economic activity in tax-favorable sites, respectively transfer declaration profits.

The opinions and concerns of insufficient amount of public expenditures may be opposed with data stated in Table 1. Even though there has been tax competition not only in Europe and there could be pressure on decrease of expenditures for the reason of insufficient amount of public revenues, total expenditures of the public sector have not decreased, on the contrary—since 1870 they have noticeably increased.

Table 1 Growth of General Government Expenditure in % of GDP (1870 – 2007)

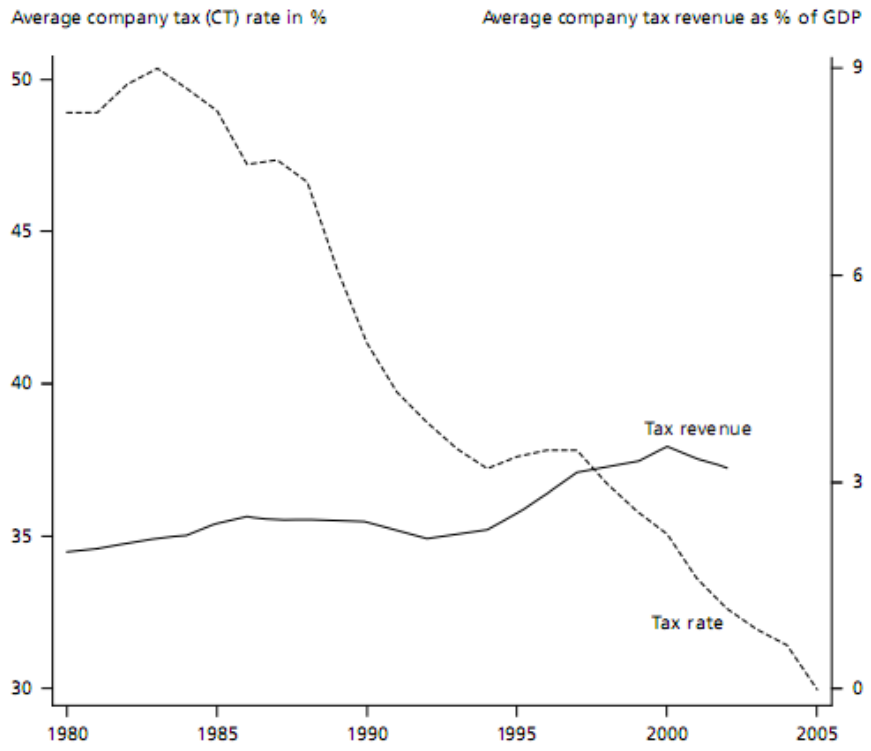
	1870	***1913***	***1920***	***1937***	***1960***	***1980***	***1990***	***1996***	***2007***
Austria	10.5	17	14.7	20.6	35.7	48.1	38.6	51.6	49.7
France	12.6	17	27.6	29	34.6	46.1	49.8	55	53
Germany	10	14.8	25	34.1	32.4	47.9	45.1	49.1	44.3
Japan	8.8	8.3	14.8	25.4	17.5	32	31.3	35.9	36.5
Norway	5.9	9.3	16	11.8	29.9	43.8	54.9	49.2	41
Sweden	5.7	10.4	10.9	16.5	31	60.1	59.1	64.2	53.8
UK	9.4	12.7	26.2	30	32.2	43	39.9	43	44.6
USA	7.3	7.5	12.1	19.7	27	31.4	32.8	32.4	37.4
Average	8.775	12.125	18.413	23.388	30.038	44.05	43.938	47.55	45.0375

Source: The author´s own compilation according to OECD data and Tanzi, V., Schuknecht, L. (2000, p.6)

New member states are often criticised for their "tax-friendly policies" which is usually proven by lower rates as well as by total revenues mainly from taxation of companies´ profits. However, Kubátová (2008) opposes that motivation for changes in tax rates in these countries is not to get competition advantage or to adapt to surrounding countries, but the effort to "fill" public budgets.

Based on the above mentioned theories we may ask whether tax decrease (which is usually a result of tax competition effect) really always means decrease of tax collection.

Figure 1 Average corporate tax rates and revenues in EU-15 (1980−2005)



Source: Ganghof, S., Genschel, P. (2007, p. 6)

The Figure 1 shows relation between amount of average corporate tax and revenues of state budget in the countries of the EU-15 in the period from 1980 to 2005, proves that it is not the case. It is apparent that in spite of significant decrease of rates there was no decrease of tax revenue, but quite the contrary—it increased, and this development may be interpreted as application of concept of Laffer curve[1] in practice.

[1] Laffer curve expresses dependence of tax revenue on rate of taxation (or tax rate). It proves that maximum rate of taxation does not mean maximum revenue of public budgets.

It is not possible to unambiguously confirm or to disprove the usefulness or harmfulness of tax competition, either theoretically or empirically. However, it should be emphasized that tax competition is not deliberately or artificially created but it is a result of unsuccessful harmonization negotiations and it results from various types of tax systems of individual countries.

3. European Union approach to taxation and tax competition

Enlargement of the European Union and the globalization process significantly affect tax systems and fiscal policies of Member States. At the moment the European Union (EU) includes twenty-seven member states. As it proclaims, its functioning is connected to the single internal market, which is defined as area without inner borders and within this area there are four kinds of freedom ensured, i.e. free movement of goods, persons, services and capital[1]. Member states of the EU have independent tax systems and use independent tax policies. To the presented aims of tax policy of the European Union count support of harmonic development of economic activities, continuous and balanced development, increasing stability, growth of living standard and close collaboration of member states. The aim or effort of the European Union is not to unify national systems of taxes and contributions, but to ensure their mutual comparability in accordance to accepted contracts established in the European Union[2]. The result is twenty-seven tax systems and systems of taxation, whose configurations result from various economic, sociological, historical and other factors. With the growing globalization and

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When increasing rate of taxation, tax revenue only increases up to a certain point (Laffer point), and when increasing the rate of taxation further, tax revenue begins to fall. That is, if rate of taxation (tax rates) is too high, tax subjects are discouraged from increase in performance, work and savings, or they move their adresses outside the given state, which means decrease of tax revenue in the end.

[1] Široký (2009, p. 21).

[2] Tax policy belongs to policies with shared authority. Member states may issue their own legislation only when there is no common European arrangement, possibly as its amendment. Tax practice is more or less a summary of factually independent tax policies of individual member states of the EU.

internalization there are more and more discussions about what is more profitable – keeping tax competition or effort to reach tax harmonization.

Nowadays there are boundaries for individual types of taxes determined in the EU as follows:

- personal incomes taxes remain in the authority of national governments;
- indirect taxes—directly affecting functioning of the single market—attract a lot of attention and efforts to be harmonized;
- corporate taxes should help free movement of capital and should not cause harmful competition between individual states;
- social and pension systems should eliminate discrimination of residents of individual states and should not be an obstacle of free settling and investing in any member state of the European Union.

Current tax policy of the EU is focused on harmonization of indirect tax rates (VAT and excise taxes) that may directly affect the market. In the field of direct taxes, tax competition between individual states is noticable in spite of effort to harmonize them. Thus functioning of the single market in the European Union is disturbed by many problems related to business activities realized across the borders of individual member states. Apart from other things, the reason is substantial dissimilarity of tax systems used in member states and related dissimilarity of effective tax burden of business units in individual member states. This mainly applies to incomes and property taxes and obligatory payments to social welfare. The existing situation is caused not only by fiscal reasons but it is caused deliberately in many cases with the aim to attract foreign capital to develop business activities in the given state by favourable tax regime.

4. Tax Burden and its Measuring

Tax is an obligatory amount determined by law in advance, by which a part of nominal income is taken away from a tax subject on the non-refundable principle.

The question is what rates or values should be the tax burden comparison based on. The easiest choice is comparison of statutory tax rates as a statutory tax rate is the legally imposed rate. This comparison is often used because of its simplicity and good availability of data. It is commonly used for comparing incomes and excise taxes. However, we must pay attention to the fact that statutory tax rates may include not only so-called nominal tax rates but also temporary or permanent complementary rates or allowances and moreover, in a great number of states taxes are collected on more levels of governments. Thus their organization may vary in the countries. Therefore, statutory tax rates may not be an objective indicator for the purposes of mutual international comparison.

4.1 Implicit Tax Rates

An appropriate standard for comparison of effective taxation seems to be implicit rates, which are tax rates that consider not only size of statutory tax rates but also other aspects of tax systems determining total amount of effectively paid taxes (for example differently constructed tax base). Implicit tax rates are calculated in order to provide better information on the tax burden on an economic activity.

Implicit tax rate (ITR) = T / Y x 100 [%]

Where T is tax duty and Y is gross income from which tax is counted.

It is obvious that no tax rate will be consistent with ITR in case when a tax allowance is included in tax construction (non-taxable part of tax base or deductible item) or tax relief. Comparison of statutory and implicit tax rates shows tax incentives provided by authorities in individual countries; comparison of implicit tax rates across individual states provides indications whether there are significantly dissimilar tax approaches to companies with the same characteristics but located in various countries. Such data may prove whether great differences of statutory tax rates do not only hide minor differences in implicit taxation, as countries with high statutory tax rates may decrease size of tax base or soften tax enforceability.

Eurostat has used implicit tax rates for evaluation of structure of a tax system since 1995. In this way, we may express impact of taxes on

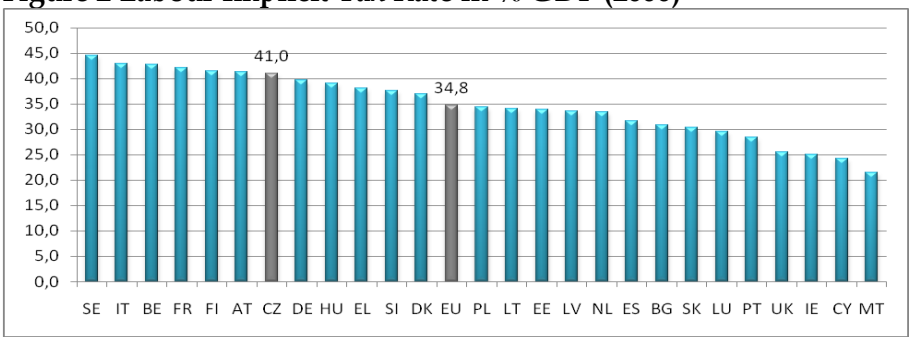
economic activities according to their functions (work, capital, consumption).

4.1.1 Labour Implicit Tax Rate

Labour implicit tax rate represents a proportion of taxes and statutory insurance (paid from labour incomes by employers as well as employees) to total labour costs (total volume of compensations paid to employees on the territory of the given state including possible taxes from earnings excluding tax revenues from social transfers).

ITR_{labour} = *Taxes on labour / (compensation of employees + wage bill and payroll taxes)*

Figure 2 Labour Implicit Tax Rate in % GDP (2006)



Source: The author´s own compilation based on data from Eurostat

The highest labour tax burden is in Sweden, followed by Italy and Belgium. Generally, labour tax burden is steady in the European Union, and higher burden may be found especially in the countries of the original EU-15. According to the data of 2006, the Czech Republic is the seventh most expensive country of the whole European Union.

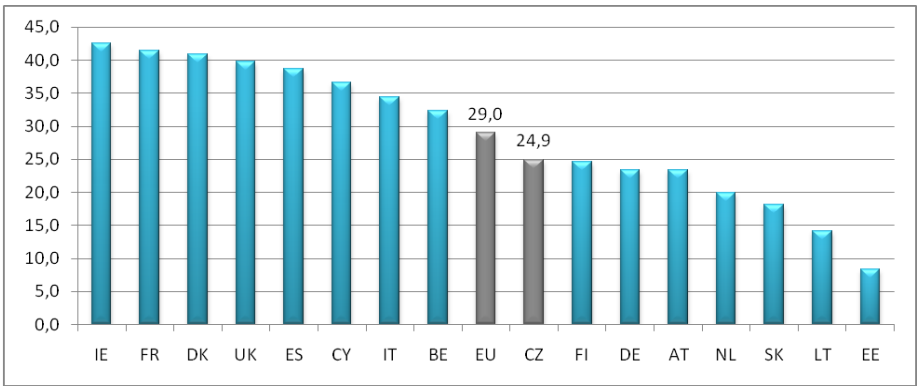
4.1.2 Capital Implicit Tax Rate

Tax environment is a significant factor for investors when deciding about allocation of their investments. Despite harmonization efforts of the European Union there is a hot tax competition in the area of these taxes regarding to high mobility of capital. The existing situation is caused not only by fiscal reasons but also by efforts to attract foreign capital by favourable tax regime. Capital implicit tax rate is calculated as proportion of collection of taxes from revenues of savings and investments of

households and companies to volume of worldwide revenues from capital and enterprise of domestic tax residents that is liable to domestic taxation. When comparing values and development of capital implicit tax rates there are great differences between member states of the EU. In general terms, the (overall) ITR on capital can be defined as follows:

$ITR_{capital}$ = *Taxes on capital income / potentially taxable capital income*

Figure 3 Capital Implicit Tax Rate in % GDP (2006)



Source: The author´s own compilation based on data from Eurostat

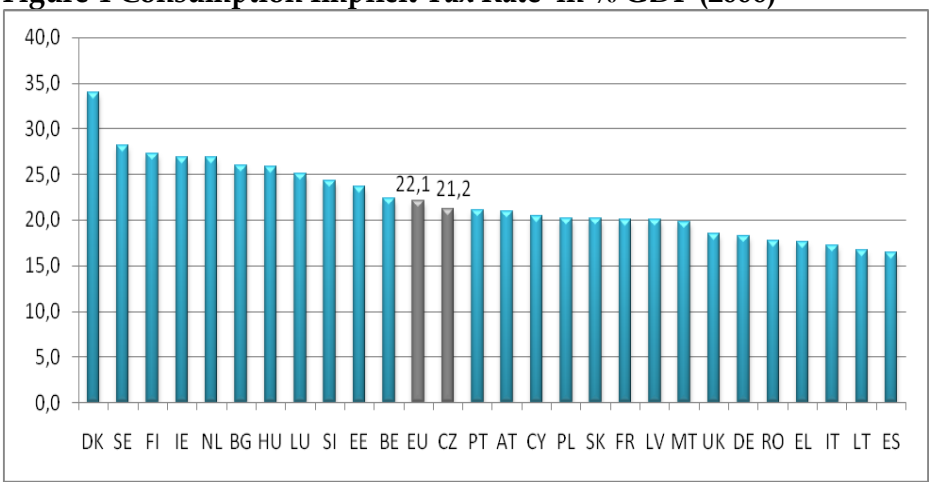
At one end there is Spain and Ireland where there was significant increase of capital implicit tax rate in the monitored period (by 18.5 per cent and 16.8 per cent respectively), at the other end there is Estonia and Slovakia where there was a great decrease in connection to introduction of equal tax (by 17.2 per cent in both countries). Estonia is by far a country with the lowest capital implicit tax rate (8.4 per cent), on the other side of the scale there is Ireland (42.5 per cent) and France (41.5 per cent).

4.1.3 Consumption Implicit Tax Rate

Taxes on consumption are defined as taxes levied on final consumption goods. Consumption implicit tax rate is calculated as proportion between total revenues from taxes from consumption (for example in the Czech Republic mainly VAT and excise taxes) and total final costs of households of consumption on the territory of the given state.

$ITR_{consumption}$ = *Taxes on consumption / final consumption expenditure of households*

Figure 4 Consumption Implicit Tax Rate in % GDP (2006)



Source: The author´s own compilation based on data from Eurostat

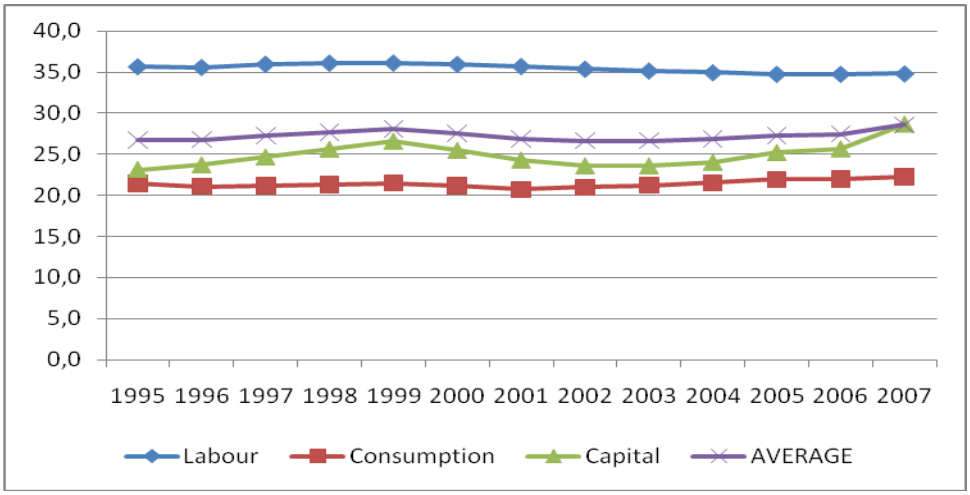
In 2006 the consumption implicit tax rate in the Czech Republic was 21.2 per cent, which is almost one per cent below the average value of the EU-27 (22.1 per cent), value of the rate in Poland was still one per cent below the rate in the Czech Republic. In the implicit consumption tax burden there are not such great differences as it applies for other types of taxation. One of the reasons is probably fact that consumption is easier to be taxed, even if the payment moral is lower.

4.1.4 Implicit Tax Rates in the EU – Summary

The last graph summarizes what current trends there are in the tax policy of the European Union. It is obvious from the graph that in the EU the labour implicit tax rate is higher than capital and consumption tax rates. Labour is taxed above average especially because it is not much mobile, compared to other production factors. The capital implicit tax rate does not fall, but it tends to rise in the long term in spite of decreasing nominal rates. The reason for this is expansion of tax base and partially the impact of fight against tax evasions. The lowest is the consumption implicit taxation when the reasons may be social reasons as well as the fact that

consumption is easier to be taxed and possibility of tax evasion is lower than in case of more mobile tax bases - labour and capital.

Figure 5 Implicit tax rates in EU in % GDP (1995 –2007)



Note: calculation used arithmetic average data
Source: The author´s own compilation based on data from Eurostat

4.2 Tax Quota

As already mentioned, international comparison of actual taxes does not say much with regard to different construction of taxes in individual countries. Level of tax rate is only one of the variables. Resulting values substantially affect differently constructed tax bases, from which the tax is calculated, as well as systems of exceptions and deductible items that vary in every country. As recommends Kubátová (2005, 142-50) for international comparison of tax burden we may use a tax quota . This is a macroeconomic indicator that is calculated as "proportion of tax and duty revenue and to GDP" in current prices.

*Tax quota = tax revenues / GDP * 100 [%]*

It actually represents a proportion of gross domestic product that is redistributed by means of public budgets. As it uses data of really collected tax revenues to GDP, it provides information about value of total effective taxation in the given country. Depending on the "extent" of numerator (i.e. "extent" of public revenues considered), there is a simple and a compound

(sometimes called overall) tax quota. Simple tax quota includes only those incomes of public budgets that are really labelled as taxes. With regard to the fact that tax revenues (quasi taxes) are in fact also incomes from the obligatory payments to social welfare, contributions to state unemployment policy and obligatory payments to health insurance system, the relevant indicator for international comparison is the compound tax quota that also includes these incomes. Compound tax quota (CTQ) is calculated as "proportion of revenue from tax, duty and payments to health insurance and social welfare systems to GDP" in current prices.

*Compound tax quota = tax revenues + quasi taxes / GDP * 100 [%]*

As it results from the formula, basic factors affecting value of tax quota is the amount of gross domestic product and volume of taxes collected[1]. Total effective burden is regularly monitored by Eurostat and published in the form of tax quota.

4.3 Tax Quota and Its Development

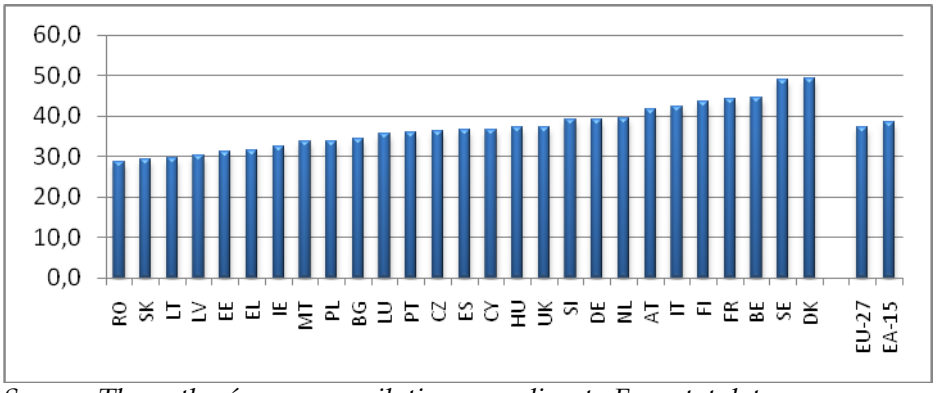
Total effective burden is regularly monitored by Eurostat and published in the form of tax quota. In 2006 compound tax quota in the European Union reached its average value of 37.1 per cent, which is higher by twelve per cent than in the US or Japan. Similar development may have been observed since the 1970s when there was an increase in the 1980s and at the beginning of the 1990s, and the main reason for this was mainly the need to cover higher and higher public expenditures. This problem of expanding state activity is described by so-called Wagner´s law[2]. After the

[1] For tax quota in detail see SZAROWSKÁ (*2008*, pp. 168-77)

[2] After Adolf Wagner, a German economist of the 19th century. When incomes per capita increase in the economy, relative size of public sector also grows. The base of this statement was empirical. Wagner observed growth of public sector in many European countries, the United States and Japan in the 19th century. Forces causing these movements in proportion of public expenditures to GNP were explained in connection to political and economic factors. Wagner explained the existence of services of public sector, such as legal services, police and banking, by increasing complexity of manufacturing relations. Banking, provided by state banks, is to connect those who offer surplus funds with those who have the best opportunities to invest. Growth of public expenditures on education, recreation and culture, health and welfare was explained by Wagner with regard to their income elasticity of demand. For Wagner these services represented superior or income-elastic needs. Therefore, together with growth of real incomes in the economy (i.e. with increase of GNP) there is an increase in public expenditures on these services more than

Maastricht Treaty and the Stability and Growth Pact[1] were adopted, there were changes in fiscal policies of some countries related to the effort to accept Euro, and subsequently there was decrease of public expenditures, which was indirectly projected also by decrease of compound tax quota.

Figure 6 Compound tax quota in the EU in % GDP (in 2006)



Source: The author´s own compilation according to Eurostat data

What is important is not only amount of the indicator observed but value and ratio of individual components as well. According to the structure of tax quota, i.e. according to the fact which taxes bring the highest incomes into the public budgets, member states of the European Union may be divided into three groups. The following table shows that in sixteen countries the main source of public revenues are indirect taxes, i.e. taxation of consumption. In six countries the highest revenues come from direct taxes (mainly personal and corporate incomes taxes) and in five countries the basic source of public budgets are payments for social welfare[2].

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proportionally, which is explained by an increasing proportion of government expenditures to GNP.

[1] The Stability and Growth Pact is an agreement between members of the Eurozone regarding coordination of their budget policies so as not to threaten stability of Euro or to increase inflation in the Eurozone in case of possible high deficits of state budgets. The agreement partly applies to states of the European Union that have not accepted Euro as its currency.

[2] When we compare development in the Czech Republic with OECD countries we find, that social insurance creates a decisive share of tax revenues in almost all OECD countries. OECD publication explains the increasing share (from 18 per cent in 1965 to 26 per cent in

Table 2 Division of EU countries according to the main tax resource in 2006

Main Source of Tax Revenues		
Indirect Taxes	***Direct Taxes***	***Social Contributions***
Bulgaria, Estonia, Ireland, Italy, Cyprus, Lithuania, Latvia, Hungary, Malta, Poland, Portugal, Austria, Romania, Greece, Slovenia, Spain	Belgium, Denmark, Finland, Luxembourg, Sweden, United Kingdom	Czech Republic, France, Germany, Netherlands, Slovakia

Source: The author´s compilation according to Eurostat data

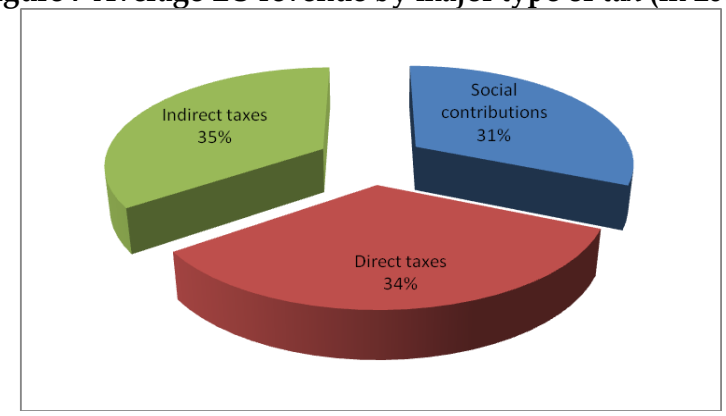
Figure 7 displays the average shares of revenues raised from direct and indirect taxes and social contributions across the European Union. It also confirms a standard, generally used economic rule which prefers indirect taxes[1] to direct ones. As points Široký (2009) high income taxes may discourage employees from earning more and force companies to take their profits into countries with the lowest tax rates. Therefore, many economists claim that the best taxes for the economy are those from consumption. Their level may threaten groups with low incomes but this may be compensated by special social benefits. Moreover, they are transparent[2].

2003) mainly by pressure on increase of social transfers related to increasing unemployment, aging population and greater government expenses on health service.

[1] Indirect taxes are value added tax, excise tax, duty and other indirect taxes.

[2] Direct taxes are imposed on a concrete subject that may not transfer this tax on somebody else, e.g. income tax. Indirect taxes are also imposed on a concrete subject, but may be transferred on another one.

Figure 7 Average EU revenue by major type of tax (in 2006)



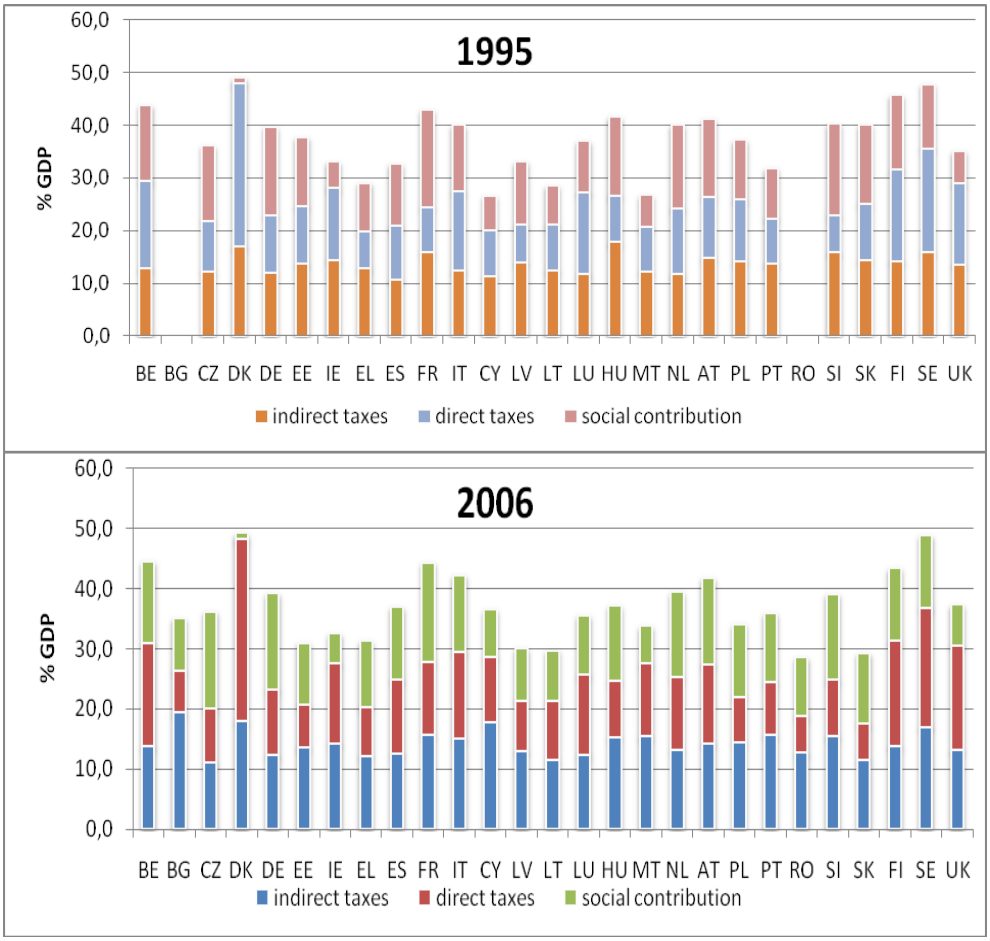
Source: The author´s compilation based on Eurostat data

However, individual Member States have very different structures according to the type of tax. New Member States tend to rely to a smaller extent on direct taxation. Direct taxes only account for around 20 % of total revenues in Bulgaria, Romania and Slovakia while they represent more than 60 % in Denmark. The share of indirect taxes varies from 30 % in the Czech Republic and Belgium to 56.5 % in Bulgaria. Social contributions only bring 2 % of total revenues in Denmark, but 44 % in the Czech Republic[1].

Figure 8 shows development and changes in structure of compound tax quota in Member States in years 1995 and 2006.

[1] For details see Taxation trends in the European Union (2008)

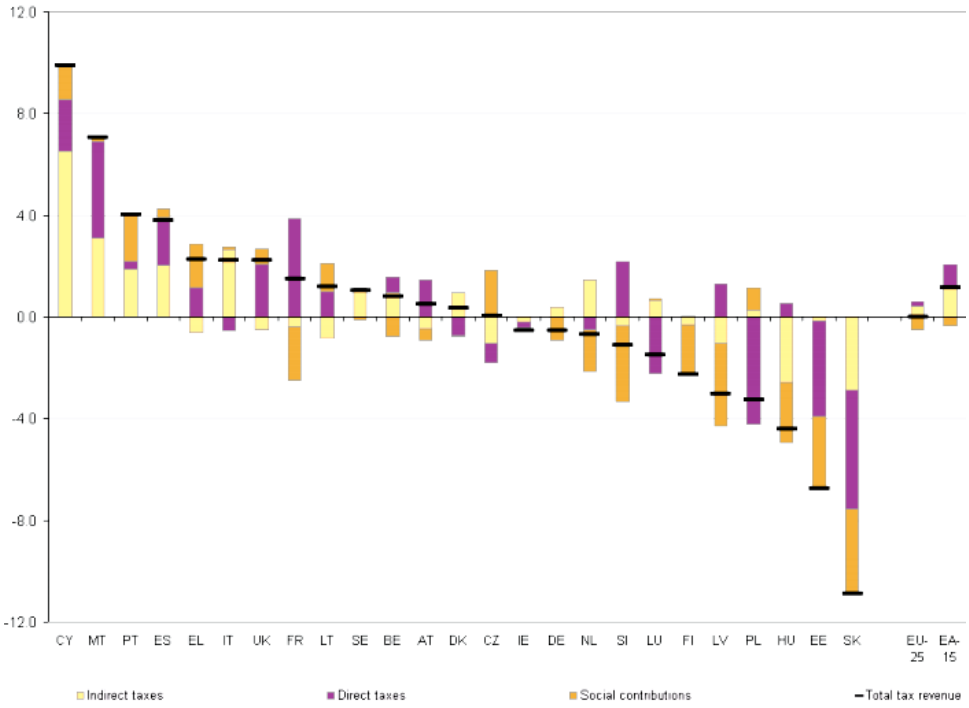
Figure 8 Components of compound tax quota in the EU in % GDP



Source: The author´s compilation based on Eurostat data

Although taxes are cross-cutting tool connected to many sectors of public life and government policy (i.e. social policy, environmental policy, education, health), the main task is still to ensure sufficient revenues for financing public goods and services. Each government must choose the own tax strategy and create efficient system of taxes (so called tax mix). Globalization and other socio - economic changes are reflected in changes in the preference of the structure of tax revenues. Next figure decomposes the change in the overall tax burden into (positive or negative) changes of its three major components.

Figure 9 Evolution by major type of taxes 1995-2006, differences in % of GDP



Source: Taxation Trends in the European Union (2008)

The black line shows the change in the overall tax to GDP for all the countries. The figure highlights that, in the period under consideration, Member States only shifted taxation from one type of taxes to another. Examples of changes in the tax mix are the Czech Republic and Poland, which shifted the burden of taxation from taxes to social contributions, and France, Slovenia, Latvia, and the Netherlands, which did the opposite. Bulgaria and Romania, too, shifted taxation in a clear way towards indirect taxation, but this is not virble in the figure owing to the lack of data for 1995. In more recent years, there has been a lively discussion about the merits of a shift towards indirect taxes, and such a measure was taken, for instance, in Germany in 2007, when part of a VAT increase was used to finance a cut in social security contributions.

The present tax policy of the EU prefers revenue from indirect taxes (e.g. VAT and excise taxes), value of indirect taxes has continuously

increased since 2001. Development of revenue from direct taxes has been fluctuating. On the other hand, the value of revenue from quasi taxes, mainly from social welfare payments, has a steady development in the countries of the European Union and it only decreases very slowly.

5. Conclusions

With growing globalization and internationalization, the level of tax burden is often discussed. In economic theory there are two basic opinions of level of tax burden and approaches to tax burden and competition and its impact on capital flows, economic activity and tax base. The first opinion prefers tax competition and „tax game" because of positive effects on public expenditure, reducing of noneffective activities. The second opinion highlights the impact of tax competition in a negative way and prefers tax harmonization and puts stress on negative influence of capital mobility on capital tax rates and level on public expenditure.

For comparison of tax burden, the easiest way is to use statutory tax rates but the result may be rather inaccurate. More convenient way of comparison is comparing implicit tax rates that consider not only size of statutory tax rates but also other aspects of tax systems determining total amount of effectively paid taxes. Eurostat has used implicit tax rates for evaluation of structure of a tax system since 1995. In this way, we may express impact of taxes on economic activities according to their functions (work, capital, consumption). Published data show current trends in the tax policy of the European Union. It is obvious that in the EU the labour implicit tax rate is higher than capital and consumption tax rates. Labour is taxed above average especially because it is not much mobile, compared to other production factors. The capital implicit tax rate does not fall, but it tends to rise in the long term in spite of decreasing nominal rates. The reason for this is expansion of tax base and partially the impact of fight against tax evasions. The lowest is the consumption implicit taxation when the reasons may be social reasons as well as the fact that consumption is easier to be taxed and possibility of tax evasion is lower than in case of more mobile tax bases - labour and capital.

The complex indicator providing an international comparison of tax burden is a tax quota that compares total implicit taxation in individual countries by measuring a proportion of effectively collected taxes on gross

domestic product. Total effective burden is also regularly monitored and published by Eurostat. Research has proven that value of tax quota falls in time and indirect taxes prevail over the direct ones. In sixteen countries of the EU main resources of public revenues are nowadays indirect taxes, i.e. taxation of consumption. In six countries the greatest revenues come from direct taxes (especially personal and corporate income taxes) and in five countries the basic source of public budgets are payments for social welfare. In the process of decreasing taxes, thus increasing competitive advantages over the neighbouring states, the most active countries are those in the Middle and East Europe. Both trends mentioned above appear in the member state of the European Union to various extent. When assessing countries according to statistical data, we find great differences not only in tax quota but especially in its structure and construction of individual taxes.

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THE EUROPEAN BUSINESS LAW BETWEEN TRADITION AND INNOVATION

1. The heads of the European business law.
2. The harmonisation of the European business law between tradition and innovation.
3. The harmonisation of the European business policy for companies.
4. The recognition of the European companies.

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Abstract

The paper deals with the importance of the European harmonised law system during the present and the future evolution. For the beginning, we define and analyse the fundamental elements of the European law and provide a history of the European law's evolution.

A distinct part of the paper deals with the European law institutions, especially the Court of Justice which defines and influences the juridical system analysis and its specific instruments.

The main conclusion of the paper is that the harmonised law system represents a challenge for the EU 27.

1. The statute of the International Court of Justice, in article no.38, marks out the greatest part of the international law heads (D. Sandru, 2006). These heads can be used as heads for the community law, as well. It is a result of the idea that the origin of the community law can be

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found in the constitutive treaties, in the institutions and the Member States' practice and in the regulations' renewal, which is made by the Court of Justice.

From a quantitative point of view, the greatest part of the community law's heads is represented by the constitutive treaties (as primary or main heads) and by other rules which are connected to the adopted documents (acts) by the community institutions, in order to apply these treaties (as derivative or secondary heads).

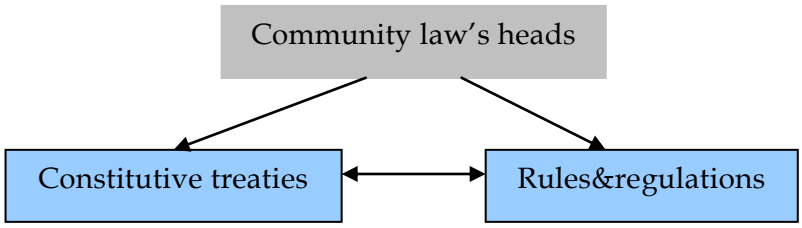

Figure 1: Primary and derivative law heads

From a general point of view, the community law is defined as:

- all low regulations applied in the community law order, even if some of them are not written;
- the general law principles or the jurisprudence of the Court of Justice;
- the law rules which come from the ex- community law order (from the community's foreign relationships);
- the complementary law, which comes from the conventional documents signed by the Member States in order to apply the treaties.

The European primary community law consists of three institutive treaties of the Communities, which were permanently modified, completed and adapted to the new realities.

This process leads to the implementation of a lot of conventional instruments, which are specific to a Community or to another, or which are common for all the three.

There are two primary law heads. The *originating treaties* come first of them all. Under the European Coal and Steel Community, the main instrument was the Paris Treaty signed on the 18th of April 1951, and came

into force on 23rd of July 1952. This Treaty is renewed by numerous additional annexes and protocols which have the same value as the treaties, sometimes. Such documents are the protocols on the Court of Justice's status and on its privileges and immunities.

Moreover, there are two Rome Treaties for the European Economic Community and EURATOM signed on ther 25th of March 1957. They are accompanied by numerous annexes and protocols, including the most important one connected to the European Investment Bank's statute. Other important protocols are those connected to the Court of Justice's privileges and the immunities signed on 17th of April 1957 and came into force on 14th of January 1958.

The treaties and the modifying documents are difficult to present exhaustively because the initial treaties' changes and the completions result only from the treaties themselves, from a large and diverse number of other documents (normative documents) of the community institutions (under the simplified revision procedures) or from other particular documents (specific decisions which ask for a Member States' ratification).

The most important changes which had relevance on the three communities are the following:

- the instruments which implement the common institutions of the three communities (the Convention related to some common institutions, which was ratified and came into force at the same time with the Rome Treaties; the treaties which created a unique Council and Commission of the Communities and Unique Protocol on the privileges and immunities which were signed at Brussels, on 8th of April 1965, and which came into force on August 1967);
- the treaties connected to the Communities' budgets, in order to grow the financial power of the European Parliament (Luxembourg Treaty signed on the 22nd of April 1970, which came into force on 1st of January 1971 and the Brussels Treaty signed on the 22nd of July 1975, which came into force on 1st of June 1977);
- the Decision signed on the 21st of April 1970 with regard to the replace of the financial contributions with the community own resources. This decision was based on the articles 231 of the European Treaty and came into force on 1st of January 1971. Nowadays, it is replaced by the decision signed on the 24th of June 1988;
- the multiply and diverse adhering documents adapting and completing the previous documents;

- the European Single Act adopted in Luxembourg and Hague on 14th of February 1986 by 9 Member States. On 28th of February 1986, Italy, Denmark and Greece adopted the same document. The European Single Act modified the three constitutive treaties, completed the European Treaty and created a juridical basis for the European Council and the European politic cooperation;
- the Maastricht Treaty signed in 1993;
- the Amsterdam Treaty signed in 1999;
- the Nice Treaty signed in 2003.

The derivative heads of the European community law represent the institutions' unilateral documents. They are not in the presence of a conventional law, but in the presence of an "institutionalised" law, which represents a set of rules (documents and norms which are defined by the community in order to apply the treaties).

The main characteristic of the European Communities is that the capacity to create law rules is institutionalised. That means it is conferred to some specific institutions and organisms which have to implement it under an established procedure. As a result, it is a normative power which is comparable with the legislative power. The Court of Justice uses the terms of the legislative system of the Communities, especially in connection with the European Treaty.

The official designation of the derivative (secondary) heads is given in Article 234 of the Treaty: "in order to execute missions under the Treaty's conditions, the Council and the Commission establish regulations and directives adopt decisions and formulate recommendations and notices". Moreover, there is a list of different document categories and a systemic presentation of the specific juridical effects of everyone.

We can consider that the nature of an act doesn't depend on its name and the authority which adopted it, but it depends on its object and content.

The regulation represents the main head of the community law. It is used by the Community legislative power. Its juridical effects are defined in Article 249 of the Treaty, and it has comparable effects as the national laws.

The regulation (and the law) has a general influence. It contains general and impersonal stipulations which are abstract. This is the normative working condition for the treaty system. It hasn't been confused with the decision (D. Sandru, 2006).

Another characteristic of the regulation is its obligatory character. The recommendations and the notices "don't oblige" are stipulated in the Article 249 of the Treaty.

The regulation foreseen in the directive forbids derogatory or incomplete application measures.

Under the regulation, the community authority has a complete normative power able to prescribe a result and to impose the ways of implementation, as well.

The regulation is effective in all Member State and directly focused on their internal law consisting on their subjects' own rights and duties.

The directive represents a form of the two steps process applied legislation. It seems to belong to the law technique framework but it is completed by the decree application measures. The treaties' redactors option circumscribed the directive application measures to provide instruments for the creating of a harmonised juridical framework of particular institutions, a formula based on charge division and the national levels cooperation with the community.

The directive goals should be more flexible and trusty as far as the national peculiarities are concerned being interested in the community special needs to provide the legislation in accordance.

The 249 Article of the Treaty stipulates that "the directive makes the connection between the recipient Member State and the goals, allowing the national authority competence to establish the instruments and the way, laying emphasis on essential differences between the directive and its regulations.

From a general point of view, the directive doesn't bear any influence as it is focused on specific Member States. When a directive is addressed to all Member States, it becomes an indirect legislative procedure. The Court of Justice qualifies it as a document bearing such an influence.

The directive isn't directly applicable. As a result, the Court admitted that the directives can have such an effect on the Member States only under certain conditions.

The decision is characterised in Article 249 of the Treaty as "an obligatory document in all its elements for the nominated receivers". The decision doesn't always bear the same effects, being able to carry out multiple-purpose functions under the Treaty system.

Unlike the regulation, the decision doesn't bear a general character influence, as it is focused on the Treaty stipulations being applied to particular situations. It is assimilated into the national legislation and consists of an instrument to execute the community administrative decisions in the name of their legal authority.

A decision is able to establish an objective carried out relying on national measure support, under the international influence of one or more Member States (as for example, the decision to accelerate the elimination of the trade taxes).

Unlike the directive, the decision is obligatory in all its elements, not only in achieving a specific result. It can be legitimately detailed and is able to forecast the instruments used to achieve that specific result. The Member States have the possibility to select only the juridical form of the implementation under the national juridical order.

The decision doesn't imply to respect the unity principle in the direct applicability subject. It is the regulation that asks for that principle.

On the other hand, the decision has a direct effect when the receiver is an interest or an action, because it modifies the juridical situation.

The recommendation and the notice "don't chain", because they haven't coercion force. As a result, they aren't perfect law heads. But they are very useful instruments to orientate the behaviours and the legislations. Even though the European Commission notice aim the Member States, proper or their actions they express only an opinion (the Commission's notice on 25th of September 1979 to the Irish government respecting the harmonisation of some specific social regulations in connection with the road transports).

The European Commission and Council's recommendations invite the Member States to adopt one rule or another of conduct, which belong to the non-compulsory directives and play a concrete role of "to draw the national legislation closer to reality".

There are *different categories of EU foreign commitments*, multiplying and diversifying in a greater participation to the international relationships. They are real law heads for the community juridical order.

2. The trade operations are influenced by the integration law and all the consequences of this process. We can't obviate the impact of the trade exchanges on the operators. As a result, it was necessary to leap from the

trade operations (trade acts) to an instrument which is able to make possible these operations (companies).

The interest of the establishing order was to eliminate any barrier of the national borders against the companies' entrepreneurship and organisational abilities, in order to obtain an efficient use of the inputs on the Single Market. The companies can substitute for the Member States, because they have the main role in the world economy, under globalisation. As a result, these companies operate across the national borders.

For the beginning, the implementation of the Treaty on the companies implied the harmonisation of some specific institutions of the companies' material law domain.

The 12 legislative directives allow the possibility to develop new entities, which characterize the Single Market System.

The companies, especially the joint-stock companies and the vacancies, were under a continuous harmonisation process.

The next step of the companies' integration within the European Communities was the proposal to adopt a regulation about the European company statue. This project developed later under the European cooperative company. The European company had a sinuous road. The first action of the European Communities was connected to the adoption of a regulation for the European economic interest group, in 1985.

The corollary of the harmonised legislation of the European entities is the regulation for the European company from 2001.

There are two requirements disputing issues of settlement: harmonisation and smoothing. The first method is focused on the harmonisation of some specific elements of the national legislations, where the companies have to perform some common conditions for all the Member States.

The harmonisation of the companies' law was covered by the directives, but the Member States can analyse some aspects, even though their duty is a teleological one.

Under the 12 directives, the Member States had a straight action margin, because this domain is very strict.

The second method covers the European uniform legislation, which has a national head (French), connected to the economic interest group. But the latest form – the European company – represents an innovative juridical solution.

The progress made in the implementation of these entities was carried out relying on the direct regulations.

From the technical point of view, the community rules are uniform, even though the regulations allow the Member States to interpret or to introduce supplementary conditions for these specific entities or to apply the national legislation.

The directives focus on the harmonization, close or coordination policies, even that they don't ask the Member States to introduce a uniform law for all the companies or some particular juridical forms in the least (joint-ventures, for example). The proposal for a European company law model is rejected, as the traditions and the institutions are different, even in the same law system (Roman-German law) or between two juridical pools (Roman-German and English-Saxon) (J. Hanlon, 2003).

The Regulation on the European company stipulate in its preamble (point 4) that the present juridical framework, in which the companies have to operate inside the E.U., is mainly based on the national legislation. As a result it doesn't match the economic framework and to achieve the objectives stipulated in the Article 18 of the Treaty (free movement). This situation represents an important obstacle in the grouping of companies of different Member States.

The Council Regulation on the Statute for a European Company of the European Union was adopted on the October 8, 2001 (EU, 2001, European Council, 2001). It contains rules for the European Public Companies known as a Societas Europaea (SE) (Latin for "European Company").

There is also a statute allowing the European Cooperative Societies. A European company can be registered in any member state of the European Union, and the registration can be easily transferred to another member state. There is no EU-wide register of SEs (an SE is registered on the national register of the member state in which it has its head office), but each registration is to be published in the Official Journal of the European Union. As of September 2007, for example, at least 64 registrations were reported (seeurope-network.org., 2008).

The legislation harmonisation was the first step of this process. It was followed by smoothing away excessive differences.

The doctrine stipulated that the company law harmonisation process is still incompatible. The EU and the European company law were not able to face the challenges connected to the business Europeanization.

The latest regulations are technical and consist of obstructions for the future striking down of the law. Eversince 1994, many changes have been made to support the European company in the endeavours of meeting the requirements of the present global trade.

3. An important EU need is to provide the economic and juridical unity. In order to achieve that, provisions have been structured for the companies operating under a community direct regulation applicable across all the Member States. These companies operate together with those companies which are regulated by the national specific law.

The provisions of this regulation allow the creation and the management of the European companies, which become free of disparity and territorial obstacles to implementation which come from the National Company Law.

The juridical regulations which cover the European company haven't affected the achieving of the future economic needs. They must allow the fusion of the companies of different Member States, the creation of a holding or the implementation of common branches.

Moreover, every joint-venture, which has the statutory and central administrative headquarters inside the E.U., can be transformed into a European company without being dissolved and going through liquidation, if it has a branch in a Member State, different from that where are its statutory headquarters.

The national provisions are applied to the limited companies which offer their stocks using the public supply or to the transactions with the real estate. When a European company is established using a public real estate supply or when a European company wants to use such financial instruments, the national provisions are applied, as well.

A European company has to be organised as a stock company, which represents the best way for the financing system and its management. In order to ensure that these companies have reasonable dimensions, it is necessary to fix a minimum capital level, but it has not to be an obstacle for the SMEs to turn into a European company.

A European company has to be efficiently managed and monitored. Nowadays, there are two different forms of management for the limited companies. The European company can choose between these two systems. As a result, it is necessary to define exactly the responsibilities for those covering the management and those covering the monitoring.

According to the general rules and principles of the private international law, when a company can get the control over another one, which is under a different juridical system, its rights and obligations for the minority shareholders and for the third parties are stipulated in the Law of the companies under control. This law does not affect the obligations of the company which exercise the control using its own law (the need to elaborate consolidated accounts, for example).

Nowadays, there it is not necessary to have specific rules for the European companies under this domain.

The rules and the general principles of the international private law must apply to the European company which has the control and to that which is under control, as well. We must consider the law system which operated in the limited companies of the Member State where the European company has its statutory headquarters.

4. There are two approaches about the headquarters in the EU:

- *the registration theory*: used in Denmark, UK, Ireland and Netherland;
- *the real headquarters theory:* used in France, Germany, Luxembourg, Portugal, Belgium, Spain and Greece.

The first system considers that the registration of a company binds that company to respect all the provisions connected to its legal regime and it will be governed by these laws anywhere it will operate.

When the main headquarters are moved to another Member State, there are no legal problems. The real problems appear for the secondary headquarters, especially for the branches, that do not have legal personality.

The second system uses the law of the place (location) where are the trader's main interests. It can be differently demonstrated from a Member State to another.

The real headquarters theory appeared later, in France and Germany, in the nineteenth century. It is based on the local interests' protection.

The real headquarters doctrine has nevertheless some limits, because it is uncertain and arbitrary in terms of its effects. Moreover, the control will become more difficult according to the e-trade development in terms of the company's location.

The implementation of the registration theory can support the E.U. to go a step further in the companies' domain, because it promotes the lowest standards and the *legal arbitration,* which represents a possibility of choosing the most appropriate legislation statue.

The European Commission decision vs. France, appealed under the Article 169 of the European Treaty, considered that France had not respected its stipulations in the Article 52 of the Treaty. Practically, France did not provide fiscal benefits for the branches and the insurance companies of other Member States for the same terms as for the French companies.

Under the Segers case, there were implemented the provisions of the Articles 52 and 58 of the European Treaty. These provisions allow any manager of a society to benefit by the national insurance in case of sickness, even though his company was created according to other Member State's legislation and the company's social headquarters is in another Member State, as well.

A prejudicial action, under Article 52 of the European Treaty, opposed the possibility of the Member States' legislation to bind the companies established in these countries to create branches in other Member States, to subordinate the right for a tax exemption to the situation in which a holding activity consists a majority ownership of the branches' stocks of the same Member State. As a result, the national judge is not bound to interpret the legislation according to the community law or to apply the law into a situation which is out of the community law, as well.

Another pattern of legal shareholding was that in which the company's management and control were in Denmark, the shareholders being Danish, the director being also Danish and the company registered in the UK. The company's recognition depended on the Danish laws, because Denmark was the location of the "real headquarters".

According to the Daily Mail case, the British corporate law allows a company which has its registered office in the U.K. to establish its business and administrative headquarters into another Member State without losing its legal personality or the quality of the company for the British law. According to the British law, only those companies which have the fiscal residence in U.K. are object of the British taxes. The fiscal residence is the location of the business centre.

The Articles 52 and 58 do not offer any right to a company, which is established according to a Member State's legislation and which has there

its statutory headquarters, to transfer its business center to another Member State, while it keeps its legal personality in the former state (paragraph 24, Court of Justice, Article 81/87).

Under the Daily Mail decision, the Court of Justice, relying the traditional relationship of the law conflict passed an important judgment: freedom of decision. As a result, the Member States themselves have to resolve themselves this dispute on the rules of agreement with the legal harmonisation across the EU. As far as, the rigorous protection of striking down legal rights is concerned, that decision represented a step backwards.

The Court of Justice eliminated the main headquarters in the application of the Articles 43 and 48 and created a deterrent effect for the companies' trans-border mobility.

Another point of view, connected to these legal shoulders, is that of applying the substantive law to the companies.

Nowadays, the Council Regulation 1346/29th of May 2000 on insolvency procedures allows the opening of the main insolvency procedure in that Member State in which it is the centre of the debtor' s main interests. This centre has to meet the location in which the debtor led its interests and it can be checked by the third parties.

This regulation can be applied only when the debtor's main interest centre is located inside the E.U. and it is connected to the real headquarters' system.

In the recent Uberseering case, the Court applied the rules connected to the establishment of liberty and admitted that a Dutch company can move its business headquarters to Germany.

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ZONING OR MIXED USE – A DILEMMA FOR PUBLIC ADMINISTRATION DECISION ?

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Abstract

The article summarizes the changes set by land uses in two forms – zoning and mixed use. Its content is drawn up on the comparison between zoning as planning practice, especially in the Romanian context, and mixed use reality as tendency in the new postmodern society. One of the key questions is about the difficulty and opportunity to choose one of them in order to increase the urban welfare status and growth equilibrium.

1. Introduction

During the 1960's and 70's a number of institutions and mechanisms designed for preserving agricultural lands for their economic, ecologic, and aesthetic values had been developed in the United States and Western Europe (La Freniere, 1993). In such countries as Great Britain and France, rather than in the United States, more stringent land-use policies could have on account of the relative scarcity of agricultural land, on the one hand, and on account of historical and traditional reasons, on the other.

In a centralized political system, such as that of Romania's or of one of the former communist countries', the necessity of a zoning plan, strictly speaking, in a unitary context, became a way to argue. The functional zoning traces the peculiarities of land improvement and territory systematization mode to control the development in both rural and urban area. Meanwhile, the science of urban planning and regional practices experienced the zoning limits, more and more overcoming the new paradigm of urban planning. This is what is called mixed use as opposed to land zoning.

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2. The meanings of land and its uses

Land cover is the *physical* material at the surface of the earth permitting life on. Soil provides vegetation, minerals, water, and its capacity for producing being modified or not by the anthropogenic processes. It is in that sense that carefully conceived and organized land falls under the topic as a primary concern.

The second dimension refers to land as real property or real estate. For purposes of ownerships and use, land is divided into units known as parcels. Each parcel represents a defined area of land surface set off by boundaries and owned by particular individual, group, corporation or government agency. It is the *juridical* dimension of land (Platt, 2003).

The third *economy* based land concept is an object of capital value that can be owned and used by its owner to maximize economic return opportunity. In its most abstract form, land is purely an investment to be bought and sold like any other good or service.

Fourth, land may have noneconomic value, a *sense of place* defined by collective or individual experience and values (Puscasu, 2008). Sense of place is often rooted in the physical form and ecology of a site or region, as overlain by culture (fig.1).

Several types of land use said that it can be classified and analyzed in a structural manner. Although each country or region could decide on its land use structure and categories, there is, however, a certain similitude in various cases study.

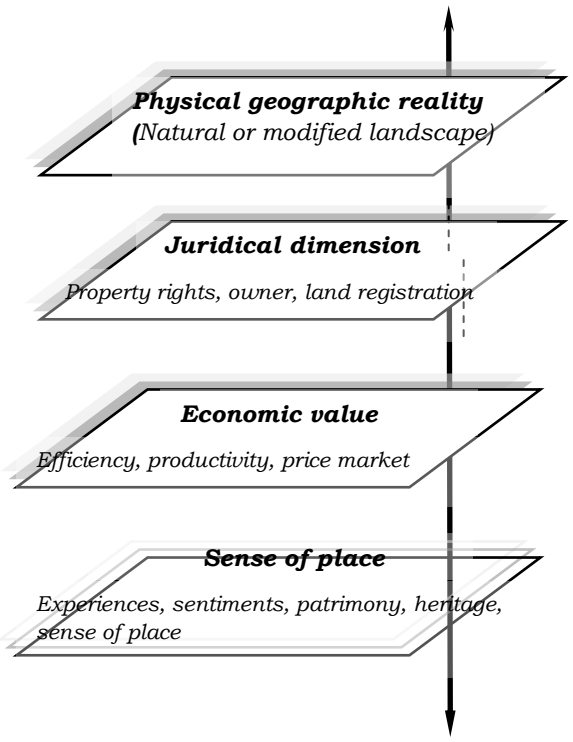

Fig no.1 Different meanings of land

It is recognized that working with functional land use categories becomes a common practice – residential, economic (industry, agriculture, tourism, trade and transport) forestry, water surface (wetlands) and croplands. By that, we assume that zoning could emphasize the nature of land, the activities and utilities to be developed into a region.

Zoning is not the only land use regulatory measures available to local governments. They also possess important powers to regulate land subdivisions at local, urban territory level. They may also utilize tax incentives and other devices to encourage desired land-use pattern.

3. Zoning

Zoning is a device of land use regulation practised by local governments in most developed countries. The word is derived from the

practice of designating permitted uses of land based on mapped zones which separate one set of land uses from another. Zoning may be use-based (regulating the uses to which land may be put), or it may regulate building height, lot coverage, and similar characteristics, or some combination of these. Theoretically, the primary purpose of zoning is to segregate uses that are thought to be incompatible. In practice, zoning is used to prevent new development from interfering with existing residents or businesses and to preserve the "character" of a community. Zoning is commonly controlled by local governments and administration through the urban planners, though the nature of the zoning regime determined or limited by state or national planning authorities or through enabling legislation.

Zoning may include regulation of the kind of activity which will be acceptable on particular lots and parcels (such as open space, residential, agricultural, commercial or industrial), the densities at which those activities can be performed, the height of buildings, the amount of space structures may occupy, the location of a building on the lot, the proportions of the types of space on a lot, such as how much landscaped space, traffic lanes, and parking must be provided. Most zoning systems have a procedure for granting variances (exceptions to the zoning rules), usually because of some perceived hardship caused by the particular nature of the property in question.

Basically, urban zones fall into one of five major categories: residential, mixed residential-commercial, commercial, industrial and special (e. g., power plants, sport complexes, airports, shopping malls etc.). Each category can have a number of sub-categories.

Conventional land use zoning, known as *Euclidean zoning*, involves use of the public regulatory authority to specify how private land may be developed and used (Abercrombie, 1977). Unconventional non-Euclidean zoning includes various approaches to guide land use more flexibly and creatively than conventional zoning allows it to be done. The authority to plan and zone land-use is the delegate municipalities according to the law prescriptions.

4. Mixed use

Although not called mixed use, land uses—work, home, commerce—were typically mixed throughout history, until the scale of industrial development in modern cities brought about land-use

incompatibilities. In response, modern planners developed zoning laws that segregated land-uses. The history of planning and land-use, in the first half of the twentieth century, includes increasingly segregated land-uses (Miller &Miller, 2003).

Mixed-use development today is conceptually more akin to the mixed-use commercial corner at the transit stop, but also incorporates lessons of mixed-use developments of the past fifty years. Whereas the 1970s concept of mixed use was oriented toward creating activity or event centers, today's concept is oriented more toward, integrating commercial and housing activity on a smaller scale that is pedestrian-friendly and linked to transit. Purpose is to increase the types of spaces available for living and working, to encourage a mix of compatible uses in certain areas, and to encourage the upgrading of certain areas with buildings designed to provide a high quality pedestrian-oriented street environment. Mixed use may include permitted activities mixed within the same building (vertical) or within separate buildings on the same site or on nearby sites (horizontal) (Miller &Miller, 2003).

4.1 Benefits of Mixed-Use

In their report about Defining Mixed-use Development in USA, Nancy and Jeff Miller stressed some frequent benefits that the contemporary urban planning could take from this practice. There is some evident benefits already known in the rural space (!) and little towns of Romania even before that new approach be imported.

- A mix of uses potentially eliminates the problems of residential areas that are unpopulated during the day and commercial areas that are desolate after business hours. It is evident, in the great metropolises such as Bucharest, and more and more in the new residential neighbourhood built in the recent years.
- To increase housing options for diverse household types.
- To reduce auto dependence. Mixed-use areas provide a variety of services and activities within a walkable distance from the house, allowing residents to conduct more of their daily activities without depending on cars.
- To increase travel options. Mixed-use areas, if well designed, can comfortably support pedestrian, bicycle, transit line, and automobile traffic.

- To create a local sense of place. Although difficult to quantify, mixed-use areas can create a vibrant sense of local place and community. They support pedestrian movement and, with more people on the street, provide increased opportunities for neighbors to meet and interact.

5. Conclusions

Zoning and mixed use coexist in order to respond to the various needs and realities of the contemporary society. Romanian planning system has to choose between two solutions. One is the smart growth management which promotes sensible reinvestment in older urban communities while advocating more compact development, mixed land use, accessible public space. The second one is to rediscover the clear zoning with rehabilitation of older parks, brown fields' remediation in the former industrial zones, reconstruction of central zone and civic centres. Between the two alternatives the decisions of the communities seem to be opposite to the authorities and technicians.

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ACADEMIA – FACTOR OF A PERMANENT REGIONALIZATION

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Abstract

The article deals with the concept of regionalization generated by an unspecific factor of spatial organisation that is „academia". The paper content is structured as a gradual presentation of the principal stages of university's action into European space. Two major aspects are pointed out – the permanent dynamics of academic power centres and the reality process of regionalization made by university even move invisible. The conclusion set a prospective view about the reconsidered position of the university as a powerful regional factor.

1. Introduction

The criteria of geographical divisions ("cutting-ups") of space cover a range almost equal to the typology of the geographical objects it includes, be it natural or human phenomena. Using all these criteria has become almost axiomatic, especially in the cases of some major examples:

- political, historical and administrative aggregate levels of tradition, which generate, among other things, the nation-state, instrument of work and analysis for any discourse in the last 200 years, and which is gradually replaced by the super and infra national levels;
- the economic criterion, also aggregate and synthesizer of a multitude of entirely economic elements, in accordance with which a space includes "center" and "periphery", developed and underdeveloped areas, growing or fluctuating GDP, etc;
- the physico-geographical natural criterion which organizes the most stable "cut-ups" – natural regions.

The most unique and dynamic regions derive from the human action diversity, be it concrete substantially or informational-energetic.

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2. University – a *sui generis* criterion

As an element of "territorializing", arranging and finally organizing a space, the university /academia has exerted its force of structuring, initiating and often imposing formal or informal configurations, sometimes taken over, and confirmed by the other participants of the society organization.

It is natural to look at the main stages of the University's interference as the aim of this article is precisely that of emphasizing the way in which university frames the contemporary European space. A brief history of its territorial function outlines a few distinctive steps University has played in the European space.

Medieval University

The roots and origin of this institution in the Middle Ages are neither common nor unique. Two types of universities can be distinguished by the way they were created and by their structure: Bologna and Paris. In their turn, these models will generate some "hybrids" in other remote regions.

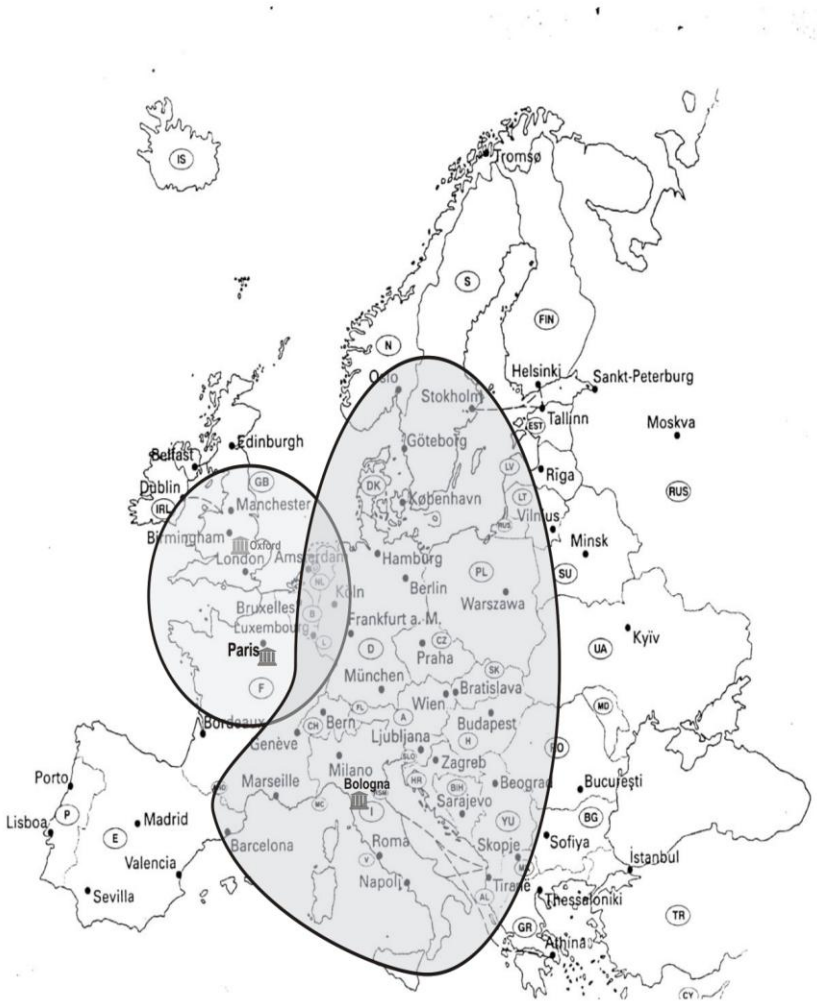
The Bolognese type – a corporatist student only association– spreads and develops South of the Alps, in many Italian cities, in Central and Northern Europe, but it will be also taken over by some French Universities (Toulouse, Orleans, and Angers).

The Parisian type, found only in one French University, Caen, will perfectly match the English[1] and Dutch pattern, being a monopole of the clergy – "universitas magistrorum". They are the old Episcopal Church, under ecclesiastical jurisdiction.

Therefore, we have a first "puzzle" generated by the University, two worlds functioning by different rules and in parallel and simultaneously with the other spatial-political configurations. For reasons of space, we cannot look into the revealed aspect too deeply, (my fellow historians can deal with it more competently), but we can ask this question – is this university "territorial" segregation one of the germs of the later

[1] Oxford University is of Parisian inspiration, but without copying it entirely, and without succeeding in attracting continental students.

differences between the systems – a conservative close one, as opposed to a liberal, open one?



Informal regionalization by Parisian and Bolognese universities

Without contradicting ourselves, we can add that this territorial division is formally supported by a network, made possible by the singularity of Latin, "universal" validity of the academic titles, the right of the students to "travel" between one university and another and choose to

listen to classes of some famous teachers. This époque can be considered "the first Erasmus wave", even though the paradigmatic scholar would be born two centuries later, when "the network university" had already begun to fall.

The classical period of Europe (the 15th through 17th century) was paradoxically characterized by a decline and fall of universities ideal and of the unified theory for the teaching system, and European interest in academic activities or their cultural legacy being gradually blurred.

The political-administrative environment of the era, the rise of the national monarchies, the assertion and consolidation of some nation or of the independence of some cities determined a fraction of the "European university network". The nodal segments enter a phase of island-like isolation, each state, region or monarchy creating and maintaining an ever more isolated academic institution, according to the latest policies and trends.

This academic division corresponds to a consolidated political stage. University has no longer the strength to gather Europe in contiguous subspaces activities. Thus, there are large spaces that do not know the intellectual supremacy of such an institution (the Romanian Countries, for example).

Universities of Germany and of the rest of Central Europe (Heidelberg, Prague, Krakow, Budapest, and Bratislava) did not have the same impact abroad as Paris and Bologna did, although many of them are creations of lay princes or of urban communities.

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…the fraction of the European university

The Enlightenment (the end of the 17th and the 18th century) and then the academic reforms at the end of the 19th century will connect and reopen the cultural spreading towards East. Paris, Vienna, Prague and Berlin will become attractive areas in a reconstruction network, where the political context begins to play a more and more dominant role. This is the "second Erasmus wave" when the students begin to circulate between European recognized universities. Together with them, scientific information, demeanor pattern and political message started to circulate in a feed-back way making impossible revealing of the primordial cause

impossible in the cutting ups which come into being. They usually double those political and administrative messages.

A new cultural cut up is generated by the trends of those times, promoted by Universities: the Polish humanism, the Russian and Greek orthodoxies, the English Puritanism and the French Cartesians.

The Romanian space gravitates around Kiev and succeeds in marking on the European academic map several prestigious universities: Bucharest, Iasi, Alba-Iulia, Cluj (royal academies or Jesuit universities). Young graduates of royal schools complete their studies abroad in cities like Lwov, Rome Vienna, Constantinople, famous cultural and political centers, corresponding to regimes which made history – the Ottoman power, the Russian and Habsburg imperialism, Prussia or Poland.

The 19th century and the beginning of the 20th century range among the same pattern of coexistence of some "areas" and "network".

3. The University of the 20th century between Versailles and Berlin

Two factual realities result from the 20th century Europe by combining the historical temporal scale with the geographical spatial scale.

- re-strengthening of University's national identity, which is ranked, in the happiest cases, as *school,* a *way of life* or *cultural area*– the French school, the Russian/Soviet, the German or Anglo-Saxon way of life, etc;
- a huge "puzzle" divided between East and West where the academic ways used to cross each other accidentally, but coming and especially making for different directions;

Paradigms and ideologies, currents and trends put forward by the academics changed Europe from the Atlantic to the Caspian Sea in an "enriching" mosaic beyond the double colour political background Berlin used to impose on people.

Universities began to strikingly stand out as a super system with connections in the environment it is created, but with elitist outlets by means of which generalized connections are made.

Following 1990, the European university space is re-mapped by programs like Tempus, Erasmus and Leonardo and in the last years the framework program (FP6, FP7) reaching its goals by a new regionalization of the academic partners.

Facing a new challenge, especially after the last 200 years have made the universities accumulate and reconsider, also after the industrial, agricultural, demographical and ethical revolution, a revolution in attitude adjusting requiring an answer to the dilemma: science or profession?

Connections, bilateral agreements and networks have been already created depending on the answer of the universities and on the adjustments to be done.

„...schools, ways of life, or cultural areas..."

The network-university returns in various forms after more than 1,000 years: regional corporations, transnational extensions, long distance education, NTIC.

Thus, the university program really becomes a workshop center of territorialization by its influence, polarizing definite areas. It also becomes, sometimes purposely, a center of arranging territory and in so doing equipping organizing the space in terms of wave and network.

The "university" system becomes a doubling confirming and initiating structure for other elements of territorializing and a motive of indirect and direct arranging by means of private funds, new programs and mobility of its members, etc.

The phenomenon is verifiable at the level of medium sized universities, which really succeed in reconfiguring the regional wave, the economic initiative. The origins of this way of action are also Western, but the increasing number of connections North-South, West-East connections will standardize this phenomenon and will provide a new configuration of the regions generated by the university.

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The European network university in the XXIst century

4. Conclusion

We live in an era of historical discontinuity and the universities do reflect these changes with a legic legging. The contemporary university must choose between alternative futures, most elements of which are already subject to political influences. The policy sciences assume ever larger importance as the need for planned change increases. The unique institution able to provide guidance—the university—is, however, still cursed with rigid academic departmentalization, but over all, in its complex external environment, *academia* will always act as an important factor of territorialization and regionalization. Vigorous new inter- and trans-networking modes must evolve to reshape the European territory, consonant with the general dynamics and unstable societies, but also

fulfilling their emergency missions to provide society with reasoned analyses of optimum policy judgments.

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THE REGIONAL IMPACT OF FISCAL TARIFF PREFERENCES FOR THE IMPORT OF GOODS IN NON-EU COUNTRIES

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Abstract

The common customs tariff of EU implies, besides applying customs taxes, granting a preferential regime to third countries whom EU agrees to do so.

The origin of goods represents the „economic" nationality of the goods being the object of international trades.

As far as that origin protocol is concerned, in order to establish a unitary work practice and eliminate ambiguities and the direct consequences they bear upon the traders and the local of budget structure, it is recommended that the evaluated goods should be assigned an as exact and through classification as possible.

This study is also based on the explanations provided by the central authority of customs on the purpose of emphasising the economic effects of the goods origin and the strong protective character of the customs tariff in the international trade relations.

1. Preferential and non-preferential origin

The preferential proof of origin is provided for only in certain countries where the goods complied with certain criteria. These criteria are established according to protocols defining the notion of original products which are appendixes of the free trade agreements; they are also, as a rule,

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identical, irrespective of the country or group of countries the actual free trade agreement had been made on.

The preferential origin criteria require, in general, that the goods should be (sufficiently) processed or transformed besides everything that would be necessary for obtaining the non-preferential origin. However, the criterion of products obtained completely (in a country or group of countries) is applied both for non-preferential and preferential origin.

Thus, in order to benefit by the tariff advantage for import, the goods must comply with one of the following conditions: to be a product obtained completely, to be sufficiently transformed or processed, or both.

The processing or transformations providing the origin proof to the goods obtained from non-original raw materials are listed in the appendixes accompanying each origin agreement or protocol. The rule of cumulation says that goods are considered original if manufactured from raw materials going through processes which make up for insufficient supplies.

The essential fact is that granting tariff preferences for import of goods implies the presence of a document of preferential origin.

The document of preferential origin is the EUR 1 or EUR MED certificate of origin and the declaration on the invoice or the declaration on the EUR MED invoice, respectively Type A certificate or declaration on invoice for the case of the generalised system of preferences.

The form of the certificate of origin and the wording of the declaration on the invoice are internationally established and reciprocally notified, lest the confusion should be avoided in case of a great variety of forms or variants of printed documents.

Most of the situations in which the origin document is rejected derive from the incorrect filling in of the document of origin.

For a document of origin not to be rejected, the following aspects should be taken into account:

- the declaration must be made out by an „authorised" exporter and the value of the goods should be less than 6.000 EUROs;
- the declaration on invoice must be given to the customs authorities of the import country within two years from the import to which it refers;

In all these cases, the customs authorities of the import country can demand the "a posteriori" control, the result of which will determine the granting of tariff preferences.

If the declaration contains unimportant errors of form and there are no other reasons for rejection, the customs authorities of the import country can grant the tariff preferences provided by the protocol, but it is advised that the document should be forwarded to the "a posteriori" control.

2. Types of certificates for the circulation of goods

2.1. Type A Certificate

The Type A certificate is used by the countries which benefit by the preferences stipulated by the General System of Preferences (the GSP EU granted unilaterally facilities for the import of goods coming from these countries and complying with the criteria of origin provided by Reg. 2454/93).

The model of this certificate is in appendix 17 accompanying Reg. 2454/93, and the reasons for which the granting of tariff preferences can be rejected are similar to those mentioned for EUR 1 and EUR MED certificates.

2.2. A.TR. Certificate

The A.TR. certificate is not a proof of origin, but a proof of the condition of goods ready to circulate freely in Turkey (or in the Community) in the Customs Union between EU and Turkey.

In case of suspicions, the customs authorities of the importing country can refuse the granting of customs taxes exemption if they have consistent reasons and they also can send the document to the "a posteriori" control.

2.3. Declaration on invoice

The declaration on the invoice represents a proof of origin achieved in a simplified manner by the exporter.

A declaration on the invoice can be made out by:

- any exporter for a transport consisting of one or more parcels with original goods with a total value of no more than 6.000 EUROs

- any authorised exporter, in case the value of the parcels or goods in a transport is over 6.000 EUROs.

In Romania, the legal basis for authorising the exporters for issuing in a simplified manner the documents of preferential origin within the scope of the agreements that rule the preferential trade between the Community and the partner countries and of the A.TR. certificates confirming the condition of goods freely circulating within the EU – Turkey Customs Union is represented by the Methodological Norms approved by the Decree of the ANV Vice-president no. 4822 of 13 April 2007.

The text on the declaration on invoice is written on an appendix of each protocol of origin. For the GSP, the text of the declaration on invoice is given in appendix 18 of Reg. 2454/93 - RVC.

A declaration regarding the origin of the goods can be made on the invoice which accompanies the goods, on the delivering document or on another commercial document, by typewriting, stamping or printing it, only if the goods to which it refers comply with the criteria for conferring preferential origin.

The declaration on invoice must be signed by hand (holograph) in original by the exporter, save the case in which the exporter is authorised and handed a written commitment to the customs authority from the exporting country by which they take the responsibility for each declaration of origin identifying them.

Taking into account the conditions a declaration on invoice need to carry out, the importing customs office can refuse reasonably the granting of tariff preferences in the following situations:

- when the text of the declaration differs significantly from the text stipulated in the agreements;
- when the declaration is made by an „unauthorised" exporter and is not and the original is not hand-signed;
- when the invoice is presented in copy;
- when there are incongruities between the documents and the goods they refer to;
- the stamp which was used is not the notified one (even when the stamp is new but it was not notified yet);
- the certificate is presented in copy (of any kind);
- the countries mentioned in columns 2, 4 or 5 are not parts of the Agreement considered (eg., Ukraine or Cuba);

The Customs office to whom the EUR 1 or EUR MED certificate is presented can offer other reasons of refusal, besides those mentioned above, if they can justify them.

In case a Customs office needs to reject a EUR 1 or EUR MED certificate, the following mention should be written on it: **"UNACCEPTED DOCUMENT",** and also the reason or reasons which led to the rejection should be given, returning it to the importer, so that the latter could obtain a new EUR 1 or EUR MED certificate. In this case, the import customs office will not grant tariff preferences and will keep a copy of the rejected certificate.

Failure to accept an EUR 1 or EUR MED certificate represents a reason for issuing an "a posteriori" certificate.

Also, the import customs office accepts the certificate but refuses to **grant the tariff preferences** in the following cases:

- the certificate is presented beyond the effect period (4 months from the issuing date, except the special case of the "Copy" EUR 1 or EUR MED certificate, which is also effective for 4 months, but starting from the issuing date of the first certificate). In such situations, the importer will present a new certificate issued "a posteriori". Taking into consideration the conditions in which an "a posteriori" certificate can be issued, such a certificate must not be accepted for granting tariff preferences;
- when there are discrepancies between the dates contained in the certificate and those in the other documents which accompany the goods. In this situation, the respective certificate will be sent to the "a posteriori" control, granting or not granting the tariff preferences depending on the answer received. If, within 10 months passed from the request of the control, no answer is received, the import customs office can decide if they grant or not the tariff preferences, taking into consideration the specific elements that they have (including the reason for which the control was demanded);
- when there are errors of form in filling in the certificate, which do not influence the content, the customs office will grant the tariff preferences, sending the certificate to control at the same time.

In the situation in which an EUR 1 or an EUR MED certificate was issued after the goods it refers to were exported, the following mention should be made in box 7: "*issued retrospectively*".

In case an EUR 1 or an EUR MED certificate was issued instead of a previous one, which was lost, destroyed, etc, in box 7 the mention "*duplicate*" will be made. This is an exact copy of the first certificate.

In the situation in which the goods were supervised by the customs authority, an EUR 1 or an EUR MED certificate (substitute) will be issued based on the original document, but the norms do not provide a special mention for box 7. However, the mention "*it replaces EUR 1 (EUR MED) no...*" or similar ones may be made.

In all the cases, at the import customs office, granting the tariff preferences can be requested only presenting the original EUR 1 or EUR MED certificate. It would be impossible to issue a duplicate or a substitute certificate for a certificate which was considered incorrect and therefore refused.

3. Rejecting the certificate of origin

In order to apply the preferential tariff rules, the customs authorities in the import country will check both the goods and the certificate of origin, with the accompanying documents presented by the importer.

In case the document is correctly filled in and there are no discrepancies or good reasons of suspicion, the facilities provided by the import customs tariff will be given according to the agreement between the customs authority and the holder of the import customs declaration.

An EUR 1 or EUR MED certificate of origin can be rejected for "*technical reasons*", if it was not made or filled according to the legal procedures from the agreements concluded. Rejecting a certificate of origin for technical reasons is one of the reasons for issuing an "a posteriori" certificate.

The technical reasons leading to an EUR 1 or an EUR MED certificate to be rejected are as follows:

- the certificate was made out on a form other than the one which was established (eg. without a special background, or which differs from the form agreed upon regarding the sizes, form or colour, which has no series or number or which is printed in another language than one of the official languages etc.);
- one of the mandatory columns was not filled in (ex. R1, R8, R9 etc.);

- lack of stamp and signature (ex. R11);
- the certificate is approved by another (customs) authority than the one which was designated and notified;
- the certificate is not approved (at all) by the competent authority.

4. EUR 1 and EUR MED certificates

These certificates are presented as sets containing the certificate form, the application form and the exporter's declaration. These forms are filled in by the exporter or by its representative. The boxes without the note "*optional mention*" must be obligatorily completed.

When the certificate is approved, the customs authorities keep the application form and the declaration of the exporter. The following aspects will be considered when completing the application:

- when it is handwritten, capital letters will be used, as well as ink or pen;
- the declaration of the exporter must contain the reasons for which the respective goods are considered original (the criteria of origin taken into consideration), as in the applicable agreement;
- the exporter must be able to hand in to the customs authority all the documents and information which support the request for the certificate and the statement regarding the origin of the goods;
- the exporter or their representative is obliged to sign the declaration.

For certificate, besides the above mentioned, the following will be considered:

- the information regarding the goods must be specific and allow their identification with ease;
- the column with information about the goods must be completed so that no changes or additional data can be added, without space between lines or words; after the last line a horizontal line will be drawn and the rest of the space crossed;
- if the space for the description of the goods is not sufficient, the exact description will be made on another document (invoice, inventory list etc.);
- the name of the country or the group of countries the goods come from must be written in the form (box 4); it is not mandatory that the country of the group of countries of origin should be the same as the one in which the document of origin was issued (to the extent in which certain pre-established conditions, in the protocols of origin are carried out);

- for the EUR MED certificate, box 7 must also contain the mention "*cumulation applied with...*" or "*no cumulation applied*".

It is important to keep in mind that on the back of the EUR 1 or EUR MED certificate only official mentions should be made.

5. Conclusions

The customs tariff of import is the main instrument for regulating the external commercial exchanges, corresponding to the national economic interests of the states. This practice of the international trade was made legal in art. XI of the General Agreement for Tariffs and Trade (GATT) which stipulates that the contract parts of this agreement will not have and will not back other restrictions for import besides the customs tariffs.

Enacting the Common customs tariff of the EU means, besides the implementation of the customs taxes[1], based on the clause of the most favoured nation, stipulated by this tariff towards the third countries benefiting by this clause, granting a preferential condition to the third countries, to whom the EU consents such a condition, based on certain association agreements, agreements of free trade on certain plans and preferential customs systems[2]. It is the case of the countries in AELS – Switzerland, Norway, Iceland and Liechtenstein; the Mediterranean countries, with which EU is to create a Euro-Mediterranean free trade area up to 2010 (some association agreements of Israel, Tunis and Maroc with the EU are already effective); the ACP countries (71 countries of Africa, the Caribbean and the Pacific, having participated in the Lomé Convention); the countries of Latin America, with which the EU concluded and will conclude agreements of free trade (Mexico, Chile, Argentina, Paraguay and Uruguay); the countries which took part in the Council for the cooperation in the Gulf – Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, Oman and Qatar; the countries which benefited from the generalised system of preferences (GSP), all in all about 150 countries and territories at present.

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[1] E.Bălan, *Financial Legislation*, Ed.C.H.Beck, Bucureşti, 2007, pp.170
[2] D.D.Şaguna, D,Şova, *Fiscal Legislation*, Ed.C.H.Beck, Bucureşti, 2008, pp.249

Theoretically, all the products can benefit by the preferential origin. In fact, a country (member of EU) will not grant preferences for the goods it considers be sensitive for its industries (see Table 1 and 2). Therefore, such commercial instruments and fiscal provisions need to be carefully negotiated between the parts of a commercial agreement as they can have an important regional impact for the import of goods from the non-EU countries.

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Table 1- EA16 trade - non seasonally adjusted data (bn euros)

EA16 trade - non seasonally adjusted data bn euro Flows	Aug 08	Aug 09	Growth	Jul 08	Jul 09	Growth	Jan-Aug 08	Jan-Aug 09	Growth
Extra-EA16 exports	116.5	89.7	-23%	142.5r	116.7r	-18%r	1,045.4	817.8	-22%
Extra-EA16 imports	127.7	93.7	-27%	147.1r	104.4r	-29%r	1,085.9	812.7	-25%
Extra-EA16 trade balance	-11.3	-4.0		-4.6r	12.3r		-40.5		5.2
Intra-EA16 dispat-ches 4	107.7	89.8	-17%	138.2r	110.5r	-20%	1,067.0	834.8	-22%

Eurostat – newsrelease Euroindicators 147/2009 - 16 October 2009
Sursa: http://ec.europa.eu/eurostat/euroindicators

Table 2 - EU 27 trade – non seasonally adjusted data (bn euros)

EU27 trade - non seasonally adjusted data bn euros Flows	Aug 08	Aug 09	Growth	Jul 08	Jul 09	Growth	Jan-Aug 08	Jan-Aug 09	Growth
Extra-EU27 ex-ports	99.2	79.3	-20%	121.9	101.0r	-17%r	872.1	701.3	-20%
Extra-EU27 im-ports	127.9	91.4	-28%	145.4	100.4r	-31%r	1,052.7	781.9	-26%
Extra-EU27 trade ba-lance	-28.7	-12.1		-23.4r	0.6 r		-180.6	-80.6	
Intra-EU27 dis-patches 4	192.7	154.3	-20%	237.0	186.6 r	-21%r	1,842.1	1,409.1	-24%

Eurostat – newsrelease Euroindicators 147/2009 - 16 October 2009
Sursa: http://ec.europa.eu/eurostat/euroindicators

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EU-RUSSIA RELATION WITHIN THE ENLARGED EUROPEAN COOPERATION

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Abstract

EU-Russia relationship has evolved from confrontation and neglect during the Cold War to a vital partnership for both parties, which approaches dependence on energy resources.

Cooperation between EU and Russia takes place on several levels, from the Northern dimension of cooperation to cooperation in the Black Sea area, from the human rights cooperation to ensuring the European security.

EU-Russia partnership is vital for both sides, representing one of the pillars of European security building. The degree of interdependence and the need to coordinate efforts in order to address current international challenges (such as the financial crisis) in a world that is projected to be multipolar require the two parties tostrenghten ties and cooperation on the principles of international law norms.

1. The implications of EU's relationship with USSR on EU-RUSSIA relationship

The formation of the European Communities in the '50s caused a hostile reaction from the Soviet Union, which clearly fall within the general picture of the beginning of the Cold War between the political-military blocks.

This attitude was motivated by the fact that the USSR perceived the creation of the Communities as an economic weapon whose only existential logic was blocking or limiting Eastern bloc economies.

Therefore, the USSR refused any dealings with the European Communities and for this purpose, the official position was the non-recognition of the Communities although within the international relations was not required recognition of international organizations; consequently, it changed from an aggressive anti-community propaganda to a total ignorance.

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During the '60s, trade between the Community market and the USSR were modest, though steadily improved over the very low one (almost insignificant) of the '50s.

The '70s were marked by some attempts of the Communities to establish some contacts with the USSR which were due both to political[1] and economic reasons. A further cooling of bilateral relations came in 1979, when the USSR invaded Afghanistan. Although the Community opposed the U.S. embargo against the Soviet Union in 1981, they started to reduce imports from the country and abandoned the attempts to cooperate with CMEA, which had started earlier in the decade, taking into consideration that there were no major trade interests with the Soviet area[2](**S. S. NELLO**, 1991).

The arrival to power of Mikhail Gorbachev gave the signal of a new era of East-West relations, especially in Europe. In 1985, Gorbachev called for the establishment of official relations between the EC and CMEA and as a result, in 1988, it was signed *a joint declaration on mutual recognition,* followed by the establishment of diplomatic relations between the USSR and the European Community.

In the early 90s, the relations between the European Community and the Russian Federation were full of enthusiasm. Under the leadership of Boris Yeltsin, Russia seeks to join as soon as possible the community of civilized states, expressing willingness to take radical economic and social reforms. The European Community believed that Russia will manage to move quickly through transition and implement all the necessary reforms.

2. The construction of a strategic partnership

2.1. The Partnership and Cooperation Agreement - basis for cooperative relations

The opening of the USSR and then Russian Federation to West launched a cooperation process in which the EU's efforts focused on supporting Russia's democratization process and economic reforms. These

[1]The inauguration of „Ostpolitik" by Chancellor Willy Brandt and the coming Conference for Security and Cooperation in Europe in Helsinki.

[2] The commercial trade with all CMEA countries did not exceed 6-7% of the total commercial trade and the USSR imports in 1985 from the EU area did not exceed 12.2% and exports amounted to 18.1% with a large share of primary goods and energy which generally enjoyed free access to the Community market.

efforts have resulted ever since 1991 in concluding the *„Tacis program"*[1] with Russia, with the purpose to provide technical assistance to Russia in the transition to a market economy. So far, the European Union supported Russia with over 2.6 billion Euros in order to conduct institutional, legislative and administrative reforms, as well as her economic and social development Russia (European Commission Delegation to Russia, 2008) and worked in 58 of her areas.

In 1990, Russia had incomplete information on the project within the EU. In the early '90s, Moscow was concerned about the expansion of NATO and the EU began to be seen as a stabilizing factor on the Western borders. (Alexey GROMYKO, 2005).

In June 1994, the Partnership and Cooperation Agreement (PCA) was signed, the legal framework of the relations between the EU and Russia which confirmed them to be strategic partners. The agreement was signed by the governments of the EU member states, President of the European Commission and President of the Russian Federation in June 1994, on the island of Corfu. The agreement came into force just over three years (due to the war in Chechnya)[2], on December 1, 1997 and initially a validity period of 10 years was set automatically extended after 2007, provided that both parties agree.

Partnership and Cooperation Agreement is based on the principles and objectives shared by both sides: promoting peace and international security, promoting democratic norms and political and economic freedoms. The Agreement shall be oriented to strengthening political, commercial, economic and cultural relations and is based on the idea of partnership on equal terms.

An important aspect is that this document establishes *an institutional framework of the relations* between the two parts of the agreement.

In this respect, they provided assistance for *the organization of two summits a year, at the highest Heads of State and Government level,* intended to set strategic directions for the EU-Russia developing relations.

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[1] TACIS (Technical Aid to the Commonwealth of Independent States) was established in 1990, representing a grant financial aid for the states resulted from the dissolution of the USSR, in order to help them overcome economic and social issues which were caused by switching to economy market and strengthening democracy.

[2] in October-November 1996, PCA was ratified by the Duma and Federation Council;

At ministerial level, the Permanent Partnership Council was created to coordinate mutual actions and discuss ministerial problems and issues, meeting whenever such a framework was necessary[1].

The relations between the two sides may be discussed on the level of *senior officials and experts* but a regular *political dialogue* takes place at meetings of foreign ministers and senior EU officials and their Russian counterparts and in the monthly meetings of the Russian Ambassador to EU with the Political and Security Committee during which are discussed a wide range of topical international issues.

Regular institutional relations are established between the European parliamentarians and the Russian parliamentarians in the *Parliamentary Committee for EU-Russia cooperation*.

As a consequence of Russia's transformation and the developments in relations with the EU, PCA provisions were supplemented by a series of international sectoral agreements and certain mechanisms of cooperation.

After the financial crisis of 1998 that marked the end of the first phase of transition of post-Soviet Russia, the Russian Federation started the long road to stability and economic growth, so that, a decade of economic and social unrest, 1999-2003 brought Russia not only a progressive increase of stability and predictability of the political environment, but also a record of economic growth, macroeconomic stabilization and political reforms.

Following the EU enlargement, in April 2004, the two sides signed a Protocol to the Partnership and Cooperation Agreement, in order to extend the agreement on the 10 new Member States of the European Union.

The EU is currently negotiating with the Russian Federation on a new agreement since both parties have gone through significant political, economic and social transformations which will be reflected in the new agreement. The purpose of the new agreement is to provide a comprehensive and sustainable framework for the future EU relations with Russia based on respect for common values.

Although a new agreement is necessary for both parties, extremely complex problems separate the two positions regarding issues of international security, energy cooperation, frozen conflicts in the former Soviet area and Russian ambitions to become a great global power again.

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[1] So far have been conducted several meetings of the Permanent Partnership Council with the participation of Foreign, Justice, Home Affairs Ministers and those responsible for energy policy, transport and environment.

2.1.2. Strengthening cooperation - the four common areas

Within the European Council in Madrid that took place in December 1995, the EU adopted its first strategy on EU-Russia relationship, which claimed that "*good relations between the EU and democratic Russia are key to stability in Europe*". Therefore, the EU has offered Russia a partnership to facilitate its transition to democracy, market economy and human rights.

In June 1999, the EU has developed *the EU Common Strategy on Russia (*European Commission Delegation to Russia, 1999), in recognition of the need for a consistent policy in the relations between the two parties. Strategy is the starting point for developing policies to strengthen democracy and public institutions in Russia, integrate Russia into the European economic and social area and enhance stability and security in Europe.

On the other hand, on the level of structural reforms, Russia has progressed significantly, especially after 2000, when the government implemented a more coherent strategy, which included many economic sectors as well as social policy (regulation of business, taxation, pensions or ownership of land). However, there remain important issues such as energy, financial or social fields that need to be improved. In November 2002, as a result of Russia's efforts in transition to a market economy, the European Commission has granted Russia market economy status with full rights. There must be noticed that, in the EU-Russia trade relations, only ten anti-dumping measures are in force relating to products which are only 0.5% of the total imports from Russia.

At the Summit in St. Petersburg, in May 2003 *(*European Commission Delegation to Russia, 2003), EU and Russia agreed to reinforce their cooperation by creating four long term 'common areas' within the Partnership and Cooperation Agreement and based on values and common interests.

At the Summit in Moscow in 2004, was reached an agreement on a roadmap in order to achieve the common area on the four dimensions mentioned above. The Summit in London, in October 2005, assessed the progress of the roadmap, passing from tactical agreements to strategic cooperation. This cooperation is intended to take place in four common areas:

Common Economic Area aims to approximate the EU economies with the Russian ones, with the ultimate purpose of creating an integrated

market between the EU and Russia. This can be achieved through the legislative convergence of the two parts which do not imply, however, the harmonization of rules and the Russian standards with the European acquis. Legislative convergence also includes cooperation on environment and in this regard, the EU welcomed the ratification the Kyoto Protocol by Moscow.

Since spring 2004, the EU and Russia agreed on the terms and conditions required to be met by the latter in order to join the WTO. While negotiations[1] continue on different levels of details, this agreement is of critical importance to the future economic relations between the two parties. Cooperation in energy and environment is built within the European economic area whose existence and development is a compulsory condition for them.

Another area of cooperation within the Common Economic Area is to develop pan-European transport network (highways, rail networks, etc.), energy transmission channels (oil, natural gas units and interconnection of electricity networks, etc.) as well as telecommunications and networking.

Common Area of Freedom, Security and Justice covers police and judicial cooperation in criminal matters. This area is a growing area of cooperation between the EU and Russia, based on respect for human rights, focusing on common issues – namely, terrorism, illegal migration, cross-border crime, including human trafficking and drugs.

Meanwhile, both the EU and Russia are firmly convinced that the efforts to ensure better security and improve border guard must not lead to new barriers in the cooperation of both parties. People should have a greater freedom of movement and this has led to negotiations ever since the second half of 2004 in order to simplify bilateral visa regime.

At the Summit in Sochi, on May 25, 2006, the leaders agreed to simplify visa regime of June 1, 2007 (The European Commission's Delegation to Russia, 2007). In the future, both sides intend to establish the necessary conditions[2] that will allow the removal of visa restrictions. It should be noted, in this regard, a number of other initiatives such as the Cooperation Plan for 2007-2010 between FRONTEX and the Russian border

[1] The EU has an uncompromising position in the negotiations on energy. The dialogue on energy took place as Russia is the EU's main supplier of hydrocarbons.
[2] Travel document security, establishment of common rules on border crossings, etc.;

structures, cooperation between the European Monitoring Center for Drugs and Drug Addiction, Russian Federal Service for Drug Control and Europol.

Common Area of External Security seeks to strengthen cooperation in policy and foreign security, stressing the importance of international organizations like the UN, Council of Europe, OSCE.

One of the major goals of cooperation, in this area, is focusing both sides' efforts on preventing conflicts, crisis management and post-conflict reconstruction, where applicable, with direct view on the frozen conflicts in the vicinity of the EU and Russia.

Common Area of Research, Education and Culture aims at promoting cooperation by promoting scientific, educational and cultural exchange programs. Its purpose is to strengthen the economic and intellectual capacities of both parties and promote several programs to facilitate direct contact between their citizens which will lead to further mutual understanding and closer ties between the two companies, in particular for young people.

Scientific cooperation between EU and Russia is very good, recording successful results which led Russia to be ranked third among the countries in the *EU Research and Development Framework Programme*[1].

Cooperation in education[2] was conducted mainly through Tempus program which contributed on the educational reform in Russia with convergence towards EU standards in the field. In this regard, the Commission had to extend the program for 2007-2013.

An important step of this cooperation was the opening in 2006 of the Institute of European Studies in addition to the Institute of International Relations of Moscow (MGIMO University), forming a focal point of European studies for training students and leaders of tomorrow.

Moscow Summit in May 2005 adopted the Action Plan on short to medium term which included instruments for implementing the four common areas and make it a reality.

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[1] http://ec.europa.eu/research/fp7 - the official site of the European Commission;
[2]http://www.etf.europa.eu/Web.nsf/pages/Tempus_EN?opendocument – the official site of *The European Training Foundation* which is an EU agency with the purpose of contributing to the development of education and training of EU partner countries.

Therefore, the EU-Russia medium term cooperation is determined by the actions necessary to achieve these areas of cooperation (The European Commission, 2006).

Thus, on the EU-Russia Summit in June 2008, EU-Russia Joint Statement was adopted regarding cross-border cooperation which provide cooperation within the framework of the four common areas in a seven border programs for 2007-2013.

2.1.3. Northern dimension of EU cooperation with Russia

The Northern dimension of the cooperation was established in 1999 and comprises the reflection of the EU's relations with Russia on foreign and cross-border policy on the Baltic Sea and the Arctic Sea. The Northern dimension addresses the new challenges and opportunities that have developed in these regions aiming to strengthen the dialogue between the EU, its Member States in the area, the Nordic states in the region associated to the EU in the EEA (Norway and Iceland) and the Russian Federation.

The political framework for setting up and developing the Northern Dimension is represented by *the Political Statement on the Northern Dimension* that fits over the wider Partnership and Cooperation Agreement with Russia. A special emphasis is placed on subsidiarity and ensuring the active participation of all stakeholders in these regions, including regional bodies, local and regional authorities, academic and business communities and civil society.

Among the key issues[1] of the cooperation within the Northern dimension there are:

- economic and infrastructure;
- human resources, education, culture, scientific research and health;
- environmental protection, nuclear safety and natural resources exploitation;
- cross-border and regional cooperation;
- internal affairs;

In order to implement these priorities there were successively developed: the first Action Plan of the Northern dimension for the period 2000-2003 adopted by the European Council in Feira in June 2000, followed

[1] Northern Dimension – Areas of cooperation UE-Russia în http://www.delrus.ec.europa.eu/en/p_225.htm

by the second Action Plan covering the period 2004-2006 adopted by the European Council in Brussels in October 2003[1].

The funding of the cooperation within the Northern dimension is achieved by the contribution of all parties and regarding the financial support on the EU level, achieved by existing financial instruments such as TACIS, Interreg and instruments provided by the New Partnership for Neighborhood which should be the main source of funding offered by the EU.

Since 2007, within the Northern Dimension there has also been held the political cooperation between parties, so that the Northern Dimension could be used as a political and operational framework for promoting the implementation at regional and subregional levels, the four common areas created with Russia and with the full participation of Norway and Iceland. In order to strengthen the political cooperation of all stakeholders in the region was proposed the encouragement of Belarus participation at expert level, for the beginning[2].

After a long retreat period, dedicated to internal reforms, Russia has returned as a major player at regional level and claimed its powerful interests in the Northern area of the continent and the Frozen Ocean. Significantly in this respect is the symbolic gesture with geopolitical overtones of planting its flag on the ocean floor and claiming some submarine territories in this area which have become very important under the circumstances that they have important natural resources and the new climate changes facilitating the access to their operation[3] .

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1 See *Northern Dimension Action Plans* in European Union in the World, External Relations - http://ec.europa.eu/external_relations/north_dim/ndap/index.htm;

[2] *Guidelines for the development of a political declaration and policy framework document for Northern Dimenson policy from 2007* - http://ec.europa.eu/external_relations;

[3] In the Arctic there have already appeared minor tensions between Russia and Norway on the fishing rights around the Spitsbergen archipelago (there are large resources of natural gas and oil which are currently locked in the frozen layer). If global warming cause these resources to become available, between Russia and Norway a very tense situation could be created. In this crisis, the U.S., Denmark and Canada could be attracted as they fight for important energy resource opportunities.

2.1.4. Black Sea cooperation

The Black Sea region has recently become an intersection area of the Western interests with the Russian ones, represented by the two integrative systems: the Euro-Atlantic area and the Russian one or CIS (Commonwealth of Independent States).

In these circumstances, the Black Sea region raises great challenges for EU as the resolution of the frozen conflicts or energy security which seeks to be addressed by boosting regional cooperation and participation in the multilateral negotiations in which Russia plays an important role.

EU cooperation with Russia in the Black Sea is currently achieved within the existing regional cooperation mechanisms such as the Commission for the Protection of the Black Sea which regards the protection of marine environment in the area but also within the most important form of multilateral cooperation in the region which is the Organization for Economic Cooperation in the Black Sea.

In recent years, the Russian Federation has returned in force both in the world politics, especially extensive in their energy ramifications and in the regional ones, stating that it has "recovered" in the Balkans and the Black Sea areas. The war in Georgia marked a new phase regarding the presence of Russia in the area. Russia has occupied important positions in particular on markets transmission, distribution and processing of energy products in Romania and Bulgaria, has significantly improved its relations with Turkey and Iran and strengthened its influence in Moldova and Ukraine. Moreover, after being accepted in the WTO Russia has announced the formation of a customs union with Kazakhstan.

The Black Sea region occupies a conspicuous place on the security agenda of Russia which became the ensurance of the independence of Abkhazia and South Ossetia following the military conflict with Georgia in August 2008. Russia considers the region as part of its neighbourhood where it is not willing to share influence with the EU, so it sabotages the actions that could have this result[1].

The European Union has vital interests in the Black Sea region, reason for wishing to represent one of the major players in the region.

[1] in this respect it is significant the refusal of the leader of Kremlin to participate in the Black Sea Forum in Bucharest;

3. A pragmatic partnership or confrontation

Immediately after 1990, the West believed that Russia would manage to pass quickly over transition and implement the necessary reforms. The economic crisis of 1998, the war in Chechnya, the frozen conflicts in former Soviet area, the question of Kosovo, the war in Georgia, human rights and energy policy are just some of the major differences in their relations. Russia was disappointed because it was not included in the structures of political cooperation and European security, but especially because NATO continued its existence, even accepting new members from the former communist states and leaving the possibility of even accepting some other states, former parts of USSR, such as Ukraine or Georgia which are traditionally considered part of the Russian sphere of influence.

Both EU and Russia stated that their dialogue and cooperation is a success, but in reality, the political statements remained without concrete steps towards a strategic partnership as long as the main framework document governing the bilateral relations is the Partnership and Cooperation Agreement, extended to 2007. A closer analysis of this document reveal that it lacks substance and concrete projects, and the actions are expressed in terms of "dialogue" and "cooperation", neither side wishing to address key issues.

As a result, Russia has tried to rethink its relations with the EU and in a debate with high and broad participation in Moscow, in January 2005, it was outlined the possibility of existing only two models of the relations with the EU:

1) Russia's strategic goal in the relation with the EU is integration, whose end point may be joining the EU;

2) cooperation without formal integrationist elements (such as adopting legislation in line with the European one) between two independent power centers belonging to the companies of civilized nations.

In the first case, it was stated that EU membership is counterproductive to the long-term interests of the Russian Federation as a world-class power. "Due to the mentality and political culture, Russia is not able to accept the position of 'leader among many other leaders' in the EU" (S.A. KARAGANOV , 2006).

The supporters of this thesis were in minority but the majority stated that on medium and long term Russia will not be able to maintain a global role for itself. The common point of the expressed views was that the

greatest obstacle in resolving the uncertainties and the lack of trust between Russia and the EU is represented by the differences in value between the two companies and especially between elites.

It seems that Russia has opted for the second model by adopting a strength position and an intimidation and blackmail tactics regarding the EU oil supply, which is a situation caused by creating the necessary preconditions for the emergence of the EU's energy dependence on Russia (Vladimir MILOV , 2006). This position was influenced by the fact that the EU did not take into account (in real) the possibility of Russia's accession even in a distant future.

Russia's economic growth mainly caused by the huge increase in prices[1] of energy products made it more powerful (Georgi DERLUGUIAN, 2006), less cooperative and, above all, less interested in cooperation with the West.

Although the EU is a far greater power than Russia if analyzing demographic and economic parameters (the economy is 15 times higher), military spending and territory[2], the Europeans are vulnerable regarding the source of their power, namely unity. This is an aspect exploited by Russia, which used each particular interest to the detriment of European unity, as the adage *divide et impera*.

Thus, a study of the European Council of Foreign Relations (Mark LEONARD, Nicu POPESCU, 2007) has identified five distinct approaches of the relations with Russia in the Member States of the "old" and "new" Europe:

- *Trojan horses* (Cyprus and Greece) which often defended Russian interests in the internal EU negotiations and would exercise a veto against the adoption of common positions on Russia;

- *Strategic Partners* (France, Germany, Italy, and Spain) that have enjoyed special relations with Russia, and have sometimes undermined common EU positions;

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[1] growth caused, on the one hand, by the lack of resources on global level on the basis of the economic growth of some resource-intensive countries such as China but on the other hand, the price has also climbed because of Russia, which has used its position as the EU energy supply semimonopol, a position which was created through its actions of monopolizating the Caspian energy resources and systematically preventing the creation of other European supply routes.

[2] EU population is 493 million people to 143 million inhabitants of Russia; the EU area is 17,075,000 sq km to Russia's 4,423,000 sq km.

- *Friendly Pragmatics* (Austria, Belgium, Bulgaria, Finland, Hungary, Luxembourg, Malta, Portugal, Slovakia and Slovenia) which maintained close relations with Russia and put their private interests above the EU political goals;

- *Distant Pragmatics* (Czech Republic, Denmark, Estonia, Ireland, Latvia, Netherlands[1], Romania, Sweden and the United Kingdom) which also focus on their interests but criticize Russia's behavior whenever necessary;

- *New Cold Warriors* (Lithuania and Poland) which show an unhidden hostility against Kremlin and are willing to exercise their veto to block EU negotiations with Russia.

In what the following policy towards Russia is concerned, each of the five groups of EU countries rallies to two approaches. One approach regards Russia as a potential partner which may be attracted on the EU's orbit through a process of integration leading to the unification of interests. The second approach regards Russia as a threat that should be controlled through a software process that involves the removal of Russia from the G8, NATO expansion, support of anti-Russian regimes in its neighbourhood and the creation of a cordon sanitaire.

Latest international developments[2] have demonstrated that Russia's neighborhood policy is better coordinated and implemented than the EU's, because Russia has political, economic and even military resources in order to exercise its influence on its neighborhood which is much stronger than the EU's. Renewed Foreign Policy Concept of the Russian Federation of July 12, 2008 stated that Russia „has developed a full role in global relations" and underlined that" the development of bilateral and multilateral cooperation agreements with CIS Member States constitutes a priority area of Russia's foreign policy" (Olena PRYSTAYKO, 2008).

The new challenges for Russia on the EU are more important taking into consideration the deeper consequences that can appear than energy

[1] It is to be seen whether, following the strategic cooperation agreement signed by Rosneft and Royal Dutch Shell companies in Moscow on July 6, 2007, the Netherlands has already passed from the category of Distant Pragmatics to Strategic Partners.

[2] The fragility of the orange regime in Ukraine, the blocking of the admission into NATO of Ukraine and Georgia due to the military conflict in August 2008, the concluding of cooperation agreements with Azerbaijan, Kazakhstan, Turkmenistan;

blackmail or blockage exerted by Russia to the UN by exercising its right of veto. What Russia "offers" is *a new alternative ideology*[1] to that of the EU that differs in the understanding of sovereignty, power and world order. Russia seeks to revise trade agreements concluded by Western oil companies, military agreements such as the European Treaty on Conventional Forces (Vladimir SOCOR, 2007, 2008)[2], but also diplomatic codes and conducts such as the Vienna Convention.

Thus, President Medvedev launched in Berlin, on June 5, 2008, the idea of a new European security treaty to replace the Helsinki Final Act, arguing that the current security architecture of Europe did not pass the tests of strength during the recent events and that it must correspond to a multipolar system of international relations to which we turn **(**Andrew MONAGHAN, 2008).

Although this proposal cannot remain unanswered, it delayed to appear both from the EU and the U.S.A. proposal to build a *Trans-Eurasian Security System* was launched at the level of the theorists of international relations since 1997.

Taking into account that deeper reactions delayed to occur (which also include the U.S. position, NATO, OSCE), an analysis was made (by the specialists), (Marcel H. Van HERPEN, 2008) to identify how the EU should respond and detect the hidden targets[3] of Medvedev's plan which aimed at limiting the influence of U.S. and EU, NATO, preventing the crystallization

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[1] Moscow believes that laws are the expression of power and if the balance of power changed, the laws should reflect this change.

[2] The intention to renegotiate or withdraw from the Treaty on Conventional Forces in Europe belongs to Russia since July 2007 when Russia notified all the contracting states to suspend this document due to new international realities and to maintain this document in its current form would be detrimental to Russia

[3] According to this analysis, the hidden objectives are: Introduction of China as a counterweight extra-European power, alongside the U.S.; Counseling the profile in Sanghai Organization (seen by some as a way to counter NATO of Asia), Division of NATO (between "friends" like Germany, France, Italy, Spain and "hostile" represented by Britain, the Baltic states, etc.); Total lock of NATO (because the Russian proposal aimed at individuals, states, institutions and alliances); Consecration of a "Monroe Doctrine" of Russia for immediate vicinity (which means NATO farewell for Ukraine, Georgia, Moldova. Removal from the game of the current European security Treaties, the OSCE and the CFE Treaty.

of a common foreign policy of the EU to Russia as well as re-discussing the current European security treaties.

After this warning, a number of ideas were advanced to counter the Russian proposal, but it would be premature to present them here, since decision-makers in NATO and EU member states have not done an active policy of them (yet).

EU-Russia Summit, in June 2008, during the Slovenian Presidency has relaunched the negotiations on a new cooperation framework agreement after identifying some basic principles[1] in accordance with the principles of international law, on which negotiations should be conducted and after obtaining a common position from all Member States[2]. Unfortunately, soon after the outbreak of the military conflict in Georgia in August 2008, the process of negotiations that had just started was blocked.

For the next EU-Russia summit in Nice, on the 14th of November, France expects the release of negotiations with Russia since the EU presidency is held by France which is classified as a "friendly" state to Russia and has direct interests in this regard and the parties will be represented at the highest level[3]. It remains to be seen whether EU member states would reach a consensus in spite of having already given some conflicting signals[4] upon unblocking the negotiations accession, certain countries being sceptical of Russia's lean toward compliance with such terms, the six-point peace agreement, signed with Georgia on Kremlin not fully complying on that strategic partnership.

Nowadays, Russia and the EU have an asymmetric relationship in the sense that currently, almost all indicators are in favour of the EU. Not

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[1] *EU-Russia Summit: The start of a new age* - Press Releases, http://www.eu2008.si – the official site of the Slovenian Presidency.

[2] Poland and Lithuania have long blocked the negotiations with Russia because of bilateral issues, such as the Russian embargo on the Polish meat or the refusal to supply the largest refinery in Lithuania after it was privatized by a Polish investor;

[3] from Russia President Medvedev and Foreign Minister Sergei Lavrov announced their presence, see http://ec.europa.eu/external_relations/rusia (6.11.2008).

[4] EU foreign ministers adopted in October 2008, in the pre-deployment meetings of General Affairs and External Relations Council in Luxembourg, an opposite position regarding the resumption of negotiations for the conclusion of partnership with Russia. Thus, the EU countries were divided into two camps, France, Germany and Italy adopted pro positions and Britain Poland, Sweden and the Baltic States have expressed contrary positions.

only are the size of territory and population positive but also the structure of the economic exchanges. Thus, 56% of the Russian exports address to EU and 44% of its imports are from the EU, while only 6% of the EU exports bound for Russia and only 10% of the EU imports are of Russian origin. Even energy interdependence reflects an asymmetry in favour of the EU, since during 2000-2005 the imports of Russian gas have fluctuated (Pierre NOEL, 2007), while 70% of the Russian gas exports is bound for the Community. The absence of a Russian pipeline to China makes it vulnerable to the developments in the EU consumption.

Finally, it can be said that EU-Russia partnership is vital for both sides, representing one of the pillars of European security building and the degree of interdependence and the need to coordinate efforts to address current international challenges (such as the financial crisis) in a world that is projected to be a multipolar, require both parties to closer ties agreement and cooperation on the principles of international law norms.

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LINKING WORDS IN LEGAL ENGLISH

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Abstract

This paper emphasis on the Legal English linking words usage and their Romanian translation challenge.

Using a variety of linking words is important in ensuring a logical flow of ideas in writing easy for the reader to follow.

Introduction. Each legal system is situated within a complex social and political framework which responds to the history, uses and habits of a particular group. This complex framework is seldom identical from one country to another, even though the origins of the respective legal systems may have points in common. The diversity of legal systems makes research in the field of legal terminology more difficult because a particular concept in a legal system may have no counterpart in other systems. Sometimes, a particular concept may exist in two different systems and refer to different realities, which raise the problem of documentation and legal lexicography. Legal translation implies both a comparative study of the different legal systems and an awareness of the problems created by the absence of equivalents. Translation is much more than the substitution of lexical and grammatical elements between two languages. Often the process of translation requires the art of leaving aside some of the linguistic elements of the source text to find an expressive identity among the elements of the source and the target texts. In legal translation, a problem arises from the very beginning if the translator aims at finding the exact terminological equivalent. The attribution of an equivalence to a legal term, for which no comparable concept exists in another legal system, can be the cause of ambiguities, confusion and all types of miscomprehension due to the effect the term in question produces in the reader of the translated text.

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Therefore, the difficulty of terminological equivalence in legal translation is reflected, above all, in the expectations of the reader from the translated text. In most cases, legal texts do not lend themselves to precise translation, unlike the case of a scientific article. In this respect, legal concepts, terminology and realities of one society may only correspond partially to those of another one, that is to say, certain concepts may totally coincide, while others may only partially do so. As a result, in the field of legal translation, the major practical difficulty is deciding whether a concept is the same in two languages or different in terms of the consequences it will ensure.

Register is a technical term used in linguistics to refer to the language we use in certain situations. During the same day you will use and move between a number of registers of standard English, depending on where you are and whom you are talking or writing to. You will use different language to your child, your partner, your law lecturer, your employer, your best friend, your clients, the judge, and your colleagues. As a barrister you will use different language with your colleagues in court from that you would use with them in chambers or over lunch. You adapt your standard language to suit each occasion and to reflect the kind of relationship you have with your audience.

Occupations and activities have their own specialized language registers. Thus, rugby players participate in *loose mauls, rucks* and *turnovers.* Linguists discuss *syntax* and *register*. And lawyers? *For the purposes of the aforesaid it is submitted that the said professionals may be in flagrante delicto hereunder. Res ipsa loquitur.* As this example demonstrates, we are not talking only about vocabulary. Grammatical structure also changes between registers. A register may also contain slang. Police officers may talk of sending out the *yobbo van*, and teachers in higher education may refer to *resource-based-learning* as *fo-fo* (unabbreviated form unprintable).

Legal English sentences. Besides being long and complex, legal sentences are self-contained. This means they stand on their own; neither linked to what precedes or follows them. This is necessary because each action or requirement is dependent on a series of conditions which must be fulfilled before it can happen.

In standard written English, ideas are linked by logical progression and the use of linking words and phrases. This gives coherence to a text.

By treating each sentence as a separate item, legal ideas are isolated from each other. The writing is disjoined and may read like a list.

Documents, therefore, seem to lack coherence. The reader has to struggle to make connections between items and their place in the text as a whole, as well as put up with unnecessary repetition.

In fact, legal documents are coherent, in a way which is closely linked to their purpose. They are written records which lawyers use for reference. This means that, for example, readers will not normally scan a new piece of legislation to get a rough overview – they can get this from journals and commentaries. They will scan to find out which sections of the document are likely to give them the answers they want to specific questions, and then take time to study those parts in detail. This process is easier if each section is set out separately from every other one.

The general rule in English is that a simple declarative sentence should be structured Subject-Verb-object. For example:

The lawyer drafted the contract.

In this sentence, the *lawyer* is the subject, *drafted* is the verb, and *contract* is the object.

The subject is the part of the sentence that usually comes first on which the rest of the sentence is predicated. It is typically – but not always – a noun phrase. In traditional grammar it is said to be the "doer „of the verbal action.

A subject is essential in an English sentence structure – the more so as a dummy subject (usually "it") must sometimes be introduced (e.g., *It is raining*). However, they are unnecessary in imperative sentences (e.g. *Listen!*), and in some informal contexts (e.g., *See you soon*).

Verbs are traditionally described as "doing" words. They are usually essential to clause structure. Verbs may be classified either as *main* or *auxiliary*. Auxiliary verbs are traditionally described as "helping verbs", and include *be, do* and *have*.

The object is usually a noun phrase. In a simple declarative sentence it follows the verb. The object is usually said to be "affected" by the verb. As in: *The lawyer drank a cup of coffee.*

If in everyday writing and speech the subject appears at or near the beginning of the sentence, followed closely by its verb, legal drafters, however, put words, phrases and clauses in unusual positions. The usual underlying logical structure of a legal sentence is:

If (or when) X, then Y shall be Z, or Y shall do Z.

X is a set of conditions or circumstances: if? when? where?;

Y is the agent: who?;

Z is the state or action: what?

This structure is sometimes known as a legislative sentence, or legislative thought. Here is an example:

If the work is cancelled by the customer, (X)
the contractor (Y)
is entitled to make the following charges... (Z)

Normal English word order would be Y, Z, X. Why the difference? In Legal sentences the X component often appears at the beginning of the sentence to enable the reader to discover early on whether she is interested in this provision or not. If not, she is spared the agony of having to read on! If she is unfortunate enough to have to struggle on, by the end she may well have been floored by a monstrous and nightmarish sentence which spawns vast strings of embedded clauses and phrases. These overwhelm the subject of the sentence and swallow up part of its verb. She may hunt in vain, but won't find the verb until it is disgorged many lines further on.

In more complex sentences, it may be necessary to introduce other parts of speech. These include: adjectives – adjectives go before the nouns they qualify, for example: *The **commercial** lawyer drafted the **sales** contract;* adverbs – they may be added to modify the meaning of our example: *The commercial lawyer **efficiently** drafted the sales contract*; linking clauses - they help linking clauses together.

One way of achieving this is by using prepositions:

In, at, on, to, from, etc

or conjunctions:

and, or, but, since, when, because, although, etc.

Using the same example, we can add:

*The commercial lawyer efficiently drafted the sales contract **for** the company, **but** the client requested various amendments **and** additions.*

In addition, relative pronouns:

who, whom, whose, which, that

provide a convenient means of linking sentences together.

When writing in English, lawyers use "discourse markers" to show how different ideas interrelate. These usually appear at the beginning of sentences and they indicate to the reader the way in which he or she should treat the information or ideas given in the sentence. They provide an essential means of orientating the reader and assisting his or her comprehension of the text.

In practice, since there are only a limited number of language functions that are typically required in legal discourse, a small handful of words and phrases will cover situations that a lawyer might expect to encounter in the course of daily working life.

Examples: ***In the event that*** *a trademark owner wishes to allow others to use the trademark, he or she must inform the Registrar.*

Here, the opening phrase "in the event that" indicates to the reader that what follows is a hypothesis. The word "if" could also be used to the same effect.

Example: *Where trademark infringement occurs, the owner of the trademark has the right to sue.* ***However****, a trademark may be lost if it is no longer distinctive.*

Here, the opening word of the second sentence – *however* – indicates a qualification to the previous statement.

Example: ***Of course****, if information is already in the public domain, it will no longer be regarded as confidential.*

The opening phrase "of course" in this sentence indicates an assumption. The writer uses this technique to indicate to the reader that the idea conveyed in the rest of the sentence is generally accepted.

Example: ***Therefore,*** *in such circumstances a confidentiality agreement covering such information will be ineffective.*

In this sentence, the opening word "therefore" indicates a logical step or deduction based on the information provided in the previous sentence.

The table below sets out some of the more common functions for which discourse markers are used (on the left) and some suggested words or phrases for those functions (on the right).

Function	Suggested word or phrase
Referring to the past	Formerly
Expanding on a point	Besides, furthermore
Contrasting	On the other hand, conversely
Summarizing	In short, in summary, by way of précis
Drawing a conclusion or inference	As a consequence, consequently, as a result
Giving an example	For instance, for example
Emphasizing	In particular, especially, it should

	be stressed that
Qualifying	However, it should also be borne in mind that
Making a logical step in the argument	Therefore, thus, it follows that in particular
Beginning	Firstly, to begin with
Making an assumption	Of course, naturally, clearly, evidently
Referring to a new issue	Turning to, with reference to, with respect to, with regard to, regarding
Hypothesizing	In the event that, if
Bearing a factor in mind	Given that, bearing in mind that, considering that
Stating an exemption	Except, with the exception of, save for, save as to

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THE IMPACT OF ELECTRONIC COMMERCE ON THE PRESENT SOCIETY

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Abstract

With the Internet access growth, the Electronic Commerce (E-commerce) captured the interest of individual consumers and commercial societies everywhere. Many companies were so involved in marketing, branding, raising money and carrying their bags of money to the bank that they forgot that an online business may still be. The discussions are about the creation of a new business model (e-business, e-commerce) through the Internet that radically changes their efficiency by reducing transaction costs. For a business to work, there are certain fundamentals that need to be practiced, even in the magic world online. To be successful online, just like offline, you need a business plan that will eventually lead to profitability.

JEL Classification: L 81

1. The electronic commerce: introduction, generalities, evolution

From Adam Smith to our days, commerce has been viewed as a means of exchanging goods for another value. Since the first states appeared, the commerce has been protected by the stick, in the beginning, and by the law, later on. We arrived at the moment when commerce can be traded on computer networks and communication systems.

Electronic commerce or *e-commerce* does not yet have a definition widely accepted. It could mean, in a large sense, any business made on the Internet or, in a small sense, goods sale and services delivered off-line or on-line sale digital products (Coppel, 2000).

In the 1990's the IBM company made popular the *electronic business* term through marketing campaigns. Another related term is *E-Trade*, which refers to the electronic stock transactions. Internet offers a various spectrum

of use in commercial business and it can involve relations between different partners, like firms, individual consumers and public authorities. E-commerce started with quite limited applications which answered to companies wishing to incorporate their own business systems with the suppliers and distributors' ones through electronic change of information provided by very expensive private networks.

For the first time, technology allows to create a real global market and, at the global level, they try to establish the legislation in this field. Electronic Commerce developed and proceeds to develop very fast at global level, being a true social- economic vector. While some people think that computers are an instrument which dehumanize and reduce the life quality, its impact over other persons determine them to see in the developing of information and communication technology a challenge and a good opportunity.

Any commercial company will be able to be approached by its customers irrespective of their geographic situation and the consumers can obtain products or services at the most convenient price / performance reports launching the command from their work place.

Electronic deliveries are certainly made to the client and they assure at the same time the suppliers' immediate access to the cash generated by the sales performed, while the consumers receive automatically a financial report which permits them to have a latest image of their financial reports.

If in 1998, through electronic commerce, exchanges of about 50 billion dollars were made in the USA, in the next ten years they increased more than ten times.

One of the principal objectives of the year 2010 is to create a unique informational space. Until now, the stress has been laid on the regulatory of the networks and of the content, so that the change of the content market change has became already obvious in the growth of the music online sales and new digital devices.

The transition from the classic distribution of the content way to the online distributions is accompanied by an explosion of a content created by users. The absence of a specific legal frame for the consumers' protection based on high standards of security and on the definition of suppliers' responsibility, and also the most important aspect - the uncertainty of the remedies at their disposition in case of litigation, do not allow consumers and societies in the field to fully exploit the network commercial power.

2. **The e-commerce forms**

These forms have been diversified in categories like:

- B2B (Business to Business) - is an e-commerce model in which all the participants are companies or other organizations. In Romania B2B field is a very important business, leading to the apparition of the internet in firms at high level. Recent analysis shows that, in Romania, there are more than 1.1 million users which navigate on Internet for their jobs (including schools and universities) and more than 42000 of high level domains registered.
- B2C (Business to Consumer) - is an e-commerce model in which the companies are selling to individual buyers. In Romania, the B2C electronic market is in a forming stage. The consumers are still testing online, but there are a lot of barriers which must be broken before the customers behaviour changes; these things are linked with the problems in the creation of the transactions security the protection of the customers guarantee, the speed of transfer increasing in the network or even to guarantee internet access. Most of the particular users of the Internet have access through their jobs and only about 200000 of people have a personal access. Office of National Statistics in Great Britain sustains that the B2C sales on the world exceed 10 billion dollars in 2001, the market being in high expansion.
- C2B (Customers to business) - this e-commerce model refers to the individuals which use the Internet for selling their products and services to firms and for looking for sellers on auction on-line for the products and services that they need.
- C2C (Consumer to Consumer) - this model refers to the consumers who are selling directly to other consumers. An example in this respect which has an enormous success all over the world is the eBay system.
- E-Government - this form of e-commerce is met in the following forms: B2G (Business to Government), G2B (Government to Business), G2C (Government to Consumer). Here, "government" means the administration of the respective state.
- B2G (Business to Government) - the governments are using e-commerce channels for performing the efficiency of the operations and

improving the services offered to the customers - citizens. An important interest field for the governments in the business field is the enhancing of Internet and of VAN networks using, for dissemination of information, opportunities, shares received from the sellers/suppliers of goods and services. Between 1980- 1990, some innovational governments began to use B2G, using dial-up system in "bulletin board services" transmission (BBS), which guarantee the online access to the current demand of information, opportunities, consultancy.

- G2B (Government to Business) - is an e-commerce model in which a governmental institution is buying or selling goods, services or information from the judicial persons.
- G2C (Government to Consumer) - is covering government-citizens relations on the informing and public service catering level (e.g., the online payment of taxes).

3. **E-commerce and traditional commerce: similitude and differences**

E-commerce not only includes the commercial transaction as such, but also all the interactions and changes of information between sellers and buyers, which appear before and after the respective transaction (publicity, technical support for the bought product, delivery, commercial services etc.). So, in the e-commerce case, we meet the same elements like those of the traditional commerce, but with some specific changes, like:

- the product/service (there is a product or service which is material or digital);
- the sale place (in case of commerce through internet, there is a website on the network which present the offered products or services);
- publicity (a manner for attracting people to come to a certain website was developed);
- the selling manner (an online form in the case of commerce through Internet);
- the payment manner (in commerce on the Internet, the e-banking activity evermore applied, a certain manner to charge money - usually a banking account with payments by credit cards. E-banking assumes the existence of a secured page for commands and connection to a bank);

- the delivery manner (acquiring products on the Internet is realized by post-office messenger or classically - by the buyer's visit to the seller deposit (a physical location).

The e-commerce activities are not different from the activities of traditional commerce: a simple cycle of selling without intermediary, in which only the delivery of the tangible goods can not be executed through electronic proceeds, useful data bases for electronic business, commercial activities realized electronically (the publicity for goods and services, promotional actions, communication between traders, online delivery from software packs, electronic magazines, newspapers and news reports, transfer of assets, commercial auctions, direct marketing, sale services, launching orders, transferring documents of transport, contracting services and others).

With small exceptions, e-commerce does not differ very much from the traditional one, over the appearance of the stages necessary for the achievement of transactions. But there are other aspects which delineate the two forms of the commerce.

At first sight, it is about the sphere of action, or about the coverage of the two forms of commerce. Practiced especially by Small and Medium Enterprises (SMEs), the e-commerce represents an important objective of the Government Strategy for maintaining and developing of the SMEs in 2004-2008 time period. So, the developing of the competitive capacity of the SMEs, like a strategic priority, can be obtained by an e-business promotion and by a sustained support for innovation and the access of SMEs to the new technologies. But, for a high generally using of e-commerce by SMEs, the legislative and standard conditions in this field are necessary. Also in Romania, since 2000 it has been considered that one of the principal objectives belongs to the home commerce is "the preparing of the legislative and normative conditions for a generally high using of e-commerce". But, e-commerce cannot be restricted to a territory, because there are at least two characteristics of e-commerce (because of Internet) like: the market opened at a global level and represented by the network and the partners in an unrestricted number, being known but also unknown. The development of e-commerce was possible because of another important aspect in delineating the traditional commerce system from the electronic one, namely the time of the commercial transactions achievement. Another seemingly important aspect is delimitating the e-commerce by the traditional one referring to the commercial products.

The firms of electronic commerce sphere are selling: IT (software, hardware, accessories), books, music, financial services, flowers and gifts, entertainment, tourism services, toys, spectacles and travel tickets, information and not so much food-products on account of their perishability.

4. Advantages and disadvantages of commerce markets developing

Online markets are associated with advantages for consumers, but they also carry problems pre-requisites of the regulatory system. Online markets differ in a significant way from the structure of the traditional market in the typology, the customers' potential, the competition between price and the interactions seller-customer, these being significantly different from the same phenomenon of the traditional markets. Their attractiveness is offered by the strong orientation to consumers, hand a lot of products suppliers and services are laid-out at hand, reasonable prices and more information.

An important problem of the online market is more possibility, than in the case of the traditional one, of having a fraudulent and deceptive behaviour, because of the anonymous character of the participants. As follows, near to fair traders, it is very possible to exist false sellers who are cheating the buyers by the help of some attractive sites, aggressive advertisement, the promise of offering "marvellous" products and some unbelievable discount of prices, and finally they don't offer what they have promised or not delivering the merchandise at all. Moreover, the consumers are confronted with a theft of identity through more and more complicated methods.

In the economic offences chapter, one of the most seriously infringement of the law of property through electronic commerce is the digital traffic which has three typical forms of manifestation like: duplicating, illicit access, the transmission of artistic literary operas of software and technical creations. The computer, as crime instrument, is very powerful. Also, a mistake of the computer program which manage the ATMs of a bank activity can reduce or increase the deposited or withdrawn sum. In New York, only at a bank, 150.000 transactions were effectuated by mistake, which means more than 15.000.000 USD. The theft of a stock of microprocessors, which have a bigger value than their weight in gold, is

relatively easier to be realized than a transport of a bank attack. The terrorist attacks don't restrict themselves to bomb attack or other conventional arms. John Deutch, ex-manager of C.I.A., said that: "The tomorrow terrorist will be able to produce bigger damages with a keyboard than with a bomb". In 2000, the International Strategic Studies Center from USA reported that 23 nations informationally attacked the American state, and The American Department of Defense declared that their computer system is being subjugated to 60- 80 of informationally attacks daily.

5. The result of e-commerce over the reality of present economy

It is known that more than 80% of the sites are commercial, half of the cars sold in USA are ordered online and the transition at a full digital economy is inevitable in the future. The site www.amazon.com is the biggest virtual bookshop of the world (once quoted at stock exchange for 17 billion dollars, it does not bring any cents for the shareholders).

Peter Drucker underlined the fact that information is not the fuel of Informational Revolution, but e-commerce is, fact that nobody know ten or fifteen years ago. Like in the normal life, where there are a lot of catalogues and advertisements, the buyer gets less products and more image. The principal activity of the commercial websites is the collecting of personal data and it was revealed that about 92% of these data are collecting personal data of users who are putting then together, sorting and using them thereafter. It is expected that the power transfer from the producers to the consumers should be produced on the reduction and even elimination of the sellers' intentions for imposing prices which do not cover the value of the offered products or services.

The organizations and enterprises will necessitate, in a first stage, digital consulting firms able to facilitate the conversation with consumers and relieve the work of the producers for personalized information on the products and services provided. In this manner, the companies will be concerned, for the most part of their resources, with collecting data and making studies referring to the consumers' requirements and preferences.

In a study made by Global Business Dialogue on Electronic Commerce, it is estimated that the whole value of online transactions will hit almost 7000 billion USD annually and it is presented in a report drawn up by Jupiter Research that the number of Internet users, in Europe, will hit

212 million value users until the year of 2008, from 142 million of value users in 2002.

At present, one of the elements which restricts the development of online business is linked to the distribution, at a global level, of the technologies necessaries for the achievement of some transactions; in other words, "Internet will reach only certain parts of the world". People dissatisfied of the quality or performances of one of the products acquired online will be able to lodge acclaim in their country, but the solutions of that claims will be done in conformity with the norms and standards of the sellers country. At this moment, the goods acquired online, which are transferred from a country to another, are custom duties free, this thing means that e-commerce has a preemptive treatment comparing to the traditional commerce. In the conditions that e-commerce will become the principal form of carrying on the international commerce, less for some categories of goods, this fact could have a negative impact over the incomes of the state budget which can register decreases owned to the substitution stage of the traditional commerce with the electronic one. It can be said that at present the biggest part of the global population cannot have access to the new technologies of information, yet. In the most countries of the world, "the old economy'," the economy of chimneys of factory", like A. Toffler says, is dominating not the digital one.

Regarding the evolution of e-commerce (table 1), we can observe that the percentage of turnover of the enterprises obtained from e-commerce through Internet, not only in EU, but also in Romania, it is growing, even if in our country it is much lower than the EU average.

Table 1. The weight of turnover of the enterprises obtained from e-commerce through Internet in UE and Romania

	2004	**2005**	**2006**	**2007**
EU (27 countries)	2.1	2.7	4.0	4.2
Romania	1.3	Data not available	0.4	1.2

Source: Eurostat

6. Conclusion

The development of the informational technologies revolutionized the global commerce, retail trade, redefining the classical principles of marketing. It is remarkable the fact that, in our days, for more and more enterprises from different countries, e-commerce means the increasing of income. This because e-commerce means the unfolding of a business, like a value-producing activity, having as a support the Internet network and using some special software programs. On the global level, e-commerce became a principal component of the economic development politics of the developed countries' governments (Japan, USA, EU countries, and others), and through the measures taken by the countries at the governmental level for establishing some unique regulations regarding the achievement of commercial transactions on electronic support, e-commerce become an essential component of the global commerce.

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THE IMPACT OF THE ECONOMIC CRISIS ON THE UNEMPLOYMENT RATE IN GALATI COUNTY, MEASURES AIMED AT ITS REDUCTION

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Abstract

The work was undertaken from the perspective of impact analysis and economic crisis on unemployment in the region of Galati, taking into consideration the causes which led to the unemployment emergence and its increase, the effects that generate and maintain it, as well as its mitigation. The unemployment rises on the basis of two major economic and social problems: loss of the jobs by a party due to employment and increasing the working offer for the employment of the younger generations in their working age. To avoid the negative effects brought about by the unemployment should focus on: a policy to encourage investors, the labour market flexibility, the convergence of educational curricula and development service industry.

Keywords: unemployment, economic growth, global crisis, labour.
Classification: JEL – E24

The existence and the progress of the society are provided by the population and the economic development, on the one hand, and their interaction, on the other, on condition that relationship is carried out under certain qualitative and dimensional characteristics. The lack of these features or their distorting effects, lead to an imbalance of the population-economy correlation.

As a result of recent economic problems, more and more workers of all branches of economy are losing their jobs every day. Less investment, a decreasing demand, companies shutting down or banks restricting individual loans are all factors which have made Romanian citizens be more cautious when it comes to spending. It's no surprise, then, that house and car sales have dropped, that people are no longer going on expensive holidays and that even the number of cosmetic surgeries has been reduced.

Statistics shows that since the crisis began, unemployment rates have risen in 31 counties of Romania. The most affected regions are the rural areas in the North-East, South-West and South of the country. In late November, the Agrostar Farmers' Federation announced that over 50 thousand workers in agriculture were laid off temporarily. The National Association of Importers and Exporters expects other hundreds of thousands to be laid off temporarily or definitively in the coming months. This comes as a result of the decrease in textile, chemical, mechanic and furniture exports. At the moment, the majority of companies operating on the Romanian market are not hiring new people, while in the real estate area, the number of job offers has dropped by 70% compared to the last year.

The unemployment today is one of those imbalances that affect the proportions in different countries and regions. Romania ranks 9th in the Eurostat top, with an unemployment rate of 6.9% in July, 0.1% above the member states' average. This year brought a decrease in unemployment, compared to July 2006, when the unemployment rate was 7.5%.

Although analysts say unemployment will continue to drop, job losses might increase on the short run, due to exporting companies and the end of seasonal activities. Appreciation of the national currency affected some producers for both the domestic and export market. We might witness a reduction in jobs, especially in the furniture industry (standard.money.ro).

The National Employment Agency (ANOFM) also announced that this month some 1,700 people are likely to lose their jobs, especially in the private sector. However, the market will assimilate rapidly the unemployed labour force, specialists say.

Lowest unemployment rates in member states, in July, were in Denmark – 3.2%, the Netherlands – 3.4%, Cyprus – 4.1%, and Austria – 4.3%. At the opposite pole, the highest rates were in Slovakia, with 10.6%, and Poland with 9.7%. The EU had an unemployment rate in July of 6.8%, lowering every month (6.9%) and year-on-year (7.9%).

The unemployment is a complex contemporary phenomenon, carrying out different consequences upon all the countries in the world. It is a broad phenomenon that includes the economic field, in particular, but also elements of social, political, psychological and moral level.

In terms of the labour market, unemployment represents the excess supply over demand for labour.

Table 1: Unemployment rate in Romania

Year	Unemployment rate	Rank	Percent Change	Date of Information
2003	8.30 %	114		2002
2004	7.20 %	126	-13.25 %	2003
2005	6.30 %	58	-12.50 %	2004 est.
2006	5.90 %	59	-6.35 %	2005 est.
2007	6.10 %	68	3.39 %	2006 est.
2008	4.10 %	51	-32.79 %	2007 est.
2009	6.80 %	64	-6.33 %	2008 est.

Source: CIA World Factbook - Unless otherwise noted, information in this page is accurate as in June on the 18th, 2009

Labour economists tend to consider unemployment as a short-term disequilibrium which can be solved by a proper price adjustment that is by a wage decrease large enough to induce an adequate increase in the demand for labour. Yet, in recent times, unemployment appears to be a rather permanent phenomenon, especially in the largest European countries and in the European Union as a whole. Moreover, this persistence does not seem to be positively affected by wage moderation started in the late '80s and lasting during the '90s. Thus, mainstream economics has tried to find other justifications of high and permanent rates of unemployment and attention has been focused on the so-called "labour market rigidities.

The most known definition of unemployment is given by the International Labour Office, and this is: unemployed persons over 15 years who meet the following conditions simultaneously: do not have a job or activity for the purpose of revenue, are looking for a job, failing in the last four weeks to find one, are available to start work in the following 15 days, if there is a job for them start immediately.

The unemployment phenomenon can be characterized by the help of several elements:

- The level of unemployment, which is determined both in absolute size, the number of unemployed as well as relative size, the unemployment rate (calculated as the ratio between the percentage of unemployed and civil active population). These indicators, in the region of

Galatz, differ depending on a number of characteristics (gender, age group, medium, etc.). Currently, the world believes that full employment of labour is equivalent to a low level of unemployment (1.5 - 4%). As a permanent phenomenon, the famous English scientist A.W.Phillips added the two indicators a certain third one, called the natural rate of unemployment, which corresponds to a stable or inertial rate of unemployment.

- The intensity of the rate of unemployment - depending on the features delineating the following types of unemployment: total unemployment - involves loss of employment and total cessation of business; partial unemployment - reducing activity of one person, in particular by working time reducing followed by a decrease of remuneration; disguised unemployment - specific for the least developed countries, where many people have a job of reduced employment effectiveness.
- The unemployment duration or period of unemployment from the moment of leaving the job up to the moment of resuming a new one, as a characteristic element of a rising trend in unemployment. In most countries, there are specific rules that specify the duration for which compensation is paid, usually long-term unemployment being considered unemployed continuously for more than 12 months.
- The unemployment structure or its components are made by classifying the unemployed after a series of characteristics: the level of qualification, field in which they worked socio-professional category, age, sex, etc.

The result of several causes (which derives from the salary size matters, supply and demand of goods, the rigidity of prices), unemployment takes three forms: unemployment by insufficient consumer demand, also called Keynesian unemployment or involuntary'' (workers will work, since demand for labour is scarce relative to supply). Unemployment by insufficient production of various reasons (lack of raw materials, production equipment), entrepreneurs cannot or will not produce and employ staff; partial non-adaptation to the unemployment through labour, which may have several causes: poor working conditions, low level of salaries.

Unemployment today is regarded as predominantly involuntary, but it is also composed of voluntary unemployment and transient forms. It is formed on the basis of two major economic and social processes: loss of

employment by a party and employing the new generation in their working age.

In the first trial, there are the following types of unemployment: cyclical unemployment or short - because of various crises partially fully managed during the economic boom, structural unemployment - caused by economic restructuring trends, geographical and social level that involves a long and difficult process of growth investment, retraining and reorientation of education;. Technological unemployment - due to the technical progress enhanced by the emergence of advanced technologies and reduced through retraining the workforce; intermittent unemployment - caused by the practice of short-term employment; discontinuance of unemployment - especially bearing an impact mostly on women and caused by interruption of business due the family or maternity reasons; seasonal unemployment - caused by activities depending on natural factors going down.

In our country, the phenomenon of unemployment has been officially recognized since 1991, with the entry into force of Law no. 1 / 1991 on social protection of unemployed persons and their vocational integration.

The decline and disturbances caused by switching to a market economy have caused a real explosion of unemployment in the early years of transition, culminating in 1994 when it registered a high rate of unemployment. This year followed a period of recovery, in the year 2004 registering again a higher rate as a result of restructuring or even liquidation of inefficient units of economics (especially in the steel industry, wood industry and furniture, construction and transport of textile industry, agriculture, industry machinery and equipment, trade and waste processing as branches represented in the area Galati).

The graphical representation of unemployment sex rate trends, in the area of Galati, reached an average, during the 2004-2009 time period, as highlighted in Figure 1, in which a general increasing unemployment rate as well as the specific rates are to be seen.

On average, the differences of unfavourably unemployed urban population is maintained throughout the period, but their magnitude reached varies from 5.2%, in 2004, to 10.3%, in 2009, gender differences unfavourably employed male population, from 0 4%, in 2005, to 0.9%, in 2009 (except 2006, when the unemployment rate among male individuals exceeded the one of the female individuals, by 0.11%).

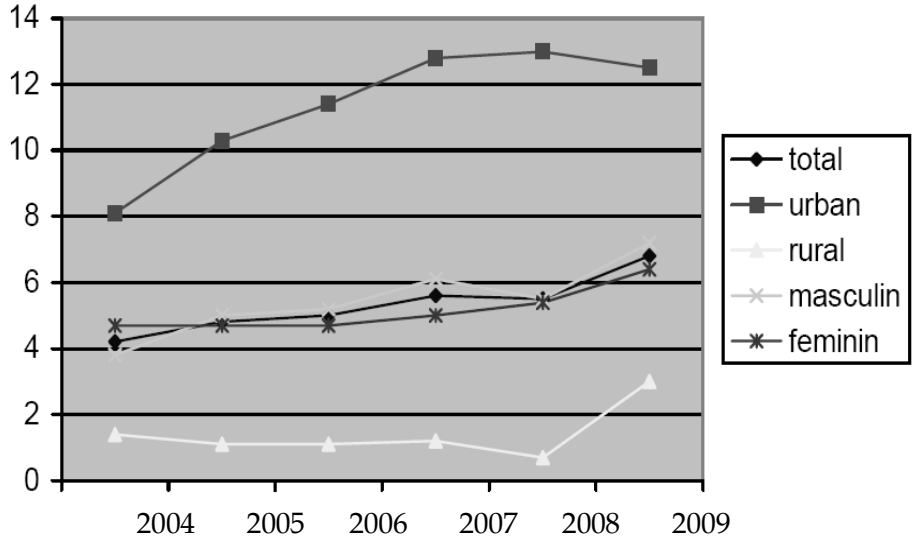

Figure 1: The evolution of unemployment rates in the Galatz area

The unemployment rate in the county of Galati has increased from 5.8% in October to 6.2% in November 2008, during which dozens of companies have announced the dismissal of 4300 employees their number being also reduced by nearly one quarter over a the similar in 2007.

The first companies that have resorted to this measure were in a contractual relationship with the largest trader in the region, Arcelor Mittal, involving steel plant, in turn affected by the crisis. ICMRS SA Galati, who made the steel plant at Galati involving steel industry repairs and Grand Smithz Works International, a firm operating to hold the slag on the steel platform, the number of employed workers having been dropped to about 500.

The County Agency for Employment has forecast an unemployment rate of over 6.2% for the month of November 2008.

In January 2009, there were massive layoffs, especially in construction, the largest company profile in the region, VEGA 93 SRL, fired 1600 employees got the sack of the 2060 employees.

Statistics Employment Agency of the County of Galati shows that a total number of 3913 citizens lost their jobs in 2008, in the month of

December and in 2009, in the month of January. Together with another 370 workers redundant by November 2008, resulting a total of 4283 unemployed in the region of Galati. That will be added by the ones leaving the platform Arcelor Mittal by the end of March 2009 in exchange for compensation payments.

The reduction of employment in November is another factor contributing to the rising of unemployment rate in the county of Galati. According AJOFM Galati, in November 2008 and have found a job 382 Galatians, with almost 25% less than in November 2007 when 505 people were employed in the work force. If you want to judge the performance of any savings, you will have to judge, measure and correlate the basic elements we have at our disposal for the economic growth rate, for inflation and unemployment.

When the rate of growth (rate of real GDP) is high, the production of goods and services is increasing and, therefore, it lowers the rate of unemployment, increasing employment and hence the living standards.

The specialists argue that if the rate of growth of the real GDP per capita would remain 2% per year, then consider per capita GDP would double every 35 years each generation can hope for a longer life. When the economic growth is an expansion, default has occurred and a decrease in unemployment. So, for a higher growth rate, a lower unemployment rate will get increased.

The Law that reflects the linkage between the growth rate and the unemployment rate is known as "Okun's Law", so called after the name of the discoverer Arthur Okun. Under this law, "for every 2.2 percent of the real GDP growth achieved in a year, the unemployment rate falls by one percent. The statistics is valid only for the US and around the Okun research carried out. It is considered that the level of unemployment up to 5% is normal and acceptable, and when they reach 8-10% or even more than that it leads to the most serious social problems.

Among the most important measures to decrease unemployment, the solutions and the final term, are necessary:

- the process revives growth through a policy of encouraging investors to create new jobs and stimulate the efforts of imports of equipment and capital goods that increase employment and infrastructure development;

- the labour market flexibility through flexible work schedules, partial or temporary work practice, seasonal reduction of the working time;
- the convergence of the educational curricula on specialization and professional requirements of various industries to increase employment opportunities for young people;
- the employment programs must submit extensive and ongoing information to persons seeking jobs. The more complete knowledge and information on jobs, the easier the adaptation is performed.

In this respect, support initiatives through tax incentives, interest subsidies, and preferential customs duties long term effect actions but of a more stable nature.

Training and further training may also be important goals in the programs, such as to assist those threatened by unemployment because they cannot keep pace with the new requirements under the professional competence.

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THE TRANSFER OF CIVIL SERVANTS ACCORDING TO LAW NO 188/1999 - RECENT MODIFICATIONS

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Abstract

Transfer for work considerations is mostly unilateral, mainly based on the public authority's will – the civil servants cannot refuse the transfer, otherwise they might be released from office. The only case exempted from this rule is transfer on request. Modifications with regard to the transfer of civil servants with management positions have occurred starting with October 6th 2009, while important modifications will affect the process of job occupation in case of collective transfer, starting with January 1st 2010.

Key words: executive and management civil servants, transfer, public interest, occupation, January 1st 2010.

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1. Introduction

The administrative action of appointing one in a public service job is governed by the principle of work stability, one of the principles found at the core of the practicing civil services, according to art. 3, letter f) of Law no. 188/1999, The Civil Servants Statue[1]. Although it is regarded as a warranty for the right to a career, from the point of view of public authority stability represents more than just a right, being settled mainly due to its efficiency and independence. It governs the organized mobility of labour force within public administration[2].

The general definition of the term *to transfer* means " moving jobs from one institution to another, without terminating the work contract (with the agreement of, or on the request of the employee)[3]". In the case of public jobs, there is a modification of work relations due to the transfer – termination of the previous relation, immediately followed by the start of a new one. Thus, the transfer has a double nature – it is both a way of modifying the work relation, as well as of taking over a civil service job. As this mobility results from the stability existing within the civil service job, no interview for the job is necessary.

In labour public law, the modification of work relations for work reasons (by delegation, transfer, moving to another compartment or structure without legal nature of the authority or public institution, as well as by temporarily carrying out a management civil service job) is unilateral, based on the public authority's will. The civil servants cannot refuse the

[1] Reprinted in The Romanian Official Gazette, Part I, no. 365 from May 29th 2007, with subsequent alterations including The Government Emergency Ordinance, No. 105/2009, relevant for some measures in the field of civil servant positions, as well as for the reinforcement of the managerial ability of the decentralized public services from ministries and other entities of the central public administration, territorial one, and other public services as well as regulating some measures related to de public official office, prefect office, and locally elected position (published in the Official Gazette, Part I, No. 668, from October 6th 2009)

[2] Ana Cioriciu *Consideratii privind transferul functionarilor publici*, in Revista Romana de Dreptul Muncii, No. 3/2007, p. 6

[3] See Dictionarul limbii romane, DEX, Romanian Academy, Linguistic Institute Iorgu Iordan, 2nd Edition, Bucharest, 1998, p. 1103

transfer, otherwise they might be released from their office[1]. However, there are exceptions related to personal situation which are mentioned in art 91. paragraph 6 of Law 188/1999. In conclusion, permanent promotion and transfer on request are exceptions of the above rule. The fact that both the transfer for work considerations transfer for work reasons, as well as the permanent moving of a civil servant to another compartment by the manager of the public authority or institution may be done only "with written consent of the civil servant who is to be transferred[2]", gives the process a formal nature rather than an imperative one.

Taking into consideration that civil service law, as part of administrative law, thus of public law, was created to increase the power of public authority over civil servants appointed in public jobs, as opposed to labour law which stemmed from the need to protect the weaker employee[3], this type of measure is very natural, as long as it does not turn into an abuse coming form the manager of the public institution or authority.

2. Scope of transfer stipulated by Law no. 188/1999.

Transfer stipulated by Law no. 188/1999. is directly applied to civil servants:

a. that are under the incidence of this status – most of those who carry out their activities within central or local public administration authorities, or within autonomous administrative authorities – as well to those who could have enjoyed special status or for whom this kind of status is related to the general one.
b. Whose special status does not contain any regulation regarding this legal institution.

[1] Art. 87, paragraph (2) and (3) and art. 77, paragraph (2), letter i., from the Law 188/1999. See also The Civil Servants National Agency *Human Resources Booklet*, policy 7 – Civil Servant Mobility, p. 3, http://www.anfp.ro/oip/doc/publicare/ghiduri%20si%20brosuri/59706ABCDEFMRU_final_fara_anexe.pdf.
[2] Art. 90, paragraph (3) from the Law 188/1999
[3] Alexandru Ticlea *Opinii privind dreptul public al muncii - subramura a dreptului muncii*, in Revista Romana de Dreptul Muncii, No. 4/2009, p. 14

This regulation directly affects the civil servants who benefit from special status, as long as it does not imply derogatory stipulations[1].

3. Transfer groups and general conditions

According to art.90, paragraph 1, of Law no. 188/1999., the transfer may be done between public authorities or institutions, for work reasons and on employee's request.

There is the general rule, stipulated in paragraph 2, of the same article, stating that the transfer to a public job position may be done for those positions for which all the requirements mentioned in the job description are fulfilled.

According to art 54, letter g) of Law no. 188/1999, the person who wants to have access to a public job, including transfer, must fulfil the job requirements which are mentioned in the job description, according to Appendix 1 of the Government Decision no 611/2008 regarding the approval of norms for organizing and developing the civil servants' career[2], that is:

a. specialized education
b. trainings
c. computer/programming skills
d. foreign languages needed to carry out the activities.
e. Skills, qualities and abilities needed to carry out the activities.
f. Other specific requirements such as: frequent business trips, temporary transfers, willingness for working longer hours in certain conditions.
g. Managerial skills.

Additional to these conditions, art 120, paragraph 2 of the Romanian Constitution[3], art 108 of Law no. 188/1999., art 19 of the Local Public

[1] Ana Cioriciu *transferul functionarilor publici care beneficiaza de statute soeciale*, in Revist Romana de Dreptul Muncii, Nr. 5/2007, pp. 32-51

[2] Published in the Romanian Official Gazette, Part. I, No. 530 from July 14th 2008, with subsequent alteration including The Government Decision No. 1173/2008 (published in the Romanian Official Gazette, Part I, No. 677 from October 2nd 2008)

[3] Revised by the Law 429/2003 (published in The Romanian Official Gazette, Part I, No. 758, from October 29th, 2003)

administration Law no. 215/2001[1] and art 20, paragraph 3 of the Government Decision no. 611/2008, stipulate the need to acknowledge the language of national minorities: "Within the territory-administrative units where the number of persons belonging to a national minority is higher than 20%, some of the civil servants who have direct contact with the citizen will have to speak the language of that national minority."

The need to comply with the requirements exiting in the job description is quite new, having been introduced in our legal system in regards to occupying the public positions by art. XII, 37 and 48 of Law no. 161/2003 regarding some measures for insuring transparency of publicly held positions, of civil services and of the business environment, and for preventing and sanctioning corruption[2].

Collective transfer, according to art. 169-170 of the Labour Code and to Law no. 67/2006, regarding the protection of the employees' rights in case of transfer of the company, unit, or parts of it[3], is also applied in the case of the three public powers, thus it to civil servants, on administrative re-organization and taking over the staff.

4. Transfer for work considerations

The logic behind this type of transfer is based on increasing the efficiency of public authorities and institutions, and on public interest.

According to art 90, paragraphs 3 and 4 of Law no. 188/1999, transfer for work considerations is granted on the request of the management of the institution from which the employee leaves, only with the written consent of the civil servant and may take place only to a job of the same hierarchical position, category and professional degree or to a lower one this not being subject to the equivalence of the new position to

[1] Published in The Romanian Official Gazette, Part I, No. 1031, December 23rd 2006, with subsequent alterations and completions, including the Government Emergency Ordinance No. 105/2009

[2] Published in The Romanian Official Gazette, Part I, No. 279, April 21st 2003, with subsequent alterations and completions, including the Law 144/2007 stipulating the incorporation, organization and functioning of The National Integrity Agency (published in The Romanian Official Gazette, Part I, No. 359, Mai 25th 2007)

[3] Published in The Romanian Official Gazette, Part I, No.276, March 28th 2006

the same level of hierarchy. Failure to obtain the consent leads to release from office.

As the law maker does not distinguish between the hierarchical level of the job, this type of transfer (both for executive civil servants, as well as for those within management) can take place on the same position of any of the exisitng levels within the system, just as delegation or detachments.

5. Transfer on request

Art. 149, paragraph 1, of the Government Decision no. 611/2008 stipulates that civil servants may request transfer to another public authority or institution.

According to art 90 paragraph 5 of Law no. 188/1999, transfer on request takes place for a job of the same hierarchical position, or a lower one, after the civil servant's request has been approved by the manager of the public authority or institution within the local public administration.

In this situation, the transfer can take place only on the same level: between public authorities or institutions within central public administration; between autonomous administrative authorities, or, if that is the case, between public authorities or institutions within the local public administration.

We mention that for full compliance with the new classification of civil service job positions, local civil service jobs should be taken into consideration.

This rule is applicable both for executive and management civil servants.

We notice that in case of this type of transfer, local civil servants' access to state jobs is no longer guaranteed.

As a natural continuation of those mentioned previously, art 87, paragraph 1, letter c) of Law no. 188/1999. (mobility is done through transfer for developing careers in civil service) and art 90, paragraph 7 of the same law, stipulate that public authorities or institutions have the obligation to make public the job vacancies that may be filled by transfer on request.

Public authorities or institutions must display at their premises and on their internet site the add regarding occupying those vacancies by transfer on request. The add must be displayed with at least 30 days before

the deadline for filling it by transfer upon request by another public servant.

The public servants interested in filling the vacancy must submit a transfer request, together with a resume within 20 days from the fist display datum.

Although, as already stated, the transfer is not conditioned by any kind of examination, yet, article 99 line (7) from the Law 188/1999 introduces a new provision in terms of legally rendering the transfer: "in case two or more civil servants require to fill the vacancy by means of a transfer request, a selection will be made by resorting to an interview." Due to the lack of special stipulations related to the interview, it is our opinion that the rules relevant for recruiting are incidental.

The interview is to be held by the head of the institution or of public entity or by a person assigned by the abovementioned. The milestones, hour and place for the interview are to be notified with the applicants by means of the same advertising means as already mentioned.[1]

The same procedure will be enforced for the cases in which the transfer is for the chief civil servants.

6. Recent alterations relevant for the chief civil servants

Before the recent alteration of the Law 188/1999 by the Government Emergency Ordinance no. 105/2009, paragraph (6) from art. 90, it used to stipulate only one difference in the transfer of the chief civil servant personnel which could have been made only on positions of the same level in the hierarchy, level sharing the same types of responsibilities with the previously held position if the requirements stipulated in the job description are met and if the already analysed requirements for the transfer upon request or for activity purposes are also met.

All in one, this type of transfer can be viewed as a specific type of the transfer either for activity purposes or upon request only due to the already mentioned difference. So, taking into account that in order to be transferred, the responsibilities had to be similar as well as the requirements of the operations to be, the class, category and professional

[1] Art. 149, line (5) from the Government Ordinance no. 611/2008

rank or the inferior ranked position[1], one can say that the collocations as "similar duties" and "same position" need to be enlarged upon.

Now, paragraph (6) from art. 90 of the Law 188/1999 has the following content "in case of the chief civil servants, the transfer can be made on chief civil servant positions similar in rank, or as the case may require, of inferior rank, if the requirements of the professional expertise and filling the vacancy conditions are similar to these required by the transferee position, under close observance of the provisions of paragraphs (2), (4) and (5). The authorities of the entities between which the transfer is to take place are obliged to check whether the professional expertise and the vacancy filling conditions are similar."

A few comments are to be made. The civil positions corresponding to these categories of chief civil servants are to be found on all levels of the administrative system. There are to be understood in the broader meaning of the managing (organisation, co-ordination, leading and control), representing, at the same time, decision-making positions. As far as the decisions-making process in the administration[2] is concerned, the managing positions are:

- Positions having responsibilities in all areas of the decision-making process;
- Positions having responsibilities mainly in achieving certain segments of managing (organisation, co-ordination, control, etc.)

Within the frames of these two positions, taking into account their self-containing nature, one can single out two types leading positions:

- Exclusively administrative leading positions (general director, director),
- Specialised leading positions (technical director, chief-accountant)

Saying these, we consider that the issue of similarity will be second first of all by the aforementioned aspects for each type of level in hierarchy. In conclusion, the transfer of the chief civil servants cannot be made for instance from a position of secretary in a specific administrative-territorial institution to a position of deputy director in the autonomous local

[1] That is simultaneously observing the provisions of paragraphs (2)-(6) from art. 90 of the reprinted statue.
[2] Antonie Iorgovan *Trata de drept administrative*, vol. I, 4th Edition, All Beck Publishing House, Bucharest, 2005, p. 590

authority, in the ministry and other entities of the specialised public central administration as well as the positions similar to these.

The assessment of the compliance with the vacancy filling conditions and the professional expertise level will require the analysis of the degree conditions, working period and of other requirements of such position.

If for the participation in the recruiting interview for filling a chief position vacancy, in accordance with art 57 paragraph (7) from the Law 188/1999, is conditioned by university graduate degrees or by post-graduate ones, one should understand, in the light of the recent alterations brought by art. 90, paragraph (6) from the same law, that these conditions are to be enforced when a transfer occurs for chief civil servants positions[1]. In accordance with the same provisions, these studies have to be in the same field with that of public administration, management, or the same field with that in which the professionals will activate. Taking into account this specific requirement, the transfer will be assessed.

7. The effects specific to public servant transfers – recent alterations

In relation to the position the transfer is to take place and comparing the two categories it has – upon request and for activity purposes – it has been mentioned that only for the last situation a combination of effects may appear with those of a promotion[2], if the transfer is from an inferior to a superior position.

To this respect, the annual ordinances[3] related to salaries which are to be abrogated stipulated that the public servants to be transferred will

[1] Putting on hold the master degrees or any type of post-graduate degrees until January 1st 2015 does not apply the transfer for chief civil servants positions. For this, check Ana Cioriciu-Stefanescu, *suspendarea conditiei studiilor de masterat sau postuniveristare pana la 1 ianuarie 2015*, on www.avocatnet.ro. (November 10th, 2009).

[2] See Ion Popescu *Functia publica - curs universitar*, Vol. I, The National School of Political and Asministrative Studies, 2003-2004, Bucharest, p. 156

[3] The last of these ordinances was The Government Ordinance No. 6/2007 stipulating some measures related to salary rights and other rights for civil servants valid until coming into force of the law for unitary public remuneration system and other rights for the public servants as well as the salary increasing for the civil servants for the year 2007 (published in the Romanian Official Gazette, Part 1, No. 66 from January 29th, 2007), with subsequent alterations and

receive the salary equivalent to the level they used to hold, determined by the authority or the public entity to which they are transferred with the exception of the case in which the public servant transfers to an inferior institution, and in this case the salary is determined by the basic salary and the salary level relevant for a position of such.

As of January 1st, 2010 art. 14 from the Master Law related to the unitary salary system for the personnel paid from public funds, No. 330/2009: "the public servant filling a vacancy by moving in another department or by transfer, are entitled to a salary equivalent to the position they are filling by means of alteration of the working relationships, but by retaining the salary level they used to hold."

The prevailing of public interest over the personal one is presented inclusively by the material issues; only in cases of the activity purpose transfer to another locality, the civil servant is entitled, in accordance with art. 90, paragraph (3) from the Law 188/1999, to a compensation equal to the net salary computed at the level of the salary prior to the transfer month, as well as compensations for all transportation costs and a five-day paid leave.

In cases of collective transfers, the alterations come into force as of January 1st 2010.

In conclusion, if the provisions in force by this date stipulate that the transferred of taken-over personnel as a result of the reorganisation of some institutions used to retain all the rights gained before, including the salary (including the cases in which the transfer was from a superior to an inferior entity), in the spirit of the common law[1] (art. 169-170 from the Labour Law and the Law No. 67/2006[2]) today, as an exception, art. 6, paragraph 6, line 3 from the Law 329/2009 relating to the reorganisation of some authorities and public entities, the cutting of public expenditure, supporting the business environment and observing the master agreements with the European Commission and the International Monetary Fund[3]

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completions, including the Government Ordinance No. 41/2009 related to some measures in the field of budgetary personnel salaries for the period between May and December 2009 (published in the Romanian Official Gazette, Part I, No. 286 from April 30th 2000)

[1] Magda Volonciu *Transferul colectiv (integral)* in Revista romana de dreptul muncii, No. 2/2004, p. 47

[2] Ana Cioriciu *Consideratii privind transferul functionarilor*, idem., p. 80-82

[3] Romanian Official Gazette, Part I, No. 761, from November 9th 2009

stipulates that "the personnel from the dissolved institutions will be hired in the limits of open vacancies approved for the institution which takes over the activity of the dissolved entity, benefitting from the salary rights given in accordance with the law for all categories of positions within the authority or the public entity" and, as a result, corresponding to the entity to which they have been transferred.

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