Treaty of Lisbon – An European Constitution?

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Abstract

Europe has changed, the world has changed. The 21st century brings new challenges and new opportunities. The interaction of economies and peoples worldwide, whether by communication, trade, migration, shared security, concerns or cultural exchange, is in constant evolution. In such a globalised world, Europe needs to be competitive to secure economic growth and more and better jobs, in order to achieve an overall sustainable development. Climate change calls for a response that must be both global and local. Demographic change has shifted some of the old certainties about the patterns of how society works. New security threats call for new strategies and policies. In all these areas, Europe needs to be equipped for change.

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JEL Classification**:** K33

1. Introduction

The American experience regarding the federalism may serve as a lesson for the Europeans, for the European Constitution project, as well s for the future of the European Union.[2]

First of all, the ambiguity of the European Union regarding the existence of "an even more close (integrated) union" is not surprising. This takes it closer to the deep ambiguity existing in the American constitutional landscape between 1776 and the Civil War.[3]

In a certain way, the original Constitution of the United States of America, as well as the European Constitution project are alike through the fact that people see in them what they like to see. As Alexander Hamilton, James Madison and Thomas Jefferson approached the Constitution of 1787 in radically different ways, as well in the present moment the Euro-federalists and the Euro-skeptics find in the Constitution project reasons of content, respectively fear.[4]

The debates are also very alike.

Alexander Hamilton sustained the existence of a powerful American state-nation (European concept), with a high degree of economic and political integration.

Thomas Jefferson and James Madison, the opponents of Alexander Hamilton's ideas are alike to the nowadays Euro-skeptics (especially the ones in Great Britain), who are afraid of the limitation by the bureaucrats from Brussels of their sovereignty and liberties (fear somewhat legitimate due to the fact that the community bureaucracy has been copied to great extend from the French one).

Secondly, one cannot settle before if the European Union will become a federal union of American type. Although the European Union has some of the elements of a state-nation (flag, anthem, motto and national day) and it much more integrated than the American states of the years immediately after the conquest of independence by Great Britain, some obstacles may however be identified in the path of a more profound integration, differentiating the European Union from the United States of America from the period of its beginnings.[5]

Although each of the 13 original American states (former colonies) had their own independency, own government and political culture, they concomitantly shared the same language, a religion and common culture (based on that religion, the Protestant Christianity), common legal principles (based on the British law) and a common history. Especially the common history and the

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[2] Mark C. Christie, *Political Integration in Europe and America. Towards a Madisonian Model for Europe*, Center for European Policy Studies, Policy Brief, no. 72, (2005), p. 8, https://www.files.ethz.ch/isn/25729/72_Madisonian%20Model%20for%20Europe.pdf, consulted on 1.06.2023.

[3] Ibid, p. 8.

[4] Ibid, p. 8.

[5] Ibid, p. 8.

fight against the British domination have been the arguments invoked by President Abraham Lincoln in his first inaugural speech, in 1861, in a final effort to convince the secessionist southern states not to rise in arms against the federal government. This common history could not prevent in 1861 the triggering of the Civil War, but it has been very important in the reconstruction of after 1865. By contrast, while English rapidly becomes the dominant language on European plan in the commercial and superior learning fields, on national level persists the linguistic multitude. Under the current conditions, when there are 22 official languages inside the community space, besides the variety of written or spoken languages and dialects.

2. The viability of a federal Europe

The Europeans, far from having a common history of fighting against the same enemies, had rather had wars between them. The French and Germans had seen the European Economic Community as a political mean of avoiding some destroying conflicts between their countries. Belgium, Luxembourg and Netherlands, who have seen their territories crossed by the French and German armies, followed the same purpose.

The British always had a different vision. Great Britain, although it participated to the majority of the main European wars, has not suffered an invasion on its own territory since 1066 and regarded the political union on European level usually with skepticism, sometimes even with hostility. According to the former British Prime Minister Margaret Thatcher "In all my life, all the problems came from the European continent and all the solutions from the Anglophone countries in the world".[6]

The European Union carried a great success through the fact that it brought in Europe the longest period of peace and prosperity in the modern history, thing which does not create however that type of European national conscience and patriotism that would lead to the creation of a new state-nation. The European citizens never fought as Europeans, under a common flag, against an enemy, as it happened to the American citizens. This historic factor, together with the lack of a common language, clearly represents major obstacles in the path of the creation of a European integrated political federation.

Thirdly, even though what is written on paper cannot guarantee the clear future evolution of the European Union, the importance of specific terms must not be minimized. The provisions in cause settle the legal frame and the future directions of development of the European construction.

One must also consider the fact that all the precedent community agreements have been conceived as treaties. By the annexation of the two terms (the Treaty project instituting a Constitution for Europe), one may deduct that the authors of the project deliberately intended the creation of a confusion.[7]

Unlike the USA Constitution and the precedent community treaties, the European Constitution project directly refers to the question due to which the American territory faced a four year civil war and that is the secession of the member states. There is a specific provision according to which a member state is entitled to leave the Union, without the process or consequences of the secession being clarified.[8]

If a formal mechanism of the secession offers satisfaction to the Euroskeptics, the supremacy clause has the contrary effect. According to the respective paragraph "The Constitution and the laws adopted by the Union's institutions in exerting the competences that are conferred to them benefit from a primacy (supremacy) over the laws of the member states".[9]

This language is very similar to the supremacy clause provided by the Constitution of the United States of America. According to this clause "the Constitution and all the laws of the United States voted according to it will be the supreme law of the land (territory). The judges in each state

[6] Ibid, p. 8.
[7] Ibid, p. 9.
[8] Ibid, p. 9.
[9] Ibid, p. 9.

will have to respect it, despite the contrary provisions of the Constitutions or laws of other states".

The supremacy clause has been one of the main sources if the American federal government's power towards the 50 component states of the federation. Even if some supporters of larger powers of the states disputed its application by the courts of law, nobody could contest its legitimacy. This was according to the conception of James Madison, who considered the United States of America as a composed republic, within which the federal Constitution, as well s the constitutions of the states aroused from the people's will.[10]

Fourthly, the adoption method is essential, regardless of if it is about a treaty between sovereign states or a classic constitution. According to the occidental democratic politic tradition (with its origins in the period of Enlightenment), the governments are legitimate only if they are constituted according to the will of the governed ones. According to the former president of the USA, James Madison, "the last authority, wherever it is found, is the people itself…" This means that an European Constitution may be considered as being legitimate only if the European citizens of each member state explicitly express their agreement to be governed by it, either by referendum, or by a chosen assembly to ratify it.[11]

The European Union has had an oscillatory history regarding the use of referendum. Great Britain organized a referendum in 1975 having as theme the eventual abandon of the European Economic Community (the predecessor of the European Union). Surprisingly, the British electorate chose not to leave the community structure. France put the Maastricht Treaty in front of the people's vote, who approved the community document with a feeble small majority.[12]

Despite these examples and others, the history of community evolution has been directed by the European elite in the direction of economic and political integration, even in the absence of the people's support or against the public opinion, thing that made some annalists and commentators to talk about the European Union's deficit of democracy. On one side, many Europeans, adepts of the objective of Rome Treaty of creating a new "union even more closer (integrated)" are skeptical regarding the submission of the European constitutional project to the people's referendum, to a vote of the people.

While many Eurofederalists are afraid of the people's referendum (Germans, especially, are afraid of the referendum due to its use in the past by the Nazi regime), no Constitution can be legitimate as long as it does not have the approval of the European people. The national parliaments, although elected, may exert only those powers which are delegated to them by the governed ones in the fundamental law, the Constitution. The parliamentary attributions (powers) cannot legitimately include the institution of a new form of government without the people's vote.[13]

The request that all the 27 member states of the European Union approve the constitutional project is extremely difficult to fulfill. The accentuation of the anti-European feelings (or rather against the bureaucracy in Brussels) as well as the electoral scores obtained by the anti-European parties at the last elections for the European Parliament (2019) will make this project "a bridge too far away".[14]

The process of creating "an even closer (integrated) union" started 50 years ago will not stop under these conditions, but it will logically transform into "an Europe with two speeds" (problem approached in the last year, especially due to the context of the adhesion of new states). In reality, the Europe with two speeds already exists, being composed of the states in the Euro area and the ones outside it. Regardless if the European Constitution project will be ratified or blocked, it is probable that a group of member states, most of them inside the Euro zone, will try to elaborate a Constitution of a federal union more integrated than the existing one in the present. Proceeding in this manner, the European integrationists will have to consider some aspects of the American constitutional history. Especially, it will be necessary to study more carefully the federalist

[10] Ibid, p. 9.
[11] Ibid, p. 9.
[12] Ibid, p. 9.
[13] Ibid, p. 9.
[14] Ibid, p. 10.

principles of James Madison.

While the European Union is much more integrated in some aspects than the United States at the beginning of its history, the European integration is problematic given the possible obstacles. Even if USA did not face the same problems (the lack of a common language, religion, legal system, of a history and a national identity), the evolution of the United States into a federal union deeply integrated took place due to a civil war, fact possible on European plan.[15]

The literature regarding the federalism makes the difference between the two ideal models (types), having as basis the different interpretations (ideas) of Montesquieu about the organization of political power. These are the separation of powers and the allocation (distribution) of powers.[16]

The separation of powers, or "dual federalism", corresponding to the model of the United States of America, emphasizes the institutional autonomy of different levels of government, following a clear separation of the powers on vertical plan. Each level of government has an autonomous sphere of responsibilities. The competences (attributions) are allocated more depending on the field o activity, than from the functional point of view. For each sector (field of activity), a certain level of government holds legislative powers, as well as executive powers. As a result, the entire governmental machinery if doubled, and each level conducts its activities autonomously. The dual or sector allocation of the competences is completed by a weak representation of the federal states on central level.[17]

The second chamber of the federal legislative is organized according to "the principle of Senate". According to this principle, the federal states are represented by an equal number of senators directly elected, regardless of the territory or population of the respective states. As a result (and in contrast with Bundesrat principle), the Senate does not reflect the territorial (local) interests, but the functional options of the electorate or if the political parties of those federal states.[18]

The federal states do not coordinate their interests through voluntary cooperation and coordination with the central (federal) government, usually by intergovernmental conferences. The institutional autonomy of each level of government also presumes a fiscal system which must guarantee the federal states enough resources to allow them to exert their attributions without financial (fiscal) interventions from the federal (central) government. The federal states usually enjoy an accentuated fiscal autonomy, which allows them to perceive their own taxes and to have independent sources of income.[19]

The distribution of powers or "cooperative federalism", having Germany as prototype, is based on a functional division of the powers between the different levels of government. This means that the central level elaborates the laws, the federal lands being responsible for their application (implementation). In this system, most of the competences are "concurrent" or "shared". This functional division of the power requires a strong representation of the lands' interests on central level, not only to ensure the efficient implementation of the federal policies, but also to prevent the transformation of the lands in simple "administrative agents" of the federal government. Their reduced capacity of self-determination (autonomy) is compensated by a high degree of participation to the legislative and federal decisional processes (mainly in the case of Bundesrat). The major political initiatives usually require the approval of will of the federation, as well as the majority of the federal lands. In this meaning, the chamber of territorial representation may be considered Bundesrat (Federal Council), within which the lands are represented by their governments, proportional to the size of the population.[20]

The distribution of competences is completed by a common system of taxes. The federal government and the federal lands share the most important incomes from taxes, which allows the

[15] Ibid, p. 10.
[16] Tanja A. Börzel, *What can Federalism teach us about the European Union? The German Experience*, The Royal Institute of International Affairs, 2003, p. 4, https://www.chathamhouse.org/sites/default/files/public/Research/Europe/borzel.pdf, consulted on 1.06.2023.
[17] Ibid, p. 4.
[18] Ibid, p. 4.
[19] Ibid, p. 5.
[20] Ibid, p. 5.

redistribution (reallocation) of financial resources from the lands with greater incomes to the ones with small incomes (fiscal equalization). The functional and fiscal interdependency of the two main levels of government does not give birth only to "the policies of coalescence" and "the mutual adoption of decisions", but also determines the apparition of a system within which the policies are formulated and applied by the administrations from both levels of government ("executive federalism").

Unlike the dual federalism, the functional (non-territorial) interests are weakly represented in the federal decisional process and are based on alternative forms of interests' intermediation, such as the system of parties and the sector associations.[21]

The European system of governance on multiple levels is apparently much closer to the cooperative federalism than the dual federalism. The European Union does not dispose of an autonomous sphere of competences in the meaning of concomitant holding of executive and legislative attributions in the case of certain sector policies. Even in the field of "exclusive competences" the European Union cannot legislate without the agreement of the member states (represented in the European Union's Council). With the exception of the monetary policy, there is no field in which the member states completely ceased the sovereignty to the European Union, thus excluding their direct participation to the decision making. This is true even in the fields of commercial policy, competition policy or agricultural policy.[22]

While the great majority of the legislative competences of the European Union are practically divided or concurrent, the responsibility of power in the application of the policies stays the task of the member states.[23]

The European Union disposes of a too reduced administrative device to be able to apply and implement the european policies.

This functional division of the competences (attributions) or the division of the legislative powers confer to the national governments of the member states an important role within the European (community) institutions.

Thus, the Council of the European Union or the Council (former Council of Ministers) is alike to the second chamber of Bundesrat type of the European legislative. Within it, the member states are represented by their executives, the number of votes being directly proportional to the size of the population. As in the case of other federal cooperative systems, the coalescence of the competences, the functional division of labor and a second chamber of Bundesrat type act in the meaning of an asymmetry of the political representation, within which the territorial (local) interests are before the functional interests.

The restrained financial autonomy of the European Union regarding the member states underlines the dominance of territorial interests within the community (European) political process.

The European Commission, the European Parliament or the Court of Justice of European Communities first of all represents the functional interests of the European Union. However, the members of these institutions are elected or assigned on functions based on the territorial representation. Even the president of the European Commission is named by the governments of the member states (even under the conditions of voting of commissaries by the Parliament), while the president of the Council is by definition nominated by the governments (based on the principle of rotation between the member states). Although all the three supranational community institutions are apt for extending their competences gradually, the Council is practically the community institution with the highest gravity in adopting the decisions. Its relationship with the European Parliament and the Commission (despite the Amsterdam and Nyssa Treaties) continues to be based on an asymmetrical balance of power.[24]

The European Commission, in its capacity of executive branch of the European Union, disposes of a limited authority in comparison to the Council, even if it has the power to settle its

[21] Ibid, p. 6.
[22] Ibid, p. 6.
[23] Ibid, p. 6.
[24] Ibid, p. 8.

agenda, power based on the right of legislative initiative. Due to the fact that it is not the result of direct elections, the Commission disposes of a reduced political legitimacy.

Moreover, the Commission depends on the member states regarding the financing and implementation of its own policies. For these reasons, it enjoys a strategically reduced autonomy in the matter of negotiations against the Council.

The European Parliament, as first chamber of the european legislative, succeeded in increasing the powers of co-decision in the european policies. However, the community policies cannot be adopted without the agreement of the Council. But even on the territory of the European Parliament, the local and territorial interests, due to the fact that an effective system of the alliances of European parties has not yet formed.

Even the committee system related to the Council and partially to the European Commission reflects the amplitude of representation based on the local and territorial interests. The experts of these committees are usually selected from national governments and many times they have worked in the national administrative structures.[25]

The predominance of local and territorial interests in the community institutional structures has a more pronounced character than in the case of federalist-cooperative systems (where some remedies of this situation exist).[26]

In Germany, the federal lands are strongly represented in decision making on central (federal) level through Bundesrat (the second chamber of federal legislative). On the other side, the federation, represented by the Bundestag (first chamber of the federal legislative and directly elected) and the federal government counterbalance the influence of local interests. The equilibrium is determined by the political identity and the federation's legitimacy, its domination within the legislative frame and budgetary competences.

By comparison, neither the European Commission, nor the European Parliament can counterbalance the Council's domination.[27]

The representation of political interests in Germany is based on a well settled system of party vertical integration in both chambers of the federal legislative. Even the neo-corporatist forms of intermediation (representation) of interests guarantee to the German economic interests a privileged access to the political process. By comparison, the European Union does not dispose of a well settled system of party vertical integration. There is no central arena (a central frame) of competition (concurrency) between the parties, neither within the executive, nor within the legislative. Not even the industrialists' associations or syndicates of the first rank can represent effectively the interests of European enterprisers or employees within the European (community) decisional process.

3. The United States of Europe

The fact that the founding (constitutive, institutive) treaties of the European Union may be characterized as being a "Constitutional Charter" may lead to their description as a "Constitution". However, they are not identical or similar to a classic Constitution of a state. These treaties reflect the fact that the European Union, whose authority derives from the member states, does not dispose of some of the essential characteristics of a state.[28]

In the present moment the European Union is far from having the necessary means and resources for a complete governing system.

We are speaking here about legal instruments (the implementation and control of respecting the provisions of the European law depends to the greatest extend on the national courts and administrations), human resources (the total number of european civil servants is approximately

[25] Ibid, p 9.
[26] Ibid, p 9.
[27] Ibid, p 9.
[28] Jean-Claude Piris, *Does the European Union have a Constitution? Does it need one?*, Harvard Jean Monnet Working Paper, 2000, p. 14, https://jeanmonnetprogram.org/archive/papers/00/000501.html, consulted on 1.06.2023.

half of the one of the Municipality of Paris), financial resources (the european budget represents a small part of the member states' and the large part of the expenses falls in the task of national administrations and are paid by them directly to the beneficiaries).

Although the European Union has its own resources (its budget does not depend on the contributions of the member states, as in the case of United Nations or of other organizations), it does not have the power to settle taxes or to allocate resources, which can be made only through a decision, which then must be ratified by the member states.

We are speking also about administrative and technical capacities (the European Union has few operational means of control and action at its disposal, the administrative expenses representing only a small of the total european budget) and finally the constraint (coercion) means.

The European Union does not dispose of means of constraint characteristic to a sovereign state, such as the army and police. For these reasons, the European Union has been and probably will stay independent to a great extend from the member state and their legislative, executive, administrative and judicial structures.[29]

The European Union is not a state.

Its authority derives from the one of the member states. An aspect which is probably clear for all the European (community) citizens is the fact that the European Union does not represent a state. For example, it does not have a chief of state. On the other side, the states forming the European Union have all the attributions of a state (chiefs of state and chiefs of Government, army forces, instances and courts of law, police, penitentiary system, etc.).

The European Union is not a state-nation.[30]

An important criterion in defining a Constitution in the juridical dictionaries is the one of "nation" or "state". From this point of view, the answer is clear. The European Union, although it has some of the attributes of a state, it is clearly not a state, and the citizens of the Union do not form one nation.

Black Juridical Dictionary defines the state as being "one people occupying permanently a fixed territory, governed by the same habits (traditions) and legal practices, forming one political body and exerting through an organized governing, independent sovereignty and control over all persons and goods in the territory of its borders, capable of making war and peace and of settling international relations with other communities in the world".

However, it would be useful to analyze this definition.[31]

The first element in defining a state refers to the people, as it happens for example, in the preamble of the Constitution of the USA, which begins with the words: "We, the people of the United State". Concerning the European Union, indubitably it is formed of several peoples, and the Treaty of the European Union refers in its preamble to "an even closer union between the peoples of Europe". The notion of the existence of one people must not be exaggerated. There are several states whose citizens have different ethnic origins and speak different languages. We cannot report to one person only in the terms of citizenship or the affiliation to a common language, but also in terms of affiliation to a certain town or region, these affinities presuming factors beyond the national borders. It is obvious that Europeans share common and distinctive aspects, though being different from other peoples and societies, from geographical, historical and cultural points of view. From the historical point of view, the Europeans have the roots of their civilization in Judeo-Christianity, antic Greece and antic Rome. As soon as the Enlightenment, the term "Europe" started to be used and adopted step by step.

From the cultural point of view, despite its richness and diversity, Europe is clearly different from other continents, although the differences regarding North America are less pronounced. At the same time, "the European social model" is different from the American one.

The second element is the sovereignty and attribution (distribution) of powers

[29] Ibid, p. 14.
[30] Ibid, p.16.
[31] Ibid, p.16.

(competences) [32]

Referring to the second element of the definition of a state, the state must have "independent sovereignty". Black Juridical Dictionary defines sovereignty as being "the self-sufficient source of the political power, from which all the specific political powers derive". On other words, a state enjoys sovereignty and power from the legal point of view over all the fields of governance, with the exception of the ones it specifically waived through the Constitution. It is very clear that the European Union and the European Community (the European Economic Community) do not dispose of "independent sovereignty". Moreover, the European Community is governed by the principle of attributing (sharing) powers (competences), as it is specified in the CE Treaty, according to which "the Community will act in the limits of the powers that are conferred to it by the Treaty and of the objectives that are attributed to it". This means that, unlike state-nations, which are sovereign by definition, CE (CEE) disposes only of those powers that are attributed to it by the treaties. Each action of CE must be based on a specific disposition of the CE Treaty, which confers it the respective attribution (power), request which is strictly controlled by the Court of Justice. Contrary to what some people think, article 308 (former 235) of the CE Treaty does not allow the exertion of any competence which is outside the purpose of the Treaty. Although it is true that the formulation of this article is not very precise, an extensive approach is not possible, neither from the ethic point of view, nor from the legal of view. The Council has a more restrictive approach in using this provision than in the past, especially after two opinions of the Court of Justice, no. 1/94 and no. 2/94. In this context one can mention "the Maastricht decisions" of the German and Danish Supreme Courts.[33]

The third element is control over all persons and goods.[34]

The third element of state's definition in Black Juridical Dictionary is the exertion of "control over all persons and goods within its borders". Although the Community has the power to regulate many economic sectors, it does not dispose of control over persons and goods. Regarding this aspect, it must base on the administrative and coercive devices of the member states in order to insure the correct application of the provisions of community law.

The fourth element is about war and peace (to start and wage the war and to make peace).[35]

A state, according to the fourth element in Black Juridical Dictionary "is capable of making war and peace". The European Union does not dispose of such powers (is does not have an army, common defense, it does not participate to military alliances). Altogether, the Community and the Union may adopt certain measures considered hostile (unfriendly) in international law, such as trading embargo or other sanctions imposed to a third party. Besides this, the progressive delineation of a politics of common defense is explicitly studied and actively discussed.

One of the last elements of the state's definition in Black Juridical Dictionary is "the settlement of international relations with other communities in the world".[36]

The European Union has legal personality and the competence to sign treaties, but it may sign international agreements only in those fields that are in its attributions (powers). To the extend in which an international agreement covers fields in which the competences are shared (distributed) between the European Union and the member states, the member states are free to exert these competences on their own, by signing agreements on their own behalf.

To the extend in which the European Union is also affected, it has the power to sign treaties, in the fields provided by Title V and Title VI of the European Union Treaty.

This strengthens the argument according to which the European Union is implicitly a legal personality, even in the lack of express provisions in this meaning.

After mentioning all these different elements of a state's definition, two conclusions may be drawn.

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[32] Ibid, p.18.
[33] Ibid, p. 19.
[34] Ibid, p. 19.
[35] Ibid, p.19.
[36] Ibid, p. 20.

On one side, the European Union is not a state, and on the other side, the member states did not keep their entire sovereignty and full liberty of action, but they transferred some powers to the European Union or are sharing them inside the Union.

The last element is that European Union does not obtain (extract) the authority directly from the citizens, but from the member states.[37]

An important element of defining a Constitution in Black Juridical Dictionary is that "it extracts its entire authority from the ones it governs". This is the case of the Constitution of the United States of America, which, in its preamble, shows that "We, the people of the United States… have decided and laid down this Constitution". By contrast, the european treaties are signed under the form of international agreements between the chiefs of states.

Moreover, the Court of Justice, in the opinion no. 1/91, shows that the Rome Treaty is "a constitutional charter … its subjects not being only the member states, but also their citizens". On other words, the Community brings together not only the member states, but also their peoples, "citizens of the Union".

One cannot deny the fact that the constitutive (original) authority for the negotiation and adoption of any amendments to the treaties remains in the competence of the member states. The Constitutional Charter of the European Union cannot be compared to a national constitution of a classic state, as in the community treaties is affirmed that "the Union will respect the national identities of the member states" and that "the citizenship of the Union will complete and not replace the national citizenship".

The doubt (mistrust) can be diminished if the following problems are clarified.

Firstly, the international legal personality is not the first step to the apparition of a super-state (supra-state). For example, the Organization of the United Nations has a history of more than 50 years and nobody thought of transforming it into a super-state.[38]

Secondly, the international legal personality does not have an influence over the competences (attributions) of the organization that achieved it. These organizational competences result from its constitutive papers (documents), without having any connections to the legal personality.[39]

Thirdly and lastly, the international legal personality has nothing to do with the intergovernmental or supranational character of the organization that achieves it. Some intergovernmental organizations have it, others do not.[40]

One may argument that a treaty recognizing the legal personality and reaffirming that some of the problems presented above, it may confer some guarantees.

The absence of an explicit clause of the treaty in this meaning will not implicitly diminish the Union's legal personality, recognized on international level and denied (disputed) only by a small number of member states.[41]

4. Special aspects

At a first superficial sight (analysis), the history of the evolution of the European construction is to great extend the one of European elite that accelerated the process of economic and politic integration without the support of the people and sometimes even against the sentiments of the public opinion, which made many commentators refer to the "democratic deficit" of the European Union.

The most important aspect is that the concept of European Constitution has been completely eliminated, reaching the solution of modifying the Treaty instituting the European Community

[37] Ibid, p. 20.
[38] Philippe de Schoutheete and Sami Andoura, *The Legal Personality of the European Union*, „Studia Diplomatica", Vol. 60, No. 1, Global Europe (2007), pp. 233-243.
[39] Ibid, p. 241.
[40] Ibid, p. 241.
[41] Ibid, p. 241.

(Rome Treaty) and the Treaty for the European Union (Maastricht Treaty). This will also have an indirect negative effect on the idea of a European federal supra-state. The second conclusion in the order of importance is the inclusion of the jurisprudence of the Court of Justice of the European Union (which will include the Court of Justice of the European Union, the Tribunal of First Instance and the specialized tribunals, in the present only one existing, the Tribunal of Public Function), as the third main source of the european law (the other two already being mentioned in the European Constitution project).

The jurisprudence as source of law is characteristic firstly to the Anglo-Saxon law system.

However, maintaining the jurisprudence as source of law it had already been present more in the theoretical works of community (European) law, now being dedicated for the first time from the theoretical point of view to the provisions in the treaties. The role of the national parliaments will be bigger than in the present, which will lead directly to the diminution of the role of the European Parliament.

Thus, all consultative documents of the Commission (communications, White Books, Green Books), will be transmitted to the national parliaments before publishing them. The Commission will transmit to the national parliaments the legislative program as well, annually, the legislative programming or political strategy instruments, as well as the proposals of legislative documents concomitantly to their transmission to the European Parliament and the European Council.

The European Parliament also sends automatically all its legislative proposals to the national parliaments.

Finally, the legislative documents projects coming from a group of member states, from the Court of Justice of the European Union, from the European Central Bank or from the European Investment Bank are transmitted to the national parliaments by the Council. Regarding the functioning of the tributariness guarantees, each state will dispose of two votes, regardless of the parliamentary (unicameral or bicameral) structure.

This will oblige the member states to accelerate and to simplify the internal parliamentary procedure, either to transform into a unicameral parliament. Anyway, some states which in theory are bicameral, in practice are unicameral (Germany and Great Britain).

A new aspect that might create difficulties are the different law systems of the formed communist states that adhered in 2004 and 2007. Even if in general lines they may be situated in the Romano-Germanic law system, they keep elements of the socialist law systems, especially in the sphere of public law.

The European Union will have legal personality, important aspect firstly in the field of external relations. Related to the legal personality, there will be no elements of statehood (anthem, motto, flag). As can be seen, the European Union is in the present moment in a crucial period for its future evolution and, at least for now, it looks like it will not dispose of ideas about how this evolution will go.

This dilemma is not exactly surprising if we think about the beginnings of the european construction. Since the beginning it was intended to take over more or less faithfully, the model of the United States of America, especially due to the fact that nothing could have been developed without the support offered by the Marshall Plan (1947) and the creation of NATO in 1949, both of them started under the aegis of the USA. USSR riposted by creating ACER in 1949 and the Warsaw Treaty in 1955.

The European moved more hardly by signing the CECO Treaty in 1951 and the 2 Rome Treaties (CEE and Euratom) in 1957. We must take into consideration the moment of the apparition of the concept of "The United States of Europe", during the revolutions of 1848, when the preferred book of many European revolutionaries was "Democracy in America" written by Alexis de Tocqueville.

As we can see, there are many common points between the USA and EU, which unfortunately are forgotten in the present moment in the favor of dissension. From the practical point of view, the more or less identical taking over of the American model would have been impossible, due to several differences (aspects). First of all, on the territory of the American

federation "melting pot" principle applies, according to which all the citizens are uniformed by adopting the same languages and set of values. In practice, the Americans are reticent in recognizing the minorities, emphasizing the conferring of individual rights, not collective rights, as the Europeans do. Due to this reason, the racial incidents have usually a smaller amplitude.

Secondly, the minorities in USA have an important role in defining the external policy (Jews, Irish, Poland, Italian, Armenian, Greek, etc.). Thirdly, the interest groups (PAC – Political Action Committees), the civil society, the NGO's, the universities, are much more powerful and have a more powerful word to say in front of the political factors. To these also contributes a much more clear legislative frame of lobby activities.

Fourthly and lastly, there is a much more simpler system of parties (only 2, presenting ideological qualification differences). After the end of the Cold War, the collapse of USSR and the communist block, the European Union partially lost its objectives and reasons of its existence. From the political-diplomatic-military point of view, on the first plan is USA and NATO. The role of United Nations reduced a lot, being still in crisis.

Due to the European multi-polarity in a unipolar world, it is possible that the European states adopt different positions, due to their national interests.

It is possible that some European states consider that good relations with Russia or China and supporting it would contribute to the elimination of unipolarity.

It is a false reasoning, taking into consideration the authoritarian tendencies of the Chinese and Russian political class and its last statements and actions, that converge to a new Cold War.

A factor that contributes to the smaller influence on the international arena of the European Union is the lack of a fast reaction force.

5. Conclusions

In the present moment, the European Union is in a critic moment of its evolution, which will have effects on Romania as well.

First of all, the European Union will have to decide if it will take only the way of a closer union (integration) only on economic and social plan, or an institutional, military and political plan as well (thing which until the present moment proved much more difficult to perform).

Secondly, it will have to be more transparent and much closer to the needs and aspirations of the common citizen.

The European Union should define more clearly the role in the international arena, through an own conception on long term and not by exacerbating the transatlantic differences and automatic and puerile adoption of attitudes contrary to the ones of the United States of America.

Fifthly, the European Union needs to clarify the limits of its extension.

Romania must find the right place in this context. It is necessary to adapt to a new set of values and to pursuit with consistency the national interests, through an opened dialog with the European partners, not through a subordinated attitude. We must know very well what we can offer to the European Union and what we can ask from the European Union.

In the conclusion, it is very eloquent to mention the words of the count Coudenhove-Kalergi, words said in Hague in 1948, "Let's never forget, my friends, that the European Union is a mean, not a purpose".

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