The Future of European Constitution -Treaty of Lisbon

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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. Tomorrow's prosperity requires new skills, new ways of working, and political, economic and social reforms.

Key words: *Constitution, European integration, Federalism, Future, Romania*

I. INTRODUCTION

The problem of the European Constitution is increasing in importance and relevance in many member states.[1]

[1] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Update on the Ratification Debates. What Prospects for the European Constitution Treaty?, EPIN (European Policy Institutes Network) Working Paper, no. 13/2005, page 24.

In this context, there is an evident difference between the member states in which referendums have been developed and the ones that chose the way of the parliamentary ratification. While in the latest states the debate on national level had a limited character, in the states that chose the referendum, the national governments had to explain the contents and the significances of the European text.

It is also important the way in which the different specific aspects are perceived in the national debates.

Thus, the provisions with economic character of the 3rd part of the Constitution project draw the attention on the absence of the social protection in France, but has a contrary effect over the state of economies in other states, such as Great Britain.[1]

In the same time, the constitutional text continues to be opposed to the national maximalist requests (claims), and the European dimension of the problem is most of the times ignored. Especially, the debates developed in France on different occasions hide the fact that the constitutional text is a synthesis of many national and political interests.[2]

In all states a limited influence of the community institutions or actors is observed. With some exceptions, the community institutions are almost absent from the debates. As a result, the role of the national parties and politicians from each community state may be considered crucial.

We must take into consideration the fact that the debate on European level is not cumbered only by opponents of the Constitution project. For example, the former French president Jacques Chirac set up for a defender of the national French interests in the case of the Directive of Services (Bolkenstein Directive). Initially he has been (at least declaratory) an adept of this community regulation. [3]

[1] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Op cit, page 24.
[2] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Op cit, page 25.
[3] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Op cit, page 25.

The adepts (representatives) of the positive (affirmative) vote will have to prove the European common (usual) impact (significance) of the Constitution, as a national strategy of the type "we against them" will affect not only the process of adopting the European Constitution, but also the entire integration process.

In the light of the debates in France, comes out the fact that defending the Constitution against the national maximalist positions will not be possible unless the citizens will understand the fact that the constitutional text represents the result of a necessary compromise between 27 different states (with the participation of the civil society, the European institutions, the national parliaments and the candidate states).[1]

The European integration makes necessary a debate on the European level, as the negative vote expressed in a country has effects on the entire European Union. In the case of non-ratification of the Constitution, things will probably get stuck on the level of the Nyssa Treaty. Probably some elements of the Constitution will be saved, but the coherence will be lost and we will reach a Byzantine structure. This is the alternative that will fuel the Euro-skepticism more than the Constitution did.[2]

The German chancellor Angela Merkel became the target of powerful critics after expressing some remarks regarding the mentioning of Christianity in the preamble of the Treaty.

One can say that there are many divergent points of view and interests. The Vatican wishes the mentioning of God, the French wished a permanent place in the European Constitution and the elimination of provisions regarding the competition (which actually happened in 2007), the British wanted to eliminate the Book of Fundamental Rights and the function of Minister of Foreign Affairs (and they succeeded), the Polish are the adepts of returning to the qualified majority voting system provided in the Nyssa Treaty and mentioning the Chris-

[1] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Op cit, page 25.
[2] Sebastian Kurpas, Marco Incerti, Jutus Schonlau, Julia De Clerck – Sachsse – Op cit, page 25.

tianity, and other small states want renegotiations regarding the presidency of the Council.[1]

Despite uncertain imperfections, there is a principle political agreement on the key-articles (fundamental, basic) regarding the values, principles, purposes, competences, instruments and decisional procedures (Part I), as well as on the Charter of Fundamental Rights (Part II).

Germany, who ratified the Constitution project, may act as spokesman of its adepts.

One may add the fact that in Great Britain, where from the practical point of view nobody debated or explained the Constitution project, the Parliament does not dispose, from the substantiated point of view of its relative merits.

The states which have not yet pronounced themselves regarding the document of 2004 (Bulgaria, Czech Republic, Denmark, Ireland, Great Britain, Poland, Portugal, Romania or Sweden) will find themselves in advantageous positions in the event of eventual renegotiations.[2]

One of the critics brought to the project in 2004 (especially by the French left), is that according to which the constituting of community treaties will make the performance of any modifications in the future more difficult. This imposes in the course of eventual renegotiations the elaboration of more facile procedures of constitutional review.

Concomitantly, it is necessary to settle a hierarchy between the different parts of the Treaty, in the meaning that Part III (including the main community politics and administrative, budgetary and legislative detailed procedures) to be subsidiary to Part I.

Part IV should be modified in the meaning in the meaning of admitting any amendments to Part III, which would not grant new compe-

[1] Andrew Duff-Op. cit, page 57.
[2] Andrew Duff-Op. cit, page 58.

tences to the Union, amendments which require the vote of four fifths of the member states, representing minimum two thirds of the European Union's population, states that would have terminated the process of ratification.

Regarding the substance of the European Constitution project, there are five action fields that must be improved (modernized), thus directly addressing to the sources of discontent of European citizens (popular). [1]

1) the Union's economic governance must be strengthened, especially in the Euro area. The constitutional project must also mention the objectives of the Lisbon Agenda, relatively to the modeling of community economic policy to answer the requests of globalization. The states of Euro area must constitute in a group (thing which was performed in 2007), functioning according to the improved rules of strengthened cooperation, provided in the Constitution project. The European Commission needs more powers to be able to propose changes to the national budgetary policies and the policies for the increase of the degree of labor force occupancy.[2]
2) It is necessary to define the common architecture of the European social model, which finds solutions to the current problems of equity, efficiency and degree of labor force occupancy. The phrase "unity in diversity" must be correlated to the observance of the social dimension of unique market. A new Declaration of Solidarity should include all the social policy provisions of the new Constitutional Treaty, in order to facilitate the interpretations. The member states whish desire to go forward in this field may mutually agree a Social Union Protocol, also according to the new rules of strengthened cooperation.[3]

[1] Andrew Duff-Op. cit, page 58.
[2] Andrew Duff-Op. cit, page 59.
[3] Andrew Duff-Op. cit, page 59.

3) It is imposed the actualization of policy in the field of environment, in the present considered an accessory policy of the unique market and axed on the pollution control. The fight against the climate changes must be the imperative to which all common policies will conform to. This reform will open the perspective of remodeling the policies in the agricultural and fishing fields. The common policy in the field of electricity will be able to become a feature of a reformed Union, including here the objectives of conserving the energy and other new sources of energy, as well as the perfecting of security and diversity of supply sources (objective reached in 2007 as well).[1]

4) The inclusion of a new chapter in Part III, which refers to the policy of extending the European Union is imposed. In this context, a rigorous process of adhesion of each new state must be provided, including pre-adhesion agreements, reporting, saving clauses and transition arrangements (agreements), absent in this moment. The concept of vicinity policy, summarily provided in Part I, must also be included here. The creation of a new category of associated members is imposed, in order to answer the present debates about the capacity of absorbing the privileged funds and partnerships.[2]

5) A reviewed financial system, regarding the incomes (the reduction requested by the British) as well as the expenses (the Common Agricultural Policy), will be negotiated in 2008 – 2009. The new system will have to imbue the belief that the community budget exists for the redistribution of the welfare between the rich states and the poor ones, that it may be verified and that it may allow the Union to direct the expenses depending on its political priorities (such as the future extensions). The purpose is to create a more equitable and more transparent

[1] Andrew Duff-Op. cit, page 59.
[2] Andrew Duff-Op. cit, page 59.

system than the present one (improvised and which allows complicated and mercantile arrangements).[1]

The modifications brought to Part III in these five fields have as purpose the strengthening of the financial discipline, the modernization of the economic and social policies, the analysis of insecurity generated by climate changes and the better informing of the citizens about the enlargement (extension) of the European Union.

The delicate problem of the referendum is still to be discussed.[2]

On one side, those parties that manifested their populist tendencies in the direction of the referendum will show less enthusiasm in repeating this process.

On the other side, those political governments and parties that did not succeed in mobilizing the electorate or even did not wish to mobilize it may block in one sole state the entire European constitutional process.

A viable alternative of solving the dilemma could be the ratification by all the national parliaments, followed by a popular referendum at the European level, in order to confirm or infirm the popular support for the European Constitution project.

The French president Nicolas Sarkozy considers that a mini-treaty containing only the problem of the powers and the one of the institutions is most likely to obtain the popular support in states like France, Great Britain, Netherlands.[3]

After all probabilities, the French and Netherlander citizens will not accept a technocratic fix. Moreover, the current European constitutional project (a more or less inspired coy of the Nyssa Treaty), which ceases the national sovereignty to foreign forums will not obtain the

[1] Andrew Duff-Op. cit, page 59.
[2] Andrew Duff-Op. cit, page 61.
[3] Andrew Duff-Op. cit, page 61.

vote of the Chamber of Commons of Great Britain and moreover, will not receive the British popular vote.

The British Prime Minister Gordon Brown is anxious to present the renegotiation of the constitutional treaty as a progress regarding the mandate of his predecessor, Tony Blair. This means that the institutional aspect (package) must include a reform of the common community policies, also considering the British grievances, such as the reform of common agricultural policy, structural economic changes and more equitable financial arrangements.[1]

With the spring of 2005, there were few ideas related to the answer which can be given to the crises determined by the French and Netherlander referendums.[2]

This problem is a very complex one. On the other side, the idea of new referendums is not agreed either by France, or by Netherlands, and on the other side, those states that already ratified the Constitution project cannot be easily convinced to enter a new series of negotiations.

The mechanism of reforming the community treaties is very conservatory. It has not been changed since the beginning of the European construction process, although some states raised on the way the problem of democratic control.

The conservatism is easy to explain through the desire of the European governments to hold control over this process, in the meaning that the European integration must not take a direction contrary to their desires.

The section regarding the eventual future reviews of the Constitutional Treaty contains provisions of a maximum prudency, providing the re-

[1] Andrew Duff-Op. cit, page 61.
[2] Renaud Dehousse-Can the European institutions still be reformed? European Policy Center (EPC), Challenge Europe, Issue 16, February 2007, page 63.

quest of humanity for signing, as well as for the ratification of any amendments of the new fundamental charter.[1]

Although the treaties have been reformed for four times in less than two decades, in the last five years a consensus for the need of "reforming the reform process" has appeared.

Already since the Amsterdam Treaty in 1997, critics regarding disordered nature of the intergovernmental negotiations have been expressed, where crucial decisions are adopted in a hurry, in the last moment. The semi-failures of the Amsterdam Treaty and Nyssa Treaty led to the settlement of new more opened (transparent) procedures and the creation of a new structure, the Convention for Europe's Future, which elaborated the European Constitution project.

In the context of an Europe formed of 27 states, where the agreement of each member is required for the smallest reform, there is a great risk of additional problems appearing in the ratification stage.

If we accept that Europe did not reach the end of its institutional evolution, we must surpass humanity's problem, in order for things to evolve.

As mentioned before, the general review procedure provided in the community treaties is of the outmost rigidity. Any amendment must be adopted through an agreement of will of the representatives of the member states' governments, reunited within a diplomatic conference. The respective amendment comes into force after it is ratified by all states according to their constitutional norms.[2]

This procedure involves more difficulties.

Its diplomatic nature does not make it a transparency model. Its decentralized nature (each member state being allowed to present proposals) may sometimes lead to disjoint (parallel) negotiations, espe-

[1] Renaud Dehousse – Op. cit, page 63.
[2] Renaud Dehousse – Op. cit, page 64.

cially in the final phases of the conferences. The lack of a powerful management is felt, especially if the number of participants grows.

Generally, the spikiest problems are occasions by the meetings between the Ministers of Foreign Affairs, state chiefs and governments, which sometimes lead to a deadlock.

The problem is amplified (exacerbated) by the double unanimity required in order to conclude an intergovernmental conference. Each delegation has the right to veto at the end of the works. One can also appeal to the more subtle method of suggesting that, in the lack of certain concessions for certain special questions, the final document may be rejected in the national parliament or through people's referendum.[1]

Thus one may fall in "the trap of common decision" (the pursuit and negotiation of own interests, each state wishing to maximize their own advantages, the general interest not being important anymore).

The settlement of an European Convention will bring a few significant changes to this system (more participants in the reform process, such as the members of the European Parliament or members of the national parliaments, as well as a greater transparency of the debates, which are opened for the public).

These changes of the rules allow the Convention to reach a compromise on the unsolved problems of the past, such as the dissolution of the pillar structure, simplification of the treaties and legal character of the Union.[2]

However, it is wrong to say that this innovation will make a decisive difference in the balance of power in the context of the review procedure. The constraint of double unanimity still exists. Each of them knows that a Convention is followed by an intergovernmental conference, where the member states may express their objections to the text

[1] Renaud Dehousse – Op. cit, page 65.
[2] Renaud Dehousse – Op. cit, page 65.

project and where they obtain additional concessions. The most delicate stages of the debate are shadowed by the threat of final compromise, which impel the participants to moderate their claims. On other words, the member states keep control over the final compromise.

The failure of Constitution is a confirmation of the fact that we deal with structural problems.

A negative result of the referendum was expected in at least one state. The surprise was the negative result in two founding member states, sooner than in one Euro-skeptical state by definition (Great Britain), or in two new states (Czech Republic and Poland).[1]

In a system involving multiple negotiation stages, with 27 member states (possibly 30 in the future), the chances of failure are greater. Moreover, the number of institutions with the right to veto is greater than the number of the member states. For example, a national parliament may refuse the ratification of a treaty signed by its own government, as the case of the rejection in 1954 by the French National Assembly of the European Community Treaty for Defense.

Unless this difficulty is solved, any significant reforms will be impossible.

Right before the beginning of the works on the Convention, opinions according to which, with the growth of the number of member states, is necessary to review the request of double unanimity provided by the treaties (unanimity within the Convention or the Conference and the unanimity of ratification by all member states) have been expressed.

The problem of rejection is not new. The Maastricht Treaty has been rejected by the Danish (the rejection by the French has also been very probable, considering the results of the people's referendum), and the Nyssa Treaty by the Irish. According to some opinions, these precedents should have been taken into consideration by adopting some

[1] Renaud Dehousse – Op. cit, page 65.

protocols or declarations, which would answer to the ones that voted No, before the voting of a new text.

The conditions are radically different in the case of the Constitution project. The reasons that formed the basis of the French and Netherlander negative vote are heterogeneous and it is difficult to foresee that a formal declaration could answer them entirely. Besides these, these two founding states have no reasons of concern regarding the risk of exclusion, being difficult to imagine that Europe can be build without them.

The European Union reached the limits of the current reform mechanisms. If it wishes to evolve, it will have to give up the rule of unanimity. Many international organizations (starting with the United Nations) already use reviewed procedure of qualified majority.[1]

The unanimity had sense in an union of six states, but in one of 27 states, it will most likely reach the paralysis of the decision.

Besides the political obstacles, there is a legal one as well, as the existing treaties may be amended only through unanimity.

This question (problem) occupied a central place in the elaboration process of the European Constitution project within the Convention ("Penelope" project).[2]

In order to avoid a deadlock, the Commission proposed an innovating solution, giving each member state the possibility to opt "between the continuation of participating to the Union, now based on a Constitution and the withdrawal from the Union, in order to adopt a special status, within which it will not loose anything in comparison to the current situation, as it will benefit from a large extension of the current arrangements (agreements)".

The legal legitimacy of this solution is based on two elements. On one side, it offers all the guarantees to the recalcitrant states by keeping

[1] Renaud Dehousse – Op. cit, page 66.
[2] Renaud Dehousse – Op. cit, page 67.

their already settled (earned) rights, and on the other side, the member states must unanimously approve this procedure of amending the Treaty.

There are a few advantages of this ingenious solution.[1]

First of all, the question of conditions in which the new treaty would come into force must have been approached since the beginning of the negotiations (affirmation proved by the current stage of the Constitution project).

The Penelope document wanted to appease (conciliate) the need of reforms with the respect for the law. This was a much more optimistic supposition, as it was expected that the member states would give up the rule of unanimity. The thing that made the proposal powerful from the legal point of view (fulfilling the conditions of the international law), made it weak from the political point of view.

The moderate (cold) reactions for this project are not exactly surprising. The unanimity is in the advantage of the status-quo adepts and who accept the failure to any tries of reform. Even the most pro-European states are moderated in ceasing their right to veto. Under these conditions, except a crisis situation, it is difficult to believe that the governments will give up the power the unanimity gives them.

In order to make this radical change possible, another way must be adopted. This refers to the creation of a new legal structure within the European Union. In this situation, the unanimous will agreement is no longer necessary. The signatories of the new text can provide less strict conditions for the coming into force, and the one that cannot ratify the new treaty may continue to be members of the European Union.

From the legal point of view, this solution is probably less elegant than the precedent one. It will compulsorily make thing more complex, at

[1] Renaud Dehousse – Op. cit, page 67.

least in the initial phase, which will lead to the creation of new structures within the already existing ones.

Besides these, a new agreement cannot, in principle, affect the rules already settled by the already existing treaties.

The history of European construction shows that the bold reforms are accepted much easier when their objectives are concrete enough to insure the support of the governments and of the public opinion. For the usual citizen (voter), the European Constitution project proved to be too abstract. In the same time, the Constitution project met will agreements in many aspects, thing which may inspire a new way. If the situation will constantly evolve, and the new projects will prove attractive, it will be proved that it is possible to fundament a new consensual evolution even without the formal guarantee of unanimity.[1]

The movement of some activities of the European Union to the new structure would probably be imposed and even the reforming of the review procedure provided in article 48 of the European Union Treaty (the Maastricht Treaty) would be possible.

The same conclusion also applies to the reform process and other aspects of the European institutional frame, that is the European Union is in an unpredictable period of changes.

Although the diplomatic model used at the beginning, within which the states played a central role, is kept in the current Constitutional Treaty as well, it has certainly reaches its maximum limits.

Although the innovations brought in the last years, the intergovernmental nature of the reform process of the treaty did not modify.

This makes any substantial reform almost impossible. The many are those who can oppose veto, the greater is the risk of a deadlock. The paralyzing rule of unanimity must be reviewed, without bringing prejudices to the consensual nature of the process.[2]

[1] Renaud Dehousse – Op. cit, page 69.
[2] Renaud Dehousse – Op. cit, page 69.

II. THE VIABILITY OF A FEDERAL EUROPE

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.[1]

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.[2]

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.[3]

The debates are also very alike. As Alexander Hamilton sustained the existence of a powerful American state-nation (European concept), with a high degree of economic and political integration, as well the former German Minister of Foreign Affairs Joschka Fischer expressed his hope that the European Union will transform into an integrated political federation. On the other side, 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).

[1] Mark Christie – Political Integration in Europe and America. Towards a Madisonian Model for Europe, CEPS (Center for European Policy Studies) Policy Brief, no. 72/2005, page 8.
[2] Mark Christie – Op. cit, page 8.
[3] Mark Christie – Op. cit, page 8.

Secondly, one cannot settled 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.[1]

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 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, this represents an obstacle for the transformation of the European Union in a federation like the one Joschka Fischer foresaw.[2]

Although the European Union disposes of a Christian past and legacy, it has on its territory an important Muslim minority and it also began the adhesion negotiations with Turkey, a Muslim state. It is not a coin-

[1] Mark Christie – Op. cit, page 8.
[2] Mark Christie – Op. cit, page 8.

cidence that many French and Germans, who for a long time have been the most vocal adepts of a more accentuated European federalism, are in the present moment much more moderated regarding the adhesion of Turkey as a member state. They are afraid that the adhesion of Turkey could represent a step back towards a more accentuated political union and a step forward towards the British vision of the European Union especially regarded as a free-trade area.[1]

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".[2]

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.

[1] Mark Christie – Op. cit, page 8.
[2] Mark Christie – Op. cit, page 8.

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. For these reasons, the analysis of the provisions of the European Constitution project is essential.[1]

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.[2]

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 years 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.[3]

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".[4]

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

[1] Mark Christie – Op. cit, page 9.
[2] Mark Christie – Op. cit, page 9.
[3] Mark Christie – Op. cit, page 9.
[4] Mark Christie – Op. cit, page 9.

state 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.[1]

Fourthly, the adoption method is essential, regardless 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.[2]

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.[3]

[1] Mark Christie – Op. cit, page 9.
[2] Mark Christie – Op. cit, page 9.
[3] Mark Christie – Op. cit, page 9.

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 Euro-federalists 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.[1]

On the other side, it is ironic that many Euro-skeptics, especially the ones in Great Britain, are the adepts of the referendum for the purpose of adopting the European Constitution project. Evidently, they hope that the referendum will have a negative result. But if the result will be positive, as in 1975, the Euro-skeptics will no longer be able to say that the British government and the European Constitution act without the approval of the British people.

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

[1] Mark Christie – Op. cit, page 9.

anti-European parties at the last elections for the European Parliament (2004) will make this project "a bridge too far away".[1]

The process of creating "an even closer (integrated) union" started 50 year 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 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.[2]

The literature regarding the federalism make 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.[3]

[1] Mark Christie – Op. cit, page 10.
[2] Mark Christie – Op. cit, page 10.
[3] Tanja Borzel – What can Federalism teach us about the European Union? The German Experience, The Royal Institute of International Affairs, page 4.

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.[1]

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.[2]

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.[3]

[1] Tanja Borzel – Op. cit, page 4.
[2] Tanja Borzel – Op. cit, page 4.
[3] Tanja Borzel – Op. cit, page 5.

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 insure 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.[1]

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 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

[1] Tanja Borzel – Op. cit, page 5.

alternative forms of interests' intermediation, such as the system of parties and the sector associations.[1]

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.[2]

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.[3]

The European Union disposes of a too reduced administrative device to be able to apply and implement the community 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.[4]

[1] Tanja Borzel – Op. cit, page 6.
[2] Tanja Borzel – Op. cit, page 6.
[3] Tanja Borzel – Op. cit, page 6.
[4] Tanja Borzel – Op. cit, page 6.

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.[1]

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) continue to be based on an asymmetrical balance of power.[2]

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 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

[1] Tanja Borzel – Op. cit, page 8.
[2] Tanja Borzel – Op. cit, page 8.

these reasons, it enjoys a strategically reduced autonomy in the matter of negotiations against the Council. The European Parliament, as first chamber of the community legislative, succeeded in increasing the powers of co-decision in the community policy. 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.[1]

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).[2]

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.[3]

The representation of political interests in Germany is based on a well settled system of party vertical integration in both chambers of the

[1] Tanja Borzel – Op. cit, page 9.
[2] Tanja Borzel – Op. cit, page 9.
[3] Tanja Borzel – Op. cit, page 9.

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.[1]

If they had wanted to save the European Constitution project, the European leaders should have faced two difficult problems.[2]

Firstly, they should have raised themselves over the narrow national or partisan (special) interests. Each member of the European Council will be individually responsible for the decisions collectively made. This liability (responsibility) is in the present moment important more than ever in the renegotiation of the European Constitution project which is in a dead end. The chiefs of governments should deal with the preparation of a common company, in order to insure the successful ratification of the new text.

Secondly, the European Council must insure a certain risk. The risk is that of bringing in front of the national parliaments and European people a new version of the project from 2004.

In order to make a decision of reviewing the document of 2004, the leaders of the European Union have two alternatives, on tactical as well as on strategic level.[3]

[1] Tanja Borzel – Op. cit, page 9.
[2] Andrew Duff – Operation Pandora, European Policy Center (EPC), Challenge Europe, Issue 16, February 2007, page 55.
[3] Andrew Duff – Op. cit, page 55.

An alternative, expressed by the French president Nicolas Sarkozy, consists of the re-analysis of the original text, in order to draw up a "mini-treaty", with or without promising ulterior radical reforms.

A second alternative is the one of a "new Constitution", by modifying the initial text and bringing substantial improvements (which has been done).

III. 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.[1]

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

a) legal means: the implementation and control of respecting the provisions of the community right depends to the greatest extend on the national instances and administrations;

b) human resources: the total number of community clerks is approximately half of the one of clerks of the Municipality of Paris;

c) financial resources: the community budget represents a small part of the member states' IGP (1.13% in 1999), and the large part of the expenses (85%) 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

[1] Jean-Claude Piris – Does the European Union have a Constitution? Does it need one?, Harvard Jean Monnet Working Paper, no. 5/2000, page 14.

does not depend on the contributions of the member states, as in the case of UNO 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;

d) administrative and technical capacities: the Community has few operational means of control and action at its disposal, the administrative expenses representing only 4.6% of the total community budget;

e) 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.[1]

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.[2]

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.

[1] Jean-Claude Piris – Op. cit, page 14.
[2] Jean-Claude Piris – Op. cit, page 16.

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.[1]

1) One people or several peoples?[2]

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.

[1] Jean-Claude Piris – Op. cit, page 16.
[2] Jean-Claude Piris – Op. cit, page 17.

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. In the same time, "the European social model" is different from the American one.

2) The sovereignty and attribution (distribution) of powers (competences)[1]

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 point

[1] Jean-Claude Piris – Op. cit, page 18.

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.[1]

3) Control over all persons and goods[2]

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.

4) War and peace (to start and wage the war and to make peace)[3]

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.

5) International relations[4]

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". The European Community has legal personal-

[1] Jean-Claude Piris – Op. cit, page 19.
[2] Jean-Claude Piris – Op. cit, page 19.
[3] Jean-Claude Piris – Op. cit, page 19.
[4] Jean-Claude Piris – Op. cit, page 20.

ity 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 Community 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. 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.

6) The European Union does not obtain (extract) the authority directly from the citizens, but from the member states[1]

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 community 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".

[1] Jean-Claude Piris – Op. cit, page 21.

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.[1]

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.[2]

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.[3]

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

[1] Philippe de Schoutheete, Sami Andoura – The Legal Personality of the European Union, In Studia Diplomatica, Vol. LX, no. 1/2007, page 8.
[2] Philippe de Schoutheete, Sami Andoura – Op. cit, page 8.
[3] Philippe de Schoutheete, Sami Andoura – Op. cit, page 8.

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. The situation may evolve so that it has done in the last years, under the form of new treaties signed with several partners. Some ambiguities still remain, and the coexistence of two legal entities, the European Union and the European Community will be embarrassing, being in contradiction to the fundamental unity of purposes.[1]

IV. THE LAST EVOLUTIONS OF THE EUROPEAN CONSTITUTIONAL PROCESS

In 2005 six alternative scenarios (variants) were taken into consideration in the situation of non-ratification:[2]

1) The treaty is submitted to a second vote by the states that did not ratified (voted) it.
2) The states that did not ratify (voted) it leave the European Union and start a new Constitutional Treaty.
3) The states that did not ratify (voted) it leave the European Union and start together a new political union, which will apply the Constitutional Treaty.
4) A new Inter-Governmental Conference is settled, in order to re-negotiate either some aspects of the Treaty, or the entire Treaty.
5) The Treaty is considered "dead" and the European Union continues to function based on the Nyssa Treaty.

[1] Philippe de Schoutheete, Sami Andoura – Op. cit, page 8.
[2] Julia De Clerck-Sachsse – What if they say "non"? Alternative scenarios if the European Constitution is rejected, The Oxford Council on Good Governance Briefing, no. 4/2005, page 2.

6) Some aspects of the Constitutional Treaty are applied through methods that do not require the amendment of the Treaty.

The Intergovernmental Conference will draw up a "Reform Treaty", and the amendments to the Treaty will not have "a constitutional character". The two main clauses of the Reform Treaty will amend the Treaty of the European Union (TUE – Maastricht Treaty) and the Treaty instituting the European Community (TCE – Rome Treaty), but changing the name of the last into the Treaty for the European Union's functioning.[1]

The European Union will have only one legal responsibility, which will not replace the national representation within the international organizations, such as the Organization of the United Nations. All references top "the European Community" will be removed and replaced with "European Union". There will be no elements of statehood, such as flag (banner), anthem or motto.

It is shown that the ones with primacy in front of the legislation of the member states will be the treaties, community legislation and the jurisprudence of the Court of Justice of the European Union.[2]

In order to strengthen this principle, the opinion of the Legal Service of the Council regarding "The Primacy of the Community Law" will be annexed to the Final Document of the Conference.

The main (key) amendments to the Treaty of the European Union are grouped in many categories.

Regarding the values and objectives of the European Union, the reference to "the free and undistorted competition" has been eliminated from the objectives of the European Union (on France's request), but

[1] Vaughne Miller – EU Reform: a new treaty or an old constitution? House of Commons Library Research Paper, no. 07/64/2007, page 34.
[2] Vaughne Miller – Op. cit, page 34.

the importance of competition (concurrence) is highlighted within a Protocol project in the field of internal market and competition.[1]

The Charter of Fundamental Rights will have "a compulsory legal value", although it will not be incorporated (reproduced) in the Treaties. The text, initially provided in the Nyssa Treaty has been integrated into the European Constitution project. It cannot be applied by the Court of Justice of the European Communities – CJCE, although it has been taken into consideration in the formulation of some decisions of the Court. The European Union has already incorporated an Agency for Fundamental Rights, with the seat in Vienna, which monitors the community institutions and the governments of the member states regarding the observance of community legislation and the obligations of observance of human rights and which formulates opinions for the interested governments and institutions.[2]

The Charter will be renewed by the three main community institutions. A statement will mention the field of application of the Charter and its relation to the European Convention of Human Rights. A protocol will state the British instances (courts) or the Court of Justice of the European Communities cannot state the British laws as being incompatible to the Charter. The effect of this exception is disputable, as it undermines the fundamental principle of the states' obligation to adhere and to apply the community acquis (community legislation, the treaties and the jurisprudence of the Court of Justice of the European Communities). It has been suggested that the indirect impact the Charter will have on the British legislation, especially when CJEC will pronounce in other cases.

Regarding the competences, the provisions of the Constitution regarding the relations between the Union and the member states will be maintained, a specific provision according to which the European Union "will act only in the limits of the competences conferred by the

[1] Vaughne Miller – Op. cit, page 34.
[2] Vaughne Miller – Op. cit, page 35.

member states in the Treaties" being added. The national security (safety) is explicitly defined as of the competence of the member states.

The role of the national parliaments in the European Union will be settled through a new article, which will also show "how they will actively contribute to the good functioning of the Union". It is for the first time when the community treaties mandate the action of national parliaments.

Their contribution (activity) will consist of the following:[1]

– obtaining information and legislative projects from the community administrations;

– insuring the observance of the subsidiary principle;

– participating to evaluation mechanisms for policies in the field of Justice and Internal Affairs – JIA, especially in Europol and Eurojust monitoring and evaluating;

– participating to the procedures of reviewing the Treaties;

– receiving notifications and adhesion requests form the European Union;

– participating to inter-parliamentary cooperation activities between the national parliaments and the European Parliament.

The European Constitution conferred to the national parliaments the possibility of expressing objections to the provisions of the community legislation because of the non-observance of the subsidiary principle. The objections must have been formulated within six weeks by the parliaments of at least one third of the member states. In this situation, the Commission must review the proposal.

The subsidiary guarantee for the national parliaments will function as follows:[1]

[1] Vaughne Miller – Op. cit, page 36.

– The national parliaments will have eight weeks to examine the legislative proposal and to formulate a motivated opinion over tributariness. Each national parliament will have two votes (one vote for each chamber in the bicameral parliaments). On the occasion of the re-examination, the Commission will analyze if the proposal is maintained, will modify it or will withdraw it.

– Within the ordinary legislative procedure, if the motivated approvals regarding the nonobservance of the subsidiary principle by a legislative proposal represents the simple majority of the votes attributed to the parliaments of the member states (28 of 54), the Commission will decide if it maintains the proposal, modifies it or withdraws it.

– In case the Commission decides to maintain the project (proposal), it must formulate a motivated opinion, submitted then to the European Parliament and the European Council together with the motivated opinions of the national parliaments.

– The European Parliament and the European Council must then analyze the compatibility of the legislative proposal with the tributariness principle, taking into consideration the opinions of the Commission and of the national parliaments.

– The proposal may be eliminated if the majority of the European parliamentarians, or 55% of the Council's members consider that the proposal is incompatible with the tributariness principle.

In the present moment, the parliaments approach the tributariness problems in the relation with their governments in order to present them within the Council of Ministers. But nothing prevents them from writing directly to the Commission about the tributariness problems (aspects).

Regarding the institutions, the modifications of 2004 are maintained.[2]

[1] Vaughne Miller – Op. cit, page 37.
[2] Vaughne Miller – Op. cit, page 37.

– Beginning with 2014, there will no longer be one commissary for each state, the number of commissaries representing 2/3 of the number of the states. The Commission must reflect correspondingly the demographical and geographical proportions (dimensions) of the Union. The Commissaries will be selected based on an equal rotation system between the member states and will have a mandate of five years.

– The European Council will be considered as an institution of the European Union, with a permanent presidency, which will not be depending on the rotation of the presidents of the member states at the management of the Council (the Council of Ministers).

– The European Council will have management teams (groups) with a mandate of 18 months. Each management team will be composed of three member states, each holding the presidency for six months.

– The voting system provided by the Nyssa Treaty will function until November 1st 2014. After this date a voting system of double majority (a qualified majority will need 55% of the votes in the Council, representing at least 65% of the community population) will be applied. Between November 1st 2014 and March 31st 2017, any member state may request the return to the Nyssa system. In the same period, if the member state representing 75% of the Council's votes or 75% of the population necessary for the incorporation of a minority blocked in the Council, express the opposition to a certain proposal, a final vote over the proposal may be postponed in the try to reach an agreement. Since April 1st 2017 this final vote may be postponed if 55% of a blocking minority (in votes or in population) manifests its opposition.

In the field of the European Union's external politics, the controversial title regarding the Minister of the Union for Foreign Affairs has also been modified (combining the functions of Commissary for Foreign Relations and the High Representative for PESC). The denomi-

nation of the function will be modified in "The High Representative of the Union for Foreign Affairs and Security Policy". The external action of the Union is in the present moment in the attribution of the Council through PESC and the Commission in the field of the international organizations, trade and negotiation of the treaties. The Constitution Project considered the function of Minister of Foreign Affairs necessary for the increase of coherence, consistency, efficiency and visibility of external actions of the European Union. The Commission analyzes the means of improvement of the cooperation between the Commission, Council, community institutions and member states.[1]

Regarding the external actions and the External and Community Security Policy (PESC), the provisions of the Constitutional Treaty for the Service of European External Action and structured cooperation in the defending policy will be mentioned, but a Declaration will underline the existing responsibilities of the member state for the formulation and management of the external politics and representation in the international relations. The chapter regarding the external actions and the External and Community Security Policy will detail the procedures and rules applicable in the PESC sector. PESC will keep its intergovernmental character in its nature, and the decisions will be taken in unanimity. PESC provisions will be maintained in the European Union Treaty, and a declaration of the Intergovernmental Conference show that the PESC provisions will not affect the responsibility of the member states (as it is in the present) regarding the fundament and management of their external policy, or their international representation regarding third countries or international organization.[2]

Regarding the strengthened cooperation, the strengthened cooperation actions will be triggered with the participation of at least nine of the member states.

[1] Vaughne Miller – Op. cit, page 38.
[2] Vaughne Miller – Op. cit, page 39.

Other final provisions consist of the following:[1]

– The European Union will have legal personality, although a Declaration will confirm that the European Union is not authorized to act outside the competences conferred by the member states in the Treaties.

– The article regarding the voluntary withdraw form the Union is also kept.

– The provisions of the Constitution regarding the review of the Treaties without appealing to an intergovernmental conference will be reunited in one article, which will clarify if the review of the treaties will reduce or increase the European Union's competences.

– The conditions of adhering to the European Union will be amended.

The key (main) amendments to the CE Treaty cover several aspects.[2]

In the renamed Treaty over the functioning of the European Union, all referrals to the European Community will be removed, reflecting the collapse of the structure of the 3 pillars and the incorporation of an omnipotent European Union.

Regarding the functions of the European Union, the Treaty will be amended in order to include the amendments of 2004 of the Constitution project:[3]

– competence fields;

– the domains of the qualified majority vote (the Constitution project had modified the way of voting from unanimity to qualified majority in 15 articles and had introduced 24 new articles presuming the vote with qualified majority);

– the fields of co-decision with the European Parliament;

[1] Vaughne Miller – Op. cit, page 39.
[2] Vaughne Miller – Op. cit, page 39.
[3] Vaughne Miller – Op. cit, page 40.

– the distinction between the legislative documents and the non-legislative ones;

– a "solidarity clause";

– perfecting the Euro system;

– provisions over the own resources, multi-annual financial frame and the budgetary procedure of the European Union;

– provisions in the field JIA (Justice and Internal Affairs), such as the modification of the voting system and the veto right.

A number of modifications of the text of the Constitutional Treaty will be performed through additions:[1]

– a specific language regarding the definition of a member state and of the European Union's competences;

– the amendment of the coordination and cooperation measures in the field of diplomatic protection and consultancy;

– a protocol containing interpretative provisions regarding the services of general economic interest;

– a specific language in order to allow some member states to implement certain measures in the field of judiciary and police cooperation, while other states do not participate to these actions;

– an extension of the option of Great Britain in 1997 of not participating to certain actions in the field of judiciary cooperation in criminal matter and police cooperation;

– the role of the national parliaments in applying the bridge clause (procedure of simplified review) in the field of judiciary cooperation in civil matter regarding the family right problems;

– a reference specific to the solidarity between the member state in the field of energy supply;

[1] Vaughne Miller – Op. cit, page 40.

– restrictions in the field of European space policy;

– the specific reauthorization given to the European Union to act for the prevention of climate changes on international level;

– keeping article 308 of the CE Treaty (flexibility clause), but specifying that it is not applicable in the case of External and Community Security Policy – PESC.

V. CONCLUSIONS

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.

If we deepen the analysis, the situation is completely different.

As a result of the Inter-governmental Conference, we can extract the following main conclusions.

The most important conclusion is that the concept of European Constitution has been completely eliminated, reaching the solution of modifying the Treaty instituting the European Community (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 spring of the community law (the other two already being mentioned in the European Constitution project). The jurisprudence as spring of

law is characteristic firstly to the Anglo-Saxon law system. However, maintaining the jurisprudence as spring 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 the 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.

A new element is added to the structure of the Commission. Thus, beginning with 2014, there will no longer be one commissary for each member state, but the number of commissaries will be equal to 2/3 of the number of the member states. This will be performed based on a rotation system. It is not clear how this system will function, which may generate anomalies and tensions.

Another great step back towards the former European Constitution project is the dissolution of the function of Minister of Foreign Affairs of the Union. In its place will be the High Representative of the Union for Foreign Affairs and Security Policy, which will preside concomitantly the Council for Foreign Affairs within the European Council. The European Council and Commission will be the most powerful community institutions (which will make the functioning of the European Union more dependent on the national governs and parliaments). The attributions of the minister designer would have superseded especially with the ones of the president of the Commission.

Neither in the new European constitutional – institutional configuration there is no mentions about Christianity. There can be two motivations of this omission, one from the field of internal policy, and the other from the field of external policy. The internal political motivation refers to the increasing number of Muslims from the community space (and the fear of recrudesce of extremism and Islamic terrorism). From the external policy's point of view, Turkey is seen as a future member state, to whose predispositions must be spared, especially due to the electoral increase of Islamists at the last parliamentary elections.

The qualified majority replaced the unanimity in many situations, but anyway, the voting way does not encourage reaching fast and concrete results.

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 community construction.

Everything started a few years after the end of the Second World War, when most of the European continent was in ruins, this besides the division due to the beginning of the Cold War.

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 UNO reduced a lot, being still in crisis. Even regarding the situation in Bosnia and Kosovo, their solving from the political-military point of view has been imposed by the United States, the Europeans subsequently involving in keeping the peace and reconstructing. The only place in which the USA, NATO and EU cooperate is Afghanistan (where a NATO mandate exists).

It is obvious that the three main powers on European level are France, Germany and Great Britain.

Of these three, the most European country is France. Great Britain has common interests with the United States and the Anglophone world, and Germany is tightly connected to Russia and former communist countries of center and south-east of Europe. As a proof in this meaning, one can mention the Ostpolitik started in Germany in the 70's, for the closeness of these states. Germany had a special reason for this. The German political class saw the German reunification performed through European reunification. In this meaning, a national strategy has been elaborated followed consequently until 1990 (an example that should be taken by Romania as well).

If these three states would cooperate more closely, the future of the European construction as well as the transatlantic relations would be more clearly contoured. There are encouraging signs in this meaning, such as the recent constitutional compromise within the Intergovernmental Conference. In other fields there are profound divergences, such as the Iraq problem.

As a result of the analysis of the last evolutions, one can say that Great Britain strengthened its position on European plan. The proof in this meaning are the express mentioning of the jurisprudence as spring of the community law and the exclusion from the text of the Treaties of the provisions of the Fundamental Charter of Human Rights. Besides these, it can take over the best from America, as well as Europe.[1]

The new Biritsh prime-minister, Gordon Brown, affirmed in this meaning that "the United States have initiative, but they do not have correctness, Europe has correctness, but it lacks the initiative".

The Europeans may take over from the Americans the innovations (research – development), the tax system and the conditioning of social aids for performing a labor, and the Americans can take over from the Europeans the public health system or the transports system in common.[2]

Regarding the European social politic, the European states are too assisting in comparison to the United States. If the pensions system is not reformed and the birth rate is not stimulated, it is possible that in 2025, the European state can no longer pay pensions.

France and Germany insured the management of the European construction process for 40 years.

[1] Timothy Garton Ash – Lumea libera. America, Europa si viitorul surprinzator al Occidentului, Ed. Incitatus, Bucharest, 2006, page 203.
[2] Timothy Garton Ash – Op. cit, page 203.

The events of the last years proved that this system can no longer continue. If Great Britain does not join this group, it can form alliances with states such as Italy, Poland or Spain.

It is not compulsory to happen like this. In the last months it is observed a discrete alliance France – Great Britain departing from Germany. The main reason of this state of facts are the relations with Russia. Germany depends a lot from the energetic point of view by Russia, while the French and the British base on nuclear energy and petroleum from Persian Golf. It is possible that a more substantial European participation for the solving of the situation in Iraq would contribute to the closeness of the American-European relations and to the reduction of the energetic dependency by Russia. The unilateralism of the current American administration harden the solving of this problem.

It is likely that a democratic administration in the White House or a more moderate republican administration would easy the situation. We must mention that the period of the mandate of George Bush senior enjoys a great consideration on the European continent due to the help offered on the period following the end of the Cold War.

However, the French and German governments are more pro-American than their predecessors.

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.[1]

It is possible that some European states consider that good relations with Russia and supporting it would contribute to the elimination of unipolarity. It is a false reasoning, taking into consideration the authoritarian tendencies of the Russian political class and its last statements and actions, that converge to a new Cold War.

[1] Timothy Garton Ash – Op. cit, page 211.

We must mention (as an example for Romania) the position of Poland within the European constitutional compromise.

Ever since the reunion in Nyssa in 2000, Poland insisted on the number of the population to be taken into consideration, as well as on the system of double majority. The Spanish parliamentary elections of 2004 left Poland without allies in this problem.

However, the failure of the European Constitution project determined the come-back of Poland in first-plan and due to its non-ratification on internal plan through the postponement of the people's referendum.

According to the system proposed by the Polish, small states that contributed net to the community budget would enjoy a smaller influence in the disadvantage of state with a smaller population, but having a more reduced contribution (the situation of Poland and Romania).

Romania supported the position of most of the great states, not Poland's (as it would have been normal).

This emphasis the fact that regarding the formulation of a position of Romania at the European Council the consultation of the public opinion does not exist, the consultancy with the political parties happening one day before the start of the Council's works. The example of Poland must be followed by founding the position in the European matters through an ample consultation of all directly interested internal factors, such as the consequent pursuit of some principles and defending our interests even with the price of a conflict with the community partners.

A factor that contributes to the smaller influence on the international arena of the European Union is the lack of a fast reaction force (whose incorporation is foreseen for about 8 years and which could easily reach 60,000 – 100,000 militaries). For this, the European states should increase the military expenses.

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

Fist 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. Here is where we have to find the explanation of the failure of the former European Constitution project, not in the opposition to a more integrated Union, as it was wrongly interpreted by the European leaders and political parties. In this context, we must mention that the last Euro-barometers show an increasing mistrust in the European Union project, but a decreasing trust in the political parties and community institutions.

Thirdly, the activity of the community institutions must be controlled effectively. This will be probably performed mainly by the national parliaments (which will have a greater role than in the present in the community concert) and by the civil society (which according to the same Euro-barometers, together with the NGO enjoy an increasing trust). The foreseen European patriotism (a sort of abstract formulation) cannot exist and it would be absurd without having as basis the national, regional and local patriotisms).

Fourthly, 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. The starting point in this meaning is the Interdependency Statement foreseen more than 40 years ago by the American president John Kennedy.

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

Lastly, 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, sone of the coryphaeus of the European unification, 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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