

THE ISSUE OF THE EUROPEAN GOVERNANCE

Diana-Ionela Ancheș¹

Abstract

The present text is dedicated to an important issue related to the development of the European Union – European governance – due to its contribution to the democratization of the entire European construction, to the good functioning of the European institutional system and to a larger involvement in the problems of the European society. In order to highlight the importance of the European governance we structured our paper into four main parts. First, we presented a few aspects related to the concept of governance, then we made reference to the relationship between the nature of the European Union and the framing of the concept mentioned above. The part concerning the birth of the good governance mechanism is, in turn, dedicated to analysing a few aspects concerning multi-level governance, the concept of “capacity building” and the types of multi-level governance. We concluded by a short presentation of the principles that represent the basis of the good governance and of its importance for the democratic system and for the well functioning of the European Union.

Keywords: European governance, good governance, “capacity building”, multi-level governance

Introductory aspects concerning the concept of “governance”

Writing about the genealogy of the ways of cognitive approach towards governance, S. Saurugger shows that there are three sources of this concept: the debates from the international relations, the ones from the comparative studies of politics and the ones that are present in the language of some international economic, financial and banking

¹ Lecturer, Dr. – “Vasile Goldiș” Western University, Arad, Faculty of Legal Sciences

institutions as are, for example, International Monetary Fund, the Organisation for Economic Co-operation and Development and the European Commission².

Concerning the first perspective we must mention the fact that Liviu-Petru Zăpârțan pointed out the presence of the concept in the theory of international relations, concerned with the fact that on the international scene there appeared processes and tendencies related to the multiplication of the actors with significant weight, that lead to the decrease of the role of the states, imposing a multiple correlation, an engagement of a mutual adaptation and of a collaboration between the private and the public fields, of a democratic interaction meant to ensure the management of some issues that are imposing interdependences. The essence of governance is expressed by the fact that within the international relations globalization and mondialization impose networks of actors in which hegemony is excluded and management is necessary in networks that are structured depending on the approached issues³.

The research literature easily observed that nowadays, international relations are characterized by an intensity allowed, among others, by the ease of communication, the evolution of technology and the ease of international travelling⁴. There is built a new order in the international relations, in which new actors are making their appearance, that develop complex relationships between them, giving the international scene a new aspect. Ph.-M. Defarges underlined that in order to see and characterize this new aspect, it is necessary to specify the bench marks established by the agents of the international scene according to which they engage in relationships: of force, of power, of balance, of peace or war. Under this aspect, the actual global order is defective because states and other agents, among which transnational companies, the various international organizations refuse, in fact, a set of principled bench marks to which to genuinely relate, preferring instead the assertion of some rules of conduct and a formal system of values so that, in content, each agent of the international scene to act according to its own interests. Hence, a precariousness of this order emanant from the permanent change of the report of forces, from their reversibility, from the equivocal of the hierarchy of the factors that determine it: what today seems significant, tomorrow may fall in the derisory⁵.

² S. Saurugger, *Théories et concepts de l'intégration européenne*, Sciences Po., Les Presses, F.N.S.P., Paris, 2009, p. 229.

³ L.-P. Zăpârțan, *Relații Internaționale*, Ed. Studia, Cluj-Napoca, 2001.

⁴ M. Floroiu, G.Schin, "Regional development and international relations – challenges and opportunities", in *Public Administration & Regional Studies*, 7th year, No. 2(14), Galati University Press, 2014, p. 11, <https://ideas.repec.org/a/ddj/parsro/y2014p5-14.html>.

⁵ Ph.-M. Defarges, *Relations internationales, vol. 2, Questions mondiales*, Ed. du Seuil, Paris, 1997, p. 61.

It is explainable the fact that, under the conditions of globalization and mondialization, the richness of flows that they bring (of goods, ideas and people) make global order even more complex, more difficult to understand, to explain and even less hard to master. This aspect determines the agents of the international scene to group in areas and subsystems, according to their interests, geopolitical position, cultural values, etc. In this framework, we observe that the European Union is such a group of states, built as a response to the problems that Western Europe had in the years that followed the Second World War: economic reviving in order to ensure prosperity, peace and security against the Communist threat. It is a general accepted judgement for which European integration in the formula of the actual European Union represents a unique process in history, accomplished through a transfer of competences from the member states to the Community bodies, giving birth to an original mechanism through which the leadership of the European problems is accomplished both through the Monet's Community method and through the intergovernmental one, under the control of the European law. To this effect, Article 4 of the Treaty on European Union provides that "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, including regional and local self-government"⁶. To these there can be added the provisions of Article 5 of the Treaty in which is specified the fact that the demarcation of the Union's competences is governed by the principle of attribution. The exercise of these competences is regulated by the principles of subsidiarity and proportionality.

We consider that these two articles highlight an essential aspect of the European Union's functioning, the one that refers to the structural, organizational and institutional aspect, in which the decisive role belongs to the Member States and to the Union's institutions, a field in which the following Treaties developed clarifications regarding their mobilizing capacities, from the propelling necessary for the development of the Union, from the definition of the general political orientations and priorities that the European Council has to the legislative ones that the Council and the Parliament have or to the ones that are related to the promotion of the general interest of the Union, to the application of the Treaties, to the budgetary execution, to the coordination of the Union's policies that the Commission was granted with, to the respect for the law and the interpretation and application of the Treaties that the Court of Justice accomplishes. There was developed a comitology that establishes the rules according to which the different specialised institutions, committees and Commissions are preparing the decisions of the Union's institutions. Nevertheless, experts are still talking about a democratic deficit

⁶ *Versiunea Consolidată a Tratatelor, Carta Drepturilor Fundamentale*, O.P.U.E., Luxemburg, 2010, p. 18.

of the Union, of its functioning, marked by bureaucracy, by the great distance between it and the citizens, by the fact that many agents from the European society are active and can contribute to a better management of the Union's issues. There can be added the fact that the more and more tighter relationships between citizens, their freedom of movement, along with the free movement of goods, services and capitals are founding a European civil society whose concerns are demanded to be reflected upon by a new mechanism of organization and leadership in the Union.

To these needs related to an efficient functioning of all the Union's mechanisms responded the concept of *governance* considered challenging for the development of the European Union⁷. As far as the European construction has its own originality, it is natural that the processes that it triggers and supports to be expressed in concepts that are original. Maxime Montagner remarked in an article since 2005 the fact that this originality is regarded with reservations even by the ones who are involved in it. Hence, J. Delors qualified it as an unidentified political object, and M. Abélès and I. Bellier talked about a "communitarian abnormality"⁸. As the author well notices, the need for the concept originated in the new realities that are built by the European Union, which are not – and cannot be – reflected by a categorial apparatus unanimously recognised. The perception of these new phenomena needs to be included into a theoretical vision, and this is not, at this moment, generally accepted. Nevertheless, some of the content notes of the concept were framed and this term of Anglo-Saxon inspiration is now used as a theoretical instrument even by the participants to the European construction.

The nature of the European Union and its relevance for framing the concept of European governance

The difficulties in determining the concept are related then to the fact that it does not relate to a single action field of the Union but it intervenes in a variety of (economical, social, political) activities with explanatory intentions which leads the theory of governance towards the search for some of its general features, towards what it expresses as a touch of originality of the Union not only related to its functioning – as it is often said in certain studies – but also to the structure of the actors that it brings on the scene. We consider that, from this perspective, the interpretation of governance cannot be exclusively listed in the area of functionalism or neo-functionalism, but it must also aim at

⁷ European Commission, *Communication from the Commission, COM (2014), 130 final*, Bruxelles, 5.3.2014.

⁸ M. Montagner, *La notion de gouvernance: un paradigme pertinent pour étudier le système politique de l'U.E.*, Publications IRG, Paris, 2005.

the structural aspects of the Union, at the ones that highlight the new components of the European civil society, the provisions of the Lisbon Treaty concerning the functioning of the institutional system and the European civil society. Only this way we can free of the capacity of the European construction to enhance in the sense of deepening its democratic character, meaning of its capacity to be a construction in the service of the European citizen. This is why the attempt of these researchers is a positive one because they highlight what the European construction is not and thus, what it cannot do in the name of a certain historical vision about the way in which a society is organized and lead. In this sense, the studies from the international public law, from the constitutional comparative law, and from the theory and sociology of international relations offered a domesticated categorial apparatus over time, but which is incapable of describing in a detailed manner what European construction is and what it will create in its originality, as it does, in fact, function in the daily life⁹.

It is suggestive the idea expressed by M. Montagner to give a negative definition of the European Union only to see where the old categorial apparatus has shortages. She considered that on the international scene there are two types of actors who take action: States and International Organizations. European Union is neither a state nor an international organization because it cannot build in any of the two positions. Deepening this judgement we can consider that indeed, none of the elements that define State can be one hundred per cent found in the appreciation of the European Union's nature:

- Its territory is, in fact, the territory of the Member States and only a part of their law is the expression of the community *acquis*; even though it is often spoken about the "community territory" it is not precisely determined;
- The population of the Union is, in fact, composed of its citizens, but European citizenship does not replace the national one, being added to it;
- The most important determinations of the State are the ones that relate to the existence and manifestation of a sovereign authority exercised on the territory and population.

To this effect, the institutions of the Union undoubtedly dispose of a series of competences in the management and leadership of some of its sectors of activity, but it is only a transfer of competences of the sovereign states in certain fields, precisely determined in the Treaties. It may be at most spoken about a shared sovereignty between the European institutions and the Member States. To this effect, the most clear example is offered by the policy in the field of Justice and Home Affairs, in which European Union does not have the monopole of the physical constraint and neither the one of the effective capacity

⁹ A. L. Ivan, "Guvernanța Uniunii Europene", in vol. *Uniunea Europeană*, Ed. Napoca Star, Cluj-Napoca, 2007, pp. 241-251.

of exercise of its policies which, according to Max Weber, were the so-called royal attributes of the State.

The same demarche on the characterization of the European Union's nature was also initiated by the theorists of the international relations, and respectively by the consecrated jurists of the international public law. As far as the Union was not a state but a reunion of sovereign states, the result of their action represented a mechanism of cooperation, that brought European Union closer to an international organization. And the fact that the whole construction is founded on Treaties conferred it the position of subject of international public law. There were three aspects that conferred community legal order a distinct place within the determination of the Union's specificity: the fact that Community Law takes priority to the national one; its effect is direct because it applies both to the Member States and to the physical and legal persons; and the fact that the Court of Justice determined through its jurisprudence not only the respect for the Community's legal order but also its enrichment.

Given the difficulties in determining the identity of the European Union, especially the ones related to the political dimension, to the way of its organization and leadership as a whole, two decades ago was introduced the concept of governance in order to nuance the understanding of the way in which the Union really works, no matter of the theoretical preoccupations from different disciplines. Thus was made the connection to the discussions promoted by the financial and banking institutions. A. Pagden shows that in 1989, in a Report of the World Bank, there was raised the issue of a good management of the economy and finances of the developing countries, especially from Africa, given the fact that central authorities functioned with difficulty, there were involved international bodies and local interests were strongly manifesting. It was considered that there was necessary a new mechanism of management called the mechanism of the good governance, meaning a mechanism of governance that encompassed all the actors interested in a certain program¹⁰.

The birth of the "good governance" mechanism

Starting with this report, the concept received a quick spreading because it questioned an authoritarian management accomplished with the consecrated institutional instruments, as they were presented by the traditional state. It is about establishing what must be accomplished by a totality of actors interested in a project and whom were not imposed an imperative working stile but who are meeting with each other, who are

¹⁰ A. Pagden, "La g n se de la "gouvernance" et l'ordre mondial Cosmopolitique", in *Revue internationale des sciences sociales*, no. 155, mars, 1998.

mutually influencing, and who establish a contract and rules so that the project to be accomplished with maximal efficiency. There must be taken into consideration the arrival of some new social actors, of some new public policies, of some new relationships between public and private, between the various sectors of the society, that demand for a new way of coordination or even of "self-organization". There are social agents, institutions and other types of social aggregation that have a certain autonomy, and that do not necessarily have a hierarchy relationship but which must correlate and take action within a network in a self-imposed discipline based on a mutual adjustment obtained through a permanent negotiation.

It is not necessarily the expression of the weaknesses of the act of governance but of the fact that it must not get involved in all the problems of a society and, the society, in turn, must assume the activities of self-management, of expressing its own capacities and of its capital. If we take into account these determinations, the concept of governance is related to the European construction with a great epistemic success because the Union presents various components of structure and functioning that fit into the concept of governance.

- At the level of the actors and structures of the Union that are participating to its life, we can see a series of particularities that confirm the idea expressed above. Indeed, in the actual stage of the European construction it is being build a European civil society that is based on the *European citizenship*¹¹. Even if it is being added to the national citizenship and it does not replace the it, it allows the establishment of some new types of relationships between people that allow them to reunite over the old borders. On this basis, many non-governmental organizations of the civil society are manifesting themselves, with a great capacity of mobilization, whose transboundary action contributes to the assertion of the intercultural dialogue, to the over passing of the clich s of the collective mentalities and to the building of a spirituality of tolerance and dialogue. Based on these spiritual approaches at the deep level of the cultural life of the people there are being built doctrinaire structural political beliefs that are picked up and transposed in an organizational manner by *the great families of European political parties* which debate on ample spaces the perspectives of the European construction, in relation to the conditions existing in each country. Common spiritual life, the basis of a European culture with identity is supported by an economic life, that

¹¹ In a recent paper, Willem Maas referes to the relationship between European governance, citizenship and nationality, showing that European citizenship must be analysed through the perspective of the European governance. – Willem Maas, "European Governance of Citizenship and Nationality", in *Journal of Contemporary European Research*, vol. 12, issue 1, 2016, pp. 533-551, <http://www.yorku.ca/maas/Maas2016c.pdf>.

is generating some formulas of aggregation of interests and social groups at a European scale. Even though sometimes the movement of capitals generates contradictory social relationships (see Nokia case in Cluj, Romania, correlated with its dislocation in Germany, which is an example of what the consolidation of the unique market and the materialization of the four liberties mean). To this effect, there can be invoked the situation created by the Schengen Agreements which provide the rules for a freedom asserted by all European citizens but which, for particular reasons of some States, gives birth to contradictory reactions. They are the expression of the fact that at the level of the citizens and of the European social groups there are still manifesting a series of particularities, of attempts to manifest in a distinct manner in the process of solving some problems related to poverty, migration, economical growth. Governance intervenes in this social moment of the European construction, in postulating the need for finding the optimal channels for the manifestation of some group interests from the European society. Paul Claey's made the test of the capacities that the lobby organizations from the European Union countries have for transmitting efficiently their message towards the national and European institutional system¹².

- Governance is manifesting at all the Union's organization levels. It marks the way in which decisions in the local communities are made, in the fields in which projects are related to the daily life of the people. It manifests at a regional level because the Union saw that at this level it is a great meeting point for all the local, general, national and community aspirations. European region became the basis of the European regional policy, the place towards which there are directed regional funds whose management imposed the collaboration of a complex of agents through the mechanism of governance. Thus, the need for the cooperation between the local and the regional levels is obvious.
- Then we must pay attention to the European level of structuring the decision-making process. If the great objectives of economic and social integration are expressed in the Treaties and in the European policies we must consider the fact that community projects are materializing, are developing at a regional or local level. Social and territorial cohesion policies supported by ERDF (European Regional Development Fund), ESF (European Social Fund), and EAGF (European Agricultural Guarantee Fund) cannot be accomplished without the contribution of the regional and local bodies. This explains the fact that at the institutional level of the European Union the role of the Committee of the Region is in a permanent

increase. Furthermore, after the adoption of the Lisbon Strategy in 2000 there was developed "the opened method of coordination" through which the exchange of a managerial practice is supported at all the levels of the European Union's organization.

Multi-level governance

Adrian Liviu Ivan showed that the proposals of *multi-level governance* were promoted by the American political scientists¹³. The insistence of some theorists on what is called multi-level governance, can be seen from the works of Liesbet Hooghe and Gary Marks for whom, if the basic objective of the Union is the integration of its components in a whole with a performing functioning – and it is important to see how the actors are assuming an integrative role – it assumes at the Union's various levels its outcomes, values and norms. Comparing the Union with the German federal system, the two authors assert that the decisions made at a supranational level are depending on the agreement of the inferior levels. And to this effect, the principle of subsidiarity proved to be saving for the European Union in a historical moment when the temptation to emphasise its supranational, communitarian side faced the national opposition. In the name of the principle of subsidiarity, multilevel governance is asked to put at work the dialogue between the non-state local and regional agents and the governmental and the European ones, in a partnership that is meant to bring a compromise through which economic and social cohesion to become real at the European level.

It is a compromise – writes Sabine Saurugger – that does not exclude neither the conflicts nor the asymmetrical distribution of power but she insists on the fact that different actors are intervening along the communitarian decision-making process, actors that can be found at a local level as well as at a regional, national or European level¹⁴. It is important that from a theoretical perspective the new way of structuring the decision-making process expressed by the concept of governance could not reflect in the old categorial apparatus and relate to it. Also, the functionalist demarche is, from this perspective, decisive even though it is not the only theoretical formula through which governance is supported. From the critic addressed to it – that it ignores the institutional aspect and especially the role of the State which is at the same level as the inter and supranational actors – there was born a neo-corporatist vision according to which the demands of the civil society represent the core, the basis of a decision-making process of the elites. This became obvious for the economical governance.

¹² P. Claey's, C. Gobin, *Lobbisme, pluralisme et Intégration Européenne*, Institut de Sociologie, ULB, Bruxelles, 1999.

¹³ A. L. Ivan, *Teorii și practici ale integrării europene*, CA Publishing, Cluj-Napoca, 2015, p. 135.

¹⁴ S. Saurugger, *op. cit.*, pp. 237-238.

A significant aspect of the governance's efficient character was presented in the past years on the background of the financial crisis. The financial imbalances accumulated by certain countries, the economic and financial crisis impacted on the European construction and especially on the Euro Zone. Governance – as a concerted action of all interested actors in the good functioning of the economical and financial mechanisms proved its limits. It was necessary the concerted intervention of the Member States and also of the European institutions. Thus and so, multi-level governance can take two forms: one in which there are rigorously established the levels of competence of the various actors and the responsibilities that a system of power assumes. In other words, there is a democratic governance well delineated by norms and by the public opinion. The second form is the one that does no longer consider the traditional games of interests and power but instead it is concerned with the way in which are being built the collective actions of regulation, organization and leadership. In this case, there is no actor with the full decisive monopoly or constraining force and the protestant measures are no longer possible but in the form of quitting the game. This second form of governance is specific to the Union.

In March 2010, European Council decided the enhancement of the basis of budgetary and macro economical surveillance and also the creation of a management mechanism of the crisis at the European level that framed the actual framework of the economical governance of the European Union submitted to some regulations concerning public finances, meant to reduce the macro economic and financial imbalances. In March 2010 there were also adopted a series of measures meant to support the vulnerable Member States. Thereby, there were created the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM). There was also decided the reform of the basis of economical governance of the Euro Zone. There were formulated the directions of concrete action for the reform of the economical governance at the European level by creating an integrating framework for the identification of the macro economic and fiscal imbalances; there was elaborated the Euro Plus Pact which follows the launching of the conditions necessary for the economic growth and for the enhancement of competitiveness; there was proposed the creation of the European mechanisms of financial surveillance¹⁵.

In 2014 there were operative the following mechanisms for protection of the financial system:

- *European Financial Stabilisation Mechanism (EFSM)* – which offers assistance for the Member States of the European Union. It is authorized to mobilize on the international financial markets funds with a value up to 60 mild. Euro, with the

warranty of European Union's budget. The fund's administration and assignation is made by the European Commission based on some conditions imposed to the beneficiary states.

- *European Financial Stability Facility (EFSF)* – which is a Luxemburgish law company having as shareholders the Member States from the Euro Zone, which grants credits to the states from the Euro Zone that are no longer capable to finance themselves on the financial markets or can finance themselves only under very hard conditions. EFSF can grant 440 mild. Euro and has a capacity of warranty granting of 780 mild. Euro. Its resources come from emitting bonds with the date of payment of 3, 5 and 7 years. Until 2014 EFSF performed titles' emissions that worth 22,5 mild. Euro, from which 19 mild. Euro were used for financing Ireland and Portugal.
- *European Stability Mechanism (ESM)* – is a intergovernmental institution created by the “Treaty concerning the European stability mechanism”. This was signed by the Member States of the Euro Zone in July 2011. ESM's activity consists of granting credits and intervening exceptionally on the primary market of the state bonds. The maximal volume of the credits granted by ESM is established at 500 mild. Euro.
- *EU Framework for Crisis Management in the Financial Sector* comprises measures to solve the situation of banks with problems and “bank resolution funds”.

The revision of the financial surveillance mechanism at the level of the European Union lead to the creation of a new institutional system of European financial surveillance – European System of Financial Supervision (ESFS) composed of:

- European Committee for Systemic Risk (CESR);
- European Supervisory Authorities (ESA) – represented by European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Security and Markets Authority (ESMA);
- Joint Committee of the ESA;
- National Supervisory Authority.

Structural and functional duality of the European Union, its organizational complexity, the plurality of the actors involved in the enlargement process of the European Union/ Euro Zone, the combination of centralized and decentralized responsibilities and the novelty of the “independent institutions” in the institutional structure of the European Union make so that the economical governance at the European level becomes a very complex problem. Financial crisis highlighted the need for enhancing economical governance in the European Union. The proposals for the reform of the economical governance and of

¹⁵ Id.

enhancing the financial system are still being debated, and the measures adopted are still in the implementation process and have a limited impact. On the other hand, ensuring long term financial stability, economic growth and the maintenance of prosperity needs not only a qualitative leap in the field of the economical governance but also a certain continuity of the economic and budgetary policies of the European Union¹⁶.

As far as the actual European governance emphasises the role of the intergovernmental procedures, it becomes non-hierarchical, as a network, and it moves along with the will of the Member States. But the measures comprised in the Euro Plus Pact (Decision of the European Council from 24/25 March 2011) and in the Fiscal Treaty modify this model because it enhances the control on the Member States, hereby acquiring much greater functions.

Because it grants the European Commission with shared competences in the field of fiscal policy and enhances the jurisdiction of the Court of Justice of the European Union in controlling the implementation of the supranational regulations, the Euro Plus Pact and the Fiscal Treaty impose the completion of a federal-type system at a European level, through a positive integration. The provisions of the Fiscal Treaty and of the Euro Plus Pact are correlated with the desire of the European Union's states to introduce a European tax which to enter directly into the Union's budget starting with 2014. This made that the fiscal policy to pass from the sphere of the low politics to the one of the high politics as a main instrument for the consolidation of a competitive-type federalism with a decrease of the role of the States in economy¹⁷.

The concept of "capacity building"

Governance in European Union depends both on "capacity building" of the bodies that function at the level of the Union, and on "capacity building" accomplished at the level of the Member States. It is about a certain type of organizational capacity, about an opening towards cooperation and network building. The process of "capacity building" runs against the fact that between the Member States there are great differences concerning the ability of the public and private organizations to create networks, so that local communities and individuals to develop their own capacities for improving their lives.

European Union uses the idea of "administrative capacity" which does not have a model because it is dependent on each country and so, at the European level it has only guidelines (Common Assessment Framework – CAF). Member states either mechanically overtake this approach, or they have developed their own model of "institutional

capacity". Surely "capacity building" and "administrative capacity" are two different things because they have different implications in the programs of economic and social cohesion of the Union, in the evolution of the governance system at the European level and in the Member States. Capacity building refers both to the internal organizational development and to the institutions and relationships that ensure the economic and social order, to the capacity of the individuals to change their social condition, so that they are able to permanently adapt to change¹⁸.

European perspective on capacity is preponderant inward – oriented towards an internal organization and is based on evaluation, knowledge, leadership, institutional engagements and responsibility. "Capacity building" means a governance system in which the network is opened towards the private actors, meanwhile European governance does not have this kind of opening. In European governance the network exists between super state organisms and the Member States. The relationships with other levels of the society are weak which justifies a part of the critics concerning the democratic deficit of the European Union¹⁹.

Capacity building is marked by the interest of the states for keeping their influence in the super state bodies which makes European governance determine a permanent increase of the competences and also of the regulations that are multiplying. For example, only in the past five years there were created different super state bodies for the financial markets, some of them necessary (capital market, insurance market and allowance market), others with competences that had to be granted to the European Central Bank. Regarding this legislation, European system of governance allows the exchange of information, inter-operability and the correlation of the actions within the decision-making process, so that to diminish the informational asymmetry, and to negotiate everything. Therefore, the decisions regarding governance at the level of the Union are taken in a more difficult manner, as it was seen in the agreements on Greece as a result of some long series of negotiations.

Types of multi-level governance

At the level of the Union's Member States capacity building is extremely different. Some states are more institutionally evolved than others, creating thus difficulties of communication, cooperation, compatibility in the decision-making process. European Union's Member States with a weak institutional development cannot have a suitable

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ About the democratic deficit see: Liviu-Petru Zăpârțan, *Reflecții despre Europa Unită*, Ed. Eikon, Cluj-Napoca, 2011.

response to the decisions made at the level of the super state bodies so that, the decisions of these bodies will suffer. Institutional problems feed the institutional asymmetry on the relation principal (super state bodies) – agent (Member State) especially in policies where there are shared competences. According to Saurugger, there were two authors, G. Marks and L. Hooghe, who put face to face the two types of multi-level governance in order to distinguish its characteristics at the European level and to frame it within the perspective of the theory of international relations²⁰.

Types of multi-level governance²¹

Variables	Type I	Type II
Legal inclusivity	General	Specific
Levels of governance	Clearly distinguished	Encompassing; Interdependent
Institutional inclusivity	Systemic	Diversified and flexible
Feeling of appurtenance to an integrated system	High	Low
Privileged relationship of the actors	Of expression	Of walking out
Political fields covered	Policies (political game)	Market building

Distinguishing the two levels highlights the fact that governance demands a more complex theoretical approach, in which there are comprised the systems of values of a society (the axiological aspect), the ways of regulating the conducts that can show the mobilizing capacity of the networks that governance is building, and also its efficiency. To this effect, the relationship between governance and the neo-functionalism that theorizes it is significant.

Launched by Ernst Hass in his famous work *The Uniting of Europe*, neo-functionalism affirms that, before the integration takes place, there are necessary certain preliminary conditions, among which a transfiguration of the political attitude from nationalism to cooperation, a desire of the elites to promote integration for reasons rather pragmatic than altruist and the transfer of real power towards a new super national authority²². Ernst Hass sustained that progress in the theoretic and economic fields must lead to a tighter political cooperation, accomplished through consensual knowledge by the political elites²³.

²⁰ S. Saurugger, *op. cit.*, p. 241.

²¹ Id.

²² E. B. Hass, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford Univ. Press, Stanford, 1968.

²³ J. McCormick, *Să înțelegem Uniunea Europeană – o introducere concisă*, Ed. Codecs, București, 2006, p. 22.

The key concept in the neo-functional theory was the one of *spill-over*, in order to describe the mechanisms that set in motion the processes of integration, defined by Leon Lindberg as “a situation in which a given action, related to a specific object, creates a situation in which the original objective can only be ensured by following additional subsequent actions, which in turn create subsequent conditions for a greater action field, and so on”²⁴. Therefore, after the promotion of the European integration by the national governments, the process develops by itself, based on an internal, intrinsic mechanism and determines the governments to continue the integration process at a higher degree²⁵.

The research literature talks about a functional *spill-over* for which economies have interconnected elements so that if Member States integrate a functional sector it, in turn, demands for the integration of other sectors. Based on this process, there can take place a political *spill-over* that holds to the continuance of integration within the involved states. There is also a cultivated *spill-over* that consists of developing some community policies institutionally stimulated. The practice has shown that the success of the cooperation between states does not function according to the principle of domino and it does not spread from one area to another and does not follow an organic logic²⁶.

It is about the role of elites in the stimulation of the integration process, and also about the building of the super national groups of interests supported by the political parties, and also by the national groups of interest. Neo-functionalism was criticised because it is too linear and it ignores the modification of the public and political attitudes, the role of nationalisms, the influence of the external factors (as for example, the economic and military threats, the social and political changes that took place separately in the integration process)²⁷. Also, it was criticized for ignoring the globalization and mondialization processes.

Hence, neo-functionalism appears as one of the explanatory theories which is very close to the rare processes of European construction but without being generally valid. For the governance issue it offers a set of arguments that cannot be ignored. Governance means the existence of the networks of actors, their plurality and so, the complexity of the mutual relationships that they are capable of building. If multi-level governance had in mind a vertical structure of the networks involved in the organization and leadership of a society, governance in networks aims at horizontal structures created through the actions of the various actors.

²⁴ L.N. Lindberg, *The Political Dynamics of European Economic Integration*, Stanford Univ. Press, Stanford, 1963.

²⁵ G. Silași, *Teoria integrării*, ediția a II-a, Ed. Universității de Vest, 2006, p. 100.

²⁶ G. Gusilov, “Neofuncționalismul European”, in *Sfera Politicii*, nr. 116-117, <http://sferapoliticii.ro>.

²⁷ J. McCormick, *op. cit.*, p. 23.

It can be said that the demarche in networks is with prevalence an analytical one because, first of all, it calls for the registration of the actors of governance and then, for relations of interdependence, in order to see how fragmentary is a structure of actors, in what sectors does it divide and then, in order to establish what relationships it can support, how much public space do the negotiations occupy in order to support them, and how direct or opened they are. Basically, this type of demarche presents the refusal of governance to back up the hierarchies. Taking into account the complex character of the structures in which it manifests it supposes a relatively stable cooperation between partners, a permanent negotiation between them, a mutual exchange of resources based on some norms and mutually accepted interests in the name of the belief that each of them is, in a greater or smaller degree, dependent on the others. To this effect, at the level of the Union there was asserted comitology as a concern for the regulation of the relationships between the thousands of committees and commissions that interact within their activities in order to give consistency to the community action. Therefore, it can no longer be a question of strong or weak governance but of a good or weak governance.

Conclusions

After 2000, when Prodi Commission granted a particular attention to governance and after the publishing of the White Paper in 2001, the demarches related to the improvement of its mechanisms and norms multiplied. The discussions moved towards the new ways of accomplishing governance, as non-coercive processes, of “accommodation” of the various actors’ action into a collective deliberation, based on some clearer norms and procedures, on an effort of disengaging the common objectives.

The White Paper on EU governance published by the European Commission in July 2001 signaled the need for a reform of the European governance imposed by the fact that there was a difference the practical accomplishments of the European integration, at the institutional level and at the one of implementing its policies and the way in which was manifesting the spirit of the Europeans, its assertion and the lack of support that it should have enjoyed on the behalf of the European citizens²⁸.

At that time, the example is offered by the refusal of the Irish population to ratify the Nice Treaty under the conditions in which their country fully benefited on the advantages of the adhesion to the European Union. Hence was born, according to K. Armstrong, the idea that there is a normative gap that European governance must overpass so that what it truly does for the European citizens to be not only recognized as beneficial,

²⁸ Commission of the European Union, *A White Paper on European Governance*, Brussels, 2001.

but also supported, so that EU indeed offer stability, peace and economic prosperity. Therefore, the reform of the European governance treated from the perspective of its capacity to offer a normative framework in which the real life of the members of the “European civil society” to meet with the transnational technocrat decisions, so that European construction to prove its legitimacy and to manifest its democratic character. So, governance was placed at the centre of the European Union’s functioning and its reform was seen as a condition for the development of this Union. Hence, the principles of the *good governance*²⁹.

At the basis of the good governance, the Commission considered that it was necessary to establish five principles through which to consecrate the features of the democratic system and of the rule of law specific to the EU Member States, but which are valid for all types of governance (global, European, national, regional or local). The five principles are the following: transparency (openness), accountability, participation, effectiveness and coherence³⁰.

Transparency (openness), as main principle, proclaims the need for adopting an opened, sincere manner by all institutions in accomplishing their activity³¹.

Participation conditions the obtaining of a high quality and efficiency of the policies promoted in the EU to securing a wider participation, over the entire process, from the elaboration until the implementation and monitoring. Or, as we already know, the amplitude of participation is conditioned not only by the trust the institutions enjoy, but also by the final expected results. *Accountability*, as a third principle, demands for the clear delineation of the legislative and executive role, the fact that the promoted policies must ensure efficiency, be opportune, meaning they must be implemented when necessary, based on a clear evaluation of the objectives and of their impact. The most important aspect refers to the fact of assuming accountability for everything that happens in their sphere of activity. *Effectiveness* expresses the requirement of accomplishing good governance as being “the way through which the Union uses the powers granted by its citizens and on their behalf” because they are the ones who directly or indirectly feel the benefits of integration. *Coherence* demands for ensuring a high coherence of the promoted policies, their correlation, and a consistency in the logic they are based on³².

²⁹ K. Armstrong, “Rediscovering Civil Society: The European Union and the White Paper on Governance”, in *European Law Journal*, vol. 8, no. 1, March 2002, pp. 102-132.

³⁰ N. Bernard, *Multi-level governance in the European Union*, Kluwer International Law, The Hague, 2002, pp. 148-151.

³¹ Id.

³² Commission of the European Communities, *A White Paper on European Governance*, op. cit., 2001, p. 3.

Governance opposes to any attempt of levelling the behaviours, to any attempt of dogmatizing the formulas of achieving the commons objectives of a local collectivity or of a nation. It means what is called *soft law*, an acceptance of the community regulations in a free spirit. Hence, a series of reserves concerning the capacity of governance to radically overpass the Union's consecrated methods of organization and leadership. Its contribution to the democratization of the entire European construction, to the better functioning of the institutional system and to a stronger relationship with the problems of the European society are still indisputable. This way the European Union can keep the viability of the positive interpretation of its governance because it left a capacity of adjustment of the Union's structures and policies to "what it must do" in the name of what they are³³.

Acknowledgements

The present paper represents the consolidated and revised version of a text that was first published in the volume "Preocupări juridice privind Uniunea Europeană", Eikon, Cluj-Napoca, Romania, 2014.

References

- Armstrong, K., "Rediscovering Civil Society: The European Union and the White Paper on Governance", in *European Law Journal*, vol. 8, no. 1, March 2002.
- Bernard, N., *Multi-level governance in the European Union*, Kluwer International Law, The Hague, 2002.
- Claeys, P., Gobin, C., *Lobbisme, pluralisme et Intégration Européenne*, Institut de Sociologie, ULB, Bruxelles, 1999.
- Commission of the European Union, *A White Paper on European Governance*, Brussels, 2001.
- Defarges, Ph.-M., *Relations internationales, vol. 2, Questions mondiales*, Ed. du Seuil, Paris, 1997.
- European Commission, *Communication from the Commission, COM (2014), 130 final*, Bruxelles, 5.3.2014.
- Floroiu, M., Schin, G., "Regional development and international relations – challenges and opportunities", in *Public Administration & Regional Studies*, 7th year, No. 2(14), Galati University Press, 2014, <https://ideas.repec.org/a/ddj/parsro/y2014p5-14.html>.
- Gusilov, G., "Neofuncționalismul European", in *Sfera Politicii*, nr. 116-117, <http://sferapoliticii.ro>.
- Hass, E. B., *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford Univ. Press, Stanford, 1968.

- Ivan, A. L., *Teorii și practici ale integrării europene*, CA Publishing, Cluj-Napoca, 2015.
- Ivan, A. L., "Guvernanța Uniunii Europene", in vol. *Uniunea Europeană*, Ed. Napoca Star, Cluj-Napoca, 2007.
- Lindberg, L. N., *The Political Dynamics of European Economic Integration*, Stanford Univ. Press, Stanford, 1963.
- Maas, W., "European Governance of Citizenship and Nationality", in *Journal of Contemporary European Research*, vol. 12, issue 1, 2016, <http://www.yorku.ca/maas/Maas2016c.pdf>.
- McCormick, J., *Să înțelegem Uniunea Europeană – o introducere concisă*, Ed. Codecs, București, 2006.
- Montagner, M., *La notion de gouvernance: un paradigme pertinent pour étudier le système politique de l'U.E.*, Publications IRG, Paris, 2005.
- Pagden, A., "La genèse de la "gouvernance" et l'ordre mondial Cosmopolitique", in *Revue internationale des sciences sociales.*, no. 155, mars, 1998.
- Saurugger, S., *Théories et concepts de l'intégration européenne*, Sciences Po., Les Presses, F.N.S.P., Paris, 2009.
- Silași, G., *Teoria integrării*, ediția a II-a, Ed. Universității de Vest, 2006.
- Versiunea Consolidată a Tratatelor, *Carta Drepturilor Fundamentale*, O.P.U.E., Luxemburg, 2010.
- Zăpârțan, Liviu-Petru, *Relații Internaționale*, Ed. Studia, Cluj-Napoca, 2001.
- Zăpârțan, Liviu-Petru, *Reflecții despre Europa Unită*, Ed. Eikon, Cluj-Napoca, 2011.

³³ N. Bernard, *op. cit.*, pp. 148-151.