

## **Constitutional Changes in the Context of Europeanisation**

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## 1. Introduction

The process of *Europeanisation*, i.e. the adaptation of the constitutional order of the member states to the encompassing European framework of policy- and decision-making, has been a long and complex one. As the Monnet-method of small steps towards integration has prevailed over federalist views on a European constitutional agreement as a starting point, the institutions and policies of the Communities and Union were set up by treaty. European cooperation, even arrangements involving supra-national authority, was for many years seen as a matter of international relations. So, per definition, only the states involved were considered as actors and the procedures were the ones that apply to negotiations and ratification on the international scene.

As long as the process was mainly focused on *negative* integration, i.e. removing barriers to free trade by creating a customs union and, later on, a common market, the institutional pattern of the member states and the internal division of powers were hardly touched upon. The decisive shift took place in the mid-eighties with the Single European Act (1985-1987). In line with its ambition to establish a single market by 1992, the EEC embarked on the *positive* integration of a wide diversity of policies that, until then, had been exclusively dealt with at the national and sub-national level, e.g. regional development policy, environmental policy. Especially in federal states, with their strong tradition of regional self-government, this shift did not pass unnoticed, but in unitary states as well, national parliaments started to worry about their impact on policy formulation.

The Treaty of Maastricht (1991-1992) extended significantly the policy horizon of the Union, and the Treaties of Amsterdam and Nice only confirmed this trend. The introduction of the principle of subsidiarity in Maastricht can be seen as the first recognition of the problematic division of competencies between levels of government, whereas the Committee of the Regions aims at associating the sub-national authorities in the collective policy-making process. The draft Constitution, finally, has broadly formulated the aims of the Union and reconfirmed the guiding principles for the functioning of the emerging European polity.

This evolution challenged the traditional forms of domestic state systems of governance. Accordingly, in light of these developments, for the past two decades scholars have begun to study the transformation of governance in the context of the European Union, and thus to reflect to the role of the state in Europe. With the development of the European polity and the inherent transformations in the character of governance, numerous authors started to question the appropriateness of using the traditional model of the state, conceptualised by Max Weber according to which the state is a “unitary actor” having the right to implement the whole body of decisions and detaining the “monopoly of the legitimate use of physical force”<sup>1</sup>. Referring to two contrasting approaches, the ‘*state centric*’ and the ‘*governance*’ or ‘*multi-level governance*’ models of European integration, one can trace distinct perspectives on the role of the EU in reshaping the nation-state.

On the one hand, authors like Moravcsik<sup>2</sup>, Milward<sup>3</sup> defend a *state-centric model of governance in the EU*, according to which the nation-states have been rescued and strengthened by the European integration. In line with Moravcsik’s arguments, the EU increases the agenda-setting power of national governments and adds legitimacy and authority to state policy projects<sup>4</sup>.

On the other hand, a number of scholars have formulated an alternative approach to understanding the EU’s evolving polity and its influence on the transformation of nation states. This alternative model, known as *multi-level governance*, is drawn from several sources<sup>5</sup>. According to this model, decision-making competencies are no longer a monopoly of the state

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1 Markus Jachtenfuchs and Beate Kohler-Koch, *The Transformation of Governance in the European Union* Revised translation of "Regieren im dynamischen Mehrebenensystem", Jachtenfuchs, Markus; Kohler-Koch, Beate, *Europäische Integration*, Opladen: Leske + Budrich, 1995, p.8, <http://www.iubremen.de/imperia/md/content/faculty/mjachtenfuchs/transfo.pdf>

2 Andrew Moravcsik, “Preferences and Power in the European Community: A Liberal Intergovernmental Approach”, *Journal of Common Market Studies*, vol. 31, 1993, pp. 473-524; Andrew Moravcsik, *The Choice for Europe*, Ithaca: Cornell University Press, 1998.

<sup>3</sup> Alan Milward, *The European Rescue of the Nation-State*, Berkley: University of California Press, 1992.

<sup>4</sup> Andrew Moravcsik, “Preferences and Power in the European Community: A Liberal Intergovernmental Approach”, p. 515.

<sup>5</sup> Gary Marks, “Structural Policy After Maastricht”, Alan Cafruny and Glenda Rosenthal (eds), *The State of the European Community*, New York: Lynne Rienner, 1993; James Caporaso and A. Keeler, “The European Community and Regional Integration Theory”, Paper presented at the Third Biennial International Conference of the European Community Studies Association, Washington, 27-29 May 1993; Gary Marks, Liesbet Hooghe, and Kermit Blank, “European Integration From the 1980s: State Centric v Multi-Level Governance”, *Journal of Common Market Studies*, vol. 34, no. 3, 1996, pp. 341-378; Liesbet Hooghe and Gary Marks, *Multi-Level Governance and European Integration*, Lanham: Rowman and Littlefield Publishers, 2001.

executives, being rather shared by actors at different levels (European and sub-national). A second assumption is that political arenas at different levels are interconnected.

In comparison to these viewpoints drawn from distinct models of European integration, one can equally map out another perspective, grounded in neo-institutionalism and broadly developed in the Europeanisation literature. This neo-institutionalist grounded approach points out to the penetrating effect of the EU on national policies, polities and politics leading to formal and informal changes at the state-level and its form of governance. It stresses the stickiness of domestic institutions and their resistance to change. Seen from this angle, the nation-state systems of governance are less likely to fade away as a result of the effects of European integration<sup>6</sup>. Rather, what it is expected is a variation in terms of resilience and adaptation to the EU leading to different degrees of Europeanisation. And this outcome with possible transformative effects on national systems of governance is explained by looking at the presence of deeply embedded domestic factors of state and society organisation that are rooted in the constitutional foundations of member and candidate countries<sup>7</sup>. Thus, these restraining or facilitating national institutional factors for change become “*key to understanding distinct national and sectoral trajectories of Europeanisation*”<sup>8</sup>.

Therefore, in this context, what are then the role and the influence of the EU in this evolutive process of transformation of national systems of governance?

In order to assess the role of the EU in the transformation of the traditional form of nation-state, we will first appeal to the literature on Europeanisation and the impact of the EU on domestic systems of governance. The reason for choosing this approach is that we want to go beyond the *state centric* and the *multi-level governance* debates focused on the question if the EU weakens or strengthens the nation-states. We believe that the literature on Europeanisation provides us with a

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<sup>6</sup> Johan Olsen, “The Many Faces of Europeanisation”, *Journal of Common Market Studies*, vol. 40, no. 5, 2003, pp. 921-50; Jeffrey Anderson, “Europeanisation and the Transformation of Democratic Polity, 1945-2000”, *Journal of Common Market Studies*, vol. 40, no. 5, 2002, pp. 793-822.

<sup>7</sup> Maria Green Cowles, James Caporaso and Thomas Risse, *Transforming Europe. Europeanisation and Domestic Change*, Ithaca, New York: Cornell University Press, 2001.

<sup>8</sup> Simon Hix and Klaus Goetz, “Introduction: European Integration and National Political Systems”, Klaus Goetz and Simon Hix, *Europeanised Politics? European Integration and National Political Systems*, London: Frank Cass, 2001, p. 19.

number of hypotheses that can be very helpful for interpreting our empirical data. Secondly, we will pass to presenting three examples of nation-state adaptation to the EU developments. In doing so, we will mainly concentrate on national constitutional changes in response to Europeanisation. Finally, we will try to draw some tentative conclusions.

## 2. Different Approaches to Europeanisation

In the last decade, research on the impact of European decisions on national policies, politics and political systems has witnessed a rapid transformation in terms of conceptual complexity and empirical developments. Europeanisation has evolved into a well-developed framework for research. The main argument is that the political systems of the EU member states and candidate countries are influenced and transformed by European decisions<sup>9</sup>.

In this sense, a systematic analysis of the phenomenon would take into account several aspects concerning the European polity in itself as well as the pressures for adaptation and change of domestic political and administrative/institutional structures of the member and candidate countries. When reviewing the different contributions that touch upon Europeanisation and its impact on existing member and new coming states, two main approaches tend to emerge.

### 2.1. The First Approach: A Multi-Causal Framework

The first tendency displays a multi-causal frame of analysis, in which the European Union is an explicative variable among others. The contributions mainly focus on the transformation of the traditional form of nation-state and the creation of a multi-layered type of governance as a result of multiple worldwide economic and cultural factors such as (a) Europeanisation. Changes are equally due to other identifiable variables: (b) globalisation, (c) the market economy, (d) the

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<sup>9</sup> Tanja Börzel, and Thomas Risse, "When Europe hits home Europeanisation and domestic change", *European integration online Papers*, Vol. 4, No.15, 2001, <http://eiop.or.at/eiop/texte/2000-015a.htm>; Maria Green Cowles, James Caporaso, and Thomas Risse (eds), *Transforming Europe. Europeanisation and domestic change*; Adrienne Héritier, "Differential Europe: The European Union Impact on National Policymaking", in Adrienne Héritier *et al.*, *Differential Europe. The European Union Impact on National Policymaking*, Lanham, New York, Oxford: Rowman & Littlefield, 2001; Keith Featherstone and Claudio Radaelli (eds), *The Politics of Europeanisation*, Oxford: Oxford University Press, 2003 etc.

societal changes towards more individualism, (e) the technological developments or (f) the nature in flux of the system of governance in general<sup>10</sup>.

Authors like John Loughlin and Michael Keating have particularly developed this trend of analysis<sup>11</sup>. The main argument is that the nation-state is currently subject to different transformations that originate from above: the rise of international regimes, among which the European Union, and from below: the territorial assertion and regional identities and structures of territorial organisation.

Their explicative framework is very encompassing, being built to assess various phenomena of modern politics such as the rise of regional nationalisms, the transformation of the state and the appearance of new territorial politics in Western Europe, the redefinition of democracy and the emergence of local democracy as a new form of public participation.

Within this approach, Europeanisation is conceived as a process that triggers the transformation of the nation-state and opens new opportunities and channels of expression for other actors than those representing the central state organisation. For example, regional and local actors start to express themselves on the European arena, leading to the creation of a relevant sub-national level.<sup>12</sup>

According to Keating, the EU influenced the transformation of the nation-state in the following ways: “*Europe in particular provides a new context for national minorities and the management of nationality issues. It diffuses sovereignty by creating a new layer of political authority and, however much some state leaders might deny it, irreparably damages the doctrine of absolute sovereignty. (...) Europe also encourages the growth of multiple identities among both citizens and political leaders. It provides a new political space, organised in a complex and asymmetrical*

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<sup>10</sup> John Loughlin, "Introduction: The Transformation of the Democratic State in Western Europe", John Loughlin *et al.*, *Subnational Democracy in the European Union. Challenges and Opportunities*, Oxford: Oxford University Press, 2001, pp.1-33, p. 24.

<sup>11</sup> Michael Keating, "The Minority nations of Spain and European integration: a new framework for autonomy?", *Journal of Spanish Cultural Studies*, vol. 1, no. 1, 2000, pp. 29-42.

<sup>12</sup> Michael Keating, *The New Regionalism in Western Europe. Territorial Restructuring and Political Change*, Edward Elgar, 1998; Michael Keating and John Loughlin (eds), *The Political Economy of Regionalism*, Frank Cass, 1997.

manner, in which a variety of state and non-state actors operate, seek expression and exert influence”<sup>13</sup>.

Having briefly sketched the main arguments of this first analytical approach, I will pass to the second identified trend of interpretation, which focuses mainly on the role of the European Union in fostering changes in the domestic systems of governance<sup>14</sup>.

## 2.2. The Second Approach: The Europeanisation Framework

A brief look at the state of the current research on Europeanisation entitles us to say that the authors writing in this field tried to organise research by using the following dimensions: *the 'objects' of Europeanisation* (policy/polity/politics) (see table 1), *the dimension of change* (the degrees of Europeanisation: retrenchment, inertia, absorption, transformation) (see table 2), *the mechanisms of Europeanisation* (see table 3) and *the explanatory variables* (the intervening variables restraining or pushing for Europeanisation at the domestic level) (see table 4)<sup>15</sup>.

The main argument is that the growing action capacity of the EU leads to a transformation of present political institutions, processes and policies in the member and candidate states. In the framework of this analysis, we only refer to the Europeanisation studies that present a more holistic approach and investigate on the impact of Europeanisation on domestic systems of governance, rather than on specific policy fields or political/administrative developments.

Without intending to present a very exhaustive overview of the contributions in the field of Europeanisation, we note that numerous authors presented evidence of the impact of

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<sup>13</sup> Michael Keating, "The Minority nations of Spain and European integration: a new framework for autonomy?", *Journal of Spanish Cultural Studies*, vol. 1, no. 1, 2000, pp. 29-42, p. 30.

<sup>14</sup> We introduce this two-fold categorisation for the sake of conceptual clarity while being aware of its limitations. The second approach, drawn from the literature on Europeanisation, deals with the impact of the EU on national systems of governance taking into account other intervening variables in order to explain change at the domestic level. The different authors representing this trend do not restrict themselves only to the exogenous factor of explanation which is the EU's effect but also look at domestic contexts that may refrain or encourage the process of change in response to Europeanisation.

<sup>15</sup> We will not further develop the data from the tables. We only synthesise the information in order to give the reader a clear picture of our understanding of the main aspects touched in the literature on Europeanisation.

Europeanisation on nation-states at the level of national legal systems<sup>16</sup>, national administrative traditions<sup>17</sup>, territorial structures<sup>18</sup>, or collective frames of mind and understanding about the nation-state and its linkages with the EU<sup>19</sup>.

Furthermore, in Meny's own words, the Europeanisation process "*creates a permanent challenge to national political systems, which are forced to adapt to a normative and strategic environment that they have as yet only partially mastered*"<sup>20</sup>.

Claudio Radaelli argues that the EU impacts on "*domestic discourse, identities, political structures and public policies*"<sup>21</sup>. For him, the important change brought by the process of Europeanisation led to the replacement of the old, individual, national "logics" of policymaking, politics and polity organisation with a new, supranational European "logic"<sup>22</sup>.

Other authors highlight the transformation of the welfare state into a regulatory state<sup>23</sup> or the impact of the EU regulations on the political economy and political and economic philosophy of member states<sup>24</sup>. There are equally studies that claim that Europeanisation leads to the transformation of traditional forms of government into a mode of governance based on functional networks<sup>25</sup>, or to the transformation, on the one hand, "*of institutional structures and political*

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16 Lisa Conant, "Europeanisation and the Courts/ Variable Patterns of Adaptation among National Judiciaries", Maria Green Cowles, James Caporaso and Thomas Risse (eds), *Transforming Europe. Europeanisation and Domestic Political Change*, pp. 97-115.

17 Cristoph Knill and Andrea Lenschow, "Adjusting to EU Environmental Policy: Change and Persistence of Domestic Administrations", Maria Green Cowles, James Caporaso and Thomas Risse (eds), *Transforming Europe. Europeanisation and Domestic Political Change*, pp. 116-136.

18 Tanja Börzel, *States and Regions in the European Union. Institutional Adaptation to Europeanisation in Germany and Spain*, Cambridge: Cambridge University Press, 2001.

19 Thomas Risse, "A European Identity? Europeanisation and the Evolution of nation-States", Maria Green Cowles, James Caporaso and Thomas Risse (eds), *Transforming Europe. Europeanisation and Domestic Political Change*, pp. 198-216.

20 Yves Meny, "Introduction", in Yves Meny, Pierre Muller and Jean-Louis Quermonne, (eds) *Adjusting to Europe: The Impact of European Integration on National Institutions and Policies*, London: Routledge, 1996, p. 8

21 Claudio Radaelli, "Whither Europeanisation? Concept Stretching and Substantive Change", *European Integration Online Papers (EIOP)*, vol. 4, no. 8. 2000, p. 4, <http://eiop.or.at/eiop/texte/2000-008a.htm>

22 See also Robert Ladrech, "Europeanization of Domestic Politics and Institutions: the case of France", *Journal of Common Market Studies*, Vol. 32, no. 1, March 1994, pp. 69-88, p. 69.

23, Giandomenico Majone (ed) *Regulating Europe*, London and New York: Routledge, 1996.

24 Vivien A. Schmidt, "Integrating Economic Diversity: Towards a European Economy and an End to National Varieties of Capitalism?", paper written for Simon Bulmer and Christian Lequesne (eds), *Member-States and the European Union*, Oxford: Oxford University Press, forthcoming.

25 Beate Kohler-Koch, "Catching Up with Change: The Transformation of Governance in the European Union", *Journal of European Public Policy*, vol. 3, pp. 395-380; Beate Kohler-Koch and Rainer Eising (eds), *The Transformation of Governance in the European Union*, London: Routledge, 1999.

*processes in the Member States*” and of *statehood* understood as the “*transformation of the principle of territorially organized politics*”, on the other hand<sup>26</sup>.

Another contribution that deals with the effect of the EU on domestic systems of governance comes from Heather Grabbe, who mainly refers to experiences from the candidate countries. According to her, the EU has a potential impact on three aspects of governance in terms of relations between different parts of the state: (1) the executive-legislative relationship - the executive is privileged over the legislative<sup>27</sup>, (2) the emergence of a core accession team in the executive<sup>28</sup> and (3) the centre-regional relations – the regional layer becomes a very important aspect of adaptation to the EU.

With these considerations in mind, we come to presenting our approach and the main hypotheses guiding our research.

### **2.3. Attempt of Positioning in the Present-Day Debate**

Starting from Loughlin and Keating's hypothesis that the European dimension is very important for explaining the process of domestic change and governance transformation, and notwithstanding the importance of other explicative factors for change such as globalisation or the liberalising market forces, we will mainly refer to the conceptual tools provided by the Europeanisation literature. Our academic interest in Europeanisation reflects contemporary political concerns with the transformation of traditional forms of governance as a result of on-going EU influence on domestic affairs.

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26 Markus Jachtenfuchs and Beate Kohler-Koch, *The Transformation of Governance in the European Union*, revised translation of "Regieren im dynamischen Mehrebenensystem", p. 7.

27 Barbara Lippert, Umbach Gaby and Wessels Wolfgang, “Europeanisation of the CEE Executives: EU Membership Negotiations as a Shaping Power”, *Journal of European Public Policy*, vol. 8, no. 6, 2001, pp. 980-1012.

28 Klaus H. Goetz and Hellmut Wollmann, “Governmentalizing central executives in post-communist Europe: a four-country comparison”, *Journal of European Public Policy* 8:6 December: 864–887.

From the overview of the literature on Europeanisation, we retain two main hypotheses.

First, “*Europeanisation changes nation-states by exerting adaptational pressures*”<sup>29</sup> Therefore, it can be argued that the nation-states, in western societies and in the Central and Eastern Europe societies as well, are going through a phase of transformation in the context of the EU integration process. Secondly, we acknowledge the existence of constant interaction and links between national and European levels, which leads to the transformation of the nation-state and to “*domestic adaptation with national colours, in which national features continue to play a role in shaping outcomes*”<sup>30</sup>.

For us, Europeanisation is understood as a process of institution building at the European level, which influences the national and sub-national systems of governance. This means adapting the national systems of governance to a European political centre, and European norms. We refer to governance having in mind the distinction currently found in the literature between ‘*government*’ and ‘*governance*’, which is very helpful in tracing the lines of the nation-state transformation within the context of EU integration. “*Governance has come to be widely accepted as a term which includes practices of governing that are not exclusively performed by state actors*”<sup>31</sup>.

Accordingly, we will examine how the EU, seen as a wider system of ‘*governance beyond the nation-state*’<sup>32</sup>, affects national structures of government by giving access to a larger number of actors and institutions to policy-making and policy-shaping and by putting into question the whole domestic understanding of several concepts such as: the national unitary state, the foreign interference (the EU in this case) and its limitations for national sovereignty, the relation between

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<sup>29</sup> Thomas Risse, Maria Green Cowles, and James Caporaso, "Europeanisation and Domestic Change: Introduction", in *Transforming Europe. Europeanisation and Domestic Change*, pp. 1-20, p. 2.

<sup>30</sup> Thomas Risse, Maria Green Cowles, and James Caporaso, "Europeanisation and Domestic Change: Introduction", p. 1.

<sup>31</sup> Antje Wiener, “The Embedded Acquis Communautaire: Transmission Belt and Prism of New Governance”, Neunreither Karlheinz and Antje Wiener (eds), *European Integration After Amsterdam. Institutional Dynamics and Prospects for Democracy*, Oxford: Oxford University Press, 2000, pp. 318-341, p. 318. See also Markus Jachtenfuchs and Beate Kohler-Koch, “The Transformation of Governance in the European Union” Revised translation of “Regieren im dynamischen Mehrebenensystem”, p. 9.

<sup>32</sup> Markus Jachtenfuchs, “Theoretical Perspectives on European Governance”, *European Law Journal*, vol 1, 1995, pp. 115-33.

centre and periphery, between different ethnical or linguistic communities, democracy, participation etc.

The focus of the analysis will be looking at the impact of Europeanisation on domestic forms of governance, primarily analysing the formal measures of constitutional change in order to accommodate the EU decisions. In empirical terms, we would like to illustrate this process of adaptation by looking at three cases of domestic constitutional amendments: two original member states: one federal system and a unitary state, more precisely Germany and France and one new comer, Romania, a unitary state. The choice for France and Germany is related to their status of established, traditional member states, considered to be among the EU's most powerful states<sup>33</sup>. It becomes therefore very interesting to trace the way in which these "big states" adapted to the EU in an increasing number of areas such as constitutional adjustments.

The Romanian case is chosen due to its paradoxical account in terms of Europeanisation. On the one side, Romania and Bulgaria are the only post-communist candidate countries to have had their prospective membership postponed due to their insufficient state of preparation and important misfits in adaptation. On the other side, Romania is one of the few countries from the region which introduced in its Constitutional order specific references to the EU accession, constitutionally enshrining the transfer of competencies from the national to the supra-national level. In Romania, the writers of the Constitution introduced one new chapter specifically called "*The EU Integration*" (art 145.1), which introduces the primacy of the community law on the national law and which shows the high degree of societal and political willingness for compliance and adaptation of the Romanian constitutional order in the perspective of the EU integration. In other central and eastern European countries such as Poland, the Czech Republic or Slovakia, the approach was much more restrained than in the Romanian case in terms of sovereignty transfer and the relation between the national and the European arena. For instance, the Polish Constitution, adopted by national referendum on May 25, 1997, was amended by introducing a flexible "European clause" (art 90), which "*provides for the possibility of a transfer of powers of*

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<sup>33</sup> Thomas Risse, Maria Green Cowles, and James Caporaso, "Europeanisation and Domestic Change: Introduction", p. 2.

*the branches of the national government in certain areas to an international organization or an international agency*"<sup>34</sup>, including the European Union.

Before proceeding with the analysis of the national constitutional change experience, we have to add that, in choosing these countries, we do not intend to follow a classical comparative approach, but mostly to present some insights from different domestic experiences of constitutional adaptation in response to Europeanisation, which puts forward the variety of domestic solutions for adaptation to the EU arena. In doing so, we will mainly look at the institutional arrangements at the national level introduced in the constitutions explicitly planned to deal with EU-related affairs.

### **3. Examples of National Constitutional Changes in Response to Europeanisation**

It is clear, nowadays, that European issues can be seen as *extended domestic affairs* and that the national legislative and decision-making procedures should be adapted for keeping up with the ever broader policy horizon of the Union and the pace of its policy-making. In other words, seen from the current member states, Europeanisation does not mean an adaptation of the constitutional order to new *principles*. It's rather a way of making the national constitutions *compatible* with new treaty provisions unanimously decided upon, and *accommodating* the participation of the member states' internal authorities (legislature(s), executive bodies) within the encompassing EU decision-making framework. What happens therefore is that "*in the daily practice of governance and adjudication, the transfer of political competencies up to the European level proceeds in small steps. At larger intervals, the results of these processes are codified in treaty form by intergovernmental conferences*"<sup>35</sup>, followed, if necessary, by constitutional amendments at the national level. This is not entirely the case for the candidate

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<sup>34</sup> "Constitution Watch - A country-by-country update on constitutional politics in Eastern Europe and the ex-USSR: Poland" , *East European Constitutional Review*, vol. 6, no. 2 & 3, Spring/Summer 1997, <http://www.law.nyu.edu/eecr/vol6num2/constitutionwatch/poland.html>

<sup>35</sup> Markus Jachtenfuchs and Beate Kohler-Koch, "The Transformation of Governance in the European Union" Revised translation of "Regieren im dynamischen Mehrebenensystem", p. 2

countries, which are confronted with strict conditionality for accession and the complete taking up of the *acquis communautaire*, this element being further developed in our contribution.

### 3.1. Germany

Right from the beginning of the new constitutional order, in 1949, Germany's positioning in the European context was solemnly affirmed. Even before the European Communities took shape, Germany defined itself as 'partner in a united Europe'<sup>36</sup>. Ad intra, federalism was adopted, creating a clear division of competences and a specific sphere of action for representing the Federation (Bund) and the constituent states (Länder). However, over the years, a form of *cooperative federalism* took shape, stressing the common endeavour for creating a modern welfare state. Some analysts have qualified this system as 'Politikverflechtung' (entanglement of politics and policies).

In the early years of the EEC the European integration process was exclusively dealt with at the federal level, and mainly by the federal ministries of Foreign Affairs and Economy. Once the process started to 'spill over' into the policy sphere of the Länder, they were alarmed and tried to cope with the challenge by claiming more 'participation' within the national decision-making bodies. This early phase has been qualified as 'Compensation via participation'<sup>37</sup>. This participation included an observer's status in the German Representation to the EU in Brussels, and, later on, the establishment of unofficial representatives of the Länder in Europe's capital. Clearly, the Länder wanted to be better informed and to have their say in matters that are of their competence in the national constitutional order.

The breakthrough came in 1992, linked to the ratification of the Maastricht Treaty. The validity of the Länder's case was officially recognized and a constitutional amendment introduced art. 23, the so called *Europe article*. In 1993 a *Law* on the cooperation of Bund and Länder in matters

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<sup>36</sup> Preamble of the Constitution of 23 May 1949.

<sup>37</sup> Thomas Fischer, "Zur Europatauglichkeit des deutschen Föderalismus. Anspruch und Wirklichkeit der aktuellen Modernisierungsdebatte", M. Chardon et alii (eds.). *Regieren unter neuen Herausforderungen: Deutschland und Europa im 21. Jahrhundert*. Baden-Baden, Nomos, 2003, pp. 83-96.

regarding the EU formulated the constitutional amendment into more operational terms. Moreover, an *agreement* between both levels specified the ‘modus operandi’.

Thanks to this arrangement, the *Bundesrat*, the federal Chamber of the Länder, gets involved right from the beginning of the policy formulation process in Brussels. It is informed by the federal government on all initiatives, legislative and other (including the Green and White Papers), emanating from the European Commission and the Council of Ministers. These documents are forwarded to the different committees of the Bundesrat that screen them on their relevance for the sub-national level and on the application of the principles of subsidiarity and proportionality. The central European Affairs Committee of the Bundesrat is coordinating these deliberations and proposes a *position* to the plenary session.

The federal government and its representatives in Brussels are formally bound by these positions if they deal with issues within the field of competence of the Länder. Moreover, in such cases the Länder can directly represent their views by heading the German delegation at the negotiation table. The competent Minister of the Land that currently holds the chair in the Bundesrat, is then representing the German Federation as a whole. This practice has been legitimized by an amendment of the EC-Treaty, on the request of the federal countries.<sup>38</sup>

In essence, one could say that the internal method of policy negotiation, proper to the German federal system, in which the Bundesrat plays a crucial role, has been extended to the European arena. In all European issues that are of manifest relevance to the Länder, they play their part in a way that can be compared to the domestic sphere. Apparently, the European integration process has extended the scope of a federal participative system that was designed in a national perspective. Nowadays, ‘Politikverflechtung’ takes place internally and externally<sup>39</sup>.

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<sup>38</sup> EC-Treaty, art. 203.

<sup>39</sup> Roland Sturm, *Föderalismus in Deutschland*. Berlin, Landeszentrale für politische Bildungsarbeit, 2001, pp. 117-124, p. 152.

A very recent illustration of the impact of Europeanisation on the internal constitutional debate is offered by the exercise of “*modernisation of the entire state apparatus*”<sup>40</sup>. Since both Federation and Länder are confronted with the challenge of elaborating a new system of fiscal equalization (‘Finanzausgleich’) for the period of 2005-2019, they agreed in 2001 to check the efficiency and effectiveness of the current federal system of competence delimitation. It has been decided to include the European dimension in the reflections of the working committees. They are considered to take into consideration the implications of the recent European Treaties (Nice, Draft Constitution) when assessing the ‘Europe-fit’ character (‘Europatauglichkeit’) of the German Constitution and the German federal order<sup>41</sup>. One can hardly think of a more convincing illustration of the interference of the European constitutional order with the national ones.

Having briefly sketched the nature of the national, German accommodation in terms of constitutional arrangements in response to Europeanisation, we will turn now to the French case, followed by the Romanian account.

### 3.2. France

Although very recently the French Republic has stressed its decentralised character<sup>42</sup>, the state is a single, unitary actor on the European scene. Nevertheless, the gradual process of European integration has its repercussions on the *positioning* of the French Republic and, especially, on the *functioning* of its legislative and executive actors within the European context.

Consequently, the Constitution of the Fifth Republic (1958) has been amended four times with respect to the European Communities/European Union: first in 1992 in view of the ratification of the Treaty of Maastricht, a second time in 1993 for introducing the Schengen agreement, a third time in 1999 preparing for the ratification of the Amsterdam Treaty. The most recent amendment (2003) deals with the European arrest warrant, actually introducing the European judiciary area<sup>43</sup>.

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<sup>40</sup> Thomas Fischer, Zur Europatauglichkeit des deutschen Föderalismus. *Auspruch und Wirklichkeit der aktuellen Modernisierungsdebatte*, p. 83.

<sup>41</sup> Thomas Fischer, Zur Europatauglichkeit des deutschen Föderalismus. *Auspruch und Wirklichkeit der aktuellen Modernisierungsdebatte*.

<sup>42</sup> Constitutional law of 28 March 2003.

<sup>43</sup> Constitutional law of 25 March 2003, especially art. 88-2.

One could say that all major changes in the European constitutional order have been reflected in the French Constitution. In other words, the achievements on the European level, to which they contributed substantially, are systematically updated in the internal legal order.

Since 1992, Title XV in the French Constitution, actually art. 88, explicitly deals with the European Communities and the EU. It comprises four parts.

Art. 88-1 affirms the participation of the Republic to the EC/EU, composed by states that, by treaty, have freely chosen to exert some of their competences in common.

Art. 88-2 is more precise vis-à-vis the transfer of certain competences touching explicitly on core sovereign rights: the economic and monetary union (and the single currency), the free movement of persons and, recently, the European arrest warrant.

Art. 88-3 confirms the voting rights and the eligibility of European citizens in municipal elections. Agreed upon in Maastricht as part of the arrangements on European citizenship, the French Constitution introduces this provision into the national system, however precisising that all executive mandates are reserved to French nationals.

Finally, art. 88-4, introduced in 1999, deals with the interaction between the national Parliament (National Assembly and Senate) and the European policy-making bodies (Commission, Council, and Parliament). Apart from the complex double structure of the federal decision-making process in Germany, the provisions of art. 88-2 have a lot in common with the corresponding paragraphs of art. 23 of the German Constitution. A comparable concern is at the origin of this constitutional amendment. The national Parliaments of both countries don't want to miss the opportunity of interfering "in tempore opportuno" in the European policy-making process.

Therefore, the French Government has to submit to both Chambers all *legislative* proposals tabled in Brussels. Actually *all* relevant proposals and documents *can* be communicated. Within both National Assembly and Senate a '*Délégation pour l'Union européenne*' acts as the

permanent watchdog for European affairs. These delegations draw the attention of the other committees and, eventually, the plenary Assembly, on the issues at stake. Resolutions can be voted, urging the Government to take action or to support a particular position.

Very relevant in the French constitutional context is the provision that this type of EU-related activities can be continued outside the regular sessions of Parliament. The Constitution of the Fifth Republic has clearly delineated these sessions. Making an explicit exception for EU-affairs is not only an expression of pragmatism – ‘Brussels’ is an ongoing mechanism – but also of adaptation of the constitutional ‘philosophy’ to the prerogatives of Europeanisation. In this respect both the French and the German Parliaments, despite their fundamentally different constitutional design, have converging views and interests.

A recent illustration of the *flexibility* of the French constitutional system when confronted with European issues, is offered by an amendment introduced on 28 March 2003 in the framework of the decentralisation reform.<sup>44</sup> Contrary to the tradition of institutional uniformity, avoiding any form of a particular statute (at least in metropolitan France), a certain form of *experimentation* has been introduced at the decentralised level, albeit for a limited period and in view of a specific task. This opportunity has been given a first time to the region of Alsatia (Alsace) for experimenting with European structural policies in a less centralized way. The acquaintance with the German model and the social-economic interferences across the Rhine river have, for sure, played a decisive role in the choice of this test-case. Moreover, Alsatia is considered to be a loyal partner to the present-day French government. However, it cannot be denied that the efficient and effective implementation of a (mainly) European policy has been triggering this shift in the letter and the spirit of the French Constitution.

### **3.3. Romanian Constitutional Changes in Response to Europeanisation**

The 1991 post-communist Romanian Constitution reflects the philosophy of a typical nation-state modelled on the Jacobin principles of the French revolution (supremacy of national sovereignty, unity of the state’s territory with its nation, indivisibility of the national territory).

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<sup>44</sup> Art. 72 § 4.

In the present process of EU integration, the Romanian authorities' policy-making is extensively subjected to the norms and politically obligatory requirements of the EU. The institutional reforms, the accession negotiations and the subsequent implementation of the impressive legal and political pack of rules and regulations touch on fundamental constitutional principle of popular sovereignty, which is established in article 1 of the Constitution. Therefore, the need for constitutional authorisation for the European adaptation process has been acknowledged by the Romanian government and the elites in general. This led to further steps towards a constitutional amendment for creating the legal preconditions for Romania's accession to the EU. In 2003, the Romanian Constitution was amended and the newly introduced norms were thought to outline a general basis for the accession to the EU and to equally create the possibility to delegate to this end certain traditionally known state powers.

In the Romanian case, the high degree of change reflected in the constitutional amendments and change in response was mostly linked the external EU conditionality and the necessity of such reform in view of the future integration. Additional elements that can explain the depth of reform are (1) the eagerness of the national executive to show its determination on the path of reform, adaptation and preparation for entry as scheduled in 2007, and (2) the high level of Euro-enthusiasm in the ranks of the population.

The constitutional amendments implied by EU membership of Romania may be classified in two groups. The first group includes all the amendments introduced in the member states:

- Partial transfer of State sovereignty in certain areas to the EU and its institutional framework
- the introduction of a number of rights linked to European citizenship like for instance the right for European citizens to vote and be elected in local elections (art 16 (4)) and in elections for the European Parliament (art 35 (1))
- Direct effect of community law (art. 145<sup>1</sup> (2))
- Parliamentary control and establishment of special parliamentary committees on matters concerning the EU (art. 145 (5))
- Provisions for entering the Economic and Monetary Union and the passage to the Euro (art 136 (2))

The second group of amendments is related to fundamental rights of citizens:

- the modification of article 41 in order to allow the possibility for foreigners to acquire land (art 41 (2)).
- the modification of the provision according to which only persons holding exclusively Romanian citizenship could have access to public civilian or military functions (16 (3))
- the introduction of a formulation specifying the separation of powers (art 1)
- the formal recognition of citizens' rights vis-à-vis the public authorities (art 48 par. 1)
- the restriction of governing through 'emergency ordinances' (art. 114)
- the introduction of the decentralisation principle (art. 119 (1))
- the independence of justice (art. 123, 132, 140)
- the guarantee for citizens belonging to national minorities to use their mother tongue in the relations with the local public authorities (art. 119 (2) and 127 (2))

The rather technical inventory of constitutional amendments illustrates the fact that in Romania, as a candidate country preparing its entrance into the EU, the nature of change is deeper than in the member states, in response to high EU pressures for adaptation and strict conditionality for accession. In France and Germany, the process of Europeanisation means adapting their constitutional order so that domestic institutions can function within the commonly constructed European arena. In Romania, some of the constitutional changes challenge completely the traditional understanding of the state and its sovereignty, leading to paradigmatic transformation of the domestic constitutional and institutional order, which is intimately linked with other processes such as democratisation, modernisation and the passage from a communist to a market-type society and economy.

#### **4. Tentative Conclusions**

It is becoming increasingly acknowledged that the changing nature of domestic political institutions, political processes and policies, affecting the transformation of their traditional systems of governance, cannot be understood without taking the EU dimension into account. Bearing in mind this reflection, we argue that the traditional forms and understandings of the nation-state in western societies are going through a phase of transformation in the context of the EU integration process. In our view, it is even more interesting to broaden the scope to the new

coming member states from Central and Eastern Europe, which are already confronted with several challenges of regional/European or more global nature. Starting from this assertion, the essay focused on the following research question: what are the role and the influence of the EU in this process of transformation of national systems of governance?

In order to tentatively answer the research question, we identified a set of features inspired mainly from several scholarly contributions on the Europeanisation of member and candidate states. Within this approach we focused mainly on two research assumptions.

The first assumption according to which the *EU adaptational pressures lead to domestic change* was largely confirmed by the selected empirical evidence because the constitutional amendments under scrutiny in this study were introduced essentially in response to Europeanisation, being less the result of clear domestic political resolutions. The three cases illustrated the importance of the Europeanisation pressures in triggering the domestic adaptation processes and the inherent constitutional amendments which reflect the developments of the European constitutional and institutional order.

The second assumption deals with *the importance of national environments and outcomes towards change in response to Europeanisation*. The three domestic experiences of constitutional change showed that these various processes of adaptation of the member and candidate states are mainly conditioned by the existing domestic institutional conditions, leading to Europeanisation “*with national colours*” and to different models of constitutional reform and accommodation.

It is true that no single model emerges, but a common denominator can certainly be found in terms of the EU’s influence on domestic political and societal arenas in member and candidates countries as well. The difference in between them lays in the degree of change and the nature of the transformation of domestic systems of governance. In old established member states such as France and Germany, the process of Europeanisation triggers an up-date of their domestic systems of state organisation in order to adjust to EU developments. In Romania, the constitutional changes for preparing the EU accession do not respond necessarily to a need for updating an already existing system of governance, but mostly to a necessity for restructuring and

re-building new political, economical and societal arrangements. The new constitutional amendments - the acknowledgment of the possibility for foreigners to acquire land, the recognition of the principle of decentralisation, the access for citizens with double nationality to the domestic political establishment, the recognition of the separation of powers and the independence of justice, the granting of citizens' rights before the state administration, among other changes - reflect an important domestic trend for state reform and reorganisation in the broader context of EU integration, "*where institutional and policy adjustment to the EU is closely intertwined with the triple transition of democratisation, liberalisation and privatisation*"<sup>45</sup>. This last point leads us precisely to draw attention to the importance of additional factors for analysing domestic adaptation processes in response to Europeanisation, as the most appropriate way to understand the nature of changes taking place in the systems of governance of existing member and new coming states.

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<sup>45</sup> Simon Hix and Klaus Goetz, "Introduction: European Integration and National Political Systems", p. 21.

Table 1

| <b>The Domestic Effect of Europeanisation</b>  |  |  |
|--|--|--|
| <i>Policies</i>  | <i>Politics</i>  | <i>Polity</i>  |
| <ul style="list-style-type: none"> <li>• Standards</li> <li>• Instruments</li> <li>• Problem-solving approaches</li> <li>• Policy narratives discourses</li> </ul> | <ul style="list-style-type: none"> <li>• Processes of</li> <li>• Interest formation</li> <li>• Interest aggregation</li> <li>• Interest representation</li> <li>• Public discourses</li> </ul> | <ul style="list-style-type: none"> <li>• Political institutions</li> <li>• Judicial structures</li> <li>• Intergovernmental relations</li> <li>• Public Administration</li> <li>• State traditions</li> <li>• Economic institutions</li> <li>• State-society relations</li> <li>• Collective identities</li> </ul> |

Source: Tanja Börzel and Thomas Risse, 'When Europe Hits Home: Europeanisation and Domestic Change', *EIoP*, vol. 4, n°15, 2000, <http://eiop.or.at/eiop/texte/2000-015.htm>.

Table 2 –: Inertia etc

| <b>Outcomes of Europeanisation</b>                                 |  |   |  |
|--|--|---|--|
| <b>Retrenchment</b>  | <b>Inertia</b>   | <b>Absorption</b>   | <b>Transformation</b>  |
| A situation when national policy becomes less European than it was | A situation of lack of change" which occurs when the European models are to dissimilar to domestic practices | A situation where domestic structures display a mixture of resiliency and flexibility, with no fundamental changes. | A situation of "paradigmatic change", which occurs "when the fundamental logic of political behaviour changes" |

Source: Claudio Radaelli, "Whither Europeanisation? Concept stretching and substantive change", *European Integration online Papers* (EioP), vol. 4, N° 8, 2000, p. 11, <http://eiop.or.at/texte/2000-008a.htm>

Table 3

| <b>The Mechanisms of Europeanisation</b>   |  |
|--|--|
| <b>Mechanisms for the Member States</b>  | <b>Mechanisms for the Candidate States</b>   |
| <p><b>1. Cristoph Knill and Dirk Lehmkuhl (1999)</b></p> <p><i>Institutional Compliance</i> (positive integration - the EU prescribes a model)</p> <p><i>Changing Domestic Opportunities Structures</i> (negative integration)</p> <p><i>Policy Framing</i> (soft integration altering the beliefs of domestic actors)</p> | <p><b>1. Heather Grabbe (2002)</b></p> <p><i>Models: provision of legislative and institutional templates</i></p> <p><i>Money: aid and technical assistance</i></p> <p><i>Benchmarking and monitoring</i></p> <p><i>Advice and twinning</i></p> <p><i>Gate keeping: access to negotiations and further stages in the accession process</i></p> |
| <p><b>2. Joseph Weiler (1991), Lisa Conant (2001)</b></p> <p><i>The Judicial Review</i> (the right of any affected party to challenge the deficient implementation of Community law before national courts)</p>  |  |

Table 4

| <b>Explaining the Impact of the EU - The Intervening Domestic Variables Restraining or Responding to Europeanisation</b> |  |
|--|--|
| <b>Maria Green Cowles <i>et al.</i> (2000)</b>   | <ul style="list-style-type: none"> <li>• <i>Multiple veto points in the domestic structure</i></li> <li>• <i>Facilitating formal institutions</i></li> <li>• <i>A country's organisational and policymaking cultures</i></li> <li>• <i>The differential empowerment of domestic actors</i></li> <li>• <i>Learning</i></li> </ul> |
| <b>Claudio Radaelli (2000)</b>   | <ul style="list-style-type: none"> <li>• <i>The domestic institutional capacity</i></li> <li>• <i>The time dimension,</i></li> <li>• <i>The constellations of actors</i></li> <li>• <i>The policy structures</i></li> </ul>  |
| <b>Adrienne Héritier and Cristoph Knill (2000) and Héritier <i>et al</i> (2001)</b>                                      | <ul style="list-style-type: none"> <li>• <i>The dominant belief system of problem solving approach</i></li> <li>• <i>The reform capacity of a country (an integrated leadership and the number of formal veto points)</i></li> <li>• <i>The policy stage (pre-reform, reform, post-reform)</i></li> </ul>                        |
| <b>Tanja Börzel and Thomas Risse (2000)</b>  | <ul style="list-style-type: none"> <li>• <i>Multiple veto points</i></li> <li>• <i>The Formal institutions</i></li> <li>• <i>The Norm Agents</i></li> <li>• <i>The Political Culture</i></li> </ul>  |