

# IMPLICATIONS OF THE EU MULTI-LEVEL GOVERNANCE IN THE FIELD OF COMPETITION POLICY – A COMPARATIVE ANALYSIS OF THE CHARACTERISTICS OF COHESION AND COMPETITION POLICY

Florin Bonciu \*

## Abstract

*The paper has in view to present the intrinsic characteristics of the European Union and to show that these characteristics require in an objective way the implementation of a multi-level governance. A comparative analysis of cohesion and competition policy of the European Union is presented from the point of view of these elements. Further on, given the implications of the economic crisis the paper explores the possible translation from multi-level governance to polycentric governance and the implications for the cohesion and competition policies.*

**Key words:** nature of European Union, multi-level governance, polycentric governance, cohesion policy, competition policy, possible structural changes of the European Union.

## JEL classification: F12, F15

Understanding the importance but also the limits of the multi-level governance in the field of competition policy implies the study of this mechanism in the context of the functioning general mechanism of the European Union. In its turn, the functioning mechanism of the European Union can be analyzed and explained only after the understanding of the intrinsic nature of European Union as an organization.

Beyond the multitude of definitions, European Union is at a fundamental level:

- **An organization** because it has a number of members, a statute of functioning and a behaviour as an autonomous entity in its relations with third parties;

- **An organization with an inter-state character** because it is established by states which are members of the United Nations Organization, entities which therefore have a world recognition of their statute. The inter-state character should not be confounded with international character. If one applies a rigorous approach, the notion „inter-state” refers to relations of any nature among states, while the notion

---

\* Florin Bonciu is Professor of World Economy at the Romanian-American University in Bucharest

„inter-national” refers to relations of any nature among nations<sup>1</sup>. If we take into account these aspects it is clear that the European Union is an organization formed by member states, not by nations, at least because some of the member states are multi-national (such an aspect is evident in case of Belgium which was confronted in 2010 with the real risk of disintegration exactly because of national criteria, namely the tensions between Flemish and Valon, but also in the cases of Spain – where there are disputes among Castilians, catalans and Basqs - , Great Britain – where under the name of United Kingdom there are in fact three countries – England, Wales, Scotland and Northern Ireland. Similar situations can be found also in other parts of the world, for instance in Canada, where the province of Quebec has explicit autonomous tendencies<sup>2</sup>). The vast majority of analyses regarding the European Union are not so rigorous in making this distinction between „inter-state” and „inter-nation” organization. As result the terms „international” or „supranational” are used with the sense of „inter-state” or „supra-state”.

- **An organization with elements of supra-state characteristics** because some of the regulations at the level of the organization have precedence over those of the member states, a fact which is mentioned in their Constitution (such is the case of Romania). The supra-state characteristics do not refer only to legal aspects, be they about the relations among members or about relations between members and third parties. Also, the supra-state characteristic is joined by the aspects of coordination of decisions, policies and positions of member states, aspect which means the maintainin of suveran autonomy of decisions in certain fields but in corelation with a concerted action from the part of the member states having as result an unitary action at the level of organization.

All these characteristics have determined the need for some solutions regarding the means of managing the functioning of the organization, solutions which had to take into account the reality that **the European Union is more than an organization and less than a federation.**

From historical and functional considerations these solutions had to take into account at least three levels of decision, namely, the supra-state, the state and the regional levels. The existence of these three levels of decision have led to the formulation of the **subsidiarity principle** (which tried to avoid a decision

---

<sup>1</sup> In order to underline this aspect we can think at the sense of the expression “international relations between Russian Federation and Switzerland “ as compared to the expression “ inter-state relations between Russian Federation and Switzerland”. The two states have been chosen in this example for the explicit purpose of underlining the difference between state and nation, both of them being multinational states.

<sup>2</sup> Resnick, Philip, Ambiguous Identities: Nationalism in Multinational States, The University of British Columbia, <http://www.politics.ubc.ca/index.php?id=3444>

mechanism based on a centralization which is specific to a federation), as well as to the so-called „**open method of coordination**” which aimed at providing a compromise between the need of unity of action at the level of the organization and the need to recognize the decision prerogatives of the member states for the majority of the decisions).

The solution to these requirements, many times contradictory, has been found in the **mechanism of multi-level governance**. A definition which is both concise and encompassing of the multi-level governance mechanisms is the following: The relocation of some components of state authority towards levels of decision which are superior (supra-state), inferior (regional) and horizontal (based on mechanisms of consultation among states)<sup>1</sup>.

Hooghe and Marks, the researchers who linked their name to the emergence of the concept of multi-level governance had explained the creation of this means of manifestation of decision authority by two phenomena that characterized Europe (especially Western Europe) in the second half of XX century: on the one hand, **the European integration** which transferred at least a part of state authority towards European Community organisms (supra-state level); on the other hand, a phenomenon of contrary sign, **the regionalization** (which did not manifest with the same intensity in all member states) which transferred a part of state authority towards regional levels (sub-state level)<sup>2</sup>.

The multi-level governance in the community space has recognized and formalized the dissipated, dynamic and unequal character of power manifestation by means of interaction among states, community institutions and regional/local authorities. This approach recognized the differences in the organization of authorities from the member states, accepted the existence of a diversity of interests and tried to provide flexibility to the decision making mechanism in the context of some issues that were relevant to a variable number of interested parties.

In fact, the European Commission also characterized the European Union as being based on a multi-level governance in which each actor contributes according to its possibilities and knowledge to the success of the organization. In this system of multi-level type the main challenge is to establish clear rules regarding the way in which the competences are shared and not separated<sup>3</sup>.

By means of increasing the number of participants to the decision making process the multi-level governance had initially created the impression that it would lead to the diminish of the role of state, at least within the community framework.

---

<sup>1</sup> Hooghe, Liesbet; Marks, Gary, *Unraveling the Central State, But How? Types of Multi-Level Governance*, Political Science Series, no.87, Institute for Advanced Studies, Vienna, March 2003

<sup>2</sup> Hooghe, Liesbet; Marks, Gary, *Multi-level Governance and European Integration*, Rowman and Littlefield Publishers, Inc., 2001

<sup>3</sup> *European Governance, A White Paper*, Commission of the European Communities, COM(2001) 428 final, Brussels, 25.7.2001

Far from this, the multi-level governance brought with it a new approach regarding the role of states as decision factors at the community level, namely that by the participation to the community decision mechanism **the member states do not diminish their role but transform it, based on the increase of the number and intensity of consultations among members, as well as between members and community institutions**<sup>1</sup>.

In the following we are going to analyze the way in which the implementation of the multi-level governance principles within the European Union had influenced the implementation of two of the most important community policies, namely the cohesion policy and the competition policy.

Multi-level governance has represented for many decades the basis for **the cohesion policy** which is, in itself, a redistribution mechanism aiming at reducing the disparities in development. In this context, the participation to decisions of some regional, state and community (supra-state) actors appeared as a precondition to obtaining efficiency because the local needs and solutions could not be conceived on the basis of some centralized and abstract decisions.

In the field of competition policy the specifics of the area of interest are very different than in case of cohesion policy. The differences between the two fields of regulation are at least the following:

- The cohesion policy has as beneficiaries the regions/areas which are less developed or which are confronted with structural issues. The competition policy has in view the whole internal market;

- The cohesion policy is in its essence a redistributive mechanism. The competition policy is in its essence a normative and monitoring mechanism having a goal of general interest. From these aspects results an important difference: while the cohesion policy is, at least in the short term, a zero sum game (in the sense that a finite quantity of resources is redistributed according to some rules), the competition policy is a game with a different from zero sum, even in the short term (function of the decision of the participants the result can be more or less than zero. In the second case the result is represented by the degree of observance of the interests of a number as large as possible of the economic actors and citizens from the European Union space);

- The cohesion policy is dependent on the size of the community budget and on the share of the budget allocated to cohesion, while the competition policy is independent of the community budget in the sense that the domain of monitorization and intervention is represented by the European market which is based to the largest extent on the resources from the private and public sectors from the member states, as well as on economic resources and activities belonging to third party entities (like foreign investors from outside community area);

---

<sup>1</sup> McGowan, Francis, European Competition Policy as Multilevel Governance, Sussex University, November 2000.

- The cohesion policy has as real actors (those who design and coordinate the implementation of programmes) the authorities from different levels. The competition policy has as real actors the institutions with attributions in the respective field (at the member state level and community level) but also economic actors which are active in the internal market. Although one can argue that the final beneficiaries of the cohesion policy are the citizens from the community space, a fact that may lead to a very large sphere of application and of interests, we can not overlook the significant difference between the negotiation power of a citizen who wants a higher level of development for his/her region and the negotiation power of a company which wants to defend its interests vis-a-vis the possible anti-competition manifestations from the internal market:

- The cohesion policy implies and knows an active participation of the local/regional authorities, while the competition policy does not provide for the possibility of a real implication of local authorities (with the limited exception as sphere of application and decision power that is found in case of German lands;

- The cohesion policy has as almost exclusive field of application the community space. The competition policy has an explicit tendency of expanding its field of application towards the world space, both by means of regulating the market behaviour of some global actors (like Microsoft), and by establishing agreements and cooperation activities with authorities from outside the community space. Also, in the same context, the competition policy witness a permanent extension of international consultation and cooperation (for instance with the USA, Canada, with countries from South America), including for the definition of a multi-level approach at a global level<sup>1</sup>.

As result of these differences we can note some notable characteristics of multi-level governance in the field of competition policy which were not explored in the classical approach regarding competition policy.

a) In the field of competition the economic actors are much more present in the context of multi-level governance by means of frequent interaction with monitoring and regulating authorities, by the action of professional or business associations, by the continuous formation of a dynamic competitive behaviour, adapted to the economic outlook.

b) The implementation of the requirements of competition policy has supported in time the strenghtening of the national authorities in the respective field, their power as well as the legal basis deriving from community regulations. As result, competition is among the very few community dimensions in which the accession of a country to the European Union led to the consolidation of the respective national authorities, at least in the

---

<sup>1</sup> Budzinsky, Oliver, The Governance of Global Competition, Edward Elgar Publishing Inc., 2008

dimension related to the effective implementation of community regulations<sup>1</sup>. According to the regulations in force the implementation of the provisions of articles 101 and 102 belongs to the national competition authorities and to national courts of law. A simple explanation of this apparent paradox is that in Europe there was not a tradition regarding competition regulation previous to second world war. As result, in many member states the implementation of the requirements deriving from competition policy was not confronted to the inertia of some pre-existing state institutions, but required the establishment or consolidation of some new or relatively young institutions in accordance to some community regulations which maintain a central role<sup>2</sup>. These considerations are the more so valid for the cases of countries from Central and Eastern Europe (including Romania).

c) The globalization phenomenon raises new challenges in the field of competition, the focus being changed from mostly intra-community analyses to analyses involving extra-community actors or actors which although originate in the community space carry out a large part or most of their activity outside the community space. A number of new phenomena (at least as dimension), such as the privatizations in Central and Eastern Europe after 1990 or state aid during the economic crisis of 2008 – 2009 have complicated even more the managing of the competition policy and increased the level of implication of the decision makers in the multi-level governance system.

d) In the context of the increase of the interest for the issues related to environment (the issue of global warming, of exhaustion of classic reserves of raw materials and energy) or issues of social interest (related to public health, education, aging of population) we witness to a gradual extension of the objectives targeted by the competition policy. Thus, if the classic approach considered that the main objective of the competition policy was to secure the welfare of the consumers nowadays there are more and more opinions that also other objectives of public interest must be taken into account in defining and implementing competition policy<sup>3</sup>. In case of a future inclusion in the community regulations of these debates on the changing of the Regulation regarding the implementation of rules on competition the multi-level governance could obtain new dimensions by including new actors from the area of authorities in the fields of environment, health, labor and even civil society in the decision making process. In fact, after year 2000 more debates emerged which analyzed new methods of governance and which proposed concepts based on polycentric governance. As a recognition of the importance given to this subject, the Nobel prize laureate for economy in 2009, Elinor

---

<sup>1</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance)

<sup>2</sup> Manganelli A., Nicita, A., Rossi, M.A., Multilevel Competition Policy in Europe, University of Sienna, 2009.

<sup>3</sup> Christopher Townley, Article 81 EC and Public Policy, Oxford/Portland, OR, Hart Publishing, 2009

Ostrom has researched exactly the aspects of polycentric governance, namely the modalities in which common resources can be efficiently managed by those who use them rather than governments or private companies<sup>1</sup>.

The comparative analysis of cohesion and competition policy from the point of view of multi-level governance show also a very interesting effect of mutual enhancement. This effect can be expressed like this: **because the resources allocated to the cohesion policy are limited, their granting is done based on a competition among the proposed projects and the implementation is achieved with observance of principles regarding state aid.**

Under these circumstances, the carrying on of the programmes of cohesion policy contribute to the establishment of a culture / mentality regarding competition and allows (at least in principle) for the efficient use of funds. At the same time, the carrying on of the programmes financed within the cohesion policy may lead also to a competition among regional development policies, which is a positive aspect to the extent it is based on objective evaluations<sup>2</sup>.

The comparative analysis of the cohesion policy and the competition policy of the European Union, both regarded from the point of view of multi-level governance, shows that the two policies belong to different forms of multi-level governance.

Marks and Hooghe<sup>3</sup> proposed a differentiation between **multi-level governance of Type I** (regarded as being similar from many point of view to federalism<sup>4</sup>) which implies the existence of some authorities at different levels which have a universal competence in their decision at the respective level (community, state, region, local) and **multi-level governance of Type II** which implies the existence of authorities having competence at the level of a certain policy (one decision area) for the whole geographical area of the respective countries.

The main difference between **multi-level governance of Type I and Type II** is that of the delimitation criterium: in the first case the unit of reference is the authority, characterized by well defined spheres of power, defined by legal regulations (at a state or community level); in the second case the unit of reference is a certain policy which implies competences attributed on the bases of some community legal regulations<sup>5</sup>. According to this interpretation the cohesion

---

<sup>1</sup> Ostrom, Elinor, Beyond Markets and States: Polycentric Governance of Complex Economic Systems, Nobel Lecture, December 8, 2009.

<sup>2</sup> Benz, Arthur, Meincke, Anna, Policy Competition in Multilevel Governance, Fern Universitat in Hagen, 2006

<sup>3</sup> Hooghe, Liesbet; Marks, Gary, Contrasting Visions on Multi-Level Governance, in volumul Ian Bache and Matthew Flinders eds. Multi-Level Governance: Interdisciplinary Perspectives. Oxford University Press, 2003

<sup>4</sup> Bache, Ian, Europeanization and Britain: Towards Multi-Level Governance ?, University of Sheffield, 2005.

<sup>5</sup> Conzelmann, Thomas, Towards a New Concept of Multi-Level Governance ? University of Maastricht, September 2008.

policy, by its methods of programming and implementation, can be regarded as a manifestation of multi-level governance of Type I, while the competition policy can be regarded as a manifestation of multi-level governance of Type II.

However, from a principal point of view multi-level governance implies forms of governance (management) which have in view subjects confronted with common problems. This aspect lead to a dynamic (historical) character of multi-level governance because to the extent to which the subjects intensify in time their methods of informing and communication they also define and perceive more and more clear their appartenece to a community (be that at maximum the European citizenship) and then their common problems will be more and more cleaar identified and will determine a social need for solutions of the type defined by multi-level governance of Type II.

For European Union and implicitly for the member states such an evolution will mean the orientation towards polycentric power structures, of a network type, in which the role of community and state institutions will be that of providing the infrastructure for information, communication and monitoring of the observance of some rules of inter-action in a way similar to the management at a global level of the Internet network by World Wide Web Foundation<sup>1</sup>.

The above analysis may get new dimensions in the conteext of the structural changes that take place at the world and community level because of the effects of the economic crisis, effects that were felt in a different way by the states of the world, including the member states of the European Union. The significant differences in the economic results obtained in the post-crisis period in the member states of the European Union lead also to the forecasting of a polycentric model of decision making. We mention here the clear distance taken by Germany as an economic power as compared to the rest of the European countries and the emergence of the PIIGS Group – Portugal, Italy, Ireland, Spain – countries that more or less failed from the point of view of the sustainability of their model of development.

To the extent that the disparities among the member states of the European Union will increase in the future we can estimate a number o possible evolution scenarios based on the assumption of decisions made on economic rationality criteria. Thus, if the member states will be confronted with different internal problems and will witness different social reactions, then we can assume they will maintain from the community architecture only those elements which are clearly efficient (such as those related to trade in goods and services, free movement of capital and labor), but they will adopt a variable geometry as regards the problems related to agriculture, regional development, energy, security and defence policy.

On the basis of the analysis of the functioning of the internal market of the European Union we consider that even if a variable geometry is adopted within the European Union (that is **a set of rules** accepted and implemented by all members and **temporary groups of members** which apply among themselves

---

<sup>1</sup> <http://www.webfoundation.org/>



rules with a higher degree of regulation in certain areas of interest) the competition policy will remain one of the policies accepted by all member states due to the fact that it is intrinsically linked to the observance of the four freedoms. This statement is supported by the fact that the functioning of the states is closely linked at present to the economic exchanges beyond the classical borders so that the developed states of the European Union will not allow and the less developed states of the European Union will not be able to give up the internal market.

As regards the cohesion policy, in case of an evolution of the European Union in the post-crisis period towards a polycentric mechanism of decision making we can assume that there will be serious changes related to the decrease of the funds allocated or related to the change in the management mechanism or both. In all cases we estimate that the efficient participation in the design, financing and implementation of cohesion policy will imply an active participation of the states or regional/local entities. For the states that became members of the European Union at a later moment (like 2004 and 2007) this requirement will imply the change as soon as possible from the logic of conformation to existing community regulations to the logic of active participation, respectively from the status of passive subjects to the status of participants.

### **Bibliography**

1. Bache, Ian, *Europeanization and Britain: Towards Multi-Level Governance?*, University of Sheffield, 2005.
2. Benz, Arthur, Meincke, Anna, *Policy Competition in Multilevel Governance*, Fern Universität in Hagen, 2006
3. Budzinsky, Oliver, *The Governance of Global Competition*, Edward Elgar Publishing Inc., 2008
4. Christopher Townley, *Article 81 EC and Public Policy*, Oxford/Portland, OR, Hart Publishing, 2009
5. Conzelmann, Thomas, *Towards a New Concept of Multi-Level Governance ?* University of Maastricht, September 2008.
6. Hooghe, Liesbet; Marks, Gary, *Multi-level Governance and European Integration*, Rowman and Littlefield Publishers, Inc., 2001
7. Hooghe, Liesbet; Marks, Gary, *Unraveling the Central State, But How? Types of Multi-Level Governance*, Political Science Series, no.87, Institute for Advanced Studies, Vienna, March 2003
8. Hooghe, Liesbet; Marks, Gary, *Contrasting Visions on Multi-Level Governance*, în volumul Ian Bache and Matthew Flinders eds. *Multi-Level Governance: Interdisciplinary Perspectives*. Oxford University Press, 2003
9. Manganelli A., Nicita, A., Rossi, M.A., *Multilevel Competition Policy in Europe*, University of Sienna, 2009.
10. McGowan, Francis, *European Competition Policy as Multilevel Governance*, Sussex Univeristy, November 2000.

11. Ostrom, Elinor, Beyond Markets and States: Polycentric Governance of Complex Economic Systems, Nobel Lecture, December 8, 2009.
12. Resnick, Philip, Ambiguous Identities: Nationalism in Multinational States, The University of British Columbia, <http://www.politics.ubc.ca/index.php?id=3444>
13. European Governance, A White Paper, Commission of the European Communities, COM(2001) 428 final, Brussels, 25.7.2001
14. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance)
15. <http://www.webfoundation.org/>