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J. McCormick, J. de Jong, D. Innerarity, N. Stevenson,
L. N. Leustean, A. Ibarrola-Armendariz, E. Ruiz Vieytez, S. Collard

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[1] BAUMERT, K. and KATE, N., «Introduction: An Architecture for Climate Protection» en BAUMERT, K. *et alter* (eds.), *Building on the Kyoto Protocol: Options for Protecting the Climate*, World Resources Institute, Washington 2002.
[2] Artículo 2, CMNUCC.

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---

[1] Vid. el artículo 43 y comentarios al mismo por SAÚCA, J.M.

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  —Ejemplo: KABUNDA, M., «La crisis africana: diagnóstico y lecturas» en MBUYI, K. (coor.), *África subsahariana ante el nuevo milenio*, ed. Pirámide, Madrid, 2002, pp. 125-143.

—Citas de artículos de revista: APELLIDOS, Inicial del nombre, «título del artículo entre comillas» en nombre de la revista en cursiva, n.º, fecha, pp.

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Cuadernos Europeos de Deusto

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Sumario

Presentación

Twenty years after the introduction of the concept of European Citizenship by the Treaty of Maastricht, this first issue of 2013, the year officially named "The European Year of Citizens", addresses the highly contested notions of cultural Citizenship and European identity in the context of the European Union. Most of the articles presented here originate from keynote speakers at the Erasmus Mundus MA in Euroculture Intensive Programme "Europeans between Europeanisation and Globalisation. European identity and Cultural Citizenship: Envisaging challenge" held at the University of Deusto in June 2012. Though some are more theoretical in nature than others, all critically envisage new readings and a new comprehensive understanding of the notions of cultural citizenship and European identity.

The first article, **John McCormick**'s, suggests that the idea of cultural citizenship has been underdeveloped and underemployed and looks at its political dimensions in the context of the European Union. According to McCormick it is in the articulation of the very concept of cultural citizenship at large that problems seem to arise. McCormick sets to test the adequacy of cultural citizenship in today's Europe as a means to establish shared approaches to the ways in which government is conducted. Accordingly, this author believes that European integration has enhanced the move from an "association with states or cultures towards an association with ideas of a political cultural nature".

Janny de Jong's article ponders on what she regards as the usefulness and potential risks of the very concept of cultural citizenship. By adopting a chronological perspective to citizenship de Jong examines how the original notion of citizenship in Europe was based on primary ideals of inclusiveness and diversity, thus taking into account the rich diversity within Europe and the European Union. De Jong analyses the many different views the concept of cultural citizenship seems to be offering now, which have made many Member States of the European Union question the adequacy of this concept. For de Jong, only through a "comprehensive" understanding of the notion of cultural citizenship can the usefulness of the concept and its applicability in today's Europe at large be explained and adopted as a means to reflect the multiple "ties between the citizen and the polity".

Daniel Innerarity's article, as its title suggests, addresses the European Union as one of the greatest political innovations in recent history, stressing that this is precisely what needs to be understood if a stronger European identity is to be achieved. Innerarity's analysis of the European Union in regard to its geographical and historical reality, its original governance tools and its integration into the broader process of globalization reveals that this political innovation can only make sense if the categories inherent to the national state are abandoned. Professor Innerarity strongly believes in the possibility of shaping "something like a democracy beyond the nation state" and new relationships between the stakeholders involved in global governance.

Nick Stevenson is concerned with questions of freedom in a European "cultural" social democracy. By looking back at thinkers like Fromm, Orwell and Roselli of the 1940s and after, who were much influenced by a clear reaction against totalitarianism, Stevenson sets out to find how those lessons from the past could enhance our understanding of today's Europe with regard to freedom and other global concerns. In this sense, Stevenson's reading of the "cultural" socialist writings of those years can produce new understandings of how neoliberalism can bear a close resemblance to certain traits of the totalitarian Europe of the past. After examining the validity of cosmopolitanism within the European context, Stevenson engages in showing how rethinking questions of freedom anew might be the plausible answer to help socially in discourses of crisis.

Lucian N. Leustean's article first examines how the Lisbon institutionalisation of religious dialogue builds on a long history of relations between institutions and religious/convictional actors, and how European officials have engaged in religious dialogue since the very first days of the European Community**.** Then, Leustean analyses functional breakdown of religious dialogue in the European Union and proposes four types of relations between religious/convictional representations and European institutions, namely, private-public, experimental, proactive and institutionalized. This article concludes that, though religious issues remain under the legal jurisdiction of the EU member states, the increasing diversity of the functional breakdown of religious/convictional representations in dialogue with European institutions suggests a shift from the national to supranational approach towards religion.

The paper presented by **Aitor Ibarrola and Eduardo Ruiz Vieytez** examines the concept of citizenship in Spain at the beginning of the 21st Century from two seemingly contradictory perspectives. On the one hand, the regional autonomy promoted by the 1978 Spanish Constitution in specific social domains such as the health system, education or the management of the cultural heritage has had a significant influence on "the kind of citizenship fostered in the region". On the other, the norms

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and regulations issued by supra-national entities such as the EU, the UN and Human Rights organizations have had a significant impact on our understanding of the concept and have eroded traditional views that linked citizenship to the Nation-State. Thus although local and global processes are creating new potential to develop forms of civic engagement, "these new forces shaping contemporary citizenship(s)" do not necessarily push in the same direction.

Susan Collard's contribution provides an analysis of the impact of European Citizenship on citizens twenty years after its introduction by the Treaty of Maastricht. Focusing on the right for non-national European citizens to vote and to stand as a candidate in local elections in their Member-State of residence, this article addresses the lack of empirical research into the actual take-up of this right by non-national EU citizens. Collard's research carried out in two Member States, the UK and in France, reveals that national institutions and procedures impact on levels of participation. The relevance of this study lies in the fact that similar criteria could be used to extend the analysis across all EU Member States. Only then will we "have a clearer sense of the full impact at grass roots level of the introduction of voting rights for NNEUCs by the Treaty of Maastricht".

Finally, as is usual in *Cuadernos Europeos de Deusto*, two chronicles close this issue. The first by **David Ordóñez Solis** relates to jurisprudence and the second by **Beatriz Iñarritu Ibarreche** covers a relevant current issue within the EU.

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Estudios

Cultural citizenship, political belonging, and the European Union*

John McCormick
Indiana University

Summary: I. Introduction.—II. A European political culture?—III. The effects of Parliamentary Government.—IV. Conclusions.

Abstract: Like many concepts in the social sciences, the notion of citizenship is subject to different understandings based on the particular interests and preferences of those who engage in public discourse about its meaning. The particular notion of EU citizenship is often dismissed as insubstantial. Authors note that EU member states continue to have different laws on citizenship, that Union citizenship is derived from member state citizenship, and that Union citizenship has failed to promote much of a sense of European identity. The particular idea of cultural citizenship, meanwhile, has been described by some as an oxymoron, with many authors noting that while it is a useful concept, it remains underdeveloped and underemployed, and that it needs to be further articulated in connection with specific issues and contexts. This paper will attempt to do just that by moving from theory to practice, exploring ways in which ideas of political and cultural belonging have overlapped in such a way as to direct citizenship in Europe away from an association with states or cultures to an association with ideas.

Keywords: Union citizenship, European identity.

Resumen: *Como muchos conceptos en las ciencias sociales, la noción de ciudadanía está sujeta a diferentes interpretaciones basadas en los intereses y preferencias particulares de aquellos que participan en discursos públicos sobre su significado. A menudo se descarta la noción de ciudadanía de la Unión Europea como insustancial. Distintos autores constatan que los Estados miembros de la Unión Europea continuan teniendo diferentes leyes sobre la ciudadanía, que la ciudadanía de la Unión se deriva de la ciudadanía de los Estados miembros, y que la ciudadanía de la Unión no ha sido capaz de promover un sentido de identidad europea. La idea de ciudadanía cultural, mientras tanto, ha sido descrita como un oximorón, y muchos autores opinan que si bien se trata de un concepto útil, sigue estando muy poco desarrollado y muy poco utilizado, y que necesita ser articulado en conexión con temas y contextos más específicos. En esta misma línea, partiendo de la teoría hacia la práctica, este artículo pretende explorar cómo ciertas ideas de pertenencia política y cultural se han solapado de tal manera que están dirigiendo a la ciudadanía en Europa desde la asociación con Estados o culturas hacia una asociación con ideas.*

Palabras clave: *Ciudadanía de la Unión, identidad europea.*

* Recibido el 31 de noviembre de 2012, aceptado el 20 de diciembre de 2012.

I. **Introduction**

Where citizenship has long been understood and discussed in formal civil and legal terms, and its cultural qualities have often been overlooked, the growing racial and religious diversity of Western societies since the end of World War II has generated a new interest among scholars in the relationship between diversity and equity. The concept of cultural citizenship has been developed as a supplement to traditional ideas about political citizenship, the suggestion being that citizenship needs to be inclusive enough to allow for the cultural differences that exist within and among states. It is thus a question, as Rosato puts it, of 'who needs to be visible, to be heard, and to belong'[1], or the recognition, as Touraine puts it, of the existence of new political spaces where 'minorities' are protected and intercultural exchanges are promoted.[2] Another definition suggests that cultural citizenship 'concerns the ways in which various groups such as immigrants, religious groups, women and minorities use cultural practices to stake identity and citizenship claims. It is about the quest for cultural belonging, being counted and being heard in an increasingly globalized world.'[3]

Delanty and Rumford regard the differences among European cultures both as positive and as a possible first step in the process of building a European citizenship; in other words, they argue, European identity 'might be seen as the recognition of differences and the capacity to build upon them'.[4] At the same time, Habermas suggests that the notion of cultural citizenship raises the demand for a revised model of the public sphere.[5] He and Jacques Derrida hailed the birth of just such a sphere on 15 February 2003 in the wake of mass demonstrations in almost every European capital against the impending US-led invasion of Iraq. They spoke of Europe now having its own 'political mentality' exemplified by support for notions such as secularism, welfarism, and multilateralism.[6]

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[1] ROSALDO, R., "Cultural Citizenship, Inequality and Multiculturalism", in TORRES, R.D. *et alter* (eds.), *Race, Identity and Citizenship*, Blackwell, Oxford, 1999.

[2] TOURAINE, A., *Can We Live Together? Equality and Difference,* Polity Press, Cambridge, 2000.

[3] Center for Cultural Citizenship, University of New Hampshire, at http://www.unh.edu/humanities-center (last retrieval on September 2012).

[4] DELANTY, G. and RUMFORD, C., *Rethinking Europe: Social Theory and the Implications of Europeanization*, Routledge, London, 2005, p. 63.

[5] HABERMAS, J., *The Structural Transformation of the Public Sphere*, Polity Press, Cambridge, 1989.

[6] HABERMAS, J. and DERRIDA, J., "February 15, or What Binds Europe Together: Plea for a Common Foreign Policy, Beginning in Core Europe", in *Frankfurter Allgemeine Zeitung*, 31 May 2003. Reproduced in LEVY, D. *et alter* (eds.), *Old Europe, New Europe, Core Europe*, Verso, London, 2005.

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Three points are worth making about the debate over cultural citizenship. First, the bulk of the literature comes out of the disciplines of history, sociology, anthropology, and philosophy, or has been written by those with an interest in literature or other forms of expression. Political considerations have to date been included only in a marginal sense, and political scientists have contributed relatively little to the debate. Second, the bulk of the literature is notable for its failure to define cultural citizenship as a concept. By no means is this an unusual state of affairs; it is quite normal within the social sciences to debate concepts without agreeing how they are best defined, or to employ contrasting definitions. This leads to the third point, which is that there seems to be a consensus that the idea of cultural citizenship is something of an oxymoron, and that while useful, it remains underdeveloped and underemployed, and needs to be further articulated in connection with specific issues and within more particular contexts.

If cultural citizenship is concerned with the role of culture in citizenship, and is concerned with notions of recognition, empowerment, and common experiences, then political considerations should clearly play a central role in our efforts to pin down its meaning. This is particularly true of Europe and European integration; the latter is often dismissed by its critics as having failed to generate a sense of belonging, and questions are often asked about the seeming absence of a sense of European identity, or of an understanding of what Europe represents, and there is even conjecture regarding the death of multiculturalism in the European context. But while much of the literature on cultural citizenship focuses on minorities, it could be argued that within the context of the EU, containing as many nationalities as it does, all Europeans are members of minority groups. The issue, then, may be less one of how they are recognized than of how or whether they have been able to rise above narrow political values and agendas, and how far we might be able to identify a European political space.

This article sets out to address criticisms of the underdevelopment and underemployment of the idea of cultural citizenship by looking at its political dimensions in the context of the European Union. But rather than pursuing the idea that cultural citizenship might be a means through which minorities use cultural practices to stake identity and citizenship claims[7], it turns the notion on its head by arguing that ideas of political and cultural belonging have overlapped in such a way as to direct citizenship in Europe away from an association with states or cultures to an association with ideas. Specifically, it argues that there are clear indications of the emergence

[7] Center for Cultural Citizenship, University of New Hampshire, at http://www.unh.edu/humanities-center (last retrieval on September 2012).

of a shared political culture in the European Union (and in Europe more broadly) whose existence represents a pooling of political values through which the interests and concerns of minorities have become subsumed within a broader idea of what Europe represents in political terms. In other words, where Miller begins his 2007 study of cultural citizenship with the observation that 'wwe are in a crisis of belonging'[8], this article suggests that there is a distinctively European political space whose features—if more widely understood and recognized—would obviate many of the concerns about belonging.

II. **A European political culture?**

The notion of cultural citizenship can be traced back to a seminal 1964 article by T H Marshall in which he outlined the expansion of citizenship from civil through political to social rights.[9] The civil component included 'liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice'. The political component involved 'the right to participate in the exercise of political power'. The social component entitled citizens to live the life of a civilized being according to the standards prevailing in the society".

The definition of citizenship was subsequently expanded, primarily in the work of Turner, to include culture.[10] Cultural rights, argues Pakulski, 'include rights to unhindered and dignified representation, as well as to the maintenance and propagation of distinct cultural identities and lifestyles'.[11] He goes on to suggest that while the concept of cultural rights is not new, it has rarely been linked to citizenship, and that it might be seen as a new set of citizenship claims involving 'the right to symbolic presence and visibility (vs. marginalization); the right to dignifying representation (vs. stigmatization); and the right to propagation of identity and maintenance of lifestyles (vs. assimilation)'. Full cultural citizenship, he concludes, is seen less as a matter of legal, political and socioeconomic location so much as a matter of symbolic representation, cultural-status recognition and cultural promotion.

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[8] MILLER, T., *Cultural Citizenship: Cosmopolitanism, Consumerism and Television in a Neoliberal Age,* Temple University Press, Philadelphia, PA, 2007, p. 1.

[9] MARSHALL, T.H., *Class, Citizenship and Social Development,* Doubleday, New York, 1964.

[10] TURNER, B.S., *Citizenship and Capitalism: The Debate over Reformism,* Allen & Unwin, London, 1986; TURNER, B.S., "Outline of a theory of citizenship", in *Sociology* no. 24, 1990, pp. 189-214; TURNER, B.S., "Contemporary problems in the theory of citizenship", in TURNER, B.S. (ed.), *Citizenship and Social Theory*, Sage, London, 1993.

[11] PAKULSKI, J., "Cultural citizenship", in *Citizenship Studies* 1:1, 1997, pp. 73-86.

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To discuss cultural citizenship in the European context is to suggest that minorities are marginalized and stigmatized, and that their separate identities are insufficiently recognized. There has been much discussion of late about the alleged failure of multiculturalism in Europe, but closer study reveals that this failure is discussed more in terms of the failures of multiracialism and of tolerance for Islam. In regard to culture as such, Europe has long been multicultural and while there has been integration taking place at the macro level, the rights of national and cultural minorities have been increasingly recognized to the point where a process of disintegration (or, at least, the assertion of rights) has set in at the micro level. At the same time, however, Europeans share much in regard to the collective norms, values and attitudes that govern the expectations of society about politics and government; in regard, that is, to political culture, if this term is understood along the lines proposed first by Durkheim, and then developed by Almond and Verba.[12] In other words, there are common themes in the way that Europeans believe that government should be conducted, in the role they feel that government should play in their lives, in the role they see themselves playing in the political process, in their views regarding the core purposes of government, and in their views regarding the political goals and ideals of society.

Surprisingly little has to date been proposed along these lines, which is less an indication that such themes do not exist than a reflection of the limited perspective of most political scientists: comparativists tend to see Europe as a collection of sovereign states, and have paid little attention paid to the idea that there might be a European political space separate from—or in addition to—those of the EU or its individual member states. Meanwhile, the long domination of political studies of the EU by scholars of international relations means that the EU has only recently begun to be seen as a political system in its own right. Rather than a European political culture, then, what most scholars of Europe see is a constellation of national political cultures. The effect of this is to draw discussions into the question of how minority interests and rights can be recognized and protected (in other words, into the question of how cultural citizenship applies in the European context) when it might be argued instead that a closer understanding of the features of European political culture would indicate that minority interests and rights are already recognized and protected through the influence they have had on shaping that political culture.

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[12] DURKHEIM, E., *The Division of Labour in Society*, Macmillan, Toronto, 1933; ALMOND, G.A. and VERBA, S., *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Princeton University Press, Princeton, NJ, 1963, and *The Civic Culture Revisited*, Little, Brown, Boston, 1980.

There are at least five qualities that make European political culture distinctive. First, Europeans have a singularly pragmatic view of the nature, purposes, and possibilities of democracy, driven by their historical experiences and by their views about the nature both of civil society and of the mechanics of today's relationships between and among European states. They are restrained in how much they believe can be achieved without both the necessary combination of time, effort, political will, and good fortune. This might be described as pessimism, but it might also be regarded as realism or pragmatism given the limitations of achieving change within complex political and social arrangements. The views of Europeans are reflected in the extent to which they place a premium on results over rules and in ensuring that the results are as equal as possible. The European experience stands in contrast to that of the United States, where—at least until the recent economic downturn—there is more of a focus on aspirations, possibilities, and achievement of the American Dream, which assumed in part that life for each generation will be better than for the previous generation .

Second, patterns of political participation in Europe have been changing, with a drift away from the conventional and towards the unconventional. The data show that participation in the electoral process has been declining through much of Europe, with fewer people engaging in campaign activities, and turnout at national elections either falling or remaining static. The most common explanation for this has been a growing sense of political alienation, but it may simply be that Europeans are rejecting indirect participation in politics through their elected officials—in whom they generally have declining trust and faith—in favour of more direct influence through interest groups, referendums, petitions, or direct political action. There has, in other words, been something of a shift from representative democracy to participatory democracy in Europe.[13]

Third, the dynamics of European integration have helped promote a culture of compromise and consensus decision-making. Making policy at the European level has meant involving more people and interests in a decision, taking into consideration a greater variety of opinions and agendas, and thereby slowing down the decision-making process. This can be frustrating, and in the case of the response to the crisis in the euro zone it has been stretched and tested, but it is also the essence of democracy. The consensual qualities of the European project stand in contrast to the United States, which is often congratulated for its democratic achievements but has become so polarized of late—thanks mainly to its two-party political

[13] ALMOND, G.A. *et alter* (eds.), *European Politics Today*, 2nd ed, Longman, New York, 2002, pp. 42.

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system, the capture of its politicians by special interests, and the tendency of elected representatives to look only to their core base of support—that many worry about its ability to address its manifold problems. Europeans are more familiar with coalition government, which can be slow and unstable but is more inclusive and requires more compromises. In this sense, the EU model is a natural outgrowth of the coalitions that are the norm in most of its member states.

Fourth, government in Europe is attuned to the needs and procedures of international (actually, inter-state) decision-making. While this is generally true of all governments that engage in the work of international organizations, that ratify international treaties, and that take seriously their obligations under international law, with Europeans this phenomenon has evolved further. The obvious explanation can be found in the patterns of cooperation that have been required under EU decision-making, where the independence of national governments has been reduced in favour of broader European interests. Less obvious, however, has been the impact of changing views about the role of the nation and the state, and the growing hold of cosmopolitanism on the Europeanist political imagination. While much is made of the difficulties that European governments have experienced in finding common ground on numerous issues, the existence of a substantial body of European law and policy attests to the extent to which a consensus has been achieved. It also illustrates the extent to which national interests have been combined with and often subsumed under European interests, and the extent to which the European governing style combines local, national, state and European interests.

Finally, if there is one particularly distinctive quality of political culture in Europe it is support for communitarianism. Europeans believe that there has been too much emphasis on individual liberty and too little on the community, and that there should be more of a balance between individualism and social responsibility.[14] Selznick defines communitarianism as 'any doctrine that prizes collective goods or ideals and limits claims to individual independence and self-realization'.[15] Etzioni sees it as a concern with 'the balance between social forces and the person, between community and autonomy, between the common good and liberty, between individual rights and social responsibilities'. Communitarians, he argues, are not majoritarian, but instead seek a 'strong democracy' in which activity goes beyond occasional political participation, and government is instead responsive to all its members. Each member of the

[14] See ETZIONI, A., *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda*, Fontana Press, London, 1995.

[15] SELZNICK, P., *The Communitarian Persuasion*, The Johns Hopkins University Press, Baltimore, MD, 2002, p. 4.

community owes something to all others, and the community owes something to each of its members.[16] On the economic front, communitarians argue that the debate between supporters of the private sector and the public sector has overlooked the needs of society.

Communitarianism has been described by its critics as 'anti-individual'[17], and some of its critics may quote Abraham Lincoln's argument that prohibition runs the danger of making a crime out of something that is not a crime. But this rather misses the point regarding the way it is approached by Europeans, who are more likely to argue that a decent society is based less on rights than on duties, and that for the opportunities provided by society, individual responsibility is demanded. Communitarianism underpins attitudes towards social welfare in Europe but it is also a defining part of the manner in which Europeans approach government: they would argue that society can be a better judge of what is good for individuals rather than vice versa, and that the state has a role in restricting individual rights for the greater good of the community. In other words, while they support negative rights, they are more willing to allow the state to take action on individual issues in the interests of the community.

The emphasis here is on the state rather than on government, in which Europeans have low levels of faith and trust (but no lower than those in other liberal democracies[18]). Polls in the EU indicate that levels of trust in the army, the police and the media are significantly higher than those in government institutions and political parties. Few believe that national administrative institutions are transparent (68 per cent believe they are not very transparent or not transparent at all, compared to 24 per cent who believe they are very transparent or transparent), and in spite of doubts about integration—which have worsened markedly in the wake of the euro zone crisis—Europeans do not make much of a distinction between the problems faced by their country, by the EU, and by the world; majorities of 58 per cent, 55 per cent and 54 per cent respectively feel that each is headed in the wrong direction.[19] Polls also indicate higher levels of trust in voluntary organizations, reflecting the extent to which Europeans are willing to replace political engagement with civic engagement.

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[16] ETZIONI, A., "Introduction", and "The Responsive Communitarian Platform: Rights and Responsibilities", in ETZIONI, A. (ed.), *The Essential Communitarian Reader*, Rowman and Littlefield, Lanham, MD, 1998, p. x, p. xix.

[17] FRAZER, E., *The Problems of Communitarian Politics: Unity and Conflict*, Oxford University Press, New York, 1999, p. 21.

[18] BLIND, P.K., "Building Trust in Government in the Twenty-First Century: Review of Literature and Emerging Issues". Paper presented to 7th Global Forum on Reinventing Government, Vienna, 2007.

[19] EUROPEAN COMMISSION, *Eurobarometer 76*, autumn 2011, p. 37.

III. **The Effects of Parliamentary Government**

In addition to these general features of political culture in Europe, it is important also to better understand the structure of political institutions and the role they might play in encouraging cultural citizenship. Are political institutions a reflection of the culture in which they are embedded, or are cultures a reflection of the character of their governing political institutions? In other words, to what extent do the structural principles of institutions reflect or shape the political cultures of the societies in which they function? The evidence suggests that there is a symbiotic relationship at work, with both elements shaping and being shaped by the other. Of one principle we can be sure: the relationship is never static, and new challenges, needs and opportunities bring constant change in the internal organization of institutions, in their relationship to one another, and in their place within the political system.[20]

The one relative constant in the European case has been the durability of the parliamentary model, which was born and bred in Europe, and is today used in one form or another in every European state. It has been exported outside Europe, to be sure, and we may not be able to claim that it is any longer uniquely European, but nowhere does it dominate national government to the same extent, or provide politics and government with quite so strong an institutional identity or quite so distinctive a procedural character, as it does in Europe. The region remains—in the view of Müller et al—'the heartland of parliamentarianism'.[21] The parliamentary model has four core elements and effects.

- The co-existence of a political head of government and a symbolic head of state.
- The fusion of executive and legislature; the former comes out of —latter, and the two have mutual sets of responsibilities to—and powers over—the other.
- Collective decision-making through a cabinet or council of ministers.
- The division of parliament into governing and opposition parties or coalitions.

First, with the exception of states using the semi-presidential or dual executive model, a political head of government and a symbolic

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[20] For discussion, see HALL, P.A., "Institutions and the Evolution of European Democracy", in HAYWARD, J. and MENON, A. (eds.), *Governing Europe*, Oxford University Press, Oxford, 2003.

[21] MÜLLER, W.C. *et alter*, "Parliamentary Democracy: Promise and Problems", in STRØM, K. *et alter* (eds.), *Delegation and Accountability in Parliamentary Democracies*, Oxford University Press, Oxford, 2006, p. 4.

head of state co-exist. This encourages the view that allegiance to the state is not necessarily the same as allegiance to the government, and vice versa. Heads of government come and go, their position and power dependent upon changing levels of public support and approval, but the head of state remains as the embodiment of the values of the state, largely untouched (except in semi-presidential executives) by ideological partisanship. The situation in Europe stands in contrast to that found in executive presidential systems such as the United States, Mexico, Brazil, or Argentina, where the combination of political and state responsibilities in a single office blurs the distinction between allegiance to state and allegiance to government.

Monarchies and non-executive presidents offer Europeans several advantages: they provide an institution that functions above politics and around which the citizenry can rally in times of trouble, they can arbitrate the formation of a new government should there be no party or coalition in clear control of a legislature, they can act as a moral constraint on elected political leaders attempting to extend their powers, and they can act as politically-neutral symbols of the state that represent the interests of its multiple cultures and minorities. Legitimation can be provided by constitutions and courts, it is true, but the process of judicial review is often politically charged, and judges will often have their own political agendas. This is rarely the case with monarchs or non-executive presidents in the European model. At the same time, however, non-executive heads of state are often criticized for being expensive symbols, and monarchs in particular are rejected by republicans as a throwback to the feudal era, as perpetuators of the class system, and as dividers rather than uniters. In today's increasingly egalitarian Europe, however, where monarchs are expected to show the common touch, the socially and culturally divisive nature of monarchs and their attendant aristocracies has declined.

The second quality of the parliamentary model is that it fuses executive and legislative functions. The prime minister is normally the leader of the biggest political party in the legislature, or the individual most acceptable to the parties joined in a coalition government. Thus the executive is closely identified with the balance of parties in the legislature, and prime ministers are themselves members of the legislature; there is typically no separate election for a prime minister. Prime ministers have extensive powers of appointment, and are rarely required to have their appointments confirmed by another body. They also have strategic advantages tied to their control of the party or coalition, and to their ability to decide the date of national elections. Decision-making within the cabinet is collective, but the prime minister coordinates, sets the agenda, and expects the support of cabinet colleagues. Governments with strong majorities in the legislature can also

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normally expect party unity, meaning strong influence over the legislative programme. The effect of this is to make the lines of policy responsibility relatively clear.

By contrast, an executive or semi-executive president may have to govern in conjunction with a hostile legislature, particularly when the opposition has a majority, but even in some cases when the president's own party has a majority. In the parliamentary system, partisanship is normal, party discipline is relatively tight, and lines of responsibility are more clear. In a presidential republic or a semi-presidential system, the links between the executive and the legislature are not as strong, mainly because the president does not control key appointments within the legislature. As a result, partisan lines are more blurred, and there is less association between voters and parties. There is also more opportunity for legislatures to block the policy programme of the executive (an event that would potentially set off a crisis or even a fall of the government in a parliamentary system), and for the executive to blame a hostile legislature for its own failures. Hence the lines of responsibility are often less clear.

The third effect of the parliamentary model is that cabinet government is at the heart of the European political process.[22] As well as governing collectively, and being the foundation of the power and influence of the prime minister, cabinets (or councils of ministers) are also testing grounds for future contenders for the prime ministership, and a vital link between the bureaucracy, the government, interest groups, and voters. Members of the cabinet are usually members of the legislature, and the cabinet as a whole is politically responsible to the legislature, which has the power of oversight over ministers and their departments, and can compel the cabinet to resign. Cabinet government is by no means unique to Europe, and is found in some form in parts of Africa and Asia, but nowhere is it so generalized or so much a feature of the process of government as in Europe.

Finally, the dynamics of the European parliamentary model are based fundamentally on the centrality of political parties to the political process. The prime minister and cabinet rely on the majority party or coalition as the base of their support and power, and for security of tenure. In majoritarian systems[23] where large parties sometimes dominate, such as those in

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[22] See BLONDEL, J. and MULLER-ROMMEL, F. (eds.), *Cabinets in Western Europe*, 2nd ed., Palgrave Macmillan, Basingstoke, 1997, and *Cabinets in Eastern Europe*, Palgrave Macmillan, Basingstoke, 2001; STRØM, K. *et alter* (eds.), *Cabinets and Coalition Bargaining: The Democratic Life Cycle in Western Europe*, Oxford University Press, Oxford, 2008.

[23] For discussion of the majoritarian/consensual dichotomy, see LIJPHART, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Yale University Press, New Haven, CT, 1999.

Britain, Ireland, France and Greece, the executive can wield considerable powers and is almost guaranteed that its policies will be confirmed by the legislature. But this is relatively rare. More typically in Europe, there are multiple parties representing the entire political spectrum, from communists and socialists on the left through greens, social democrats, centrists and liberals to Christian Democrats, conservatives, and fascists on the right, along with regional parties in many countries. The result is that coalitions have become the norm, particularly in the Benelux countries, Scandinavia, Germany, Italy, Ireland and Switzerland. Whether these are coalitions of the centre-left or the centre-right, the number and variety of their membership results in a system in which parties are typically obliged to cooperate and compromise in order for business to be done.

Another quality of party politics in Europe is the critical role played by parties in defining and mobilizing opposition. In executive presidential systems, parties do not always typically function as the formal opposition, mainly because they do not have leaders in place who would take over the presidency were the party to win a majority at an election. In authoritarian systems such as China or many African states, opposition parties are either not permitted or are controlled and manipulated. But in Europe, opposition parties are a central and formal part of the political process, help clarify the political options for voters, and play a critical role in determining the structure and longevity of governments.

There has been much debate over the last few decades about the decline of European party systems, and even about periodic crises in that system. But while it is clear that parties may not always have as much power as they think they do, and that party systems constantly evolve, they continue to persist, and it is hard to imagine what would replace them.[24] Furthermore, while legislatures and courts in particular have lost some of their powers as a result of the twin effects of European integration and regional devolution, the same cannot be said for parties. Integration has been slow to impact national parties[25], but the creation in recent years of a growing number of pan-European party confederations promises to bring national parties closer together, and to encourage them to run pan-European campaigns for elections to the European Parliament, giving them a more prominent role in pan-European politics. Meanwhile, rising support for devolution and national self-determination has injected new vitality into national party

[24] See discussion in SMITH, G., "The Decline of Party?" in HAYWARD, J. and MENON, A. (eds.), *Governing Europe*, Oxford University Press, Oxford, 2003.

[25] See discussion in MAIR, P., "The Limited Impact of Europe on National Party Systems", in GOETZ, K.H. and HIX, S. (eds.), *Europeanised Politics? European Integration and National Political Systems*, Frank Cass, London, 2001.

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systems by both encouraging the creation of new regionalist parties and obliging national parties to develop policies on regionalism.

IV. **Conclusions**

This paper began by reiterating the point that the concept of cultural citizenship has been developed as a supplement to traditional ideas about political citizenship, based on the suggestion that citizenship needs to be inclusive enough to allow for the cultural differences that exist within and among states. This is clearly of importance and relevance to better understanding the modern European experience, given the variety of states and cultures within the European Union specifically and Europe more broadly. But rather than approaching cultural citizenship as a means through which minorities could use culture to stake claims to identity, the paper goes on to argue that the interests and concerns of minorities have been critical to defining the broader identity and meaning of Europe. Within Europe there are no majorities, thus everyone is a member of a minority of one kind or another, and European identity is based on the foundation of bridging those differences.

Critical to this discussion has been the possibilities of the emergence of European political space, driven by the emergence of a shared political culture in the European Union (and in Europe more broadly). In other words, rather than the EU witnessing a crisis of belonging (the core idea behind most discussions about cultural citizenship), the paper suggests that there is a distinctively European approach to politics whose features would indicate the growth of a sense of belonging in Europe, regardless of national or cultural background. The effect, then, has been to allow minorities to drive the establishment of shared approaches to the manner in which government is conducted, to the roles expected of government, to the roles of citizens in the political process, to the views of citizens regarding the core purposes of government, and to a European definition of the political goals and ideals of society. In short, the process of European integration has led to an overlap of ideas about political and cultural belonging, directing ideas about citizenship in Europe away from an association with states or cultures and towards an association with ideas, in this case of a political cultural nature.

Cultural Citizenship – some critical thoughts on the usefulness and potential risks of the concept*

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Summary: I. Introduction.—II. Meanings and dimensions of citizenship.—III. Dimensions.—IV. European citizenship.—V. Cultural citizenship.—VI. Conclusion.

Abstract: Since the 1990s the idea of global, cosmopolitan, multicultural and cultural citizenship gained prominence. The notion of cultural citizenship originally suggested inclusiveness and diversity. It intended to recognise cultural rights of various groups in society, in other words multi-ethnicity and diversity. This inclusive notion has been challenged lately, and increasingly it also has been interpreted in the opposite way. The contradictory readings of this concept, for instance in various Member States of the European Union, question its usefulness. The focus on the cultural dimension of citizenship might even prove risky. Only a broad, "comprehensive" understanding of citizenship can reflect the interconnectedness and multiplicity of political, social and cultural ties between the citizen and the polity.

Keywords: Cultural citizenship, European identity, active citizenship.

Resumen: *La idea de lo global, lo cosmopolita, lo multicultural y la ciudadanía cultural ha ido adquiriendo importancia desde 1990. En sus orígenes, la noción de ciudadanía cultural sugería inclusión y diversidad. Intentaba reconocer los derechos culturales de grupos sociales variados, en otras palabras, pluralismo étnico y diversidad. Recientemente, esta noción de inclusión se ha visto cuestionada, e incluso interpretada de forma contraria. La lectura contradictoria de este concepto, por ejemplo por parte de varios Estados miembros de la Unión Europea, cuestiona su utilidad. El énfasis en la dimensión cultural de la ciudadanía podría incluso resultar arriesgado. Sólo una amplia comprensión integradora de la ciudadanía puede reflejar la interconexión y multiplicidad de los vínculos político, social y cultural entre el ciudadano y el sistema político institucional.*

Palabras clave: *Ciudadanía cultural, identidad europea, ciudadanía activa.*

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I. **Introduction**

Citizenship is very important, and a highly contested notion. When browsing through the great many books and articles that have been written about citizenship, particularly in the last three decades, it is astounding how many adjectives have been attached to the word citizenship; ranging from regional to global citizenship, social to cultural, inclusive and exclusive citizenship and every shade in between. This recent increase in citizenship studies does by no means imply that it is a "new" or contemporary notion—language, activities and institutions in the field of citizenship may even be called one of the most important, long lasting and ongoing struggles in the history of politics.[1]

Certainly the understanding of what citizenship means and represents has significantly altered through time, as well as the focus on specific aspects. "Citizenship and social class"—the seminal essay by the British sociologist T.H. Marshall published in 1950—would not be a very likely topic today if only because the Marxist concept "class" is not in vogue anymore. Titles such as Reframing Social Citizenship, on the other hand, immediately are recognised as current[2]. This particular title also shows, by the way, that Marshall's essay remained important. In fact it is noteworthy how very often it is quoted or referred to; tracing references to Marshall's essay in the Google scholar database renders a result of 6.678 direct quotes.[3] The crucial importance of the notion citizenship was "rediscovered" in the late 1980s and early 1990s, and this also implied re-examining Marshall's distinction between three types of citizenship, legal, political and social. The enhanced interest in especially social citizenship in the 1980s was related to debates on the social welfare state and the "new" economic

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[1] TULLY, J., "Two meanings of global citizenship: modern and diverse," in PETERS, M.A., BLEE, H. and BRITTON, A. (eds.), *Global Citizenship Education: Philosophy, Theoryand Pedagogy,* Sense Publications, Rotterdam, 2008. Web http://www.southampton.ac.uk/smrn/docs/tully_two_meanings.pdf, (Last retrieval 23/9/2012).

[2] MARSHALL, T.H., "Citizenship and Social Class," in *Sociology at the Crossroads, and Other Essays* Heinemann, London, 1963, pp. 67-127. The essay was first delivered in the form of The Marshall Lectures in Cambridge 1949. TAYLOR-GOOBY, P., *Reframing Social Citizenship*, Oxford University Press, Oxford; New York, 2009.

[3] REES, A.M,, "T.H. Marshall and the Progression of Citizenship," in BULMER, M. and REES, A.M. (eds.), *Citizenship Today: The Contemporary Relevance of T. H. Marshall*, UCL Press, London, 1996, pp. 1-24.; MARSHALL, T.H. and BOTTOMORE, T., *Citizenship and Social Class*, Pluto Press, London, 1992, p. 101.

http://scholar.google.nl/scholar?cites=14046845792627094931&as_sdt=5&sciodt=0&hl=en, search (last retrieval on 19/7/ 2012); OERS, R. VAN, ERSBØLL, E. and KOSTAKOPOULOU, D., *A Re-Definition of Belonging?*, Extenza Turpin distributor, Biggleswade, 2010, p. 338.

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policies such as Thatcherism and Reagonomics that were being introduced at that time.

Academic research into the matter of citizenship obviously reflects problems, debates and issues of the specific timeframe. It will not come as a surprise that citizenship often was—and is—put forward as a solution to current political or social issues. "Whatever the problem", political scientist Richard Bellamy writes with irony—"be it the decline in voting, increasing numbers of teenage pregnancies, or climate change—someone has canvassed the revitalization of citizenship as part of the solution"[4]. Revitalisation is the key word here: and this may also explain why so many adjectives have been invented in connection to citizenship in the first place: in order to show the difference with previous citizenship studies.

Since the 1990s it was the idea of global, cosmopolitan, multicultural and cultural citizenship that gained prominence. International and national and local developments related to migration, Europeanisation and globalisation and the end of the Cold War triggered this "cultural approach"[5]. With the growing interest for issues connected to multiethnic and multicultural societies, the topics of rights of ethnic minorities in multi-ethnical societies and democratic citizenship gained prominence as well. While especially the " liberal" view of citizenship had more or less overlooked how those with political and legal rights could exercise power over the vulnerable, these new strands offered a kind of redress.[6] Political philosophers Will Kymlicka and Wayne Norman observed however, that minority rights and the so-called "democratic citizenship" often seemed an odd couple: "good" citizenship seemed to overlook specific practices of minorities, while appeals to minority rights were suspected of contradicting a "robust" conception of civic virtue[7].

The concept of cultural citizenship reflects precisely that contradiction. The notion of cultural citizenship in connection with a global approach originally suggested inclusiveness and diversity. The aim was to recognise cultural rights of various groups in society, in other words multi-ethnicity

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[4] BELLAMY, R., *Citizenship: A very Short Introduction*, Oxford University Press, Oxford, 2008, p. 1.

[5] See for references to the concept of world citizenship in earlier periods, especially antiquity NUSSBAUM, M.C., "Cultivating Humanity," *Liberal Education* 84, no. 2, Spring 98, 1998, p. 38; NUSSBAUM, M., "Education and Democratic Citizenship: Capabilities and Quality Education," *Journal of Human Development* 7, no. 3, 11, 2006; BOWDEN, B., "The Perils of Global Citizenship," *Citizenship Studies* 7, no. 3, 2003, pp. 349-362.

[6] HOFFMAN, J., *Citizenship beyond the state*, Sage publications inc. London etc, 2004, Electronic reproduction. Palo Alto, Calif : ebrary, 2009, p. 9

[7] KYMLICKA, W. and NORMAN, W., "Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts," in KYMLICKA, W. and NORMAN, W. (eds.), *Citizenship in Diverse Societies*, Oxford University Press, Oxford, 2000, p.1.

and diversity[8]. Yet increasingly it also has been interpreted in the opposite way. In the exclusive reading of cultural citizenship, the concept is given an "ethnic twist".[9] Obviously, these two interpretations rule each other out.

Because cultural citizenship is interpreted in so many contradictory ways, its meaning is diffuse at best. In this article the focus will not lay on the "contestedness" of the concept, however. The fact that a great variety of meanings exist is of course important, but what here is at stake, are also the practical implications of the concept in the context of the European Union (EU). Cultural citizenship was intended to build a more stable and cohesive society. That particular focus on culture however, might have drawbacks that question its very usefulness in this respect. To what extent is the application of cultural citizenship in the Member States of the EU a notion that, instead of expanding the possibilities to participate to all the different ethnic groups that live in a particular nation, is actually limiting these simply because of the focus on the cultural dimension? Firstly the various meanings and dimensions of citizenship will be briefly sketched. Then the introduction of European citizenship will be analysed, before turning to the different interpretations of cultural citizenship. Lastly a conclusion can be drawn about its usefulness and the potential risks involved.

II. **Meanings and dimensions of Citizenship**

In the simplest, narrowest definition citizenship is the legal relationship between the individual citizen and the polity. What this polity is, differed historically. In earlier times, for instance in antiquity, the polity in Europe was usually defined by the city. In the Netherlands in late medieval time, "burghers" belonged to the "civitas", the political community of the city. Interestingly though, in regions that were less urbanized such as the early modern Polish-Lithuania commonwealth, citizenship was a synonym for "nobility".[10] In early

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[8] DELANTY, G., "Citizenship as a Learning Process: Disciplinary Citizenship Versus Cultural Citizenship," *International Journal of Lifelong Education* 22, no. 6, 2003, pp. 597-605, esp. p. 598; STEVENSON, N., "Cultural Citizenship in the 'Cultural' Society: A Cosmopolitan Approach," *Citizenship Studies* 7, no. 3, 2003, 331-348, esp. p. 345.

[9] LÖFSTRÖM, J., "Historical Apologies as Acts of Symbolic Inclusion - and Exclusion? Reflections on Institutional Apologies as Politics of Cultural Citizenship," *Citizenship Studies* 15, no. 1, 2011, pp. 93-108, esp. p.104.

[10] TILMANS, K., "The concept of the Dutch citizen," *Resdescriptions.Yearbook of Political Thought and Conceptual History*. 8, 2004, pp. 146-171, esp. pp. 146-147. http://karintilmans.nl/pdf/citizenship.pdf, (last retrieval 10/10/2012); ELLIS, S. *et alter*, "Towards a citizenship of the European Union," in ISAACS, A.K. *et alter* (eds.), *Perspectives on European Integration and European Union History. A Cliohworld reader,* Pisa, 2011, pp. 45-72, esp. p. 59.

modern and modern times the different patterns of state formation resulted in a variety of definitions of citizenship rights and concepts in Europe. This great variety is still in existence: it has even been called the "last bastion of sovereignty" in the European Union in that respect.[11]

For the modern reading of the concept citizenship the French revolution is of particular importance. Concepts like the "equality" of citizens and their political and social participation were put forward. One of the most famous documents in this respect is the French Declaration of civil rights and the citizen of 1789. It stressed the equality of the citizens before the law, and the sovereignty of the nation. Everyone who had the status of citizen—large segments of the population, for instance women, or the poor, were left out at that time—was supposed to participate in the nation. Therefore the French revolution "invented" national citizenship, historian Rogers Brubaker argued, because of features such as the introduction of civic equality with shared rights and obligations, the doctrine of national sovereignty and the direct connection between citizenship and nationhood.[12]Paradoxically this republican notion of citizenship and nationhood emphasized universal rights, and made inclusion possible, but by stressing the unity of the nation also has entailed cultural assimilation.

Core elements in the concept citizenship are belonging (or membership)(1), rights (2) and participation (3). Depending on whether one uses a "thick" or a "thin" description, each of these concepts can mean different things. For instance membership or belonging can range from the legal, civic status, to cultural identity.[13] The political, social and cultural ties between the citizen and the political communities are dynamic and subject to change. This holds also true for the rights and laws that are codified by means of a continuous democratic decision-making process. Rights and laws are closely related to the political culture; norms and values form an intrinsic part of it.

When citizenship is analysed in relation to the rule of law, it can be perceived as an opportunity: the rights that a citizen has and can execute. Rights also define the way participation takes place. A democracy does not function if a majority of the citizens abstain from political or civic action, such as voting. "Good citizenship" implies therefore active citizens. Citizens only feel the urge to participate however, if they not only are a

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[11] BRUBAKER, R., *Citizenship and nationhood in France and Germany*, Harvard University Press, Cambridge, MA, 1992, p. 180.

[12] BRUBAKER, R.,*Op.cit.,* Chapter 2.

[13] BELLAMY, R., "Evaluating Union Citizenship: Belonging, Rights and Participation within the EU," *Citizenship Studies* 12, no. 6, 2008, pp. 597-611, esp. p. 599; see the table that Rainer Bauböck introduced in BAUBÖCK, R., *Recombinant Citizenship*, no. 67, Institute for Advanced Studies, Vienna, 1999, p. 4.

member of the community and but also to some degree committed to it. "Rights" of course are not fixed in time but will change in response to altered circumstances and contexts. This means that the circle drawn in figure 1 has no fixed direction: rights may define the participation, but participation also influences the content of rights.

Figure 1
Core elements of citizenship

III. **Dimensions**

Citizenship can be divided into various civil, political and social dimensions or capacities. It was the already mentioned British sociologist T.S Marshall who in 1949/1950 was breaking new ground with the idea of social rights as welfare rights that were awarded on the basis of the status of citizenship, instead of some sort of charity to the poor and needy. Marshall sketched a linear development of citizenship rights through time; starting with civil rights, leading to political rights and ending with social ones. In other words, citizenship rights were becoming more encompassing through time, as the idea of the specific role of a democratic state developed. Marshall's ideas were highly influential, and innovative; before especially the social dimension had not been addressed in great detail. Still the influence of this rather short essay is remarkable given its limited scope—Marshal

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was only taking into account the English situation, taking furthermore the family, with a male breadwinner as the basic social unit.

In Marshall's time the inequality in society could be redressed to a certain extent by the state. Because of global influences, international organisations and increasing European integration that situation has become more complex. Citizenship furthermore became less and less tied to one national polity only, especially in the European Union that made free movement and settlement and employment possible in the early 1990s. The cultural diversity in most of the European states has increased both due to migration to the EU as to the enhanced possibilities of settlement and employment within the EU. Therefore Marshall's sequential development of civil, political and social rights has been further elaborated, to include for instance cultural rights. That is one of the reasons why cultural citizenship came in vogue.

The role of (im)migration is of crucial importance then for the current debate about citizenship. Worldwide the estimate of migrants living abroad is almost 214 million; in Europe only this number in 2010 was close to 70 million.[14] The influx has in some countries led to a stricter policy, for instance with regard to the possibility of having two passports, or the introduction of so-called citizenship tests. In the last two decades the actual policy towards migrants in the EU has changed substantially. Due to the imposed restrictions on immigration, there no longer exists such a thing like "mass migration", though debates in (social) media and politics seem to suggest otherwise.[15] However, it is also true that the real number of immigrants is difficult to decide, since by definition the number of unauthorised and illegal immigrants can only by an educated guess.

The problem of stateless people and refugees as such hardly is a new phenomenon of course. In 1950 for instance the office of the United Nations High Commissioner was established by the General Assembly of the UN to address the problem of the large number of people that were still uprooted since the Second World War. In 1951 political philosopher Hanna Arendt addressed the issue of refugees and asylum seekers from another, theoretical, perspective. In her book Totalitarianism she famously criticized the concept of inalienable human rights because the first half of the 20th

[14] Dataset United Nation Populations division, http://esa.un.org/migration/p2k0data.asp. (last retrieval 14/9/2012). Based on United Nations, Department of Economic and Social Affairs, Population Division (2009). *Trends in International Migrant Stock: The 2008 Revision* (United Nations database, POP/DB/MIG/Stock/Rev.2008).

[15] See for figures on migration worldwide: *OECD Factbook 2011: Economic, Environmental and Social Statistics* (Paris: Organisation for Economic Co-operation and Development, 2011), http://dx.doi.org/10.1787/888932502923 (last retrieval 10/1/2012).

century had made clear that Rights of Man "proved to be unenforceable —even in countries whose constitutions were based upon them whenever people appeared who were no longer citizens of any sovereign state."[16] Minorities and stateless people in the 1930s and 1940s had lost their "right to have rights" and no place to turn to.[17] The membership of a political community therefore was crucial for having rights. Arendt's observation is still valid for illegal migrants and to some extent to the refugees and asylum seekers today. It is what has been called calls the "perils" of global citizenship: being a citizen of the world is not a positive feat if there is no legally constituted authority to turn to in case of need for protection.[18]

This important matter was also stated by the report that the "Group of Eminent persons of the council of Europe" published in 2011 on the question on how to combine diversity and freedom in 21st century Europe (2011). It pointed with concern to the policy in virtually all European states to control immigration, which in turn resulted in a substantial increase of illegal immigrants who are in fact "without the law" in the most literal sense. These people cannot invoke the protection of the law since the law consists the threat of deportation. Often asylum seekers enjoy very limited legal protection as well.[19]

In various countries in the EU the policy towards migrants and minorities became a matter for heated debate. Citizenship and citizen's rights developed into a highly precarious political area. Most of the European states introduced mandatory, test-based integration programmes, including sanctions for those who did not comply, ranging from fines, no family reunification to deportation. A clear relationship was suggested between integration and citizenship policies.[20] Other issues arose in the Member States that joined the Union in 2004. Russians, for instance, found themselves stateless in the former Baltic States.[21]

While a lot of European Member States countries have adopted new citizenship laws, there is no convergence with regard to the content. The

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[16] ARENDT, H., *The Origins of Totalitarianism*, Meridian books, 2nd enlarged edition 1958, New York, 1962, pp. 290-293

[17] ARENDT, H., *op. cit.,* pp. 296-297.

[18] BOWDEN, *op. cit.*

[19] *Living together. Combining Diversity and Freedom in 21st century Europe* Report of the Group of Eminent persons of the council of Europe, 2011, http://book.coe.int/ftp/3664.pdf, pp 20-22 (last retrieval 12/10/2012).

[20] KOSTAKOPOULOU, D., "Introduction", in OERS, R. VAN, ERSBØLL, E. and KOSTAKOPOULOU, D., *A Re-Definition of Belonging?,* Extenza Turpin distributor, Biggleswade, 2010, pp.1-24.

[21] BAUBÖCK, R., "Who are the citizens of Europe,"*Eurozine*, published 23 December 2006, web www.eurozine.com (last retrieval 15/9/2012).

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Member States have, however, worked towards creating a common European agenda since 1993 with regard to immigration and integration. In this respect the Communication on *Immigration, Integration and Employment* (2003) is relevant, since a " comprehensive" integration policy was called for. This implied next to socio-economic aspects, also cultural diversity, citizenship, participation and civil rights. Anti-racism and anti-discrimination were important elements in this approach[22]. The European Pact on Immigration and Asylum, that was submitted by the French Presidency and adopted in October 2008 by the European Council, seemingly adorsed this Communication. However, Doro Kostakopoulou, specialist in European Law and European Integration calls this in practice a retreat from pluralism, since the text explicitly referred to the "integration capabilities of migrants"[23]. The original version had included a compulsory integration contract that required migrants to conform to the national identity of the Member State.

The problem is of course that a strong stress on integration, or even assimilation, may conflict not only with the European Convention on Human Rights (1953), but also with the political criteria and democratic values that the European Council in Copenhagen had laid down as criteria for European Membership (1993). These criteria determined which states might join the European Union, which was established with the Treaty of Maastricht (1992). It was this treaty that also started a new phase of European citizenship in Western Europe.

IV. **European Citizenship**

The treaty of Maastricht formally introduced European citizenship on top of national citizenship. The inclusion of European citizenship in the treaty was an important example of the pluralistic, inclusive, model of citizenship. The aim was to enhance and nurture feelings of belonging to Europe next to the national identity. This idea had been proposed before; in particular the ad-hoc Committee of the European Council on "A People's Europe" should be mentioned. As chair PietroAdonnino in 1985 had

[22] KOSTAKOPOULOU, D., *op. cit,* p. 13.

[23] KOSTAKOPOULOU, D., *op. cit*, p. 17. France does not recognise national minorities; it has signed nor ratified the Framework Convention for the Protection of National Minorities (FCNM). http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf (last retrieval 11/10/2012). Of the EU Member States Belgium, Greece, Island and Luxembourg have signed but not ratified FCNM. See also SASSE, G. and THIELEMANN, E., "A research Agenda for the Study of Migrants and Minorities in Europe," *Journal of Common Market Studies (JCMS)* 2005 vol 43 655-671, esp. p. 660.

written the president of the European Council in the accompanying letter to the proposals of this committee: "It is essential to ensure for the citizen an active role as a participant in a Community which he understands and which offers real influence to him on matters of importance for his life".[24] In a community that strived for a "Europe sans frontières", specific symbols were important to underline and strengthen this aim. A flag, anthem, emblem and a special Europe day were mentioned in that respect. In other words, these were all efforts to stimulate a common European identity and community[25]. The committee's proposals were adopted in Milano 1985.

Felipe González, former Spanish prime minister and member of the European Council, in retrospect explained the formal inclusion of European citizenship in the Treaty of Maastricht as a "proposal aimed at convincing Europe's men and women that what we were doing (in making the European Union) only made sense if we viewed Europe as belonging to its citizens. National identities and original citizenships would be compatible with this idea. We meant to add it as a bonus, as Europeans who shared a common project".[26] González stressed that citizenship is not simply a legal status but also an identity that does not interfere with the national or regional identity. This last provision was even explicitly stated in the treaty of Amsterdam, 1997[27].

From the outset then, the idea of European citizenship was closely connected to attempts at strengthening democratic legitimacy in the European Union, and increasing popular support for the EU. However, this positive idea was not very successful. Many citizens in Europe viewed attempts to create a European citizenship with suspicion; and, as the opinion polls of the Euro barometer shows again and again, the respondents' identification with the nation or region far exceeds than with Europe.

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[24] "A People's Europe. Reports from the ad hoc committee," *Bulletin of the European Communities Supplement* 7/85, quote on p. 7. http://aei.pitt.edu/992/1/andonnino_report_peoples_europe.pdf, (last retrieval 27/9/2012).

[25] See for a critical view on the importance of these symbols to create a "politics of emotion", PAPAGAROUFALI, E., "Of Euro-symbols and Euro-Sentiments: The case of Town and School Twinning," *Historein* 8, 2008, pp. 72-82, esp. 73. http://www.nnet.gr/historein/historeinfiles/histvolumes/hist08/historein8-papagaroufali.pdf, (last retrieval 111/10/2012).

[26] GONZÁLEZ, F., "European Union and Globalization," *Foreign Policy,* No. 115, Summer, 1999, pp. 28-37, esp. p. 30. Jstor. (last retrieval: 14/06/2012). SHORE, C., *Building Europe: the Cultural Politics of European Integration,* Routledge London, 2000, pp. 74-75; SHORE, C., "Whither European Citizenship? Eros and Civilization revisited," *European Journal of Social Theory* 7, no.1, 2004, pp. 27-44, esp. pp. 30-31.

[27] PREUSS, U.K. *et alter*, "Traditions of Citizenship in the European Union," *Citizenship Studies*, 7, no. 1, 2003 pp. 3-14.

This illustrates also how very much the three earlier defined core elements in citizenship—belonging, rights and participation—must be considered as a whole. Attempts a creating a feeling of belonging through simply proclaiming citizenship backfires.

Voting has been called crucial to the act of citizenship in democracies. "No act of citizenship, and no form of participation, is more important in a democracy than that of voting".[28] Yet in order to take the trouble to vote, there also needs to be an urge for civic participation, and the idea that the vote makes a difference. In that respect the turnout at elections for the European Parliament does not render a positive image; it is rather low and gradually decreasing. (See figure 2). The question "where should we invest our money", that was used in the last election campaign for the European parliament (2009), was highly relevant. But it did not convince. Many European citizens did not consider it worth taking the trouble to take part in the election process. The average turnout was only 43 %.

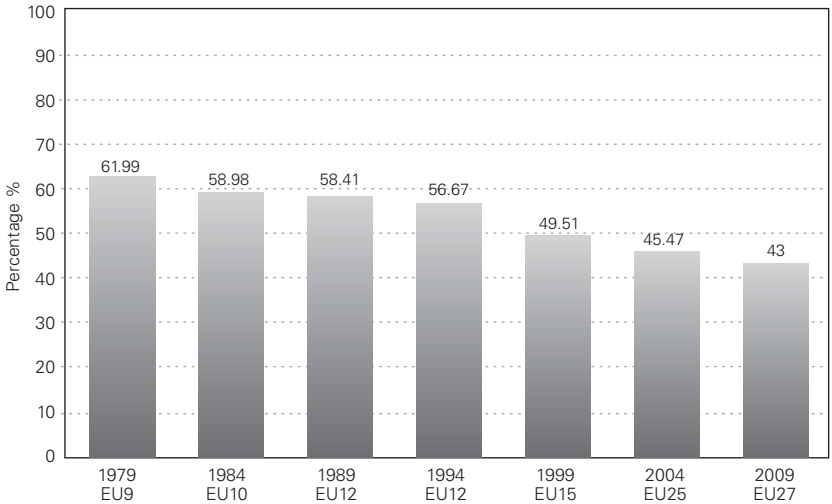

Figure 2

Turnout at the European elections (1979-2009)

Source: http://www.europarl.europa.eu/aboutparliament/en/000cdcd9d4/Turnout-%281979-2009%29.html

[28] KIDD, Q., *Civic Participation in America,* Pallgrave, Macmillan, Houndmills, Basingstoke, New York, 2011, p. 13.

However, because the European Parliament (EP) is not a sovereign legislative body—European citizens can only in a very limited sense use democratic rights usually related to citizenship—the turnout necessarily only to a limited degree can serve as a measuring rod. The EP only to a limited degree serves as a "real" parliament; there is no government that the members of parliament can send home. What is not helpful either to attract interest, is the fact that the elected are member of national parties that in the EP usually cooperate in transnational groups. Therefore parties that at a national level may compete, cooperate closely at transnational, European level, in most cases in "Europarties"[29]. Yet, the Members of the EP are seldom elected because of their salient capacities in European politics; national issues play the upper role here as well. It makes politics at the EP not easy to gasp.

The most powerful impact of European citizenship, anyhow, is therefore not the franchise to the European parliament but the earlier mentioned creation of a common space of free movement and settlement. One might very much question however, whether this particular provision created a sense of togetherness, and/or belonging and whether it stimulated the idea of a common European identity.

Of course European integration has stimulated jobs and employment, and created a dynamic society with a lot of social interaction at various levels. The number of people that travel across borders, and live, work or study abroad has risen enormously. One of the major problems is however, that patterns of shared culture and interaction tend to follow social class-lines. Those who feel European and favour the European integration process are usually found in the middle and upper middle classes; and do not hold conservative nationalistic political views. They also tend to be relatively young[30].

The free movement and settlement has also stimulated Eurosceptic feelings. The fear of an influx of cheap labour from the new EU countries did not strengthen the idea of a common European identity and citizenship. The fact that in 2004 no less than 12 of the member states opted for restrictions on the opening of their labour markets to citizens of the new member states was an important, negative, signal.[31]

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[29] See for a list of the grants 2004-2012 http://www.europarl.europa.eu/pdf/grants/grant_amounts_parties_01-03-2012.pdf, (last retrieval 25/09/2012).

[30] FLIGSTEIN, N., *Euroclash: The EU, European Identity, and the Future of Europe: The EU, European Identity, and the Future of Europe*, Oxford University Press, Oxford, etc., 2008, pp. 136-139 ;"Future of Europe , Standard Eurobarometer 71/spring 2009, pp. 34-37. http://ec.europa.eu/public_opinion/archives/eb/eb71/eb713_future_europe.pdf, (last retrieval, 11/10/2012).

[31] BAUBÖCK, R., "Who are the citizens of Europe," *Eurozine*, published 23 December 2006, web www.eurozine.com, (last retrieval 15/9/2012).

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The introduction of the idea of European citizenship in the 1990s had meant to foster both the regional and national identity, and the feeling of belonging to a larger community. A comparable project, this time by the Council of Europe, was the Education for Democratic Citizenship (EDC). It started in 1997 and aimed at identifying values and skills that citizens needed to become a "participating citizen", subsequently how these skills were acquired and could be disseminated. May 1999, at its 50th anniversary, the Committee of Ministers of the Council of Europe agreed upon a Declaration "For a greater Europe without dividing lines" that contained an Appendix devoted to a Declaration and Programme of Education for Democratic Citizenship. The idea was that if citizens obtained knowledge about the institutions and practices of democracy, and learned how to exercise influence at various levels, they could also deal with the difference "knowledgeably, sensibly, tolerantly and morally". This would strengthen mutual understanding, as well as social cohesion. Democratic and active citizenship were mentioned in one breath.[32]

A current project, subsidized and stimulated by the European Commission is the *Europe for Citizensprogramme*. An earlier edition had been called Europe of citizens. It started inin 2007, with a total budget 215 million Euros, and will conclude in 2013 with the *European Year of Citizens*. Ranging from town twinning meetings to remembrance projects, this programme's intention is to develop mutual understanding and a sense of European identity by personally involving European citizens. The keyword in this programme is "active citizenship".[33] At European institutional level citizenship is considered of crucial importance. A future programme 2014-2020 will focus on civic participation.[34]

Yet in recent time the EU has also taken a step backwards. The negative outcomes of the referenda on ratifying the *Treaty establishing a constitution for Europe* (TCE) of 2004 in France and the Netherlands in May-June 2005, showed that at least the voters that said "NO" still had to be convinced of the merits of further integration. While the TCE had included a reference to

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[32] Council of Europe. Committe of Ministers, The Budapest Declaration For a greater Europe without Dividing Lines, 7 May 1999. WEB; https://wcd.coe.int/ViewDoc.jsp?id =448149&Site=CM, (last retrieval 27/9/ 2012); see also STARKEY, H., "Democratic Citizenship, Languages, Diversity and Human Rights. Guide for the development of Language Education Policies in Europe From Linguistic Diversity to Plurilingual Education". Reference Study http://www.coe.int/t/dg4/linguistic/Source/StarkeyEN.pdf, (last retrieval, 26/9/2012).

[33] http://eacea.ec.europa.eu/citizenship/programme/about_citizenship_en.php (last retrieval 11/10/2012).

[34] http://ec.europa.eu/citizenship/about-the-europe-for-citizens-programme/future -programme-2014-2020/index_en.htm, (last retrieval 11/10/2012). The new budget is 229 million Euro.

EU symbols such as the flag, and the anthem, any state-like Union symbols, as well as terms such as constitution and foreign minister were omitted in the treaty of Lisbon (2007) that came in place for the TCE. The Euro was the only exception.[35] Leaving out the symbols that referred to nation-states was a kind of lip-service to those who feared a European super state or a European citizenship coming instead of nationally defined one. This may give a clue about the prospects of cultural citizenship that has been promoted in lieu of nationally defined citizenship.

V. **Cultural citizenship**

The notion of cultural citizenship is very much related to research and debates on multiculturalism, globalisation, integration and assimilation. Academics such as sociologist Gerard Delanty for instance, stress the role of citizen as an active agent. Citizenship is not confined to the territorial limits of a given state anymore; it is multi-leveled. Because the nation-state has become less "sovereign" due to processes such as globalisation of markets, communication and European integration, he argues that the nation-state, though still powerful, no longer can provide the framework for citizenship in all its aspects. His conclusion is that citizenship reflects "the pluralism of contemporary culture and the fact that there is no single national culture but contested sites of belonging" [36].

Cultural citizenship has also been interpreted as a specific *cultural policy* to build upon coherence and stability in society. In 2007 the Dutch advisory body Council for Culture for example specifically mentioned the notion of cultural citizenship in its report *Innovate, Participate!* Culture, it stated, was the glue that keeps citizens together, much more than for instance than public authorities were able to do, and cohesion was particularly important in a time in which forces like migration, globalisation had made the society more diverse. The Dutch official policy towards arts, heritage and media should stimulate and enable citizens to make the "proper" decisions. In other words cultural policy with an open eye and mind for differences in society would encourage the acceptance of diversity in the country with it all its ethnic and cultural differences and

[35] The Treaty of Lisbon, http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.5.pdf; See OFFICIAL JOURNAL OF THE EUROPEAN UNION, *Treaty establishing a Constitution for Europe*, 16-12-2004, pp. C310/13. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0011:0040:EN:PDF, (last retrieval 11/10/2012).

[36] DELANTY, G., *The Cosmopolitan Imagination, the renewal of Critical Social Theory,* Cambridge, University Press, Cambridge, 111-131, quote on p. 125.

varieties.[37] The report clearly distanced itself from a xenophobic and closed community approach that, as was stated on the very first page of the report, did not fit in the Dutch tradition of cosmopolitanism, enterprise, tolerance, democracy, freedom and innovation. Culturally citizens are not limited to national borders, but consumers of what was called "worldwide cultural heritage". Arts, cultural practices and cultural institutions were important means to develop a "national political community in a global context".[38]

In the meantime this report did not signify a clear difference with the cultural policy that was already in place: it fitted neatly in the concrete actions that the then incumbent State Secretary had proposed in June 2006 to promote diversity, for instance in the Programme for Cultural Dialogue.[39]

However, at the same time another interpretation of cultural citizenship was clearly visible as well, also in the Netherlands. In contrast to the aforementioned inclusive models of cultural citizenship, it is another interpretation that stresses the role of education in turning newcomers such as immigrants to "proper" citizens. In fact that model is increasingly taken: the common tendency in Europe in general is to equate incorporation ofindividual migrantson equal terms in the core institutions of society,with the necessity of the acquisition of "cultural competences".[40] Which cultural competences exactly, and to what degree, are not answered in the same way in the various European Member States. The ultimate form are the citizenship tests that ideally constitute a bridge to the culture, responsibilities, privileges and values of their new country. The tendency then within European national states is towards a *more* instead of a less nationally defined citizenship. In citizenships tests for prospective citizens that have been installed in countries such as Great Britain, Germany and the Netherlands, values play a distinctive role. New citizens are not only asked about their knowledge of the language and law and order, but also should be able to show whether they are able to understand way of living in their prospective country.[41]

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[37] RAAD VOOR CULTUUR, *Innoveren, Participeren! Advies Agenda Cultuurbeleid en CultureleBasisinfrastructuur.* Den Haag, 2007.

[38] RAAD VOOR CULTUUR , *op. cit.,* p. 13, See also BOOMKENS, R., "Cultural citizenship and real politics: the Dutch case," *Citizenship Studies*14, No. 3, 2010, pp. 307-316, esp. p. 313.

[39] MINISTRY OF EDUCATION, CULTURE AND SCIENCE, *Cultural Policy in the Netherlands*, edition 2009, Ministry of Education, Culture and Science/Boekman*studies,* The Hague, Amsterdam 2009, p. 58.

[40] *Integration and Integration policies*. IMISCOE Network Feasibility Study, University of Bamberg, 2006.http://www.efms.uni-bamberg.de/pdf/INTPOL%20Final%20Paper.pdf. Last retrieval, 11/10/2012.

[41] JONG, J. DE, "'Here we go again'. The Supposed Failure of Multiculturalism in Historical Perspective," in TAMCKE, M., JONG, J. DE, KLEIN, L. and WAAL, M. VAN DER (eds.), *Europe – Space for Transcultural Existence* Volume 1 in the Series "Studies in Euroculture", Universitätsverlag Göttingen, 2012, pp. 116-128.

This reading of cultural citizenship is closely related to a more critical stance in the public domain on the multicultural society. This in its turn has different causes. Often the terrorist attacks of 9/11 and subsequent terrorist activities in Madrid and London are put forward as crucial in changing the mindset to more critical views. In the Netherlands the murder of a right wing populist politician and a polemic filmmaker—both notorious for their criticism on Islam—definitely played an important role in the hardening of the tone of the national debate on the multicultural society. The 2005 "banlieue" riots in Paris were put forward in the public debate as proof for the failure of the French model of integration. In popular discourse the term banlieue, which simply means suburb, quickly became shorthand for the discussion of the role of ethnic minorities and Islam in France. The paradox was that when Islam leaders were trying to calm down the riots, they failed because the rioters did not associate with Islam, yet precisely because these Islam leaders took this responsibility; this reinforced the image of the riots as "an Islam problem", while in fact social economic conditions played an important role.[42] A study in 2009 demonstrated ethnic profiling in stops and identity checks by the police in Paris.Especially young members of ethnic minorities were subject to police checks because of their physical appearance and style of clothing, not because of their behaviour.[43]

In November 2009 an official national debate started in France, initiated and monitored by the ministry of National Identity, Integration and Immigration. It had the aim to collect views of the public about what

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[42] GREWAL, K., "'The Threat from Within' - Representations of the Banlieue in French Popular Discourse," in KILLINGSWORTH, M. (ed.), *Europe: New Voices, New Perspectives: Proceedings From The ContemporaryEurope Research Centre Postgraduate Conference, 2005/2006* (Melbourne: The Contemporary Europe Research Centre, The University of Melbourne, 2007), pp. 41-67, quote on p. 47.

http://cerc.unimelb.edu.au/publications/Europe%20new%20voices%20ch3.pdf. Last retrieval 28 Sep. 12. EL-TAYEB, F., "'The Birth of a European Public': Migration, Postnationality, and Race in the Uniting of Europe", *American Quarterly*, 60, 2008, pp. 649-670.

In the meantime the riots and looting that took place in suburbs of London in August 2011 and some days later in cities such as Liverpool and Manchester showed that riots, looting and heavy violence certainly are not the prerogative of ethnic minorities. Where social economic deprivation may have been of importance in England, very recent heavy fighting and looting between youth and the police in a quiet town of Haren, the Netherlands, after a facebook invitation for a birthday party went viral, showed many influences, such as the role of social media, copy-cat behaviour after a popular film ('Project X), 'hooliganism', as well as boredom, but no deprivation of any kind.

[43] OPEN SOCIETY FOUNDATIONS, *Profiling Minorities: A Study of Stop-and-Search Practices in Paris*, 2009, p. 10 URL: http://www.soros.org/sites/default/files/search_20090630. Web.pdf last retrieval 10 October 2012. PATRICK, S., *French National Identity and Integration: Who Belongs to the National Community?* Washington, DC: Migration Policy Institute 2012, p. 16.

constituted French values and patriotism. It seemed as if the issue was how to define a "good Frenchman" and a good citizen. The official website of this debate went haywire at once and proved a format for extreme-right utterances. This debate proved to be highly divisive and was stopped after a few months.[44]

This example shows that a particular focus on culture and identity is risky. In the concept citizenship one might argue that this emphasis has little *practical* added value. Cultural particularities and characteristics are already embodied in the laws of the country. Culture, values, and identity are embedded in the three key dimensions of citizenship: membership/ belonging, rights and participation. Furthermore it is important to make a clear and proper distinction between civic rights and identity. A newcomer to a country obviously should respect the laws, but that does not imply that all values should be adopted as well. As philosopher TzvetanTodorov remarked in *The Fear of Barbarians* "Only totalitarian states make the love of one's country obligatory".[45]

VI. **Conclusion**

Citizenship is a very important concept both in a national and European context. Only a broad, "comprehensive" understanding of citizenship can reflect the interconnectedness and multiplicity of political, social and cultural ties between the citizen and the polity. Legal, political, social 'and cultural rights and obligations are all part of contemporary citizenship.

Citizenship should not be conflated with (national) identity issues. In Europe, that is multi-ethnic and multi-cultural by definition, issues related to national identity have proven to be issues that arouse passions very quickly and tend to be very divisive.

To lay the stress on the cultural dimension in the concept citizenship is no problem provided that this does not limit the rights and obligations of citizenship to the cultural field only. Terms that define action or participation, like "active citizenship" however, are less sensitive and therefore more useful than the idea of cultural citizenship. While active citizenship defines what someone *does* with his or her rights and obligations, how to put it into practice, cultural citizenship can best be understood as a *dimension* of citizenship.

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[44] MOERLAND, R., "French Identity debate is getting out of control", 22-12-2009, *NRC.NL* International edition. Website archive.http://vorige.nrc.nl/international/article2443227.ece/French_identity_debate_is_getting_out_of_control. Last retrieved 5/10/2012.

[45] TODOROV, T., *The Fear of Barbarians:Beyond the Clash of Civilizations*, translated from the French by BROWN, A., Polity Press, Cambridge, 2010, pp. 80-81.

It is like sociologist Ralf Dahrendorf wrote "A civilised society is one in which common citizenship rightscombine easilywith differences in race, religion or culture. It is also one that does not useits civic statusas a weapon for exclusion".[46] Citizenship today no long reflects upon sovereign, closed and homogeneous political communities—if indeed it ever deed. Certainly European citizenship does not. Citizenship reflects diversity.

[46] DAHRENDORF, R., "Citizenship and social class," in BULMER, M. and REES, A.M. (eds.), *Citizenship today. The contemporary relevance of T.H. Marshall* UCL Press, London and Bristol 1996, pp. 25-48, quote on p. 32.

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The political innovation of the European Union*

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Abstract: The political innovation represented by the European Union can only be understood if the perspective and the concepts inherent to the national state are abandoned. This paper aims at examining such innovation from an analysis of the European identity, weaker than usually believed, in historical and geographical terms, as well as from the understanding of the EU's original methods of governance, thus conceiving it as an experiment of global reach.
Keywords: European identity, governance, globalization.

Resumen: *La innovación política que representa la Unión Europea solo puede ser entendida si abandonamos la perspectiva y los conceptos propios del estado nacional. Este artículo propone examinar dicha novedad a partir de un análisis de la identidad europea en términos históricos y geográficos, más débil de lo que suele creerse, desde la comprensión de sus originales métodos de gobernanza y concibiendo la UE como un experimento de alcance global.*
Palabras clave: *Identidad europea, gobernanza, globalización.*

I. Introduction

Europe is often said to have communication problems. I would like to begin this paper by saying that this is not surprising, taking into account the very nature of this political undertaking. Jacques Delors himself said that what we are facing is an unidentified political object; we should then not be at all surprised that public perception is often blurred and confused.

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This perplexity would be minimal if we were dealing with a configuration that could be guided by the traditional categories of the nation state or international relations, if we were building a national state on a larger scale or intensifying relations between sovereign states. However, this integration process is unique and requires original concepts and actions. For this reason, my reflections on Europe are not so much on the way to communicate as on what must have been previously understood to be able to communicate; they are not instructions for use but guidelines for understanding.

A lot has been said about the democratic deficit. However, I believe that Europe's deepest problem is its cognoscitive deficit, our lack of understanding about what the European Union stands for. It is difficult for us to understand that we are facing one of the greatest political innovations in recent history, an authentic laboratory to test a new formula for identity, power or citizenship within the framework of globalization. The crisis behind the failure of the Constitution or the widespread disaffection concerning the possibilities for further integration are mainly due to poor understanding of what we are and what we are doing, or, if you allow me this statement, the lack of a good theory of Europe. The deficit I have mentioned is not a communication problem that can be solved with better marketing techniques. It is a lack of understanding and conviction (among citizens and their government leaders) about the originality, subtlety, meaning and complexity of the European construction. This explains the citizens' fears and the modest ambitions of many of their leaders. The ideas that many people hold about Europe are full of misunderstandings, at the mercy of superficial public opinion: Europe is seen as a supplementary power scale, a strategy to survive in the face of globalization seen as a threat, a political system replicating the nation state model... Frequently, some countries seem to be firm believers in Europe because they appreciate the subsidies they have received while others see Europe as a threat and fail to recognize the opportunity it represents. Both sides have the wrong idea of what Europe stands for, and until this misunderstanding is cleared up, endorsement of the EU's political project will continue to be weak or shallow.

What Europe needs is to know itself and renew its coherence. No progress can be made in political integration if we do not openly tackle the issue of the nature of Europe, if we ignore the deep issues of what it is and what it can be. Needless to say, until this point is clarified, no communication policy within the European Union can be efficient, above all in a mature society where it is increasingly difficult to act without being accountable. As Julia Kristeva[1] said: Europe must become not just useful

[1] KRISTEVA, J., *Crisis of the European Subject,* New York: Other Press, 2000.

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but meaningful. Understanding Europe is the first step to give it meaning and direction, to tell the public what should receive their assent after public debate. This clarification may have been considered idle for some time, but it has now become unavoidable to have an idea of Europe which can explain its uniqueness and the possibilities it contains.

I am going to try to demonstrate the European Union's originality in six aspects: 1. The European *identity*, more complex and diverse than what we tend to think; 2. The European *space*, with margins rather than limits or borders; 3. European *governance* testing a new political structure that goes beyond the nation state and sovereignty; 4. European *economic governance*, meaning pooling risks; 5. European *citizenship,* which has become pluralized and whose endorsement is needed to advance towards greater integration, and 6. A globalized Europe that could serve as a model for an interdependent world. The aim of this paper is to reflect on these six topics (identity, space, government, economy, citizenship and globalization) and explain why Europe, paradoxically, has a poorly defined identity, a space that is not closed, a government that is not sovereign, an economy that shares risks, citizens with a conditional loyalty and a sense of "us" without others.

II. **European identity: an "us" made up of others**

Europe has often been defined from geographic, cultural, historical and political factors supposed to form the basis of a unique civilization and to give rise to a Western model of modernity. However, a closer look shows that the issue of identity is more difficult to define. From the geographic point of view, Europe lacks natural limits: the Atlantic does not separate its shores in absolute terms, above all because of the peculiar relationship between Great Britain and the United States or Spain and Portugal with Latin America; the Mediterranean is a space that separates as much as it unites and relates; towards the East Europe has no clear border. If we understand Europe as a continent, it is even less clear. Paul Valéry aptly described it as a small promontory of Asia[2]. In this sense, Europe is even less consistent geophysically than, for instance, the Indian subcontinent. In terms of civilization, Europe stretches towards Asia and encompasses a large part of the Mediterranean.

From the historical point of view, Europe is not a uniform civilization that has followed a unique path clearly different from the rest of the world.

[2] VALÉRY, P., "Note (ou L'Européen)", in *Œuvres*. I, Paris: la Pléiade, 1957, pp. 1000-1014.

Europe's cultural diversity is more than the diversity of the nations forming it. Europe has been formed by the interaction and mutual fertilization of its civilizations. Therefore, it more closely resembles a "constellation of civilizations"[3] than one civilization.

When attempting to effectively identify European s, there is no all-encompassing inclusive identity. European s are not especially united and are even less likely to define themselves as opposed to otherness. As Brague said, "the danger for Europe cannot come from outside simply because it cannot consider itself as an inside"[4]. The forces that keep us together are not especially emphatic, nor is that which makes us different from others.

Nor can Europe be defined as the West. The historical roots of Western civilization—Athens, Rome, Jerusalem—were not European in the Western sense of the word. We often forget that Western culture and civilization were originated in the Eastern world. The ancient world was Eastern rather than Western. Classical antiquity and the origins of Christianity were Mediterranean in the sense used by Braudel[5]. The Romans, like the Greeks, did not have a clear sense of European identity, which was more typical of the Middle Ages. Rather, the Romans thought of Rome as the centre of the world. Because of its history, Europe is not the same as the West, and this is especially true in the present time.

Ancient peoples thought that the North-South division was more meaningful than the East-West one. For many years, the Alps stood for a geographical and cultural frontier much more than the Mediterranean, which was considered the centre of civilization. The counter position East versus West originated when the idea of Europe was articulated against Islam in the seventh century. This counter position continued throughout the Middle Ages, in modern times and until the end of the Cold War.

The enlargement of the European Union towards the East is qualitatively different from former enlargements. It is not only a significant increase of member states but also a reshaping of its civilization framework. By moving Europe's borders towards Russia and with the future entry of Turkey, Europe is moving towards Asia and becoming increasingly post-Western and polycentric. This makes it possible to overcome the "little Europe" of the Cold War. Enlargement not only makes Europe larger but also transforms it qualitatively. The fall of the Communist regime did not eliminate the East but reshaped it, a new "East" that is going to be

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[3] DELANTY, G. and RUMFORD, C., *Rethinking Europe. Social Theory and the Implications of European ization,* Routledge, London, 2005, p. 37.

[4] BRAGUE, R., *Eccentric Culture: A Theory of Western Civilization,* Augustine's Press, South Bend, 2002, p. 185.

[5] BRAUDEL, F., *La Méditerranée,* Flammarion, Paris, 1999.

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increasingly relevant in the new Europe. The fall of the Berlin Wall in 1989 meant the disappearance of the sharp distinction East versus West and gave rise to a new European era oriented toward building a multipolar world.

The answer to the recent debate on "Europe's Christian roots" can best be understood within these premises. If European identity is not codified in a cultural package, it cannot be defined in terms of religious identity, either. Europe's identification with Christianity—which comes from the Habsburgs and was used at the time to oppose the Ottoman Empire—does not do justice to Europe's religious pluralism either in historical or sociological terms. It does not succeed in explaining the significance the religious dimension has had and still has in Europe. The problem is not admitting or just forgetting the importance Christianity has had as one of Europe's foundations. To begin with, this acknowledgement cannot be fair if it forgets that there are other religions that have contributed to shape our constituent identity. This pluralism (which cannot be understood without the Jewish or Islamic influence) is required by our history. However, this pluralism is also demanded by the current configuration of our societies, home to, for example, over fifteen million Muslims. This said, the core issue lies in the fact that the definition of citizenship cannot be determined by a reference to a culture or religion. Europe will certainly have to adjust to a pluralism that does not only refer to diverse religions but to the diverse meanings religion has for our fellow citizens. But we will have to do it within this dissociation between the identitarian and the public that has allowed, like no other, the coexistence of beliefs and lifestyles.

Europe is not a lifestyle, a people, a civilization or a super-state. Rather, it is a particularly original construction allowing the possibility of accepting legally binding rules that stem from the articulation between spaces that are neither homogeneous nor wholly unified. In this way, the EU differentiates itself from the traditional constitutionalism that called for unity of *demos,* which very often also entailed political, cultural or linguistic unification. This dissociation between the identitarian and the political constitutes one of its most interesting innovations. This contemplates the possibility of a democracy without *demos* or with diverse *demoi,* a vaguely defined, not clearly limited and porous people, not necessarily opposed to others.

This difficulty to describe Europe in cultural terms that refer to a common history, a defined common territory or a set of shared values makes the configuration of a European public space particularly important: Europe must be seen as a conversation, as a discursive space that does not need determining bases but opportunities for dialogue

If one had to stress a particularly characteristic value in the midst of this pluralism, I would say that the starting point would be Montesquieu's sharp remark when he said that Europe has always been especially interested in

knowing what others think about us. I think it is this will to see ourselves from the outside, rather than a supposed defence of something exclusive, that is at the origin of our best constructions. And, what if our fundamental values were a set of habits that have shaped an identity that continuously makes us keep at bay from our own identity? Self-relativization, reflexivity, distance from oneself, curiosity, respect, interest in compatibility, willingness to cooperate and recognition are the descriptive features of a weak kind of identity without which the European experiment would not be possible.

III. **European spaces: margins that do not set limits**

The European space is a key issue to understand the meaning of European integration. From this point of view, we can also come across some peculiarities that are essential if one needs to understand the innovation represented by the European space. The European Union is a singular space. As a unified political space it represents an innovation that demands the reconsideration of the premises concerning the conventional conception of territoriality. It is not surprising that the EU has come up with some new spatial terms: networks, variable geometry and multiple levels, among others. This innovation reveals that we are rehearsing the possibility of an organization of the political space beyond certain territorial premises of the nation-state[6].

The first category that may be eroded by the new constellation is the idea of a delimited space. We are used to thinking of political spaces as delimited, articulated into states and divided by borders. In the case of the EU what we have, both inwards and somehow outwards, is a plurality of spaces that cross and overlap each other. The European space has margins or 'borderlands' rather than limits. From a geopolitical point of view, its Eastern or Mediterranean borders are not properly fixed limits, but margins that do not limit, relatively porous thresholds, dynamic zones where ways of connectivity and discontinuity are articulated. Margins do not necessarily divide spaces; they can also unify them in some way and behave as points of suture[7]. Something that also occurs in other places in the world is particularly intense in Europe. Globalization means a continuous crossing of spaces, a dialectics of limitation and delimitation. Rather than being

[6] BARRY, A., *Political Machines: Governing a Technological Society,* Athlone Press, London, 2001.

[7] HANSER, P., "Fixed Borders or Moving Borderlands? A New Type of Border for a New Type of Entity", in ZIELONKA, J., *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union,* Routledge, London, 2002, p. 40.

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reduced to a divisory line, discontinuities take place within a space[8]. This is the reason why borders have lost their old strategic role. Therefore, the outbreak of new conflicts does not take place in contact areas, but inside the supposedly delimited spaces themselves.

From this point of view, one can state that the idea of margins resembles rather the *limes* of an empire than the traditional border of modern states. In this sense it seems to be appropriate to compare the EU and the old empires, to which it may be bear more resemblance than to national states from the point of view of the organization of space. The issue is that contact zones do not delimit spaces in the same way as the borders that safeguarded territorial integrities. Unlike limits, margins do not make a complete distinction between those inside and those outside; they do not delimit them in a definite, sharp way. Margins are spaces that are neither fully integrated nor absolutely exterior; and they cannot be tamed. The nature of margins manifests itself in their expandable character or in the possibility of maintaining privileged relationships with certain environments. When it comes to understanding the kind of borders in the EU, it is very significant to consider the argument that the enlargement took place because there were no reasons for opposing it. Due to its peculiar identity, the EU lacks uncontroversial arguments to set its limits.

I think that in the current discussions on the future of Europe, one tends to neglect this sort of decisive issues. For example, debates on 'integration' tend to ignore other key issues that belong to its spatial shape: provided Europe is a network, internal coherence is as important as the articulation established with its surroundings and the rest of the world. The European space cannot be properly understood if it is reduced to a matter of integration—domestic—and if its connectivity is neglected—external. This is what makes it more complex and dynamic. It is in fact this idea of 'European margins' that suggests there is another logic in the process of integration: its incapacity to either wholly unify its political, economic or social spaces or to limit them outwards stems from two different facts. First, that the EU is less separated from the rest of the world than we usually think, and second, that globalization does not make it different from other regions in the world, but means its interpenetration[9]. This may be the reason why it makes sense to define Europe itself, the whole of it, as "borderland"[10], in the sense that Europe itself is both a crossroads and

[8] SASSEN, S., "Spatialities and temporalities of the global: elements for a theorization", in APPADURAI, A. (ed.), *Globalization,* Duke University Press, Durham, 2001.

[9] DELANTY, G. and RUMFORD, C., *op. cit.,* p. 134.

[10] BALIBAR, E., *We the People of Europe: Reflections on Transnational Citizenship,* Princeton University Press, 2004, p. 220.

a site of conflict, a space where global interdependences are particularly intense.

The *European Neighbourhood Policy* (ENP) constitutes the clearest manifestation of the EU's interest in acting beyond its immediate sphere and assume its responsibilities concerning the governance of civilization. The Commission is growingly aware of the fact that, as a consequence of globalization, financial flows, communication networks and markets, rigid limits are a source of potential instability rather than a guarantee for security. The EU's response to this situation is its intention to develop an area of prosperity and friendly neighbourhood—'a ring of friends'—by means of cooperative relationships[11]. By acknowledging the interrelationship between its inner development and the external environment, the EU admits it cannot think of itself on the basis of a rigid division between the internal and the external. "Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations"[12]. The EU internal security cannot be reduced to a matter of control of external borders. Little by little, we have come to realize that we have to move from the concept of Europe as a fortress to a topography of the border areas that reduces the separation between Europe and the world.

IV. **Governing without sovereignty: beyond the national state**

It is difficult to think of the EU in terms different from those of the state, to think of it as something more than a peculiar variation on the same pattern. However, we are neither facing a super-state nor a simple articulation of states. For the forerunners of the idea of Europe, it was clear that Westphalian order, based on the principle of unlimited sovereignty of states, in which relations are governed by force, had to be replaced by common regulatory principles. The needed to go beyond the merely declaratory principles, such as the Universal Declaration of 1948, and make the states commit themselves in such a way that those principles could be invoked and the states punished if their performance threatened democracy and fundamental rights. This internationalisation of fundamental rights meant the endorsement of a primordial rule for states, similar to the

[11] EUROPEAN COMMISSION, *Communication from the Commission to the Council and the European Parliament: "wider Europe – neighbourhood: a new framework for relations with our eastern and southern neighbours"* COM, 104 final, Brussels, 2003, p. 4.

[12] EUROPEAN COUNCIL, *"A secure Europe in a better world: European security strategy",* Brussels, 12 December, 2003.

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ones imposed by democratic revolutions. It also pointed to transnational constitutionalism.

Since then, the evolution of Europe has taken place hand in hand with a discussion concerning its nature. Supporters of sovereignty understand Europe as a simple federation of states, or at least, would like to limit it in that direction. Federalists highlight that, in fact, judges have already adopted interpretative criteria closer to those of Constitutional Courts than to those of international jurisdiction. The authority of the European institutional system enjoys is stronger than that of classic international law, though less stable than that resulting from a state Constitution. In any case, to understand the EU it is necessary to overcome this dilemma. An unprecedented kind of post-state political power is built on the basis of existing structures containing elements of federation and confederation.

It is true that the European Union was born in part so as to create a framework of action that allowed all states to cope with the demands of a globalised economy. The Union would provide what states could no longer guarantee and in this way states would be saved[13]. However, this saving has only been possible by means of radically modifying the scenario defined by states, which have stopped being sovereign actors. National states can no longer be the core of the analysis to understand what Europe means. The radical novelty brought about by the European Union cannot be understood when considered on the basis of the old conceptual framework, which considers institutional expansion and widening of spaces of action as a way to weaken particular sovereignties. National categories cannot but provide a negative definition of Europe. Methodological nationalism and its obsession with the state prevents the possibility of conceiving what is new in Europe, which limits perspectives and draws attention towards false alternatives and zero-sum games. On the basis of these categories Europe is understood either as a "super-state"[14] that would eliminate nations or as a federation of national states that would defend their respective sovereignties with particular zeal.

In order to get an idea of the innovation involved, it is necessary to understand that European integration as a whole is a process resulting from the tension between intergovernmentalism and supragovernmentalism, a movement in which states play the leading roles but goes beyond them. The successive allocation of policies, competences and spaces for action at a European level, and the implementation of decision making processes that can no longer be controlled by the member states alone but that have more

[13] MILWARD, A.S., *The European Rescue of the Nation-State,* Routledge, London, 1994.

[14] SIEDENTOP, L., *Democracy in Europe,* Columbia University Press, New York, 2007.

to do with their own dynamics create a structure that is neither a replica of national states nor a variation of international organizations[15]. The best definitions of the European Union have tried to label its radical innovative character under a new category: a network or "set of networks"[16] but also a "multi-level governance" or "consociative system"[17]. It has also been said that Europe is "a balance of imbalances"[18]. The institutional and procedural innovations of the European experiment stem from a way of governing that is based on coordination and interdependence. They correspond to the type of organization that belongs to a society that can no longer put up with being governed from a rigid centre, with a strict hierarchy aimed at producing homogeneity.

The EU has become a regulatory framework that undermines the sovereignty of the states[19]. According to the European Court of Justice there is even a limited possibility of amending founding treaties and, therefore, a drastic limitation to the sovereignty of states. The primacy principle, which was not explicitly reflected in the founding treaties, has become an undisputable statement supported by jurisprudence. It is even argued whether there is a right of secession without the consent of all others and without complete negotiation. Although the Union lacks coercive instruments, one has to bear in mind that it is an original political and legal system whose effectiveness does not rely on violence, but on interdependence[20].

In any case, due to its complex government structure, the European Union has modified the way to understand and exercise power. The idea itself of sovereignty, traditionally absolute and non-shareable, transforms

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[15] TÖMMEL, I., *Das politische System der EU,* Oldenbourg, München, 2003, p. 54.

[16] KEHOHANE, R. and HOFFMANN, S., "Conclusions: Community politics and institutional change", in WALLACE, W. (ed.), *The Dynamics of European Integration,* Printer, London, 1990, pp. 276-300; CASTELLS, M., *La era de la información (3). Fin del milenio,* Alianza, Madrid, 2001; KOHLER-KOCH, B., *The Transformation of Governance in the European Union,* Routledge, London, 1999; ANSELL, C., "The Network Polity: Regional Development in Western Europe", in *Governance* 13, 2003, pp. 303-333.

[17] MARKS, G. *et alter*, *Gobernance in the European Union,* Sage, London, 1996; GRANDE, E., "Multi-Level Governance: Institutionelle Besonderheiten und Funktionsbedingungen des europäischen Mehrebenensystems", in GRANDE, E. and JACHTENFUCHS, M., *Wie problemslösungsfähig ist die EU? Regieren im europäischen Mehrebenensystem,* Nomos, Baden-Baden, 2000; HOOGE, L. and GARY, M., *Multi-Level Governance and European Integration,* Rowman & Littlefield, Lanham, 2001; BENZ, A., *Der moderne Staat. Grundlagen der politischen Analyse,* Oldenburg, München, 2001.

[18] HOFFMANN, S., *The European Sysiphus. Essays on Europe,* Westview Press, Boulder, 1996.

[19] MAJONE, G., *Regulating Europe,* Routledge, London, 1996.

[20] DÍEZ-PICAZO, L., "Les pièges de la souveraineté" in DEHOUSSE, R. (ed.), *Une constitution pour l'Europe,* Presses de Sciences Po, Paris, 2002, p. 65.

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itself and results into what some have called "complex sovereignty" [21], that is, the paradoxical possibility that sovereignty losses can provide sovereignty gains. It is difficult to understand this peculiarity of the UE's regime when sovereignty is thought of in the traditional way, on the basis of which one gains what someone else loses. Europe is a cooperation game that does not leave those who take part in it untouched, but that transforms them in such way that they accept the institutionalised constrictions of collective action. Europe disciplines interests and modifies preferences inasmuch as it inserts them into interdependence networks and they are subject to permanent discussion and revision. The genius of the "community method" consists in its capacity to avoid single leadership, hegemony or centralization.

Whether the European experiment fails or succeeds is something that will not be decided upon because we have a clear idea of what we are involved in. However, a process of such magnitude cannot be carried out without a set of categories that properly interpret the situation. Our main challenge lies in abandoning the concepts focused on the traditional idea of state and developing an alternative understanding of the relationships between states, nations and societies. In order to understand Europe properly we have take some distance from the concept of state. The European Union is not a state, but a new form of organizing political power for which the concept of state is not suitable. European integration has undermined the old argument according to which democracy can only work in nationally homogeneous territories, the only ones capable of shaping a common identity and the indispensable mutual trust. Although the discussion on democracy in the EU is still unfinished, integration has allowed for an evaluation of the issue of democracy at the level of a discussion on the possibility of a pluralist order beyond the nation state.

At the same time, the concept of sovereignty must expand towards the areas of power in the global age. The traditional notion of sovereignty is not in line with the political project of European citizenship. As things stand, Ulrich Beck is right when he claims that a cosmopolitan Europe is nowadays the latest effective political utopia[22]. As we need to define a new European common good as opposed to the most immediate interests posed by both the capital and the states, European s have an opportunity to discover the great goals of politics.

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[21] GRANDE, E. and PAULY, L.W., *Reconstituting Political Authority: Complex Sovereignty and the Foundations of Global Governance,* University of Toronto Press, Toronto, 2004.

[22] BECK, U. and GRANDE, E., *Das kosmopolitische Europa. Gesellschaft und Politik in der Zweiten Moderne,* Suhrkamp, Frankfurt, 2004, p. 11.

V. **European economic governance: mutualisation of risks**

When one assesses reality, it is advisable to respect the principle that the severity of the judgment must be proportioned to the difficulty of the task. In the midst of the most complex economic crisis of the history of humankind the European Union has made a series of decisions that have in fact encouraged the process of integration probably out of sheer necessity rather than conviction. The deepest transformations in the history of European integration have been taking place during the past months, as a consequence of the decisions the different European states have been forced to adopt to face the economic crisis. In particular with the outbreak of the crisis of sovereign debt, projects aimed at reinforcing the economic union by means of mutualising its risks occur rapidly at the same time as they make it evident that the European Union is more evolutionary than its critics lamented.

Are we going too fast or too slowly in this process of handing over sovereignty? I am one of those who would go for a higher speed and a more definite support of federalization, but this does not prevent me from admitting, when faced with non-refined criticism addressed at the European Union, that we have made a certain progress that would have been unthinkable of in calmer times. The following example may be enough to keep the restless at ease. Almost a year went by between the agreement of the European Council in Copenhagen (April 1978) and its implementation (March 1979). The aim was to fix some kind of parity between the different local currencies in the EEC in order to reach "a zone of monetary stability in Europe"[23]. The nine countries that then were part of the Union had taken seven years to reach some previous agreement. In 2010, four months were enough to go from divergences to an agreement on EU policy to face the crisis of sovereign debt. In the meantime, there is undergoing discussion as well as expectations that the European Central Bank can play a more significant role in the management of the financial crisis. By means of their guarantee funds, the seventeen countries in the Eurozone and the twenty-seven in the EU have implemented a system of budgetary solidarity and, above all, unmistakable tools of budgetary federalism.

It is advisable to assess those advances within their historical context and on the basis of certain inertias that are probably heavier than what would be desirable. The European Union is an association of postnationalist national states. Considered from the perspective of five centuries of modern

[23] The Brussels Summit of December 1978 decided to set up a European Monetary System (EMS). It aimed to create a zone of monetary stability in Europe by reducing fluctuations between the currencies of the participating countries. It was put into operation in March 1979.

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and contemporary history, European integration is a true revolution; from the point of view of the urgencies posed by globalization, this integration turns out to be very slow, though. This slow pace can of course be explained because European citizens neither can nor want to break apart from those five centuries of history. Mutualizing twenty-seven sovereignties is an unprecedented process in the history of humankind. It is, no doubt, a process with a clearly universal scope. But, logically, it goes hand by hand with slowness, hesitation, backward steps and deviousness.

What needs to be done is to complete the project of the euro with a true economic government in the Eurozone. The mechanisms of European governance have proved to be dramatically inadequate. On the occasion of the Greek problem it was especially manifested that a monetary union demands true mechanisms of budgetary coordination. We can now perceive the problems resulting from having created a single currency without enough budgetary and political coordination. We do not have the necessary solidarity, either, and generally speaking the rules of the Stability Pact have not been respected. When the 2008 crisis broke out, the EU counted on an unfinished money institution, a weak economic growth, and important private and public debt, together with a lack of agreement concerning the economic, political and strategic decisions to be adopted.

But there is something more serious for the single currency: the Eurozone includes countries with diverging economic paths: exporting Germany focuses on labour costs to the detriment of internal demand; France, on the contrary, maintains its growth on the basis of private consumption; Greece is a service-based economy, little exporting in itself; Spain is rooted on the real estate market. What can be done about this heterogeneous EMU space when divergence stresses particular interests, when transit towards new stages in the cooperation would involve decisions that affect certain deeply rooted commitments in the personality of each and every state and their respective social contracts? It is indeed difficult to ask German taxpayers, for example, to bear the burden entailed by the falsification of Greek figures that allowed them to benefit from very low interest rates or to facilitate the liquidity of Irish banks when we all know their dramatic boost in the 90's was due to European subsidies, but, most of all, to a process of tax dumping away from the rest of Europe.

The relentless pressure of markets on certain countries of the Eurozone is largely due to the fact that the crisis has touched a monetary area of fragile integration. In order to understand the reasons for this fury in the markets it may be useful to wonder why Greek or Irish debt have not been tackled the same way as the debt in Louisiana or California. On January 13, 2010 Standard & Poor's downgraded California, which had serious repercussions in terms of the conditions to fund its cash requirements.

However, the dollar was not attacked. There was no announcement of a plan of adjustment of American public finances, even though the weight of California in the United States is heavier than that of Greece in Europe. The United States has a very high public debt problem but, if handled seriously by the authorities, it cannot be subject to speculative attacks with the same intensity as a the Euro, a young currency in a more uncertain environment.

What is the reason for such a different attitude in both cases? The answer has to do with the fact that in the United States economic unity goes beyond the Federal States, a sense of identity which Europe lacks. The markets do not acknowledge the unity of the Eurozone, and this weakens us. Jean-Claude Trichet complained that international investors could neither understand the European decision-making mechanisms nor the historical dimension of the European construction. But one cannot hold this against financial markets, as they are only stating a fact. We are a monetary federation, but we lack the corresponding budgetary federation in terms of the control and monitoring of the implementation of public finance policies. As a general rule, the countries belonging to the Union enjoy a high level of regulation of the financial markets, but to date these mechanisms are not sufficiently and, above all, do not materialize in a given authority that ensures their respect. Therefore, the problem is the lack of economic coherence in the Eurozone and its weak governance. This weakness has become more evident under the impact of the crisis[24]. The Euro is definitely an "unfinished currency"[25] and we are now paying for the asymmetries between the European strong monetary orders and weakly constitutionalized social and democratic rights[26].

How will this crisis transform Europe? Up to now, even though it could be improved, European coordination has been crucial. Markets speculate on the divisions perceived when intergovernmental management is chaotic. Thus, it is necessary to take steps towards mutualisation of economic risks at the same time as the monetary system is completed by means of a recognizable authority. It is urgent to rebalance both political deliberation and

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[24] FEAETHERSTONE, K., "The Greek Sovereign Debt Crisis and EMU: A Failing State in a Skewed Regime", in *Journal of Common Market Studies* 2011/49, 2: pp. 193-217; DE GRAUVE, P., *The Governance of a Fragile Eurozone*. CEPS Working Document No. 346, 2011; EICHENGREEN, B., "European Monetary Integration with Benefit of Hindsight", in *Journal of Common Market Studies* 2012/50, pp. 123-136.

[25] MAYER, T., *Europe's Unfinished Currency. The Political Economics of the Euro,* Anthem Press 2012.

[26] EDER, K. and GIESEN, B., *European Citizenship: National Legacies and Transnational Projects,* OUP Oxford 2001; SCHIEK, D., LIEBERT, U. and SCHNEIDER, H. (eds.), *European Economic and Social Constitutionalism after Lisbon,* Cambridge University Press, 2011.

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the reality of markets. Europe is also an interesting project inasmuch as it is an attempt to build a space for political, economic and social reconciliation.

VI. **European citizenship: a plurality of loyalties**

What we could call, I dare say, the European's disloyalty means in fact that, thanks to the innovation represented by Europe, we enjoy a space in which political loyalty finds itself pluralized, conditioned by the law of the state monopoly and free from it. Some of these features had taken place before, but never had these three circumstances articulated in such a balanced way and in such an original citizenship framework.

In order to understand this innovation, one needs to abandon the idea that society depends only and exclusively on the state's architecture, as this no longer enjoys the monopoly on identity, sense of belonging, acknowledgement and protection. What makes this dissociation more visible is the possibility for citizens to appeal to Community Courts against decisions taken by their own states. This alone allows us to say that, for the first time, Europe has separated human rights from nationality and citizenship. Thus, it contravenes the state's wish to be the only instance ensuring the preservation of rights.

Europe as a construction makes clear that the link between nation and democracy is context-dependant rather than conceptual, which leads us to the conclusion that wider civic identifications are possible, that the process of democratic learning can be extended beyond the nation state. We have managed to disperse sovereignty, multiply spaces for civic engagement, while promoting self-government and loyalty towards wider political sets[27]. This is why we are faced with the possibility of inventing a new kind of citizenship, a more complex one, which would not stem from the mere extension of the existing kinds to the European scale.

Up to now, redistributive issues and the definition of a political community have been dealt with inside the states themselves; but at the same time there is a massive redistribution on a EU scale without specific criteria of transnational legitimation. The temptation for mimesis is certainly a reason for pessimism, but there are other ways of identification and governance apart from those featured in the national state. There is no reason for thinking of democracy in wider spaces (Europe or the world) as reproduction on a different scale of the mechanisms representative of the

[27] SANDEL, M., *Democracy's Discontent,*The Belknap Press of Harvard University Press, Cambridge, MA, 1996, p. 148.

state. The future of the EU is not simply a matter of building a large state, be it federal or confederal, but requires the invention of new structures that lack a substantial precedent either in the experiences of different states or in organized international cooperation[28].

What some call 'Europeanization' is something very different from the traditional "nation-building", and has to be reconsidered beyond the category of the national state, mostly beyond the idea that society is no more but a mere corollary of the state, and therefore has to be tamed. The issue is that one must not think of societies as fixed, delimited entities, but as transforming realities, as "emerging realities"[29]. The EU does not govern in the same way as any other state. Its peculiarity is, so to say, that it builds the spaces in which European solutions to European problems can be found. Its main challenge consists in building Europe as something to govern, and to this aim it activates a series of actors, state institutions, citizens, networks, companies… What is innovative is not as much the governance tools as the fact that what is to be governed has to be constituted. In Majone's words[30] the first task governance is to build what is to be governed, in this case, European -wide activities.

One could say that Europe is a space for redefining what is common, and that European citizenship aims at the democratic configuration of that sense of common. This is difficult to identify by means of democratic deliberation, and should not be reduced to a primitive juxtaposition of interests. Here we are faced with the antagonism formulated by Benjamin Barber, when he spoke of the overlapping of individual interests, of the "mutual advantage" and "the advantage of their mutuality"[31]. The old ontological principle that states that the whole is greater than the sum of its parts is politically translated into a public sphere understood as something that does not limit itself to just balancing individual preferences. The greatness of the process of European integration lies in fact in its enormous cooperative knowledge, but also in its weakness when the sphere of implicit or merely biased accession is not transcended.

In my view, it is here that the legitimacy crisis we have been suffering from since the 90's lies, a crisis that has eroded respect for the common rules, as shown by the fate of the Stability Pact. Within a general environment that

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[28] CONSTANTINESCO, V., "Europa fédérale ou fédération d'États-nations", in DE-HOUSSE, R. (ed.), *Une constitution pour l'Europe,* Presses de Sciences Po, París, 2002, p. 139.

[29] MELLOR, P., *Religion, Realism and Social Theory,* Sage, London, 2004.

[30] MAJONE, G., *Regulating Europe,* Routledge, London, 1996, p. 59.

[31] BARBER, B., *Strong Democracy. Participatory Politics for a New Age,* Berkeley: University of California Press, California, 1984, p. 118.

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has not particularly favoured great projects and considering a generation of politicians lacking their predecessors' vision, Europe remains at the mercy of the volatility of short-term interests and subordinated to domestic goals. Citizens do not trust a political system that they misunderstand and state governments do not trust the increasing power of the Commission. Forms of action are reduced to classical intergovernmentalism and leadership is provided by the European Council, which is formed by the heads of state and government. Little by little, a willingness to break with the delegations of power, a feature of the community method, has settled.

This is the context that fostered the need for a redefinition of Europe's own purposes and that ended up in an attempt to draw up a Constitutional Treaty. Fischer's denunciation in his famous speech in 2000 criticised the "communitarian method", that is, the idea that everything should be dependent on functional integration. But 'permissive consensus' is not sufficient when the issue is to build a political community. Pragmatism promises to make progress step by step without wasting time wondering about the overall picture of the European construction, but the matter of substance, that is, the shape of European citizenship, comes to surface when we come across the limits of an integration thought of as a technical process.

From this point of view, the Constitutional Treaty was an insufficient step. The fact that it was 'constitutional' suggested a break with the past, but it was basically a treaty and therefore retained a line of continuity and preservation of the power of states, which, in turn, did not seem to worry about anything except about ensuring that no decision affecting their essential interests could be made. Negotiation about blocking minorities and exceptions marginalized any debate on the procedures for the identification of what is common. Constitutional rhetoric was misleading, as can be seen by comparing, for example, who signed the American Constitution *("We, the people")* and how, in the draft of the Constitutional Treaty that decision was in the states' hands[32]. The difference between a treaty and a constitution is, in fact, the same as that between a deal between states and an act of self-determination of the European society. The Constitutional Treaty did not involve a qualitative leap; the traces of continuity overweighed the drivers for change. In spite of this, in some countries it also raised fears and difficulties for its acceptance, as if it really was a real break with the past. One of the reasons for the constitutional failure was the gap between the emphasis of the proclamations and the modesty of real objectives. There is nothing worse than arousing fear and lack of enthusiasm at the same time.

[32] DEHOUSSE, R., *La fin de l'Europe,* Flammarion, Paris, 2006.

How can we get out of the current scenario? There is no doubt that the procedure for the revision of treaties should be modified, decision-making in an enlarged Union should be made more agile by spreading qualified majority voting, the European social model should be defined, and we should succeed in making the citizen find positive reasons for providing active support to one of the most spectacular enterprises in recent history. It is necessary to redefine public goods (security, social protection, economic growth…) in order to make sense of the common European space and, at the same time, design particular projects with identifiable benefits. We will need an objective of integration that is legible for the citizens, since Europe can only be credible when the action undertaken by an organ replaces that of scattered governments.

Nevertheless, the future of Europe depends ultimately upon the recovery of its original strength, which stems from the wish to put an end to the helplessness of traditional diplomacy between states. The European project would enjoy larger support if we were able to understand and explain its large innovative capacity. Rulers and citizens alike need to make the conceptual leap represented by the EU means. The former are responsible for making people understand the demands of interdependence, explaining the long-term benefits that can justify mutual concessions and immediate sacrifices. And citizens wish for choices to be made consciously and following public debate; they reject that, under the pretext of Europe or globalization, irresponsibility may gain ground or political matters may be abandoned to inertia, lacking direction. Even the 'no' is a manifestation that the European space is considered a relevant dimension of citizenship.

In any case, any strategy adopted must combine the search for consensus and convergence, without which the referendum procedure is bound to fail, and the decision-making capacity of citizens, in which the source of legitimacy lies. Vision and participation are the two main elements that need to be put at stake in what constitutes the laboratory of the largest supranational, multicultural democracy in the world.

VII. **A globalized Europe: a sort of "us" without others**

When it comes to thinking of Europe it is not enough to focus on institutional structures; one has to pay attention to society. Societies are built and transformed under conditions that are neither fixed nor can be reduced to institutional structures. Europe must be understood on the basis of European society, a society that cannot be understood with the analytical procedures of states and their convergence that can no longer be understood without the reality of globalization. It is necessary to have

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a perspective over the European public space, involving overlapping and interdependence. It is common to speak about "domestic changes produced by the European integration"[33], but the opposite process is usually forgotten: that it is the internal transformation of those societies that forces the modification of the institutional frameworks, and this social dynamics can only be explained in the global context. This is why it is more suitable to speak about "Europeanization" rather than "European integration". The former refers to society in a wide sense, and includes its global dimension; the latter seems to reduce everything to states and institutional frameworks.

In spite of the EU's regulatory power, Europeanization is taking place worldwide[34]. Europe is built in the midst of a process in which diverse logics intervene and projects, discourses, social patterns, and disparate imaginaries interweave. All this is taking place in a moment in which the nation state has lost the monopoly of collective action and social identifications. There exists abundance of groups, institutions and individuals that think and behave outside national states, such as migrations and diasporas, traditional social movements, regions and cities.

When the European Commission, in its Document on Governance (2001) posed the issue of citizenship and European public space, it paid little attention to this dimension, as if it was thinking of a closed, well-defined community similar to those at the basis of national states, the image of which should be replicated. Whether a European citizenship exists or not also has to be put forward in an original way; rather than a question of identity, it should be faced as a challenge linked to the civilizing mission we can face. The determination of the Commission to build an "organized civil society at a European level" must be understood within the global society it is part of. It is paradoxical to state that fostering a truly European citizenship through universal values leads to a weaker exclusive identification with Europe as such values provide reasons for European s to see themselves as part of the world, of a single humankind.

What is most interesting about the European construction is that it allows going beyond the fiction involved by the fact that society can be stately built, independently from other societies. There is not a single European civil society that is the result from the mere aggregation of national societies disconnected from the rest of the world. European society forms part of a global one. It is a mistake to over-emphasize the difference between Europe and the rest of the world, or to think that all integration strategy can be justified as a defence from a world considered a threatening

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[33] VINK, M., "What is European ization? And other questions on new research agenda", in *European Political Science* 3 (1), 2003, pp. 63-74.

[34] DELANTY, G. and RUMFORD, C., *op. cit,* p. 155.

reality. If there is something that justifies the European experiment, it is the fact that it encourages a kind of identity that not only does require the elimination of its internal diversity but also does not need to oppose others to gain its own affirmation: it is a sort of "us" without others. One of Europe's fundamental values is that identification with one's own becomes less exclusive and allows a great complementarity.

The political construction of Europe is singular in a way that makes it different from all the projects of national construction. It is probably the first political body shaped without the need for a kind of ideological patriotism that demands a well-delimited, homogeneous people, a common origin, a common language and culture, and some sort of external enemy that serves internal cohesion. In spite of the abundant rhetoric in that direction, the antagonism with the United States tries to endorse Europe with an unnecessary legitimacy, as Europe is rooted in other kinds of values. Unlike what has been habitual in the configuration of nations, the European project does not demand the dramatization of external danger in order to ensure inner cohesion.

Europe cannot be thought of as an entity away from the world. This interweaving has been a constant feature in history; here the awareness of being linked to the rest of the world has always been particularly intense. This reference, which in the past was driven by a civilizing will that was at the same time commercial and colonial, has provided Europe with a strength that continuously takes it away from its potential isolation. Therefore, one can state that the impact of globalization does not mean a particularly original break with history. This "cosmopolitan Europe" [35] becomes emphasized in the European Union project. Against the conception of Europe as an autocratic entity clearly separated from the rest of the world and competing against it, the European experiment has no other justification than to represent the embryo of genuine cosmopolitics. Europe, which has always enjoyed an expansive culture, can find here a horizon of meaning. Against the stereotype that presents globalization as a threat, against the warning that Europe should not become the Trojan horse of globalization—as said by Nicolas Sarkozy during the French presidential election campaign in 2007, and, by the way, something a large section of the left agreed with, since the Socialist Party itself had used that expression in their Dijon Congress in 2003—, it is urgent to "de-provincialize Europe"[36], that is, to set it in the context it belongs to at the same time it faces its current responsibilities.

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[35] BECK, U. and GRANDE, E., *op. cit.*

[36] CHAKARBARTY, D., *Deprovincializing Europe: Postcolonial Thought and Historical Difference,* Princeton University Press, 2000.

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The European Union reveals, even though in an incipient way, that globalization is not a threat for democracy, but an opportunity to expand it beyond the limits of the nation state. "Europe is an especially intense way to elaborate a global system"[37], a miniature "world polity". Globalization, rather than a threat, challenge or catalyst, must be seen as a possibility to define the European project in global terms. It does not so much mean taking sides as a global actor as promoting a different way of organizing the relationships between the actors. We are trying to look for the meaning of society in a world in which social coherence, democratic participation and political legitimacy are being redefined.

Government practices of the European Union develop a series of universal provisions: the ability to see the very community from a certain distance, the acceptance of limitations, mutual trust, willingness to cooperate, and a sense of transnational solidarity[38]. Europe is not an example because of some sort of superiority, but because the European public space represents the fact that most political decisions cannot be adopted without considering whether they are in keeping with the interests of others. In this sense, Europe can be considered a paradigm of the new politics demanded by an interdependent world. "Europe provides a modern experimentation of the shaping of a truly 'multipolar' world (…). It is, no doubt, one of the messages the political Europe can propose: being multipolar itself, it can foster this kind of organization; by projecting its own internal practice outwards it can contribute to 'civilizing' globalization"[39]. The European process of political integration is an unprecedented response, maybe an example one day, to the current circumstances conditioning the exercise of power in the world.

VIII. **Conclusion**

Only a European Union released from the categories with which we are used to thinking of the national state can make intelligible what is at stake in the current European experiment. In this paper we have analyzed such innovation in regard to its geographical and historical reality, as

[37] MEYER, J., "The European Union and the globalization of culture", in ANDERSEN, S. (ed.), *Institutional Approaches to the European Union: Arena Report, No. 3/2001,* Oslo, 2002, p. 238.

[38] MAGNETTE, P., *Au nom des peuples. Le malentendu constitucional européen,* Cerf, Paris, 2006, p. 154.

[39] FOUCHER, M., *La République européenne,* Belin, Paris, 2000, p. 137.

well as its governance tools and its integration into the broader process of globalization. In the future of the European Union many important things for the future of this region of the world will be settled, but also many aspirations of universal validity: it basically makes sense to wait for the possibility of shaping something like a democracy beyond the nation state and new relationships between the stakeholders to be involved in global governance.

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European 'Cultural' Social Democracy: questions of freedom*

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Abstract: This paper seeks to rethink the question of freedom in relation to the social democracy of the past, present and future. Here I argue that much contemporary debate on European social democratic Left emphasises a communitarian agenda. Despite some of its strengths it is problematic in terms of its neglect of questions of freedom and more global concerns. Here I return to the liberal socialism that emerged within Europe in the context of totalitarianism. Questions of freedom were emphasised in this context, and can be productively returned to in the new dimensions of the present. In particular I focus on the 'cultural' socialist writing of the 1940s and argue that thinkers like Fromm, Orwell and Roselli have something to say to us today. At this point I consider whether the neoliberalism of the present shares certain features with the authoritarian ideologies of the past. Further I seek to critically assess more recent developments in ideas related to the potential emergence of a cosmopolitan Europe. Finally in the context of the social and ecological crisis of contemporary Europe I seek to highlight how we might begin to rethink questions of freedom in ways which might help socially.

Keywords: Freedom, democracy, socialism, totalitarianism.

Resumen: *Este artículo pretende replantear el tema de la libertad en relación a la democracia social del pasado, del presente y del futuro. Argumento que gran parte del debate contemporáneo sobre la izquierda social demócrata europea pone el énfasis en una agenda comunitaria. A pesar de algunos de sus puntos fuertes este debate es problemático porque deja de lado cuestiones relativas a la libertad y temáticas de orden global. Vuelvo al liberalismo social que emergió en Europa en un contexto de totalitarismo. Los temas de la libertad se pusieron en manifiesto en este contexto, y se pueden volver a retomar de forma productiva en relación con las nuevas dimensiones del presente. Me centro, en particular, en los escritos socialistas «culturales» de 1940 y argumento que pensadores como Fromm, Orwell y Roselli tienen algo que decirnos hoy día. En este punto me pre-*

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gunto si el neoliberalismo del presente comparte ciertas características con las ideologías autoritarias del pasado. Además intento evaluar críticamente desarrollos más recientes en ideas relacionadas con el potencial emergente de una Europa cosmopolita. Finalmente, en el contexto de crisis social y ecológica de la Europa contemporánea, se aportan sugerencias que puedan contribuir a replantear cuestiones relativas a la libertad y por consiguiente al cambio social.

Palabras clave: *Libertad, democracia, socialismo, totalitarismo.*

I. **Introduction**

The idea of freedom has a long and complex association with Western notions of modernity. Indeed so central is the notion of freedom to European ideas of democracy and human rights that any civilised future seems unimaginable without it. The notion of freedom has a particular historical relevance for European social democrats. This is usually thought to be the case in at least three different ways. Firstly social democratic thought argues that the democratic state has a legitimate role to play in placing limits on the expression of economic reason and the market. How much freedom should social and cultural life have from the market, and what are the limits of this autonomy are central questions? Secondly the democratic state has a responsibility to promote equal forms of citizenship in terms of access to rights and responsibilities and also to make sure relatively equal forms of status ensure fair life-chances for citizens more generally. Finally (and this point is related to the above) a relatively equal society also offers citizens similar opportunities to participate within the polity and make their voices heard. Large divisions of wealth and power tend to favour those who are already privileged and distort democratic processes. Social democrats have historically been interested in three different (albeit overlapping) arguments in relation to freedom. We might summarise these as the rights to an autonomous life, the right to citizenship and opportunity and the right to political and public participation. Here I argue that ideas of freedom within social democratic thinking are actually a way of expanding some of the ideals that became associated with liberalism and the European Enlightenment.

II. **European Freedom**

In more recent times European social democrats seem to have given up on the idea of freedom and become more concerned to defend conservative values like tradition and security. Here the argument is that under the guise of freedom capitalist driven modernity has produced a society of competitive

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individualism and social breakdown more generally. If during the 1990s social democratic governments were in power in many European countries they did little to reverse the technocratic and state driven forms of politics that presided over increasingly unequal societies. This has led many on the social democratic Left to turn to a Durkheimian ethical socialism. This tradition tends to base its politics around the need to rediscover common norms and values in an age of social fragmentation and anomic individualism. While Durkheim is rarely named in these debates he seems to be the classical sociologist whose shadow is cast over these discussions. For example, Jonathan Rutherford[1] argues that social democracy needs to revive itself through a return to a culture of place, belonging and common values reversing the increasing trend of professional political parties to rely on technocratic elites. The need to rearticulate 'common' forms of citizenship becomes especially pressing in an age of fragmentation and uncertainty where many feel indignant or simply left behind by runaway social change. Here the assumption is that the future of social democracy is likely to be a conservative where the emphasis is placed on the common values what we share in opposition to the destructive nature of neoliberal economics. What is significant in the European context as social democracy seeks to revive itself in the context of austerity and failing capitalism, the rise of the far Right and potential environmental collapse is the lack of concern to rearticulate ideas of freedom. If like other values freedom needs to be rethought within a global age there is no reason for it to be discounted entirely. Here we need to historically trace through why the idea of freedom remains significant to social democratic ideas, but also account for its disappearance from the debate. My view is not that ideas of freedom can be unproblematically returned to in the context of the present, but that they remain an important cultural resource in need of reinvention in our troubled times.

Here part of the problem is that the term 'culture' is used more as a means to decide what we have in common than it is to describe the possibility of a critical and democratic form of everyday life. The idea of culture has however other roots being utilised to point to the importance of imagining a more participatory way of life[2]. John Dewey[3] argued for the need to bring together the ideas of democracy into the life of the community as otherwise they would simply operate as abstract notions. Democracy then is not simply a set of procedures in respect of regular elections but

[1] RUTHERFORD, J.,"Dispossession", in MEYER, M. and RUTHERFORD, J. (eds.), *The Future of European Social Democracy*, Palgrave MacMillan, Basingstoke, 2012.

[2] WILLIAMS, R., *Culture and Society*, Pelican, London, 1958.

[3] DEWEY, J., "Search for the Great Community", in SIDORSKY, D. (ed.), *John Dewey: The Essential Writings*, Harper and Row, New York, 1977.

has implications for the ways in which we live and construct our shared institutions. This way of life would need to be sceptical of the assurances of authorities and experts and value listening, debate and discussion. Dewey was especially concerned that democratic citizens learned to listen to the views of 'minorities' should they become misrepresented within debate and discussion and thereby allowing 'majorities' the potential of changing their minds. However it was only when these principles became embedded within the family, schools and other features of everyday life that they could enter into the life of the community. Notably Dewey's brand of liberal socialism influenced the intellectual development of American pragmatism and some of the key European intellectual currents related to democratic socialism.

More recently however more conservative trends have come to dominate cultural sociology where Jeffrey Alexander[4] has highlighted a renewed interest in Durkheim and the impact that this has had upon more communitarian forms of political thought. This is less the positivistic Durkheim but is more concerned with how social solidarities become constructed through complex symbolic encounters. For example, Robert Bellah et al[5] talk of the need to capture a politics of the common good in a culture where 'success' is increasingly seen in individualistic terms. A new politics is required that redefines achievement and aspiration in more communal terms.

While there is much to support in these debates, common to much communitarian criticism is the assumption that an over-emphasis upon ideas of freedom and liberty has both eroded more common forms of life and a shared sense of morality. It is not the case that this argument is entirely misplaced however my concern here is to recover a different social democratic tradition that was rightly concerned with freedom. Here my argument is that much of the social commentary that seems to emerge from communitarianism ends with an overly conservative set of cultural concerns. In this context, social democrats run the risk of allowing freedom to be defined by the political Right as well as neglecting much of its own critical heritage.

If we are to find an answer as to how European social democracy might reinvent itself in the context of the present it can-not afford to neglect its own Enlightenment heritage. In the context of a European debt crisis, increasing levels of unemployment and inequality, eroding welfare states and enhanced competition from the emerging economies this is no time to give up on questions of freedom. However the idea needs to be recast in our admittedly

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[4] ALEXANDER, J., "Introduction: Durkheimian sociology and cultural studies today", in ALEXANDER, J. (ed.), *Durkheimian sociology: cultural studies*, Cambridge University Press, Cambridge, 1998.

[5] BELLAH, R. *et alter, Habits of the Heart*, University of California Press, California, 1996.

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more challenging times. As currently looks likely many European societies are likely to experience more austere social and economic conditions in the foreseeable future. Here the spectre of social democratic governments having to manage tight budgets in our increasingly neoliberal times should be a matter of concern for progressives everywhere. Stuart Hall[6] has correctly identified neoliberalism as an attack on the idea that the state can become influenced by progressive ideologies such as fairness, responsibility and social solidarity all of which needs to be curtailed in favour of private and corporate interests. The attack upon those working in the public and state sectors, privatisation, cuts to public cultural provision and other features all point towards a society being remade by market capitalism. If European labour movements often provided the counter-force where more progressive values could be articulated what happens in a context of rapid commodification, inequality and unemployment? As many have commented market failure has not so much ended with criticism of capitalism (although there are elements of this) but with increasing downward pressure on the state. Even if social democratic governments are elected they are left with the possibility of having to manage long term retrenchment of the state in the context of an increasingly powerful market driven society. Not surprisingly then that many social democrats have sought to emphasise the need to reaffirm common values. Similar to Rutherford, the English Labour politician David Lammy[7] has emphasised the extent to which liberals have historically failed to talk about responsibility. This is particularly pressing in the context of a popular culture that celebrates materialism and personal freedom. The emphasis upon our inter-dependency is meant to question the extent to which individuals are actually social atoms whose corrosive consumerism undermines social reliance as well as recognition of our common bonds. The rights based culture of liberalism then while having played an important role in offering a sense of social entitlement to minorities (and others) now has to be rebalanced so that citizens come to lead more socially responsible lives.

Notably both Rutherford and Lammy emphasise the role of the father in the family. Rutherford[8] opens the question as to what is men's role in the family in the context of the decline of the family wage and many socially disadvantaged young men growing up in fatherless families. This question seems to be especially pressing in the context of the rise of the popular far Right groups across Europe and the English riots that took place in the summer of 2011. David Lammy[9] goes further and asks whether liberalism is

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[6] HALL, S., "The march of the neoliberals", *The Guardian newspaper,* 13.09.11
[7] LAMMY, D., *Out of Ashes: Britain after the riots*, Guardian Books, London, 2011.
[8] RUTHERFORD, J., *op. cit.*, p. 147.
[9] LAMMY, D., *op. cit.,* p. 101.

not only linked to social collapse but also undermining the responsibilities of fathers for their children? Here he argues for a rethinking of traditional masculinity that re-emphasises the importance of the disciplinary role of the father particularly within poorer families. The concern is that rights based liberalism has simply told fathers that whether they continue to support children is a 'choice' rather like others they might make. The focus on absent fathers is notable as it seemingly indicates the lack of moral authority within a culture of rampant market based liberalism. Here the only solution seems to be a re-emphasis upon a common morality around the family, work and a shared sense of place.

In the context of an increasingly market driven society Left communitarians like Rutherford and Lammy seek to point to the corrosive impact of the market on common forms of life and how liberalism has promoted an irresponsible culture of the self. Ideas of work, community and family are of course a keystone to society more generally however we need to be careful should the analysis not lapse into a form of moralism that fails to value diversity and not focus upon the social and economic forces that undermine a sense of community. Here the liberal fear is that while a sense of common values and moral standards is meant to place a break on a runaway capitalism what if it ends with attempts to curtail the freedom of our fellow citizens? Indeed what is missing from the conversation thus far is the recognition that freedom and responsibility remain deeply interconnected. Absent from the debate thus far is the recognition of the freedom to live our own lives need not lead to broken families, irresponsible consumerism or indeed a lack of concern for the well-being of others. Here I want to offer a different kind of narrative that rethinks the principles of freedom within an explicitly European setting. Further through a more explicitly cosmopolitan point of view we also need to question the nation-state centered point of view offered by social democratic communitarians. Here there is a concern that in a global age that social democrats simply end up defending a regressive nationalism in a context where global problems require more globally orientated solutions.

III. **European Freedom and the Self**

In thinking about questions of freedom it matters where you start. Much of the debate in this area has been dominated by a philosophical debate between liberals and communitarians[10]. While these perspectives

[10] SANDEL, M., "Introduction", in SANDEL, M. (ed.), *Liberalism and its Critics*, New York University Press, New York, 1984.

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remain important both perspectives often fail to offer an adequate account of the self. If for communitarians our sense of our self and capacities are handed to us by the community of which we happen to be part then liberals on the other hand tend to assume the existence of a rational calculating person maximising human freedom. In discussing questions of freedom my argument is that we need to return to some of the European intellectual debates of the 1940s to look at a generation of thinkers who sought to rethink the basis of freedom after totalitarianism. Here I wish to argue that some of the liberal and socialist debate of this period remains crucial to our own understanding of freedom. These thinkers notably sought to radicalise Enlightenment understandings of the freedom of the self, but also to extend them in important ways.

The critically important work of Erich Fromm[11] offers a more humanistic psychodynamic understanding of the self. Fromm's major work seeks to understand the 'fear' of freedom and the responsibilities that come along with it in the context of European authoritarianism. His work is particularly interesting in the context of the liberal-communitarian debate as he both recognises the substantial gains of rights based liberalism and is alive to how this culture is threatened by contemporary capitalism and the argument that freedom has a psychological dimension. There is then a personal cost to freedom where we are compelled to defend and realise our own ideas, perspectives and standpoints that may not be shared by members of our immediate community. During the time Fromm was writing freedom was explicitly threatened by social authoritarianism, capitalism and other features that sought to undermine the capacity of the self to think critically about the world. These are all escape attempts from what Fromm[12] aptly describes as 'the torture of doubt'.

For Fromm we are compelled to make a choice between life and the growth of the self or its retrenchment or death. By life he means the acceptance of ambivalence, uncertainty, spontaneity and change. It is left to us to give our lives a higher meaning or a sense of purpose. There is no ultimate purpose to our lives that we can simply take from history or the wider society but that this needs to be determined by the individual self. How though do we make sure that the self makes good choices or seeks to live a good life? Many communitarian thinkers have sought to answer this question by arguing that we seek to cultivate lives of civic virtue. That is through clubs, associations and other civic organisations individuals learn the rules of the community and lead more social and communally orientated lives. It is this civic spirit

[11] FROMM, E., *Escape from Freedom*, Avon Books, New York, 1941.
[12] Ibid., p. 171.

that needs to be urgently revived in an age of market orientated individualism and social break down[13]. Erich Fromm[14] offers a different answer to this question when he argues we can indeed seek to persuade others to do good by issuing them with moral commands. This seems to come close to many of the assumptions made by communitarian writers where the rules of the community are simply passed down to the young. Fromm[15] goes on however to argue that the best way to encourage citizens to behave morally 'is to develop a taste for and a sense of well-being in doing what is good or right'. Paradoxically this is best achieved through the realisation of individuality than it is through the following of external codes. Here Fromm's argument comes close to what is called virtue ethics. The position of virtue ethics that stems from the writing of Aristotle basically holds that how we should live is less a matter of abstract norms and commands but is more a matter of practical concern. A virtuous person is someone who seeks to do 'the right thing' because you seek to live a good life[16]. For Fromm how we best serve the community, what we become and how we live are all best decided by the self. Here our best hope for a humane world is to encourage citizens to use their reason and to recover their sanity. Here Fromm[17] writes:

> 'I believe in freedom, in man's right to be himself, to assert himself and to fight all of those who try to prevent him from being himself'

Freedom for Fromm was not the often empty promises of market freedom, or the freedom to manipulate other people but instead was rooted in the desire to authentically become the self. In the emerging market society Fromm was deeply concerned that the project for freedom was being given up. Fromm[18] warned of the emergence of 'automotons' who simply conform to 'the person he is supposed to be' who lacks any sense of spontaneity and the ability to take risks. The market society imposed an understanding of what the successful life was and this most often involved the accumulation of wealth, consumerism and the living a life of dull conformity.

Fromm[19] also warned of people who over-identify with their roles and status groups whose own value comes from external achievements and money. Here the dangers were of citizens so invested in their roles as 'workers' or 'citizens' they had no sense of themselves apart from these performances.

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[13] PUTNAM, R., *Bowling Alone*, Touchstone Books, New York, 2000.
[14] FROMM, E., *op. cit.,* p. 128.
[15] Ibid., p. 128.
[16] HURSTHOUSE, R., *On Virtue Ethics*, Oxford University Press, Oxford, 1999.
[17] FROMM, E., *op. cit.,* p. 131.
[18] Ibid., p. 86.
[19] FROMM, E., *op. cit.,* p. 42.

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Finally there are those who admire authoritarian leaders and banish the need to think or to experience the world for the self. This deep fear of freedom Fromm felt was particularly pressing in his own time given the rise of fascism and the cult of charismatic leaders like Hitler and Stalin. The idea of freedom concerns the ability of citizens not only to develop themselves but to become critical of their own culture, community or society. Notably such views are no longer popular within current debates with respect of social democrats who seek principled selves orientated to the rules of the community that have been handed down to them. Here there seems to be little concern with questions of individuality or freedom.

These arguments inevitably are more easily connected to the history of the European Enlightenment and the development of political liberalism. The question as to 'how we should live' then should not be directly answered by our society. However if this is inevitably an individual question posed to each of us it does have implications as to how we might best organise our community. Many social liberals have sought to argue for a community that would indeed recognise the spark of individuality of every citizen. Further that within a European context of totalitarianism, the holocaust and slavery that we should continue to mine this tradition for the riches that it can continue to supply within the present. Here I would follow Marshall Berman[20] and argue that the project for a society where citizens were free to become themselves within a supportive community can be traced back to the eighteenth century. However that within the twentieth century that it was the liberal emphasis upon rights and the rule of law as opposed to discriminatory cultures and traditions that best served the project of freedom. Indeed during the twentieth century it was the historical project of the labour movement to widen the appeal of freedom and to offer the possibility of living a life without oppression and servitude to include the poorest members of the community[21]. Freedom would no longer simply be for elites but offered lives of learning and authenticity to those who had been previously excluded. Here we need to briefly return to some of these concerns.

IV. **Histories of Social Liberalism**

That many liberal socialists took seriously the idea of freedom after totalitarianism is perhaps not surprising. There are of course disputes about the extent to which liberal socialist parties in power were able to deliver

[20] BERMAN, M., *The Politics of Authenticity*, Verso, London, 2009.

[21] BRONNER, S., *Reclaiming the Enlightenment*, Columbia University Press, New York, 2004.

a programme of increased democratisation and equality, but these were undoubtedly part of the aims of Western European labour movement. If socialists gradually gave up on the idea of ending capitalism they continued to dream a radical vision of a world where capitalism had been *socialised*. The European democratic socialist model of development was often strongly contrasted with the United States that seemingly endured higher levels of inequality and many more of the social problems evident with unrestrained capitalism[22]. If unregulated capitalism produced a form of barbarism by producing extreme inequality, competition and commodification social democrats could present themselves as a force for civilisation. Liberal notions of socialism sought to expand the freedom of the whole community.

These ideas can be traced back to the European Enlightenment that sought to question established ideas of traditional hierarchies. In particular the Enlightenment sought to emphasise the rule of law, constraints being placed upon power and individual autonomy. The extent to which liberal versions of socialism were connected to the Enlightenment could be traced through ideas of progress. Here 'reason' was used to question authority, criticise dogmatic beliefs and promote critical reflection. If the notion of progress seems out of date after postmodernism, the holocaust and imperialism it did not seem that way to many liberal socialists of the period. As Both Bronner and Todorov[23] argue the critical spirit of the Enlightenment is best captured by the demand for democratic and discursive forms of inquiry than the legitimation of totalitarianism. This tradition is better understood through a discussion of the history of liberalism rather than the shoring up of more authoritarian regimes. It was the liberal emphasis placed upon universal rights, law and of expanding freedom more generally that meant it could not be equated with totalitarian rule. For democratic socialists the liberal tradition was more than the idea that it simply legitimated the rule of elites, but instead offered the possibility of bringing similar freedoms to the down trodden working class population. For example, the Italian liberal socialist Carlo Rosselli[24] argues in the 1930s and 1940s that the European social democracy emerging across Europe is actually a renewed form of liberalism. This is not the Marxist struggle for a utopian society without a state, but of the attempt to build a society on a rights based citizenship that emphasises individual

[22] SASSOON, D., *One Hundred Years of Socialism: The West European Left in the Twentieth Century*, Fontana Press, London, 1997.

[23] BRONNER, S., *op. cit.,* and TODOROV, T., *In Defence of The Enlightenment*, Atlantic Books, London, 2009.

[24] ROSELLI, C., *Liberal Socialism,* Princeton University Press, Princeton, 1994.

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freedom. Rosselli's vision is of a society where citizens are free to develop themselves no longer 'enslaved' by the daily humiliation of poverty and inequality. For Rosselli[25] 'socialists postulate the end of bourgeois privilege and the effective extension of the liberties of the bourgeoisie to all'. Later Norberto Bobbio[26] would similarly argue for a liberal version of socialism that was built upon the rights of the individual and the democratisation of society more generally. Like Rosselli, Bobbio seeks to redefine socialism as concerned with the spread of liberty and democracy throughout society thereby offering a distinctive vision to that offered by Soviet Marxism. The Italian liberal socialism of Rosselli and Bobbio was born out of the fight against fascism while at the same time wishing to criticise ideas of direct democracy. The defining ethos of liberal socialism was the combination of the values of liberty, democracy and equality holding in check the power of elites from below through the establishment of formal democratic procedures[27].

If Rosselli and Bobbio identified the Italian problem as one of allowing ordinary people the possibility of experiencing a life of liberty then similar ideas were taking root elsewhere. George Orwell's[28] liberal socialism can be seen as operating along these contours. The nightmare vision of a state controlled society that has eliminated memory, authenticity and dissent is issued as a warning. However Orwell's liberal socialism sought to connect liberty and justice in new ways. Like many in the liberal socialist tradition a great deal of emphasis is placed upon the role of education. A free society depends on people who are not afraid to be free. Freedom is unlikely to be experienced as a value if the education system is reduced to training for employment, but by engaging with unusual ideas individuals are offered the possibility of developing a questioning and critical life. Such democratically inspired individuals Orwell[29] hoped are unlikely to be satisfied with a society that was overly totalitarian or 'organised like a beehive'. Ultimately for Orwell this did not mean a perfect or utopian society but rather one where economic security and liberal freedoms could be preserved while keeping more overtly authoritarian solutions to social problems at bay. Similarly Dewey and Tawney[30] place a great deal

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25 ROSEELLI, C., *op. cit.,* p. 86.

26 BOBBIO, N., *The Future of Democracy*, Polity Press, Cambridge, 1987.

27 BOBBIO, N., *op. cit.,* p. 60.

28 ORWELL, G., "The Intellectual Revolt: Four Articles, Manchester Evening News" in DAVISON, P. (ed.), *Orwell and Politics*, Penguin, London, 2001.

29 ORWELL, G., *op. cit.*, p. 437.

30 DEWEY, J., *Democracy and Education*, The MacMillan Company, New York, 1916 and TAWNEY, R.H., *The Radical Tradition*, Penguin, London, 1961.

of emphasis upon education as the place where freedom could be learned. Freedom here is less an idea and more a learned practice that needs to be apparent in our daily lives.

The liberal socialist tradition in the context of totalitarian Europe sought to extend the idea of liberty to everyone (not simply through the formal expression of rights) but to make liberty part of everyday life, and to curb the worst excesses of capitalism. The collapse of capitalism in the 1930s and the state control of 'actually existed socialism' not surprisingly made this tradition of thinking one of the major benefactors of the post-war settlement within Europe. However this 'golden period' of Western European socialism came to end in the 1980s. Western European liberal socialism had largely been based upon the recognition by the state of working-class institutions like trade unions and the need to build a progressive public culture[31]. Social democratic citizenship was a compromise between capital and labour that helped support a politics that gave expression to the establishment of the welfare state and the idea that all citizens were entitled to develop the self through education. The political parties of this period were more than election winning machines and were largely based upon an alliance between the progressive middle-class and the organised working class. Of course not all of the parties and citizens of this period could be described as liberal (more conservative strains of thought were certainly evident) however my argument is that that it was an important concern within the internal debate.

Orwell[32] in the 1940s speculated whether intellectual freedom would ever be valued as much as job security by working class. Orwell's own first hand experiences of mass unemployment of the 1930s had taught him that working people often value security over freedom. However freedom he felt should not be confined to a minority and any society that wish to consider itself civilised had to offer young people the chance to encounter strange and unusual ideas through education. Orwell also thought that unless working-class people developed a taste for freedom then we would potentially never be free of the threat of authoritarian or fascistic politics. As Tawney[33] argued that if 'to lead a life worthy of human beings is confined to a minority, what is commonly called freedom would more properly be described as privilege'. It was the desire to bring freedom home for the many that drove democratic socialist politics.

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[31] MOSCHANOS, G., *In the Name of Social Democracy: The Great Transformation: 1945 to the Present*, Verso, London, 2002.

[32] ORWELL, G., *The Road to Wigan Pier*, Penguin, London, 2001.

[33] TAWNEY, R.H., *TheAcquisitive Society*, Collins, London, 1961, p. 168.

V. **Market Totalitarianism?**

That liberal and democratic socialist ideas valued freedom after and during the dominance of totalitarianism is not surprising. Tvetan Todorov[34] has argued that totalitarianism was a concerted attack on ideas of ambiguity, liberty and dissenting opinions more generally. The state's main requirement from citizens was blind obedience. More recently there has been a concern amongst some critics that the logic of totalitarianism is far from dead but can also be detected in some aspects of neoliberalism. Tony Judt[35] goes as far as to argue that the that the dominance of market driven solutions has a grip on the common sense of elites in a similar fashion to the way that Marxism dominated the minds of many intellectuals of the 1930s and 1940s. Here Judt refers to the classic work of Polish intellectual Czeslaw Milosz *The Captive Mind*[36]. Milosz's[37] text describes how a generation of intellectuals across Europe became taken over by a 'new faith'. These intellectuals were largely motivated by a doctrine that sought to produce a perfected mankind arriving at some point in the distant future. Official state sanctioned Marxism offered an of anti-Enlightenment culture as it was driven by a desire to regulate and control thought. Here the liberal traditions of the West were dismissed as doctrinaire, evil, elitist and hostile to the needs of ordinary people. The book stands as a criticism of Left authoritarianism and has a great deal in common with the earlier warnings that Orwell made about totalitarian Marxism that knew more about doctrine than it did about truth. For Judt (2010:179) the contemporary market like authoritarian Marxism has a circle of true believers, is dogmatic and produces a blindness in terms of its short-comings. As Judt (2010:179) argues 'the thrall in which an ideology holds a people is best measured by their collective inability to imagine alternatives'. The critical component of Judt's historical thinking is quite simply to reveal that in recent times that Europeans have seen the world quite differently to that of the present where freedom could be reconciled with the state.

We might press this point further and argue that if totalitarianism marked a war against clearly defined human evils then these features were also evident in the so called war on terror. Democratic societies as we have seen require that we learn to live within freedom. The way in which we do this is to test out our ideas in public and engage in critical discussion with others. In doing this we have to accept not only that our arguments are

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[34] TODOROV, T., *Hope and Memory*, Atlantic Books, London, 2003.
[35] JUDT, T., *The Memory Chalet*, William Heinemann, London 2010.
[36] MILOSZ, T., *The Captive Mind*, Penguin, London, 1981.
[37] Ibid., p. 3.

falliable, but that we may need to reconsider our position at a later date. A problem arises once other people's arguments and positions become an 'evil' to be defeated. As the philosopher Richard Bernstein[38] pointed out there are marked similarities with this view and that which pre-occupied American neo-conservatives in the war on terror. The attempt to impose 'good' through force as opposed to clearly defined 'evils' reveals an anti-democratic form of politics. Indeed in the wake of the mass demonstrations against the war there was a widespread fear that the United States were potentially abandoning an Enlightenment based politics. Here European ideals remain less a matter of philosophical abstraction but could be related to secular principles such as the rule law, human rights and of course freedom. The good society in this setting would need to be the pluralistic society where different ideas of the good can be weighed against one another. Especially important here is the idea that fallible human-beings can make mistakes and given the opportunity once justice has been seen to be done to change course

As Todorov[39] has more recently argued if individual ideas of freedom are the Other of the totalitarian experience then under neoliberalism it is collectivism. Whereas social liberalism sought to reconcile a number of human goods most notably liberty and community such ambiguities seem to be absent from neoliberal ideas. Under neoliberalism the state can only intervene to enhance competition and not to safe guard the security of fellow citizens. Further the assumption is often made that individuals are rational actors simply acting to maximise their market returns. This assumes that all humans are equally motivated by money and that markets are neutral mechanisms fairly distributing goods. The reduction of human-beings to a single principle of market inspired freedom ends up driving out other values. Social liberalism then sought to speak of freedom the extent to which it recognises that human-beings were social actors whose freedom depended upon social relationships rather than the market. There is then a totalitarian logic to neoliberalism the extent to which it is only able to offer a 'one-eyed' understanding of human freedom and the ways in which the state is seen as a form of evil from which human-beings need to be liberated. Such a situation however can-not be accurately described as one where freedom has triumphed over community as some of the communitarians have claimed. Here my argument is that in the European setting we could argue that any concern for the authentic freedom of the self has been abandoned to service the market. Market driven intiatives harbour

[38] BERNSTEIN, R., *The Abuse of Evil*, Polity Press, Cambridge, 2005.
[39] TODOROV, T., *The Totalitarian Experience*, Seagull Books, London, 2011, p. 56.

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a view of the citizen as someone who treats human life like an economic balance sheet. Social liberalism had a more complex understanding of human freedom that recognised that the project of becoming ourselves was not only precarious, but that we would choose different values from one another within this process. Further that to secure the freedom of everyone then individual liberty would need to be balanced against other values like responsibility, equality and community. While preferable to neoliberalism, communitarianism on the other hand has a tendency to prefer community over liberty. My argument is that with good reason European social democracy needs to be concerned about freedom given the violence of the past, but also that such features avoid the overly conformist view of the self often preferred by communitarian writing.

VI. **European Cosmopolitan Social Democracy**

The other feature missing from communitarianism within a European setting is its neglect of more global frames of reference. There is a general call within much communitarian writing to recover a sense of the good society and shared moral norms by reinvestigating lost traditions and political ideas. From a cosmopolitan perspective this is a deeply problematic argument. As Ulrich Beck[40] argues this position tends to lapse into methodological nationalism. By this he means that political identity becomes overly connected to nationalist histories and understandings and fails to appreciate the ways that power and political ideologies cut across borders. A more cosmopolitan frame of reference seeks to position states within more global co-ordinates, histories and identities. Such features have been evident in the argument thus far as I have sought to talk about *European* notions of democratic socialism. Elsewhere Beck[41] has argued that we have now moved into the second age of modernity and that our political compass needs to be remade in respect of a newly emerged global society. This is less a world of separate nation-state's, but more one of interconnected national societies where the idea of human rights takes on a new normative power. Ours is a world of refugees, global travel, cultural inter-mixing, 24 hour news and an emergent trans-national civil society. In this reading, social democracy needs to be remade in terms of a new global society where state's no longer directly define the political. Further freedom has new possibilities within such a society because as traditions become increasingly open to question through the

[40] BECK, U., *The Cosmopolitan Vision*, Polity Press, Cambridge, 2006.

[41] BECK, U.,"The cosmopolitan perspective: sociology of the second age of modernity", *British Journal of Sociology* no. 51(1), 2000, pp. 79-105.

flow of information they lose some of their binding force. For example, the globalisation of religion has meant that sticking to the spiritual traditions of your community is one choice amongst the many that you might make. The second modernity is an individualised modernity where we are increasingly compelled to reinvent ourselves and reconstruct our own biographies in an increasingly uncertain world.

These features have clearly been influential in helping shape Anthony Giddens's[42] idea of the third way. What made the third way distinctive is the argument that 'politics should take a positive attitude towards globalisation'[43]. While recognising that neoliberal forms of globalisation can indeed have a destructive impact we should be careful of retreating into a politics of protectionism and warring economic blocs. Third way politics not only seeks to break with old style statist social democracy and neoliberalism, but also offers a new politics of citizenship that presses 'no rights without responsibilities'[44]. By this Giddens is concerned that old style social democracy stressed entitlements over duties. To this degree the new communitarianism is a continuation of these arguments. However as we shall see there are also differences.

The cosmopolitanism of Beck and Giddens has been criticised for failing to adopt a critical enough language of capitalism. This seems even more evident after the financial crash. There is now a more concerted need to develop a more sceptical vision of capitalism and to try and think of a different kind of economy. Further Jonathan Rutherford[45] has rightly argued that considered more socially that cosmopolitanism tends to appeal to elites as well as the middle class populations rather than the marginalised. For more subordinate populations globalisation has been experienced as an attack on more traditional cultures and ways of life. The arrival of the post-industrial economy is not so much experienced as an opportunity for cosmopolitan as it is through a sense of loss and resentment. More specifically cosmopolitanism has too little to say about the increasing sense of powerlessness and disenfranchisement of more subordinate and working-class populations. Here Rutherford adds that neoliberal forms of globalisation have been accompanied across Europe by the rise of the racist Right who act as a focus for a growing sense of resentment felt amongst working-class populations. The new communitarism begins with a sense of connection that many feel to their host communities and an increasing sense of powerlessness and resentment in the face of global social change. These

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[42] GIDDENS, A., *The Third Way*, Polity Press, Cambridge, 1998.
[43] Ibid, p. 64.
[44] Ibid, p. 65.
[45] RUTHERFORD, J., *op. cit.*

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are all important features and mark a significant advance over the third way which in practice tended to adopt a market friendly from of optimism and have too little to contribute on more complex cultural divisions.

The problem remains however that communitarianism's 'methodological nationalism' has too little to say about global social change. If cosmopolitanism lacks a more earthy sense of capitalism, class and social division then communitarian perspectives need to say more about how to rebuild a more progressive sense of social democracy in our global times. For example, Beck and Grande[46] argue that the relative success of the European project after totalitarianism can be seen in the way that it has built a relatively peaceful Europe based upon human rights and democracy. This formation has become increasingly important in the context of a faltering American empire, but that it needs a new narrative to legitimate itself to European citizens. In order to counter the widespread nationalist resentment against Europe, Beck and Grande (2007) propose a new cosmopolitan Europe based upon human rights, a democratically reformed EU, new civic initiatives and the welcoming of the Other. While these proposals are all to be welcomed what is missing is a recognition of the economic roots of the resentment against the European ideal. While the European Union may well survive the current crisis of capitalism its fate is far from certain. Missing here is a new European project that has broken with neoliberal economics and is able to deliver both freedom and prosperity for all of its citizens. Further we would also need to look more carefully as to why European social democracy has gone into decline and allowed for the rise of the racist Right. Another way of posing this question would be to ask what are the ideas and principles that could lead to a European wide social democracy becoming reconstructed? If the communitarian agenda is currently overly nationalistic and cosmopolitanism disconnected from the concerns of more 'ordinary' citizens what shape might an alternative take?

VII. **European Social Democracy Reconsidered**

Despite cosmopolitan enthusiasm for the European project we would need to recognise its role in down grading European social democracy. Norman Birnbaum[47] has argued that in more recent times that the European Left has been put on the defensive as the European Union has admitted

[46] BECK, U. and GRANDE, E., "Cosmopolitanism: Europe's Way Out of the Crisis", *European Journal of Social Theory* 10(1), 2007, pp. 67-85.

[47] BIRNBAUM, N., "Is Social Democracy Dead? The Crisis of Capitalism in Europe", *New Labour Forum* 19(1), pp. 24-31.

the more easily exploitable labour markets of Eastern Europe thereby undermining the bargaining position of Western Europeans, and the consistent ideological attack that has been mounted on the costly welfare regimes in the age of globalisation. The global movement of capital allows 'regime shopping' and pushes the race to the bottom in terms of social standards is one part 'myth' and one part reality[48]. Global processes have put pressure on labour to remove employment protection, down grade welfare and subject workers to increasingly insecure forms of employment. Rather than a social Europe there has been the emergence of an increasingly low paid and insecure Europe that after the financial crash is likely to become even more so. Perhaps then it is not surprising that many have taken refuge in racist politics. However we need to be careful of the view that globalisation simply equals social retrenchment as the evidence suggests a wide variety of institutional variation amongst welfare regimes across Europe[49]. Further there is also a considerable evidence of resistance on the part of trade unions and other social movements against the attack on the welfare and social rights. However all of these features beg the question as to whether a new European social democracy can be reconstructed in these circumstances?

There are of course considerable grounds for pessimism. While the state is more likely to intervene into the economy than during the 1930s the socialist opposition to capitalism has been substantially reduced. If the United States remains the world's dominant power then its empire is a neoliberal one. In this respect, the power of financial institutions and corporations remain largely unchecked by the current crisis. As the sociologist Michael Mann[50] has commented 'power, not efficiency, rules the world'. However as I have already indicated there remains room for manoeuvre for a reinvented social democracy that takes freedom seriously. This can-not take the form of simply returning to the liberal socialism of the past, but would at least need to be guided by this spirit in new times.

Part of the answer as to what the 'new' social democracy could be would be 'cultural'. As Henning Meyer[51] argues the social democracy of the past

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[48] GRAY, A., *Unsocial Europe*, Pluto Press, London 2004.

[49] HAY, C., "Globalization, Economic Change and the Welfare State", in SYKES, R., PALMER, B. and PRIOR, P. (eds.), *Globalization and European Welfare States*, Palgrave, Basingstoke, 2001.

[50] MANN, M., *Power in the 21st Century: Conversations with John A. Hall*, Polity Press, Cambridge 2011, p. 15.

[51] MEYER, M., "The Challenge of European Social Democracy: Communitarianism and Cosmopolitanism United", in MEYER, M. and RUTHERFORD, J. (eds.), *The Future of European Social Democracy*, Palgrave MacMillan, Basingstoke 2011 p. 155.

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was a 'way of life' that found expression through independent education associations, newspapers and other formations outside of professional political parties. This moves the focus of social democracy beyond the centralised organisation of election winning machines by elites to consider the connections that social democratic ideas might have in relation to civil society more generally. The question here is how can social democracy become a cultural movement, and how might this be achieved? The social democracy of the past was based upon the power of trade unions and the social state. Any renewal of a social democratic project within the European setting would also be based upon these features, but would need to become a broader citizen's movement that included the horizons of the young who are being particularly affected by unemployment across Europe. Further the other main feature impacting upon the development of a new European social democracy are the long term consequences of the environment crisis and our responsibilities to future generations. The long term unsustainability of consumer capitalism and the damage that it is doing not only to the external environment but also to ourselves needs to be at the centre of the debate. If the social democracy of the past sought to offer citizens equal freedom to become what they needed to be in an unequal and unfair world we need to return to some of these features. However consumer orientated citizenship continues to speak of the need for upward mobility so that citizens can lead lives of over-consumption. Here a liberal and responsible social democracy needs to offer something beyond the democratised dream of celebrity lifestyles. This would require less 'hair-shirted' social democrats, but rather a new emphasis upon the ideas of freedom and responsibility in a fragile world. Policy proposals would need to restrict working hours, increase taxes for the very wealthy while funding public works that aimed to 'green' the economy. If the catastrophe facing European democratic societies of the 1930s was fascism, the 1980s nuclear war, then the new danger is most accurately portrayed as environmental collapse and periods of resource war. The 'greening' of social democracy becomes important in the context of peak oil, climate change and the new global economy built upon unsustainable levels of consumption.

The environmental agenda however serves both the values of responsibility as well as freedom. Much of the criticism in respect of the need to build sustainable communities has argued that it is necessary to break with capitalist modernity to enhance levels of well-being[52]. Here the argument is that global consumer capitalism is not only unsustainable but that it creates individualistic citizens whose lives are dominated by insecurity and

[52] HAMILTON, C., *Growth Fetish*, Pluto Press, London, 2003.

unhappiness. In these terms we need to recognise that the capitalism and social democracy that built European prosperity after the defeat of fascism did so without much concern of the impact that economic growth would have on the environment. As John Urry[53] argues neither the American dream nor the less carbon intensive European dream is a suitable model for the rest of the planet. Here I would argue it is better to address these arguments in terms of freedom. In other words, an argument based upon freedom is more concerned with the meaningfulness of our lives rather than the need to simply conform to a consumer driven life-style of upward mobility. Further it also addresses the corresponding fear that a sustainable society would require Orwellian levels of state control in respect of the ordinary lives of citizens. This may of course be different from achieving universal happiness. As ecological educationalist David Orr[54] argues a more sustainable future requires citizen's not only who can think over longer periods of time, but who have also learned to be sceptical about more conventional notions of success. This is less the recovery of a new puritanism (as it is sometimes claimed) but an attempt to disconnect ideas of self-realisation from market success. The freedom to think for ourselves about our needs and identities is assaulted daily by the manufactured dreams of the economic system which promotes an unsustainable future. This is indeed markedly different from the generation of socialists who were confronted by the lure of authoritarian fascism of the past, but the need to imaginatively rethink what we mean by freedom is just as pressing. This time it needs to be done in terms of a sense of limits, fragility and of course responsibility for the citizens and living beings of the future. This will undoubtedly require a rethinking of actually existed European social democracy to consider the possibility of justice and democracy within the limits of the planet. As Tim Jackson[55] has argued this is not only an enormous task, but one that demands that we rethink and steadily abandon both neoliberalism and the consumer orientated society for one that values non-commodified time, community, equality and of course the opportunity to develop ourselves. We need a new narrative about who we are suitable for our times where questions of freedom and responsibility are central.

Franz Kafka[56] in the Berlin of the 1920s once wrote a short story called 'A Fasting Showman'. It tells the story of a performer who initially

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[53] URRY, J., *Climate Change and Society*, Polity Press, Cambridge, 2011, p. 155.

[54] ORR, D., "What is education for?", in GOODLAD, S.J. (ed.), *Democracy: The Last Best Hope*, Jossey-Bass, New York 1994.

[55] JACKSON, T., *Prosperity Without Growth*, Eathscan, London 2009.

[56] KAFKA, F., 'A Fasting Showman', in *Wedding Preparations in the Country and Other Stories*, Penguin, London, 1978.

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attracts the attention of audiences by fasting for 40 days at a time in a cage. However the public soon grows bored with this spectacle, and the performer joins a circus. Here he is allowed to fast for longer, but is too weak to stand and again fails to capture the imagination of the public. Lying almost dead in his cage he is asked why he had lived a life of self-denial. He answers by saying because he could never find anything he wanted to eat. A life of freedom is sometimes given up for the security of the cage. If in the past the threat to freedom came in the form of the authoritarian state today it remains under threat by both the orthodoxies of the market place and a conservative communitarianism. Liberal socialists need to demonstrate that the heritage of the European Enlightenment has a place in our hearts, public policies and common futures. Yet in bringing alive this rich tradition of thinking we need to both recover the past as well as a concern for the future at the same time.

Religious Actors in the European Union*

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Abstract: Article 17 of the Lisbon Treaty institutionalises an 'open, transparent and regular dialogue' between European institutions and churches, religions and communities of conviction. This article examines the functional breakdown of religious dialogue in the European Union and proposes four types of relations between religious/convictional representations and European institutions, namely, private-public, experimental, proactive and institutionalised.
Keywords: Religion; European Union; A Typology of Religious Actors; Religious Dialogue; European Institutions.

Resumen: *El artículo 17 del Tratado de Lisboa institucionaliza «un diálogo abierto, transparente y habitual» entre las instituciones europeas e «iglesias, religiones y comunidades de convicción». Este artículo examina la ruptura funcional del diálogo religioso en la Unión Europea y propone cuatro tipos de relaciones entre las representaciones religiosas o de convicción y las instituciones europeas: privadas o públicas, experimentales, proactivas e institucionalizadas.*
Palabras clave: *Religión, Unión Europea, una tipología de actores religiosos, diálogo religioso, instituciones europeas.*

I. Introduction

On 1 July 1968 President Jean Rey of the European Commission made a public declaration announcing a new stage in the process of European integration, namely the completion of the Customs Union. Endorsing the latest transnational political and economic achievements of the six members of the European Community (EC), he noted that, '1 July 1968 will certainly go down as a milestone in the history of Europe […] the major stage on the road to the economic unification of the European continent will be complete'. President Rey encouraged 'Europeans not to ignore or underestimate the

* Recibido el 2 de noviembre de 2012, aceptado el 18 de diciembre de 2012.

importance of what is now happening' and, indicated that his declaration, in the name of the whole European Commission, should be perceived as 'an act of faith, an expression of hope and an action programme'. He closed his speech by making a rather unusual reference to churches, arguing that,

> Two great spiritual developments dominate this second half of the twentieth century: the reconciliation of the churches and the reconciliation of the peoples. The first is not a political matter, but the second is our affair. The reconciliation of peoples has been first and foremost the reconciliation of European nations, ravaged by the two World Wars of 1914-1918 and 1939-1945, both born in Europe of the clash of nationalisms: for the peoples of Europe these were genuine civil wars. This time is now past. The moment has come to call the young and creative forces of Europe to union, action and hope'.[1]

At first glance, President Rey's words seemed to be in line with other comments on religion made by politicians across Western Europe. Christian democratic parties have regularly brought together a wide range of political leaders endorsing closer cooperation between countries while also making references on religion.[2] Rey's statement was not aimed at instigating a spiritual reawakening on the increasing secularized continent, but at acknowledging the role of 'faith' in the reconciliation between peoples.[3]

A comparable engagement with issues related to 'faith' would not take place until after the fall of communism, in 1990, when President Jacques Delors of the European Commission encouraged representatives of churches, religions and non/philosophical associations to reconsider the 'soul and heart of Europe'. Delors's words resonated among religious leaders particularly when he claimed that, without finding 'the heart of Europe, […] in the next ten years […] the game will be up'.[4]

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[1] *Declaration by the Commission of the European Communities*, 1 July 1968. Full text available at http://www.ena.lu/ (accessed 28 January 2011).

[2] For Christian democracy and the European Community see KAISER, W., *Christian Democracy and the Origins of the European Union*, Cambridge University Press, Cambridge, 2007; VAN HECKE, S. and GERARD, E. (eds.), *Christian Democratic Parties in Europe since the End of the Cold War*, Leuven University Press, Leuven, 2004.

[3] For secularization in post-war Europe see MARTIN, D., *A General Theory of Secularisation*, Blackwell, Oxford, 1978; BERGER, P. (ed.), *The Desecularization of the World: Resurgent Religion and World Politics,* W.B. Eerdmans, Grand Rapids, MI, 1999; CASANOVA, J., *Public Religions in the Modern World* Chicago University Press, Chicago, 1994; BERGER, P., DAVIE, G. and FOKAS, E., *Religious America, Secular Europe? A Theme and Variations*, Ashgate, London, 2008.

[4] For the religious and political context of President Delors's reference to the 'heart and soul of Europe' see LEUSTEAN, L.N., "Does God Matter in the European Union?" in LEUSTEAN, L.N., *Representing Religion in the European Union. Does God Matter?*, Routledge, London, 2012.

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For the most part of their existence, European institutions have been silent on religion.[5] The European Union did not issue an official view on religious and convictional issues until the 1997 Amsterdam Treaty (Declaration 11). A revised form of this Declaration was incorporated in Article 17 of the 2009 Lisbon Treaty which went a step further and institutionalised an 'open, transparent and regular dialogue' between European institutions and churches, religions and communities of conviction.[6]

This article sets out the typology of religious and convictional actors in the European Union and addresses the following questions: In what religious and political context have references to religion emerged in the European Union? Who are the main actors involved in religious dialogue with European institutions? Do President Rey's and Delors's words represent only a private 'act of faith' or the result of an on-going dialogue between European institutions and religious/convictional communities?

II. **A Typology of Religious/Convictional Relations**[7]

1. *Public-Private Relations*

Public-private relations were the prime feature of the dialogue between churches and European institutions after the 1950 Schuman Declaration. This type of relations emerged due to the personal interest in religious issues

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[5] For religion and politics in contemporary Europe see CHENAUX, P., *De la chrétienté a l'Europe. Les catholiques et l'idée européenne au XXe siècle*, CID Editions, Tours, 2007; NELSEN, B.F., GUTH, J.L. and FRASER, C.R., "Does Religion Matter? Christianity and Public Support for the European Union", *European Union Politics*, 2001, 2 (2), pp. 191-217; BYRNES, T.A. and KATZENSTEIN, P.J., (eds.) *Religion in an Expanding Europe*, Cambridge University Press, Cambridge, 2006; DAVIE, G., *Religion in Modern Europe: a Memory Mutates,* Oxford University Press, Oxford, 2000; DAVIE, G., *Europe, The Exceptional Case. Parameters of Faith in the Modern World*, Longman and Todd, Darton, 2002; NORIS, P. and INGLEHART, R., *Sacred and Secular: Religion and Politics Worldwide*, Cambridge University Press, Cambridge, 2004; FORET, F. and RIVA, V., "Religion between Nation and Europe: The French and Belgian 'No' to the Christian Heritage of Europe", *West European Politics*, 2010, 33 (4), pp. 791-809; FORET, F. and SCHLESINGER, P., "Political Roof and Sacred Canopy? Religion and the EU Constitution", *European Journal of Social Theory*, 2006, 9 (1), pp. 59-81.

[6] Article 17 states that: 'The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The Union equally respects the status under national law of philosophical and non-confessional organisations. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations'.

[7] The following two sections draw on LEUSTEAN, L.N., "Representing Religion in the European Union. A Typology of Actors", *Politics, Religion and Ideology*, 2011, 12 (3), pp. 295-315 which details the religious typology and includes a list of religious/convictional actors in dialogue with European institutions.

among civil servants and politicians working in or associated with European institutions rather than a pan-European policy on religion. After the Schuman Declaration and the establishment of the European Coal and Steel Community (ECSC), the first six member-states resembled a predominantly Catholic bloc. However, despite this perception, transnational Protestant political networks which developed from interwar ecumenical relations produced the first Christian reflection group examining the impact of European cooperation on churches.[8] This group, named the 'Ecumenical Commission on European Cooperation' (ECEC), was established in September 1950 only a few months after the Schuman Declaration and lasted until 1974. It was chaired by André Philip, former minister in Charles de Gaulle's provisional government, and Connie L. Patijn, the Dutch delegate to the United Nations Economic and Social Council, and had a highly selective membership bringing together churchmen, politicians and civil servants. The rapid mobilisation of Protestant networks was due to the active influence of the World Council of Churches (WCC) which held its first Assembly in 1948 in Amsterdam.

The ECEC brought together a significant number of religious and political leaders from both the ECSC member states and other West European countries, including United Kingdom, Norway, Austria and Switzerland. It encouraged Protestant and Anglican churches to reflect on the process of European cooperation and issued reports which were distributed on both sides of the Atlantic. The failure of wider Protestant mobilisation towards the process of European cooperation was due to emerging Cold War tensions between East and West and the organisational nature of the WCC. A number of WCC leaders were reluctant to express official support for the ECEC, fearing that the endorsement of a regional political project could endanger worldwide relations between churches.

Despite the limited public discussion among Protestant and Anglican churches on the nature of the ECSC in the 1950s and the 1960s, the ECEC had a double impact. Firstly, it brought together Protestant clergymen and politicians from the United States and Western Europe to discuss the role of post-war international organisations. From the beginning, its membership was not only limited to the ECSC member states but also included the United Kingdom and Nordic countries which took an active part in discussions on transnational religious and political issues. Secondly, some ECEC members would later become public political figures, some of whom had a direct

[8] GRESCHAT, M. and LOTH, W. (eds), *Die Christen und die Enstehung der Europäischen Gemeinschaft* Kohlhammer, Stuttgart, 1994; ZEILSTRA, J., *European Unity in Ecumenical Thinking 1937-1948* Boekencentrum, Zoetermeer, 1995; LEUSTEAN, L.N., "The Ecumenical Movement and the Schuman Plan, 1950-54", *Journal of Church and State*, 2011, 53 (3), pp. 442-71.

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input on the shaping of Western national and transnational politics, such as Gustav Heinemann, President of the Federal Republic of Germany, Jean Rey, President of the European Commission, and Max Kohnstamm, Secretary to the High Authority of the European Coal and Steel Community. These leaders regarded churches as playing a prime role in the process of reconciliation and cooperation rather than as actors directly involved in the political mechanism of European integration.

In addition to providing a discussion forum on religious and political issues, the ECEC members were instrumental in supporting the establishment of religious bodies representing Protestant and Anglican churches in the European Community, namely the 'Consultative Committee of Churches in the European Communities' (1964), and the Ecumenical Centre in Brussels (1966). Both the Committee and the Centre emerged with ECEC support and also as a result of civil servants working in Brussels who encouraged their churches to send representatives to European institutions.

Relations between European institutions and the Roman Catholic Church developed on the initiative of local dioceses, at least in France and Belgium, rather than as a systematic policy of the Holy See towards European federalism. Between 1950 and 1952 the diocese in Strasbourg had a small office monitoring the Council of Europe; however, the office was closed due to financial reasons. A new office was opened by Jesuit clergy in Strasbourg in 1956 which aimed to provide a link between the Council of Europe and the Roman Catholic Church. This office, named the 'Catholic European Study Information Centre' (*Office Catholique d'Information sur les Problèmes Européens* or OCIPE), opened a branch in Brussels in 1963. OCIPE ran in parallel with the 'European Catholic Centre' (*Foyer Catholique Européenne*) which was established in the same year to look after the pastoral needs of EC officials and their families in Brussels.[9]

After the Second Vatican Council a large number of religious bodies entered into contact with European institutions, some of which opened offices in Brussels to provide expertise and a global network on education, development, humanitarian aid and diplomatic relations, such as the CIDSE - International Co-operation for Development and Solidarity in 1967; the Catholic International Education Office in 1974; and, the European Committee for Catholic Education in 1974. The increasing number of Catholic offices in Brussels was supported by the appointment of a Papal Nuncio in charge of diplomatic relations between the Holy See and the European Community in 1970.

The first elections to the European Parliament in 1979 led to further developments in the presence of religious communities in Brussels. In

[9] DE CHARENTENAY, P., "Les relations entre l'Union européenne et les religions", *Revue du Marché commun et de l'Union européenne*, 2003, No. 465, pp. 90-100.

1979 the Quaker Council for European Affairs opened an office while, in the following year, the Holy See established an official representation, 'the Commission of Bishops' Conferences of the European Community' (COMECE), which provided a direct link between Catholic bishops in the European Community and European institutions.

Both the Catholic and Protestant offices in Brussels and Strasbourg operated with a small number of personnel, mainly appointed by national religious bodies, and with limited financial support from their churches and from the European Commission. These offices brought together not only churchmen from EC member states but also civil servants working in European institutions who provided expertise in areas traditionally considered outside the interest of churches, such as agriculture and migration. This exchange of information and knowledge between churches and European institutions reflected the private-public nature of religion. The concept of religion was associated with the personal interests of some EU officials while religious representations were regarded as part of the increasing number of civil society organisations lobbying in Brussels.

The involvement of EC civil servants in religious representations had a double impact. Firstly, it led to increased contact between Catholic and Protestant offices marked by the 1974 Roehampton Conference. The Conference represented the climax of inter-religious relations in Western Europe and was dedicated to the process of European integration. Secondly, the Conference instigated the establishment of a Joint Protestant-Catholic Working Group in Brussels to provide a theoretical investigation of the 'purpose' (*finalité*) of European integration. In addition, religious dialogue led to an established representation in Brussels named the 'European Ecumenical Commission on Development' (EECOD) which ran from 1975 to 1996.

2. *Experimental Relations*

The second type of relations developed due to the decision of President Gaston Thorn to establish an 'experimental' contact between the European Commission and churches in June 1982. On the recommendation of Secretary General Émile Noël, Thorn appointed Umberto Stefani, Director at the Secretariat General, as Special Counsellor on 13 September 1983 in charge of compiling a census of religious organisations and as an informal liaison officer with the Holy See. Stefani retained this position during the first years of Jacques Delors's presidency and was instrumental in organising the visits of Pope John Paul II to European institutions in 1985 and 1988.

The experimental type of relations was fuelled both by Delors's interest in religious and ethical issues and by the increasing mobilisation of religions

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on European issues in the context of the Single European Act and the establishment of a Single Market. New religious bodies set up offices in Brussels and engaged in informal dialogue. These included the European Union of Jewish Students which opened an office in 1982, while the European Commission received delegations from the European Jewish Congress in 1987 and the Ecumenical Patriarchate in 1989.

After the death of Jean-Louis Lacroix, who worked on ethical issues and was one of Delors's closest advisors, Delors appointed the so-called 'Lacroix Group' of advisors in 1987. Although the group did not have an official mandate to liaise with churches, on 8 March 1989 Delors established a new advisory group named the 'Forward Studies Unit' (FSU) (*Cellule de prospective*) under the leadership of Jean-Claude Morel, a former General Director, and Jérôme Vignon, Coordinator of Studies. The FSU continued the Lacroix Group's previous expertise and was asked to establish regular contact with churches and religious communities.

3. *Proactive Relations*

The FSU's official mandate on religion led to the appointment of Marc Luyckx as Secretary in charge of religious dialogue in September 1990. Luyckx, a former Catholic priest with a doctorate in Russian and Greek theology from the *Pontificio Istituto Orientale*, previously served as Secretary of the EECOD from 1985 until 1989. In 1990 he wrote a comparative analysis of the Abrahamic religions and atheist communities and concluded that, despite the process of secularisation, there was an increasing interest in spirituality coupled with science and technology.

His drive in favour of closer relations between the Commission and a wide range of religious and convictional communities that needed to be better organised at the pan-European level was paralleled by a large number of new religious representations. They included churches (the Brussels Office of the Evangelical Church in Germany in 1990; the Jesuit Refugee Service Europe in 1991; the Liaison Office of the Orthodox Church to the European Union in 1994, under the jurisdiction of the Ecumenical Patriarchate), religions (CEJI - A Jewish Contribution to an Inclusive Europe in 1990; the Forum of European Muslim Youth and Student Organization in 1996; the European Bahá'í Business Forum in 1993) and communities of conviction (European Humanist Federation in 1991).

In October 1996, Luyckx was replaced by Thomas Jansen, Secretary-General of the European People's Party, who retained his position during Santer's presidency. In the same year, the Forward Studies Unit was renamed as the Group of Political Advisors to the European Commission

(GOPA).[10] During Romano Prodi's presidency, Michael Weninger, a former Austrian diplomat with studies in theology and philosophy was appointed in charge of contact with churches and religious communities within the GOPA.[11]

Both Jansen's and Weninger's leaderships coincided with the establishment of 'A Soul for Europe: Ethics and Spirituality', an initiative of the European Commission, which was intended to promote religious dialogue between Christians, Jews, Muslims and Humanists and was administered by the European Ecumenical Commission for Church and Society. The programme had its origins in Delors's meeting with religious leaders in 1990 in which he suggested that Europe needed 'a soul'.

The establishment of the Convention on the Future of Europe in 2001 and discussions on the *Treaty Establishing a Constitution for Europe* brought new religious actors in contact with European institutions. The decision to exclude references to 'God' and 'Christianity' in the Preamble of the Constitution, and debates in the intergovernmental conference between 2003 and 2004 revealed that, despite an increase in religious lobbying in Brussels, national governments continued to have a powerful voice on issues related to religion.

4. *Institutionalised Relations*

The institutionalisation type of religious relations has been the product of intergovernmental negotiations during the Convention and increased the significance of religious dialogue between European institutions and churches, religions and communities of conviction (Article 17 of the Lisbon Treaty). In 2005 the Group of Political Advisors was renamed the Bureau of European Policy Advisors. In 2007 Jorge César das Neves, a Portuguese official with a background in philosophy, was appointed in charge of its relations with religions/convictional communities; in January 2012 he was replaced by Katharina von Schnurbein, a German national who was previously the European Commission's Spokesperson for Employment, Social Affairs and Equal Opportunities and Chair of the European Affairs Committee at the German Bundestag in Berlin. The institutionalisation of religious dialogue is in line with President José Manuel Barosso's approach to issues of 'faith', resulting in annual meetings between the Commission and high-profile leaders from a large number of religious and convictional bodies.

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[10] JANSEN, T., "Europe and Religions: the Dialogue between the European Commission and Churches or Religious communities", *Social Compass*, 2000, 47 (1), pp. 103-12.

[11] WENINGER, M.H., *Europa ohne Gott? Die Europäische Union und der Dialog mit den Religionen, Kirchen und Weltanschauungsgemeinschaften*, Nomos, Baden-Baden, 2007.

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III. **The Functional Breakdown of Representations**

Religious representations in the European Union are divided into diplomatic representations; official representation of churches; inter-church organisations or networks; confessional or convictional organisations; religious orders; and single-issue organisations.

1. *Diplomatic representations*

The Roman Catholic Church is the only religious confession with a diplomatic representation in Brussels, and has a Papal Nuncio for the European Community, first appointed in 1970. According to diplomatic law, the Papal Nuncio not only represents the Holy See but also has a symbolic mission as the Doyen of the Diplomatic Corps accredited in Brussels. Concurrent with the increased number of representations after the Maastricht Treaty, the Order of Malta entered into contact with the European Commission in the early 1990s and opened a diplomatic representation in 2003. However, the Order of Malta is not recognised by all EU member states; its diplomatic relations are recognised only by the European Commission and not by the other European institutions. In 2006 the European Commission opened an EU diplomatic delegation to the Holy See and, in the following year, the delegation was given diplomatic attributions regarding the Order of Malta.

2. *Official representations of churches*

A distinct entity is the 'official representation of churches'. Churches have been firstly represented by either pastoral bodies or by inter-church organisations. Although the Catholic Church was in contact with European institutions through OCIPE, the European Catholic Centre and other Catholic agencies, it opened its 'official' representation only in 1980, namely the COMECE. The COMECE is in direct contact with a large number of Catholic bodies and represents the official voice of the Roman Catholic Church to European institutions.

The first Protestant church to have an independent office was the Evangelical Church of Germany (*Evangelischen Kirche in Deutschland* - EKD) in 1990. The office provides legal expertise to the Church and Society Commission of the Conference of European Churches (CSC/CEC) and represents the EKD to European institutions.

After the Maastricht Treaty, a large number of churches followed a similar pattern to the EKD. Although they were and remained part of inter-

church structures, they have gradually opened their own offices. In some cases, churches have chosen to become more visibly part of the structure of an inter-church organisation by sending an officer to represent them in Brussels (for example, representatives from Sweden and Finland working in the CSC/CEC). Other churches have decided to maintain contact with their previous inter-church partners while setting up offices of their own, such as the Ecumenical Patriarchate (1994), the Orthodox Church of Greece (1998), the Romanian and the Cypriot Orthodox Churches (2007) and the Church of England (2008).

3. *Inter-church/convictional organisations/networks*

Inter-church organisations/networks have a large membership and represent most confessions within a specific branch of a faith. Since their establishment the World Council of Churches (1948) and the Conference of European Churches (1959) have had informal contact with the Ecumenical Centre in Brussels. In addition, some inter-church networks have separated from these organisations and established their own representations, such as the European Evangelical Alliance (1994) and the Pentecostal European Fellowship (2005).

A number of non-Christian and convictional communities have established their own offices in Brussels. The main distinction between this type of structure and those above is in their membership. The confessional/convictional organisations/networks represent either only a community within a larger confession (for example, B'nai B'rith Europe) or a group of confessional/convictional organisations (for example, the European Union of Jewish Students or the European Humanist Federation).[12]

4. *Religious orders*

Religious orders do not fit into one of the above categories due to their nature and operation. Their prime activity is pastoral, some of them carrying out advocacy work which is independent of the official policy of their Churches. In particular, the Jesuit order has been the most active in monitoring the activities of European institutions, opening a religious office in Strasbourg in 1956 and in Brussels in 1963. A European office of the Jesuit

[12] For Islamic communities in dialogue with European institutions see SILVESTRI, S., "Islam and Religion in the Political System of the EU", *West European Politics*, 2009, 32 (6), pp. 1210-1239.

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Refugee Service was opened in 1990 while the Dominican order established a centre (ESPACES - Spirituality, Culture and Society in Europe) in 2001.

5. *Single-issue organisations*

The majority of religious and convictional organisations represent single-issue groups, such as education, humanitarian aid and advocacy. They operate either on an exclusive 'single' issue or are engaged in a few issues at the same time. The single-issue organisations span across all churches, religions and communities of convictions and are actively engaged in EU policy areas. Most of them are in dialogue with European institutions either through diplomatic representation, official representation of churches or inter-church or convictional organisations/networks. For example, the majority of Christian single-issue organisations maintain close relations and are represented by the COMECE and the CSC/CEC in their dialogue with European institutions.

IV. **Conclusion**

The Lisbon institutionalisation of religious dialogue builds on extensive relations between European institutions and religious/convictional actors over many years. Although the number of representations in Brussels increased considerably after the Maastricht Treaty, European civil servants have engaged in religious dialogue since the very first days of the European Community. This dialogue has been shaped by four types of relations between European institutions and religious/convictional communities, namely private-public, experimental, proactive and institutionalised.

Each type has been encouraged by the European Commission's engagement on issues of 'faith' with religious issues remaining under the legal jurisdiction of the EU member states rather than part of a supra-national policy on religion.[13] The increasing diversity of the functional breakdown of religious/convictional representations in dialogue with European institutions

[13] For relations between religious communities and European institutions see ROBBERS, G. (ed.), *State and Church in the European Union*, Nomos, Baden-Baden, 1996; MASSIGNON, B., *Des dieux et des fonctionnaires. Religions et laïcités face au défi de la construction européenne*, Presses Universitaires de Rennes, Rennes, 2007; MCCREA, R., *Religion and the Public Order of the European Union*, Oxford University Press, Oxford, 2010; and LEUSTEAN, L.N. and MADELEY, J.T.S. (eds.), *Religion, Politics and Law in the European Unio*n, Routledge, London, 2010.

suggests a shift from the national to supranational approach towards religion. This shift has been encouraged by the soft-policy engagement of the European Commission with civil society organisations. Taking into account the functional breakdown of religious/convictional representations in the European Union, single-issue organisations have become the driving force of implementing a transnational public policy in which issues of 'religion' and 'faith' are actively associated with socio-economic projects at the national level of EU member states.

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Stretching the concept of citizenship in Spain on the threshold of the 21st Century*

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Abstract: The Spanish Constitution that was approved in 1978, after Franco's forty-year dictatorship, gave the autonomous regions freedom to implement their own policies in specific social domains. Although it would be difficult to speak of a full-fledged federal system of government, it is true that sub-state authorities have gained substantial ground in terms of organizing areas of civic life such as the health system, education, housing policies, etc. Simultaneously, traditional views on citizenship—which linked it to the Nation-State—have also been eroded "from above" as supra-national entities such as the EU, the UN, and Human Rights organizations have issued norms and regulations that have had a significant impact on our understanding of the concept. It remains unclear, though, whether these new forces shaping contemporary citizenship(s) are all pushing in the same direction.

Key words: Spain of the autonomous regions, Decentralizing trends, Effects on citizenship, Supra-national organizations, Challenges in different types of diversity

Resumen: *La Constitución española de 1978, aprobada tras el fin de la dictadura franquista, confirió a las comunidades autónomas notable libertad para definir sus propias políticas en determinados ámbitos. Aunque sería difícil hablar de una forma de gobierno federal, es cierto que las autoridades regionales han conseguido sustanciales cuotas de poder en áreas como la sanidad, la educación o la vivienda. Al mismo tiempo, las definiciones tradicionales de ciudadanía —vinculadas casi siempre al Estado-Nación— se han visto también erosionadas «desde arriba» ya que entidades supranacionales como la UE, la ONU o algunas organizaciones de Derechos Humanos han generado directivas y normas que han tenido*

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un profundo impacto sobre nuestra concepción del término. Sin embargo, no está del todo claro si todas estas nuevas fuerzas que dan forma a la(s) ciudadanía(s) contemporánea(s) la(s) están empujando en la misma dirección.

Palabras clave: *La España de las autonomías, Elementos de descentralización, Efectos sobre la ciudadanía, Organizaciones supranacionales, Diferentes tipos de diversidad y sus retos.*

> In the post-modern era, the new form of citizenship is marked by decentralization and the differential self-assertion of issues, partly in response to the inherent tendencies of globalization itself, such as the weakening of Nation-States and the greater social differentiation that is tending to take place worldwide as a result of the new model of production.
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> Martín HOPENHAYN, "Old and New Forms of Citizenship"

> The aim of European integration is intrinsically linked to the task that almost all 27 EU member states now face on the home front. That is, developing policies for the social inclusion of linguistic, religious, cultural and traditional minorities as well as of a steadily growing number of residents of immigrant origin.
>
> Charles WESTIN, "European Integration"

I. **Introduction: The Changing Faces of Citizenship**

For quite a long time, citizenship was a marginal and neglected topic in the social and political sciences. This was due primarily to the fact that the definition of the term was rather narrow and one-dimensional. A citizen was simply somebody recognized as a legitimate member of a 'polity' which, as the modern world conceived it, most often coincided with the Nation-State. Throughout the greater part of the 19th and 20th centuries, membership in the socio-political body of a country bestowed on the citizens a number of rights—and obligations—that allowed them to participate actively in the civic life of the nation. Conceived as such, citizenship constituted a form of social categorization and closure, whereby members were defined as insiders—or citizens—while non-members were outsiders—aliens or denizens—. But this understanding of the critical role played by the Nation-State in terms of protecting the basic rights and freedoms of its subjects faced a partial crisis in the last decades of the 20th century, when it became apparent that new forces—both global and local—are having a profound impact on how people can now gain access to those rights. Hopenhayn affirmed a few years ago that "Now that the old century is ending and a new one is beginning, many people

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feel that citizenship is being rethought, rewritten and reinscribed in new spaces, without giving up its historical content"[1].

While never losing sight of the historical legacy left by the Westphalian system, scholars such as Jürgen Habermas and Yasemin N. Soysal have been contending since the early 1990s that in order to reach a full comprehension of citizenship dynamics in our contemporary world one needs to transcend the perspective of the Nation-State as the basic unit of social and political analysis[2]. These authors maintain that phenomena such as transnational exchanges, international migrations, and human rights regulations are contributing to the blurring of the line between citizens and non-citizens. Of course, it would be naïve to imagine that the old conception of citizenship as a form of social closure in liberal democracies would vanish overnight. In fact, a substantial part of the recent literature on citizenship has centered precisely on the ways in which class, gender, and race/ethnic barriers have determined—and still *do*, to a great extent—who was to be considered a member and who was not[3]. It is true, however, that many of the books devoted to the theme of inclusion in Citizenship Studies have also dealt with the strategies used by different segments of the population in Western democracies to try to breach these barriers. In Glenn's synthetic account of the struggles of women and people of color in the U.S. for their labor and citizenship rights in the early decades of the 20th century, one notes that in some instances policy shifts antedated the sea-change that was going to take place in the late 1960s and 70s in the wake of the Civil Rights movement[4]. It is undeniable, though, that the real transformation of how citizenship is conceived in the social sciences has taken place only over these last twenty years, in which identity politics and multiculturalism have had a tremendous impact on majority-minority and native-immigrant relations. Jeffrey Alexander argues in his recent book *The Civil Sphere* that, whereas up to the mid-1980s the primary modes of incorporation of newcomers and minorities into the public/civic sphere was through assimilation or

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[1] HOPENHAYN, M., "Old and New Forms of Citizenship", *CEPAL Review*, no. 73, April 2001, p. 116.

[2] See HABERMAS, J., "Citizenship and National Identity: Some Reflections on the Future of Europe", *Praxis International*, vol. 12, no. 1, 1992, pp. 1-19 and SOYSAL, Y.N., *Limits of Citizenship: Migrants and Postnational Membership in Europe*, The Chicago University Press, Chicago, 1994.

[3] See, for example, SHKLAR, J.N., *American Citizenship: The Quest for Inclusion*, Harvard University Press, Cambridge, MA, 1991; CASTLES, S. and DAVIDSON, A., *Citizenship and Migration: Globalization and the Politics of Belonging*, Routledge, London and New York 2000; GLENN, E.N., *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor*, Harvard University Press, Cambridge, MA, 2002.

[4] Ibid. GLENN, pp. 6-17.

ethnic hyphenation, nowadays multiculturalism provides a smoother transition[5]. Canada is, of course, the country that has been most successful in implementing a multicultural model that provides space and recognition for the rights of minority groups to be incorporated into the socio-political script of the nation[6].

As the first epigraph introducing this article clearly suggests, then, the concept of citizenship has been influenced lately by a number of worldwide processes that have ostensibly expanded—and frequently complicated—its meaning. Thus, for example, the increasing respect for human rights and the adoption of democratic values in many areas around the globe—as well as the above-mentioned recognition of cultural/ethnic difference—are encouraging many States to start granting some basic political and civil rights to non-nationals. In addition, it is a fact that some international organizations conduct a kind of 'global surveillance' and would not hesitate to report and denounce States that are violating certain political or cultural rights of their residents. Some scholars have explored the possibility of a new understanding of citizenship that moves beyond the limits of State borders[7]. Although the institutionalization of those civil-society organizations on the international stage is not fully accomplished yet, so that it is difficult to think of a trans-state citizenship in the near future, we have seen a few developments—such as dual and supranational citizenships—that seem to head in that direction. Finally, another reason impelling us to rethink citizenship is that, as T.H. Marshall affirmed more than five decades ago, there are certain social and economic rights that need to be brought into the picture—besides the civil and political rights covered by the traditional concept[8]. This seems particularly urgent at a time when the globalization of finances and the acceleration of all sorts of trades have made it impossible for national administrations to protect the economic and social entitlements of their citizens. We have learnt these last two decades that a crisis in one part of the planet may have

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[5] ALEXANDER, J.C., *The Civil Sphere*, Oxford University Press, Oxford and New York, 2006, especially pp. 450-458.

[6] For an enlightening collection of essays on multiculturalism, see TAYLOR, C. *et alter*, *Multiculturalism: Examining the Politics of Recognition*, ed. and intro. by A. GUTMANN, Princeton University Press, Princeton, NJ, 1994. It was Taylor's former student Will Kymlicka, however, who first made famous the phrase "multicultural citizenship" in his path-breaking book under that title published in 1996.

[7] See HOFFMAN, J., *Citizenship beyond the State*, Sage Publications, London and Thousand Oaks, CA, 2004 and KEANE, J., *Global Civil Society?* Cambridge University Press, Cambridge, 2003.

[8] MARSHALL, T.H. And BOTTOMORE, T., *Citizenship and Social Class*, Pluto Press, London, 1987 [1950].

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adverse consequences for the levels of employment or the interest rates in another, and so Nation-States have seen their power to control their citizens' wellbeing dramatically eroded. In order to defend themselves against the often damaging effects of these global processes on their social rights, citizens must either establish alliances with international, non-governmental organizations that are able to mobilize massive support and to have a global impact or, alternatively, re-orient their understanding of the concept of citizenship to think of themselves as active members of a "radical democracy" that would need to fend for itself against those imponderable external factors[9].

Even if it is true that the processes of "decentralization and differential self-assertion of issues" characterizing citizenship these last few decades are observable worldwide, there are areas of the globe in which, for historical and political reasons, these processes have been much more evident. Of course, places in which the actions of the citizens are *not* directed toward a single interlocutor (be it a State, a regional Administration or a supranational institution) but are instead scattered among different realms of negotiation are likely to produce individuals whose participation and sense of belonging will shift strategically from one field to another depending on interests and circumstances. In her ethnographic and structural analysis of the lives of women in Asian-Pacific countries, Aihwa Ong convincingly demonstrated that individual choices have great impact on human mobility and capital investments, and on how these may, in turn, generate tensions between personal and national identities[10]. The kind of "flexible citizenships" that Ong discusses in her work can also be observed in some regions of Spain where citizens take part in forms of communication and association in the social and political realm that do not always coincide with the sphere of the State. Not only that, but aspects of cultural differentiation and self-assertion that in the past were viewed as belonging to the private/subjective realm, such as religious practices, ethnic goals or sexual choices, are now the object of public treatment since they often seek to change public opinion and prevent the stigmatization of specific social groups. As we will see below, in order to enjoy full citizenship people are no longer happy with just recognition of their membership in the polity of a particular Nation-State. Isin and Wood have cogently argued that since our identities are nowadays

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[9] Chantal Mouffe and Neil Gilbert argue that there is a need to recover a broader social democratic ideal instead of letting neoliberalism replace the state by making private, selective provisions. See MOUFFE, C. (ed.), *Dimensions of Radical Democracy: Pluralism, Citizenship and Community*, Verso, London, 1992.

[10] ONG, A., *Flexible Citizenship: The Cultural Logics of Transnationality*, Duke University Press, Durham, NC, 1999.

multifaceted and also malleable, there is no way in which citizenship can still be understood as a one-dimensional and static category[11].

It is unquestionable that Spain has been for centuries a highly diverse, multi-ethnic nation in which different human groups and cultural traditions have coexisted. It is true that legal citizenship (or nationality) has traditionally derived from membership within the Spanish nation and, therefore, all individuals under that umbrella enjoyed a series of common entitlements. However, besides this link with what we now call the State, people also maintained a strong affiliation to more ethno-territorial stories and ancestral myths that were singular to smaller communities and defined their particular values and aims. Authors such as Richard Delgado, Renato Rosaldo and the aforementioned Aihwa Ong have noted that it is difficult to talk about full citizenship if one does not take into account those cultural differences that sometimes prevent certain groups from fully identifying with the goals of the majority group[12]. This was evidently the case of the Catalans and the Basques on the Iberian Peninsula, who have historically insisted that the State should provide their peoples with the right to a specific socio-cultural membership as part of their citizenship. One could argue that the '*fueros*', a set of laws—mostly fiscal—which were specific to an identified region or estate since the late Middle Ages, served to some extent to satisfy the needs of differentiation of particular communities in such areas as tax duties, inheritance laws or the types of judicial sentences their inhabitants could receive[13]. But, of course, ethno-territorial minorities in Spain have come to play a significant role in the management of what we have called citizenship dynamics only well into the 20th century.

II. **New Forms of Governance in Spain: The Role of Autonomous Regions**

The end of Generalissimo Franco's forty-year dictatorship (1936-1975) meant a definite turning point in the relations between the central Government in Madrid and the regions on the periphery of the country. As is widely

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[11] ISIN, E.F. and WOOD, P.K., *Citizenship and Identity*, SAGE Publications, London and Thousand Oaks, CA, 1999.

[12] DELGADO, R., "Citizenship" (pp. 247-252); ROSALDO, R., "Cultural Citizenship, Inequality, and Multiculturalism" (pp. 253-261); ONG, A., "Cultural Citizenship as Subject Making: Immigrants Negotiate Racial and Cultural Boundaries in the United States" (pp. 262-293) in TORRES, R. *et alter* (eds.), *Race, Identity, and Citizenship: A Reader*, Blackwell Publishers, Malden, MA and Oxford, 1999.

[13] See MCALISTER, L.N., *Spain and Portugal in the New World*, University of Minnesota Press, Minneapolis, 1984. According to this author, certain regions of Spain were more prone to send citizens to the New World precisely because of those differentiations that the 'fueros" (or charters) marked.

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known, one of the dictator's main aims during his rule was precisely to smash and erase any signs of alternative identities in the 'new nation'. Thus, the populations of regions such as the Basque Country, Catalonia or Valencia saw the expression of their local cultures—language, folklore, institutions, etc.—heavily repressed and, in some cases, there were attempts to alter the demographic composition of whole areas by bringing in people from other parts of the country[14]. Although it has been claimed by some historians that the last years of Franco's regime witnessed a relaxation of the policies trying to turn the nation into a culturally-uniform and centralized State, the fact is that ethno-territorial minorities began to gain some visibility and political predicament only after his demise. As Preston has explained, it was only during the Transition Period that a more tolerant and moderate attitude emerged toward minority cultures emerged, allowing them to recover some of their downtrodden traditions and '*derechos forales*' (statutory rights), and giving them a basic level of political autonomy from the central Administration[15].

The Spanish Constitution of 1978, apart from "wishing to establish justice, liberty and security, and to promote the welfare of all those who form part" of the State[16], included a whole chapter (no. 3) devoted to the rights and responsibilities of those regions that decided to constitute themselves into 'Autonomous Communities'. The idea was that those contiguous provinces that shared common historical, economic, and cultural features could gain access to a certain degree of self-determination and decision-making, always under the auspices of the Spanish Parliament. Although this shift or opening up was perceived as insufficient by some of the regional parties and civic organizations, it must be said that it was quite a significant step since it granted those autonomous Administrations the possibility of developing their own statutes and deciding on such critical issues as their denomination, territorial limits, and governing institutions (Art. 147). David Brighty, former British Ambassador to Spain, has argued that despite some evident shortcomings, the movement toward decentralization that the Spanish Constitution marked at the outset of the Transition Period had a positive impact on most regions—both 'historical' and newly-constituted[17]. Not only were they able to retrieve some of the cultural elements that had been censured and repressed during Franco's regime but, looking into the future, they could also partly establish what the

[14] PAYNE, S., *Facism in Spain, 1923-1977*, University of Wisconsin Press, Madison, 2000.

[15] PRESTON, P., *Las tres Españas del 36*, Debolsillo, Barcelona, 2003.

[16] *Spanish Constitution*, "Preamble" by Enrique Tierno Galván, p. 5.

[17] BRIGHTY, D., "Devolution Provides Lessons for Other Countries", presentation given at the Royal Institute of International Affairs in London, February 1999.

socio-political priorities of their citizenry were to be. As will be seen below, the fact that the Autonomous Regions were given freedom to decide on such important areas as education, public works or local economic development has had a paramount influence on the new forms of citizenship that have begun to emerge across the country. Nobody would argue nowadays that we could refer to a single and uniform type of citizenship in Spain, since a mere glimpse at the diversity observable in terms of discourses, local practices, and distinct cultural formations would point in the opposite direction[18].

1. *National Sovereignty and its Sensitive Areas*

While it is a fact that Article 148 of the Spanish Constitution gave the Autonomous Communities competence to implement their own norms in up to twenty-two different areas, it would still be difficult to contend that the country has become a full-fledged federal system these last thirty odd years. On the one hand, it was evident from the start that not all the Autonomous Communities wanted to reach the same degree of self-government, with the so-called 'historical nationalities' (Catalonia, Galicia and the Basque Country) and, interestingly, Andalusia opting for a fast-track, simplified process that made their Statutes effective much more quickly. Moreover, the Basque Country and Navarre were rather exceptional cases because, apart from being granted autonomy the same as the other regions, they also retained some of the fiscal and economic statutory rights they had enjoyed since medieval times. One other reason that has interfered with the devolution of power to the Autonomous Governments is that Articles 148 and 149 of the Constitution, in which the competences are distributed between the State and the regions, include a number of grey areas that are unclear as to who has the power to legislate. According to Keating, there has been "continual competition" between the newly-constituted Autonomies, which want to catch up with the powers enjoyed by the historical regions, while the latter insist that their *hecho diferencial* (differential rights) should not be granted to all the others[19]. What seems undeniable is that frequent asymmetries have resulted in the rate of transference of power to the Autonomies these last twenty years, and few regions can be said to be completely satisfied with the quotas they have

[18] MORENO, L. "Local and Global: Mesogovernments and Territorial Identities", in SAFRAN, W. and MAIZ, R., *Identity and Territorial Autonomy in Plural Societies*, Frank Cass Publishers, London and Portland, OR, 2000, pp. 61-75.

[19] KEATING, M., "Federalism and the Balance of Power in European States", Paper prepared for *SIGMA*, OECD Head of Publication Service, Paris, 2007, p. 22.

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achieved. As recent events in Catalonia have shown, there is a perennial sentiment in some regions that the frame of the Constitution can respond only very inadequately to the claims and demands coming, primarily, from 'historical nationalities'[20].

As has become evident in the introduction to this article, there is a general inclination today to associate the expansion and/or erosion of the traditional concept of citizenship to forces that are external to the borders/boundaries of the Nation-State, such as financial globalization, human mobility and the ICT revolution. Nevertheless, Westin also clarifies in the second epigraph to this contribution that "There is an increasing number of Europeans who today feel excluded [or misrepresented] by the dominant national community of the state in which they hold citizenship"[21]. The Britons, Saami, Sorbs, Romas or Basques are peoples who have lived for centuries in their current Nation-States, yet they do not identify themselves with their countries' predominant national identity, and so they keep struggling to see their cultural and economic rights recognized. Most often the problems derive from a rather confusing division of powers which has allowed—in Spain, for example—that, despite the devolution of competences in several fields, the State still manages to retain the right to pass so-called 'framework laws' that can deeply condition the specific policies promoted by the regions. Sia Spiliopoulou has recently raised the point that "The conceptual relationship between territorial autonomy and the empowerment and cultural protection of minorities still remains unexplored in international law today, as is the conceptual relationship between the components and alternatives of territorial and non-territorial autonomy"[22]. In this regard, it is little wonder that the Catalans and the Basques have been protesting these last two decades—especially during the right-wing government of J.M. Aznar in the early 2000s—about that power to subtly abuse the 'residual competences' left to the State to recentralize certain responsibilities. Predictably, these transfers in power often concerned areas which directly or indirectly touched upon identity questions that were especially sensitive to the Autonomous Administrations.

In spite of the important tensions caused by the overlapping in competences, most analysts have agreed that "The Spanish system of autonomous

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[20] BURGEN, S., "Catalan Independence Rally Brings Barcelona to a Standstill", *The Guardian*, 11 Sept. 2012. http://www.guardian.co.uk/world/2012/sep/11/catalan-independence-rally-barcelona

[21] WESTIN, C., "European Integration: A Matter of Acknowledging Identities", *IMISCOE Policy Brief* no. 14, November 2008, p. 3.

[22] SPILIOPOULOU, A.S., "The Unclear Relationship between Territorial and Non-Territorial Autonomy and Minority Identity", *Newsletter, EURAC Institute for Minority Rights*, no.1, 2012, p. 1.

communities has been a success"[23] and has ultimately managed to balance centrifugal and centripetal forces in the system. Specialists have argued that the main rationale behind the move toward decentralization after the long dictatorship was political and intimately related to the significant levels of diversity of the human groups coexisting on the Peninsula[24]. Still, it was also clear that from a social and economic point of view there were domains that could be more easily and efficiently managed by regional and local administrations that were closer geographically and culturally to the constituencies to be served. Moreno has noted that the Spanish model, although never including the term 'federal' in any of its constitutional provisions, is very similar to a devolutionary federalist system in that we can find two tiers of government—central and regional—that have distributed their competence through a top-down process bearing in mind the organization of social life[25]. Thus, competences connected with the more day-to-day activities, such as education, transportation, urban planning or the health system have been transferred to the Autonomous Administrations, as well as the power to establish their own institution and public social services. In this sense, it is not surprising that since the beginning of democracy in the late 1970s, the differences in expenditure between the central and the local administrations have very much leveled out: in 1980 the central Government spent approximately 90% of the national budget while by 2000 that figure had been reduced to 50%. Needless to say, this significant redistribution of economic power and its associated changes in areas such as employment, family life and public services had immense influence on the type of citizenship the different communities were able to develop. These specificities have been most noticeable in aspects such as the linguistic and educational policies, the 'familiarist' welfare arrangements, health programs, tax policies, and plans for local infrastructures. Despite the remarkable steps taken toward decentralization and recognition of national minority rights during the last thirty years, one still sees that there are sensitive areas in which the central Government has been slow and reluctant to concede more power to the Autonomies[26]. Although the

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[23] KEATING, M., *op.cit.*, p. 24. See also the same author's discussion in "La integración europea y la cuestión de las nacionalidades", *Revista Española de Ciencias Políticas*, n.º 16, 2007, pp. 9-35.

[24] VINUELA, J., "Fiscal Decentralization in Spain", IMF Publication, 2000, pp. 1-5. http://www.imf.org/external/pubs/ft/seminar/2000/fiscal/vinuela.pdf

[25] MORENO, L., "Ethno-territorial Concurrence in Multinational Societies: The Spanish *Comunidades Autónomas*", in GAGNON, A. and TULLY, J. (eds.), *Multinational Democracies*, Cambridge University Press, Cambridge, 2001, pp. 201-221.

[26] ALONSO SANZ, I., "La descentralización española y el Estado autonómico actual: Una visión presupuestaria", *Revista Internacional de Presupuesto Público*, n.º 72, March-April 2010. http://www.asip.org.ar/es/content/la-descentralizaci%C3%B3n-espa%C3%B1ola-y-el-estado-auton%C3%B3mico-actual-una-visi%C3%B3n-presupuestaria

general impression is that substantial room has been provided for minority populations to develop their own cultural and socio-political projects, there are still competences that have been a source of friction between the central Administration and the Autonomous Regions, since they have great impact on the kind of citizenship that people can develop.

2. *Challenges of Managing a Multicultural and Plurilingual State*

Westin has complained that although a common vision seems to have guided—at least until recently—the project toward European integration, the same could not be said about the efforts of several nations to improve their social cohesion[27]. As some authors have maintained, this failure has been due in some cases to the confusing relationship between their promotion of a fairly homogeneous national identity and their attempts at being more open to cultural diversity. This has certainly been the case in Spain where, while clear signs were being emitted suggesting that the State was willing to give more competences to the regions, other political moves revealed reluctance on the part of the central Government to give up quotas of power in certain fields. To start with, there were notorious overlaps in domains such as tourism, agriculture, public works or even the Social Security system, which has made it increasingly difficult to adjust the budgetary figures for both Administrations. As stated above, there have been several cases in which, although in theory the Autonomous Communities were empowered to define the policies, the State has managed to limit their competence by passing some 'transversal' legislation that countervailed their decisions[28]. Predictably, this fact has caused a great deal of disappointment and frustration in the regional Administrations, which have often seen their plans and expectations upset by measures that restricted their powers. One only needs to take a cursory look at the cases of conflict of competences taken to the Constitutional Court by the Autonomous Communities to realize that, since the mid-1980s, this legal battle has been one of the main sources of contention between the different administrations[29].

Furthermore, during the early 1990s, when the Autonomies were hoping to use the constitutional prerogative to approve a statutory reform to its full extent, the central Government preferred to pass an organic law giving a

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[27] WESTIN, C., *op. cit.*, p. 5.

[28] ALONSO SANZ, I., *op. cit.*, pp. 3-4.

[29] CARRASCO DURÁN, M., *El reparto de competencias entre el Estado y las Comunidades Autónomas sobre la actividad económica*, Generalitat de Catalunya-Tirant lo Blanch, Valencia, 2005.

homogeneous and closed package of transferences to all the Communities, regardless of their nature. Of course, this move received, a very critical response from the historical 'nationalities' because it not only set a clear 'ceiling' (cap) to the kind of competences that they would be able to gain in the future, but it also restricted any reform of their statutes to an underlying principle of 'reasonable equality' that clearly constrained their aspirations to retain the differential rights[30]. Thus, while the two major national parties were exploring the best way to bring to an end the development of this pseudo-federal model of State, the historical Autonomous Communities showed great dissatisfaction with the slow pace with which some of the competences had been transferred and the fact that future statutory reforms had been *de facto* blockaded. The first few years of the 21st century saw the approval of proposals to revise the current model of autonomous government by the Basque and the Catalan Parliaments, granting—at least to some of the regions—a more independent management of their institutions and finances, and exclusive power over some of the competences that were still being contested[31]. These proposals were turned down by the Spanish Parliament, since they were perceived as attempts to undermine the unity of the nation that the 1978 Constitution guaranteed. As some specialists have remarked, at this stage the limits of the present system seem to have been reached and new alternatives need to be sought to satisfy the different constituencies.

Luis Moreno has argued that what he calls "ethno-territorial concurrence" (or cooperation) can not only help to overcome tensions in plural societies, but should even contribute to strengthening democratic principles as it encourages the participation of the citizens at different levels[32]. As this author sees it, the Spanish model of autonomous regional governments has allowed most minorities to develop a working form of 'dual' citizenship, which permits the incorporation of elements of both the local/ethno-territorial and the state/national identities. There is evidence that seems to support this view since decentralization in fields such as institutional development, education, management of the cultural heritage, health and the fiscal system has been clear. Nevertheless, one can also see signs of that age-old fear on the part of the State that a second—or third—round of decentralization and ceding further quotas of power to the Autonomous Administrations may result in undesirable asymmetry and fragmentation. Vinuela has pointed out that aspects such as the decentralization of public expenditure and the greater

[30] AJA, E., *El estado autonómico: Federalismo y el hecho diferencial*. Alianza Editorial, Madrid, 2003.

[31] TREMLETT, G., "Basque Plan is Treason, Say Critics", *The Guardian*, 27 October 2003. http://www.guardian.co.uk/world/2003/oct/27/spain.gilestremlett

[32] MORENO, L., *op. cit.*, 2001, pp. 201-203.

income tax autonomy after the mid-1990s may be having negative effects in terms of the poor management of human resources and the increasing difficulties in controlling regional debt[33]. Although some of the national parties advocate it, a return to a more centralized form of government would not be a solution because it would wake up old ghosts that nobody wishes to see again on the political scene. Moreover, as will be seen below, new global elements have entered the socio-political life of the country that would not recommend a regression to earlier stages in which issues such as the administration of justice, civic rights and membership or institutional representation were solely in the hands of the State. In Keating's opinion, the two alternatives open to Spain at the moment are either to favor a fairly uniform federation of autonomous regions all sharing similar economic and political goals or a more asymmetrical and plural union—as supported by the Catalans, the Basques and segments of the Left—in which the various regions could have a different relationship to the center[34]. Needless to say, in whichever direction the politics of the nation decide to head in the future, this will have a profound impact on the type of citizenship that individuals are able to develop in the different parts of the country.

III. **Other Factors Contributing to Decentralization**

If the general trend during the Transition and post-Transition period in Spain has been towards a decentralized, quasi-federalist model of State due to the pressures exerted by the peripheral regions, we should not forget that, simultaneously, other processes were taking place at a supra-national level, impinging on the citizenship that Spaniards were likely to develop in the last two decades of the 20th century. With the accession of the country to the European Community—later to become the EU—in January 1986, Spain finally achieved a long wished-for incorporation into a continental institution that would hopefully put an end to its secular social and economic isolation[35]. In principle, the positive effects of the integration were mostly expected in the field of economics, with the modernization of the country's industrial base and infrastructures, as well as the opening of its companies to broader trade and investment markets. However, as Jordán and other scholars have argued, there were other considerations, such as the quick democratization of the country and the adaptation of the country's institutional and legal structures, which were

[33] VINUELA, J., *op. cit.*, pp. 22-25.
[34] KEATING, M., *op. cit.*, *SIGMA* paper, 2007, pp. 25.
[35] TAMAMES, R., *La Unión Europea*. Alianza Editorial, Madrid, 1994.

equally weighty in the decision[36]. There is no denying that the nation benefited immensely from the integration, as it facilitated the adoption of a more liberal economic policy and encouraged businessmen to take action in sectors unexplored before. We need to bear in mind that the incorporation was being negotiated while the country was submerged in a deep economic crisis due to skyrocketing oil prices and an industrial reconversion in the late 1970s. Nevertheless, the country made an effort to meet the demands of the Community in terms of bilateral liberalization requisites and to prepare the ground for the achievement of a Single European Market[37]. The key political figures in Spain were convinced that this was a train that they should not let go by if they wanted the country to play some role in the construction of a new Europe that could compete with the other global actors—even if this vocabulary was not yet much in use at the time.

Again, although the emphasis is often put on the economic leap that the country experienced as a result of its inclusion in the European project, one should not forget that other aspects of the national character were also profoundly influenced by the process. It is true that the Spanish accession coincided with a change in the economic cycle that helped to restructure the outdated productive system of the country and to improve the competitiveness of some of its industries. Moreover, since 1988 structural funds had been funneled into many of the peripheral areas of the EU in order to achieve greater social and economic cohesion, and the southern European nations received a substantial part of those funds[38]. Even nowadays, it is not unusual to come across billboards planted on construction sites in the Basque Country informing us that those works are being partly financed by the EU. And, of course, other opportunities that membership in the Union has brought about have been as critical in the transformation of our citizenship. For one thing, the possibility of crossing the nearby border with France more freely has changed the weekend habits of many Basque families, and the nation's participation in the birth of the European Monetary Union, which allows us to use the same currency in most of the surrounding countries, has brought numerous advantages. As Jordán puts it, the Spanish society has learnt these last two decades "to cope

[36] JORDÁN, J.M., "Balance de la integración de España en la Unión Europea", *Información Comercial Española*, n.º 811, 2003, pp. 113-132.

[37] TOVIAS, A., "The Southern European Economies and European Integration", in COSTA, A. and SEVERIANO, N. (eds.), *Southern Europe and the Making of the European Union*, Columbia University Press, New York, 2002, pp. 159-181.

[38] GARCÍA SOLANES, J. and MARIA-DOLORES, R., "The impact of European structural funds on economic convergence in European countries and regions", in MEEUSEN, W. and VILLAVERDE, J. (eds.), *Convergence Issues in the European Union,* Edward Elgar Publishing, Cheltenham, 2001, pp. 334-358.

with the guidelines and the rules of the game within the European context" and Spain's presence in the EU has helped the country to adapt to the globalization process taking place worldwide[39].

1. *The European Project*

According to some specialists, Spaniards have been able to construct their identities as a multilevel process or, to put it differently, as the development of concentric circles that express the multiple allegiances of the people. Although the Spanish Constitution grants sovereignty only to the State in issues of nationality, borders, etc., the fact is that the juridical position of individuals does allow them the right of political involvement in different entities—beginning at the municipal level and reaching the EU sphere—which fosters the formation of a 'multilevel citizenship'. In the early 1990s, the Constitutional Court ruled that the treatment of citizens' rights and duties did not need to be uniform, since that would be incompatible with the varying degrees of autonomy in the regions. The only limitation to these diverse allegiances would be necessary in cases in which disproportionate divergences in treatment could affect the basic conditions of equality that all citizens should enjoy. In an article published in 1999, Llamazares and Reinares noted that in fact Spanish citizens saw no contradiction when they declared themselves identified with both their country and the European project[40]. While some traditional views held that there is an inevitable trade-off between different identities when they coexist in a single person, it actually seems that two distinct identities may be positively combined to reinforce each other. In the case of Spain, this was probably made possible an exclusionary and self-enclosed type of citizenship which over long decades had hindered any attempts at changing the uniform identity supported by the State. Ramón Tamames and others have noted that the enthusiasm shown by the country in signing the Maastricht Treaty can only be explained by the recent history of a nation that had been deprived of the most basic freedoms and rights[41].

If most Spaniards have admitted a degree of attachment to Europe and the construction of its new identity, this feeling became even stronger in the case of the peripheral populations. Of course, there were groups among these minorities that were so exclusively focused on their sub-

[39] JORDÁN, J.M., *op. cit.*, p. 130.

[40] LLAMAZARES, I. and REINARES, F., "Identificaciones territoriales, ciudadanía europea y opinión pública española", in LLAMAZARES, I. and REINARES, F. (eds.), *Aspectos políticos y sociales de la integración europea*, Tirant lo Blanch, Valencia, 1999, pp. 179-199.

[41] TAMAMES, R., *op. cit.*, pp. 3-8.

national identities that they did not seem much interested in developing other affiliations. Also, in a few instances, the integration into the EU had negative effects on local economies, as quotas were set for produce such as fish and milk. Although Autonomies heavily dependent on these industries, such as Galicia or the Canaries, were less enthusiastic about the supranational identification with the EU, most sub-state governments have stimulated their peoples' association to the European project[42]. The Catalans, above all, have favored the creation of a discourse that connects them directly to a larger entity, both modern and democratic, which is thought to facilitate the achievement of some of their aspirations[43]. Because Europe is perceived as a new framework of reference that, to a great extent, has abandoned the forms of sovereignty of the traditional Nation-States, some minorities see in it a new space in which their identities can be more easily accommodated[44]. No doubt, as Beck himself has admitted, there is a grain of political idealism and utopia in the belief that Europe may gain greater power by transcending the homogenizing inclinations of traditional States and relying more on networks and cooperation. While it is true that some of the latest events seem to be pointing in a different direction[45], it is also true that many Europeans have kept their faith in the possibility that this new entity, more prone to defend democracy, multilateralism, human rights and the rule of law, could in fact provide spaces for the construction of a 'Europe of the peoples'.

Philosophers such as Habermas and Innerarity have expressed the view that new forms of citizenship are possible in this European environment in which variegated identifications and commonalities seem to be at work. Nevertheless, as Gerard Delanty and others have also contended, it is not as if Europe had completely rid itself of all the prejudice that caused tremendous turmoil and bloodshed in the past[46]. It is not hard to see that beneath Europe's veneer of unity and welfare, there are also exclusionary dynamics—both *ad intra* and *ad extra*—and xenophobic attitudes, especially against Islam, which seems to have become the enemy to be pursued today. Delanty observes that while the Union has tried to leave behind the

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[42] LAITIN, D.D., "The Cultural Identities of a European State", *Politics and Society*, vol. 23, no. 3, 1997, pp. 291-294.

[43] The *European Charter for Regional or Minority Languages*, which was adopted in 1992 under the auspices of the Council of Europe and Spain ratified in 2001, would be an example of that progressive attitude toward minorities.

[44] BECK, U., "La Europa cosmopolita", *Claves de la Razón Práctica*, n.º 155, 2005, pp. 18-24.

[45] ROBINSON, S., "The Incredible Shrinking Europe", *Time Magazine*, 8 March 2010, pp. 15-18.

[46] DELANTY, G., "Conclusion: Towards Post-National Citizenship", *Inventing Europe: Idea, Identity, Reality*, MacMillan Press Ltd., Basingstoke and London, 1995, pp. 156-163.

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uglier aspects of Westphalian nationalisms, it is still unclear whether those ethnocentric ideals have really disappeared from the picture: "Europe emerged from the disunity among nation-states, but ultimately reinforced them"[47]. It can hardly be denied, though, that very important steps have been taken in terms of the socio-economic cohesion and demilitarization of the continent, and groups that had been vulnerable before—such as women or national minorities—have achieved rights that would have been unthinkable for our grandparents. Most important of all, as Touraine has argued, the European ideal is allowing us "to live simultaneously at various levels of political and social organization", and this fact is certainly helping us to escape, at least partly, from the hegemonic ideology of traditional Nation-States[48]. It may be true, however, that in order to articulate those multiple—or nested—citizenships in the European Union, one cannot lose sight either of phenomena that are taking place in other regions of the globe, and are definitely having an impact on those identity formations too.

2. *Elements of Globalization: Migration*

Elisabeth Meehan noted in the early 1990s that the European Community had become a worldwide reference in terms of promoting social policies meant to prevent inequalities of class, gender, and ethnicity, especially in the workplace[49]. Indeed, one only needs to consider the rising levels of the workers' participation, social assistance and women's presence in the labor market to realize that our status as citizens has been deeply affected by directives and regulations passed at the supranational level. It is debatable, though, whether these chances of defining new forms of citizenship have been equally accessible to the over 400 million residents of the Union, since there are still social categories that remain marginalized and are not given the opportunity to participate actively in the socio-political life of the community[50]. As mentioned earlier on, there are phenomena connected with globalization—such as the circulation of symbolic goods, the extended use of communication technologies, and increasing human mobility—that often complicate the granting of certain economic, social, and cultural rights to all collectives. This has been particularly difficult in countries such as Spain where, in barely over two decades, we have moved from a situation of almost total economic isolation and fairly balanced

[47] Ibid., p. 157.
[48] TOURAINE, A., *Qu'est-ce que la démocratie?* Fayard, Paris, 1994, p. 22.
[49] MEEHAN, E., *Citizenship and the European Community*, SAGE, London, 1993.
[50] CASTLES, S. and DAVIDSON, A., *op. cit.*, pp. 10-23.

migration flows—with a small surplus of emigrants—to one in which companies have begun to turn multinational and the number of immigrants settling in the country has been by far the highest in Europe. If, as we have seen above, managing the internal diversity of the nation has been by no means easy, these global processes have further complicated the efforts to accommodate cultural differences. Zapata has recently argued that given the kind of institutional 'walls' that the Spanish State has built this last decade in matters of immigration, it is very difficult to think of policies that would really tackle the problems of an increasingly diverse population[51].

Coinciding with Spain's incorporation into the European Community, the number of migrants entering the country began to grow exponentially, and during the last decade it has well surpassed the rate of 0.5 million per year. Most of these immigrants came from South American countries, although a substantial number of them were also from Romania, Morocco or the U.K. In principle, this change in the migratory trends was positive since it compensated for declining fertility rates in the country and fed a labor market that was still booming well into the 2000s[52]. In fact, the children of migrant parents account for up to 82% of the demographic growth of the country this last decade, and there are economic sectors such as construction, hostelry, and agriculture that have only been able to sustain their business thanks to the cheap labor provided by migrants from underdeveloped regions. By 2005, Spain had become, in absolute numbers, the third country in the world in the reception of immigrants since 1990—only behind the U.S. and Germany—, and the first in relative numbers[53]. Although it is true that migration into the Basque Country has never reached the magnitude that it has had in other areas of the country—in which it could sometimes come close to 20% of the total population—, still there is no doubt that the demographic composition has been profoundly altered. As Cristina Blanco has argued, due to the recurrent failures of the Spanish State to establish a well-defined migration policy, the Basque Autonomous Community has been compelled to develop its own integration plans[54].

Unlike other European nations with a longer tradition of migration, Spain was somehow caught by surprise in the early 1990s by these waves of economic migrants that were attracted by the new buoyancy of the country.

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[51] ZAPATA, R., "Diversidad y política pública", *Papeles*, n,º 104, 2008, pp. 93-104.

[52] IZQUIERDO, A., "Inmigrantes y habitantes", *El País*, Opinión, 23 January 2000. http://elpais.com/diario/2000/01/23/opinion/948582005_850215.html (last accessed 10/06/2012).

[53] DIVISIÓN DE POBLACIÓN DE NACIONES UNIDAS, *Migraciones internacionales por países*, 2005. http://publications.worldbank.org (last accessed 10/06/2012).

[54] BLANCO FERNÁNDEZ, C., "Inmigración extranjera en el País Vasco: Estrategias políticas para la gestión de la diversidad", *Política y Sociedad*, vol. 45, nº 1, 2008, pp. 187-203.

Confronted with this reality, the two major political parties came, on most occasions, to disagree on the policy measures and legislative shifts that the new situation demanded, thus simply delaying decisions and having to resort to extraordinary measures—such as regularization amnesties—that never settled the issue[55]. Although, in principle, the central Administration had all the competences in matters related to immigration and Foreign Affairs, it was soon apparent that the regions and municipalities would need to design their own plans of action in order to safeguard the basic rights of the newcomers. The absence of any coordination between the central Government and sub-state authorities made it evident that each Community was going to establish its own integration policy, in some cases blatantly going against the kind of views supported by the national Government. Thus, for example, while the Catalans seemed more interested in articulating a '*fer pais*' (or nation-building model), in the Basque region a principle of 'inclusive citizenship' was adopted, which basically considered all residents as citizens, regardless of their origins and legal status[56]. According to some policy-makers, the adoption of these generous measures—all foreign residents enjoyed full access to public social services— in many parts of the country had an '*efecto llamada*' (or pull effect) that made it even more difficult to manage the phenomenon properly. Not only that, but in areas in which the local minority culture was at risk, the sudden arrival of immigrants could aggravate their problems. Will Kymlicka and others have looked in some detail into the issues that come up when multicultural—or 'multinational'—states become also poly-ethnic due to migration[57]. While many scholars would affirm that the combination of these different types of diversity may prove incredibly enriching to a country, the fact is that hitting the right balance regarding the legitimate entitlements due to each group is not easy.

IV. **The Effects of Diverse Forces on Citizenship**

Given the title of this contribution, one would expect the various decentralizing factors that have been considered so far to have had an expansive effect on citizenship, since most of them have tended to unlock it

[55] APARICIO, R., "Towards an Analysis of Spanish Integration Policy", in HECKMANN, F. and SCHNAPPER, D. (eds.), *The Integration of Immigrants in European Societies: National Differences and Trends of Convergence*, Lucius & Lucius, Stuttgart, 2003, pp. 213-252.

[56] See GOBIERNO VASCO, *Plan Vasco de Inmigración 2003-2005*, Departamento de Vivienda y Asuntos Sociales del GV, Vitoria-Gasteiz, 2003.

[57] KYMLICKA, W., *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford University Press, Oxford and New York, 1995.

from the traditional container of the Nation-State. This view would certainly be supported by some of the advocates for cosmopolitanism, who often refer to new forms of citizenship and participation that allow individuals to change their allegiances with relative ease and to perceive themselves as part of a single global culture[58]. But, of course, we also know that people do not always make the effort to inform themselves about the critical changes in their society, nor do they necessarily exhibit a willingness to take part in the civic and political life of the community. Robert Putnam, for example, has shown that citizens in the U.S. are becoming increasingly disconnected from the organizations—neighbors, family, clubs, and government—that give sense to a democracy and often withdrawing completely from the public sphere[59]. Although it may be true that this loss of trust and confidence in some of our institutions may not be as profound on this side of the Atlantic, there have been signs these last two decades that suggest that we may be going in a similar direction. That is, while we seem to have succeeded in creating the instruments—communication technologies, grassroots organizations, etc.—to increase our social capital, there seems to be an opposing force that drives us to fend for ourselves and our closest kin, showing little engagement with the issues that are most urgent for our society. Barber and his followers have been arguing that some of the civic values and democratic virtues that have been deeply eroded by libertarian models and exclusive communities can still be saved, if only we go back to some of the basic principles—inclusiveness, deliberation, commonality, learning, and empowerment—on which civil societies were built[60]. But, of course, it would be ingenuous not to admit that there is some inertia, sometimes coming from traditional institutions and other times from unfettered economic dynamics we have set in motion, which clearly run against the fundamental civic rights and responsibilities.

1. *A Few Impending Dangers*

In his in-depth analysis of the definitions of citizenship in France and Germany, Rogers Brubaker warned us about the undesirable effects that linking citizenship to different types of "social closure" and "pre-existing cultural idioms" may have on long-term immigrants in European

[58] APPIAH, K.A., *Cosmopolitanism: Ethics in a World of Strangers*, W.W. Norton and Company, Inc., New York, 2006.

[59] PUTNAM, R.D., *Bowling Alone: The Collapse and Revival of American Community*, Simon and Schuster, New York, 2000.

[60] BARBER, B.R., *A Place for Us: How to Make Society Civil and Democracy Strong*, Hill and Wang, New York, 1998.

Cuadernos Europeos de Deusto
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countries[61]. This author's legal and cultural approach to the question of the entitlements of migrant workers in countries with a fairly long history of immigration shows us that real socio-political participation and the development of a sense of belonging are seriously hampered by legal frameworks and discourses that would put the emphasis on particular bloodlines or shared cultural elements. Although it is true that some corrective formulae have been introduced in several nations to try to shun the blatant signs of discrimination against foreigners, it is still evident that some countries are more hostile to newcomers than others, and that this fact has a profound influence on how inclined they are to get involved in the civil and political life of the host society[62]. Spain is again a case in point since, while the last two decades of the 20th century the country had a regime of migration which, if not explicitly welcoming, was fairly accommodating, by the first years of the new millennium it had become clear that the State was favoring a restrictive shift in policy. Generally, the reasons given for this shift were either related to the social costs—especially in education, health, and social services—that, allegedly, the immigrants were adding to the nation's expenses, or to the menacing image that was associated to foreigners in the wake of the terrorist attacks on New York, Madrid, and London. The problem was, of course, that the State did not seem legitimized by then to make any substantive decisions on the topic since, as pointed out earlier on, it was mostly the Autonomous Communities that had attended to the newcomers' needs. In this regard, it was to be expected that when the central Government had tried to regulate migration by introducing laws that favor certain types of foreigners or restrict the conditions to change their status, the regions have opted for skewing some of these regulations and arguing that the path of the migrants' integration was now in their hands. These contentions only come to demonstrate that, as Bauböck explains, a migration perspective on social transformation usually "highlights the boundaries of citizenship and political control", thus setting the limits for different forms of participation[63]. One wonders, however, whether the institutions involved in these tensions are really thinking of the duties and rights that their citizens should be given or, rather, they are just considering quotas of sovereignty and power that they can use for their own purposes. I have argued elsewhere that quite often discussions

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[61] BRUBAKER, W.R., *Citizenship and Nationhood in France and Germany*, Harvard University Press, Cambridge, MA and London, 1992.

[62] ODMALM, P., *Migration Policies and Political Participation: Inclusion or Intrusion in Western Europe?* Palgrave MacMillan, London, 2005.

[63] BAUBÖCK, R., *Migration and Citizenship: Legal Status, Rights and Political Participation*, Amsterdam University Press, IMISCOE Reports, Amsterdam, 2006, p. 16.

about the adequacy of certain policies barely manage to disguise the struggles to accrue higher levels of power and legitimacy between different Administrations[64].

Obviously, the theme of migration proves especially prickly in the context of debates about citizenship because of the intricate connections with cultural difference and identity issues. It is hard to think of another topic that would arouse such radically different responses precisely because transnational or 'translated' human beings seem more likely both to exercise new forms of citizenship and be victimized by particular conceptions of citizenship. This does not mean, however, that sedentary populations are not the subject of diverse allegiances and types of association—after all, little more than 3% of the world population decides to move to other countries. As we have seen in the case of the Basques, these last three decades have allowed them to enhance their sense of belonging to a particular community but also to engage with supranational entities that have contributed very definitely to the socio-economic development of the region. Telecommunications, corporate networks, and an ever-growing diaspora are the reason that, as Saskia Sassen has put it, we are witnessing a noticeable de-territorialization of citizenship[65]. These multiple connections and affiliations can be extremely enriching and empowering if one learns to maneuver in this cosmopolitan scenario. Yet, as the title of Sassen's eye-opening book also suggests, the experience can become quite disorienting if one gets trapped in the pseudo-legal jargon of global markets and civic rights organizations. It is not unusual to discover that although these entities have come to supplant the obsolete and inefficient mechanisms of the old Nation-States, in the end they are also developing their own strategies to include those citizens—or should we say, consumers—who fit into the profiles they have predesigned. One needs to be aware, therefore, that a multiplicity of levels does not necessarily make us freer if they only lead us where some elites have always wanted us to be.

V. **Closing Remarks**

Departing from a consideration of how in recent decades we have been compelled to redefine the concept of citizenship and its relation to national identities, this article has attempted to show that, although

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[64] IBARROLA, A. and BLAVE, R., "Haciendo lo correcto por las razones equivocadas: Políticas de inmigración en Euskadi a comienzos del nuevo milenio", *Revista Española de Estudios Norteamericanos*, n.º 23-24, 2002, pp. 217-232.

[65] SASSEN, S., *Losing Control?: Sovereignty in an Age of Globalization*, Columbia University Press, New York, 1996.

global and local processes are creating new potential to develop forms of civic engagement that were not even conceivable for members of earlier generations, these more inclusive versions of citizenship are not so easily materialized. It has been observed that the sanctity of national boundaries and the hegemonic power of the Nation-States have been questioned and reframed from both within their confines and from supranational organizations—such as the EU or the UN—which have established new rules and guidelines as to the kind of duties and rights that different collectives should be granted. It has become evident, for instance, since the 1980s that Basque people have achieved greater quotas of autonomy to decide on issues pertaining to urban organization, health services, the educational system and the management of the cultural heritage that have had a significant influence on the kind of citizenship fostered in the region. One only needs to look into the differences in how the budgets are structured in the different Autonomous Communities around the Peninsula to realize that their inhabitants must have set their priorities on rather specific areas regarding services and obligations. Although there were domains such as borders, international affairs, migration, the administration of justice or the military forces that, as we saw, were competence only of the central Government, these were rather limited in comparison with the matters that have already been transferred and are being managed from the sub-state Administrations. It is clear that this decentralizing trend has brought substantial benefits to the citizenry in the sense that these closer institutional entities seem to be more aware of and responsive to the needs of particular populations. We have also seen, however, that contestation is not unusual over who has legitimate power to make decisions in certain areas—especially, if they are somehow related to identity issues. Sometimes due to clear overlapping in the legislation and loopholes that the involved parties always manage to find or to create, it is clear that in Spain there is still some way to go in the matter of how to accommodate regional difference in a fair manner.

It has also become evident, on the other hand, that the incorporation of Spain into the European Community in the mid-1980s not only contributed decisively to the rapid modernization and democratization of the country, but also gave most of its citizens the possibility of building multiple allegiances to institutions, thus promoting more complex forms of citizenship. This was particularly important in a nation that had been characterized by an age-old economic and social isolation that condemned the majority of its population to rather limited choices in terms of class, religious, ethnic, and other affiliations. No doubt, most Spaniards would highlight the economic benefits that the integration into a supranational institution brought to the country via structural funds, bilateral business

deals and the monetary union. Nevertheless, we have also noted that the EU has become a reference in other spheres in which their directives and recommendations have proved much more progressive than the legislation passed at a state level. No wonder, then, that the Autonomous Communities have often looked up to the Union—rather than to the Spanish State—as a model, since its approach has usually been more prone to multicultural and multilateral solutions to problems. It must be said, though, that from the beginning of the financial crisis four or five years ago, we are being privy to a regression to attitudes that had been common in Europe in the first half of the 20th century, in which populist and fascist ideologies gained ground. Thus, a cautionary note needs to be sounded in regard to some of the globalizing processes that, although in appearance seeming to promote more flexible and fluid forms of citizenship, may easily revert to segregating and discriminatory practices that we thought were things of the past.

We have observed that these times of economic crisis may be conveniently used by authorities to justify measures and policies that tend to set back in place boundaries that earlier decades of prosperity had managed to pull down. For example, we have witnessed these last few years a revival of 'nativist' or 'ethnocentric' movements that present immigrants as an invasion or a threat to the local cultures and, therefore, they should be strictly screened in order to serve only the needs of the receiving society. Of course, no mention is made in these anti-migration tirades of the important contributions that the newcomers have made to the national economies or to keeping the demographic balance of the countries in good shape. More broadly, there is also a tendency to lose sight of global processes in our postcolonial era, processes that would explain human and capital movements as the natural result of the systems that Western countries have been implanting around the globe. But it is not just non-nationals who are suffering the consequences of this involution or regression towards paradigms of the past, the rights of the autochthonous populations are quite often affected too. Second-class (or limited) citizenships have started to become a staple feature of some European societies as some vulnerable groups—the youth, civil servants or pensioners—are beginning to realize that their civic (and even human) rights are not so much in the hands of States—or sub-national and supranational institutions—but rather in those of corporations and business associations that have taken advantage of the often market-friendly regulations. It is important, therefore, that we study how the rules of free trade and open markets intersect—and sometimes clash—with those apparently more flexible and expansive forms of citizenship that have been discussed in this article.

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Evaluating European Citizenship through participation of Non-National European Citizens in local elections: case studies of France and the UK*

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Abstract: Twenty years after the introduction of European Citizenship, the European Year of Citizens in 2013 provides an excellent opportunity to assess its impact on ordinary citizens. One of the key rights granted under this heading was the right for non-national European Citizens to vote and to stand as a candidate in local elections in their Member-State of residence. Addressing the lack of empirical research into the actual take-up of this right by non-national EU citizens (NNEUCs), this paper innovates by proposing a first step towards an EU-wide analysis, based on case studies of the UK and France. It will show how national institutions and procedures impact on levels of participation and points the way to future qualitative analysis exploiting the data presented here.

Keywords: European Citizenship, voting, participation, local elections, France, UK.

Resumen: *Veinte años después de la introducción de la Ciudadanía Europea, el Año Europeo de los Ciudadanos en 2013 ofrece una excelente oportunidad para analizar su impacto en el ciudadano de a pie. Uno de los derechos claves garantizados bajo este epígrafe fue el derecho de los Ciudadanos Europeos no-nacionales a votar y presentarse como candidatos a las elecciones locales en su Estado*

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Miembro de residencia. Este artículo aborda la falta de investigaciones de carácter empírico sobre la utilización real de este derecho por los ciudadanos no nacionales de la UE, e innova realizando un primer paso hacia un análisis a nivel de la Unión Europea, basado en estudios de caso del Reino Unido y Francia. Mostrará el impacto de instituciones y procedimientos nacionales en los niveles de participación y abre vías para futuros análisis cualitativos a partir de los datos presentados aquí.

Palabras clave: *Ciudadanía Europea, votaciones, participación, elecciones locales, Francia, Reino Unido.*

I. **Introduction**

Twenty years after the introduction of European Citizenship by the Treaty of Maastricht, the European Year of Citizens in 2013 provides an excellent opportunity to assess its impact on ordinary citizens. One of the key rights granted under this heading was the right for non-national European Citizens (NNEUCs) to vote and to stand as a candidate in local elections in their Member-State of residence: this measure is of particular interest since it offers mobile EU citizens the possibility of engagement both with the European polity, through the exercise of European Citizenship rights, and also with the host polity in their country of residence, through participation in local politics. This innovation was preceded and accompanied by much political controversy across the EU and has continued to inspire prolific academic debate across a range of disciplines. Yet as Jo Shaw has pointed out (Shaw, 2007 pp. 123-131 & 147-153) relatively little scholarly research has been devoted to ascertaining the actual impact of this measure in the twenty years since its implementation, with academics preferring to engage in theoretical and normative debates rather than empirical research. This paper seeks to address this situation by making a first step towards an EU-wide analysis of the levels of participation in local elections by NNEUCs, based on two case studies carried out in the UK and France. These two countries offer an interesting set of points of comparison on several levels: opposite attitudes towards implementation of the 1994 Directive; very diverse patterns and structures of local government including definitions of 'local units', and local electoral systems; contrasting background situations regarding voting rights at local elections for Third Country Nationals (TCNs); different voter registration procedures, and methods of data collection. These various categories will form the basis of the comparative framework of analysis adopted, after which, the paper will present the quantitative data collected in both countries relating to the extent of take up of European Citizenship voting rights. But before the case

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studies of France and the UK are developed, a first section will explain why the main research question addressed by this paper, must be approached at the level of Member-States rather than on the basis of data collected and disseminated at EU level.

II. The limits of the EU institutions in monitoring participation of NNEUCs in local elections

Whilst it might seem logical for the institutions of the EU to monitor the participation of NNEUCs in local elections across all Member States, the necessary data is in fact inaccessible on an EU wide basis, thereby limiting the possibilities for comparative assessments. This is because the Council Directive 94/80/EC[2] adopted in December 1994, which covers the right to vote and stand as a candidate in local ('municipal') elections, gave responsibility for development of EU Citizenship to the Member States rather than the EU institutions. And although Article 11 of the Directive obliges them to carry out a campaign of information aimed specifically at non-national EU eligible voters, there is no Directive requiring Member States to report comprehensively on implementation. Even though the Commission is obliged under Article 22 EC (25 TFEU) to report to the Council, EP and Economic and Social Committee every three years on the development of EU citizenship in the Member States, it has to rely on the information that the Member States provide in order to do so, and the following summary of the Commission Reports to date will demonstrate why this data is insufficient for the rigours of academic research.

There have so far been six Commission Reports on Citizenship of the Union, the first three (1993, 1997 & 2001) being mainly concerned with questions relating to transposition and implementation of the Directive[3]. The first statistical analysis of the impact of the new Directive was provided in a special report to the EP and Council, published in 2002, following the requirement of Article 13 of the Directive to report on its implementation within a year of municipal elections being held in all of the Member States

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[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0080:EN:HTML

[3] COM (93) 702 final http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1993:0702:FIN:EN:PDF

COM (97) 230 final http://europa.eu/legislation_summaries/justice_freedom_security/citizenship_of_the_union/l23031_en.htm

COM (2001) 506 final http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0506:FIN:EN:PDF

(the last election in the then 15 Member States was in 2001 in France)[4]. For the purposes of this report a questionnaire was circulated to all Member States in Spring 2001, consisting of questions concerning statistics at national and local level (including requests for specific information on the ten municipalities with the highest percentage of NNEUCs of voting age), and requests for qualitative data on information campaigns and changes in the electorate; since Denmark and France failed to submit any responses, the report is based on the other 13 Member States only. It began by giving details of transposition measures and derogations applied in certain Member States, and provided some general data for the numbers of potential voters in the EU in 2000, suggesting that about 4.7 million citizens then enjoyed the right to vote and stand as candidate in local elections across the EU, but it pointed out significant variations in numbers of NNEUCs registered on the electoral roll within the Member States due to differences in registration procedures. In the nine Member States where registration was not automatic but required a voluntary act by the voter, the average rate of registration (calculated using Eurostat population figures from the Community Labour Force Survey 2000) was 26.7%, but this figure, broken down, showed wide national variations, with Portugal recording the lowest level at 9.8 and Austria the highest at 54.2%. No data was available for actual turnout of NNEUC voters except for a few examples in Germany and Sweden, yet the report claimed that 'Since it can be assumed that a great majority of the citizens applying for registration also intend to vote in practice, the above-mentioned percentages of non-national citizens registered give a fairly accurate picture of participation' (p. 12).

On the basis of my research so far, this claim looks to be highly misleading, as will be shown below in the discussion of registration procedures in the UK. It is therefore also quite plausible that some of the anomalies pointed out in the report such as the allegedly low rate of registration in Portugal or Luxembourg (12.4%), or the high rates in Austria and Ireland (52.3%) might be better explained by further analysis of the specificities of each Member State. Nor was the data requested for the ten 'sample' municipalities sufficiently complete to justify any general conclusions, but rather, highlighted the complexity of local situations both between and within the responding Member States. Similarly, statistics on numbers of NNEUC candidates and elected councillors, even in the ten sample municipalities, were patchy and unconvincing. With regard to information campaigns, details of which were provided in Annex 3, the

[4] Commission report to the European Parliament and the Council on the application of Directive 94/80/EC, http://europa.eu.int/comm/dgs/justice_home/index_en.htm. For details of transposition issues see also Shaw (2007) pp.129-131, & 147-153.

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report noted the huge effort required for these first elections, but concluded that because of the local nature of the campaigns, it was difficult to evaluate their full scope. Altogether then, this report was largely unhelpful in providing useful data for an EU wide analysis.

The Fourth (2004)[5] and Fifth (2008)[6] Reports did not add any significant data to that provided in the 2002 special report, but the Fifth Report did include reference to the 2007 Flash Eurobarometer public opinion survey on EU citizenship[7]. This gave mixed messages about awareness of the status and rights associated with European Citizenship, but revealed that only 37% of respondents were aware of electoral rights relating to local elections, as opposed to 54% for EP elections. It noted the adaptation of the 1994 Directive, replaced after the 2004 enlargement by Directive 2006/106[8] adding references to basic local government units in the new Member States, and raised the question for the first time of 'effective participation of Union citizens in the political life of their Member State of residence', which was in some cases thought to be inhibited by discriminatory practices of political parties. The Sixth report, published in 2010, took the slightly different title of 'Report on progress towards effective EU Citizenship 2007-2010'[9], and was accompanied by a separate report on 'Dismantling the obstacles to EU citizens' rights'[10]. The former emphasised the enhancement to European Citizenship that came with the Lisbon Treaty, and discussed this, with a specific focus on the new European Citizens' Initiative (ECI). Any further reference to participation in local elections was eclipsed, except in the accompanying report, in which two of the recommended '25 actions to improve the daily lives of EU citizens' referred to the need to ensure enforcement of full voting rights for NNEUCs in their country of residence (no. 18), and the intention to propose the simplification of procedures for candidates for elections to the EP (no. 19).

Most recently, the Commission's second special report on the application of Directive 94/80/EC post 2004 enlargement, promised for publication in 2011, was finally published on March 9th, 2012[11]. This 2012 report underlined

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[5] COM (2004) 695 final http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0695:FIN:EN:PDF

[6] COM (2008) 85 final http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0085:FIN:EN:PDF

[7] http://ec.europa.eu/public_opinion/flash/fl_213_en.pdf

[8] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:363:0409:0410:EN:PDF

[9] COM (2010) 602 final http://ec.europa.eu/justice/citizen/files/com_2010_602_en.pdf

[10] COM (2010) 603 final http://ec.europa.eu/justice/citizen/files/com_2010_603_en.pdf

[11] Commission,' EU Citizenship Report 2012. Dismantling the obstacles to EU citizens' rights', COM (2010) 602 final.

the importance of participation in local elections 'where the decisions taken directly affect citizens', whilst acknowledging that 'decreasing participation in democratic life in terms of a low turnout in the elections may have the undesired effect of weakening the status of representative democracy' (p. 3). It reported generally low levels of participation in local elections across Member-States of the EU, commenting that remedying the democratic deficit remains a challenge at all levels, EU, national and sub-national. But significantly, on the question of the participation of Non-National EU Citizens (NNEUCs) in their Member States of residence, the report offered only very limited statistics on electoral registration, and none at all on actual turnout. The reason given for this paucity of data was that the Member-States, 'generally do not collect such data so as to avoid discrimination (p. 8)'. The same reason was put forward for the lack of data on EU citizens standing as candidates and being elected.

However, whilst it is true that the Commission depends on the quality and accuracy of statistics provided by the Member-States in the 'questionnaire' sent to them for this purpose (since implementation of the Directive remains the responsibility of Member-States), the authors of the report must surely have to take responsibility for the very mediocre standard of analysis offered in it: the limited data collected is not presented either clearly or comprehensively, and certain conclusions are drawn without any evidence base. Thus, for example, the report asserts that 'Despite the significant increase in the number of non-national EU citizens of voting age who reside in a Member State other than their own, only a relatively low number of these citizens actually exercised their electoral rights in the municipal elections that have been held in recent years in their State of residence' (p. 6). Yet it also claims that 'No data are available on the percentage of the resident non-national EU citizens who actually voted after being on the electoral rolls (p. 7). It also makes the blanket claim that 'once entered on the electoral roll, there is no distinction between national and non-national voters', yet this paper will show that in the case of France and the UK at least, this is simply incorrect. Also inaccurate and unsubstantiated is the assertion that 'In those Member-States where registration is not automatic, the data provided show that only an average of 10% of resident non-national EU citizens asked to be entered on the electoral rolls (p. 7).' Here again, the paper will show this to be not the case in the UK or France. All in all, the very sketchy picture presented of the take up of electoral rights in local elections across the EU is not concomitant with the high degree of political importance apparently attached to it by the Commission, and in 14 pages it could not hope to deliver a satisfactory evaluation of the impact of voting in local elections across the 27 Member States.

It is therefore clear that if we are to obtain a more accurate assessment of the exercise by European Citizens of their electoral rights in local

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elections, there must be a more concerted and determined effort to collect the necessary data and present it in a more systematic and accessible form, and academic researchers are more likely to be able to do this than bureaucrats. Given the political importance attached to the question of political participation of EU citizens, particularly in the run up to the European Year of Citizens in 2013, what is surely necessary is a major EU-wide survey that brings together in some form of comparative framework, a series of detailed national studies carried out by committed researchers which would all seek to answer the same set of questions: how many EU citizens voted in local (and EP) elections in that Member-State? Why did some vote and others not? What are the factors that determined their choice to vote or not? Can a set of typologies of EU citizens as voters be drawn up across nationalities and across territorial boundaries?

A few case studies have already been carried out relating to participation in local elections of NNEUCs with reference to specific nationalities and Member States: Sylvain Besch (2004) on the Portugese in Luxembourg, and Monica Méndez Lago (2005) on the impact of lifestyle migration in Southern Spain. The most extensive work has however to date been carried out on the case of France, where Sylvie Strudel published quite extensively on the local elections of 2001, the first to be held in France after implementation of the new Directive (Strudel, 2002, 2003, 2004a & b, Strudel & Bideray, 2002). My own research on France used Strudel's work as a starting point for further analysis, which involved comparing the 2001 elections with those of 2008, extending the scope of investigation beyond the 2857 *communes* of more than 3500 inhabitants assessed previously by political scientists, to include all 36,799 *communes* (Collard, 2010). This paper will use some of the findings of that research and will present them by way of comparison with the UK, for which I have carried out new research as part of a project which is still ongoing, funded by the British Academy[12].

III. **A framework for comparative analysis of France and the UK**

1. *Implementation of Directive 94/80/EC*

The question of implementation of the 1994 Directive in France and the UK is an interesting starting point for this comparison because it reveals how these two countries were at opposite ends of the spectrum with regard to

[12] British Academy Small Grant, awarded April 2012, on 'The Participation of Non-National EU Citizens in Local Elections in the UK'.

their to attitudes and actions. Member States were supposed to put in place the necessary legislation by January 1st 1996, and the UK was one of only four of the then twelve which actually complied with this deadline, along with Denmark, Ireland, and Luxembourg. By contrast, while France was not quite the last to comply (this was Belgium, in January 1999, after a case was brought against it in the Court of Justice by the Commission in 1998 (Shaw, 2007, pp. 148-9)), it did not do so until May 1998, after infringement proceedings from the Commission[13]. The delay resulted from a combination of the lack of political continuity due to several changes of government in 1993, 1995 and 1997, and also a considerable measure of ideological resistance from the defenders of French sovereignty on both Left and Right of the political spectrum. A constitutional amendment had already been passed in 1992 adding an article to the Constitution,[14] specifying that NNEUCs were not able to become mayor or deputy-mayor,[15] or participate in the elections for members of the Senate, and these exclusions were subsequently sanctioned by the 1994 directive along with special derogations for Belgium and Luxembourg. But the resistance of the French political authorities revealed a strong attachment to a conception of national sovereignty as 'indivisible', and a traditional reluctance to dissociate the notions of citizenship and nationality (Strudel, 2003, 18). Thus France was in the end the last Member State to organise local elections on the basis of this Directive, which was applied for the first time for the municipal elections of 2001 (Collard, 2010, p. 95; Strudel, 2002 & 2003).

2. *Patterns and structures of local government, units of organisation of 'local' elections and electoral systems used*

Member States determine what constitutes, for the purposes of voting rights in local elections, the 'basic unit of local government' as defined in Article 2 of the Directive, and these are listed in the Annex (and

[13] Organic law no. 98-404, 25th May 1998 & decree of application no. 98-1110, December 8th 1998.

[14] Constitutional law no. 92-554, 25 June 1992. This law adds a '*titre*' on the European Communities and the European Union to the constitution, in which article 88.3 states that 'On the condition of reciprocity, and according to the procedures set down in the Treaty for European Union signed on 7th February 1992, the right to vote and stand in municipal elections can only be accorded (*peut être accordé aux seuls citoyens de l'Union*) to citizens of the Union residing in France. This cautious use of language is indicative of the difficult political climate in which the change was introduced.

[15] Thus, whilst there is one highly publicised case of a British mayor in France (Ken Tatham in Normandy), he in fact holds dual nationality so is considered statistically as French.

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its subsequent amendment in 2006). Thus, while France has quite a simple and restrictive interpretation of 'local' (in spite of the fact that there are three levels of directly elected local government at municipal, 'departmental' and regional levels), the UK takes a more generous approach. In France, the situation is on the one hand straightforward, in that NNEUCs are allowed to participate in only the lowest unit of local government known as the *commune*, but on the other hand is complex, in that there are a striking 36,779 of these *communes*, making France quite 'exceptional' when compared to any other Member State. Indeed, French *communes* account for 41% of all local government units in the EU[16]. The vast majority of *communes* are inevitably very small and, since the numbers of councillors even in small (especially rural) communes is extremely high in proportion to the number of inhabitants, it generates a very high level of accessibility to the process of local government, though this obviously decreases with the size of the *commune*, as can be seen in the table below. The 'proximity' of local government in rural areas where there are significant numbers of 'lifestyle' migrants from (mainly Northern) other EU Member States is of great relevance to our study of NNEUCs, as will be demonstrated in the section below on participation rates. In the cities of Paris, Lyon & Marseilles, which are governed by the separate 'PLM law' of 1982, there are sub-divisions called *arrondissements*, each of which has an elected and semi-autonomous *maire d'arrondissement* and a council in addition to the mayor and council of the *commune*; Paris has 20, Lyon has 9 and Marseilles has 16 (but redivided as 8 *secteurs*). One third of the *conseillers d'arrondissement* are also municipal councillors and all are elected by the same electoral process. Paris has, since 1975, had the unique status not only of a *commune* but also of a *département*. This means that the 'Conseil de Paris' (Paris City Council) acts as both a *Conseil municipal* and as a *Conseil général* (a 'departmental' council roughly equivalent to an English county).

With regard to the electoral system used for municipal elections in France, a list system operates, but with three different methods of application depending on the size of the population in the *commune*. In *communes* with over 3500 inhabitants (including Paris, Lyon & Marseilles),

[16] http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/collectivites-locales-au-sein-union-europeenne.html Germany has 14%, Spain and Italy 9% each, and the Czech Republic 7%. These five countries together account for 80% of the municipalities in the EU. France and the Czech Republic both have the lowest average number (1600) of inhabitants per municipality. The highest is the UK with 135,000. http://www.dgcl.interieur.gouv.fr/Publications/CL_en_chiffres_2006/accueil_CL_en_chiffres_2006.htm

Table 1

Number of *communes* by number of inhabitants
and number of councillors by size of *commune*

No. inhabitants	No. communes	No. of councillors*
0-99	3,907	9
100-299	11,200	11
300-499	5,632	11
500-999	6,780	15
1,000-1,499	2,812	15
1,500-2,499	2,439	15
Sub-total 0-2,499	32,770	
2,500-3,499	1,152	23
Sub-total 0-3,499	33,922	
3,500-4,999	876	27
5,000-9,999	1,029	29
10,000-19,999	511	33
20,000-39,999	268	35
40,000-49,999	55	43
50,000-59,999	83	45
60,000-79,999	32	49
80,000-99,999	16	53
100,000-149,999	17	55
150,000-199,999	9	59
200,000-249,999	4	61
250,000-299,999	2	65
300,000 +	5	69
Lyon		73
Marseille		101
Paris		169
Total	36,779[16]	approx 500,000[17]

* Including the mayor.

[17] The precise number of *communes* is hard to pin down, as a range of official sources gives different figures.

[18] This is the figure estimated in DROUIN, V., *Les fantassins de la République, nos 500,000 conseillers municipaux,* Editions Autrement, Paris, 2006. There is no official number cited in any of the obvious official literature, presumably due to the complexity of the calculation.

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there is a complicated two-ballot system with proportional representation based on party lists, involving special procedures to try to ensure both stable majority local government and accurate representation[19]. In *communes* of under 3,500 inhabitants (with separate rules for those between 2500-3500), the arrangements are too complicated to be explained here, but they allow for highly personalised elections which, as we will see later, have enabled NNEUCs to get elected in significant numbers especially in rural areas[20]. The mandate for all municipal elections is normally six years, but the last elections were held not in 2007 but 2008, due to the timing of the presidential and legislative elections in 2007, thus extending the mandate to seven years. The next municipal elections are due in 2014. Since 2001, lists for local elections in communes of over 3500 inhabitants must abide by the law on 'gender parity' introduced by the Socialist government of Lionel Jospin in an attempt to increase the representation of women in politics. There is evidence that this has been beneficial to female NNEUC voters and candidates, as we shall see in the section on participation. Significant reform of local government planned by the Sarkozy government was abandoned by the current socialist government, but in any case does not directly affect this analysis.

In the UK, the organisation of local government is far more complex and irregular than in France, and the size of the basic unit is generally much bigger. This complexity can be identified immediately from the definition of 'basic local government unit' in the Annex to the 1994 Directive, which lists: 'counties in England; counties, county boroughs and communities in Wales; regions and islands in Scotland; districts in England, Scotland and Northern Ireland; London boroughs; parishes in England; the City of London in relation to ward elections for common councilmen'. The picture has been further complicated since the late 1990s when the devolution programme of the Blair government led to the creation of so-called 'regional' assemblies for Scotland, Wales and Northern Ireland, for which, as we will see, NNEUCs are entitled to vote.

The following diagram shows the interplay of these different combinations for England:

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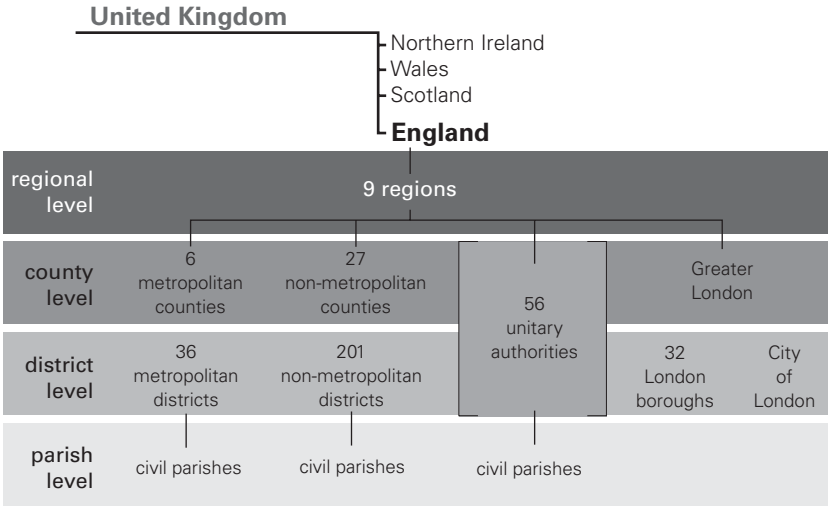
[19] For details of these complexities, see either STEVENS, A., *The Government and Politics of France,* Macmillan, 1996, pp. 152-3 or DREYFUS, F. and D'ARCY, François, *Les Institutions politiques et administratives de la France*, Economica, 1996, pp. 287-290.

[20] My full explanation of the voting system in municipal elections for communes of under 3500 inhabitants can be found at http://www.anglophone-direct.com/A-more-detailed-look-at-the-French



Regional Development Agencies.

England: 9 regions including London
(elected Assembly & Mayor); other regions are not elected

In England, all local elections use the multi-member plurality system: electoral areas are divided into wards, with specific numbers of seats allocated according to population size. A certain degree of proximity in local democracy is thus achieved by the election of 'ward councillors' responsible for their specific areas. The mandate is normally four years, and councils may be elected wholly every four years or by 'thirds': in this case elections take place every year for three years and not the fourth. Recently, election 'by halves' has been allowed, ie half the council every two years. London has had a directly elected mayor since 2000, who leads an Assembly of 25 members (together they form the Greater London Authority or GLA), responsible for the strategic government of Greater London, while the 32 boroughs and City of London Corporation are responsible for delivery of most local services. NNEUCs in London are allowed to vote in elections to both levels of local government.

In Scotland, local government is organised through 32 unitary authorities designated as councils, with councillors elected every four years. In addition, since 1998, the Scottish Parliament has 129 Members elected every four years under the mixed member proportional representation system; 73 of them represent individual geographic constituencies elected

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by the First Past the Post System, with a further 56 returned from eight additional member regions, each of which elects seven members. NNEUCs will be able to vote in the upcoming referendum on Scottish independence.

Wales has since 1996 been divided into 22 'principal' council areas, with councillors being elected every four years by the First Past the Post System. Since 1999, Wales has had a National Assembly with 60 members elected every four years; voters have 2 votes, with 40 members being elected by the First Past the Post System in individual constituencies, and a further 20 members being elected by the Regional Top-Up system in which voters have an extra vote for their particular region of residence: South Wales East, South Wales Central, South Wales West, Mid and West Wales, and North Wales. Each region elects four members based on the proportionality of the vote.

The Northern Ireland Assembly was established by the Good Friday Agreement of 1998 which put an end to the 'Troubles' lasting 30 years, though it has been suspended on a number of occasions. It has 108 members elected under the single transferable vote form of proportional representation, from 18 six-member constituencies that are the same as those used for elections to the Westminster Parliament.

These 'regional' assemblies were the product of the devolution process initiated by the Blair government elected in 1997, and although they are not considered as constituting local government in the traditional mould, they are important here because NNEUCs are (unusually) allowed to vote in these elections as well as in referendums held since 1997 (Shaw, 2007, pp. 275-6). The UK therefore operates a fairly generous regime towards its NNEUC voters: this is possibly due to the desire for successful outcomes of the new assemblies, especially when set against a backdrop of notoriously low turnout in local elections generally across the UK, but it also reflects the continuation of a traditionally open policy towards voting rights for certain TCNs, as we will see below.

3. *Standing as a candidate in local elections*

The technical process of nomination as a councillor to any of the elected bodies in the UK discussed above (except the GLA) is a cost-free and relatively straightforward matter for NNEUCs, either as independent candidates or as representatives of a political party, and nationality is not even requested in the paperwork, providing the candidate is registered on the electoral roll (which means that nationality data for NNEUC candidates is not easily available). However, to be chosen as a candidate by a political party implies a high level of political engagement over a considerable

number of years preceding the election, and / or personal notoriety in the locality, so whilst this applies to nationals as well as NNEUCs, the latter are more likely to be recent arrivals and will have to work harder to gain the necessary credentials.

In France the requirements for potential NNEUC candidates depends on the size of their *commune*; in those over 3500, a formal application must be made through the 'prefectoral' services of the state in each 'department' which control elections, and given that lists are drawn up on a party basis, the same requirements as in the UK pertain in this respect. Nationality is requested in the paperwork, making national data on NNEUC candidates available. However, the complex and personalised nature of elections in *communes* of under 3500 inhabitants means that there is no formal procedure for standing as a candidate: indeed, some councillors find themselves getting elected without even having put themselves forward. My research shows that most NNEUC candidates were invited to be on a list either by the outgoing mayor or head of a rival list, but since in many *communes* there are no actual lists, there are no formal candidates either, simply word of mouth.

4. *Voting rights at local elections for TCNs*

The granting of voting rights to NNEUCs at local elections must be set in the broader context of the situation with regard to other Third Country Nationals (TCNs), since this has an impact in various ways, and France and the UK once again have contrasting experiences in this respect. For historical reasons, the UK gives voting rights in all local, national and European elections to all 'qualifying' Commonwealth citizens[21], and to Irish citizens. Thus for citizens of Ireland, Cyprus & Malta who are now EU citizens, voting in local elections as NNEUCs is not a novelty. As we saw above, the UK also allows NNEUCs to vote in the 'regional' assemblies born out of devolution, and in the London mayoral elections, but it does not grant voting rights to non-Commonwealth TCNs. This otherwise fairly generous regime contrasts with the tighter restrictions in France where no TCNs are allowed to vote in local elections. However, since large numbers of immigrants from France's former colonies have in fact taken French (or dual) nationality, the picture is not quite as restrictive as it might seem. Indeed, the question of dual nationality has recently provoked a

[21] An eligible Commonwealth citizen is a person who either does not need leave to remain in the United Kingdom, or has indefinite leave to remain in the United Kingdom.

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highly politicised controversy, and there have been calls from those on the moderate and far Right to restrict the numbers of naturalisations[22].

The question of voting rights for 'foreigners' at local elections has been somewhat of a political minefield since it first appeared in François Mitterrand's election manifesto in 1981, and political opposition has meant that it has never been implemented. The Socialist Party put it back on the parliamentary agenda in February 2011[23], refuting the objection that citizenship cannot be dissociated from nationality on the grounds that this distinction was already made with the introduction of EU citizenship. This confirmed the fears of the *souverainiste*s in the Maastricht debate that this line of argument would be used as the thin end of the wedge to extend voting rights to TCNs. François Hollande included the proposal in his presidential election manifesto in 2012. However, despite declarations of intent from the Prime Minister on two occasions to pursue this goal, the President announced on 13 November 2012 that he would not put forward a legislative text until he was sure to have the 3/5 majority required in both houses of Parliament to introduce the constitutional amendment that would be the necessary corollary of any such law. Given the strength of opposition on the Right, a law is unlikely to be forthcoming during the current mandate.

5. *Voter registration procedures*

Procedures for voter registration are important to this study because they have a significant impact on how many NNEUCs actually register to vote in local elections, and once again, we see contrasting positions in the UK and France in this respect. Although registration is not automatic in either country, it is more 'voluntary' in France than in the UK: in France, the act of registration for NNEUCs requires a visit to the local town hall, during the months of September to December preceding the election (usually in March the following year), without any official prompting, other than in some of the more open-minded municipalities such as the city of Paris, which posts registration reminders on electronic billboards. NNEUCs are registered on separate lists to those for French citizens (which contradicts the Commission Report's claim included earlier that 'there is no distinction

[22] See for example the report by UMP parliamentarian Claude Goasguen, widely reported in the French press around the 23rd June 2011, and available on the National Asssembly web-site at http://www.assemblee-nationale.fr/13/rap-info/i3605.asp

[23] See the article in *Le Monde* on 15th Feb. 2011 by Michel Delberghe, 'Des maires relancent le débat sur le droit de vote des étrangers', and the text of the proposal for a constitutional law at http://www.senat.fr/senateur/borvo_cohen_seat_nicole95011x.html

between national and non-national voters'). In the UK by contrast, there is a proactive, nationally organised registration policy in the form of an Annual Canvass, which involves each local council sending a letter to every household from August onwards every year, asking them to complete the enclosed registration form, which requires information based on residents in occupation addresses on October 15th of that year[24]. The form makes it clear that by law, the information asked for must be given, and that failure to do so could involve a fine of up to £1,000. This threat of sanctions is accompanied by the 'enticement' that 'You will also have difficulty applying for credit (such as a mortgage, personal loan or even a mobile telephone) if you do not register each year'. Failure to return the Voter Registration form prompts first the sending of a reminder, which if not returned is then followed up by a personal visit from a canvasser, who carries a translation of the main questions in all the main European (and non-European) languages. After the end of the Annual Canvass period from August to December each year, the process is complemented by a 'Rolling Registration' procedure, which encourages registration, right up to two weeks before an election. Anecdotal evidence suggests that large numbers of residents who register (both national and NNEUC) do so even though they have no intention of voting, partly in response to the local authority efforts, but largely also because credit and phone companies will only accept customers who are on the electoral register. Thus we can see that whilst France & the UK both use registration procedures that require an initiative on the part of the voter, the level of initiative in both cases is significantly different: registering on the electoral roll in France, is much more likely to be an indicator of the intention to vote for NNEUCs than in the UK. This analysis further underlines the unreliability of the 2002 Commission Report referred to earlier, in which it was claimed for the UK that 'Since it can be assumed that a great majority of the citizens applying for registration also intend to vote in practice, the [above-mentioned] percentages of non-national citizens registered give a fairly accurate picture of participation'.

6. *Data collection*

On the question of data collection, the UK and France are once again at opposite ends of the spectrum. In France, where election figures are collected from the *communes* by the prefectoral services of each department, they are then centralised by the Ministry of the Interior's elections department. In the 2001 local elections, data was collected on the NNEUCs who registered

[24] This system, known as 'household registration', will be replaced from Summer 2014 by 'Individual Electoral Registration' (IER), in an attempt to cut down on electoral fraud.

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to vote in all *communes*, but figures for those who stood as candidates, as well as those who were elected, were only available for the *communes* of over 3500 inhabitants. Strudel's research referred to above was therefore limited to these 2857 *communes*. For the 2008 elections, data collection was extended to *communes* of under 3500 inhabitants for elected councillors (but not candidates since there is no formal nomination process). The quality of this data is quite remarkable in that names, addresses, and nationalities of all elected NNEUC councillors are fully accessible to researchers, providing the basis for a data-base of all registered NNEUCs in France that can be used for further qualitative research. Predictably however, given the huge number of *communes* and reliance on full compliance and competence of all mayors, the data is not 100% accurate: my own records (complied during the field work in 2008) contain names and addresses which do not appear on the lists provided by the Ministry, and I estimate the margin of error to be around 10%. This means that numbers of NNEUC elected councillors are probably somewhat higher than the statistics suggest. As regards numbers of registered voters, there is probably a much higher level of accuracy because of the registration process for NNEUCs described above: and since registration is pro-active, we can in this case go along with the Commission's assumption that a high proportion of those registered to vote will in fact have done so.

In the UK, by contrast, once again there is complexity and dispersion at the level of the relevant data: the Office of National Statistics (ONS) (which since April 2008 has become the executive branch of the UK Statistics Authority), collects data for registered voters in England and Wales from the Annual Canvass submitted by the local authorities, using form RPF29. Nationality of voters is not captured on this form, therefore the ONS can only provide aggregate figures of NNEUC voters for each electoral authority. Figures for Scotland are dealt with by the Scottish Government, and those for Northern Ireland by the Northern Ireland Statistics and Research Agency (NISRA). One important anomaly to note in the data for NNEUCs registered to vote in the UK is that it does not include nationals of Ireland, Malta or Cyprus, who, for historical reasons as described above, are considered separately. As regards NNEUC candidates and elected councillors, no data is available nationally since the information is not recorded by the electoral authorities. Therefore, if we are to get a more detailed picture of NNEUC voters, candidates and elected councillors, as provided in the French case by the Ministry of the Interior, we must look to the individual electoral authorities themselves.

A pilot study of the Unitary Authority of Brighton & Hove, based on local elections that took place in May 2011, showed that it is possible to obtain statistics from the local electoral services offices that show the breakdown of registered NNEUCs by nationality. Consultation of the 'marked

registers,' which identifies NNEUC voters by a 'G', and which 'marks' the names of those who have voted, is open to any member of the public in the Town Hall for one year following any election, and although tedious, this procedure makes it possible to make a very accurate calculation of how many registered NNEUCs actually voted. The method used for Brighton & Hove was then reproduced across a sample of UK cities thanks to funding provided by the British Academy Small Grant referred to earlier, the results of which are presented in the following section.

IV. **Data on participation in local elections by NNEUCs in France and the UK**

1. *Registered NNEUCs and registration rates: France*

As explained above, the fact that the Ministry of the Interior centralises all electoral data collected from the *communes* via the prefectoral services makes access to this data very simple for research purposes. The analysis here concerns the two elections that have taken place since the implementation of Directive 94/80/EC, in 2001 and 2008. The following graph shows the evolution between these elections in the number of registered voters by nationality, for the 14 relevant Member-States. The numbers of voters by nationality in all new Member States post 2004 enlargement are not shown here because they did not represent a significant presence, undoubtedly due to the temporary restrictions invoked by France on workers from these countries (unlike the UK which welcomed them).[25] The total number of registered NNEUCs was 166,122 in 2001, rising to 264,137 in 2008[26].

In 2001 it was possible to estimate the average registration rate for NNEUCs by comparing them with numbers of applications for residence permits[27]. The average registration rate using this data works out at 13.8% (much higher than for the EP elections: 3.8% in 1994 and 5.9% in 1999),[28] but with wide variations across nationalities, as shown in Table 2.

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[25] Given the significant wave of Polish migration to France in the early 20th century, especially between the wars, it is surprising that the numbers of Polish citizens is not higher in 2008. This might be explained by their having taken French nationality.

[26] This figure excludes the department of the Vendée which did not return data as requested.

[27] These estimations are to be treated with caution: since permits could be given for 10 years, holders may have moved elsewhere before expiry date. On the other hand, given the rule that a permit was not technically necessary if you left the country every three months, together with the abandonment of stamping passports of NNEUCs, and the desire to avoid long queues in the *préfecture,* it is highly likely that large numbers did not request residence permits.

[28] Strudel, 2002, p. 57.

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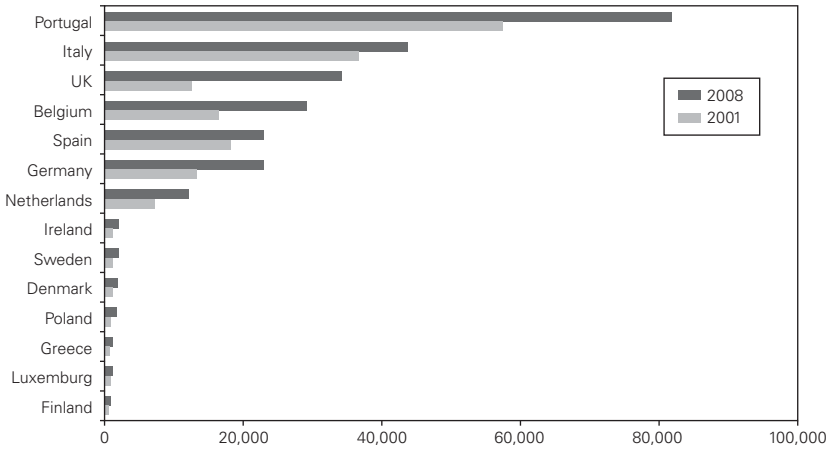

Source: French Ministry of the Interior, Electoral Division.

Registered NNEUC voters 2001-2008 from 14 member-states

Table 2

Estimated registration rates of NNEUCs by nationality in 2001

Country of origin	Registered voters by nationality	Potential voters by nationality	Registered voters as % of potential voters by nationality	Registered voters as % of total NNEUC potential voters
Austria	705	4,137	17.0	0.42
Belgium	16,399	63,731	25.7	9.87
Denmark	966	5,321	18.1	0.58
Finland	402	2,705	14.9	0.24
Germany	12,995	73,035	17.8	7.82
Greece	579	5,668	10.2	0.34
Ireland	971	5,621	17.3	0.58
Italy	36,570	204,160	17.9	22.01
Luxembourg	632	2,776	22.8	0.38
Netherlands	7,090	24,058	29.5	4.26
Portugal	57,478	566,078	10.1	34.59
Spain	17,948	167,807	10.7	10.80
Sweden	948	8,014	11.8	0.57
UK	12,439	68,095	18.3	7.48
Total	166,122	1,201,206	13.8	100.00

Source: Strudel (2002). (There are slight discrepancies in the figures between these statistics and those provided directly by the Ministry of the Interior).

It should be noted that it was not possible to calculate the registration rate in the same way in 2008 because residence permits for NNEUCs were abandoned in 2003.

The balance of nationalities amongst the NNEUCs registered partly reflects the patterns of European labour migration to 20th century France (Italians, Spanish & Portuguese), but also the prevalence of border migration (Germans & Belgians), and to a lesser extent, lifestyle migration (British & Dutch)[29]. These observations are confirmed by the following breakdown of the results by gender, showing that both sexes are roughly equally represented in the case of the British, the Dutch, the Germans and the Belgians, where border and retirement migration essentially concern family clusters or couples, whereas in the case of the Spanish, the Italians and the Portuguese, there are many more male voters than female. This could be explained either by the fact that these

Table 3

Registered NNEUCs by nationality and gender in 2001

Country of origin	Men	Women	Total
Austria	301	404	705
Belgium	8,225	8,174	16,399
Denmark	432	534	966
Finland	113	289	402
Germany	6,128	6,867	12,995
Greece	325	254	579
Ireland	403	568	971
Italy	22,812	13,758	36,570
Luxembourg	310	322	632
Netherlands	3,172	3,918	7,090
Portugal	33,810	23,668	57,478
Spain	10,139	7,809	17,948
Sweden	400	548	948
UK	6,572	5,867	12,439
Total	93,142	72,980	166,122

Source: French Ministry of the Interior, Electoral Division.

[29] For a fuller analysis of these figures see Collard (2010).

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Table 4

Registered NNEUCs by nationality and gender in 2008

	Registered NNEUCs 2008		
	Women	Men	Total
Austria	793	553	1,346
Belgium	14,530	14,341	28,871
Bulgaria	188	137	325
Cyprus	33	22	55
Czech Republic	204	168	372
Denmark	965	773	1,738
Estonia	27	6	33
Finland	448	154	602
Germany	12,493	10,331	22,824
Greece	492	485	977
Hungary	94	67	161
Ireland	1,025	894	1,919
Italy	17,105	26,566	43,671
Latvia	47	42	89
Lithuania	73	24	97
Luxemburg	441	457	898
Malta	18	10	28
Netherlands	5,993	5,914	11,907
Poland	895	618	1,513
Portugal	34,449	47,233	81,682
Romania	453	326	779
Slovakia	99	102	201
Slovenia	13	30	43
Spain	10,598	12,293	22,891
Sweden	1,101	801	1,902
UK	16,516	17,495	34,011
Total	119,093	139,842	258,935

economic migrants came as single men and remained single or married women of French nationality, or by cultural factors (a greater reluctance of women in Mediterranean cultures to engage in politics).

The geographical distribution across the country of these registered NNEUCs, and the increase in numbers between 2001 and 2008, is illustrated by the following maps, created using the detailed breakdown of the data by department, nationality and gender (Collard, 2010). These maps show the unsurprising attraction of the Paris region in attracting migrants, but they also confirm the importance of border migration, especially on the Belgian and German borders, and lifestyle migration, particularly along the southern coast.

If we were to produce separate maps for each of the nationalities present, it would become clear that certain nationalities are attracted to certain areas, and the British provide a good example of this. Apart from those based in the capital city and its region, they are largely dispersed across parts of rural France with low density of population, and along what they have

Geographic distribution of registered NNEUCs in France in 2001

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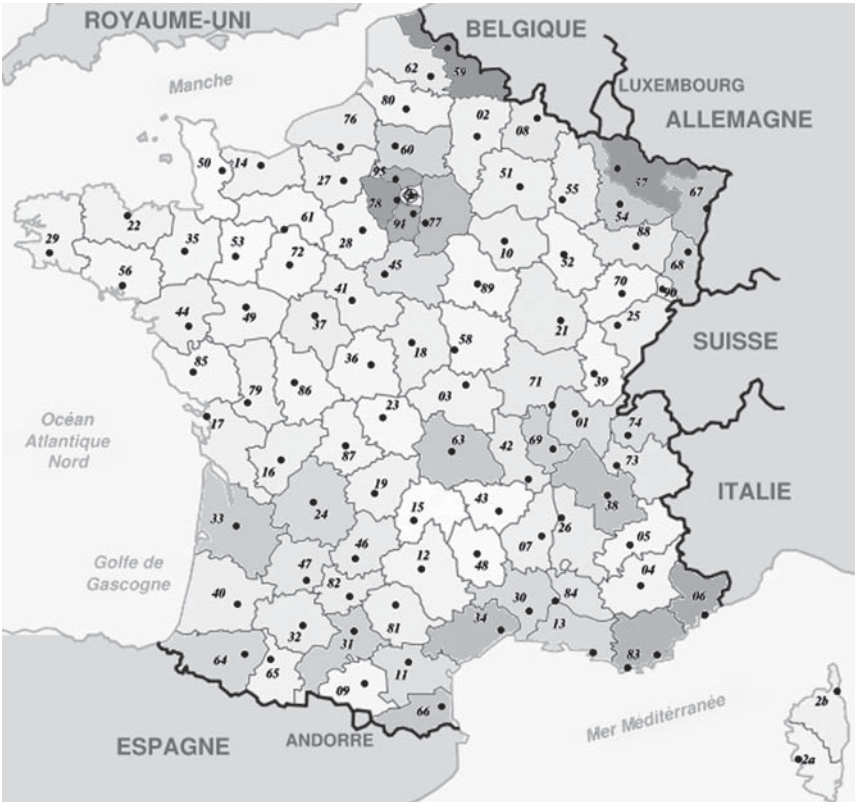
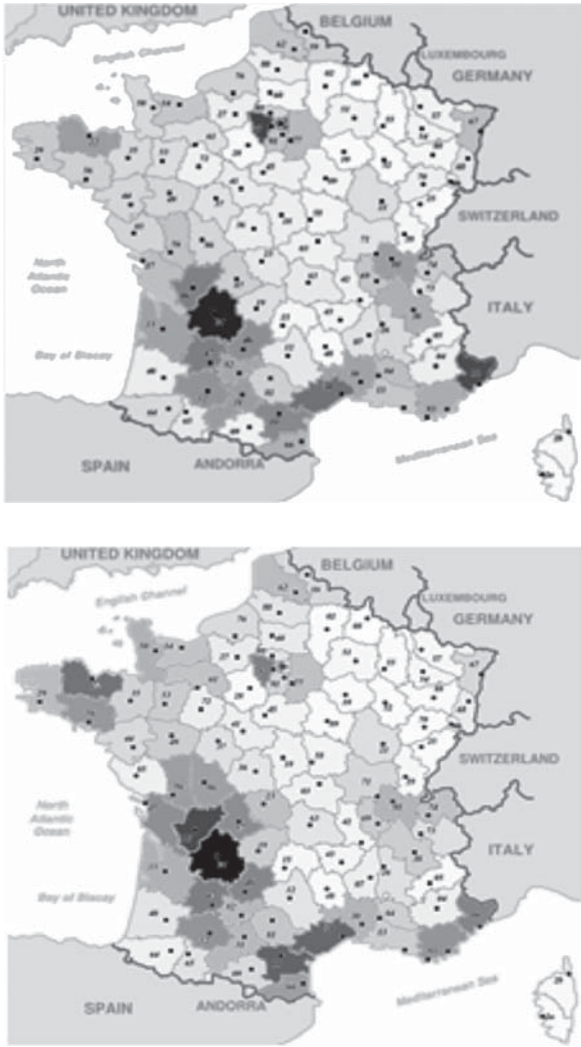


Geographic distribution of registered NNEUCs in France in 2008

called 'the Riviera' in the south. This distribution illustrates the phenomenon of lifestyle migration from the UK to France, demonstrated by the tripling of numbers of British nationals from 12,439 in 2001 to 34,011 in 2008, thus moving up from sixth to third place. This growth can be explained by the arrival of a 'second wave' of lifestyle migrants from the turn of the century onwards, that I have described elsewhere as the 'Ryanair generation' (the first, 'Peter Mayle generation' being in the late 1980s and early 1990s) (Collard, 2008). In particular, the British have been attracted to the Lot and the Dordogne area, often now referred to in the UK as 'Dordogneshire', but then spread, due to rising property prices, to the cheaper Charente and Limousin areas, as well as to the Pyrenees and Brittany, whilst retaining a strong long established presence along the Riviera and in the Alps, dating back to the days of the first aristocratic 'tourists' of the early 18th century.



British registered voters in France: 2001 & 2008

2. *Registered NNEUCs and registration rates: UK*

Numbers of registered NNEUCs are recorded on an annual basis and are available from the Office of National Statistics for the period from 2001 onwards, as shown in the following graphs.

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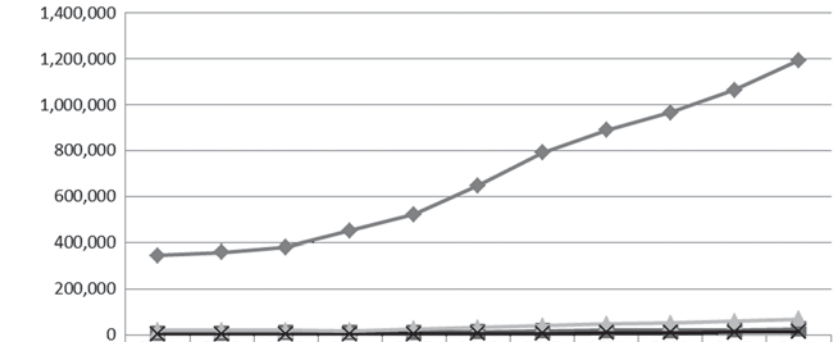
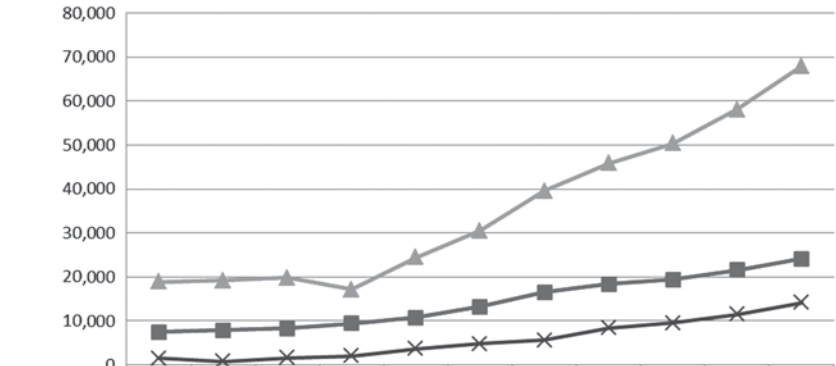


	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
England	344,169	359,563	381,038	450,474	521,149	647,768	789,636	889,133	964,376	1,063,7	1,192,7
Wales	7495	7854	8278	9436	10,775	13,265	16,517	18,370	19,352	21,569	24,125
Scotland	18,905	19,207	19,851	17,160	24,393	30,535	39,559	45,836	50,340	58,004	67,949
N.Ireland	1522	825	1595	2053	3620	4834	5622	8342	9561	11,520	14,118

Numbers of registered NNEUCs in the UK 2001-2011



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Wales	7495	7854	8278	9436	10,775	13,265	16,517	18,370	19,352	21,569	24,125
Scotland	18,905	19,207	19,851	17,160	24,393	30,535	39,559	45,836	50,340	58,004	67,949
N.Ireland	1522	825	1595	2053	3620	4834	5622	8342	9561	11,520	14,118

Numbers of registered NNEUCs in Scotland, Wales & N. Ireland 2001-2011

Given the very different type of data on registration of NNEUCs at local elections that is available for the UK, the breakdown of these numbers by nationality is only possible at the level of individual electoral authorities, so a direct comparison by nationality cannot be made with the French data. As

regards the total number of registered NNEUCs in the UK, this increased from 372,091 in 2001 to 1,298,909 in 2011. This means that even in 2001, before the 2004 enlargement, the UK had roughly twice as many registered NNEUCs as France (166,122); by 2008, France had 264,137 compared to 961,681 in the UK. This could be partly the result of the pro-active registration system applied across the UK, or may be a reflection of a greater number of NNEUCs resident in the UK. However, Eurostat figures claim that in 2000, there were 1,004,00 NNEUCs resident in France compared to 790,000 in the UK[30]. A more recent Eurostat report on 'Population and Social Conditions' gave figures for NNEUC residents in 2010, as 1,317,600 in France and 1,922,500 in the UK[31]. If these figures are accurate, it would imply that registration rates are indeed (currently at least) much higher in the UK (59.47%) than in France (20.04%).[32] The UK's Electoral Commission estimates that in 2011, 56% of NNEUCs were registered compared with 84% of UK nationals[33]. This is somewhat lower than the figure obtained by basing a calculation on ONS data as presented in the following table:

Table 5

Registered NNEUCs in the UK in 2011
as % of total electorate and estimated number of NNEUC residents

1st December 2011	NNEUCs registered on electoral roll	Total electorate at local elections	NNEUCs as % of local electorate	Estimated number of NNEUCs resident (ONS Annual Population Survey / Labour Force Survey 2011)	% of NNEUCs registered
UK	**1,298,909**	**47,383,500**	**2.74**	**2,081,000**	**62.4**
England	1,192,717	39,825,800	2.99	1,835,000	64.9
Wales	24,125	2,322,100	1.03	43,000	56.1
N. Ireland	14,118	1,227,121	1.15	41,000	34.4
Scotland	67,949	4,008,411	1.69	139,000	48.8

Source: www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-235204. ONS Annual Population Survey / Labour Force Survey, March 2011.

[30] Community Labour Force Survey 2000.

[31] http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-034/EN/KS-SF-11-034-EN.PDF This report has interesting data on both NNEUCs and TCNs resident in the EU.

[32] I have made the calculation using the figure of 1,143,329 for UK registered voters (England, Wales & Scotland in 2010) and 264,137 for French registered voters in 2008.

[33] UK, Electoral Commission (2011) *Great Britain's Electoral Registers December 2011,* London: The Electoral Commission, p. 33, available at: www.electoralcommission.org.uk/__data/assets/pdf_file/0007/145366/Great-Britains-electoral-registers-2011.pdf

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3. *Candidates and elected councillors: France*

The following table shows numbers of NNEUC candidates and elected councillors for the 2001 elections in *communes* of over 3500 inhabitants, since figures were not available for the smaller ones.

Table 6

NNEUC candidates and elected councillors
in communes of over 3500 inhabitants in 2001

Country of origin	Number of candidates	% of total EU candidates	Number of elected councillors	% of elected candidates
Austria	3	0.30	0	0.00
Belgium	100	10.09	21	10.29
Denmark	6	0.61	1	0.49
Finland	5	0.50	1	0.49
Germany	106	10.70	17	8.33
Greece	7	0.71	1	0.49
Ireland	8	0.81	2	0.98
Italy	144	14.53	28	13.73
Luxembourg	4	0.40	0	0.00
Netherlands	32	3.23	8	3.92
Portugal	389	39.25	83	40.69
Spain	99	9.99	23	11.27
Sweden	9	0.91	3	1.47
UK	79	7.97	16	7.84
Total	991	100.00	204	100.00

Source: French Ministry of the Interior, Electoral Division.

Of the 991 candidates, 204 were elected: the numbers for each nationality were roughly proportionate to the numbers of registered voters. The total number of NNEUC elected councillors contrasts starkly with the total number of 83,445 elected councillors in the same category of *communes,* of which it represents only 0,24%. Thus, in Strudel's analysis of these results, she observed that the spectre of the votes of French people being drowned in a tidal wave of NNEUC voters and candidates (as imagined

by the *souverainistes*), had failed to materialise, and she suggested that, in fact, election as a councillor tended to indicate a strong desire to integrate in the host community, rather than representing a challenge to it (Strudel, 2002).

In 2008, as Table 7 below shows, the number of NNEUC elected councillors in *communes* over 3500 almost doubled, to 396 (from 204) despite the fact that the number of candidates had not increased proportionately as much (from 991 to 1205). Thus the relative success rate was greater in 2008 and, although we do not know the gender profiles of the 2001 candidates, it is clear that the introduction of the parity law has worked to the advantage of female NNEUC candidates: of 625 female candidates, 232 were elected, compared to 580 male candidates winning 163 seats. In terms of nationality, the number of councillors elected from Spain, Italy and Portugal decreased as a proportion of the total, even though in real terms their numbers increased. Greece increased its councillors from 1 to 8, despite only having 909 registered voters. The only two new Member-States to have elected candidates were Poland and Romania (in bold): Poland only has one, for 1,039 registered voters, whereas Romania has 4, all women, for only 555 registered voters and seven candidates. This result is all the more impressive given that there were only 7 candidates. There are significantly more female NNEUC councillors than male, which can probably be explained by Strudel's observation made of the 2001 elections, that a number of these candidates were taken on to lists for their symbolic value, and that in this respect it made sense to prefer women to men in order to comply with the parity rules (Strudel, 2004a, p. 75)[34]. The fact that the number of candidates in these *communes* has not increased proportionately to the increase in registered voters suggests that parties have not made any great efforts to recruit amongst the NNEUC population. Indeed, it is notable that the vast majority of NNEUC candidates were affiliated to either the 'Various Left' or the 'Various Right', rather than to any of the big parties (see Table A.2, Collard, 2010, p. 116).

The major innovation in the 2008 elections was that the Ministry of the Interior was able for the first time to collect data for the 33,922 *communes* of under 3500 inhabitants and this revealed some highly interesting results of great significance to our analysis. Whilst the figures in the Table 8 should be treated with a little caution as regards total accuracy, they nevertheless provide hard evidence that European citizens are integrating well into rural France and participating in the process of local democracy[35].

[34] '*quitte à être « l'européen de service », il vaut mieux être « l'européenne de service »*'.

[35] For more detailed analysis see Collard (2010).

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Table 7

Numbers of candidates and elected councillors by gender and nationality in *communes* of over 3,500 inhabitants in 2008

	NNEUC candidates			% total NNEUC candidates (2001 figures for comparison)	NNEUC elected councillors			% NNEUC elected councillors (2001 figures for comparison)
	Men	Women	Total		Men	Women	Total	
Austria	1	6	7	0.58 (0.30)	—	2	2	0.50 (0.00)
Belgium	56	74	130	10.78 (10.09)	20	38	58	14.60 (10.29)
Bulgaria	*1*	*1*	*2*	*0.16*	—	—	—	—
Cyprus	—	—	—	—	—	—	—	—
Czech Rep.	—	—	—	—	—	—	—	—
Denmark	6	4	10	0.82 (0.61)	—	3	3	0.70 (0.49)
Estonia	—	—	—	—	—	—	—	—
Finland	—	3	3	0.24 (0.50)	—	2	2	0.50 (0.49)
Germany	41	95	136	11.28 (10.70)	8	36	44	11.10 (8.33)
Greece	6	10	16	1.32 (0.71)	4	4	8	2.00 (0.49)
Hungary	*2*	*1*	*3*	0.24	—	—	—	—
Ireland	6	6	12	0.99 (0.81)	1	—	1	0.25 (0.98)
Italy	122	77	199	16.51 (14.53)	24	15	39	9.80 (13.73)
Latvia	—	—	—	—	—	—	—	—
Lithuania	—	—	—	—	—	—	—	—
Luxemburg	2	—	2	0.16 (0.40)	—	—	—	—
Malta	—	—	—	—	—	—	—	—
Netherlands	17	36	53	4.39 (3.23)	10	21	31	7.80 (3.92)
Poland	***7***	***3***	***10***	***0.82***	***—***	***1***	***1***	***0.25***
Portugal	209	180	389	32.28 (39.25)	64	62	126	31.80 (40.69)
Romania	***—***	***7***	***7***	***0.58***	***—***	***4***	***4***	***1.00***
Slovakia	—	*1*	*1*	*0.08*	—	—	—	—
Slovenia	—	—	—	—	—	—	—	—
Spain	45	61	106	8.79 (9.99)	11	21	32	8.00 (11.27)
Sweden	3	8	11	0.91 (0.91)	—	4	4	1.00 (1.47)
UK	56	52	108	8.96 (7.97)	21	20	41	10.30 (7.84)
Total NNEUC	**629**	**576**	**1,205**	100.00	**163**	**233**	**396**	100.00

Table 8

Number of NNEUCs elected as municipal councillors
in *communes* of under 3,500 inhabitants in 2008, by nationality and gender

Country of origin	Men	Women	Total
Austria			6
Belgium	172	119	291
Bulgaria	1		1
Cyprus			4
Czech Republic		1	1
Denmark	3	5	8
Estonia			2
Finland	3	4	7
Germany	38	57	95
Greece			5
Hungary			5
Ireland	10	3	13
Italy	33	12	45
Latvia			0
Lithuania			1
Luxembourg	4	1	5
Malta	4		4
Netherlands	53	77	130
Poland	1	1	2
Portugal	71	26	97
Romania	1		1
Slovakia			1
Slovenia			0
Spain	14	6	20
Sweden			5
UK	167	238	405
Total	575	549	1,154

My own research suggests that this total figure is likely to be somewhat higher, possibly 1500 or even 2000, due to inaccuracies derived from the complexity of the data collection process; thus in all, there are possibly as many as 2500 NNEUC local councillors in France at present. Whilst this may sound an impressive step forward for European Citizenship, it should be set against the total figure of approximately 500,000 municipal councillors elected in France, and it should also be noted that the *commune* is rapidly being stripped of its powers through the process of 'intercommunality' by

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which the central state is trying to rationalise the complex and expensive system of local government that history has passed down to it. Moreover, my fieldwork (involving semi-structured interviews with 50 British councillors elected in 2001) showed quite clearly that very few respondents were aware that their right to vote in local elections was derived from the EU and the majority did not see themselves in any way as 'pioneers of European Citizenship'. Nevertheless, they all identified themselves in some way as being 'European' and felt that their participation was a positive aspect of their integration into their host communities. Clearly there is a need for more extensive qualitative research if we are to build a more comprehensive picture, across all the EU nationalities concerned, of how these 'pioneers' of European citizenship may (or may not) be contributing to the building of some kind of Eurodemocracy at grass-roots level, and whether or not any links between local democracy and the wider European framework can be meaningfully established.

4. *Candidates and elected councillors: the UK*

No national data is available for the UK relating to nationality of candidates, and numbers of NNEUC elected councillors can only be obtained by making individual requests to all the electoral authorities, which has so far only been possible for my home town Brighton and Hove, where the following observations were made:

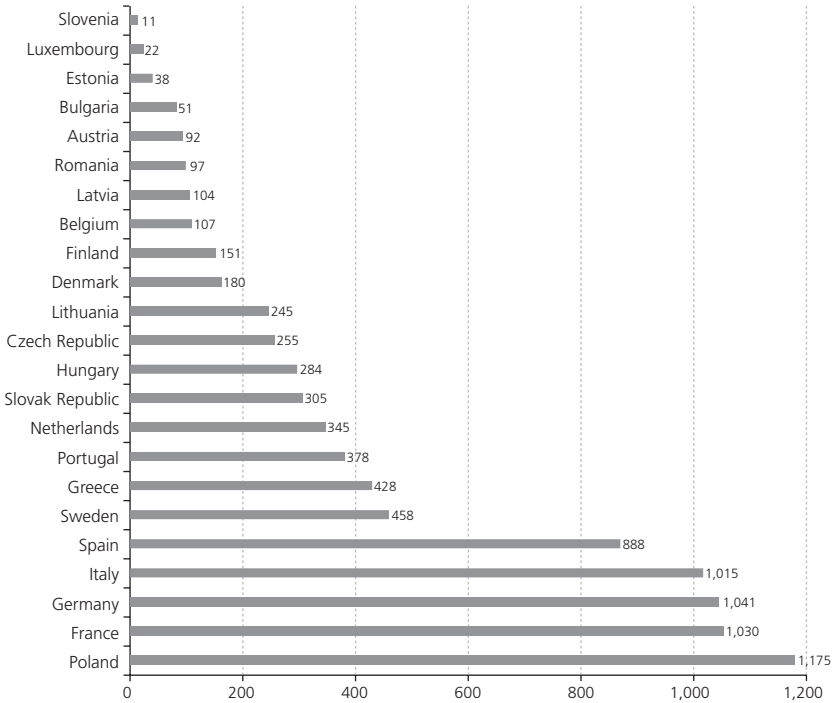
Anja Kitcat	Polish	Regency Ward	Green Party
Amelia Mills	Italian	Moulsecoomb	Green Party
Yuri Borgmann-Prebil	German	Preston Park	European Citizens Party

The first of these was the only one to be elected, along with her British husband (now Leader of the Council), in Regency Ward. Anja has lived in the UK since 1994 and does not in any way claim to speak for the Polish residents in Brighton & Hove, who, she accepts, tend not to engage much with the local community. She is the first European Citizen to be elected to Brighton & Hove Council.

5. *Participation rates of NNEUCs at local elections in the UK*

By contrast to the generality of the national data, my close empirical analysis of the local elections results in a sample of UK cities, using the method outlined earlier, allows us to get a closer look at the extent to which

NNEUCs took advantage of exercising their right to vote in recent local elections. The graphs below show for each city the number of registered voters by nationality, as well as the actual turnout of NNEUCs compared to that of the total electorate. The selection of cities in the sample was determined by various factors, the main criterion being to have a significant number of NNEUCs on the electoral register. The city with the highest number of NNEUCs on the electoral register was unsurprisingly London, with nearly 500,000 (7.95% of the total electorate) in 2011, but because of the cost of exploiting this amount of data, it could not be included in this project. For the pilot study, conducted to test the methodology, Brighton & Hove was the obvious choice for practical reasons, being my home town, but it also had a good representation of NNEUCs (4.32%).



Total local electorate: 203,437. Total NNEUCs: 8718 (4.23%)
NNEUC turnout: 26.16%. Total electorate turnout: 44.19%
NNEUC voters as % of total voters: 2.56%

Registered NNEUCs by nationality in Brighton & Hove: March 2010

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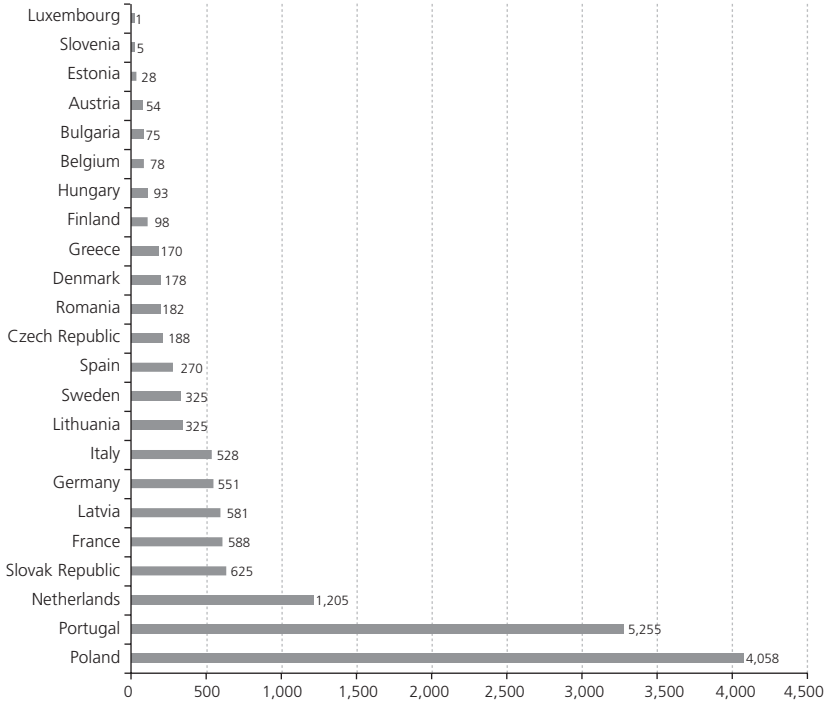
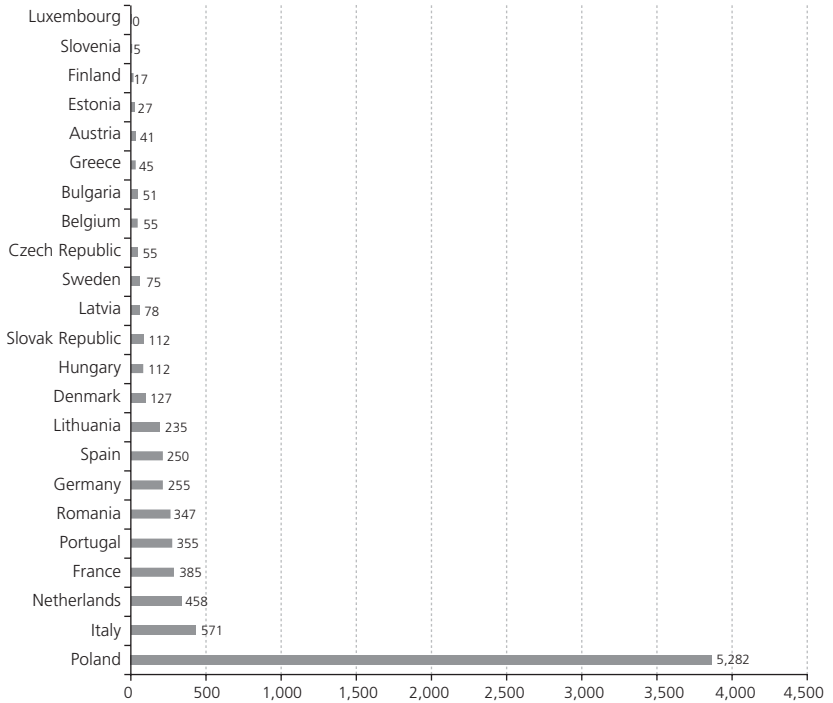
Leicester was chosen because the population has a very multi-ethnic and multi-cultural base, and will therefore provide an interesting case study of how NNEUCs integrate with other non-EU migrants. The nationality data revealed an unusually high number of Portuguese and Dutch citizens, for which there is no immediately obvious explanation: further research will seek to determine, whether these nationalities were acquired in those two countries by previously non-EU migrants, as the surnames on the register would suggest.



Total local electorate: 228,252. Total NNEUCs: 13,614 (5.96%)
NNEUC turnout: 24.45%. Total electorate turnout: 41%
NNEUC voters as % of total voters: 1.45%

Registered NNEUCs by nationality in Leicester: May 2010

Slough was selected because it has one of the highest proportions of NNEUCs in the country (9.83%). The nationality data revealed that Polish citizens outnumber all other nationalities by far, so it is not surprising, given the lack of political engagement by Poles already noted (but still to be explained in the qualitative research to follow), that Slough recorded the lowest turnout of NNEUCs in the sample, at 17.23%.



Total local electorate: 90,653. Total NNEUCs: 8918 (9.83%)
NNEUC turnout: 17.23%. Total electorate turnout: 28%
NNEUC voters as % of total voters: 5.02%

Registered NNEUCs by nationality in Slough: November 2011

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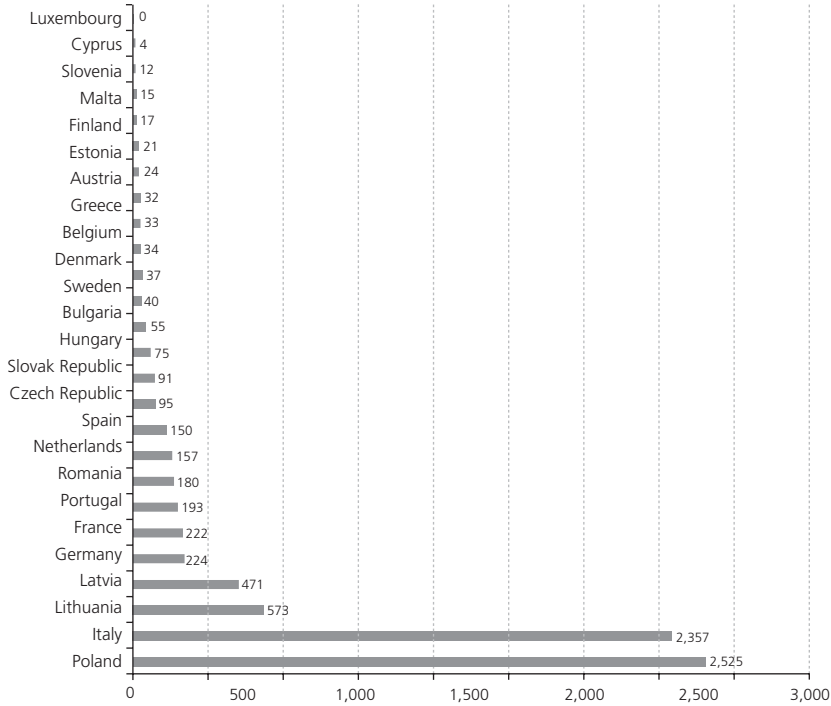
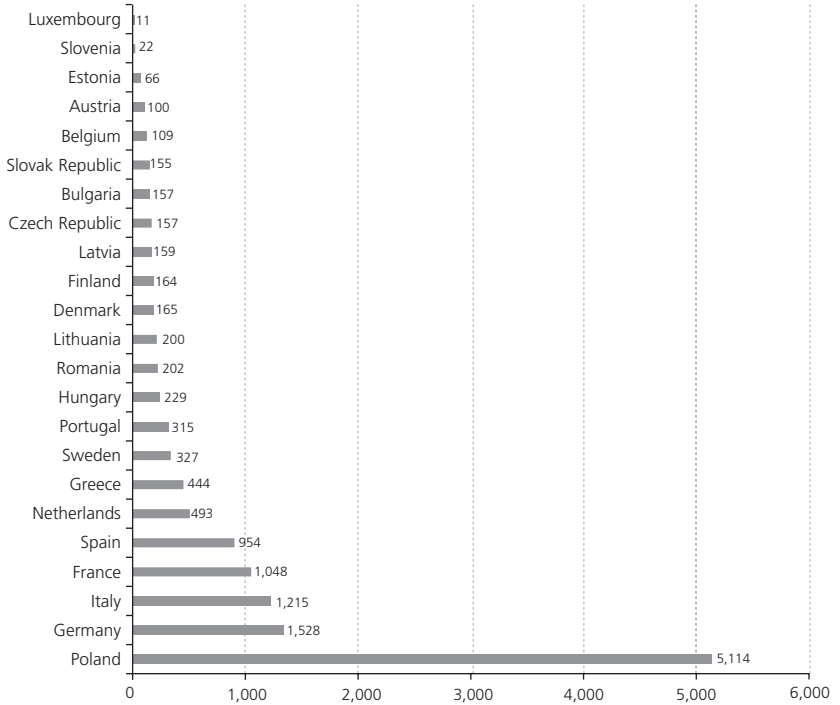
Bedford was selected because it is widely known to have a long established Italian community, making it an interesting case study of the interaction between an 'old' community and a 'new' wave of migrants. The data shows that Italians are indeed the second largest nationality group after the Poles: the qualitative research will seek to establish whether many of the 'old' migrants took British nationality, and what motivated the choice to become British or remain Italian.



Total local electorate: 118,691. Total NNEUCs: 7699 (6.48%)
NNEUC turnout: 24.27%. Total electorate turnout: 47.55%
NNEUC voters as % of total voters: 3.37%

Registered NNEUCs by nationality in Bedford: May 2012

Edinburgh was selected because it is the capital city of Scotland and a good comparison with English cities. These results will be of particular comparative interest with respect to the upcoming Scottish referendum on independence in 2014, in which NNEUCs will be allowed to vote. The NNEUC turnout was higher in Edinburgh (32.7%) than in any of the other cities sampled.



Total local electorate: 331,954. Total NNEUCs: 13,035 (3.92%)
NNEUC turnout: 32.7%. Total electorate turnout: 42.6%
NNEUC voters as % of total voters: 3.01%

Registered NNEUCs by nationality in Edinburgh: May 2012

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Analysis of data for Cambridge and Manchester is currently underway: Cambridge was selected not only because it has a very high proportion of NNEUCs (9.45%), but because it is a city whose population is dominated by the university. Manchester was chosen because the city (as opposed to Greater Manchester) it is also dominated by the university and also has the highest proportion of NNEUCs (10.94%) of all UK cities.

Overall, these initial findings for the UK suggest that the actual participation rates of NNEUCs hover on average around 25% of those registered. Ongoing research for this project will extend the sample of cities analysed, whilst also in the next stage carry out a more qualitative analysis of NNEUCs and their motives for voting or not, using an on-line survey to be followed up by semi-structured interviews with a sample of respondents.

V. **Conclusions**

In this paper I have shown that if we are to know and understand more about the significance of voting in local elections for mobile European citizens, we cannot rely on information produced at EU level, but rather, that more academic research should be carried out at national and sub-national levels, since this is the most likely way to produce accurate and considered results. The investigations I have carried out in France and the UK have produced original data that identifies individual NNEUCs by name and address, who are mobile through their residence in another Member State, and who in some cases, are known to have used their right to participate in the democratic process of their host community. However, the research has also highlighted the difficulties and limits involved in comparing two sets of national data which cannot produce directly comparable results.

For France, we have excellent detailed data on the candidates in larger *communes*, on those elected as councillors in all *communes*, and on the nationality, geographical location, gender, and even age of registered NNEUCs; all of this could be further exploited for qualitative enquiry, yet we have no data on actual turnout. This problem could possibly be addressed by carrying out a few sample investigations in a selection of localities where the local authorities were supportive of the aims of the research, since they could probably facilitate access to the '*listes d'émargement*' which could in theory provide the necessary data. But given the sheer number of local authorities in France, and their disparate sizes, it would be hard to know what would constitute a meaningful sample. For the UK, although we have established a methodology for obtaining data on actual turnout by NNEUCs in a sample of cities, it would be a costly exercise to replicate across the whole country. As regards obtaining data on candidates and elected

councillors, this would require a change in the law demanding individual local authorities to collect this information, which is highly unlikely since there is no political demand for it.

Thus the research so far indicates that a direct comparison of participation in local elections by NNEUCs in France and the UK is highly problematic. Any attempt to extend the comparison to other Member-States would no doubt reveal yet more limitations and complexities in this respect. Yet this should not be a reason to abandon the project. If Member-States could be persuaded to set in place the necessary mechanisms for collecting all the relevant data, an EU-wide comparison would surely be possible. It is clearly the role of the Commission to take on the responsibility for such a task, since it cannot seriously evaluate the development of European Citizenship without assessing the level of participation in local elections. Meanwhile, despite the incompatibilities of data which prevent direct comparisons, the two case studies presented have revealed new data which is interesting *per se*, and if more case studies were carried out in other Member-States, we would have a much richer picture of the state of participation in European Citizenship across the EU, even if they could not produce a uniform set of comparisons.

Moreover, the statistical research carried out so far is just a starting point in a much more ambitious project which aims to exploit the data in order to refine and enrich the picture presented thus far: future research will seek answers to a set of questions assessing NNEUCs' awareness of European Citizenship rights, and evaluating their impact on ordinary mobile EU citizens. To what extent have participation rates in local elections been informed by cultural practices associated with nationality, modes of access (such as registration procedures) and levels of information in the country of residence? What do these voting rights represent for the individuals concerned, when compared to the other benefits that constitute the reality of European citizenship for mobile EU citizens more generally (such as free movement, the right to work, access to health and welfare benefits)? Does political inclusion in the local democratic process enhance integration of NNEUCs into their local communities? Do they feel their human rights are enriched by having access to local voting rights? To what extent are they aware of European Citizenship and the rights it confers on them, and does mobility increase the level of awareness? Do NNEUCs associate their right to vote and stand in local elections with the European polity or do they see it as a concession granted by the host polity? What role do European Citizenship rights play in encouraging the development of a transnational European identity? Can a set of typologies be developed to frame the responses to all these questions? The pace of progress on this research will inevitably be determined by access to further funding. If this cannot be

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secured at EU level, it will have to be sought at national or sub-national levels. For it is only with more dedicated research that we can hope to have a clearer sense of the full impact at grass roots level of the introduction of voting rights for NNEUCs by the Treaty of Maastricht.

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Jurisprudencia

Comentario de Jurisprudencia del Tribunal de Justicia de la Unión Europea

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I. **Introducción**

El segundo semestre de 2012 de actividad del Tribunal de Justicia de la Unión europea en Luxemburgo se ha caracterizado, desde el punto de vista institucional, por la entrada en vigor el 1 de noviembre de 2012 del nuevo Reglamento de Procedimiento del Tribunal de Justicia (*DOUE* n.º L 265, de 29 de septiembre de 2012, p. 1; la versión codificada y comparada con la anterior se recoge en el *DOUE* n.º C 337, de 6 de noviembre de 2012, p. 1) y por la renovación de la presidencia, que desde 2003 ocupa el profesor griego Vassilios Skouris, y a partir de ahora de la vicepresidencia, encomendada a uno de los más prestigiosos profesores del Derecho europeo, el belga Koen Lenaerts.

El nuevo Reglamento de Procedimiento de 2012 sustituye al adoptado en 1991 y sus innovaciones se refieren, fundamentalmente, a la tramitación de los reenvíos prejudiciales. De hecho, el Tribunal ha publicado las nuevas instrucciones sobre el planteamiento de la cuestión prejudicial: *Recomendaciones a los órganos jurisdiccionales nacionales, relativas al planteamiento de cuestiones prejudiciales* (*DOUE* n.º C 338, de 6 de noviembre de 2012, p. 1).

Dado que el principal grupo de asuntos enjuiciados en Luxemburgo, en términos cuantitativos, son las cuestiones prejudiciales presentadas por los

jueces nacionales, se adapta la estructura y el contenido del Reglamento de Procedimiento y su finalidad es reducir la duración de los procedimientos, por ejemplo ampliando las posibilidades del Tribunal de resolver mediante auto motivado, simplificando las reglas relativas a la intervención de los Estados e instituciones y reconociendo al Tribunal la facultad de resolver sin celebrar una vista cuando considere que el conjunto de observaciones escritas presentadas ante él en un asunto le ofrece información suficiente.

De hecho, el diálogo y la cooperación entre los tribunales nacionales y el Tribunal de Justicia de la Unión tienen en la cuestión prejudicial su manifestación más acabada. En este sentido, resulta especialmente interesante comprobar cómo el Tribunal de Justicia valora la postura del juez nacional; así, en sus *Recomendaciones* a los jueces nacionales señala: «el órgano jurisdiccional remitente puede, en su caso, indicar de modo sucinto su punto de vista sobre la respuesta que deben recibir las cuestiones planteadas con carácter prejudicial. Tal indicación resulta útil para el Tribunal de Justicia, en particular cuando tiene que pronunciarse sobre la petición en el marco de un procedimiento acelerado o de un procedimiento de urgencia» (apartado 24).

Si hay un ejemplo claro de lo útil que pueden resultar los nuevos procedimientos de agilización procesal ese es el caso *Pringle* (C-370/12) en que el Tribunal Supremo de Irlanda le plantea al Tribunal de Justicia el 31 de julio de 2012 cómo resolver un caso de excepcional importancia y el propio Tribunal de Justicia sigue el procedimiento acelerado de modo que el 27 de noviembre de 2012, estando el verano por medio, se dicta una sentencia por el Pleno del Tribunal de Luxemburgo de gran trascendencia constitucional y económica relativo a la aplicación del Mecanismo Europeo de Estabilidad, es decir, una fórmula diseñada por los 17 países del euro para hacer frente a las dramáticas crisis económicas en Grecia, en Irlanda, en Portugal y en otros países de todos conocidos.

Ahora bien, el Tribunal de Justicia también se declara incompetente por el *auto Gennaro Currà y otros* (C-466/11) para conocer de cuestiones prejudiciales planteadas como es la que le formuló un Tribunal italiano de Brescia en relación con las acciones de responsabilidad iniciadas por nacionales italianos contra Alemania por acciones armadas durante la Segunda Guerra Mundial. La incompetencia *ratione temporis* se deduce al comprobar que se trata de «una acción indemnizatoria ejercitada por ciudadanos de un Estado miembro contra otro Estado miembro por hechos que tuvieron lugar durante la Segunda Guerra Mundial, es decir, antes de la creación de las Comunidades Europeas» (apartado 16). La incompetencia *ratione materiae*, referida más particularmente a la falta de jurisdicción y a la aplicación de la Carta de Derechos Fundamentales de la Unión, se funda en que «[de conformidad con] el artículo 51, apartado 1, de la Carta, las disposiciones de esta última se dirigen a los Estados miembros únicamente cuando apliquen el De-

recho de la Unión. Además, en virtud del apartado 2 de ese mismo artículo, la Carta no amplía el ámbito de aplicación del Derecho de la Unión más allá de las competencias de la Unión, ni crea ninguna competencia o misión nuevas para la Unión, ni modifica las competencias y misiones definidas en los Tratados. Por tanto, el Tribunal de Justicia debe interpretar, a la luz de la Carta, el Derecho de la Unión dentro de los límites de las competencias atribuidas a ésta» (apartado 25).

Me propongo desarrollar a continuación algunos de los hitos de la jurisprudencia del Tribunal de Justicia durante la segunda mitad del 2012 y seguidamente hago un el balance desde la perspectiva del ordenamiento jurídico español. En la primera parte sigo una división por materias destacando las sentencias que me han parecido más relevantes. En cambio, en la segunda parte tengo en cuenta las sentencias del Tribunal de Justicia dictadas a instancia de los jueces españoles y los procedimientos prejudiciales y los recursos por incumplimiento relacionados con España.

II. **Primera parte. Los nuevos desarrollos de la Jurisprudencia del Tribunal de Justicia**

La selección de las sentencias tiene, ciertamente, un sesgo subjetivo pero no obstante procuro hacer un recorrido de los ámbitos más afectados: el ordenamiento constitucional, la ciudadanía de la Unión, el mercado europeo, los derechos de los consumidores, y, en fin, algunos aspectos del espacio judicial europeo.

1. *El Derecho constitucional europeo: el Mecanismo Europeo de Estabilidad*

Los ciudadanos constituyen cada vez más el punto de referencia del Derecho de la Unión y, en consecuencia, las sentencias del Tribunal de Justicia tienen que ver con los derechos e intereses de estos tanto o más que, como ha sido tradicional hasta hace poco, con el mercado y con la integración económica.

Esta nueva dimensión ciudadana no ha sido ajena a la impugnación judicial, particularmente ante los Tribunales Constitucionales y Supremos nacionales, de los distintos pasos constitucionales dados en la construcción europea. Nunca como ahora se sintió tan propia o tan ajena de los intereses de los ciudadanos la participación en Europa. Las sentencias del Tribunal Constitucional alemán sobre el Tratado de Maastricht en 1993, el Tratado de Lisboa en 2009 o la previsión de un Mecanismo Europeo de Estabilidad en 2012 así lo atestiguan.

El Mecanismo Europeo de Estabilidad se crea con el fin de responder a la crisis financiera de algunos países del euro, a partir precisamente de Grecia, y consiste, por una parte, en una modificación en 2011 del Tratado de Funcionamiento de la Unión Europea; y, por otra, en la adopción en 2012 de un Tratado sobre el Mecanismo Europeo de Estabilidad (MEDE).

La reforma constitucional de la Unión Europea se llevó a cabo por el procedimiento simplificado y se añadió el artículo 136.3 TFUE conforme al cual: «Los Estados miembros cuya moneda es el euro podrán establecer un mecanismo de estabilidad que se activará cuando sea indispensable para salvaguardar la estabilidad de la zona del euro en su conjunto. La concesión de toda ayuda financiera necesaria con arreglo al mecanismo se supeditará a condiciones estrictas».

Esta modificación la introdujo la Decisión del Consejo Europeo de 25 de marzo de 2011 que, después de la pertinente ratificación, entrará en vigor el 1 de enero de 2013. Previamente y en el marco de la Unión Europea, todos los Estados miembros, salvo el Reino Unido y la República Checa, habían firmado en Bruselas el 2 de marzo de 2012 el denominado «Fiscal Compact», es decir, el Tratado de Estabilidad, Coordinación y Gobernanza en la Unión Económica y Monetaria, que entrará en vigor el 1 de enero de 2013 (la ratificación por España fue autorizada, de conformidad con el artículo 93 de la Constitución, en virtud de la Ley Orgánica 3/2012, de 25 de julio: *BOE* n.º 178, de 26 de julio de 2012).

Al mismo tiempo, los 17 Estados miembros del euro adoptaron en Bruselas el 2 de febrero de 2012 pero fuera de la estructura de la Unión Europea el Tratado MEDE como institución financiera internacional en la que se implican estrechamente el Banco Central Europeo, la Comisión Europea y el propio Tribunal de Justicia.

El Tribunal Constitucional alemán en sus sentencias de 19 de junio de 2012 (*2 BvE 4/11*) y de 12 de septiembre de 2012 (*2 BvR 1390/12, 2 BvR 1421/12, 2 BvR 1438/12, 2 BvR 1439/12, 2 BvR 1440/12, 2 BvE 6/12*) había advertido sobre la insuficiente información dada por el Gobierno Federal alemán a su Parlamento sobre la adopción del Tratado de Estabilidad, Coordinación y Gobernanza en la Unión Económica y Monetaria y del Tratado MEDE, aunque esto no supuso una paralización del procedimiento de ratificación. De hecho, el Tratado MEDE, ratificado por los 17 países del euro —Alemania fue el último en hacerlo—, entró en vigor el 27 de septiembre de 2012. En España la ratificación fue autorizada por las Cortes Generales en virtud del procedimiento establecido en el artículo 94.1 de la Constitución y no del artículo 93: *BOE* n.º 239, de 4 de octubre de 2012).

Pues bien y en relación con el MEDE y desde Irlanda el parlamentario Thomas Pringle impugna ante el Tribunal Supremo la legalidad del procedi-

miento de revisión constitucional y el propio Tratado MEDE entre los Estados miembros del euro.

En primer lugar, la *sentencia Pringle* (C-370/12) constituye un claro ejemplo de colaboración entre los tribunales nacionales y el Tribunal de Justicia. Además, la tramitación del recurso ha sido ejemplarmente rápida y la resolución se ha encomendado no a la Gran Sala (15 jueces) sino de manera excepcional al Pleno del Tribunal de Justicia (27 jueces).

El Tribunal Supremo irlandés remite sin más al Tribunal de Justicia las tres cuestiones que debe resolver: si el procedimiento simplificado de revisión constitucional europea es válido, si el Tratado MEDE es compatible con el Derecho de la Unión Europea y si el Tratado MEDE se podía adoptar antes de entrar en vigor el 1 de enero de 2013 la modificación constitucional europea.

La primera cuestión le plantea al Tribunal de Justicia su propia competencia al tratarse de una reforma constitucional. Sin embargo, el Tribunal lo resuelve fácilmente subrayando que es competente para examinar la validez de la Decisión 2011/199 en relación con las condiciones enunciadas en el artículo 48.6 TUE, es decir, es competente para comprobar que se ha seguido el procedimiento de revisión simplificado. A tal efecto, el Tribunal de Justicia se limita a comprobar que la revisión constitucional por el procedimiento simplificado afecta únicamente a disposiciones de la tercera parte del Tratado FUE y que no aumenta las competencias atribuidas a la Unión en los Tratados.

La segunda cuestión se refiere a la compatibilidad del Tratado MEDE, celebrado fuera del marco de la Unión Europea por los 17 Estados miembros del euro, con el Derecho de la Unión. En este sentido el Tribunal de Justicia comprueba, por ejemplo en relación con la política monetaria de la Unión, que «el MEDE no tiene como objetivo mantener la estabilidad de los precios sino que pretende satisfacer las necesidades de financiación de los miembros del MEDE —es decir, los Estados miembros cuya moneda es el euro— que experimenten o corran el riesgo de experimentar graves problemas de financiación, cuando ello sea indispensable para salvaguardar la estabilidad financiera de la zona del euro en su conjunto y de sus Estados miembros. A tal efecto, el MEDE no está habilitado para fijar los tipos de interés oficiales para la zona del euro ni para emitir euros, debiendo financiarse la totalidad de la asistencia financiera que conceda, con observancia del artículo 123 TFUE, apartado 1, con capital desembolsado o mediante la emisión de instrumentos financieros, según prevé el artículo 3 del Tratado MEDE» (apartado 96).

El Tribunal de Justicia también rechaza que sea contraria al Derecho de la Unión la implicación en el Tratado MEDE de la Comisión Europea, del Banco Central Europeo o del propio Tribunal de Justicia. Y tampoco se vul-

nera el principio de tutela judicial efectiva consagrado por la Carta de Derechos Fundamentales porque el Tratado MEDE no es una aplicación del Derecho de la Unión.

Ahora bien, la tercera pregunta parece la más difícil de solventar al querer saber el Tribunal Supremo irlandés por qué se celebra el Tratado MEDE antes de que entre en vigor la propia modificación constitucional de la Unión Europea. Sin embargo, el Tribunal de Justicia no emplea mucho tiempo en argumentar su respuesta señalando: «el derecho de un Estado miembro a celebrar y ratificar el Tratado MEDE no está subordinado a la entrada en vigor de la Decisión 2011/199» (apartado 185).

En este caso la colaboración del Tribunal Supremo irlandés ha sido correspondida con la eficaz y práctica interpretación suministrada por el Tribunal de Justicia que decide de manera excepcional en un tiempo muy breve.

2. *La ciudadanía de la Unión y los derechos que irradia*

Si ha habido un asunto especial de carácter constitucional en el Tribunal de Justicia en el segundo semestre de 2012 y que a la vez justifica una restricción a la ciudadanía de la Unión ese ha sido el que enfrentaba a Hungría contra Eslovaquia ante el Tribunal de Justicia. Se trata de uno de los escasísimos supuestos en que no es la Comisión sino otro Estado miembro el que interpone el recurso por incumplimiento contra otro Estado miembro. En este caso el Tribunal de Justicia en su formación de Gran Sala resolvió por *sentencia Hungría / Eslovaquia* (C-364/10) que no había habido incumplimiento por parte de Eslovaquia al prohibir la libre circulación en su territorio del Jefe del Estado húngaro.

El desencadenante de este recurso por incumplimiento fue la prohibición de Eslovaquia de que el Presidente de Hungría viajase el 21 de agosto de 2009, invitado por una asociación eslovaca a la ciudad de Komárno para participar en la ceremonia de inauguración de una estatua de San Esteban que, asimismo, es patrono de Hungría y cuya fiesta se celebra el 20 de agosto. Como explica el propio Tribunal de Justicia, «el 21 de agosto es una fecha considerada sensible en Eslovaquia, puesto que el 21 de agosto de 1968 las fuerzas armadas de cinco países del Pacto de Varsovia, entre ellas las tropas húngaras, invadieron la República Socialista de Checoslovaquia» (apartado 6).

El Tribunal de Justicia desestimó el recurso de Hungría distinguiendo, por una parte, entre el estatuto del presidente húngaro como ciudadano de la Unión y como Jefe del Estado. Como ciudadano europeo, el Tribunal de Justicia enfatiza el alcance del estatuto de ciudadanía que «confiere a todo ciudadano de la Unión un derecho fundamental e individual a circular

y residir libremente en el territorio de los Estados miembros, con sujeción a las limitaciones y condiciones previstas en los Tratados y en las disposiciones adoptadas para su aplicación» (apartado 43). Pero, por otra parte, el Tribunal tuvo en cuenta la regulación internacional de la figura del Jefe del Estado y llega a la conclusión, en los mismos términos que habían defendido la Comisión Europea y el abogado general Yves Bot, de que «el hecho de que un ciudadano de la Unión ejerza las funciones de Jefe de Estado justifica una limitación, basada en el Derecho internacional, del ejercicio del derecho de circulación que le confiere el artículo 21 TFUE [por lo que] ni el artículo 21 TFUE ni, *a fortiori*, la Directiva 2004/38 exigen a la República Eslovaca garantizar al Presidente de Hungría el acceso a su territorio» (apartados 51 y 52).

Y en el ámbito de la ciudadanía de la Unión y de la libre circulación de personas, este semestre ha sido fructífero al mostrar las diferentes facetas de los derechos de los ciudadanos europeos y de los nacionales de terceros países.

La *sentencia Byankov* (C-249/11) se refiere a los efectos de la ciudadanía de la Unión dentro del propio país. Así, en el caso del búlgaro Byankov se le impuso la prohibición de abandonar Bulgaria y se le retiró el pasaporte por el único motivo de que tenía una deuda con una persona jurídica de Derecho privado que superaba un umbral legal sin que pudiese aportar garantía alguna.

El Tribunal de Justicia precisa, en primer lugar, «que una situación como la del Sr. Byankov, a quien no se le permite trasladarse desde el territorio del Estado miembro del que es nacional al territorio de otro Estado miembro, está comprendida en el ámbito de aplicación del derecho a la libertad de circulación y de residencia en el territorio de los Estados miembros conferida por el estatuto del ciudadano de la Unión (apartado 30).

En segundo lugar, a juicio del Tribunal de Justicia, el Derecho de la Unión debe interpretarse en el sentido de que se opone a la aplicación de una disposición nacional que impone una limitación del derecho de un nacional de un Estado miembro a circular libremente en la Unión por el único motivo de que tiene con una persona jurídica de Derecho privado una deuda que supera un umbral legal y que no está cubierta por una garantía.

Y, por último, se plantea una cuestión de gran interés desde el punto de vista práctico: qué ocurre si la prohibición administrativa es firme y contra la misma no se ha interpuesto un recurso judicial.

En su argumentación, el Tribunal de Justicia recuerda, por una parte, «que el carácter firme de una resolución administrativa contribuye a la seguridad jurídica y que, en consecuencia, el Derecho de la Unión no impone, en principio, a un órgano administrativo el deber de revisar una resolución administrativa que haya adquirido tal firmeza» (apartado 76).

A continuación explica la regla especial conforme a la cual cuando concurran «circunstancias particulares puede, en virtud del principio de cooperación leal establecido en el artículo 4 TUE, apartado 3, determinar que un órgano administrativo nacional quede obligado a revisar una resolución administrativa que ha adquirido firmeza para, en particular, tomar en consideración la interpretación, realizada posteriormente por el Tribunal de Justicia, de una disposición de Derecho de la Unión pertinente» (apartado 77). Y detalla el Tribunal de Justicia «las particularidades de las situaciones y de los intereses en cuestión para encontrar un equilibrio entre la exigencia de seguridad jurídica y la exigencia de legalidad a la luz del Derecho de la Unión», citando las sentencias *Kühne & Heitz*, *i-21 Germany y Arcor*, *Kempter* y *Fallimento Olimpiclub*.

Asimismo y en el ámbito de la libre circulación de las personas, el Tribunal de Justicia recuerda que «mediante el artículo 32, apartado 1, de la Directiva 2004/38, el legislador de la Unión ha impuesto a los Estados miembros la obligación de contemplar la posibilidad de revisar las medidas de prohibición de entrada o de salida de sus territorios, incluso cuando tales medidas hayan sido adoptadas válidamente con arreglo al Derecho de la Unión, e incluso cuando, como sucede con la resolución de 2007, hayan adquirido firmeza. Así debería suceder, con mayor motivo, respecto de prohibiciones territoriales como la analizada en el asunto principal, que no han sido válidamente adoptadas con arreglo al Derecho de la Unión, y que son la negación misma de la libertad establecida en el artículo 21 TFUE, apartado 1. En tal situación, el principio de seguridad jurídica no exige imperativamente que un acto que impone tal prohibición siga produciendo efectos jurídicos por tiempo ilimitado» (apartado 80).

Y ya sin género de duda en el caso examinado llega a la conclusión de que la normativa búlgara sobre la inmodificabilidad del acto administrativo firme es contraria al estatuto de la ciudadanía de la Unión y a su derecho a la libre circulación y a la libre residencia y la prohibición « no puede estar razonablemente justificada por el principio de seguridad jurídica y es contraria al principio de efectividad y al artículo 4 TUE, apartado 3» (apartado 81).

También el Tribunal de casación belga plantea al Tribunal de Justicia una cuestión relativa a la libre circulación y a la percepción del subsidio de desempleo que resuelve la *sentencia Prete* (C-367/11). La Sra. Prete, de nacionalidad francesa, cursó sus estudios secundarios en Francia, se casó con un belga, se instaló en Bélgica y se inscribió en una oficina de empleo donde solicitó una ayuda. Las autoridades belgas rechazaron su solicitud porque la Sra. Prete no había cursado al menos seis años de estudios en un centro docente belga antes de la obtención de su diploma de estudios secundarios.

Al interpretar el estatuto de la ciudadanía de la Unión, el Tribunal de Justicia considera que es preciso aplicar la libre circulación de trabajadores y el principio fundamental de igualdad de trato respecto de una prestación de naturaleza financiera destinada a facilitar el acceso al empleo en el mercado laboral de un Estado miembro. A tal efecto, el Tribunal comprueba que los subsidios de espera regulados en Bélgica son prestaciones sociales cuyo objetivo es facilitar a los jóvenes el paso de la enseñanza al mercado laboral, por lo que «la interesada puede ampararse en el artículo 39 CE para defender que no puede ser objeto de discriminación por razón de la nacionalidad en materia de concesión de subsidios de espera». De modo que el Tribunal de Justicia concluye: «el artículo 39 CE se opone a una disposición nacional que, como la controvertida en el litigio principal, supedita el derecho al subsidio de espera a favor de jóvenes que buscan su primer empleo al requisito de que el interesado haya cursado al menos seis años de estudios en un centro docente del Estado miembro de acogida, en la medida en que dicho requisito impide que se tengan en cuenta otros datos representativos que pueden demostrar la existencia de un vínculo real entre el solicitante del subsidio y el mercado geográfico laboral en cuestión y, por este motivo, va más allá de lo necesario para alcanzar el objetivo de dicha disposición, que consiste en garantizar la existencia de ese vínculo».

La *sentencia Rahman* (C-83/11) se refiere a la libre circulación de familiares de ciudadanos de la Unión. El tribunal administrativo británico preguntaba por la interpretación de la Directiva 2004/38/CE relativa al derecho de los ciudadanos de la Unión y de los miembros de sus familias a circular y residir libremente en el territorio de los Estados miembros.

En este litigio un ciudadano bangladeshí, que había contraído matrimonio con una ciudadana irlandesa y trabaja en el Reino Unido, pretendía acoger a un hermano, a un hermanastro y a un sobrino que estaban a su cargo.

La respuesta del Tribunal de Justicia es que, conforme a la Directiva 2004/38, solo gozan del derecho de entrada y residencia, vinculado al ciudadano de la Unión, su cónyuge, sus descendientes directos menores de 21 años y su pareja, y sus ascendientes. En los demás supuestos, no obstante, incumbe a los Estados miembros velar por que su legislación contenga criterios que permitan a las otras personas «a cargo» obtener una decisión sobre su solicitud de entrada y de residencia que esté basada en un estudio detenido de su situación personal y que, en caso de denegación, esté motivada.

En la *sentencia Yoshikazu Iida* el Tribunal administrativo de Baden-Württemberg plantea si en el supuesto de un ciudadano japonés, que había contraído matrimonio en Estados Unidos con una alemana con la que tenía una hija alemana y que, sin embargo, había dejado de residir y convivir con

su esposa que se había trasladado a Viena donde también estudiaba su hija, tenía derecho de residencia de familiar de un ciudadano de la Unión.

El Tribunal de Justicia explica el razonamiento que debe seguirse: primero es preciso comprobar si el ciudadano japonés puede acogerse a disposiciones del Derecho derivado que, bajo ciertas condiciones, prevén la atribución de una autorización de residencia en un Estado miembro a un nacional de un tercer país. En segundo lugar, sería preciso comprobar si el ciudadano japonés puede invocar un derecho de residencia directamente sobre la base de las disposiciones del Tratado FUE relativas a la ciudadanía de la Unión.

Por lo que se refiere al primer supuesto, el Tribunal de Justicia constata: «un nacional de un tercer país, miembro de la familia de un ciudadano de la Unión que haya ejercido su derecho a la libre circulación, sólo puede invocar un derecho a instalarse con éste en virtud de la Directiva 2004/38 en el Estado miembro de acogida en que dicho ciudadano resida» (apartado 64). Sin embargo y como el Sr. Iida no ha acompañado al miembro de su familia ciudadano de la Unión que ha ejercido su libertad de circulación ni se ha reunido con él, no se le puede reconocer un derecho de residencia sobre la base de la Directiva 2004/38.

Y por lo que se refiere, subsidiariamente, al segundo supuesto, el Tribunal de Justicia argumenta: «las disposiciones del Tratado relativas a la ciudadanía de la Unión no confieren ningún derecho autónomo a los nacionales de terceros países» (apartado 66). Y explica a continuación: «al igual que ocurre con los derechos conferidos por la Directiva 2004/38 a los miembros de la familia nacionales de terceros países de un ciudadano de la Unión beneficiario de ésta, los eventuales derechos conferidos a los nacionales de terceros países por las disposiciones del Tratado relativas a la ciudadanía de la Unión no son derechos propios de esos nacionales, sino derechos derivados del ejercicio de la libertad de circulación por parte de un ciudadano de la Unión». Por lo que en este supuesto «fuera de las situaciones reguladas por la Directiva 2004/38 y cuando tampoco existe otro elemento de conexión con las disposiciones del Derecho de la Unión en materia de ciudadanía, un nacional de un tercer país no puede invocar un derecho de residencia derivado de un ciudadano de la Unión».

Respecto de ciudadanos de terceros países, en la *sentencia Sagor* (C-430/11) se plantea por un tribunal italiano el caso de un bangladeshí que estaba en situación irregular y al que le era aplicable la Directiva 2008/115/CE sobre el retorno de los nacionales de terceros países en situación irregular.

Las dudas radican en si la Directiva se opone a la normativa italiana que sanciona la situación irregular de nacionales de terceros países con una pena de multa que puede ser sustituida por una pena de expulsión o por una pena de arresto domiciliario.

A juicio del Tribunal de Justicia la Directiva sobre el retorno de los inmigrantes irregulares no se opone a que Italia sancione la situación irregular con una pena de multa que, si se cumplen determinados requisitos, puede ser sustituida por una pena de expulsión. En cambio, la Directiva se opone a que Italia sancione la situación irregular con una pena de arresto domiciliario cuando no se garantice que tal pena finalizará tan pronto como sea posible el traslado físico del interesado fuera del territorio de dicho Estado miembro.

Por último, quisiera subrayar que la protección de datos personales se ha convertido en uno de los temas estrella de la más reciente jurisprudencia del Tribunal de Justicia sobre los derechos fundamentales. Así, en la *sentencia Comisión / Austria* (C-614/10) el Tribunal de Justicia constata que la legislación austriaca no asegura, como exige la Directiva 95/46, la independencia de la autoridad austríaca de control de datos personales (DSK); y el Tribunal de Justicia detalla dónde radica el incumplimiento o la falta de independencia dado que, en primer lugar, el administrador de la DSK es un funcionario federal sometido a supervisión jerárquica; en segundo lugar, la secretaría de la DSK está integrada en la Cancillería federal; y, por último, el Canciller federal tiene un derecho incondicional a informarse de todos los aspectos de la gestión de la DSK. Del mismo modo que ya había dicho respecto de la legislación alemana, el Tribunal de Justicia reitera que «las autoridades de control en materia de protección de datos personales han de disfrutar de una independencia que les permita ejercer sus funciones sin influencia externa [por lo que] dichas autoridades deben estar a resguardo de toda influencia externa, ejercida directa o indirectamente, que pueda orientar sus decisiones» (apartado 41).

3. *El mercado único europeo*

Como es habitual, el grueso de la interpretación del Tribunal de Justicia se ha referido a la realización del mercado único europeo. Sin embargo, me referiré solo a tres aspectos relevantes: la libre competencia, la fiscalidad y la utilización de bases de datos.

En cuanto a la libre competencia, la *sentencia Otis NV* (C-199/11) se refiere a la reclamación presentada por la Comisión Europea ante un Tribunal belga en Bruselas reclamando la indemnización por los daños causados a la Unión por un cártel.

Un tribunal belga de Bruselas, donde la propia Comisión Europea planteó una reclamación de indemnización de daños y perjuicios contra varias empresas, es el que solicita al Tribunal de Justicia que se pronuncie sobre el alcance de la aplicación privada de Derecho europeo de la competencia.

Me interesa destacar que, a juicio del Tribunal de Justicia, «el artículo 47 de la Carta no se opone a que, en nombre de la Unión, la Comisión ejercite ante un órgano jurisdiccional nacional una acción de indemnización del daño irrogado a la Unión como consecuencia de un acuerdo o una práctica que hayan sido declarados contrarios al artículo 81 CE o al artículo 101 TFUE por una decisión de dicha institución» (apartado 77).

Esta contestación despeja cualquier duda de que la Comisión Europea sea juez y parte en la aplicación administrativa del Derecho europeo de la competencia y abre una interesantísima vía indemnizatoria en el ámbito de la libre competencia.

Asimismo, la *sentencia Expedia* (C-226/11) se pronuncia sobre el significado de los acuerdos de menor importancia o *de minimis* y la aplicación nacional del Derecho europeo de la competencia.

El Tribunal de Justicia responde una cuestión prejudicial planteada por la *Cour de cassation* francesa en un litigio en que la autoridad nacional de la competencia había considerado que colaboración entre la SNCF y Expedia para crear una agencia para la venta de billetes de tren y de viajes por Internet era una práctica colusoria, imponiéndoles una multa. La cuestión en este supuesto es si a un acuerdo de menor importancia de conformidad con la calificación de la Comisión Europea en su Comunicación sobre acuerdos *de minimis*, se le puede aplicar el artículo 101.1 TFUE.

Sobre este particular, el Tribunal de Justicia precisa que «una comunicación de la Comisión, como la Comunicación *de minimis*, no es imperativa para los Estados miembros» (apartado 29); en cambio, «la Comisión se autolimita en el ejercicio de su facultad de apreciación y no puede ya apartarse de su contenido, so pena de violar los principios generales del Derecho, en particular, la igualdad de trato y la protección de la confianza legítima [y] pretende brindar una orientación a los órganos jurisdiccionales y a las autoridades de los Estados miembros a la hora de aplicar [el artículo 101 TFUE]» (apartado 28).

Por tanto, el Tribunal de Justicia concluye señalando que el artículo 101.1 TFUE y el artículo 3.2 del Reglamento n.º 1/2003 no impiden que la autoridad francesa de la competencia los aplique a un acuerdo entre empresas que pueda afectar al comercio entre Estados miembros, pero que no alcance los umbrales fijados por la Comisión en su Comunicación *de minimis*, siempre que dicho acuerdo constituya una restricción sensible de la competencia en el sentido de esta disposición (apartado 38).

Respecto de la fiscalidad, la *sentencia Test Claimants in the FII Group Litigation* (C-35/11) continúa la saga relativa al derecho de sociedades y a las libertades económicas. El reenvío procede de la *High Court of Justice* de Londres y se plantea, nuevamente, la conformidad de la regulación británica del derecho de sociedades con el derecho de establecimiento y la libre circulación de capitales.

El Tribunal de Justicia señala cómo una legislación tributaria que discrimina según el método de exención de los dividendos de origen nacional o extranjero puede ser contraria al derecho de establecimiento (artículo 49 TFUE) y a la libre circulación de capitales (artículo 63 TFUE) (apartado 65). Y la misma sentencia distingue cuándo ha de aplicarse una libertad fundamental u otra. Así, a juicio del Tribunal de Justicia, «está comprendida en el ámbito de aplicación del artículo 49 TFUE, relativo a la libertad de establecimiento, una legislación nacional destinada a aplicarse únicamente a las participaciones que permitan ejercer una influencia real en las decisiones de una sociedad y determinar las actividades de ésta» (apartado 91). En cambio, el Tribunal europeo puntualiza: «las disposiciones nacionales aplicables a participaciones adquiridas con el único objetivo de realizar una inversión de capital sin intención de influir en la gestión y en el control de la empresa deben examinarse exclusivamente en relación con la libre circulación de capitales (apartado 92).

En segundo lugar, el Tribunal de Justicia reconoce los derechos que derivan de la invocación del Derecho de la Unión y señala: «el Derecho de la Unión debe interpretarse en el sentido de que una sociedad matriz residente en un Estado miembro que, en el marco de la tributación en régimen de grupo, como la controvertida en el litigio principal, fue obligada, infringiendo las normas del Derecho de la Unión, a abonar el ACT por la parte de los beneficios procedentes de dividendos de origen extranjero puede formular una reclamación de devolución de dicho impuesto indebidamente recaudado en la medida en que éste exceda el incremento del impuesto sobre sociedades que el Estado miembro de que se trate podía exigir para compensar el tipo impositivo nominal inferior que se aplicó a los beneficios subyacentes a los dividendos de origen extranjero respecto del tipo impositivo nominal aplicable a los beneficios de la sociedad matriz residente» (apartado 87).

Por último, el Tribunal de Justicia se ha pronunciado sobre la utilización de bases de datos en los términos protegidos por la Directiva 96/9/CE.

En un asunto el Tribunal Supremo austriaco le pregunta al Tribunal de Justicia sobre la reutilización de datos del Registro mercantil por la empresa Compass-Datenbank que explota una base de datos económicos con el fin de prestar servicios de información y para ello utiliza un archivo cuyo contenido se había comprobado, corregido y completado previa consulta del *Boletín central de inscripciones* en el Registro Mercantil al que había accedido sin ninguna restricción.

En su respuesta el Tribunal de Justica en la *sentencia Compass-Datenbank* (C-138/11) se plantea si es una actividad económica la de una autoridad pública consistente en almacenar, en una base de datos, datos que las empresas han de comunicar en virtud de una obligación legal, en permitir a las personas interesadas consultar dichos datos, o en facilitarles impresiones de

estos en papel a cambio de una remuneración, mientras se prohíbe cualquier otro uso de tales datos, amparándose la autoridad pública, en particular, en la protección *sui generis* de la que goza como creadora de la base de datos en cuestión. Para el caso de que constituyese una actividad económica la autoridad pública, en el ejercicio de dicha actividad, estaría sometida a las normas de competencia, a lo previsto en el artículo 102 TFUE.

No obstante, el Tribunal de Justicia puntualiza, en primer lugar: «en la medida en que un organismo público ejerce una actividad económica que puede disociarse del ejercicio de sus prerrogativas de poder público, dicho organismo, por lo que respecta a esa actividad, actúa como una empresa, mientras que si dicha actividad económica es indisociable del ejercicio de sus prerrogativas de poder público, todas las actividades ejercidas por dicho organismo permanecen actividades vinculadas al ejercicio de esas prerrogativas» (apartado 38).

Y en cuanto se refiere al caso concreto, es decir, a los datos del Registro público austríaco, el Tribunal de Justicia considera: «la actividad de una autoridad pública consistente en almacenar, en una base de datos, datos que las empresas han de comunicar en virtud de una obligación legal, en permitir a las personas interesadas consultar dichos datos, o en facilitarles impresiones de éstos en papel a cambio de una remuneración, no constituye una actividad económica, y, por consiguiente, esa autoridad pública, en el ejercicio de dicha actividad, no debe considerarse empresa en el sentido del artículo 102 TFUE. El hecho de que dicha consulta o entrega de copias se hagan a cambio de una remuneración prevista por la ley, y no determinada, directa o indirectamente, por el correspondiente organismo, no basta por sí misma para modificar la calificación jurídica de dicha actividad. Además, en la medida en que esa autoridad pública prohíbe cualquier otro uso de los datos que de esa manera se recopilan y ponen a disposición del público, amparándose en la protección *sui generis* que se le concede como creadora de la base de datos en cuestión con arreglo al artículo 7 de la Directiva 96/9, o en cualquier otro derecho de propiedad intelectual, tampoco ejerce una actividad económica y, en el ejercicio de dicha actividad, no debe considerarse empresa en el sentido del artículo 102 TFUE» (apartado 50).

En cambio, en la *sentencia Football Dataco* (C-173/11) el Tribunal de Justicia se refiere a la reutilización de bases de datos. En la Directiva 96/9 se hace referencia al derecho *sui generis* y determinar que el fabricante de la base de datos tiene la facultad de prohibir la extracción y reutilización de la totalidad o de una parte sustancial de su contenido, evaluada cualitativa o cuantitativamente, cuando la obtención, la verificación o la presentación de dicho contenido representen una inversión sustancial.

A tal efecto, el Tribunal de Justicia considera que «se pondría en peligro, de forma general, la consecución del objetivo de protección de las ba-

ses de datos mediante el derecho *sui generis* […] si actos de reutilización destinados a un público situado en todo o en parte del territorio de la Unión quedaran fuera del ámbito de aplicación de esta Directiva y de las normas nacionales de transposición de la misma por el mero hecho de que el servidor del sitio de internet explotado por el autor de estos actos se encuentre en un tercer Estado» (apartado 46).

De este modo y a juicio del Tribunal de Justicia: «el envío por una persona, a través de un servidor web situado en un Estado miembro A, de datos previamente obtenidos por esta persona a partir de una base de datos protegida por el derecho *sui generis* con arreglo a esta misma Directiva al ordenador de otra persona establecida en un Estado miembro B, a solicitud de esta última, para ser almacenados en la memoria de este ordenador y ser visualizados en su pantalla, constituye un acto de "reutilización" de dichos datos por parte de la persona que ha realizado tal envío. Debe considerarse que este acto ha tenido lugar, al menos, en el Estado miembro B cuando existan indicios que permitan concluir que tal acto pone de manifiesto la intención de su autor de dirigirse a los miembros del público establecidos en este último Estado miembro, extremo éste que corresponde verificar al órgano jurisdiccional nacional» (apartado 47).

4. *La protección de los derechos de los consumidores*

Los derechos de los consumidores cuentan en las Directiva de armonización legislativa con una fuente de felices interpretaciones por el Tribunal de Justicia que, además, tienen una repercusión extraordinaria en los Derechos nacionales.

Precisamente en el ámbito de la responsabilidad civil del automóvil el Tribunal de Justicia ha tenido ocasión de distinguir netamente entre la armonización de las normas del seguro realizadas por sucesivas Directiva y la no armonización de los principios nacionales de responsabilidad patrimonial.

La *sentencia Marqués Almeida* es una respuesta del Tribunal de Justicia en su formación de Gran Sala a la cuestión prejudicial planteada por el Tribunal portugués de Guimarães sobre el alcance del seguro obligatorio de responsabilidad civil en caso de accidentes de automóvil. En este supuesto se planteaba si las Directivas relativas a la aproximación de las legislaciones de los Estados miembros sobre el seguro de responsabilidad civil derivada de la circulación de vehículos automóviles, tal como estaban redactadas y en vigor en 2004, permitían que conforme al Derecho portugués se limitase o denegase la indemnización a un pasajero que iba de copiloto sin el cinturón de seguridad abrochado y que, en consecuencia, había contribuido a la producción del daño.

La abogada general Verica Trstenjak plantea en las Conclusiones de este asunto el problema teórico de un modo que resulta particularmente esclarecedor en la medida en que la cuestión debatida es central para el Derecho y es esencial para comprender el alcance del Derecho de la Unión:

> La idea de la reparación nace a raíz del afán de justicia, concebido como ideal ya en la filosofía de la Antigua Grecia. Siguiendo este planteamiento, pensadores como Platón, por ejemplo, formularon sus reflexiones acerca de una reparación de todo tipo de daños más allá de las fronteras del Derecho penal. Además de varios grados de imputación de responsabilidad, en la Filosofía antigua también se conocía la posibilidad de exoneración de la responsabilidad cuando resultaba evidente que, en todo caso, el daño no podía imputarse exclusivamente a su autor, debido, por ejemplo, a la propia contribución del perjudicado. Este concepto, con la determinante impronta de Antifonte, experimentó una evolución en el transcurso de la historia del Derecho romano y del Derecho europeo moderno hasta llegar a ser lo que actualmente se conoce generalmente bajo el concepto de «corresponsabilidad» en los sistemas de Derecho civil de numerosos Estados miembros. En el presente asunto el Tribunal de Justicia debe responder a la cuestión de si este concepto, conocido también en el régimen portugués de responsabilidad civil, es compatible con la normativa del Derecho de la Unión en materia del seguro de responsabilidad civil del automóvil [apartado 1 de las Conclusiones de 5 de julio de 2012, se omiten las notas].

El Tribunal de Justicia recuerda la diferencia entre la obligación de cobertura por el seguro de responsabilidad civil de los daños causados a los terceros por la circulación de vehículos automóviles, definida y garantizada por las Directivas, y el alcance de la indemnización de terceros en virtud de la responsabilidad civil del asegurado que se rige, fundamentalmente, por el Derecho nacional (apartado 28). En este sentido, el Tribunal de Justicia subraya: «tanto del objeto de las Directivas Primera, Segunda y Tercera como de su tenor se desprende que su finalidad no es armonizar los regímenes de responsabilidad civil de los Estados miembros y que, en el estado actual del Derecho de la Unión, éstos tienen libertad para definir el régimen de responsabilidad civil aplicable a los siniestros derivados de la circulación de vehículos» (apartado 29). Por eso, a juicio del Tribunal de Justicia, siguiendo las sugerencias de la abogada general Trstenjak: «la legislación [portuguesa] no afecta a la garantía, prevista por el Derecho de la Unión, de que la responsabilidad civil derivada de la circulación de vehículos automóviles, determinada en virtud del Derecho nacional aplicable, quede cubierta por un seguro conforme con las Directivas Primera, Segunda y Tercera [relativas a la aproximación de las legislaciones de los Estados miembros sobre el seguro de responsabilidad civil que resulta de la circulación de los vehículos automóviles]» (apartado 38).

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En materia de etiquetado de bebidas alcohólicas se ha planteado en la *sentencia Deutsches Weintor* (C-544/10) la interpretación del Reglamento aplicable y los límites de las restricciones impuestos a los empresarios en esta materia. Así, el land de Renania-Palatinado prohibió a la cooperativa vinícola Deutsches Weintor utilizar etiquetas en sus botellas de vino la mención «de fácil digestión» dado que se trataba de una «declaración de propiedades saludables» que prohibía el Reglamento n.º 1924/2006 relativo a las declaraciones nutricionales y de propiedades saludables en los alimentos respeto de aquellas bebidas con una graduación superior al 1,2% en volumen de alcohol. Después de pasar por dos tribunales de lo contencioso-administrativo, de instancia y de apelación, que desestimaron el recurso, llegó al Tribunal Supremo Contencioso-administrativo alemán que le preguntó al Tribunal de Justicia sobre la interpretación del Reglamento y sobre su validez por si pudiese atentar esta regulación contra el derecho fundamental a la libertad de empresa.

El Tribunal de Justicia en la *sentencia Deutsches Weintor* consideró, en primer lugar, que «el concepto de "declaración de efectos saludables" no se refiere únicamente a los efectos del consumo aislado de una cantidad determinada de un alimento que, normalmente, puede tener efectos únicamente temporales y transitorios, sino también a los efectos de un consumo repetitivo, regular, e incluso frecuente, de dicho alimento; efectos que, en cambio, no son necesariamente temporales y transitorios» (apartado 36). Por tanto, la expresión «declaración de propiedades saludables» del Reglamento incluye una indicación como «de fácil digestión», acompañada de la mención del contenido reducido en sustancias que a menudo se consideran perjudiciales, con la que se etiquetaban las botellas de vino, y, por tanto, estaría prohibida.

Y, en segundo lugar, el Tribunal alemán plantea si la prohibición de esta publicidad es conforme con los derechos fundamentales tal como están consagrados en la Carta de los Derechos Fundamentales de la Unión.

Sobre este particular, el Tribunal de Justicia recuerda que la compatibilidad de la prohibición, sin excepción alguna, de etiquetar las botellas de vino en tal sentido debe valorarse en atención a la libertad profesional y a la libertad de empresa y a la protección de la salud. El Tribunal de Justicia recuerda: «tal valoración debe efectuarse respetando la necesaria conciliación de las exigencias relacionadas con la protección de distintos derechos fundamentales protegidos por el ordenamiento jurídico de la Unión, así como el justo equilibrio entre ellos» (apartados 46 y 47).

Por lo que se refiere a la protección de la salud, el Tribunal de Justicia señala: «las medidas que limitan las posibilidades de hacer publicidad de bebidas alcohólicas, como medio de combatir el alcoholismo, responden a preocupaciones de la salud pública, cuya protección, como se dedu-

ce también del artículo 9 TFUE, es un objetivo de interés general que, en caso necesario, puede justificar la restricción de una libertad fundamental» (apartado 49). Por tanto, «la prohibición total de una declaración como la controvertida en el litigio principal puede considerarse necesaria para garantizar el respeto a las exigencias derivadas de lo dispuesto en el artículo 35 de la Carta» (apartado 53).

En cuanto a la libertad profesional y la libertad de empresa, también el Tribunal europeo recuerda: «el libre ejercicio de una actividad profesional, al igual que el derecho de propiedad, no son prerrogativas absolutas, sino que deben tomarse en consideración atendiendo a su función dentro de la sociedad […] Por consiguiente, pueden imponerse restricciones al ejercicio de tales derechos siempre que dichas restricciones respondan efectivamente a objetivos de interés general perseguidos por la Unión y no constituyan, teniendo en cuenta el objetivo perseguido, una intervención desmesurada e intolerable que lesione la propia esencia de esos derechos» (apartado 54). Y, en definitiva, el Tribunal llega a esta conclusión: «la prohibición total, establecida en el Reglamento n.º 1924/2006, de una declaración como la controvertida en el litigio principal, debe considerarse conforme con la exigencia destinada a conciliar los distintos derechos fundamentales y a establecer entre ellos un justo equilibrio» (apartado 59).

En la *sentencia Purely Creative* (C-428/11) el Tribunal de Justicia se pronuncia sobre las prácticas comerciales desleales agresivas y, en este caso, sobre los premios que implican gastos a la luz de la Directiva 2005/29/CE sobre prácticas comerciales desleales de las empresas en sus relaciones con los consumidores en el mercado interior.

En Inglaterra la Office of Fair Trading inició un procedimiento judicial ante la *High Court of Justice* de Londres para que conminara a varios profesionales de la publicidad a que cesaran en una publicidad engañosa consistente en cartas, cupones y otros encartes publicitarios incluidos en periódicos y revistas donde se informaba al consumidor de que tenía derecho a obtener uno de los premios o recompensas especificados, que van desde premios de valor considerable hasta premios que apenas valen unas libras. No obstante, el consumidor disponía de varias opciones para averiguar lo que le había tocado y para obtener un número de pedido: llamar a un número de teléfono de tarificación incrementada, un servicio de SMS de teletexto inverso, o bien obtener información por vía postal ordinaria.

A la hora de interpretar la Directiva sobre las prácticas comerciales desleales el Tribunal de Justicia ponderó, por una parte, la seguridad jurídica como elemento esencial para el buen funcionamiento del mercado interior. Para alcanzar este objetivo, el legislador ha reagrupado en el anexo I de dicha Directiva las prácticas comerciales que son desleales en cualquier circunstancia y que, por tanto, no requieren una evaluación en cada caso concreto. Asi-

mismo, el Tribunal de Justicia considera que el objetivo de garantizar un elevado nivel de protección de los consumidores está en línea igualmente con la interpretación del punto 31 del anexo I de la Directiva sobre las prácticas comerciales desleales según la cual no puede imponerse ningún gasto al consumidor que ha ganado un premio (apartado 48). En consecuencia y a juicio del Tribunal de Justicia, la Directiva prohíbe las prácticas agresivas mediante las que ciertos profesionales crean la impresión falsa de que el consumidor ha ganado ya un premio, cuando la realización de una acción relacionada con la obtención del premio, ya se trate de una solicitud de información sobre la clase de premio o de la recogida del mismo, está sujeta a la obligación, por parte del consumidor, de efectuar un pago o de incurrir en cualquier gasto; y para ello es irrelevante que el gasto impuesto al consumidor, como puede ser el gasto en un sello de correos, sea insignificante en relación con el valor del premio o que no confiera ningún beneficio al profesional; y también es irrelevante que las acciones relacionadas con la obtención de un premio puedan realizarse según diversos métodos que el profesional propone al consumidor, de los que al menos uno de ellos es gratuito, cuando uno o varios de los métodos propuestos dan lugar a que el consumidor incurra en un gasto para informarse sobre el premio o sus modalidades de obtención.

La *sentencia Content Services* (C-49/11) constituye una repuesta a la pregunta del Tribunal Supremo austríaco referida a la Directiva 97/7/CE de protección de los consumidores en materia de contratos a distancia.

Content Services, empresa inglesa con una sucursal en Alemania, ofrece varios servicios en línea en su sitio de Internet, en alemán y accesible también desde Austria. En su página los internautas deben rellenar un formulario de inscripción y cuando formalizan su pedido deben declarar que aceptan las condiciones generales de venta y renuncian a su derecho de resolución, marcando una casilla del formulario. La información relativa al derecho de resolución no se muestra directamente a los internautas, pero pueden visualizarla haciendo clic sobre un vínculo que aparece en la página que rellenan para la conclusión de ese contrato y es imposible celebrar un contrato si dicha casilla no está marcada. Una vez transmitido el pedido, el internauta recibe de Content Services un correo electrónico que le remite a una dirección de Internet, pero no contiene información alguna sobre el derecho de resolución que solo puede obtener información mediante un vínculo transmitido en ese mismo correo.

El órgano austriaco de protección de los consumidores en Viena denunció a Content Services por infringir varias normas del Derecho de la Unión y del Derecho nacional en materia de protección de los consumidores. Sucesivamente ante los tribunales se plantea que la información sobre el derecho de resolución no figura en el propio correo electrónico de confirmación y sólo puede obtenerse mediante un vínculo transmitido en dicho correo

electrónico y el Tribunal austriaco le plantea al Tribunal de Justicia si se respeta la Directiva 97/7 dando acceso al consumidor mediante un hipervínculo a un sitio de Internet de la empresa.

La interpretación de la Directiva se ciñe fundamentalmente a saber si la información es accesible para los consumidores a través de un vínculo presentado por el vendedor en un «soporte duradero». Sin embargo, el Tribunal de Justica considera que una práctica comercial que consiste en dar acceso a la información prevista en esta disposición sólo mediante un hipervínculo a un sitio de Internet de la empresa en cuestión no cumple lo exigido por dicha disposición, ya que tal información no es «facilitada» por esa empresa ni «recibida» por el consumidor, en el sentido de esta misma disposición, y un sitio de Internet como del que se trata en el litigio principal no puede considerarse un «soporte duradero» a efectos de lo exigido por la Directiva.

El Tribunal de Justicia en su formación de Gran Sala dictó la *sentencia Nelson / Lufthansa* (C-581/10 y C-629/10) que respondía sendas peticiones de decisión prejudicial procedentes de un tribunal alemán y de un tribunal británico sobre el derecho de compensación por retraso de un vuelo.

Ante el tribunal alemán la familia Nelson había demandado 600 euros por cada pasajero a Lufthansa porque en un vuelo de vuelta desde Nigeria a Fráncfort del Meno llegaron con más de 24 horas de retraso sobre la hora de llegada prevista inicialmente. Ante el tribunal británico se dirimía la controversia entre TUI Travel y la Civil Aviation Authority en relación con la interpretación del Reglamento n.º 261/2004 sobre compensación y asistencia a los pasajeros aéreos en caso de denegación de embarque y de cancelación o gran retraso de los vuelos.

A juicio del Tribunal de Justicia, «al aprobar el Reglamento n.º 261/2004, el legislador pretendía también lograr el equilibrio entre los intereses de los pasajeros aéreos y los de los transportistas aéreos» (apartado 39). Y deduce la siguiente interpretación: «los pasajeros de vuelos retrasados tienen derecho a ser compensados en virtud de lo dispuesto en dicho Reglamento cuando sufren, debido a tales vuelos, una pérdida de tiempo igual o superior a tres horas, es decir, cuando llegan a su destino final tres o más horas después de la hora de llegada inicialmente prevista por el transportista aéreo. Sin embargo, tal retraso no da lugar a una compensación de los pasajeros si el transportista aéreo puede acreditar que el gran retraso se debe a circunstancias extraordinarias que no podrían haberse evitado incluso si se hubieran tomado todas las medidas razonables, es decir, a circunstancias que escapan al control efectivo del transportista aéreo» (apartado 40).

Pero esto no impide que los pasajeros afectados, en el caso en que el mismo retraso les cause también daños individuales que den derecho a una indemnización, puedan ejercitar, además, las acciones de indemnización individual de dichos daños en las circunstancias previstas en el Convenio de

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Montreal (apartado 58). Y esto implica, a juicio del Tribunal de Justicia, que el artículo 12 del Reglamento n.º 261/2004, bajo la rúbrica «Compensación suplementaria», «permite así al juez nacional condenar al transportista aéreo a indemnizar el perjuicio resultante para los pasajeros del incumplimiento del contrato de transporte aéreo sobre la base de un fundamento jurídico distinto del Reglamento n.º 261/2004, es decir, en particular, en las condiciones previstas por el Convenio de Montreal o por el Derecho nacional». Asimismo, el Tribunal de Justicia puntualiza: «la importancia del objetivo de la protección de los consumidores, incluidos, por lo tanto, los pasajeros aéreos, puede justificar consecuencias económicas negativas, incluso considerables, para determinados operadores económicos» (apartado 81).

En otros casos, los consumidores intentan hacer valer sus derechos fundamentales pero no siempre con éxito. Así, la *sentencia Probst* (C-119/12) es una respuesta del Tribunal de Justicia al Tribunal Supremo alemán que le preguntaba sobre la invocación de la protección de datos personales para evitar la reclamación de una deuda con una compañía telefónica.

El litigio surge entre el Sr. Probst, titular de una conexión telefónica, y Deutsche Telekom, a través de la cual conectaba su ordenador a Internet. Al no haber pagado a la telefónica, le reclamó la deuda una compañía que tenía un contrato de *factoring* con la telefónica mientras el deudor trató de escabullirse invocando los límites establecidos por la Directiva 2002/58 sobre la privacidad y las comunicaciones electrónicas que, en particular, limita el tratamiento de datos de tráfico.

La cuestión es si el proveedor de servicios, la telefónica, puede transmitir datos de tráfico al cesionario de créditos, la empresa a la que cedió el crédito, para que proceda a su cobro. A juicio del Tribunal de Justicia: «comoquiera que se califique el contrato de cesión, se entenderá que el cesionario actúa bajo la autoridad del proveedor de servicios, en el sentido del artículo 6, apartado 5, de la Directiva 2002/58, cuando, a efectos del tratamiento de datos de tráfico, sólo actúe siguiendo instrucciones del proveedor de servicios y bajo el control de éste. Específicamente, el contrato suscrito entre ambos recogerá estipulaciones que garanticen que el tratamiento de los datos de tráfico por el cesionario será lícito y que permitan que el proveedor de servicios pueda asegurarse en todo momento de que el referido cesionario cumple dichas estipulaciones» (apartado 30).

5. *El espacio judicial europeo: la cooperación civil y penal*

Desde la entrada en vigor del Tratado de Ámsterdam en 1999, el desarrollo más espectacular del Derecho de la Unión se está produciendo tanto legislativa como jurisprudencialmente en el espacio de libertad, segu-

ridad y justicia donde la cooperación judicial civil y penal adquiere una importancia decisiva.

La *sentencia Lippens* (C-170/11) se refiere al alcance de la cooperación judicial civil en materia de pruebas. Desde el Tribunal Supremo holandés se pregunta por la aplicación del Reglamento n.º 1206/2001 relativo a la cooperación entre los órganos jurisdiccionales de los Estados miembros en el ámbito de la obtención de pruebas en materia civil o mercantil.

En un procedimiento civil seguido en un tribunal holandés de Utrecht contra Lippens y otros directivos de una compañía se acordó el interrogatorio de estos que, a su vez, reclamaron al juez holandés que expidiera una comisión rogatoria para que pudieran prestar declaración ante un juez francófono en Bélgica, donde residían.

En este caso se plantea si el Reglamento n.º 1206/2001 exige que el juez que desea interrogar en calidad de testigo a una parte residente en otro Estado miembro, debe aplicar siempre, para llevar a cabo dicho interrogatorio, los procedimientos de obtención de pruebas previstos por dicho Reglamento, o si, por el contrario, tal órgano jurisdiccional tiene la facultad de citar ante él a dicha parte y de interrogarle con arreglo al Derecho del Estado miembro del mismo órgano jurisdiccional.

El Tribunal de Justicia constata, por una parte, que el órgano jurisdiccional competente de un Estado miembro está facultado para citar ante él en calidad de testigo a una parte residente en otro Estado miembro e interrogarle con arreglo al Derecho del Estado miembro del citado órgano jurisdiccional (apartado 37). Y, por otra parte, el Tribunal europeo puntualiza: «dicho órgano jurisdiccional conserva la libertad de deducir de la incomparecencia injustificada de una parte en calidad de testigo las consecuencias previstas por su propio Derecho nacional, siempre que se apliquen de un modo conforme con el Derecho de la Unión» (apartado 38).

También en el ámbito de la cooperación judicial civil la *sentencia Trade Agency* (C-619/10) responde la pregunta del Tribunal Supremo de Letonia sobre la interpretación del Reglamento n.º 44/2001 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil.

El litigio se refería al reconocimiento y ejecución en Letonia de una resolución de la *High Court* londinense pero se planteaba ante los jueces letones que durante el procedimiento en el Reino Unido se había vulnerado el derecho de defensa del ejecutado, ya que no fue informada de la acción entablada ante la *High Court*, y dado que la resolución inglesa era manifiestamente contraria al orden público letón por no estar motivada en absoluto.

El Tribunal de Justicia considera que «cuando el demandado interpone un recurso contra el otorgamiento de la ejecución de una resolución dictada

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en rebeldía en el Estado miembro de origen y acompañada de la certificación, alegando que no recibió la notificación de la cédula de emplazamiento, el juez del Estado miembro requerido, que conoce de dicho recurso, es competente para comprobar la concordancia entre la información contenida en dicha certificación y las pruebas».

Sobre este particular y a juicio del Tribunal europeo: «el juez del Estado miembro requerido es competente para proceder a una apreciación autónoma del conjunto de los elementos de prueba y para comprobar de este modo, en su caso, la concordancia entre éstos y la información que figura en la certificación, a fin de evaluar, en primer lugar, si el demandado rebelde recibió la notificación o el traslado de la cédula de emplazamiento y, en segundo lugar, si la posible notificación o traslado se llevó a cabo en tiempo útil y de modo tal que el demandado pudiera defenderse» (apartado 38).

Esta interpretación la deduce el Tribunal de Justicia después de haber puesto de manifiesto que el Reglamento n.º 44/2001 establece un régimen de reconocimiento y ejecución que «se basa en la confianza recíproca en la justicia dentro de la Unión Europea. Tal confianza exige no sólo que las resoluciones judiciales dictadas en un Estado miembro sean reconocidas de pleno Derecho en otro Estado miembro, sino también que sea eficaz y rápido el procedimiento para hacer ejecutorias, en este último Estado, dichas resoluciones» (apartado 40). Seguidamente, el Tribunal de Justicia precisa: «la función asignada a la certificación consiste precisamente en facilitar la adopción, en una primera etapa del procedimiento, del otorgamiento de la ejecución de la resolución adoptada en el Estado miembro de origen, de modo que su expedición sea casi automática, como está expresamente recogido en el considerando 17 del Reglamento n.º 44/2001».

Sin embargo, el Tribunal de Justicia se refiere a los límites de este procedimiento señalando: «como se desprende de reiterada jurisprudencia, el objetivo así perseguido no puede alcanzarse menoscabando, de cualquier manera que sea, el derecho de defensa» (apartado 42). De tal modo que «el régimen de recursos que prevé contra el reconocimiento o la ejecución de una resolución tiene por objeto crear un justo equilibrio entre, por una parte, la confianza recíproca en la justicia en el seno de la Unión, y, por otra parte, el respeto del derecho de defensa, que impone que el demandado pueda, llegado el caso, interponer un recurso que se examine con arreglo al principio de contradicción contra el otorgamiento de ejecución, si considera que se da alguno de los motivos de denegación de la ejecución» (apartado 43). Y subraya la existencia de un «mecanismo de doble control» que tiene por objeto garantizar, en particular, el respeto de los derechos del demandado en rebeldía no sólo durante el procedimiento inicial en el Estado miembro

de origen, sino también durante el procedimiento de ejecución en el Estado miembro requerido (apartado 44). Esto supone que no se puede limitar el alcance de la facultad de examen de la que dispone en esta fase el juez del Estado miembro requerido por el mero motivo de que se ha presentado una certificación equivaldría a privar al control que este mismo juez debe efectuar de todo efecto útil, y, por tanto, a impedir la realización del objetivo consistente en garantizar el respeto del derecho de defensa establecido por dicho Reglamento.

En definitiva, concluye el Tribunal de Justicia, «cuando el demandado interpone recurso contra el otorgamiento de la ejecución de una resolución dictada en rebeldía en el Estado miembro de origen y acompañada de la certificación, alegando que no recibió la notificación de la cédula de emplazamiento, el juez del Estado miembro requerido, que conoce de dicho recurso, es competente para comprobar la concordancia entre la información que figura en dicha certificación y las pruebas» (apartado 46).

Por último, la *sentencia Giovanardi* (C-79/11) se refiere a la interpretación de la armonización de la legislación penal, en este caso la Decisión marco 2001/220/JAI relativa al estatuto de la víctima en el proceso penal.

El Tribunal de Florencia plantea, en un procedimiento penal seguido contra el Sr. Giovanardi y otros trabajadores de la Red de Ferrocarriles Italianos, a quienes se imputa un delito de homicidio y varios delitos de lesiones, si la peculiar institución jurídica de la responsabilidad «administrativa» de las personas jurídicas derivada de una infracción penal es compatible con las normas comunitarias en materia de protección de las víctimas de infracciones penales.

En la *sentencia Giovanardi* el Tribunal de Justicia señala que la Decisión marco 2001/220/JAI solo pretende, en el ámbito del proceso penal, establecer normas mínimas sobre la protección de las víctimas de infracciones penales (apartado 44) pero «no contiene ninguna indicación acerca de que el legislador de la Unión hubiera tenido la intención de obligar a los Estados miembros a regular la responsabilidad penal de las personas jurídicas» (apartado 45). En efecto, la Decisión marco garantiza a la víctima, en principio, el derecho a ser indemnizada en el marco del proceso penal por un «acto u omisión que infrinja la legislación penal de un Estado miembro» y que haya causado «directamente» el perjuicio (apartado 46).

Por esa razón, «las personas que hayan sufrido un perjuicio derivado de una infracción administrativa cometida por una persona jurídica […] no pueden considerarse, a efectos de la aplicación del artículo 9, apartado 1, de la Decisión marco, como víctimas de una infracción penal que tienen derecho a obtener, en el marco del proceso penal, una resolución relativa a la indemnización por parte de dicha persona jurídica» (apartado 48).

III. **Segunda parte. La influencia de la jurisprudencia europea en el derecho español**

La jurisprudencia del Tribunal de Justicia referida al Derecho español debe centrarse en las respuestas a las cuestiones prejudiciales planteadas por los jueces españoles y también sobre aquellas cuestiones prejudiciales que resultan más interesantes y que en estos momentos están tramitándose. Asimismo y a título de ejemplo comento una sentencia declarativa de incumplimiento, una sentencia que impone una multa a tanto alzado y una multa coercitiva por no haber ejecutado una sentencia declarativa previa de incumplimiento y, en fin, menciono una interesantísima sentencia del Tribunal Constitucional español en la que corrige al Tribunal Superior de Justicia de Madrid en la aplicación del Derecho de la Unión Europea.

1. *Las sentencias prejudiciales «españolas» del Tribunal de Justicia*

Solo a efectos expositivos tiene sentido agrupar las sentencias prejudiciales en función de las jurisdicciones españolas que plantean las preguntas. De modo que exponemos tales sentencias en torno a los ámbitos mercantil, social y contencioso-administrativo.

Desde el ámbito jurisdiccional mercantil, tres sentencias del Tribunal de Justicia se refieren a los derechos de los pasajeros del transporte aéreo en relación con la indemnización por pérdida de equipaje y por denegación de embarque.

La *sentencia Espada Sánchez y otros / Iberia* se suma a la interpretación que el Tribunal de Justicia está haciendo sobre los derechos de los pasajeros de líneas aéreas. En este caso la dinámica Audiencia Provincial de Barcelona (Sección 15.ª) planteaba si una familia con dos hijos que hicieron el vuelo de Barcelona a París y a quienes les perdieron las dos maletas podía reclamar una indemnización y si era aplicable un límite en función de sus cuatro miembros. La respuesta del Tribunal de Justicia fue positiva al considerar que efectivamente «el derecho a indemnización y el límite de responsabilidad del transportista en caso de pérdida de equipaje se aplican también al pasajero que reclama esa indemnización a causa de la pérdida de un equipaje facturado a nombre de otro pasajero, si el equipaje perdido contenía efectivamente los objetos del primer pasajero» (apartado 36).

La sentencia *Rodríguez Cachafeiro y otros / Iberia* se refiere al vuelo de una pareja de novios desde A Coruña a Santo Domingo, haciendo transbordo en Madrid. Como el primer vuelo se retrasó, Iberia anuló sus tarjetas de embarque para el segundo vuelo pero al llegar a Madrid, los demandantes se presentaron en la puerta de embarque en el momento en que se rea-

lizaba la última llamada a los pasajeros pero se les impidió embarcar dado que sus plazas habían sido ocupadas por otros pasajeros. Al reclamar ante el Juzgado de lo Mercantil n.º 2 de A Coruña este pregunta al Tribunal de Justicia si la indemnización procedente se correspondía con el exceso de reservas («*overbooking*»).

El Tribunal de Justicia lleva a cabo una interpretación amplia y protectora de los derechos de los pasajeros en lo que se refiere al concepto de denegación de embarque de modo que «si se reconociera que el concepto de "denegación de embarque" sólo se refiere a los casos de exceso de reservas, la consecuencia sería privar por completo de protección a los pasajeros […] negándoles la posibilidad de invocar […] los derechos a la compensación, al reembolso o a un transporte alternativo y a la prestación de asistencia» previstos en el Reglamento 261/2004 sobre compensación y asistencia a los pasajeros aéreos en caso de denegación de embarque y de cancelación o gran retraso de los vuelos.

Y, en fin, en la *sentencia Cuadrench Moré* / *KLM* responde a la Audiencia Provincial de Barcelona que le había preguntado al Tribunal de Justicia si la reclamación de una indemnización por cancelación de un vuelo estaba sometida a un plazo de prescripción establecido por el Derecho español, de 10 años, o al Derecho internacional convencional, el Convenio de Montreal, de dos años. Al interpretar el Reglamento n.º 261/2004, el Tribunal de Justicia llega a la conclusión de que cuando no existe normativa de la Unión en la materia, corresponde al Derecho interno de cada Estado miembro establecer la regulación procesal de las acciones destinadas a garantizar la tutela de los derechos que el ordenamiento jurídico de la Unión confiere a los justiciables, siempre que esta regulación respete los principios de equivalencia y de efectividad. Por tanto y en este supuesto, el plazo de prescripción aplicable era, a juicio del Tribunal de Justicia, el más amplio previsto en la legislación española.

Respecto de las cuestiones sociales, el Tribunal de Justicia se ha pronunciado en dos interesantes sentencias relativas al derecho a las vacaciones retribuidas y a la discriminación por razón de sexo de las trabajadoras a tiempo parcial en cuanto se refiere a su derecho a generar una pensión de jubilación.

La *sentencia Anged* (C-78/11) constituye una respuesta a la pregunta de la Sala de lo Social del Tribunal Supremo sobre el alcance del derecho de los trabajadores a disfrutar de sus vacaciones anuales retribuidas aun cuando estas coincidan con períodos de baja por incapacidad laboral temporal. A pesar de existir jurisprudencia europea anterior, el Tribunal Supremo quería saber cuál era el criterio para el caso de que la incapacidad laboral sobreviniese una vez iniciado el período de vacaciones anuales retribuidas.

Lo más destacado de la sentencia es que el Tribunal de Justicia recuerda que «el derecho a vacaciones anuales retribuidas no sólo tiene una im-

portancia especial por su condición de principio del Derecho social de la Unión, sino que también está expresamente reconocido en el artículo 31, apartado 2, de la Carta de los Derechos Fundamentales de la Unión Europea, a la que el artículo 6 TUE, apartado 1, reconoce el mismo valor jurídico que a los Tratados» (apartado 17).

En definitiva y a juicio del Tribunal de Justicia: «el trabajador tiene derecho a disfrutar de sus vacaciones anuales retribuidas coincidentes con un período de baja por enfermedad en un período posterior, con independencia del momento en que haya sobrevenido esa incapacidad laboral» (apartado 21).

Con esta sentencia el Tribunal de Justicia respondía también la cuestión prejudicial planteada a la vez que el Tribunal Supremo por el Juzgado de lo Contencioso-administrativo n.º 1 de Oviedo. La pregunta del juez ovetense se refería a las vacaciones de los funcionarios de la Administración de Justicia y, en particular, a la regulación del artículo 502.4 de la Ley Orgánica del Poder Judicial. La regulación específica prevé que en caso de surgir una situación de incapacidad temporal durante unas vacaciones ya iniciadas solo podía entenderse interrumpido su disfrute si esa incapacidad había exigido ingreso hospitalario descartando el resto de supuestos de incapacidad temporal (C-194/11, *Martínez Álvarez / Principado de Asturias*, archivado por auto de 6 de agosto de 2012). A la luz de la jurisprudencia del Tribunal de Justicia puede considerarse que el artículo 502.4 de la Ley Orgánica del Poder Judicial es inaplicable por ser contrario al Derecho de la Unión.

Después de trabajar como limpiadora 18 años y cuatro horas a la semana, la Sra. Elbal Moreno, de 66 años, no reunía, según la legislación española, el período mínimo de cotización de quince años, exigido para poder causar derecho a la pensión de jubilación. Ante el Juzgado de lo Social de Barcelona la trabajadora a tiempo parcial invocó el principio de igualdad de sexos y el Juzgado decidió preguntar al Tribunal de Justicia si a este supuesto se aplican las Directivas europeas.

El Tribunal de Justicia en la *sentencia Elbal*, un asunto de gran trascendencia práctica y económica en nuestro país, respondió, recordando su jurisprudencia anterior, que el artículo 4 de la Directiva 79/7 debe interpretarse en el sentido de que se opone a la normativa española en la medida en que «exige a los trabajadores a tiempo parcial, en su inmensa mayoría mujeres, en comparación con los trabajadores a tiempo completo, un período de cotización proporcionalmente mayor para acceder, en su caso, a una pensión de jubilación contributiva en cuantía proporcionalmente reducida a la parcialidad de su jornada» (apartado 38).

En el ámbito contencioso-administrativo destacan las respuestas del Tribunal de Justicia relativas a la tasa por la ocupación del dominio público de las operadoras de telefonía y respecto del IVA sobre el bingo.

La *sentencia Vodafone España y France Telecom España* (C-55/11, C-57/11 y C-58/11) es de una extraordinaria importancia para los municipios españoles en la medida en que la respuesta del Tribunal de Justicia a la cuestión prejudicial planteada por la Sala de lo Contencioso-administrativo del Tribunal Supremo afecta a más de 1.300 Ayuntamientos y a numerosísimos litigios planteados por las operadoras de telefonía contra las ordenanzas municipales y contra las liquidaciones anuales de las tasas.

El origen de la sentencia son tres reenvíos prejudiciales de la Sala de lo Contencioso-administrativo del Tribunal Supremo en relación con la aplicación de la Directiva 2002/20/CE relativa a la autorización de redes y servicios de comunicaciones electrónicas.

El Tribunal de Justicia llegó a la conclusión de que la Directiva «se opone a la aplicación de un canon por derechos de instalación de recursos en una propiedad pública o privada, o por encima o por debajo de la misma, a los operadores que, sin ser propietarios de dichos recursos, los utilizan para prestar servicios de telefonía móvil».

Por si hubiese alguna duda, el Tribunal de Justicia explicó las consecuencias de esta incompatibilidad subrayando: «en todos aquellos casos en que las disposiciones de una directiva, desde el punto de vista de su contenido, no estén sujetas a condición alguna y sean suficientemente precisas, los particulares están legitimados para invocarlas ante los órganos jurisdiccionales nacionales contra el Estado, bien cuando éste no haya adaptado el Derecho nacional a la directiva dentro de los plazos señalados, bien cuando haya hecho una adaptación incorrecta» (apartado 37).

De modo que a partir de esta sentencia numerosísimos recursos contra las ordenanzas, ante los Tribunales Superiores de Justicia, y contra las liquidaciones de las tasas, ante los Juzgados, han prosperado anulándose las disposiciones reglamentarias y las liquidaciones tributarias contrarias a la previsión de la Directiva.

La *sentencia International Bingo Technology* responde a la Sala de lo Contencioso-administrativo del Tribunal Superior de Justicia de Cataluña sobre la aplicación del IVA a una empresa dedicada al juego del bingo. En este caso la cuestión se refiere al cálculo de la prorrata de deducción del impuesto sobre el valor añadido para el caso de un sujeto pasivo que efectúe indistintamente operaciones con derecho a deducción (la explotación de un bar y de un restaurante) y operaciones que no conllevan tal derecho (el juego del bingo).

En primer lugar, la venta de cartones del juego del bingo está sometida al IVA. Y a estos efectos el Tribunal de Justicia señala que «la base imponible del IVA no comprende la parte del precio de esos cartones, fijada previamente por la normativa, que se destina al pago de los premios a los jugadores [en el caso concreto el 69% del "valor nominal" de la totalidad de los cartones vendidos]» (apartado 33).

Y, en segundo lugar y por lo que se refiere a la regla prorrata, el Tribunal de Justicia considera que se trata de una regla que no confiere ningún margen de apreciación a las autoridades nacionales para determinar lo que debe considerarse la contraprestación obtenida o que obtendrá el prestador por parte del destinatario por lo que interpreta en este supuesto que los Estados miembros no pueden establecer que, a efectos del cálculo de la prorrata de deducción del IVA, la parte, fijada previamente por la normativa, del precio de venta de los cartones de bingo que debe abonarse a los jugadores en concepto de premios forme parte del volumen de negocios que se ha de incluir en el denominador de la fracción prevista en el artículo 19.1 de la Sexta Directiva 77/388/CEE sobre el IVA.

En estos momentos y una vez conocidas las conclusiones de los abogados generales, estamos a la espera de que a principios de 2013 el Tribunal de Justicia se pronuncie en el asunto *Aziz* (C-415/11) por la repercusión que pueda tener en la facultad del juez para intervenir decisivamente en las procedimientos de ejecución hipotecaria y en el asunto *Melloni* (C-399/2011, Conclusiones de Yves Bot, de 2 de octubre de 2012) por ser la primera sentencia que el Tribunal de Justicia conteste al Tribunal Constitucional español.

Por último, de las cuestiones prejudiciales que llegaron al Tribunal de Justicia en la segunda mitad de 2012 quisiera destacar los asuntos *Fradera Torredemer* (C-364/12) y *Vueling Airlines* (C-487/12).

En el *caso Fradera Torredemer* la dinámica Sección 15.ª de la Audiencia Provincial de Barcelona especializada en asuntos mercantiles, a través de un auto densamente argumentado, se cuestiona, a la luz del Derecho de la Unión, la aplicación del arancel de los procuradores. En este sentido la Audiencia barcelonesa se refiere al Derecho europeo de la competencia aplicado a las autoridades españolas, a la libre prestación de servicios y a la Directiva de servicios para cuestionar el régimen de cobro por arancel aplicado por los procuradores. También el tribunal barcelonés pretende que el Tribunal de Justicia interprete el artículo 6 del Convenio Europeo de Derechos Humanos en relación con la imposibilidad de impugnar la cuenta del procurador por excesiva al estar fijada su retribución por arancel.

Asimismo, el *asunto Vueling Airlines* plantea la cuestión relativa a los derechos de los pasajeros aéreos pero ya desde la perspectiva del poder de sancionar administrativamente la inclusión por las compañías aéreas de cláusulas abusivas. En este caso el Juzgado de lo Contencioso-administrativo n.º 1 de Ourense conoce de la impugnación de una multa de 3.000 euros a Vueling Airlines por imponer cláusulas abusivas en el contrato de transporte al exigir a los pasajeros un recargo por la maleta facturada. Pues bien, el juez de Ourense le pregunta al juez de Luxemburgo si la Ley española de navegación aérea que obliga a las compañías aéreas a facturar una maleta sin so-

brecoste ni recargo en el precio del billete contratado es conforme con el Reglamento n.º 1008/2008 relativo a la explotación de servicios aéreos que consagra la libertad de fijación de precios.

2. *El incumplimiento por España del Derecho de la Unión Europea: las sentencias declarativas, las multas judiciales y el Tribunal Constitucional*

Tal como se deduce de los informes anuales del Tribunal de Justicia las estadísticas reflejan que España es objeto de numerosísimos recursos por incumplimiento (61 recursos de 2007 a 2011) que por regla general e ineluctablemente terminan con la «condena» por el Tribunal de Justicia (solo se desestimaron 5 de los 61 recursos presentados en los últimos cinco años). Pero también y como consecuencia de estas sentencias declarativas, España tiene el dudoso honor de ser «condenada» a pagar multas coercitivas y multas a tanto alzado por no cumplir y con el fin de que finalmente se ajuste el ordenamiento español a las exigencias del Derecho de la Unión.

La sentencia de 12 de julio de 2012, *Comisión / España* (C-269/09) tiene particular interés porque se refiere a las restricciones que por vía fiscal se pueden imponer a las libertades económicas fundamentales, en este caso la regulación tributaria española para el caso de traslado de la residencia de un contribuyente a otro país de la Unión o del Espacio Económico Europeo (Noruega, Islandia y Liechtenstein).

La Comisión Europea demandó a España ante el Tribunal de Justicia por considerar que la legislación española resultaba desfavorable para las personas físicas que trasladaban su residencia al extranjero y por la que exigía que las rentas pendientes de imputación se incluyesen en la base imponible del último ejercicio en que fueron residentes en España. La Comisión Europea comprobó que esta legislación obligaba a las personas físicas a pagar el impuesto en el momento de trasladar su residencia, mientras que los contribuyentes que mantienen su residencia en el territorio español no están sujetos a tal obligación. Por lo tanto y a juicio de la Comisión, la legislación española permite un trato discriminatorio dependiendo de la residencia en España, lo que es contrario a las libertades económicas fundamentales.

Los razonamientos del Tribunal de Justicia tienen este punto de partida: «si bien la fiscalidad directa es competencia de los Estados miembros, en el estado actual de desarrollo del Derecho de la Unión, éstos deben ejercer tal competencia respetando aquel Derecho» (apartado 47).

En segundo lugar, el Tribunal de Justicia elabora el concepto de restricción y obstáculo a las libertades económicas fundamentales y determina si ha habido en este caso tal restricción. A tal efecto, señala: «Las disposiciones que impidan o disuadan a un nacional de un Estado miembro de

abandonar su Estado de origen para ejercer el derecho a la libre circulación suponen, por consiguiente, obstáculos a dicha libertad, aun cuando se apliquen con independencia de la nacionalidad de los trabajadores afectados» (apartado 53). Y dentro del concepto de obstáculo el Tribunal de Justicia incluye cualesquiera «medidas que prohíban, obstaculicen o hagan menos interesante el ejercicio de dicha libertad» e incluso una restricción de escaso alcance o de importancia menor. Por lo que el Tribunal de Justicia no tiene duda de que es una restricción que el traslado del domicilio fuera del territorio español, en el marco del ejercicio de los derechos que garantizan los artículos 39 CE y 43 CE, implique para el contribuyente la obligación de pagar los correspondientes impuestos con anterioridad al momento en que deben hacerlo los contribuyentes que continúan residiendo en España (apartado 57).

Por último, el Tribunal de Justicia determina si esta restricción está justificada y si es proporcionada. Los motivos de justificación que admite el Tribunal de Justicia son: garantizar la recaudación eficaz de las deudas tributarias, asegurar el reparto de la potestad tributaria entre los Estados miembros y, en fin, preservar la coherencia del sistema tributario nacional.

Si bien el Tribunal de Justicia admite que se pueda invocar la necesidad de garantizar la recaudación eficaz de las deudas tributarias, considera que la legislación española resulta desproporcionada por esta razón: «Aun admitiendo que la recaudación transfronteriza de una deuda tributaria sea normalmente más difícil que una recaudación por vía de apremio efectuada en el territorio nacional, procede declarar que, en el asunto presente, no se trata de un simple método recaudatorio, sino de determinar si la obligación, que incumbe al contribuyente que se propone trasladar su residencia a otro Estado miembro, de pagar inmediata y definitivamente, por el mero hecho del traslado, un impuesto sobre rentas ya devengadas y cuya cuota ya ha sido determinada, excede de lo necesario para alcanzar la finalidad que se persigue, aun cuando los contribuyentes que permanezcan en el territorio nacional no estén sujetos a tal obligación» (apartado 74).

También el Tribunal de Justicia admite que garantizar el reparto de la potestad tributaria entre los Estados miembros puede ser un objetivo legítimo que justifica la discriminación. Sin embargo, a juicio del Tribunal de Justicia no se ha demostrado que en este supuesto exista un conflicto entre la potestad tributaria de España y la del Estado de acogida, ni existe un problema de doble imposición ni los contribuyentes hayan podido eludir totalmente el impuesto.

Y, por último, el Tribunal de Justicia examina si la medida restrictiva española está justificada por la necesidad de preservar la coherencia del sistema tributario nacional. Sin embargo, considera que no se ha demostrado la relación directa entre la ventaja fiscal de que se trata y la compen-

sación de dicha ventaja mediante un gravamen fiscal determinado. Y, en cualquier caso, la legislación española sería desproporcionada al exceder de lo necesario para alcanzar los objetivos que justificarían la restricción controvertida.

Ahora bien, este razonamiento sobre el desplazamiento dentro de la Unión Europea no se aplicaría en los mismos términos al Espacio Económico Europeo. En efecto, el Tribunal de Justicia comprueba que en este ámbito no se aplican las Directivas 76/308, 77/799 y 2008/55 relativas a la asistencia mutua en materia de recaudación de impuestos ni España ha celebrado acuerdos bilaterales en esta materia con Noruega, Islandia o Liechtenstein por lo que la restricción en estos supuestos estaría justificada y sería proporcionada.

En definitiva, el Tribunal de Justicia declara el incumplimiento por España del Derecho de la Unión al imponer a los contribuyentes que trasladan su residencia a otro Estado miembro de la Unión (pero no a otro Estado del Espacio Económico Europeo) la obligación de incluir todas las rentas pendientes de imputación en la base imponible del último ejercicio fiscal en el que se les haya considerado contribuyentes residentes en España.

La ejecución forzosa de sentencias del Tribunal de Justicia tiene uno de sus últimos y más interesantes ejemplos en la *sentencia Comisión / España (Magefesa)* por la que se impone a España de una multa a tanto alzado 20 millones de euros y una multa coercitiva de 50.000 euros por cada día de retraso en la ejecución de una sentencia de 2002 relativa a la recuperación de las ayudas concedidas ilegalmente a la empresa Magefesa.

En 1989 la Comisión Europea había declarado ilegales e incompatibles con el mercado común las ayudas concedidas por el Gobierno español y por varias Comunidades Autónomas a las empresas del grupo Magefesa. En 2002 el Tribunal de Justicia dictó una sentencia en virtud de la cual declaraba el incumplimiento por España de sus obligaciones de recuperar las ayudas ilegales e incompatibles. Y, finalmente, diez años después en 2012 el Tribunal de Justicia dicta esta sentencia de ejecución que consiste en imponer una respetable multa y obliga a las autoridades españolas a adoptar, bajo la amenaza de una disuasoria multa coercitiva diaria de 50.000 euros, las medidas precisas para la recuperación de las referidas ayudas concedidas a Magefesa.

La ejecución judicial forzosa se ha centrado únicamente en el caso de Indosa que seguía operando a través de CMD y de Euskomenaje, radicadas en el País Vasco, dado que las otras empresas de Magefesa ya habían sido liquidadas. Pues bien, en 2010, fecha del requerimiento de la Comisión Europea, el Tribunal de Justicia constata que Indosa no había devuelto las ayudas ilegales recibidas y que, más en particular, el Gobierno vasco no había presentado una solicitud de inclusión del crédito relativo a la restitución de

las ayudas ilegales en cuestión en la lista de acreedores del procedimiento concursal de CMD que, por lo demás, solo comprendía una parte mínima de las ayudas cuya restitución había exigido la Decisión de la Comisión de 1989 (apartado 73). De hecho, el Tribunal de Justicia explica: «la inclusión en la lista de acreedores del crédito relativo a las ayudas declaradas ilegales e incompatibles con el mercado común no basta por sí sola para hacer desaparecer la distorsión de la competencia causada de esa manera» (apartado 107).

Es muy interesante comprobar que a la hora de imponer las multas a España, el Gobierno español invocase en Luxemburgo que las ayudas ilegales en cuestión hubiesen sido concedidas por una Comunidad Autónoma por lo que debería aplicarse únicamente el porcentaje, el 6,24% del producto interior bruto español, que representa esta Comunidad Autónoma, subrayando el abogado del Estado ante el Tribunal de Justicia que el Derecho nacional obliga al Gobierno español a repercutir las sanciones que se impongan a las entidades infraestatales responsables del incumplimiento del Derecho de la Unión (apartado 91). Sin embargo, el Tribunal de Justicia puntualiza: «No cabe acoger al respecto el argumento del Reino de España de que en este caso la capacidad de pago debe reflejar la de la Comunidad Autónoma del País Vasco y no la del Estado miembro como tal. Basta recordar sobre ello que la circunstancia de que un Estado miembro haya encomendado a sus regiones la función de llevar a cabo la recuperación de una ayuda ilegal e incompatible con el mercado común no puede tener incidencia alguna en la aplicación del artículo 260 TFUE. En efecto, si bien cada Estado miembro tiene libertad para repartir como considere oportuno las competencias del poder central y del regional en el orden interno, no es menos cierto que en virtud de ese mismo artículo dicho Estado miembro es el único responsable frente a la Unión del cumplimiento de las obligaciones que resultan del Derecho de la Unión» (apartado 132).

Por último, en la *sentencia Magefesa* el Tribunal de Justicia también recuerda que, a partir de la entrada en vigor del Tratado de Lisboa el 1 de diciembre de 2009, se modifica el desarrollo del procedimiento administrativo previo a los recursos de ejecución forzosa de sentencias declarativas de incumplimiento. En efecto, se suprime la fase del dictamen motivado por lo que el procedimiento precontencioso solo tiene una fase, a saber, la del requerimiento al Estado miembro interesado (apartados 42 y 43). En consecuencia, esta sentencia es un aviso, esperemos que económicamente disuasorio, para que las autoridades nacionales cumplan con las obligaciones impuestas por el Derecho de la Unión.

Al hilo, precisamente, de los recursos por incumplimiento seguidos contra España es preciso referirse brevemente a la sentencia n.º 145/2012, de 2 de julio, del Tribunal Constitucional español (*Iberdrola* / *Comisión Nacio-*

nal de Energía, ponente: Aragón Reyes). El Tribunal Constitucional siempre ha sido muy respetuoso con la ejecución del Derecho de la Unión Europea; de hecho, reconoce que existe una violación del derecho fundamental a la tutela judicial efectiva si un tribunal no aplica una sentencia declarativa dictada por el Tribunal de Justicia en un procedimiento por incumplimiento.

El litigio tiene su origen en la multa de 60.101,21 euros impuesta en 2007 por la Comisión Nacional de la Energía a Iberdrola por haber incrementado la participación en el capital social de una empresa del sector del gas sin la preceptiva autorización administrativa. En virtud de la sentencia, de 17 de julio de 2008, el Tribunal de Justicia había declarado en un recurso por incumplimiento interpuesto por la Comisión que España incumplía el Derecho de la Unión al haber adoptado una normativa que exigía la autorización previa de la Comisión Nacional de Energía en la adquisición de ciertas participaciones en las empresas del sector energético. No obstante, la Sala de lo Contencioso-administrativo del Tribunal Superior de Justicia de Madrid que conocía de la impugnación de la multa, aun cuando la rebajo a 30.000 euros, la confirmó en una sentencia de 2010.

Iberdrola acudió en amparo por vulneración del derecho a la tutela judicial y por infracción del derecho a la legalidad sancionadora. El Tribunal Constitucional, después de un amplio recordatorio del efecto directo y de la primacía del Derecho de la Unión, se refiere a los efectos de las sentencias declarativas del Tribunal de Justicia y termina reconociendo: «La declaración por el Tribunal de Justicia de la Unión Europea de que esa norma es contraria al Derecho comunitario impone a los órganos jurisdiccionales españoles (incluido, desde luego, este Tribunal) la obligación de inaplicarla, extrayendo de esta operación jurídica las consecuencias oportunas». Lo que, finalmente, le conduce a la estimación del amparo y a la anulación de la multa administrativa.

IV. Relación de las sentencias comentadas del Tribunal de Justicia de la Unión Europea

1. TJ (Sala 3.ª), sentencia de 5 de julio de 2012, *Content Services* (C-49/11) (protección de los consumidores en contratos a distancia).
2. TJ (Sala 1.ª), sentencia de 12 de julio de 2012, *Comisión / España* (C-269/09) (obligaciones fiscales por traslado de la residencia de un contribuyente al extranjero).
3. TJ (Sala 2.ª), sentencia de 12 de julio de 2012, *Giovanardi y otros* (C-79/11) (indemnización a las víctimas de delitos).
4. TJ (Sala 3.ª), sentencia de 12 de julio de 2012, *Compass-Datenbank* (C-138/11) (base de datos del Registro mercantil).

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5. TJ (Sala 3.ª), auto de 12 de julio de 2012, *Gennaro Currà y otros* (C-466/11) (responsabilidad durante la guerra del Ejército alemán contra nacionales italianos).
6. TJ (Sala 4.ª), sentencia de 12 de julio de 2012, *Vodafone España y France Telecom España* (C-55/11, C-57/11 y C-58/11) (tasa por la utilización del dominio público por empresas de telefonía).
7. TJ (Sala 1.ª), sentencia de 19 de julio de 2012, *International Bingo Technology* (C-377/11) (IVA y venta de cartones de bingo).
8. TJ (Sala 5.ª), sentencia de 21 de julio de 2012, *Anged* (C-78/11) (vacaciones coincidentes con una baja por enfermedad).
9. TJ (Gran Sala), sentencia de 5 de septiembre de 2012, *Rahman* (C-83/11) (libre circulación de familiares a cargo de ciudadanos de la Unión).
10. TJ (Sala 1.ª), sentencia de 6 de septiembre de 2012, *Lippens* (C-170/11) (cooperación judicial civil en materia de pruebas).
11. TJ (Sala 1.ª), sentencia de 6 de septiembre de 2012, *Trade Agency* (C-619/10) (ejecución de decisiones judiciales civiles).
12. TJ (Sala 3.ª), sentencia de 6 de septiembre de 2012, *Deutsches Weintor* (C-544/10) (etiquetado del vino y libertad de empresa).
13. TJ (Sala 2.ª) sentencia de 4 de octubre de 2012, *Byankov* (C-249/11) (ciudadanía de la Unión y libre circulación de personas).
14. TJ (Sala 3.ª), sentencia de 4 de octubre de 2012, *Rodríguez Cachafeiro y otros* / *Iberia* (C-321/11) (denegación de embarque y cancelación de vuelo).
15. TJ (Gran Sala), sentencia de 16 de octubre de 2012, *Comisión* / *Austria* (C-614/10) (independencia de la autoridad nacional de control de datos personales).
16. TJ (Gran Sala), sentencia de 16 de octubre de 2012, *Hungría* / *Eslovaquia* (C-364/10) (libre circulación de los Jefes de Estado en la Unión Europea).
17. TJ (Sala 3.ª), sentencia de 18 de octubre de 2012, *Football Dataco* (C-173/11) (reutilización de bases de datos en distintos países).
18. TJ (Sala 6.ª), sentencia de 18 de octubre de 2012, *Purely Creative* (C-428/11) (prácticas comerciales desleales y premios con gastos).
19. TJ (Gran Sala), sentencia de 23 de octubre de 2012 (*Nelson* / *Lufthansa y otros* (C-581/10 y C-629/10) (derecho de compensación por retraso de vuelo).
20. TJ (Gran Sala), sentencia de 23 de octubre de 2012, *Marqués Almeida* (C-300/10) (responsabilidad civil en accidente de automóvil).
21. TJ (Sala 4.ª), sentencia de 25 de octubre de 2012, *Prete* (C-367/11) (libre circulación de personas y subsidio de desempleo).
22. TJ (Gran Sala), sentencia 6 de noviembre de 2012, *Otis NV y otros* (C-199/11) (tutela judicial y reclamación por daños causados a la Unión por un cártel).

23. TJ (Pleno), sentencia de 6 de noviembre de 2012, *Pringle* (C-370/12) (Mecanismo Europeo de Estabilidad).
24. TJ (Gran Sala), sentencia de 13 de noviembre de 2012, *Test Claimants in the FII Group Litigation contra Commissioners of Inland Revenue* (C-35/11) (derecho de sociedades y libertades económicas).
25. TJ (Sala 3.ª), sentencia de 8 de noviembre de 2012, *Yoshikazu Iida* (C-40/11) (ciudadanía de la Unión y derechos de los nacionales de países terceros).
26. TJ (Sala 3.ª), sentencia de 22 de noviembre de 2012, *Cuadrench Moré / KLM* (C-139/11) (plazo para recurrir la denegación de embarque aéreo).
27. TJ (Sala 3.ª), sentencia de 22 de noviembre de 2012, *Espada Sánchez y otros / Iberia* (C-410/11) (responsabilidad de la compañía aérea por pérdida de equipaje).
28. TJ (Sala 8.ª), sentencia de 22 de noviembre de 2012 *Elbal Moreno / Instituto Nacional de la Seguridad Social y Tesorería General de la Seguridad Social* (C-385/11) (jubilación de trabajadores a tiempo parcial y discriminación por razón de sexo).
29. TJ (Sala 3.ª), sentencia de 22 de noviembre de 2012, *Probst* (C-119/12) (comunicaciones electrónicas y protección de datos personales).
30. TJ (Sala 1.ª), sentencia de 6 de diciembre de 2012, *Sagor* (C-430/11) (sanción de los inmigrantes).
31. TJ (Gran Sala), sentencia de 11 de diciembre de 2012, *Comisión / España (Magefesa)* (C-610/10) (multas por no recuperar ayudas ilegales).
32. TJ (Gran Sala), sentencia de 13 de diciembre de 2012, *Expedia* (C-226/11) (acuerdos de menor importancia y aplicación nacional del Derecho europeo de la competencia).

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Crónica

Crónica comunitaria: la actualidad institucional y económica de España en el marco de la Unión Europea

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Sumario: I. Introducción.—II. El estado de la integración. 1. La Unión Europea, Premio Nobel de la Paz. 2. La crisis de la Eurozona: Rescate a la banca española y entrada en vigor del tratado mede y del pacto fiscal. 3. Gobernanza económica: nuevos ciclos anuales del «semestre europeo» y del mecanismo de alerta de desequilibrios macroeconómicos 2013. 4. Ampliación de la UE: Inicio de negociaciones con Montenegro e informe anual sobre la ampliación.—III. La actualidad institucional de la Unión Europea. 1. Consejos Europeos y Cumbres del Euro: Pacto por el crecimiento y el empleo y acuerdos sobre la Unión Bancaria. 2. Comisión: Cambio de comisario maltés. 3. Banco Central Europeo: España pierde un puesto en el Comité Ejecutivo.—IV. Cuestiones generales de la actualidad económica. 1. BCE: Rebaja de los tipos de interés. 2. Comisión: autorización de restricciones a España sobre ciudadanos rumanos. 3. Mercados Financieros: Cooperación reforzada para implantar la tasa sobre las transacciones financieras. 4. Política de Competencia: Sanción récord a los fabricantes de televisores. 5. MAGEFESA: Condena a España por no recuperar las ayudas ilegales a la empresa.

I. Introducción

El segundo semestre de 2012 será recordado por dos hechos, la concesión del premio Nobel de la Paz a la Unión Europea y el inicio del camino hacia la Unión Bancaria Europea.

Las profundas dificultades que atraviesa la Unión deberán ser superadas, en parte recordando los méritos de los grandes logros conseguidos y también, necesariamente, con nuevos proyectos de integración.

El rescate de los bancos españoles, de casi 40.000 millones de euros, ha encontrado una vía de solución en la UE a través del Mecanismo Europeo de Estabilidad, MEDE, que finalmente entró en vigor en septiembre. Y, aunque los mensajes que nos envían los dirigentes políticos y económicos siguen siendo pesimistas para el futuro más inmediato, la UE no ceja en su empeño de caminar hacia la gobernanza económica común.

The second semester of 2012 will be remembered for two facts, the awarding of the Nobel Peace Prize to the European Union and the beginning of the path towards the European Banking Union.

The Union is going through deep difficulties that should be overcome by taking into account the great achievements attained so far and, necessarily, with new projects of integration.

The rescue of the Spanish banks, amounting to almost 40.000 million euros, has found the solution in the EU through the European Mechanism of Stabilisation, EMS, which entered into force in September. And, although the messages we receive from politicians and economic leaders continue to be pessimistic, the EU does not abandon its efforts to find a way towards a common economical governance.

II. **El estado de la integración**

1. *La Unión Europea, premio Nobel de la Paz*

La Unión Europea recibió en octubre el Premio Nobel de la Paz como reconocimiento universal de que el «sueño europeo» es una revolución silenciosa y pacífica que, a pesar de las dificultades, no renuncia a sus objetivos de integración y pacificación del continente.

«El avance hacia la reconciliación y en los valores basados en la democracia y los derechos humanos de las seis últimas décadas» fueron los logros valorados por el comité del Nobel, que destacó, además, el esfuerzo de los Veintisiete (que serán Veintiocho en 2013 con Croacia) por reconstruir Europa y por haber expandido la democracia y la estabilidad a los países del Este tras la caída del Muro de Berlín en 1989.

La Unión Europea es la primera potencia económica, el segundo bloque comercial del mundo y el primer donante de ayuda humanitaria y, sin embargo, consiguió este reconocimiento en un momento de profundas incertidumbres sobre el papel de Europa en el mundo.

«Hay enormes peligros al acecho», dijo tras los elogios el portavoz del comité que decidió la concesión del Nobel, el exprimer ministro noruego *Thorbjorn Jagland*. «Se está produciendo un aumento de las actitudes extremistas y nacionalistas. Existe el riesgo real de que Europa empiece a desintegrarse. Por eso deberíamos fijarnos una vez más en los principios fundacionales de la Unión», fueron sus palabras. «A veces los viejos argumentos siguen siendo los mejores: una Europa sin memoria no seguirá siendo Europa por mucho tiempo», concluyó.

Resulta innegable que, ciertamente, gracias al proceso integrador de la Unión Europea los europeos hace ya tiempo que dejaron de enfrentarse en

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guerras fratricidas, con en una media de conflictos cada 20 años y con decenas de millones de víctimas, y que ahora, en cambio, discuten y debaten sus muchas diferencias en múltiples mesas de negociación.

En todo caso, la concesión del premio fue interpretada por muchos analistas internacionales como un estímulo para no cejar en el empeño de la integración, en un momento tan especial como el actual cuando la UE atraviesa uno de sus momentos de mayor pesimismo, con una gravísima crisis económica y de identidad que, incluso, hace temer por su futuro. El Nobel parece tratar de recordarnos la utilidad y los grandes logros de la UE.

En este sentido, *Olli Rhen*, comisario de Asuntos Económicos y Monetarios, señaló con motivo de la concesión del galardón que «a pesar de algunas sombras en la economía en Europa, se trata de una gran día para Europa». En su opinión, el Nobel de la Paz «premia la contribución de la Unión Europea en los últimos 60 años a la paz y a la reconciliación, a la democracia y a los derechos humanos», y afirmó sentirse muy orgulloso de estos valores europeos que son, también, los valores humanos universales.

«Es un día de orgullo para todos los europeos. Varios países están negociando libremente la adhesión a la Unión Europea, señal de que, a pesar de las difíciles condiciones económicas, la UE es un imán para la estabilidad, la prosperidad y la democracia. Los principios de la UE de la reconciliación entre europeos pueden servir como inspiración para otras regiones del mundo, desde los Balcanes hasta el Cáucaso. La UE funciona como un faro para la democracia y la reconciliación», resumió.

2. *La crisis de la eurozona: rescate a la banca española y entrada en vigor del tratado MEDE y del pacto fiscal*

A lo largo del segundo semestre de 2012 la UE dio nuevos pasos en la búsqueda de soluciones a la grave crisis financiera que padece la Eurozona, incluyendo el rescate a la banca española y la entrada en vigor del Tratado constitutivo del Mecanismo Europeo de Estabilidad, MEDE, en septiembre y del Pacto Fiscal el 1 de enero de 2013.

Por lo que se refiere a la ayuda europea para los bancos españoles, y tras la decisión del Eurogrupo, el 9 de junio, de atender la solicitud del gobierno español para apoyar la recapitalización de su sistema financiero, el 28 de septiembre se concretó aún más la dimensión del rescate con la publicación de los resultados del examen realizado por la consultora *Oliver Wyman* sobre el sector. El gobierno español anunciaba, tras esta

auditoría, que la petición de ayuda europea para los bancos nacionalizados alcanzaría unos 40.000 millones de euros, si bien afirmaba también que las necesidades del conjunto de los bancos españoles podrían acercarse a los 60.000 millones.

Tras esta primera estimación de la ayuda, el gobierno español y la UE fueron adoptando, a lo largo del último trimestre del año, las diferentes decisiones vinculadas a dicho rescate, incluida la creación del «*banco malo*» (Sociedad Gestora de activos inmobiliarios en manos de las entidades bancarias) y la definición de los planes de reestructuración de las bancos destinatarios de las ayudas europeas.

La Unión Europea anunció el 28 de noviembre una ayuda global de 36.965 millones de euros para los bancos españoles nacionalizados (*Bankia, CatalunyaCaixa, NovaCaixaGalicia* y *Banco de Valencia*) y la transferencia de otros 2.500 millones de euros a la mencionada Sociedad de Gestión de activos inmobiliarios.

El comisario de la Competencia, *Joaquín Almunia*, señaló que estas cuatro entidades deberán reducir un 60% sus activos y un 50% su red de oficinas, y que habrán de recortar sus plantillas en unos 10.000 trabajadores. También afirmó que estas entidades deberán centrarse en la actividad de banca minorista en su ámbito geográfico regional y deberán abandonar, por tanto, las actividades de riesgo, como el crédito a promotores inmobiliarios. Las entidades deberán vender activos no estratégicos y participaciones empresariales, además de aplicar una quita a sus inversores en preferentes.

En diciembre se ponía en marcha el «Banco Malo» (la mencionada *Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria,* SAREB), cuyo objetivo será la retirada de los «activos tóxicos» de los balances de los bancos. Con una previsión de vida útil de entre 10 y 15 años», este «banco» deberá ser capaz de sacar a la venta, a precios razonables, el stock de viviendas que adquiera a los bancos.

El objetivo último es que este instrumento permita que los bancos comerciales españoles, libres de activos inmobiliarios problemáticos como viviendas y suelo, puedan abrir de nuevo el «flujo del crédito» a empresas y particulares.

Por su parte, el Mecanismo Europeo de Estabilidad (MEDE), que había sido firmado el 2 de febrero, entró en vigor el 27 de septiembre de 2012. Arrancaba, así, esta nueva institución financiera internacional con carácter permanente y con sede en Luxemburgo, que deberá apoyar a los Estados de la Eurozona cuando esta asistencia resulte ser indispensable para salvaguardar la estabilidad financiera. El Tratado prevé, en este sentido, que el MEDE pueda conceder a sus Estados miembros préstamos, poner a su disposición instrumentos financieros con carácter preventivo, o adquirir bonos

públicos en los mercados primario y secundario. También podrá conceder préstamos a los países para financiar la recapitalización de sus instituciones financieras.

Así fue como el 5 de diciembre el MEDE anunció su primera emisión de Deuda, por un total de 39.468 millones de euros, destinados al rescate del sector financiero español.

Y también debe destacarse que el conocido como «Pacto Fiscal», que había sido firmado el 2 de marzo por Veinticinco Estados miembros, ha entrado en vigor el 1 de enero de 2013. Se trata de un compromiso de austeridad económica consistente en alcanzar el equilibrio presupuestario en las cuentas públicas (el déficit público estructural anual no podrá supera el 0,5% del PIB) por parte de estos países (los Veintisiete salvo Reino Unido y República Checa).

Los Estados que han suscrito el Pacto disponen de un año a partir su entrada en vigor (el 1 de enero de 2013) para incluirlo en sus Constituciones o legislaciones equivalentes. El Tribunal de Justicia de la UE podrá verificar esta transposición, de la regla de equilibrio presupuestario a los Ordenamientos Jurídicos nacionales, y, en su caso, estará facultado para imponer multas de hasta el 0,1% del PIB del país incumplidor.

3. *Gobernanza Económica: nuevos ciclos anuales del «semestre europeo» y del mecanismo de alerta de desequilibrios macroeconómicos 2013*

El 28 de noviembre de 2012 dieron comienzo los nuevos ciclos anuales del «Semestre Europeo» y del «Procedimiento de Desequilibrios Macroeconómicos» previstos para 2013. La Comisión publicaba los dos informes iníciales de ambos procesos, la «Encuesta Anual sobre el Crecimiento 2013» y el «Informe del Mecanismo de Alerta 2013».

Por lo que se refiere a la «Encuesta sobre el Crecimiento», la Comisión destacaba que, a pesar de que las políticas comunitarias están empezando a mostrar resultados (los déficits se están reduciendo, las tensiones en los mercados financieros se están relajando y se observan signos de mejora de competitividad en algunos Estados miembros), las reformas continúan siendo necesarias para generar crecimiento sostenible y empleo.

Por esta razón la Comisión recomendaba continuar en la adopción de medidas en las mismas cinco prioridades identificadas en la «Encuesta» del año anterior:

— realizar una consolidación fiscal diferenciada y propicia al crecimiento,
— restablecer en la economía la actividad normal de préstamo,

— impulsar el crecimiento y la competitividad,
— luchar contra el desempleo y las consecuencias sociales de la crisis,
— modernizar la administración pública.

Y en el nuevo «Informe del Mecanismo de Alerta» incluido en el Procedimiento de Desequilibrios Macroeconómicos, la Comisión señalaba que «los datos muestran indicios de que está progresando el ajuste de los desequilibrios macroeconómicos». Apuntaba, en este sentido, que «los déficits de la balanza por cuenta corriente se están reduciendo en los países con mayores desequilibrios externos, gracias a la mejora del comportamiento de las exportaciones y a ganancias de competitividad, y está en curso la corrección del mercado inmobiliario». Sin embargo, a este proceso de reequilibrio, que es una condición previa para el crecimiento sostenible a largo plazo, «le queda todavía un largo camino por recorrer».

En esta ocasión el Informe reclamaba la necesidad de realizar análisis detallados («Exámenes Exhaustivos») de catorce Estados miembros de la UE, los mismos Doce del año anterior (Bélgica, Bulgaria, Dinamarca, España, Francia, Italia, Chipre, Hungría, Eslovenia, Finlandia, Suecia y Reino Unido) y Malta y Países Bajos. En todos estos «Exámenes» se deberán valorar la evolución y la corrección de los desequilibrios macroeconómicos detectados.

Por lo que se refiere a la Economía española, este nuevo Informe indica que varios indicadores incumplen los valores de referencia establecidos, en especial el déficit por cuenta corriente, la cuota de mercado de exportaciones, la inversión internacional neta, la deuda del sector privado, la deuda del gobierno general y el desempleo (seis de los Once indicadores del Cuadro de Indicadores).

— En el ámbito exterior, el déficit por cuenta corriente ha mejorado en el contexto de una recuperación de las exportaciones y, aunque se mantiene por encima del límite establecido, es previsible que vaya recuperando el equilibrio en los próximos años.
— La reducción de los costes laborales unitarios y la depreciación en el tipo de cambio real efectivo contribuyen a recuperar parte de la pérdida de competitividad acumulada, y también han permitido reducir las pérdidas en las cuotas de mercado de exportación, aunque este indicador continúa incumpliendo el valor de referencia fijado.
— Las Deudas externas continúan siendo relevantes, como reflejan la negativa posición de inversión internacional neta y la Deuda exterior neta, cuestión de especial relevancia en la Economía española por lo que significa de una mayor exposición a riesgos de liquidez.

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— El sector bancario mantiene su fragilidad y, a pesar de la reducción de los costes laborales unitarios, el mercado laboral se ha deteriorado con altos y crecientes niveles de desempleo, muy por encima del límite establecido y ha continuado con la destrucción de empleo.

4. *Ampliación de la UE: inicio de negociaciones con Montenegro e informe anual sobre la ampliación*

En la cumbre de Jefes de Estado y de Gobierno celebrada en junio, los Veintisiete decidieron el inicio las negociaciones de adhesión con Montenegro.

Y en octubre la Comisión Europea hizo público el Informe anual de progreso de la Ampliación de la UE, en el que se analizan los principales avances en cada uno de los países candidatos y candidatos potenciales a formar parte de la UE.

En este nuevo informe la Comisión recomendaba la apertura de negociaciones de adhesión con la antigua República Yugoslava de Macedonia, la concesión del estatuto de candidato a Albania una vez aplicadas las reformas clave y la negociación de un Acuerdo de Estabilización y Asociación (AEA) con Kosovo. También confirmaba que Croacia está completando con éxito sus preparativos para la adhesión, y destacaba que el inicio de las negociaciones de adhesión con Montenegro y el estatuto de candidato de Serbia son muestras de que, una vez hechas las reformas requeridas, «la UE cumple sus compromisos».

Con respecto a la positiva evolución en los Balcanes Occidentales, la Comisión señalaba que «es un claro signo del potencial transformador de la ampliación de la UE». Para seguir avanzando, la Comisión propone prestar más atención a una serie de ámbitos. En primer lugar, señala la potenciación de la gobernanza democrática comenzando a abordar las cuestiones sobre el Estado de Derecho antes de la apertura de las negociaciones de adhesión. En segundo lugar, destaca los esfuerzos a favor de la libertad de expresión y la independencia de los medios de comunicación. Y en tercer lugar, planteaba la lucha contra los problemas económicos en una fase precoz del proceso de adhesión, para consolidar la estabilidad económica y financiera y contribuir a la recuperación.

Por otra parte, los intereses comunes entre la UE e Islandia se afianzan, por ejemplo en los ámbitos de la energía renovable y el cambio climático, como también se refuerza la importancia estratégica de la política ártica de la UE. Las negociaciones de adhesión avanzan a buen ritmo. Respecto a la candidatura de Turquía, la Comisión señala que crece la inquietud debido a

la falta de avances importantes de cara a cumplir plenamente los criterios políticos. La situación de los derechos fundamentales sobre el terreno sigue siendo un motivo de honda preocupación. «Urgen la plena aplicación de las obligaciones derivadas de la Unión Aduanera y nuevos avances en la normalización de las relaciones con Chipre», destaca.

III. **La actualidad institucional de la Unión Europea**

1. *Consejos Europeos y Cumbres del Euro: pacto por el crecimiento y el empleo y acuerdos sobre la unión bancaria*

Al finalizar el primer semestre de 2012 se celebró el Consejo Europeo ordinario los días 28 y 29 de junio. Los Veintisiete aprobaron, en el contexto de la «Estrategia Europa 2020», el denominado «Pacto por el Crecimiento y el Empleo» que significará la movilización de 120.000 millones de euros, lo que equivale al 1% del PIB de la UE, a favor de medidas de estímulo y crecimiento económico en los Estados comunitarios.

La decisión preveía la ampliación de capital del Banco Europeo de Inversiones en 10.000 millones de euros, lo que permitirá aumentar su capacidad de préstamo en 60.000 millones de euros para financiar proyectos que desarrollen la innovación y las competencias técnicas, y que apoyen las pequeñas empresas, la energía limpia y las infraestructuras modernas en toda la UE. Asimismo, la UE invertirá cerca de 5.000 millones de euros en la cofinanciación de proyectos de construcción de infraestructuras de transportes, energía y banda ancha. Y otros 55.000 millones de euros, procedentes de los Fondos Estructurales del presupuesto comunitario, se reasignarán para apoyar a las PYMEs y el empleo juvenil.

También acordaron nuevas medidas para crear un «sistema único de patentes», que permita a los inventores registrar solamente una patente que sea válida para la mayoría de los países de la UE, lo que ahorrará costes y trámites. Y anunciaron el acuerdo para iniciar con Montenegro las negociaciones de adhesión a la UE.

Y también, los líderes de los *Diecisiete países de la zona euro* alcanzaron un acuerdo para que el Mecanismo Europeo de Estabilidad (MEDE) pueda recapitalizar directamente a los bancos de la eurozona sin la intermediación de los Estados. Esta medida supondría que los rescates directos no se contabilizarían en la Deuda y el Déficit públicos de los países destinatarios (incluido el crédito de hasta 100.000 millones de euros aprobado a comienzos de mes para la banca española).

La decisión de aprobar ayudas directas a la banca se condicionaba, en todo caso, a la supervisión común del sector por parte del Banco Central

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Europeo (BCE), lo que se interpretó como un primer acuerdo hacia la creación de una Unión Bancaria.

Los Veintisiete también pactaron que este Fondo perdería el carácter de acreedor preferente a la hora de reclamar sus deudas, para evitar el recelo de otros inversores, temerosos de verse relegados al último puesto en caso de impago.

El presidente del Consejo Europeo, *Herman Van Rompuy*, anunció que se «flexibilizarían» los requisitos para que los dos fondos europeos de rescate, el provisional (FEEF) y el permanente (MEDE), pudieran comprar Deuda, en los mercados secundarios, de aquellos países que cumplan sus compromisos de ajuste y consolidación fiscal.

Por su parte, en el segundo semestre del año se celebraron tres cumbres.

En la primera, celebrada el 18 y 19 de octubre, Los Veintisiete continuaron las conversaciones de junio sobre la recapitalización directa de los bancos en dificultades y, finalmente, acordaron un calendario que, en la práctica, *retrasaba la supervisión única efectiva* y, por lo tanto, la recapitalización directa de bancos respecto a las fechas previstas inicialmente.

En este sentido, la canciller de Alemania, *Angela Merkel*, admitía que la creación del supervisor bancario «requerirá más que un par de meses y no estará en vigor el 1 de enero», al tiempo que recordaba que los Veintisiete habían ratificado que la recapitalización directa de los bancos solo sería posible una vez que esté funcionando de hecho ese instrumento. Recordó las palabras del presidente del BCE, *Mario Draghi*, quien había explicado que se necesitaría un plazo de un año para adaptar sus estructuras y ser capaz de asumir la tarea de supervisar los bancos de la eurozona, lo que retrasaría esta fecha hasta 2014.

La noticia de la cumbre fue, por tanto, que la Unión Bancaria seguía su curso aunque con plazos más realistas, y a pesar de que los países que más la necesitaban (España, en particular, para evitar el «peso» del rescate financiero en sus cuentas), hubieran preferido acelerarla.

La decisión de este retraso se había fraguado en Helsinki el 25 septiembre cuando los ministros de Finanzas de Alemania, Holanda y Finlandia dejaron claro que las condiciones para España iban a ser más duras de lo previsto inicialmente. Los tres Gobiernos anunciaron que el supervisor bancario no iba a estar preparado para el enero de 2013 y explicaron que «no basta con poner en marcha el supervisor» para poder recapitalizar bancos a través del mecanismo de rescate.

Los Veintisiete acordaron completar el trabajo legal para crear el mecanismo de supervisión bancaria dentro de la estructura del BCE para finales de 2012, y ponerlo en marcha a lo largo de 2013, lo que efectivamente suponía retrasar la recapitalización directa de bancos por parte del Mecanismo europeo de rescate hasta 2014.

Las conclusiones aprobadas por la eurozona recalcaban que es «imperativo romper el círculo vicioso entre la banca y la deuda soberana» y reiteraron que la recapitalización directa se hará «una vez esté establecido un supervisor único efectivo».

El Gobierno español, que había defendido la importancia de poder recapitalizar sus bancos con el apoyo directo de la UE, comenzó entonces a «minimizar los daños», y fuentes del Ministerio de Economía señalaron a continuación que se trataba tan sólo de «cuatro puntos del PIB» y que aún «tendríamos un porcentaje de Deuda pública por debajo de la media europea».

En la cumbre celebrada el 22 y 23 de noviembre, los Veintisiete dedicaron los debates al nuevo Marco Financiero Plurianual, previsto para el período 2014-2020.

El presidente del Consejo Europeo, *Van Rompuy*, había presentado en los días previos una propuesta de 1,08 billones de euros, lo que significaba un recorte de 80.000 millones respecto al proyecto anterior de la Comisión Europea y una rebaja de 20.000 millones respecto al anterior marco presupuestario.

A pesar de la fuerte reducción del presupuesto y de que los países receptores de Fondos estructurales y agrícolas parecían dispuestos a suscribir el proyecto para evitar recortes mayores, el debate no concluyó en acuerdo alguno por la oposición de los llamados «contribuyentes netos» que reclamaban más ajustes en las cuentas europeas. El fracaso de la negociación lo protagonizó, en particular, el primer ministro británico, *David Cameron*, quien, apoyado por sus homólogos sueco y holandés, reclamó un recorte mucho mayor que el propuesto por *Van Rompuy*. Alemania y Finlandia, más moderados, solicitaban una rebaja menor, en torno a 30.000 millones de euros.

Aunque no se produjeron los «dramatismos» de otras cumbres presupuestarias, un alto responsable de la UE admitía que «el fracaso complica los esfuerzos para reflotar a la estancada zona euro, y refuerza la impresión de que los dirigentes de la UE son incapaces de tomar decisiones ejecutivas». Y, en este sentido, apuntaba a que si las negociaciones se prolongan demasiado, «podrían retrasar, por ejemplo, el programa multimillonario de inversiones en proyectos energéticos y de transporte en los países más desfavorecidos».

En todo caso, la conclusión evidente es el hecho de que, por primera vez en su historia, la UE se dotará de unos presupuestos inferiores en relación con los anteriores.

En la última reunión del año, celebrada el 13 y 14 de diciembre, los presidentes y primeros ministros de la UE aprobaron nuevos pasos para crear la «Unión Bancaria Europea». Acordaron, en este sentido, que el Banco

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Central Europeo (BCE) ejercerá la supervisión directa de los bancos de la eurozona en principio a partir de enero de 2014 y, aunque su este mecanismo está previsto para funcionar en los países de la eurozona, quedará abierto a la adhesión de los demás países de la UE.

Inicialmente supervisará unos 150 bancos de los 6.000 existentes en la UE, los considerados «sistémicos» por su gran dimensión, es decir, aquellos cuyos activos superen los 30.000 millones de euros o el 20% del PIB del país. Las diferencias del peso relativo de estas entidades sobre los sistemas financieros nacionales son, en todo caso, notables, ya que, por ejemplo, en los casos de Francia y España el BCE controlará, ya desde el inicio de su actividad supervisora, más del 80% del sector.

Las dudas que despierta el acuerdo son, en todo caso, importantes puesto que se supone que una gran mayoría de bancos, hasta los 6.000 mencionados. seguirá bajo la órbita de los Bancos Centrales nacionales, tal y como defendía Alemania. A pesar de ello, el acuerdo prevé la posibilidad de que el BCE pudiera controlar los bancos más pequeños cuando tuviera indicios de la existencia de problemas y bajo circunstancias «particulares».

El pacto incluía también la creación futura de un «Fondo de resolución de bancos» para facilitar el cierre de entidades en 2014, pero no mencionaba, en cambio, la puesta en marcha de un «Fondo de garantía de depósitos común», ya que tan sólo se armonizarán los Fondos nacionales.

A pesar de las incógnitas, el acuerdo fue acogido con gran satisfacción por expertos económicos y financieros ya que, en sí mismo, el inicio de la Unión Bancaria es un factor relevante para la credibilidad del sistema financiero europeo y, como se ha mencionado, abre la posibilidad de la recapitalización directa de los bancos europeos en un futuro próximo, previsiblemente a partir de 2014.

Tras los 40.000 millones de euros solicitados por España en 2012, si finalmente la banca española necesitara un mayor apoyo podría beneficiarse de la recapitalización directa de bancos sin que los nuevos rescates supongan el incremento de la Deuda pública. Se trataría así de combatir el «círculo vicioso» que vincula la crisis financiera y la crisis fiscal, y que significa, en palabras de los expertos, que «la basura de los bancos acaba alojada en las cuentas públicas».

Por otra parte, los Veintisiete también aprobaron la futura puesta en marcha de «contratos negociados para la competitividad y el crecimiento» entre los Estados miembros y la Comisión. La iniciativa, que deberá debatirse nuevamente en el Consejo Europeo de junio de 2013, pretende reforzar el compromiso de los países para aplicar reformas estructurales, de manera que dicho compromiso se viera incentivado con la asignación de Fondos comunitarios.

2. *Comisión: cambio de comisario maltés*

El comisario europeo de Sanidad, *John Dalli*, dimitió el 16 de octubre tras una investigación de la Oficina Antifraude de la Comisión Europea, OLAF.

El informe de conclusiones de dicha investigación señalaba que un empresario intentó aprovecharse de sus contactos con *Dalli* para obtener dinero de una firma tabacalera sueca a cambio de modificar la legislación sanitaria del sector. Aunque según el informe, no existían «evidencias concluyentes» de que *Dalli* participara directamente en el asunto ni de que recibiera un soborno, sí quedaba claro que «estaba al corriente» de la situación.

La denuncia había partido de la empresa objeto del chantaje, la tabaquera sueca *Swedish Match*, que en Mayo de 2012 había informado a la OLAF de que un pequeño fabricante maltés habría intentado usar, presuntamente, sus influencias con *Dalli* para ofrecerle ventajas en la futura normativa del sector. Los inspectores comunitarios descubrieron que, en efecto, el empresario había prometido a la empresa que podría conseguir alterar una normativa sanitaria favoreciendo sus intereses a cambio de una suma de dinero.

En concreto, el «tráfico de influencias» giraba en torno a los «*snus*», una especie de tabaco de mascar muy popular en Suecia y Noruega, cuya venta está prohibida en los demás países de la UE. En su Tratado de Adhesión de 1995 Suecia había conseguido que no se vetara su comercialización en el país, pero su exportación al resto los socios comunitarios está prohibida por sus efectos dañinos en la salud. Sin embargo, la Comisión había empezado recientemente a revisitar la Directiva que recoge estas restricciones, lo que motivó el intento de soborno planteado a la empresa sueca.

Ante las graves sospechas que le acusaban, Dalli las rechazó categóricamente pero optó por dimitir de su cargo «para preparar su defensa».

Apenas un mes después, el 21 de noviembre el Parlamento Europeo daba su aprobación al sustituto de *Dalli*, *Tonio Borg*, aunque con una mayoría muy ajustada.

Los medios de comunicación se hicieron eco de la ideología ultraconservadora del nuevo comisario de Salud y Consumo y destacaron, en particular, su férrea oposición al aborto, al divorcio y a la equiparación de derechos para los homosexuales.

La división en el grupo socialista de la Eurocámara permitió que *Borg* salvara la votación de investidura. «Hemos valorado positivamente su conocimiento de la materia, solvencia y falta de conflictos de intereses. Pero para nuestra delegación, sus posiciones sobre salud reproductiva y formas de matrimonio son muy importantes, por lo que los socialistas españoles vamos a votar que no», señaló poco antes del pleno el eurodiputado socialista *Juan Fernando López Aguilar*.

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3. *Banco Central Europeo: España pierde un puesto en el comité ejecutivo*

El nombramiento del luxemburgués *Yves Mersch* como miembro del Comité Ejecutivo del Banco Central Europeo fue decidido en la primera jornada de la cumbre de Jefes de Estado y de Gobierno de noviembre, decisión que significó un serio revés para los intereses españoles.

Mersch sustituía al español *José Manuel González-Páramo* y, por primera vez en la historia del BCE, se rompía el pacto tácito de que los cuatro grandes países del euro, entre ellos España, debían estar representados en el órgano ejecutivo.

El gobierno español había bloqueado el nombramiento del luxemburgués como protesta por su pérdida de poder en el Banco, pero finalmente no encontró aliados para vetar al candidato.

A todos los efectos el nombramiento de *Mersch* fue interpretado como una victoria de Alemania, ya que significaba un nuevo representante del ala más ortodoxa de la política monetaria en el BCE. Berlín se oponía a que un español (el candidato era *Antonio Sáinz de Vicuña)* asumiera este cargo después de que los dos puestos más importantes estén ocupados por dos europeos del sur: el italiano *Mario Draghi* (presidente) y el portugués *Vítor Constâncio* (vicepresidente).

Mersch, que había venido dirigiendo el Banco Central de su país desde 1998 asumió su nuevo cargo en el BCE el 15 de diciembre para un mandato de ocho años.

IV. **Cuestiones generales de la actualidad económica**

1. *BCE: rebaja de los tipos de interés*

El Consejo de gobierno del BCE decidió el 5 de julio reducir los tipos de interés un cuarto de punto situándolos en el 0,75%, el nivel más bajo desde el nacimiento del euro en 1999.

La decisión pretendía hacer resurgir el crédito ya que, en palabras del presidente del organismo, *Mario Draghi*, «la circulación del crédito es débil en la zona del euro», aunque también precisó a continuación que las diferencias entre países era notable. En su opinión, esta parálisis se debe a que los bancos «presentan una aversión al riesgo, una falta de capital o una falta de financiación».

Draghi declaró que «se han reducido más las presiones inflacionistas en el horizonte relevante para la política monetaria» aunque también alertó de que «algunos de los riesgos a la baja para el crecimiento económico se han materializado».

A pesar ser un mínimo histórico, el tipo de interés oficial de la Eurozona sigue siendo superior al de Estados Unidos, Reino Unido o Japón. En su última reunión del año, celebrada el 6 de diciembre, el BCE decidió mantenerlo sin cambios en el 0,75% aunque, en la posterior conferencia de prensa, *Draghi* admitió que había habido un amplio debate en el seno del Consejo de gobierno del Banco sobre la posibilidad de reducirlo ante las sombrías perspectivas económicas que también auguró el presidente de la Autoridad monetaria para la Eurozona.

2. *Comisión: autorización de restricciones a España sobre ciudadanos rumanos*

El 21 de diciembre la Comisión Europea autorizó a España a prolongar un año, hasta finales de 2013, las restricciones a la entrada de trabajadores rumanos en su territorio, a la vista de la difícil situación que atraviesa el mercado laboral español.

La decisión fue posible porque el Tratado de Adhesión de Bulgaria y Rumanía contiene una cláusula que permite a los Estados miembros que hayan levantado las restricciones a los trabajadores de estas dos nacionalidades volver a introducirlas posteriormente, previo acuerdo de la Comisión, si se producen graves perturbaciones en sus mercados laborales.

Se trata de una medida que no podrá prorrogarse más allá del 1 de enero de 2014, ya que para esa fecha todos los Estados miembros están obligados a poner fin a las restricciones, tanto para los trabajadores procedentes de Rumanía como de Bulgaria.

España había abierto su mercado laboral a los trabajadores rumanos y búlgaros en 2009, pero en agosto de 2011 la Comisión le autorizó a restringir temporalmente la libre circulación de los trabajadores rumanos hasta el 31 de diciembre de 2012. El comisario de Empleo y Asuntos Sociales, *László Andor*, explicó que la prórroga de un año se debe a que «la crisis ha afectado muy profundamente al mercado laboral español».

Según datos de octubre de 2012, España registra niveles récord tanto de desempleo en general, 26,2%, como de paro juvenil, 55,9% (las medias europeas son del 10,7% y del 23,4%, respectivamente). Actualmente residen en España 913.000 nacionales rumanos, lo que supone el 17% de la población extranjera en el país.

La Comisión anunció que realizará un seguimiento de la situación a partir de los informes sobre el mercado laboral que España presentará cada tres meses y aclaró, asimismo, que se reserva el derecho a derogar en cualquier momento esta decisión, en función de la evolución de la situación.

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3. *Mercados financieros: cooperación reforzada para implantar la tasa sobre las transacciones financieras*

En septiembre de 2011 la Comisión Europea había presentado un proyecto de Directiva con el fin de aplicar un Impuesto sobre las Transacciones Financieras (ITF) en todo el territorio de la Unión.

La propuesta planteaba un gravamen del 0,1% en las operaciones sobre acciones y obligaciones y del 0,01% en otras operaciones como las realizadas con derivados financieros. Las hipotecas y los créditos quedaban excluidos de la tasa y la Comisión se mostraba confiada en que la fuerte competencia del sector financiero impediría el traslado de la tasa a los clientes, por lo que el tributo debería ser soportado, mayoritariamente, por las entidades financieras. Bruselas argumentaba que su implantación podría suponer la recaudación de unos 57.000 millones de euros al año y que, además, se trataba de una propuesta ampliamente apoyada por los ciudadanos europeos.

En marzo, el presidente de la Comisión Europea, *José Manuel Durao Barroso*, presentó un informe en el que se afirmaba que la introducción de la Tasa a las transacciones financieras podría llegar a reducir en un 50% las contribuciones de los Estados miembros al presupuesto de la Unión, ya que, según sus previsiones, dos tercios de los ingresos procedentes del nuevo impuesto se destinarían al presupuesto comunitario y uno a los nacionales.

Barroso defendió la «justicia» del impuesto bancario ya que, en su opinión, «significaría más dinero procedente del sector financiero en sustitución de las aportaciones de los presupuestos públicos nacionales». Insistió en que «los bancos se han beneficiado de un gran apoyo de los contribuyentes durante la crisis» y argumentó que la medida podría convertirse, además, en un elemento de disuasión respecto de las transacciones especulativas «que nada aportan a la eficiencia de los mercados financieros».

Por su parte, el 23 de mayo el Parlamento Europeo expresó su mayoritario respaldo a la iniciativa con una votación que se saldó con 487 votos a favor, 152 en contra y 46 abstenciones.

Sin embargo, y dado que el Consejo de Ministros de Economía y Finanzas de los Veintisiete no consiguió en sus reuniones de junio y julio un acuerdo unánime para apoyar la propuesta, Once Estados decidieron solicitar a la Comisión Europea su autorización para iniciar una «cooperación reforzada» en este ámbito.

Se trata de Austria, Bélgica, Estonia, Francia, Alemania, Grecia, Italia, Portugal, Eslovaquia, Eslovenia y España, que, en conjunto, representan en torno al 90% del PIB de la eurozona.

El 23 de octubre la Comisión dio luz verde a dicha solicitud tras concluir que se cumplían todas las condiciones jurídicas necesarias para auto-

rizar a un grupo de países a que establezcan la Tasa común a las Transacciones Financieras. Por su parte, el Parlamento Europeo dio, asimismo, su aprobación a la iniciativa en una votación celebrada el 12 de diciembre.

En el curso de 2013, la Comisión deberá presentar una propuesta de fondo sobre un ITF armonizado para su discusión y adopción por los Estados miembros participantes.

La propuesta se ajustará en gran medida a la propuesta inicial sobre el ITF presentada en septiembre de 2011, tal como solicitaron los Estados miembros. No obstante, la Comisión analizará pormenorizadamente si es preciso efectuar algunos cambios a fin de reflejar el hecho de que vaya a ser aplicada por un número reducido de Estados miembros.

4. *Política de competencia: sanción récord a los fabricantes de televisores*

La Comisión Europea aprobó el 5 de diciembre una multa de 1.470 millones de euros para siete de los principales fabricantes mundiales de televisiones, acusados de haber pactado precios durante una década, entre 1996 y 2006: *LG, Philips, Samsung, Panasonic, Toshiba, Technicolor* y *MTPD* (esta última integrada posteriormente en *Panasonic*).

Las empresas acusadas mantuvieron durante casi diez años un entramado internacional que les permitió acordar los precios, repartirse el mercado, controlar la producción e intercambiar información comercial sensible sobre la fabricación y venta de tubos de rayos catódicos para televisores y ordenadores.

Se trata de una sanción record en este ámbito de los acuerdos empresariales contrarios a la libre competencia y en su explicación, el comisario *Joaquín Almunia* señaló que, con su comportamiento, los fabricantes tecnológicos han causado «un grave perjuicio» a los consumidores europeos. Los tubos catódicos representan entre el 50 y el 70% del precio de las pantallas, por lo que cualquier pacto en este componente tiene una gran incidencia en la factura final del televisor u ordenador.

Las compañías habrían llevado a cabo estos acuerdos en una tecnología considerada ya obsoleta, por lo que el comisario llegó incluso a sugerir que las prácticas denunciadas podrían haber ralentizado artificialmente la transición a las pantallas planas.

Las mayores sanciones recayeron en *Philips* y *LG*, a pesar de que la primera, junto a *Samsung* y *Technicolor*, consiguió beneficiarse de determinados rebajas en la sanción por haber colaborado en la investigación. La gran beneficiada fue la firma taiwanesa Chungwa que, a pesar de haber participado en el cártel, no deberá pagar multa alguna por haber sido quien delató la infracción a la Comisión.

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5. *MAGEFESA: condena a España por no recuperar las ayudas ilegales a la empresa*

El 11 de diciembre el Tribunal de Justicia de la UE condenó a España a pagar una sanción de 20 millones de euros por no haber recuperado las ayudas ilegales concedidas hace más de dos décadas a la empresa *Indosa*, filial de *Magefesa*, y por incumplir una resolución anterior del propio Tribunal que, en 2002, confirmaba las tesis de la Comisión Europea de solicitar a España la recuperación de los subsidios. La multa deberá aumentar 50.000 euros al día hasta que se devuelvan las subvenciones**.**

Según señalaba la sentencia de diciembre, el elevado importe de la multa era «proporcionado al incumplimiento y a la capacidad de pago de España». La Corte ponía el acento en la duración y gravedad de la infracción: «el incumplimiento perdura desde hace más de diez años a partir de la fecha en que se dictó la primera sentencia del Tribunal de Justicia, y desde hace más de 22 años desde la adopción de la decisión de la Comisión».

En 1989 la Comisión Europea declaró en 1989 ilegales e incompatibles con el Mercado Común las ayudas concedidas por el Gobierno y varias Comunidades Autónomas a Magefesa, productor de artículos de menaje de acero inoxidable y de pequeños aparatos electrodomésticos, y formado entonces por cuatro sociedades industriales: *Indosa* (País Vasco), *MIGSA* (Andalucía), *Cunosa* y *GURSA* (Cantabria). Esas ayudas, destinadas a paliar las dificultades económicas que atravesaba el grupo, consistieron en avales crediticios, préstamos en mejores condiciones que las del mercado, y subvenciones no reintegrables.

Tras emitir la acusación, Bruselas estimó que España no adoptó, en los plazos señalados, las medidas necesarias para corregir la ilegalidad, por lo que interpuso un recurso ante el Tribunal de Justicia, y éste le dio la razón en una sentencia de 2002.

Cuatro años más tarde, la Comisión consideró que la sentencia había sido ejecutada para tres de las filiales del grupo (*GURSA, MIGSA* y *Cunosa*), pero no en el caso de *Indosa*. Según el ejecutivo comunitario, las ayudas concedidas a esta sociedad no se recuperaron y la compañía prosiguió su actividad pese a su declaración de quiebra en 1994, en un primer momento con la misma razón social, *Indosa*, y más tarde como *Compañía de Menaje Doméstico* (*CMD*). Esta nueva empresa, filial al 100% de *Indosa*, se creó tras la quiebra de ésta para comercializar sus productos, incluyendo la transferencia de sus activos y personal.

A su vez, *CMD* entró en concurso de acreedores, y una parte de sus antiguos trabajadores crearon posteriormente la sociedad *Euskomenaje*, «que continuó la actividad subvencionada en los locales de CMD y fue autoriza-

da a utilizar a título gratuito los activos de dicha empresa hasta la terminación de su procedimiento de liquidación», señalaba el Tribunal.

En ese contexto, la Comisión solicitó en 2010 al Tribunal de Justicia que confirmara el incumplimiento de España por no haber ejecutado totalmente la primera sentencia de 2002. En su nueva decisión de finales de 2012, los jueces comunitarios concluyeron que «España ha incumplido su obligación de ejecutar la primera sentencia, conforme a la cual estaba obligada a adoptar las medidas necesarias para dar cumplimiento a la decisión de la Comisión de 1989 y que le obligaba a recuperar las ayudas ilegales concedidas a *Indosa*».

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