

**Governance of the International Relations of the EU:  
The Effect of the Regional Actors within the Member States**

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I. Introduction

When trying to examine any issue relating to governance, one should be very precise with regard to its definition. Such a definition was provided by Professor P. Grigoriou, in his presentation titled “*L’apport de la gouvernance européenne sur les affaires internationales de l’Union européenne*” at the Doctoral Winter School of GovUnet at Luxemburg, in December 2017, according to which governance is a system of organizing, developing and interconnecting the social structures (states, enterprises, various organizations) that appears in times of prosperity, characterised by networks and circulation of all sorts of information. According to Grigoriou, governance has a very strong democratic element, as it allows for the active participation of all actors concerned (political or social) in a common project, such a project being the EU.

In this context, examining the EU’s governance of its international relations sets a very interesting challenge, based on two unique elements: The first, as identified by Grigoriou,<sup>1</sup> refers to the position of the EU as a global actor in international affairs, which allows it to set standards of governance, suitable for any society, in order to meet the needs of the 21<sup>st</sup> century, based on the concepts of cooperation and coordination of actions, within the framework of EU policies and thus highlighting the EU’s nature as a system of multilateral governance. The second element, as highlighted by Zielonka,<sup>2</sup> is the sui generis nature of the EU as an legal entity, in the international reality: The EU lacks the statehood status of other actors, such as the USA, China or Russia, as it does not have a number of essential structural features of a state (no fixed territory, no clearly defined centre of authority, no coherent demos, etc) and this particularity is exemplified to the field of the European Common Foreign

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<sup>1</sup> Panos Grigoriou, *L’apport de la gouvernance européenne sur les affaires internationales de l’Union européenne*, presentation at the Doctoral Winter School of GovUnet at Luxemburg, December 2017

<sup>2</sup> Jan Zielonka, ‘The EU as an International Actor: Unique or Ordinary’, *European Foreign Affairs Review*, no 16, (2011), pp. 281-301

and Security Policy, as the EU Member States are allowed to act outside the EU framework (as they do very often), either formally or informally.

These elements have led to the valid conclusion that the EU is a very peculiar international actor that cannot be completely categorized in any of the established forms of power in the international environment. Although the EU has a ‘civilian foreign policy’, it is not a purely civilian power, because it has and still is acquiring military capabilities. On the other hand, it is not purely military, because it clearly has a priority for civilian instruments, and its military capabilities can be considered as insufficient. Moreover, it cannot be deemed truly as normative power, because its policies are not consistent enough, given the possibility of a dual expression of policy, at EU level and at Member States’ level.<sup>3</sup>

Thus, before examining any proposed variations in the governance scheme of the EU international relations, it is necessary to attempt a more careful approach of this scheme, taking into account the structural and operational elements of the EU as set by the Lisbon Treaty, and their performance vis-à-vis the challenges posed by the constantly changing and demanding international environment.

## II. The challenges for the EU governance of international affairs

The institutional and legal framework set by the Lisbon Treaty has introduced major changes in the organisation of the external relations of the Union, as Bono has, very skillfully, presented.<sup>4</sup> More specifically, the Union has been legally established as a subject of International Law (by replacing the European Community) and its international action is based on principles such as democracy, freedom, respect of human dignity, equality, solidarity, the rule of law, and respect of human rights. The relevant EU actions are governed by the principle of conferral, ie the EU may act only within the limits of the competences conferred to it by the Member States. Thus, in fields such as the EU external Commercial Policy, the Development Cooperation

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<sup>3</sup> Fabian Krohn, ‘*What Kind of Power? The EU as an International Actor*’, AtlanticCommunity.org, October 9, 2009, accessed December 15, 2017, <http://www.atlanticcommunity.org/app/webroot/files/articlepdf/Fabian%20Krohn.pdf>.

<sup>4</sup> Ricardo Gosalbo Bono, The organization of the external relations of the European Union in the Treaty of Lisbon, in Panos Koutrakos (ed.) *The European Union’s External Relations-A Year after Lisbon*, CLEER Working Papers 2011/3, pp.13-38.

Policy, and the Economic, Financial and Technical Assistance and Humanitarian Aid, the EU has acquired more scope of action, by being able to formulate and implement its own respective policies. As for the institutions involved in the external relations governance of the EU, the Lisbon Treaty changed their roles and competences, by increasing the role and significance of the High Representative of the Union for Foreign Affairs and Security Policy, as (s)he acts as President of the Foreign Affairs Council, Vice-President of the Commission (External Affairs Commissioner), and the “key-player” in the Common Foreign and Security Policy as well as the Common Security and Defence Policy, by taking initiatives and formulating/submitting proposals for action. The main feature of the relevant operational scheme, however, remains its intergovernmental nature and the rule of unanimity (ie all Member States must agree in order for the EU to take action), and there is no *acquis* in the field of the EU external affairs (ie the EU’s position over an issue may be reversed at any time). One important element is the fact that the Union can conclude international agreements, which bind both the EU and its Member States. The relevant process entails a very active role for the Council (authorization of opening the negotiations, adoption of negotiating directives, authorization of signing agreements, etc). There are also cases in which the European Parliament’s consent is required, and in such cases it has been argued that the Parliament must not be a mere passive spectator but it should exercise its influence (ie by conveying its views to the Commission and to the Council through resolutions adopted in plenary) and thus contributing to the formulation of the agreements’ contents.<sup>5</sup>

This brief outline of the Union’s arrangements in this field brings forward the most significant challenge of the governance of the EU international relations. The combination of the scheme’s intergovernmental nature, along with the fact that the Member States may continue to formulate and exercise their own foreign policy, even by the conclusion of international agreements, is a very delicate yet interesting point. It has been addressed carefully by Paasivirta<sup>6</sup> and Bono<sup>7</sup>, both of which have

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<sup>5</sup> Ricardo Passos, The European Union’s external relations a year after Lisbon: a first evaluation from the European Parliament, in Panos Koutrakos (ed.) *The European Union’s External Relations-A Year after Lisbon*, CLEER Working Papers 2011/3, pp. 49-58.

<sup>6</sup> Esa Paasivirta, The EU’s external representation after Lisbon: New rules, a new era? in Panos Koutrakos (ed.) *The European Union’s External Relations-A Year after Lisbon*, CLEER Working Papers 2011/3, pp. 39-48.

concluded that this state of “mixity” will continue to exist under the Lisbon regime. More specifically, the Member States do not have anymore a formal function in the representation of the EU external relations, but they have retained their sovereignty to conduct their own foreign relations, and the wording of the Treaty allows for such action in fields such as environment, energy, internal market, research, development cooperation or humanitarian aid. In the process, they have the duty to cooperate closely with the EU institutions, where the subject matter of an agreement or convention falls in part within EU competence and in part within that of the Member States. It is true that this situation may seem at odds with the overall concept introduced by the Lisbon Treaty that the EU has to project its unity in meetings taking place in international organizations and conferences. The effort for the Union to have a “single voice” on international affairs and the enhancement of the efficiency of its external representation seem to be contradicted by the Member States’ freedom to determine their own representation and point of view. However, it is the above mentioned principle of loyal cooperation, as monitored by the European Court of Justice, that will provide the basis for an integrated approach in this field.

One should keep in mind the argument put forward by Paasivirta,<sup>8</sup> according to which the exercise of foreign policy and the conclusion of agreement express the various interests at stake, primarily those of the participating parties. Those interests pertain, on the one hand, the general EU interest of unity and effective external action, and on the other hand, the interests of that the Member States, which may be distinguished between the legal interest of Member States in maintaining their national competences and their more general participation interest relating to political or diplomatic benefits resulting from entering into an agreement with a big partner country. The so called “Lisbon spirit”, ie the need for an at least coordinated international presence of the Union and its Member States, would nevertheless serve as inspiration to address these issues.

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<sup>7</sup> Ricardo Gosalbo Bono, The organization of the external relations of the European Union in the Treaty of Lisbon, in Panos Koutrakos (ed.) *The European Union’s External Relations-A Year after Lisbon*, CLEER Working Papers 2011/3, pp.13-38.

<sup>8</sup> Esa Paasivirta, The EU’s external representation after Lisbon: New rules, a new era? in Panos Koutrakos (ed.) *The European Union’s External Relations-A Year after Lisbon*, CLEER Working Papers 2011/3, pp. 39-48.

It is interesting that, according to the analysis above, the intergovernmentalist approach which exists in the field of EU international relations has been influenced – to a certain extent – by the main elements of the supranational decision making scheme (the so called “Community method”), ie deliberation and consensus-seeking, and thus the behavioral patterns of the Member States in that specific field have been adjusted accordingly, and this development has been documented constantly after the Maastricht Treaty.<sup>9</sup>

And the argument becomes even more interesting if it is transferred to the interior of the Member States, ie the relation of the national regions with the exercise of foreign policy, especially in the various fields of EU policies, and the relations formulated between the national and the regional actors and their respective activities in this field.

### III. From intergovernmentalism to interregionalism in EU international affairs: from global to local and vice versa

The concept of regionalism, as analysed by Vincent Laborderie, in his presentation titled “*Regional sovereignism and separatism in the frame of the European governance*” at the Doctoral Winter School of GovUnet at Luxemburg, in December 2017, provides a useful insight on the theoretical basis and practical implication of the assessment of the regions as actors in the international scene. More specifically, regionalism is defined as a political ideology that focuses on the national interests of a particular region. It may evolve into Regional Sovereignism which is the approach of those that consider their region as the politically relevant and democratic level. In his analysis Laborderie identifies a typology of claims that regions may put forward as issues that may justify their right to develop a policy different from the one adopted by the central government. There are four broad categories of relevant arguments: a) cultural arguments referring to cultural, linguistic, ethnic, or religious gaps between the region and state, while also the historical background of the region might be different from the state, b) economic arguments: the rich regions do not wish to pay for the poorer ones, c) political arguments: the democratic will of the people is not

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<sup>9</sup> Christopher J. Bickerton, Dermot Hodson & Uwe Puetter, The New Intergovernmentalism: European Integration in the Post-Maastricht Era, *Journal of Common Market Studies*, 4, no 53, (2015), pp.703-722.

respected and d) governance arguments: the state is not working properly, especially with regard to the regions. Such arguments have justified separatist moves throughout Europe. However, the real problem identified by Laborderie is the unilateralist approach demonstrated and not the issue of granting the regions independence. In such cases, overall refusal may lead to more intense separatist demands while overall acceptance may serve as an incentive for other regions to act alike. The solution advocated by Laborderie is the concept of Regional Sovereignism, which may result in either framing a federal state or establishing a nation-state which will provide its regions the power to obstruct (or even delay) state action against their interests.<sup>10</sup>

This solution may be used as a model for framing the regional governance scheme, within the Member States of the EU, especially those which do not have a federal structure. But is there a necessity for such approach? The reply is given by the analysis of Grigoriou, who argues that, despite the State being – at least in the case of most European countries – the main instrument for managing public goods and common interests, for exercising justice and delivering public services, for promoting the general interest and cohesion, it is necessary to acknowledge that there is a multitude of levels of governance, highlighted by the EU intergration process, such the local, the regional, the national, the global... And these levels formulate the context within which all issues must be dealt with, using as a rule the principle of subsidiarity. The decentralization of authority through the redistribution of power towards the local collectivities and the regional authorities is a global trend that should be adopted also with regard to the governance of EU affairs.<sup>11</sup>

Given that, as demonstrated above, the governance of the EU international affairs has a strong intergovernmental nature, but at the same time, the overall process is being undertaken at EU level, and taking into account the trend (or even better the need) for more involvement of the regional authorities in formulating or even exercising foreign policy in policy fields that the regional authorities have been already granted political and legal competence according to the national legal order of each Member State, it is suggested that such a possibility of delegating authority to regional authorities for

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<sup>10</sup> Vincent Laborderie, *Regional Sovereignism and separatism in the frame of the European governance*, presentation at the Doctoral Winter School of GovUnet at Luxemburg, December 2017.

<sup>11</sup> Panos Grigoriou, *L'apport de la gouvernance européenne sur les affaires internationales de l'Union européenne*, presentation at the Doctoral Winter School of GovUnet at Luxemburg, December 2017.

policy making in the field of international relations in the EU context can be examined.

More specifically, as in the EU model described above (the “mixture” scheme), the national actors (Member States) have the authority to take action, formulate and implement foreign policy, in areas in which the EU has also the right to do the same, it is suggested that the regional actors may be granted the authority to do the same in policy fields for which they have already been given the competence of taking action according to national legislation. This is a very specific implementation of the subsidiarity principle, according to which since the national legislator has considered the regional authorities more suitable for managing certain fields of policy, the external or international dimension of these policies can also be managed by the same regional actors, within the overarching framework set at national and European level. This formulates a novel aspect of regional sovereignty, which, without altering the statehood model of the nation state, allows the regional entities to become active actors in the field of EU international relations. The scope of their activity can be defined by national legislation, or, in a more advanced scenario, if the activity refers directly to issues pertaining to EU affairs at international level, by means of a directive that would allow to the Member States to adjust this scope to the national legal framework concerning the competences of the regional authorities, without, nonetheless, depriving them from the capacity of formulating international policy about issues that they are competent according to their statutes.

This proposal does not entail any reduction with regard to the sovereignty of the Member States, as it does not transfer the relevant authority to the non-public or private sphere (as is the case of privatization<sup>12</sup>) but it focuses on a re-arrangement of competences between public entities and more specifically the entity of the state, as represented by the central government, and the entities of the regions, as represented by the regional authorities. It does not actually diminish any of the central government’s core competences in the field of formulating foreign policy and developing the State’s international relations, but it allows other, public, actors, such

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<sup>12</sup> For the effects of privatization on sovereignty and governance see Johan van der Walt, *The Horizontal Effect Revolution and the Question of Sovereignty*, (Berlin/Boston: De Gruyter, 2014) p. 252-274.

as the regional authorities to get involved in this policy field, always within the limits set by the constitutional provisions of the State concerned.<sup>13</sup>

#### IV. Involving regional authorities in EU international relations: The Cotonou Agreement as a case study

An interesting example for examining the possibility of granting authority over international relations to regional authorities can be found to the case of the Cotonou Agreement. This Agreement was signed, on 23 June 2000 (revised in 2005 and 2010), between the European Union and its Member States on the one hand and the ACP (Africa, Caribbean, Pacific) countries on the other, as a means for the former to provide assistance for the economic, cultural and social development of the latter, with a view to contributing to peace and security and to promoting a stable and democratic political environment.<sup>14</sup> One of the main elements of this Agreement's objectives is to encourage and support regional and sub-regional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment.<sup>15</sup> Furthermore, one of the fundamental principles of the Agreement is regionalization, ie the cooperation arrangements are set according to a partner's level of development, its needs, its performance, focusing on the least developed countries and taking into account the vulnerability of landlocked and island countries, while regional integration is to be emphasized.<sup>16</sup> To this end, not only the central authorities but also regional and local decentralised authorities of the ACP countries will be informed and involved in consultation on cooperation priorities, policies and strategies, especially in areas that concern or directly affect them, and they will be provided with capacity-building support in critical areas in order to reinforce their capabilities, particularly as regards organization and representation, and the establishment of consultation mechanisms including channels of communication and dialogue, and to promote strategic alliances. This will entail the provision of financial resources, under the conditions laid down in this Agreement in

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<sup>13</sup> For the function of the constitution as a means of setting the limits of intervention to state sovereignty see Judith Resnik, Globalization(s), privatization(s), constitutionalization, and statization: Icons and experiences of sovereignty in the 21st century, *International Journal of Constitutional Law*, 1, no 11 (2013), pp. 162-199.

<sup>14</sup> Art. 1 of the Cotonou Agreement.

<sup>15</sup> Ibid.

<sup>16</sup> Art. 2 of the Cotonou Agreement.



order to support local development processes and the implementation of cooperation projects and programmes in areas that concern them or where these actors have a comparative advantage.<sup>17</sup>

These elements of the Cotonou Agreement provide a scope of action which assimilates the action undertaken within the framework of the EU Cohesion Policy and the involvement of the European regions in the relevant policy and financial schemes. This is the focal point of the argument put forward here: As the European regions are working together, using the institutional arrangements of EU, in formulating and implementing policies aiming at economic, social and territorial cohesion, within the European integration process, the regions of the ACP countries may be brought to work together (for each territorial part of the group ie Africa, Caribbean and Pacific) using the European paradigm at two levels: the institutional level ie the establishment of institutions that will facilitate the interregional cooperation and the substantive level ie the development of policies aiming at supporting growth and prosperity, combating poverty, promoting democracy and the rule of law. The European regions have acquired extensive experience and know-how in both these levels and allowing them to work with their counterparts in the ACP countries, as a form of exercising international relations in the EU context, will contribute to the transfer of knowledge and good practices that will help the development of a new culture of cooperation, “from region to region”. Thus the Cotonou Agreement will be not only a legal instrument for financial support to the ACP countries, but also a bridge between cultures, that will facilitate the recipients of the financial support to articulate the proper institutional and managerial schemes as well as to endorse the theoretical basis of the European form of governance and its principles.

## V. Conclusion

The analysis undertaken in the paper highlighted the most characteristic element of the concept of governance: its capacity to be flexible in order to allow the formulation of models of action, both in the economic or the political sphere and at both local and

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<sup>17</sup> Art. 4 of the Cotonou Agreement.

global levels. The European Union provides a suitable context for such models due to its unique nature, allowing for both national/intergovernmental as well as community/European approaches, despite the fact that the cooperation, at EU level, seems to act as a supplement to bilateral cooperation between States, without sufficient strategic coordination. However, if there is the political will to overcome the obstacles, the historical experience of the Union's Member States and their cultural reserve will allow for the use of the principles of governance in order to find solutions.<sup>18</sup> The case of allowing the involvement of the European regions in EU international relations, as in the example of the Cotonou Agreement, is actually a option that the dynamics of European governance may prove their value and effectiveness by forming the basis for a new effective scheme of formulating and exercising policy at international level, by employing the regional actors and renovating the entire EU international relations political and operational scheme.

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<sup>18</sup> Panos Grigoriou, *L'apport de la gouvernance européenne sur les affaires internationales de l'Union européenne*, presentation at the Doctoral Winter School of GovUnet at Luxemburg, December 2017.

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