Community Acquis. Deficiencies of the Legislative Harmonisation Process. Particular Focus on the Management as Cause of Incompliance.

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Abstract

The purpose of this article is to make a statistical analysis regarding the reasons why some states failed to conform to the communitarian acquis. The concept of communitarian acquis is a new one for Romania, but also very important because his scope is to put our legal system in conformity with the legal system of the European Union, this is why one of the conditions from Copenhagen imposes to the candidate states to incorporate the acquis.

After analyzing the jurisprudence of the European Union Court of Justice resulted that the main reason why tha states fail to comply with E.U. law is their deficient management which includes their capacity (resources) and the veto that some internal actors exercise over the government

Key words: *acquis, engagement, state, compliance, citiyen*

1) Preliminary Considerations.

Community acquis represents the body of common rights and obligations which operates as a"function to approach the national legislations."[1]It constantly evolves and encompasses the totality of legal norms which govern the activity of the European Union institutions, the Community policies and actions. The elements which form the acquis are represented by all engagements undertaken by the European Union and the Member States; such engagements may have various forms.[2]

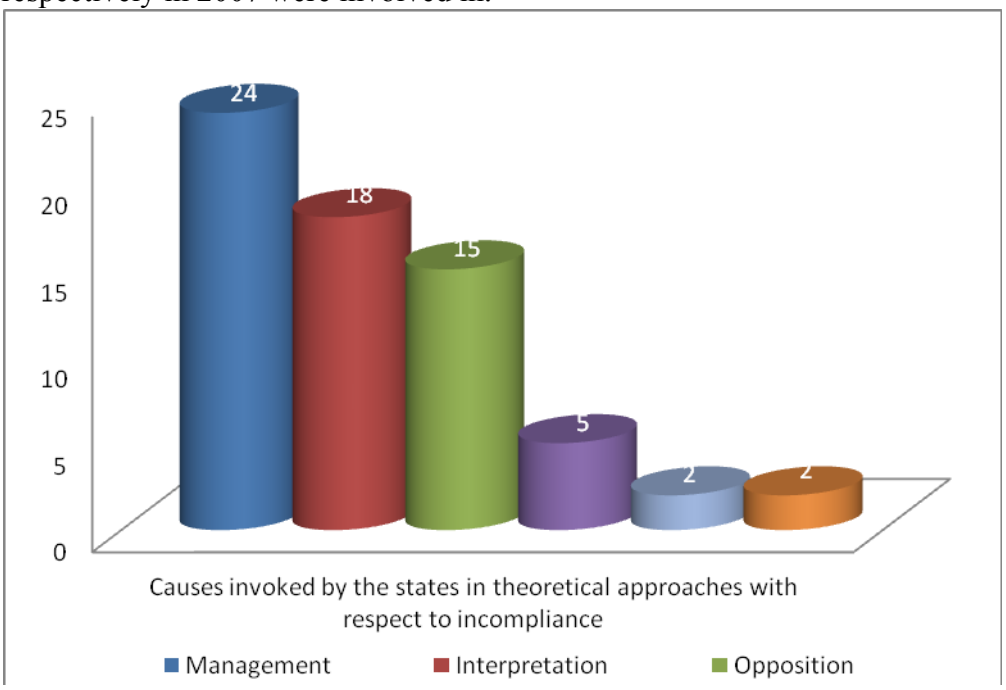
The legislative harmonisationis defined as a process where an entity aligns thelegislative system to the system of another entity without having

[1] I. N. Militaru, *Business Law*, UniversulJuridic Publishing House, Bucharest, 2013, p.38.
[2] O. Audeoud, *L'acquis communautaire, du mythe à la pratique*, Revue d'études comparatives Est-Ouest. Volume 33,, No.3. 2002, p.69,

any implication in adopting the norms which it transposes.[3]This is the case of pre-accession stage where the candidate states, according to Copenhagen terms, must internalize the community acquis.

Incompliance with community acquis is causedbydeficiencies deriving from the harmonisation process, pursuant to which certain norms from European law are transposed in the national law.

This is a qualitative study and represents an analysis of the content of the decisions passed by the European Court of Justice. In furtherance, all cases on the dockets of the European Court of Justice shall be reviewed,whichthe 12 state that accessed to European Union in 2004, respectively in 2007 were involved in.



The main theories which explain the reason why sometimes the states do not comply with the European Union law subsequent to the internalization of the community acquis are the following: the managerial approach, the deficiencies with respect to the interpretation of the European normative framework, the opposition to the European norm or the refusal to transpose it, the costs generated by the compliance, the legitimacy of the

[3] A. Evans, "*The integration of the European Comunity and third states in Europe: A legal analysis*", Clarendon Press Oxford, 1996.

European norm at a certain point in time in a specific country (the acceptance degree of the norm by the citizens of that state) and the connection issue between the community norms and the norms already existing in the national law.

Following the analysis of the cases and the systematization of the relevant data, the results were as shown in the chart below.

One can observe that the main validated theory refers to the improper management; therefore, a detailed analysis shall be done in the following section.

2) Management–Cause of Incompliance

The managerial approach says that incompliance of the states is involuntary. States do not transpose the European norms because prior essential conditions for the implementation of such normsare missing.

It must be mentioned that solely the directive presents relevance for our topic, as element of the derived law of the European Union.[4]

Pursuant to this approach, the factors that influence incompliance refer to: the capacity of the states, the inaccurate definition of the norms and the insufficient time for internalizing the norm. The promoters of this approach[5]considered that only the first characteristics – the capacity of the states – may be measured from an empirical point of view. The ability of the states to act is seen as a sum of legal authority and of military, financial and human resources.

On the other hand, neo – institutionalism presents the capacity of state by reference to the domestic players that influence the decision – making, and that may have a right of veto with respect to the decision on the implementation of a Community norm. Therefore, this hypothesis focuses on the autonomy of the government.[6]Certain domestic playersblock the decision due to costs that they may incur due to implementation of European norms. From a certain perspective, this idea might be correlated with the realistic approach on cost – benefit.

Therefore, we deal with two concepts: the governmental capacity which refers to financial and human resources and, on the other hand, the

[4]For a detailed analysis of the notion of communitarian derived law, please see: I. N. Militaru, *Business Law*, UniversulJuridic Publishing House, Bucharest, 2013, p.37-39.

[5] Simmons, Beth A. *Compliance with International Agreements*. The Annual Review of Political Science, 1998, p.75-93.

[6]Tsebelis, George. *Veto Players: How Political Institutions Work*. Princeton NJ: Princeton University Press, 2002.

governmental autonomy which is centred on "the right of veto", more or less legitimate, which some players have and pursuant to which they may block initiatives of the government.

Also, it must be considered that, under the governmental capacity, the existence of resources is not sufficient. The efficiency with which the resources are used counts much more. Two descriptive examples in this regards are offered by France and Italy which are states having a great potential of resources, but which are used inefficiently; consequently, their degree of incompliance is one of the highest in European Union.

The inefficiency to use resources, from a doctrinaire perspective[7], has two causes. The first cause refers to the capacity of collaboration of the state institutions and the second cause shows serious corruption issues existent at the national level when speaking of budgetary execution[8].

Moreover, I would add, considering the characteristics of Romania, the poor training of human resource, which is not able to manage issues related to inter-correlated aspects regardingthe Romanian bureaucratic model and the working manner at Communitylevel, which hasnot been assumed. In this case, although the human resource exists, it cannot be used due to the lack of training and, consequently, malfunctions occur, such as a very low absorption degree of European funds.

The governmental autonomy presents itself in strong connection with the players that may block the decision –making process. They may be both institutional and private players with sufficient power so as to exercise the right of veto.

The discussion with respect to the autonomy of the government may be the more important since the process to transpose a directive in the national law may take the form of a government ordinance or a government decision.[9]

The governmental autonomy encompasses two elements. The first element refers to the ability of the executive body to control the public agenda of the legislative body so as to impose itspolical projects. The second element consists in the magnitude (size) of the legislative forum. This size is relevant as regards both the number of Members of the

[7]Mbaye, Heather A. D. *Why National States Comply with Supranational Law. Explaining Implementation Infringements in the European Union 1972-1993*.European Union Politics 2, 2001, p.259-281.

[8] Popescu-Cruceru, Anca Sorina, „*Economia concurenţială în Uniunea europeană*", Ed. Artifex, 2008

[9] I. N. Militaru, *Business Law*, UniversulJuridic Publishing House, Bucharest, 2013, p.38.

Parliament and the ideological currents represented in Parliament. This second element influences decisively the manner in which the information is received. In to the context of the matters analysed in this paper, this component shall influence the manner in which the normative measures adopted at European Union level are perceived.[10]

Subsidiary to the cause of opposition, the administrative issues have at least equal importance when it comes to incompliance. Several cases show that even when the norms that must be transposed are not of major importance and even if the government manifests readiness to transpose them, delays or errors in transposition appear. In many of these cases, we deal with administrative malfunctions.[11]

3) Conclusion.

Following the analysis of 66 causes of the European Court of Justice case law, it results that the main cause of incompliance is represented by the adverse management. Therefore, not necessarily the opposition of the states or the cost for implementation generates legislative harmonisation issues, but rather the poor capacity of the states or the veto power which some of the domestic players have and use it to promote private interests.

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[10]Tsebelis, George, *loc. cit*, 2002.

[11] M. Bichler, (1995), '*The Case of Luxembourg'*, in Spyros A. Pappas, ed., *National Administrative Proceduresfor the Preparation and Implementation of Community Decisions* (Maastricht: European Institute of PublicAdministration), 1995, p. 359-373.

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