

**Gabriel MICU**

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**EUROPEAN INSTITUTIONS**

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## **PREFACE**

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The study European Institutions represents an original approach of an utmost current thematic for Romania. The originality of the work stems not necessarily from the content of the public information regarding European institutions, but rather from the manner in which the work is structured, such as to highlight the author's view on the content of the European unity idea, in general.

The reasoning used to sustain the logic of edification of the current community institutions is diversified, starting with historical aspects and reaching those of a geopolitical nature, however having as a gravity center the approach by means of juridical sciences.

Following the logical path proposed by the author, it becomes obvious that he did not attempt a detailed analysis of the institutional structure, of the European Union, but had as a primordial purpose highlighting the role of each European institution, as well as their manner of interaction in order to aid the Union in reaching the objectives proposed through Treaty by member states.

In this context, the author's desire to underline the difference between the concept of institutional community legal order, which appeared as a result of the objective process of functioning of community institutions and that of community law, can be noticed throughout the work.

In conclusion, I wish to highlight the quality of this work's content, especially varied and at the same time current, with regards to the structure, the functioning and the evolution of European Union institutions, as well as the consistent bibliography employed by the author. The presentation of the European Union's structures is realized in a logical, fluent manner, easily covered by the reader, shaping a clear, comprehensive image of the juridical elements existing in the European institutional reality, created by member states, through the agreement of their sovereign will.

It must be stated that at the basis of this work lies the course entitled Community Institutional Legal Order, published by the author in the year 2007, completed and modified in accordance with the evolutions recorded by the community institutional architecture until the beginning of the year 2013.

Considering those mentioned, it is my belief that this work addresses a wide spectrum of readers, connoisseurs, but also those taking their first steps in unveiling the addressed issue.

**Ph.D. Professor. Ion M. Anghel**

## **CHAPTER 1**

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### **THE EMERGENCE AND EXPANSION OF THE EUROPEAN COMMUNITIES**

A necessary phase in addressing this issue is the presentation of the historical and political context that led to the emergence and then to the expansion of the European Communities. In this regard, the recent past of Europe reveals the paradox that European states were those that generated the two world wars, with devastating effects on the old continent, causing it to lose the central position that it held for centuries in the world history. After the Second World War, Europe had become aware of the limit situation it had reached because of the weakness manifested repeatedly precisely by the nations that inhabited it, the ease with which they allowed triggering of fratricidal wars, from which especially external factors of the European continent would benefit. In other words, the paradox of history consists of the fact that *the two global conflicts were born out of triggered wars between European states, to finally make Europe their main victim.*

Comprised of states of different sizes, with populations more or less numerous, Europe, at the end of the Second World War was dominated by two great powers: the United States of America and the Soviet Union, whose military, politics and economic power was greater than the European potential.

The painful experience of the war led to the consolidation of the principle of international law of not using force or threat of force in settling disputes between states. The existing principles were reaffirmed and were established new principles of the classical international legal order that had the purpose to prevent the occurrence of any elements that could lead to armed conflicts, making the idea of a new war become unthinkable at the time. That was the historical moment in which the desire was strong, born immediately after the second world military confrontation, to have a better and freer world, in which the individual and the state coexist harmoniously.

Based on these findings, we can understand why, at first, the postwar attempts of the European unification have led to the appearance of a large number of complex organizations, different in scope and forms of organization: O.E.C.D. (Organization for Economic Cooperation and Development), W.E.U. (Western European Union), N.A.T.O. (North Atlantic Treaty Organisation), the Council of Europe and the three European Communities (E.C.S.C. – European Coal and Steel Community, EURATOM - the European Atomic Energy Community and E.E.C. - European Economic Community).

Of particular interest in this paper is the very essence of these organizations, which is why, trying an overall structure in terms of the objectives pursued by each of them, the organizations listed can be classified into three main categories.

*North Atlantic institutions form the first major category*, which consists of occidental organizations born from the alliance between the U.S. and the states of the Western Europe, after the Second World War. In this regard, the first postwar European organization, created in 1948 under the name of E.O.E.C. (European Organisation of Economic Cooperation) was based on the American initiative in 1947 to support the efforts of economic and political reconstruction of Europe. Then, general George Marshall, Secretary of State, responsible for foreign policy problems within the cabinet of the U.S. President at that time, invited all European countries to join efforts for economic reconstruction, promising them full support of the United States of America. This promise has materialized with the launch of the program that consecrated him, bearing his name, as it was known in history as the *Marshall Plan*.

The effectiveness of this plan was to be quantified at its end. The positive effects recorded in the European reconstruction determined that this initiative originally designed for a specific period of time, become permanent, since in 1960, the Member States of the E.O.E.C. decided to continue the work initiated with the support of the Marshall Plan. Consenting with satisfaction this decision, U.S.A. and Canada have agreed to extend the scope of the organization, providing assistance for the development of third world countries. In the same year, E.O.E.C. changed its name to O.E.C.D. (Organization for European Cooperation and Development) and U.S.A. and Canada have formally adhered to the organization.

Another example of this type of Euro-Atlantic organizations is the North Atlantic Treaty Organization (NATO), which was created in 1949 following a military agreement between the major not communist states of Europe, United States and Canada.

In the same historical period, it was established for the same purpose, in 1954, the Western European Union (W.E.U.) aimed at strengthening the cooperation between the Western European states in the field of security. This had at its basis the Brussels Treaty between Great Britain, France, Belgium, Netherlands and

Luxembourg, later joined by Germany, Spain, Portugal, Italy and Greece - a total of 10 states - that offered the member countries a platform for cooperation in matters of defense and security policy. Even if it cannot be considered as part of the European organizations constituted with the direct support of the U.S.A., W.E.U. may be mentioned at this level since, at least at the time of its founding, it was an organization that has sought to strengthen the political influence of Europe within N.A.T.O.. Later, there would be profiled another dimension of the organization, that of the creation of a European security identity.

*A second category* of organizations consisted of those whose role was limited to the traditional cooperation between sovereign states and that could be joined by all European countries, at least theoretically. The organization that can be considered a symbol of this class is the Council of Europe, created on May 5th 1949, as a political organization. Its status does not mention the intention to establish a federation or union, nor the transfer to exercise some attributes of national sovereignty. However, the Council of Europe is, by its structure, an international cooperation organization holding a very important role in the process of European unification, by developing a sense of solidarity among European countries, through which there were maintained and developed the principles of democracy and European values. Although among the members of this organization there were concluded a series of agreements in the fields of economy, culture, social policy and law, the most important remains the European Convention for the Protection of Human Rights and Fundamental Freedoms from the 4th of November 1950, as this is the rationale of being part of the Council of Europe. This convention was a world premiere because it introduced not only minimum standards for the protection of human rights, but it also created a system of juridical protection that assigned bodies established by the Convention (European Commission of Human Rights), the power to condemn human rights violations committed in the Member States.

*The third relevant category* of European organizations comprises states that have proposed that, unlike traditional international organizations that based their work on the classic system of intergovernmental cooperation, to give up the exercise of some attributes derived exclusively from their national sovereignty in order to transfer this prerogative to a supranational level. In this context, there was born the concept of European Union, which is equipped with its own attributes and powers, by virtue of which it may adopt provisions to be invoked equally to all Member States and which has an equivalent effect (in its areas of competence) such as the national legal acts. We can thus speak of *legal integration*, an overlap between some of the sovereign attributes of the states and the supranational competences of pan-European institutions created by the national states themselves in order to represent their common interests.

The first organizations of this kind, which are the backbone of what would later be called the European Union, are the European Coal and Steel Community (E.C.S.C.), European Atomic Energy Community (E.A.E.C. or EURATOM) and the European Economic Community (E.E.C.). Since the 80s, the three structures have received the generic name of *European Community*, and from 1993, with the entry into force of the Maastricht Treaty, it is the most important *pillar* of the European Union. The idea of creating European Communities was launched in May 9, 1950, in the political declaration of Robert Schuman, the French Foreign Minister at the time, who presented, at the time, a plan that had previously been thought thoroughly with the French economist and thinker Jean Monnet.

To better understand the essence of this statement it is necessary to place it in the *historical context* of the time. The failure of the Moscow Conference regarding the future of Germany, held on April 24, 1947, was to draw attention of the Occident on the fact that the Soviet Union, which proved to be an active partner of the West in the fight against fascism, became a source of immediate danger to the western European democracies. Subsequently, another event increased the tension created: the Berlin blockade in the spring of 1949. After this situation created between the West and the U.S.S.R., on April 4, 1949, the main jump of Western Europe and the United States of America have established their collective security through signing the North Atlantic Pact, the birth document of the North Atlantic Treaty Organization (N.A.T.O.).

In response, the Kremlin felt the need to step up threats against Western governments and, even more, to display their military potential by achieving the first successful Soviet experiment in matters of atomic bomb (September 1949). As expected, all helped to create a climate of insecurity and fear in the international politics scene. Thus, there began an East-West confrontation known in history as the *Cold War*.

In the same period, Federal Germany was allowed on May 8, 1949 to adopt its basic law, which has the legal power of a constitution, and, thus, having created the conditions to decide its own internal politics. Consequently, the status of Federal Germany would become, in the tense context of the relations between East and West, a subject of rivalry. On this background not favorable for the creation of a climate of peace on the old continent, U.S.A. realized the need to accelerate the process of economic recovery of this country, on whose territory, the line of democracy of the two models of state organization was crossing, based on two diametrically opposed political systems: democracy and totalitarianism. Taking into account all the factors that led to the political situation that had been reached at the time, the political and military analysts in Washington concluded that it was essential to rearm Federal Germany, as the assumption that the West would have been forced to face the Soviet threat was no longer utopian.



In the same political context mentioned, the French diplomacy, in turn, must decide between two courses of action, a situation which put it in a very sensitive position. A first way forward was, therefore, to give the American pressure and to accept the revival of the German power. This would certainly meet the vehement opposition of the French public opinion. A possible option, in this case, consisted in maintaining a rigid position towards this subject, situation that would have brought to a standstill its relations with Bonn.

Alongside these political sensitivities, there were *a series of economic blockages*. An example of this was the crisis of overproduction in the steel industry which seemed imminent because of the steel potential of the European states. The demand permanently diminish and prices fell steadily. There appeared more obvious that the producers would resort to the creation of a cartel to limit competition on the market. This fact was totally unpleasant for the European economy that was in full phase of reconstruction. Thus, the Western European economies could not afford to leave this sector of the industry at the disposal of speculation.

Being displayed through the two political variants mentioned, at least as uncomfortable for the French foreign policy, in the spring of 1950, Robert Schuman, the French Foreign Minister, received from his American and British counterparts the imperative mission to advance West Germany a proposal of integration in the great Western family. It was obvious that Paris could not shirk its responsibility. For this reason, on May 10 1950, the French held a governmental meeting with the three victorious Western powers, France, Britain and the United States of America, occasion with which they were to launch Germany an initiative in the mentioned purpose.

It was, thus, the political and economic context in which the French Foreign Minister, Robert Schuman, used the services of Jean Monnet, who was then the Commissioner of the French plan of modernization. He was appointed in this position since 1945 by General Charles de Gaulle, in order to develop projects that lead to the economic recovery of France. For this reason, Monnet became one of the most influential people in the Western world. The failures of the utopian projects in order to achieve a united Europe have shown that the states would always oppose resistance to any initiative to create a supranational structure through the classical method of an international treaty, to be signed following negotiations by the participating states. For this reason, Jean Monnet considered that it was illusory to believe that such a construction could be done in a single phase. By the substantiation of his opinion in order to ensure success in this endeavor, the French economist should have limited his objectives in specific areas, but with great psychological impact and to propose concrete ways for establishing a decision mechanism that received afterwards, gradually, new skills<sup>1</sup>.

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<sup>1</sup> Ion Jinga-U.E. *Realități și perspective (Realities and perspectives)*, editura Lumina Lex, București, 1999.

Starting from these basic ideas, there has been developed the "Schuman Plan" which was to be launched at the government meeting mentioned. In fact, it was basically the result of a strictly confidential agreement. Jean Monnet's team drafted, in late April 1950, the explanatory memorandum and a motion device that did not fit the classical diplomacy schemes. The objective of Monnet was to place the entire Franco-German production of coal and steel under the direction of a common supreme authority, within an association, which since its establishment would be open to the participation of other European countries. Inferring the consequences that the consultations with the central government institutions specialized in this field might have for his initiative, Monnet protected his project with large discretion. This approach not only helped him avoid possible objections or counter proposals that would have altered the essence of his idea, but also helped him preserve the advantage conferred by a surprising approach<sup>2</sup>.

Studying the proposal of Monnet, Robert Schuman has mastered it, point at which it entered the *sphere of political liability*. In order to increase the chances of success of this approach, simultaneously with the moment in which the French minister claimed it before its colleagues in the government, an emissary personally handed the proposal text to the Chancellor Adenauer, in Bonn. His reaction was immediate and enthusiastic, accepting the French proposal wholeheartedly.

Thus, presenting the French proposal, Robert Schuman, in his policy declaration from May 9, 1950 stated that a united Europe could not be done at once, but through a series of concrete steps. For this reason, the French foreign minister stressed that, firstly, there had to be established a de facto solidarity, through which there could be eliminated the traditional opposition between France and Germany, and the merging economic interests must have led to the establishment of a community in this regard.

This initiative reconciled some totally different aspirations. On the one hand, the European Community sought to impose Germany a unilateral control over its heavy industry and, on the other hand, it wanted to be left completely independent, case in which it would have been a potential threat to peace. The only way out of this dilemma was the integration of Germany, both politically and economically, in a solid structured European community<sup>3</sup>.

In other respect, there was another factor that facilitated a decision favorable to the creation of communities mainly with economic and political character, avoiding military issues at the moment. On the grounds of the outbreak of the Korean War and as a consequence of the worsening of tensions between East and West, the

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<sup>2</sup> Idem.

<sup>3</sup> The *Schuman Plan* became reality on April 18 1951 by signing, in Paris, by six founding countries (Belgium, Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands) the Treaty establishing the European Coal and Steel Community (E.C.S.C.). It entered into force on July 23 1952.