

MARIO PINES

*Prof. ord. di Diritto Bancario
nell'Università degli Studi di Trieste*

DOWNGRADING THE EUROPEAN ASYMMETRIES¹

Asymmetries in a Growing Europe.

“The Italian-Slovenian border, in its transformation to an inland border, represents the progress of the European citizenship, in taking part to the integration benefits and to Europe’s progress. Even for the national minorities, the connected juridical tutorship are factors in further benefits sharing and communication among people commonly belonging to the European Union²”.

The most relevant and awareness requiring area, with reference to this aspiration, when it turns out to be necessary to verify the agreed utility as stated in the preliminary phases of the association, has become that of the Italian Slovenian eastern border, as zone of a historical ideological and ethnical antagonism which comes across in the Trieste and Gorizia provinces outstandingly, territories that testify peculiar characteristics that have justified the *Special Status* of the *Region Friuli Venezia Giulia*, with the insertion within the Treaty of Peace of the *Free Territory of Trieste*, proposition overthrown by the cold war but expressing the histo-

1. “As for increasing the subscribed capital, on the first places are listed the investors from: Netherland with 13 company and 37.2 million USD (34.1 million EUR), Cyprus with 15 companies and 11.6 million USD (10.6 million EUR), China with 280 companies and 10.8 million USD (9.9 million EUR) and Great Britain with 14 companies and 8.3 million USD (7.7 million EUR)”.

<http://www.onrc.ro/english/news.htm>(Rumania Foreign Trade Ministry 2003)

2. Message sent by Mr. Ciampi, President of the Republic of Italy to the Mayor of Gorizia Mr. Vittorio Brancati in occasion of first of May 2004.

ry of the Region, with deep and old motivational and ethnic multinational roots.

On the fourth of February 1944, a member of the CLN *Venezia Giulia*, Mr. Emanuele Flora, sent to Carlo Sforza heading the North Italian Liberation Committee this message: *“One approach of yours to the Allied and Yugoslavian leaders is urgent to achieve an agreement about Trieste, to make possible and principally activate a local cooperation Italic Yugoslavian, making it more and more efficient and lasting. We propose a solution that starting from a preliminary Italian sovereignty according to the self-determination principle, transforms the harbour in an international ‘corpus separatum’ with an inland custom free zone. The Corpus separatum would be administered by all the interested States. Same solution for Fiume. We keep, search and develop direct contacts with Slav partisans and alongside are fighting against Germans; we would appreciate a reply as soon as possible.”* Felluga and Miani dissented about this message, with Flora they constituted the Action Party in the *Giulian Region* leading team³.

The peculiarity of this territory has ancient origins which date since 1716, after the Gorizia’s same year earthquake, when a first relevance of the *Isontine* area appears within the proclamation in 1717 of the *Free Sailing* in the Adriatic Sea⁴ when the Gorizia’s

3. Proponiamo soluzione che partendo da premessa sovranità italiana Trieste conforme diritto autodecisione, trasformi porto in ‘corpus separatum’ internazionale con retroterra zona doganale franca. Flora Emanuele 4 febbraio 1994 from CLN Venezia Giulia to Carlo Sforza CLNAI21 August 1944..... Reuter.... Carlo Sforza comments: *“almeno Trieste potrebbe rimanere italiana, magari con il porto internazionalizzato...”*

4. Charles VI declares the free sailing in the Adriatic Sea and promotes land and maritime trading in the Empire according to the suggestions of prince Eugenio from Savoia. He formally asks the Trieste municipality about the best location to start the free port. Trieste sends to Graz and Vienna the baron Gabriele Marenzi. Two Austrian sailing ships are sent from Ostend to Eastern India to explore the trade chances toward those regions. Also in Venice the reopening of a free port is advanced, the government refuses.
<<http://www.triestemia.com/TSStory.htm>>

municipality, requested to provide trades and suggested to declare free ports *Buccari, Fiume, Trieste, Aquileia* and *Duino*.

Exemptions and special rights to non residents were granted as they decided to settle in the area. Charles VI, recommended by Casimiro Donadoni from Bergamo, refurbished the roads leading from the kingdom inland to the harbour and granted the *Free Port Statute to Trieste* in the year 1719⁵.

In the border zone, up to the year 1420 the *Aquileia Patriarcate* had dominated the old Celtic Friuli, typically mountainous with an agriculturally oriented economy, with a local peculiar language the Friulano, an oriental version of a ladin language⁶. The near by *Gorizia* Countee, before the Habsburg rule, after the *Count of Gorizia and Tirol* Henry the 2nd who was ruling in 1500 his broad possession as lord of *Treviso* from the Bruck Castle near Lienz and Conegliano, had always been a Region characterized by the Venetian accent, comprehensible till down to *the Bocche di Cattaro in Dalmatia*, where till now sounds the typical *Serenissima* accents, which is common in the Goritian Countee firstly and in the Triestine dialect later.

In this new scenery, in the year 2004, *Trieste, Gorizia, Monfalcone, Sezana* and *Koper* are again commonly involved on an historical recurrence within the area of the old Countee at the moment of the inclusion within the European Union of the whole

5. The king firstly (1716) ameliorate the road to the harbour, then (in 1717) issued a trade Patent proclaiming:

- free sailing in Adriatic;
- protection and guarantee to vessels carrying the Imperial flag;
- chance to treat as pirates all those impeding the free navigation.

<<http://www.univ.trieste.it/~itccarli/italiano/cmtsport.htm>>

6. When the Jews were expelled from Spain in 1492, they took their language with them. In the Balkans and Turkey it was called Ladino, a corruption of the word "Latin" used to distinguish it from Turkish.

<<http://www.jewishworldreview.com/0798/ladino1.asp>>

North East region at the end of the Northern Adriatic sea which, during the last 1800 years, has seen the struggle of the Western with the Eastern Empire, that of the Mediterranean Latin culture against the invading Celts, that of the Illiric Republic against the Cisalpine and finally that of the force of the Warsaw Pact against the Nato Alliance, always the Indo-European languages against each other within the *Microcosm* in an *Euro Region*.

The European integration process, which started with the Rome Treaty in the year 1958, swollen later through the successive fifty years and still in full expansion, in order to consolidate and further proceed to the final political union, that all seem to desire and work for, requires some reconsiderations offered and allowed by the historical Slovenia adhesion.

In the initial and final 1996 records anticipating the Slovenian adhesion, there is an unambiguous legal proposition, conveyed eventually in the association decree and by now consolidated within the European legislature, representing the relevant intent protocol with the association justifications and determinations which have become the final adhesion *charter* of the new EU member State, essential guideline to understand the expectations and potential changes of the system as envisaged.

The Association agreement between Slovenia and the UE, ratified by both National Parliaments - in Italy by the law 108/98 - rekindles some profiles of the original motivations, as endorsed by the parties, which are fundamental in comprehending, promote and upholding, good neighbours relationships in the European contemporary economic integrating process in the eventually perspective of a political common European house.

In taking advantage of the chances available and in coping with the current problems related to the tough global market competition, in the increasing European environment, these Adriatic areas, culturally detached from the major Northern Sea financial centres, already developed and well connected in the global economy since the Renaissance and the colonial con-

quests⁷, must today reconsider their local strategies, often rushed and fragmentarily set up in several diversified historical backgrounds.

It is worthwhile to remember how, in formalizing the Association of The Republic of Slovenia to the UE, among the final declarations expressed on the tenth of June 1996 in Luxembourg, as entirely resumed in the Italian ratification, law 23rd march 1998, n. 108, among other relevant statements we find:

in the aforesentments*Considering the final objectives of the agreements signed in Osimo in November 1975 between the Socialist Republic of Yugoslavia, whereas the Republic of Slovenia has become a successor, and particularly the **agreement about the promotion of economic cooperation between the two countries;***

at art. 73

4. *Particular attention must be given to the measures apt to promote - the **cooperation among Slovenia and the Countries in Central and Eastern Europe...***

at art. 88...

2. *To this goal the following actions are foreseen...*

- **Common actions of regional and local authorities with regard to the economic development.**

at art. 94...

2. *In particular, the cooperation includes:*

.....

the enactment of across border mutual infrastructures;

at art. 108.....

..... *in the free zones that may be*

- **activated trough agreements between the Republic of Italy and the Republic of Slovenia, according to the agreement on economic cooperation signed in Osimo in 1975.**

at art. 127.....

The current agreement is entered for an unlimited period of time.

7. Amsterdam was the world financial centre and the Dutch fleet the greatest in the world. <<http://www.u-s-history.com/pages/h561.html>>

To better understand the opportunities of the Association *charter*, it seems worthwhile to also remember that, according to the special formal provision inserted in the *Treaty of Rome* and relating to the validity of all previously undersigned international treaties, some local unique enforceable instruments are culturally connected to:

- the free Port statute as originally granted by Charles VI in 1719,
- the incorporation of the Illiric Provinces, which first Governor was the Napoleon's Minister of Interiors M. Giuseppe Fouché up to the year 1813,
- the Austrian Kusterland chartered by Austro Hungarian monarchy including Gorizia, Gradisca and Trieste,
- the *Reichunmittlebarstadt*, Austro Hungarian free zone, exempt from military service up to the year 1900, with regard to the complex Central European and bordering Nations requests, as separately described in the S. Germaine separate treaty of peace, signed jointly by Italy and Austria, reinstated unhappily in the *Adriatisches Küstenland* within the third German Reich, and lawfully deriving from:

- the provisions of the treaty of peace of the 10th February 1947⁸, maintaining the free port status and enacting of the *Free Territory of Trieste*, turned down by the cold war the latter and blurred by the informal free port function exploited *pro tempore* by the port of *Koper* in Slovenia the former. This is a basic existing international law and effective pact which enforcement is still achievable in the consolidated body of laws, never disputed in any international court, neither historically amended by any authority ever and whose enforceability should be unquestionably expressed by the Court of the European Community in Luxembourg, as soon as such an issue will be there filed in the proper procedure,

8. "The definitive treaty of peace is an unilateral act imposed to Italy and accepted by its post-war government."
<<<http://www.cronologia.it/storia/a1947aa.htm>>>

- Annex VIII to the treaty of peace of 1947 which art.1 asserts that: *In order to guarantee that the harbour and transit infrastructures of Trieste be available in equal degree by all the international trade and for Yugoslavia, Italy and the countries in central Europe, as customary in the rest of the free ports the world over*⁹:
- the EU Rome charter in which the EU, at the original art. 234¹⁰ of the European Union, unmistakably endorses the validity and legitimacy of all the existing agreements former to the treaty of Rome, the art. 234, indeed, establishes that : *The provisions of the current agreement do not distort right and obligations stemming from conventions come into effect before the enforcement date of the treaty itself, between one or more member State on one side and one or more States on the other;*
- furthermore as the Treaty of Peace has been consolidated and bares an enlarged conventional nature, to it is also applicable the

9. Art. 1. 1. *Per assicurare che il porto ed i mezzi di transito di Trieste possano essere utilizzati in condizioni di eguaglianza da tutto il commercio internazionale e dalla Jugoslavia, l'Italia e gli Stati dell'Europa Centrale, secondo le consuetudini vigenti negli altri porti franchi del mondo: a) sarà creato nel Territorio Libero di Trieste un porto franco doganale, entro i limiti fissati o previsti dall'Articolo 3 del presente Strumento;b) le merci in transito per il Porto Franco di Trieste godranno libertà di transito, ai sensi dell'Articolo 16 del presente Strumento.*

2. *Il regime internazionale del Porto Franco sarà regolato dalle disposizioni del presente Strumento.*

.....
 Art. 5. 1. *Le navi mercantili e le merci di tutti i paesi godranno senza restrizione del diritto di accesso al Porto Franco per il carico e la discarica sia di merci in transito, che di merci destinate al Territorio Libero o da esso provenienti.*

2. *Le autorità del Territorio Libero non percepiranno sulle merci in importazione, in esportazione od in transito attraverso il Porto Franco né dazi doganali, né altri gravami, che non siano in corrispettivo di servizi prestati.*

3. *Per quanto si riferisce tuttavia alle merci importate attraverso il Porto Franco, per essere consumate entro il Territorio Libero od alle merci esportate dal Territorio Libero attraverso il Porto Franco saranno applicate le relative leggi e regolamenti in vigore nel Territorio Libero.*

10. Now becomes art. 307

1969¹¹ Vienna Convention which grants safeguard and compatibility clauses: at the art. 30, § 2, indeed, it is said: *When a Treaty specifies that it is subordinated to a previous or successive treaty, and that it must not be considered incompatible with this other treaty, the clauses of this treaty prevail;*

- the London Memorandum of 1954, which at the point 5 acknowledges that: *The Italian Government engages itself to keep the Free Port of Trieste according to the articles form 1 to 20 of the annexed VIII to the Treaty of Peace with the Republic of Italy;*

- the present Italian Custom Code reflecting the provisions of custom laws as inserted in the D.P.R. 23 January 1973, n. 43, where at art. 169 it has been formally stated that: *Regarding the Freeport areas included in the annexed n. VIII to the Treaty of Peace among Italy and the allied and associated Powers, signed in Paris on the 10th of February 1947 and enforced under the legislative decree issued by the transient head of State on the 28th November 1947, n. 1430, remain in force the previous rules when more favourable.*

- the Treaty of Osimo enforcing law 14 March 1977, n. 73, which definitively defines the configuration of the political Italo-Yugoslavian border where at art. 1 has been proposed an agreement: *about the economic cooperation promotion ...with... four related annexed, the first of these is the Protocol illustrates the Free Zone. In it the parties had envisaged the institution of a Free Zone where the Free Port of Trieste¹² legal status will be applied and at the*

11. The art. 31, sec. III, of the Vienna convention on Treaties law statues the importance of the ... *ordinary meaning* as basis to the interpretation. According to the International Law Commission comment: *The Article ... is based on the view that the text must be presumed to be the authentic expression of the intention of the parties; and that in consequence , the starting point ... is the elucidation of the meaning of the text.*

12. It refers to the five free ports in Trieste:

- The old free port
- The new free port
- The *Scalo Legnami*
- The oil pier
- The industrial free port

art.4, I° co. of the same law necessary implementations of *infrastructure and plants aimed to the improvement of economic activity on the borderline territories within the Region Friuli Venezia Giulia* have been predicted;

- the law n.19/91¹³ where at art 1, § 1, the reference to the international economic activities and cooperation development of the *Region Friuli Venezia Giulia* have been reaffirmed, considered its territory as a specific geopolitical location, as frontier border line of the EU. Therefore, instruments capable to develop economic cooperation are to be provided and, according to its provisions, *instruments capable to develop financial and economic cooperation with Austria, the Central and Balkan Europe, as well with Russia.... as well ... to evaluate the Pentagonale Initiative*;¹⁴

- the law 108/98 in the art. 108, where the *reference to free zones according to the protocol on free zones as outlined in the law n. 73 of 1977*, defined Osimo agreement clearly appears.

The set of the above listed laws and bylaws encourage to undeniably consider consistent, with the foundation of the association instruments, the main beliefs of the delicate role that the Republic of Slovenia was assuming as an essential interface between Western and Central and Eastern Europe, surfacing after half a century of self segregation and cold war, marked by isolation and autarchy and from a social system characterized by pro-

13. As a memory, the Senato had issued an obligation, on the 15 December 2000, addressed to the Government, adopting the law proposition *disegno di legge numero 4885*, considering some amendments to the borders law. l. 19/91 art. 3, then abrogated by tax law 2004, by which some integrations would have been added to realize an international financial center in the free port of Trieste. The problem has now been overcome by the new principles within the new tax code which realize some relevant principles useful in the tax planning strategies as the participation exemption and the exclusion of foreign dividends from local corporation taxation.

14. Now C.E.I. (Central European Initiative) with headquarters in Trieste and seventeen member States.

gressive decline and worsening of most of material and moral general conditions.

Whenever the Association of new States to the EU and among those that of the Republic of Slovenia, will actually improve the integration processes of distinct economies within the EU single market, the merchandises and services flow, activated by further progressive integration of the remaining Central and Eastern European areas, will start to press over the North Eastern Adriatic and the fifth Pan-European corridor in the *Giuliana* Region.

The area *Giuliana* will become henceforth a natural hub calling for adequate infrastructures and clear legal comprehensive operating competitive frameworks.

Equally, the progressive economic Asian expansion and particularly the Chinese one, since China has become a full WTO member, and is actively present over the European market, already overridden by marginal activities in the field of restoration and retail distributions activities, will not take too much time to jam the Suez canal in direction of the Adriatic sea and toward Central Europe, where the bordering areas of Northern East Italy and Slovenia are the natural not substitutable hub for goods coming from far East along the Southern Rim.

At same time, the shrewd Northern Conference system, managing transportation and logistic combining maritime and railways shipping activities, ever since supported by the disputable preferential German railways tariffs system, in the Belgium, Dutch and Hanseatic cities area, alongside the Northern Range, has been visibly monopolizing most of the European traffics and, in the Fall 1999, as a symptomatic example, the huge German *Eurokai-Eurogate* conglomerate, owning the Hamburg harbour and shareholder of the Bremenhaven e Antwerp harbours, pursuing the consolidation of the logistics and European transportation dominance target, has stretched its tariff dominance over the

Atlantic and the eastern transportation routes to and from continental Europe¹⁵.

On the same geographical position and within the logistic and transportation infrastructures system, appears also the hypothesis of a *Transversal Trans Siberian*, otherwise known as *Trans Siberian Land bridge*, or *Euro Asiatic Development Bridge* which, in transportation terms, represents the evolution of Sir Halford John Mackinder¹⁶ predictions. In the year 1904 he was already fearing the connection of continental Europe with the Euro Asiatic mass and, through this platform, with all the Pacific coast countries. Such an hypothesis would rekindle a renowned *Heartland*, the hinge of the world, opposing the *Rimlands*, which represents the necessary alternative communication ways essential in the infrastructural integration of Eurasia on the Southern borderline up to the Suez Canal.

Along the transversal Trans Siberian road to Brest in Byelorussia, the railways link will require about two weeks, from Brest the forwarding of the merchandise would follow the Warsaw direction to connect to the strategic 3rd corridor, Kiev-Warsaw-Berlin-Paris, already in an advanced construction stage and heading toward the ending of the 5^o corridor.

In effect, in integrating West and East, the road Donetz, Persia, India, China, a likely Southern alternative to the Trans Siberian backbone, seems cheaper and easier and faster joining the

15. "In the last decades many changes occurred in the liner shipping industry as well as in the market structure and in the organization of port terminal operators. Due to the necessary linkage existing between liners and port operators - it is not by chance that efficient ports are those in which goods pass through from ships to inland means of transport as smoothly as possible - the latter changes may be often considered as answers to changes occurring in liner shipping." Claudio Ferrari & Marco Benacchio, Market structure in container terminal operators and port services, in *Iame (International Association of Maritime Economists) "The Maritime Industry into Millennium"*, Naples 13-15 September 2000.

16. Halford J. Mackinder, *Democratic Ideals and Realty*, 1981, Westport, CN.

Mediterranean to Europe and to the most developed side of Asia than any Northern alternative; in this perspective, the 5° corridor would require a Southern deviation to connect the Donetsk area in Ukraine, the most industrially developed area in the country.

It is known that a railway unit cannot load more than 30 TEU of 91 m², but for sure, this size could allow a shipment transcontinental volume of units ready for fast delivery at fast rotation, a kind of priority vehicular flow that, given the volume of potential interchange would assume characteristics of high speed and heavy load within the inevitable integration process going on between East and West. In the coming years several *district-parks* will be available in the oriental EU border line, now in progressive approaching to the Far East areas. Some of these logistic instruments are already operative in Rumania, Hungary, Poland but several other *district-parks* are foreseeable also in Ukraine, Croatia e Bulgaria.

Considering the current industrial evolution and the high intensive technological manufacturing, the potential market for forward outsourcing processes is swelling and represents, in this day and age, a highly relevant competition factor, assuming the lower wages in all these countries, where quality is anyway increasing, when compared to the western standards and the persistent expressed willingness to lower economic inequalities among countries.

The impressive goods flow between Central Asia and Europe is at this time supplied by almost three operators: the Swiss corporation ICF *Mixed Block Trains*, the German *Transchaft International*, a division of the DB-Cargo *Ganzzugverkehr* and the Polish *Polzug Silk Road Express*: they provide integrated shipment services on the routes *Ostwind*, currently to almost all the European operators interested in the globalization processes¹⁷.

17. Some new positive attitudes appear also at scientific and institutional level: Jagdish Bhagwati, In *Defense of Globalization*, NY 2004.

In China, in the prediction of a huge trade volume, now only potential but already very significant, the investments in infrastructures are directed toward the logistic delivering hubs of *Shenzen*, *Pekin*, to the free zone in Shanghai and the port seems enormous as large investments have been made to create networks of pan-Chinese logistic hubs by the principal world-wide operators as *APL American President Line*, *Maersk*, *P&O* e la *NYK Nippon Yusen Kaisha*.

Presently, nevertheless, 70% of the incoming and outgoing world traffic from Europe passes through the *Northern Range* gates, leaving only the left 30% to the Mediterranean harbours, which circumstance is worsening the European asymmetries.

Major harbours world containers traffic, year 2002

World Ranking	Port Name	Trade Region	Total TEU
1 (1)	Hong Kong	East Asia	19144000
2 (2)	Singapore	South East Asia	16800000
3 (3)	Busan	North East Asia	9453356
4 (5)	Shanghai	East Asia	8610000
5 (4)	Kaohsiung	East Asia	8493000
6 (8)	Shenzhen	East Asia	7613754
7 (6)	Rotterdam	Northern Europe	6515449
8 (7)	Los Angeles	North America West Coast	6105863
9 (9)	Hamburg	Northern Europe	5373999
10 (11)	Antwerp	Northern Europe	4777387
11 (12)	Port Klang	South East Asia	4533212
12 (10)	Long Beach	North America West Coast	4526365
13 (13)	Dubai	Mid-East	4194264
14 (17)	Yantian	East Asia	4181478
15 (14)	New York/New Jersey	North America East Coast	3749014
16 (18)	Qingdao	East Asia	3410000
17 (15)	Bremen/Bremerhaven	Northern Europe	3031587
18 (20)	Gioia Tauro	West Mediterranean	2954571
19 (16) *	Felixstowe	Northern Europe	2750000
20 (19)	Tokyo	North East Asia	2712348

<<http://www.ci-online.co.uk/>>

Absurdly, even 40% of the Italian outward export traffic asymmetrically gravitate towards the *Northern Range* harbours: the

reason lies with the remarkably higher Italian railways fees: from Munich, Bavaria, it is cheaper to send goods to Rotterdam than to La Spezia or Trieste, although there are 300 more km; from Milan, often *Northern Range* harbours are preferred in despite of the Adriatic or Liguria harbours; these bizarre situation is likely due to the unfinished Italian railways deregulation, and to the stratified and consolidated advantages and subsidies of the *Northern Range* railways and related maritime facilities which have been growing and capitalizing since the end of the second world war. In Italy, the enormous and insane volume of road trucking and lorries servicing the major volume of transported goods has not been helping the evolution toward a more competitive transport industry in a highly competitive opening market.

Such a peculiarity is not helping the progress of Italian harbours and the presence of the Italian transport industry in the world wide growing competitive market. All the Italian harbours, furthermore seem to be eternally fighting each other in a national devastating competition, discouraging any rational restructuring design of the transport industry in our country.

Apart from being a road and railway communication framework, the Northern part of the Adriatic Sea and the inland neighbourhoods of Gorizia, Koper and Trieste have potentially become, in the fifth corridor system, a synergetic industrial and commercial intermodal system exploitable in the circulation and handling of merchandise and goods trough physical, geographical and temporal transformations, which extent would not exclude the interaction trough *spot e forward* exchange transactions pertaining commodities to be transformed in order to reach the free circulation legitimacy admission by the local custom authorities on goods coming from any region of the world outside the EU.

In the Slovenia Association charter, such a pillar function has been finely detected but the difference between the Adriatic and the Tirennum Sea, in spite of the natural proximity, has been feed-

ing a tough competition about the few left resources and chances that has been increasing the sensible sufferance that has now surfaced in the Adriatic routes.

For the next 20-30 years very little will be made on the Northern transcontinental corridors side, which are potentially joining Rotterdam to Pusan, Shanghai and to Japan, as above reminded and, in any case, the existing infrastructures would not be able to attract and support the huge merchandise volume stemming from the Pacific side of Asia, estimated at this moment in 20 million TEU per year, and whose growth rate is close to 10% without considering the fact that China has joined the WTO.

The pressure from Europe will not walk off soon toward the *Silk Road*, and will only slowly surface in the South of Ukraine, in the Donetsk industrial region in terms of complementarities to the third and fifth corridors final stations in North Ukraine at Kiev and to the projected *Trans Siberian Landbridge*.

In this framework, still relevant appears the potential inland role of Gorizia and Nova Gorica and the position of Trieste with its special and uncommon border line legislation, providing facilities to the advanced logistic activities¹⁸. This hub, close to the harbour system of the North Adriatic and serving the Mediterranean, Suez and Gibraltar, on an evident geographical and economic position supremacy, will not fail to affirm itself as happened during the first globalization process in the Austro-Hungarian empire, whose impressive architectural remnants are still visible in the city's Port facilities.

Back in the most long lasting European peace, after a century and a half of world wars, hot and cold, as during the Suez Canal opening period, when the first circumnavigation of the globe by Massimilian of Habsbug, sailing from Trieste in the year 1857 on the *Novara* and returning to the town in 1859, imperial ambas-

18. See on this subject: <www.frezones.org>

sador of the importance of the Adriatic sea terminals in the global economy, the Trieste region with its deep sea waters re-emerges over the scene, considering its potential double European space departing from the North Adriatic toward East and toward North. On one side the surfacing South - North connections toward Central Europe, on the other the Central - Eastern Europe emerging from the collapsing Berlin wall, never united despite the global dreams of Cesar, Napoleon and ... many others.

At this moment, the European Continent has to discover the role of the Mediterranean Sea in the developing West - East merging economies and the Adriatic may slowly become the sea highway whose main gate, located in the area *Giuliana* has been noticeably assuming a growing potential role, as the overwhelming particular Hanseatic harbour facilities and price structures are somehow to be balanced. The area *Giuliana* has on her side the impressive geographical location, the riches, history and culture of its *microcosm* ever since polyglot and multilingual where three European DNA, that have always characterized its belligerent nature, now eventually converge.

What has to be yet discovered, clear of prejudices and misbelieves is the exceptional meaning of the special legal framework that belongs to the *Giuliana* area, as above considered and outlined, which, for various reasons and conflicting interests have never been either applied or decoded by any competent legal authority, apart from the only related *Maltese* judgment, issued by the Court of Appeals of Trieste and its specific outstanding significance¹⁹.

19. LS 2 August 1947 n. 811 l.

TI 10 February 1947 PARIGI

TI 5 October 1954 LONDRA

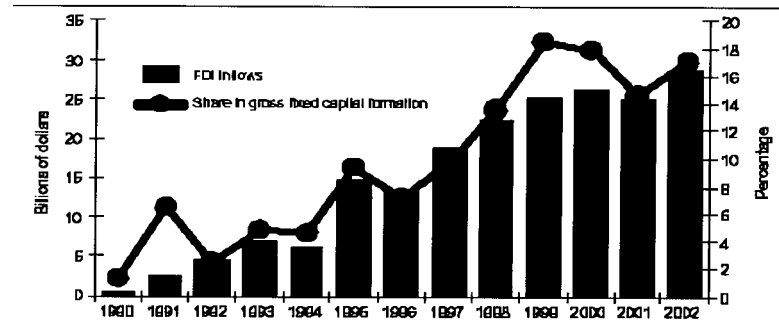
Ai punti franchi del porto di Trieste si applica la disciplina prevista dal trattato di pace di Parigi del 10 febbraio 1947 (all. VIII), così come confermato dal "memorandum" d'intesa di Londra del 5 ottobre 1954 (par. 5), con la conseguenza che le operazioni portuali svolte in dette aree possono avvenire senza ingerenza delle autorità doganali. (Trieste Courtyard, 13 May 1997 Soc. Crossbow c. Min. fin. and another Foro it. 1998, I,1318 note (MALTESE).

Let alone the huge ancient concentration of logistic and transportation activities, extraordinary in the Countries forming the *Northern Range* (Belgium, The Netherlands, Germany) not less asymmetric appears the relevance of the outsized domiciliary and financial activities with respect of the Foreign Direct Investment activities in Central and Eastern Europe, and the annexed coordinating activities which means residing in the low combined local and international taxation systems prevailing in some Northern countries when agreements against double taxation meet *Participation Exemption* provisions, on foreign subsidiaries income. With a shrewd legal framework stemming from post war emergencies, The Netherlands, Luxembourg, the U.K., Austria and Belgium, among others, are applying special taxation features to foreign activities with regard to the global operators. The holding status with exemptions from foreign produced incomes and irrelevant withdrawal taxation, has been attracting global operators scared by the complex Latin taxing attitudes, hardened by the prevailing public deficits, stability pacts and often impenetrable and complex legal rulings.

The Central Europe appears today as the centre of the whole world's foreign investment flow: according to the Conference on Trade and Development of United Nations, in the dynamic of FDI in the ex COMECON²⁰ area a spectacular rate of growth has been observed and an asymmetric pattern, notwithstanding the stagnation global FDI phase.

20. Brian Carnell, World Investment Fell Everywhere But Central and Eastern Europe in 2002.
<<<http://www.overpopulation.com/articles/2003/000071.html>>>

Figure II.19. CEE: FDI inflows and their share in gross fixed capital formation, 1990-2002



Source: UNCTAD FDI/NC database (<http://www.unctad.org/fdi/statistics>).

In the study of all the historical progression of available data, reflecting the financial flows related to the foreign direct investments in Central Europe, what seems surprisingly recurring is the steady constant presence of The Netherlands location as a source of capital, affirming itself over its actual financial structure – the country has only 17 millions inhabitants out of the 337 millions before the 2004 European enlargement corresponding to 4,2% - and has always been on top inside the financial statistics of the European Union, as detailed in the underlying table considering the Czech Republic, or more in general in the evolution of all the European Union financial flows stemming from the most developed and relevant areas supporting global firms as shown in the following table.

In the case of the Czech republic, the evolution of the 1993-2003 data, confirms the effect of the Netherlands appealing services to the global enterprises, searching for strategic headquartering paths reflecting the desire to reach satisfactory tax planning schemes, as well as the relevant presence of the German industry, perceptibly active in the outsourcing processes.

It is important to point out how the FDI financial supporting activities and their logistic controlling, coordination and management centres in general lead to the Netherlands, Luxembourg, the U.K. and, among others offshore centres, Austria, who in some way shares the common legislative framework addressed

Czech Republic: Inward Foreign Direct Investment by Industry and Country, 1993–2003 (In millions of EUR)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
W. Europe											
Belgium	27	28	19	46	50	42	1293	57	180	464	135
Denmark	2	4	9	9	3	22	40	112	175	100	7
France	29	65	130	16	90	127	218	252	1.718	151	462
Germany	70	353	439	199	347	855	1219	1433	1.466	4.942	733
Un. Kingdom	0	32	41	67	174	310	98	171	484	-234	240
Italy	10	10	1	72	-32	24	44	39	-2	135	62
Netherlands	26	5	569	207	119	748	1061	1123	1.059	1.305	-1.383
Austria	47	68	67	166	84	370	782	800	295	809	542
Sweden	10	16	17	45	79	-62	119	160	23	115	17
Switzerland	12	33	525	44	42	100	332	247	196	288	233
Canada	17	0	0	0	0	-4	10	168	81	-119	14
United States	218	33	78	202	88	477	545	328	273	201	180
Japan	0	4	0	31	10	21	5	50	33	123	224
Other	91	83	86	38	100	289	169	464	317	731	822
Total	559	734	1982	1140	1152	3317	5933	5404	6.296	9.012	2.289

Source: Data provided by the Czech National Bank. <<www.cnb.cz>>

* Until 1997 data included FDI in equity capital, starting from 1998 data on reinvested earnings and other pital have been included in FDI flows.

to hosting, and globally managing activities functions mostly linked to the taxation structures relevant on the capital gain, foreign income exemptions, and channelling of global activities trough the wise management of the rulings against the double taxation and the lowest withholding rate available in the global tax shopping arena²¹.

The choice in headquartering a controlling and management holding company is not justified for the sole reason of such factors, which characterize the *NorthernRang* as the transportation and logistic, but also the above said services affect such choices.

Such evidence is unquestionable on the basis of the above table data which reflect the EU financial flows to and from no EU members counterparts and where the relevant role of the Netherlands is again emerging, considering the significance of this country in terms of population and GDP²².

21. "Although the Netherlands has a sophisticated tax system with high tax rates some aspects of its fiscal system are extremely attractive and make it the ideal location in which to base international trading operations" <<http://www.lowtax.net/lowtax/html/offon/netherlands/nethom.html>>

22. Source <http://www.eu-datashop.de/download/EN/sta_kurz/thema2/rj_02_30.pdf>

EU FDI flows with Extra-EU countries, 2000 and 2001 by source and major destination
(excluding reinvested earnings, in EUR Mio)

Year: 2001	Outward flows to					Inward flows from				
	Share in total EU (%)	Extra-EU	USA	Japan	Canada	Share in total EU (%)	Extra-EU	USA	Japan	Canada
EU-15*	100	202 059	38 248	8 289	18 844	100	96 727	82 782	7 814	8 708
BELGIUM/LUX**	19.8	39 953	20 248	2 024	-113	31.2	30 140	15 220	-28	2 817
DENMARK	1.8	3 656	81	-40	40	0.5	497	429	54	27
GERMANY	29.5	59 566	48 189	362	49	8.2	6 935	5 455	-454	712
GREECE	0.2	485	195	0	15	0.1	135	37	0	1
SPAIN	7.8	15 820	2 475	291	25	3.8	3 702	1 514	78	13
FRANCE	15.6	31 500	14 700	400	300	6.1	5 900	4 200	200	-20
IRELAND	-0.6	-1 209	.	.	.	-12.5	-12 088	.	.	.
ITALY	1.7	3 490	889	-82	100	3.7	3 534	1 770	475	85
NETHERLANDS	17.9	36 140	23 374	-117	500	28.2	28 199	23 017	394	323
AUSTRIA	1.3	2 681	118	25	6	0.3	285	235	12	1
PORTUGAL	0.9	1 736	82	.	4	0.1	104	171	1	58
FINLAND	-0.3	-585	1 100	50	150	0.7	646	50	0	0
SWEDEN	1.5	3 099	2 563	157	287	3.4	3 390	273	20	894
UNITED KINGDOM	2.9	5 934	-18 182	5 216	18 892	24.2	23 448	9 349	6 067	2 279

Year: 2000	Outward flows to					Inward flows from				
	Share in total EU (%)	Extra-EU	USA	Japan	Canada	Share in total EU (%)	Extra-EU	USA	Japan	Canada
EU-15*	100	322 827	168 628	8 372	37 941	100	188 982	73 982	11 734	14 699
BELGIUM/LUX**	9.7	31 243	15 022	-1 081	313	23.6	37 507	14 030	-149	12 187
DENMARK	0.5	1 529	1 798	-54	174	1.6	2 322	1 850	27	27
GERMANY	14.3	46 278	27 571	3 182	195	5.3	8 426	974	860	347
GREECE	0.1	377	175	5	0	0.1	95	72	-5	-2
SPAIN	11.1	35 860	7 249	29	0	8.1	12 921	11 252	56	-10
FRANCE	24.9	80 200	32 400	2 500	32 000	2.5	4 060	3 200	100	100
IRELAND	1.2	3 716	.	.	.	9.8	16 279	.	.	.
ITALY	1.4	4 383	1 870	10	57	2.8	4 171	2 233	83	294
NETHERLANDS	14.7	47 444	34 595	178	1 010	17.1	27 186	17 878	4 997	60
AUSTRIA	0.8	2 629	555	-2	10	0.4	646	338	28	-12
PORTUGAL	1.6	5 065	383	0	-2	0.1	113	-24	2	32
FINLAND	3.9	12 733	4 355	78	455	0.2	370	-89	51	1
SWEDEN	3.6	11 700	3 713	188	-86	6.5	10 304	3 046	1 085	31
UNITED KINGDOM	12.3	39 670	38 825	1 326	3 825	22.3	35 422	18 434	4 597	2 943

* EU-15 aggregates with USA, Japan and Canada include estimates for Ireland

** Belgium-Luxembourg Economic Union

. Not available

The occurrence is recurring in Central Europe and in Hungary as well. In examining some data reflecting the year 2000 foreign investments in this latter country, on the interval January - September, the absolute presence of the Netherlands as country source of foreign investments may be understood on the sole reason of the ruling framework in taxing and hosting *holding* activities, likely reflecting the joint Netherlands Antilles and Netherlands agreements and exemption structures²³.

23. "Dividends received by a Dutch company from an equity participation in another company are exempted from Dutch corporate tax. This participation exemption is a very important provision of Dutch legislation and is based on the principle that proceeds paid out of profits that have already been subjected to corporate tax should not be taxed again." <<http://home.t-online.de/home/Nikol_eizik/steuern_in_niederlanden.html>>

Hungary 2000 The investors' country geographic region - Euro million

	Period Jan.-Sept 2000	Percentage
Austria	19,4	2,05
Belgium	13,3	1,4
Finland	0,4	0,04
France	29,2	3,08
Netherlands	386,1	40,71
Ireland	0,6	0,06
Luxemburg	19,5	2,06
United Kingdom	17,2	1,81
Germany	123,0	12,97
Italy	19,5	2,06
Switzerland	41,8	4,41
Sweden	102,4	10,8
Other European Countries	39,2	4,13
United States	72,8	7,68
Canada	19,8	2,09
Other American Countries	1,8	0,19
Africa	1,0	0,11
Australia	- 0,1	-0,01
Japan	31,0	3,27
South Korea	0,0	0,0
Other Asian Countries	9,0	0,95
Not allocated	1,5	0,16
Total	948,5	
O/w EU	744,2	
EMU	621,3	

Fonte: National Bank Hungary, Statistics Department
 <<<http://english.mnb.hu/actSearch.asp?id=7>>>

In observing the Rumanian case, a similar situation withstands this thesis about actual historical asymmetries governing the localization factors over the financial European landscape with regard to the considerably non homogeneous environment within continental Europe.

Top investing countries in Romania D.F.I. stock as of 31December 2

Value of the registered capital brought in foreign currency (million USD)

Source: << [http:// www.majorcompanies.ro/digest/articles/larive.htm](http://www.majorcompanies.ro/digest/articles/larive.htm)>>

National Trade Registry Office Romania I.B.D. S.R.L.

No.	Country	%	
1	The Netherlands	789	16%
2	Germany	549	11%
3	Cyprus	378	8%
4	Italy	340	7%
5	France	336	7%
6	USA	315	6%
7	Austria	286	6%
8	South Korea	234	5%
9	UK	213	4%
10	Turkey	197	4%
Total registered capital in foreign currency for top 10 countries		3,637	74%
Total registered capital in foreign currency		4,882	100%

Even some State not included within the next candidate to the European Union membership seems to be affected by such a localization pattern, biased buy the Dutch connection model, Ukraine for instance, a relevant member of the Central European Initiative and a candidate to a further consideration and economical relevance in the European financial scenarios, shows such a confirming recurrence.

According to the Ukrainian State Statistics Committee, as of April 1, 2003 the total volume of direct foreign investment into Ukraine since 1992 had reached US\$5.604 billion. The following are the official Ukrainian government statistics for total cumulative direct investment by country of origin from 1992 through April 11, 2003:

Country	(\$millions)	Percentage
United States	982.4	17.5
Cyprus	541.6	9.7
Great Britain	533.3	9.5
Germany	414.2	7.4
Netherlands	401.1	7.2
Virgin Islands	359.3	6.4
Russia	334.8	6.0
Switzerland	283.5	5.1
Austria	226.1	4.0
Korea	172.1	3.1
Other countries	1,356.2	24.1

Commercial Service And U.S. Department Of State, 2004
 <<http://www.bisnis.doc.gov/bisnis/bisdoc/0307_ukrainecgfy04.htm>>

The peculiar participation exemption over most of flows of dividends and capital gains related to the foreign activities, collected through branches and subsidiaries, makes this location unique and desirable for any global investor, and justifies such a common choice of the global investment processes through structures very recurring in the Dutch, Belgian and Luxemburg's legal and fiscal advising offices, offering headquartering and administrative services to the firms and conglomerates, often acquiring services supplied by the integrated conferences in the maritime and railways Northern Range transportation system.

The border line between Italy and Slovenia, on one side Trieste and Isontino with the city of Gorizia, Koper and Nova Gorica on the other, curtailed in two when the iron curtain was dividing Europe into blocks from Stettin to Trieste, reflects today, through the Pascals' communicating vases principle, the hub of the potential advanced logistic, in the uprising of the Central and Eastern European economies, already merging in the European market reunification processes.

The potential activities to be implemented in the special zone, as foreseen by art. 108/98, applicable in the reconversion of the border highway stations, as their function has been terminated in the removal of the custom barriers since the two countries are members of the EU, may now be thought as those of:

- *services connected to the active forwarding industrial processes in finishing and assembling merchandise and goods to be introduced, after complying to the European production standards, in the free circulation status within the EU, activities already mainly located or to be otherwise relocated abroad;*
- *services connected to the passive forwarding industrial processes, activities already mostly outsourced or to be otherwise relocated abroad, pertaining to industrial activities characterized by labour intensive production phases to be located in Central and eastern Europe;*
- *trading under extraterritoriality status with regard to the value added tax on inbound good, and with first relevant impact on transactions to VAT subjects at the successive transfers within EU parties (Irish model);*
- *headquartering and trading in participations, joint-ventures and similar production permanent establishments in Central and Eastern Europe taking advantage of the participation exemption clauses;*
- *providing commodity logistics and issuance of title representing commodities: such as warrants, declaration of warehousing, electronic and digitally signed warehouse receipts, activation of a counter-trade market with spot and forward trading facilities and exchange clearing activities;*
- *setting up of a data base services provider assembling data on free zones activities, leasing of know-how, management of finishing facilities, assembling and step production establishments under specific local rulings and special incentives aimed to the industrial development, specially in the area of the small and medium enterprises activities;*

- *supplying hosting and administrative management services related to tax exempted branches and subsidiaries of global enterprises operating according to the most recent evolution of the Italian fiscal code, interested to develop and increase activities in Central and Eastern Europe, including services in the marketing, finance, taxation, insurance and local infrastructure fields establishing and running related telecommunication services;*

At same time, this area seems to be a natural inland backoffice to serve the Adriatic Sea highway, close to the railway intermodal station in Cervignano, on the 5° Pan-European corridor and close to the *Ronchi* commercial airport.

The special cooperation paragraphs, unequivocally indicated in the Association agreement with the Republic of Slovenia and the legal instruments acquired along the history by this area, forcefully unexploited during the cold war years, for their juridical value and enforceability and in the scope of the opening of the country toward an interface function with the continental Europe, are now just waiting for a formal substantiation of the Court of Justice in Luxembourg to fully reveal all their efficacy and usefulness to trim down some of the European asymmetries in this very delicate international activity platform²⁴.

In commenting the Customs Rule UE 2504/88 dating 25.7.1988, regarding free deposits and free zones, the European Council affirmed that:

- *whereas the importance of those zones in the context of the Customs union calls for provisions relating to them to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus affording greater legal security for individuals;*

24. Whenever the EU Commission would refuse to apply the art. 108 of the agreement reflecting the Association of the Republic of Slovenia on the basis of presumed market asymmetries.

- *whereas Free Zones and Free Warehouses should not be given any competitive advantage where the application of import duties is concerned;*
- *whereas, on the other hand, the Customs formalities in such zones or warehouses should, in view of the special circumstances, be simpler than those applying in other parts of the Community Customs territory;*
- *whereas non-Community goods placed in Free Zones or Free Warehouses should be allowed to remain there for an unlimited period without the payment of import duties or the application of such duties and measures, the goods in these Free Zones or Free Warehouses should therefore be considered as not being within the Customs territory of the Community;*
- *whereas it should be borne in mind that Community goods placed in Free ones or Free Warehouses qualify for certain benefits normally attaching to their export; whereas it is also necessary to determine the consequences of placing in a Free Zone or Free Warehouse Community goods which are subject in infra - Community trade to charges imposed under the common agricultural policy for such time as such charges are applied;*
- *whereas it should also be possible to place other Community goods in a Free Zone or Free Warehouse;*
- *whereas, where such goods are liable to domestic taxes, it is for the Member State to decide on the conditions for, and consequences of, placing them in Free Zones or Free Warehouses without prejudice to Community fiscal provisions;*
- *whereas it is necessary to lay down certain rules for the charging of duties where a Customs debt arises in respect of goods placed in a Free Zone or Free Warehouse;*
- *whereas it should be provided that, in certain circumstances, value added within the Customs territory of the Community is not to be included in the Customs value of such goods;*
- *whereas the uniform application of this Regulation must be ensured and accordingly a Community procedure for the enactment of implementing rules should be established; whereas close and effective co-oper-*

ation in this area between the Member States and the Commission should be organised through the Committee on Customs Warehouses and Free Zones established under Council Regulation (EEC) No. 2503/88 of 25 July 1988 on custom warehouses,

Successively, within the specific rules expressed in the Uniform Custom Code, 2913/92/CE, the art.172 with regard to the same free zones issues was furthermore said that:

- Any industrial, commercial or service activity shall, under the conditions laid down in this Code, be authorised in a Free Zone or Free Warehouse. The carrying on of such activities shall be notified in advance to the Customs authorities.

- The Customs authorities may impose certain prohibitions or restrictions on the activities

referred to in paragraph 1, having regard to the nature of the goods concerned or the requirements of Customs supervision.

- The Customs authorities may prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in this Code from carrying on an activity in a Free Zone or Free Warehouse.

For the first time our countries are facing new functions and new activity areas of growth and cooperation and must therefore understand and take advantage of this unique chance to attenuate the financial and logistic gap with the Northern Range and reduce the asymmetries between the North and South Europe with respect to the logistic and transportation industry and financial logistics.

The special cooperation, as achievable in *Gorizia*, and inclusive of the special *Trieste* Free Ports legislation applicable laws, stemming from the Treaty of Peace of 1947, which may be extended to the maritime and inland highway cross border stations, represents an open path available to the whole non EU world of countries developing ties with and discovering the huge EU market. In a multilateral perception of the globalization integrating the third Europe, servicing the huge area included along the fifth cor-

ridor, showing the way to the silk road in Ukraine, close to *Donetz*, farther heading towards Iran, India and China, it might be possible to overcome the stringent Northern range oligopoly, and the third corridor terminal in Kiev leading to the Trans Siberian road.

In the present scenery of an integrating Europe, the logistic platform represented by the highway cross the border stations of Ferneti, Rabuiese, S. Andrea in Gorizia and Vertojba in ?empeter-Vrtojba, may become a huge *hub* in the future Eruroregion, including Slovenia at the Adriatic crossing, raising the relevant perspectives of an adjustment of the European asymmetries, possible trough the action of the fifth corridor Lisbon Kiev and the integrated structures of the *Trieste – Koper* harbours connected to *Cervignano* and *Ronchi* airport.

The present Italian fiscal code adjustment seems to proceed in this direction allowing a more flexible tax planning and financial consolidation trough more easily applicable international accounting standards and taxing planning trough rules and agreements with the taxing authorities. The mix of local population, generally speaking several foreign languages, with ancient ties with both the east and the West represent a valuable unique asset in promoting such a new vision.