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Trust-like mechanisms – effective tools for boosting the competitiveness of the EU - theoretical and terminological insights

Irina GVELESIANI *

Abstract

Today the EU is being confronted with internal and external economic challenges. They may become a threat of European stability. Significant strategies must be implemented for the promotion of a sustainable development reflected in economic resilience. The paper deals with the question of boosting the competitiveness of the EU via a rapid implementation of the ***trust-like mechanisms*** *- "analogues" of the common law* ***trust****. It is mainly oriented on the method of a comparative analysis and presents certain prorated fruitful ways of rapid implementation of the* ***trust-like devices*** *in civil law jurisdictions. The outcomes of the paper will be useful for the successful planning of the European entrusting processes, because they indicate to the necessity of the implementation of the American models of mutual funds and the beginning of the utilization of an express trust, which will serve a great variety of socio-economic purposes.*

Keywords: economy, law, strategy, trust, trust-like device

Introduction

The European Union was created for the promotion of security, prosperity and economic development. In the context of today's globalizing processes, the EU is being confronted with internal as well as external economic and political challenges. The given challenges may become a threat of European stability and prosperity. Significant long-term strategies must be implemented for the promotion of a sustainable development reflected in economic and political resilience. The given paper researches the question of boosting the competitiveness of the EU via a rapid implementation of the ***trust-like mechanisms*** - the "analogues" of the common law ***trust***. Moreover, it deals with the certain theoretical and terminological insights. The paper is mainly oriented on the method of a comparative analysis and presents certain prorated fruitful ways of the rapid implementation of the ***trust-like devices*** in civil law jurisdictions. The outcomes of the paper will be useful for the successful planning of the European entrusting processes, which will raise the resilience and integrity of the EU.

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1. The Common Law *Trust*

"In common law countries, the trust is one of the most utilized tools of succession because of its ease, flexibility, and informality" (Devaux et al., 2014, p. 91). This legal institution makes distinction between legal and equitable titles. Its technic is regarded as omnipresent. However, in the majority of European countries the ***trust*** *has been viewed sceptically, because it seemed almost incompatible with the civil law jurisdictions. Despite this fact, the introduction of the* ***trust*** *mechanism has become inescapable – the appearance of "the trust in a commercial context within Anglo-American law, more and more frequent in the twentieth century, led to a similar phenomenon in the civilian legal systems that had previously received this institution in the context of succession" (Cumyn, 2012, p. 13).*

1.1. **The Origin of the *Trust***

The origin of the ***trust*** causes many debates. However, it is strongly believed that this juridical institution originated from its historical antecedent - the legal arrangement ***use***. "Under the terms of use, the feoffor entrusted the feoffee with the land to the use of himself, as cestui que use, or for the benefit of persons designated by him" (Sandor, 2015, p. 48). More precisely, "[f]eoffors would convey land to feoffees, who then conveyed land to third persons - cestui que use - named in the feoffors' wills. Such transactions made use of the terms "use," "confidence," and "trust" interchangeably" (Buhai, 2009, p. 558). The process of entrustment was denoted by the term ***enfeoff (feoff)***, which implied "… to place someone in possession of an estate in fee" (Statsky, 1986, p. 320). The term ***fee*** meant "an estate in which the owner had full powers of disposition" (Statsky, 1986, p. 318). More precisely, ***fee*** came from "the old Fr. *Fe*; Lat. *Fides*: and a *fee,* any thing granted by one, and held by another, upon oath or promise of fealty or fidelity" (Richardson, 1836, p. 677).

During the centuries, the origin of the ***enfeoffment to use*** has raised many questions. It always seemed quite obscure. However, a flexible and a profitable nature of the ***enfeoffment to use*** facilitated its spread and intensive utilization throughout the centuries. The major priority of the employment of this legal institution was a skilful avoidance of certain rules about the bequest of a land:

almost all the land in England could not be left by will, that Lords would get windfalls for wardship and marriage if tenants' heirs were under age 21, that surviving spouses were entitled

to life interests in certain land, and that the land could not be conveyed to the Church without the king's licence (Cranmer et al. (eds.), 2016, p. 54).

The employment of the ***uses*** resulted in the avoidance of certain incidental obligations (the so-called ***relief***) – escheat, wardship, forfeiture, etc.

It has already been mentioned that the origin of the ***enfeoffments to uses*** is obscure, but it seems, that "the gentry themselves were the first to employ the device and that only from the 1340s onwards did the nobility increasingly follow the example set by their social inferiors" (Acheson, 2003, p. 80). It can also be noted that the formation and utilization of the ***use*** was stipulated by the fear and fraud: "fear in times of troubles and civil wars to save inheritances from being forfeites; and fraud to defeat due debts, lawful actions, escheats, mortmains, etc." (Sandor, 2015, p. 42). The ***use*** was widely utilized during the War of Roses (1455-1487). According to Serjeant Frowyk, by 1489 "the greater part of the land of England was in feoffment upon trust" (Baker, 2003, p. 654). The ***feoffment of trust*** or ***feoffment to uses*** was "a legal device in the sense that it was frequently recommended by conveyancing counsel, in order to achieve clear legal consequences, such as the power to devise. Lawyers were therefore well acquainted with trusts and commonly served as feoffees" (Baker, 2003, p. 654).

We believe that the study of the history of the development of the ***trust*** vividly indicates to its useful and strategic character, especially, during the planning of the future of one's estate.

1.2. The Contemporary *Trust*

"Rather more important that the origins of the trust, however, are the difficulties there are in translating it into other legal systems, particularly those from the civilian camp" (Matthews, 2013, p. 243). "The purposes for which we can create [common law] trusts are as unlimited as our imagination" (Devaux *et al.*, 2014, p. 112). Moreover, the ***trusts*** have a great variety of uses in the contemporary life. They are created not only for the private reasons, but for the charitable or business purposes as well. They are mainly used:

- for the benefit of private individuals (a ***private trust***);
- for the management of business affairs (the ***Massachusetts trust*** or a ***business trust***);
- to benefit future generations… through the establishment of successive equitable interests in property, to benefit employees through the holding of a company's shares or other assets in

trust for their benefit, or hold funds for public investment (a ***mutual fund*** or ***unit trust***) (Gray (ed.), 2004, p. 871), etc.

Generally, the legal institution of the ***trust*** can be defined as:

an obligation enforceable in equity under which a trustee holds property that he or she is bound to administer for the benefit of a beneficiary or beneficiaries (a private trust), or for the advancement of certain purposes (a purpose trust)… Trusts are established expressly by a settler in a trust deed or a testator in a will (an express trust) or by implication (a resulting trust). They may also be established by operation of law (a constructive trust) (Gray (ed.), 2004, p. 870).

Among different types of the ***trust***, an outstanding position is occupied by an *express trust*. It can serve

a wide range of both social and economic purposes. It is suitable, in particular, for serving people who are unable or incompetent to manage their property, or who do not wish to make their ownership public, for charitable purposes, the administration of investments, the remuneration of staff, the uniform management of financing sources, protection of property, tax planning, the management of jointly-owned property, etc. (Sandor, 2016, p. 1189).

During the description of the modern ***trust instrument,*** we have to consider its twofold nature and the British attitude towards the absoluteness of ownership. It is a well-known fact, that the contemporary English juridical system embraces a non-absolute notion of ownership:

- Firstly, the "English law adopts a system of relative titles as opposed to absolute entitlements" (Häcker, 2009, p. 35-36);
- Secondly, the recognition that equitable interests are in some sense "proprietory" has led to the idea of ownership being "split" into bare legal title and an equitable (or beneficial) interest" (Häcker, 2009, p. 35-36).

This division has historical roots. In the contemporary economic and juridical landscapes it results in the simultaneous existence of a legal ownership and an equitable one.

Therefore, the modern ***trust*** can be described as an arrangement, whereby property is managed by one person (a *trustee*) for the benefit of another (a *settler* or a *beneficiary*). The ***trust*** has the following major characteristics:

a) the assets are presented as a separate fund;
b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
c) the trustee has the power and the duty ... to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him (Convention of…, 1985).

It has already been mentioned that the British ***trust*** is largely used for commercial purposes. "This may be, for example, for the purpose of making investments in business. The unit trust (known as a mutual fund in the USA) is an example of this, with a long and respectable history" (Matthews, 2013, p. 249). In the context of commerce, the ***trust*** can also be utilized for the creation of a pension fund or a joint venture business. Actually, British pension funds made London a dominant financial centre throughout Europe. The trustees who possess these funds

> *can become large players in the stock and capital markets, with considerable liquidity… Moreover, pension funds are paid for by workers today to save for their retirement tomorrow. They go to reduce the impact of the current demographic changes in the developed world whereby the number of people in active employment goes down while the number of persons in retirement goes up. In countries where the majority of pensions of persons retiring are paid for out of taxation of those still in work, this is a serious problem, which will become more serious as the years pass (Matthews, 2013, p. 250).*

Therefore, we believe that the popularization of the ***trust*** in the majority of European countries was facilitated by its extremely versatile character and a growing worldwide importance of entrusting commercial transactions. The variations of the ***trust*** have already appeared in the commercial and juridical spheres of Germany, France, Italy, Russia, Romania, Canada, etc. The "appearance" was rather difficult and prolonged, because the transplantation of English conception of dual ownership seemed almost impossible – the civilian systems treated ownership as absolute and indivisible. We discuss some European trust-like mechanisms and their peculiarities.

1.3. Modern German *Trust-like Mechanisms*

It is a well-known fact that the greatest inconsistency between English and German jurisdictions is presented in the area of Property Law. German legal system comprises an absolute notion of ownership, which may be equalized with the ancient ***dominium*** - "the owner of a corporeal object

is the person who is in principle entitled to "deal with the thing as he pleases and exclude others from any interference". It belongs to him, and only him" (Häcker, 2009, p. 36).

Despite these circumstances, the study of the contemporary German reality reveals the existence of several ***trust-like devices***, which work differently, but perform functions similar to the ***trust***. These devices can be united under the umbrella term ***Treuhand*.** This unity comprises the following institutions:

> *the **Testamentvollstreckung** and **Nacherbschaft,** which are used to control succession to property for several legatees (and typically for many years), the **Stiftung** which serves to collect and administer funds for charitable purposes, and the general **Treuhand** by which an estate is administered for the benefit of one or more persons (Grundmann, 1998, p. 489).*

The ***Treuhand*** usually considers the transference of an ownership based on ***Vertrauen*** (trust) and ***Treue*** (loyalty). It comprises the following major elements:

- ***Treugeber*** (settlor/beneficiary) – a person, who transfers the full right *in rem* to the other person, who is obliged to deal with the property in the manner specified by the contract;
- ***Treuhänder*** (trustee) – a person, who is obliged to deal with the transferred property in the manner specified by the contract.

Although the ***Treugeber*** transfers his juridical ownership to the ***Treuhänder***, he retains an economic ownership. Therefore, a trustee ***(Treuhänder)*** becomes a legal owner and his/her duties are called fiduciary duties: "The *Treuhänder* acquires a full and unrestricted title to the Treuhand assets, whereas the beneficiaries' interests are, at least in theory, merely the ordinary rights *in personam* of parties to a contract" (Kotz, 1999a, p. 93).

One of the varieties of the ***Treuhand*** – the ***Stiftung*** (the German foundation) – has already invaded the German legal system and a significant part of the economic activities. Generally, foundations have a long history of existence. They were

> *used particularly as structures to hold property for religious purposes in the Medieval period in continental Europe. The Catholic Church, and its various manifestations, existed as foundations. In countries like Austria, Germany and Liechtenstein we have had Stiftungs … for many hundreds of years (Baker, 2007).*

Nowadays, the ***Stiftung*** is similized to the ***charitable trust*** according to its structure and activities. Besides, it consists of two major parties:

- ***Stifter*** - a *founder*, who transfers a patrimony to a newly-created legal entity and sets up rules of administration;
- ***Stiftung*** - a newly-created legal entity (a *foundation*), which administers assets, but is supervised by the Bundesland.

A variety of the ***Stiftung*** is the ***Stiftungstreuhand*** or ***unselbständige Stiftung*** (*foundation trust* or *dependent foundation*), which considers the transmission of a smaller amount of the property. The ***Stifter***

> *transfers assets as a gift inter vivos or by will to another natural or juristic person – e.g. a university, a church, a museum, a charitable association - on the understanding that the transferee keeps the assets transferred separate from his own assets and that the gains made from the assets shall be used to further the charitable purpose prescribed by the founder" (Kotz, 1999b, p. 52).*

It is worth mentioning that in case of the ***Stiftungstreuhand*** or ***unselbständige Stiftung*** (a *foundation trust* or a *dependent foundation*), the trustee's creditors are not able to take legal actions in respect to the separated assets. These actions can be impeded by a founder or by a beneficiary (beneficiaries). This is a unique example of the ***Sondervermögen*** (a separated patrimony).

We believe that the existence of the ***Sondervermögen*** emphasizes the fact that the German law "accepts" the notion of "splitting-up" - owning of more than one patrimony by one person. Such separation of assets is determined by the concept of the patrimony than that of the property, because the German property law is not based on the distinction between a legal property and an equitable one. Therefore, all the above mentioned enables us to conclude that the ongoing tendencies regulating German entrusting relationships facilitate Germany's involvement in the processes of harmonization of the legal systems of all European countries.

1.4. Modern Canadian *Trust-like Mechanisms*

The contemporary Canadian reality vividly presents the bijurality. The formation of bijuralism has been stipulated by the historical development of the country (the cohabitation of English and

French Canadians in history) and by the influence of the colonization. The colony was first subjected to the French law. However, the official introduction of bijuralism in Canada began with the Quebec Act of 1774, which

> *restored civil law "in matters of property and civil rights"... Conversely the Quebec Act provided that common law would govern in all but private law matters; this is the basis for the mixed civil and common law nature of Quebec law where common law and civil law apply respectively in public law matters such as administrative law, criminal law and other non-private law matters, and in private law matters (Cuerrier, 2016).*

It is worth mentioning, that "an embryonic regime of trust as a variant of a legacy or of a testamentary substitution was incorporated into 1866 Civil Code of Lower Canada (the 'old Code') at articles 869 and 964" (Roy, 2010, p. 1). These articles discussed the transference of property, which was controlled by a transferee for the benefit of a designated person or for the indicated purposes. By 1867 "the two distinct legal systems were well entrenched. Quebec preserved its civil law while the other provinces retained their common law systems" (Lloyd and Pawley, 2005, p. 152).

Nowadays, the "Civil Code of Quebec is a vital practical and historic component of the unique fabric of Canadian society" (Lloyd and Pawley 2005, p. 164). It presents 38 articles (from 1260 to 1298) dedicated to the ***trust*** mechanism and defines this juridical institution in the following way: "A trust results from an act whereby the settlor transfers property from his patrimony to another patrimony constituted by him, which he appropriates to a particular purpose and which a trustee undertakes, by his acceptance, to hold and administer" (Civil Code of Quebec, 1991).

Each element of an entrusting relationship can be characterized in the following way:

A **settlor** (***constituent***) is a creator of the trust, which can be set up in his/her lifetime (an ***inter vivos trust***) or upon his/her death (a ***testamentary trust***) before the distribution of the property between the heirs. A settlor may be a trustee or one of the trustees. A settlor must act jointly with an independent trustee;

A **trustee (*fiduciaire*)** can be any natural or legal person authorized by the law, which "may alienate the trust property by onerous title, change it with a real right, change its destination and make any form of investment" (Roy, 2010, p. 9). A trustee is a "full" administrator of the property ensuring its maintenance and preservation. She/he is obliged to increase a patrimony and to utilize it for a specific purpose indicated in a ***trust agreement***. More precisely, a trustee

has neither "legal ownership" of the trust property, […], nor "sui generis ownership" […]. Instead of a proprietary entitlement, the trustee has "powers" (pouvoirs) of administration to be exercised on behalf of the beneficiaries, as opposed to "legal rights" (droits subjectifs) to be exercised in his or her own interest (Emerich, 2013, p. 35).

A **beneficiary (*bénéficiaire*)** can be any natural or legal person (even another trust) determinate (or determinable) at the time of the creation of the ***trust.*** The term ***beneficiary*** must not be confined

to a person, but may be impersonal; for an impersonal benefit or purpose. The beneficiary may be directly determined, determinable or abstract, according to the type of trust. In a personal trust, the beneficiary must be one or more determinable persons (1267), while in a social trust the benefit may be one of general interest such as education (Claxton, 2016, p. 292).

In case of a ***discretionary trust,*** "the settlor may either reserve for himself or herself or give to the trustee, or to a third party the powers to appoint the beneficiaries of the trust and determine their share (art. 1282 C.C.Q.)" (*Dictionnaires de droit privé*). It is worth noting that according to the terms of a trust contract, beneficiaries can have different rights, for example, they may draw an income from the trust (up to a certain age).

It is worth mentioning that the Quebecoise ***patrimoine*** comprises a non-segregated property, because it does not belong to a person who has the power of its administration and disposition. Non-segregated assets may consist of any kind of present or future property: real, personal, movable, immovable, incorporeal, corporeal. "As regards future property one may conclude that a trust created to hold future property only, even if accepted by the trustee, will not be constituted and exist until some property is acquired by the settlor or the trustee" (Claxton, 2016, p. 286).

Therefore, the transference of the property is the major essence of entrusting relationships. The given statement is reinforced by an outstanding ability of the ***trust*** to provide the formation of ***a foundation/la fondation*** - "A foundation created by trust is established by gift or by will in accordance with the rules governing those acts" (Civil Code of Quebec, *1991*). Similarly to the ***trust property***, the property of a foundation constitutes ***an autonomous patrimony/un patrimoine autonome*** which is distinct from a patrimony of a settlor or any other individual. ***La fondation*** can be oriented on:

- the making of profit;
- the operation of an enterprise;

- the fulfilment of a socially beneficial purpose.

The last statement seems to be in tune with the opinion of well-known French jurist Pierre Lepaulle, whose arguments have been influential in some civilian receptions of the Anglo-American ***trust***. Pierre Lepaulle argued, "The common law trust could be best understood, in civilian terms, as a patrimony affected to a destination or purpose" (Smith, 2008, p. 382). Moreover, he believed that

> *none of the settlor, the trustee or the beneficiary was essential to the common law trust… He argued that the only things that were essential were that there was a patrimony, and that it be affected or appropriated to a purpose (Smith, 2008, p. 385).*

We believe that the appropriation to a purpose can be considered as the major essence of the Quebecoise ***patrimoine***. However, the negation of a settlor's and a trustee's merits is impossible neither in the Quebecoise nor in the Anglo-American entrusting relationships. A settlor establishes the ***trust***, while a trustee administers a transferred property. Without these parties, the ***trust*** is almost void. The given idea is well developed in the Article 1261 of the contemporary Civil Code: "Le patrimoine fiduciaire … constitue un patrimoine d'affectation autonome et distinct de celui du constituant, du fiduciaire ou du bénéficiaire, sur lequel aucun d'entre eux n'a de droit reel" (Lupoi, 2000, p. 308).

Therefore, we believe that the study of the Canadian entrusting relationships indicates to a vivid fact - the Quebecois ***patrimoine d'affectation*** is not an example of a segregated property. It constitutes an autonomous patrimony - neither the ***constituent*** nor the ***fiduciaire*** and the ***bénéficiaire*** have real rights in the transferred assets. Consequently, the Quebecois ***patrimoine d'affectation*** can be regarded as a unique type of the patrimony established by the ***trust-like device.***

1.5. Modern French *Trust-like Mechanisms*

Before the appearance of the ***fiducie*** (at the end of the 20th century), the French scholars expressed their concerns regarding the probability of the implementation of the ***trust-like transactions*** in the French reality. They named the following major reasons:

- Firstly, the impossibility of the implementation of the duality of ownership in the French economic and legal domains;

- Secondly, the general "inability" of allowing assets "to be set aside for a special purpose (*patrimoine d'affectation*), thus ruling out the possibility of property forming a separate fund that cannot be reached by a trustee's creditors" (Rémy, 1999, p. 131).

Despite these concerns and circumstances, the ***fiducie*** was implemented in the French reality as a vivid category of a "transplant". Nowadays, it represents a triangular relation, which considers the transference of rights on a special property for the fulfilment of a particular goal. The given transference implies the following:

> *the settlor (constituent) entrusts existing or future assets, rights or security to the trustee (fiduciaire), who manages these for the benefit of one or more beneficiaries. French law does not classify the legal status of the trustee; he is deemed to be either an agent or an administrator, only the manager (agissant, actor) of the trust property (patrimoine fiduciaire) (Sandor, 2015, p. 313).*

In certain cases, the ***constituant*** appoints the ***protecteur***, which controls the activities of the ***fiduciaire*.** However, sometimes the ***constituant*** and the ***fiduciaire*** perform the functions of the beneficiaries.

Therefore, the contemporary French entrusting relationships consider the following participants:

Constituant - a transferor of the property, which is presented by any natural person or legal entity;

Fiduciaire - a transferee represented by "a banking, insurance, or financial professional, or an avocat (attorney), whose role contributes to ensure protection for the constituent" (Devaux *et al.*, 2014, p. 110);

Bénéficiaire - a receiver of the benefit derived from the management and exploitation of the property transferred to the *fiduciaire*. In particular cases, the *constituant* or the *fiduciaire* may become the *bénéficiaire*;

Protecteur – a protector, who controls the actions performed by the *fiduciaire*.

An object of the entrusting relationships is presented by the transmitted assets – the ***patrimoine fiduciaire***. The composition of the latter enables us to single out two major forms of the French ***trust-like mechanisms***:

- the trust by way of "security (*fiducie sûreté),* where the constituent-debtor transfers to the fiduciary properties, securities or rights for its debt to create security, and

- management trust (*fiducie gestion),* where the transfer of assets is made in view of its management" (Devaux *et al.*, 2014, p. 112).

It is worth mentioning that according to the contemporary French law, a trustee is usually allowed to hold one ***patrimoine d'affectation*** (or several ***patrimoine d'affectation*** -s), which is separated from his own patrimony. Therefore, the segregation of assets takes place. Moreover, the Article L 526-17-I of the French Civil Code

> *provides the transfer, based on documents inter vivos, of the patrimony by appropriation, which can occur both under a document of onerous title and under a free of charge document, respectively: sale, donation, contribution to a company's patrimony either to natural persons or legal persons (Tuleaşcă, 2014, p. 13).*

Therefore, the French ***fiducie*** is oriented on the formation of the ***patrimoine d'affectation***, which is not a genuinely autonomous ownership. It is not completely separated from the personal ownership of a settlor or a trustee. Moreover, the ***patrimoine d'affectation*** does not represent a source of wealth of a trustee, because he/she does not act in his/her own interest. All the profits gained from the exploitation of the ***trust assets*** belong to a third person. The second paragraph of the Article 2025 of the French Civil Code provides that "where the *fiducie* patrimony is insufficient, the creditors of the *fiducie* can seek payment of their claim from the patrimony of the settlor" (Emerich, 2013, p. 24).

The practice shows that the French ***fiducie*** has already "crept" into France's business sphere. The given practice

> *developed fiduciary contracts as conventions de portage [securities repurchase agreements], which are in fact forms of a management fiducie. This in effect involves agreements by which a person, the porteur [bearer] undertakes as regards another party, the donneur d'ordre [principle] to buy or subscribe shares and then, at the end of a certain period of time, and at an agreed price, to transfer them to the principle or to a third-party (Grimaldi, 2011).*

Therefore, we believe that the French legal and economic spheres present an innovative mechanism of entrusting relationships. The French ***fiducie*** is oriented on the formation of the ***patrimoine d'affectation***, which is not completely separated from the personal ownership of a settlor or a trustee. Moreover, although the French ***fiducie*** utilizes the lexicon of the contract law, it "is best understood as located at the intersection of contract and property" (Emerich, 2009, p. 49).

1.6. Terminological Insights

Despite the existence of significant differences between common and civil legal traditions, nowadays we visualize the evident tendency of the convergence between these juridical-economic regimes. The given tendency is caused by the ongoing integrational global processes and especially, by the latest challenges of the market economy. It is strongly believed that in order to attract foreign capital to the countries of the EU or "to avoid capital flight, domestic legal orders must adapt to the requirements of financial markets, which direct their choices utilizing the most efficient approach" (Forti, 2011). Therefore, it can be assumed that the internationalization of the British ***trust mechanism*** is the result of the EU's confrontation with ongoing external economic and political challenges. Moreover, the business law of the US and especially, the US pension and mutual funds inspire the countries of the EU to implement trust-like mechanisms (German ***Treuhand***, Canadian and French ***fiducie*** -s) into their business and legal spheres. However, this implantation causes certain terminological inconveniences.

One of the major inconveniences is connected to the German linguistic reality. It is revealed during a profound study of the terms related to the contemporary German economic-juridical ***trust-like devices.*** A carried out research indicates that "Routledge German Dictionary of Business, Commerce, and Finance" presents the following English equivalents of the German lexical units related to the ***Treuhand***:

> ***"Treuhand*** *– Trust;*
> ***Treuhänder*** *– Trustee, fiduciary;*
> ***Treugeber*** *– settlor, transferor, trustor (AmE)" (Routledge German Dictionary, 1997).*

The similar data are presented in H. Haschka and H. Schmatzer's well-known book "Aspects of U.S. business and law (An English-language survey with German-language comments)". The given work directly indicates that the major elements of the ***trust*** are:

> *"A trustor or settler (Treugeber).*
> *A beneficiary (Begünstigter).*
> *A trustee (Treuhänder).*
> *A fund or corpus (zweckgebundere Vermögensmasse) the title to which passes to the trustee)" (Haschka and Schmatzer, 1990, p. 167).*

The existence of these equivalents makes obscure the essence of the ***Treuhand*** and equalizes it with the common law ***trust.*** This correlation seems impossible due to the fact that the German ***Treuhand*** and the English ***trust*** have different essences. The English entrusting relationships are based on the duality of ownership, which is unacceptable to Germany's economic and juridical reality. Some scholars have thoroughly discussed this question, for instance, J. Rehahn and A. Grimm directly indicated, that the term ***Treuhand*** must be translated as ***German trust (***Rehahn and Grimm, 2012, p. 93). We share J. Rehahn and A. Grimm's idea and suppose that ***German trust*** is the best English counterpart of the term ***Treuhand***.

One more inconvenience is depicted during the study of the correlation of the terms related to France's ***fiducie*** and the Quebecoise ***trust-like mechanism***. The following chart depicts the existed reality:

Definition	**France's Civil Law**	**Quebecoise Law (French Version)**
Legal institution	Fiducie	Fiducie
A transferor of the property	Constituant	Constituant
A transferee	Fiduciaire	Fiduciaire
A person who benefits from the exploitation of the trust property	Bénéficiaire	Bénéficiaire
An object of entrusting relationships	Patrimoine d'affectation	Patrimoine d'affectation

The given chart vividly reveals that the French terms related to the Quebecoise ***trust-like mechanism*** coincide with the lexical units, which are presented in France's civil law. We believe that this correlation seems impossible due to the fact that the French ***fiducie*** and the Quebecoise ***trust-like device*** have different essences. The French entrusting relationships are based on the segregation of property, which is unacceptable to Quebec's law. It merely presents an ownerless patrimony. Therefore, for avoiding terminological ambiguity we propose the renaming of Quebecoise lexical units in the following way:

Definition	**Quebecoise Law (French Version)**
Legal institution	Quebecoise fiducie
A transferor of the property	Quebecoise constituent
A transferee	Quebecoise fiduciaire
A person who benefits from the exploitation of the trust property	Quebecoise bénéficiaire
An object of entrusting relationships	Quebecoise patrimoine d'affectation

Therefore, we believe that the above-proposed newly-created lexical units will change the existed terminological landscape and clarify the obscurity related to the naming and consequent definition of certain concepts from the semantic field of the entrusting relationships.

Conclusions

The implementation of the French ***fiducie***, the German ***Treuhand*** and the Quebecoise ***fiducie*** can be regarded as the internationalization of the European Union's economic and juridical systems in respond to the contemporary globalizing processes. Although these legal transplants are not as flexible as the common law ***trust*** and they have not become entirely common in France, Germany and Canada, we can predict the increase of their popularity and significance during the next decades. The major reason lies in the fact that on the one hand, the ***fiducie*** and the ***Treuhand*** are excellent tools for the protection of property or for the management of a private wealth. On the other hand, France's ***fiducie*** presents the ***patrimony by appropriation*** (***patrimoine d'affectation*** in the French language) - a juridical universality, which has "destroyed" Aubry and Rau's theory of the unicity of *patrimoine* and facilitated the emergence of the notion of a segregated patrimony consisting of a patrimonial mass "impermeable" i.e. untouchable from outside. Similarly to the French ***fiducie,*** the Quebecoise ***fiducie*** "worked out" an innovative entity - an autonomous patrimony – which is separated from other assets. Neither the *constituent* nor the *fiduciaire* and the *bénéficiaire* have real rights in it. The German economic-juridical reality presents one more almost miraculous variety of the ***trust-like mechanism*** - the ***Stiftungstreuhand*** or the ***unselbständige Stiftung*** (a *foundation trust* or a *dependent foundation*) – which excludes legal actions of a trustee's creditors in respect to the separated transferred assets. These actions can be impeded by a founder or by beneficiaries. This is a unique example of the ***Sondervermögen*** (a separated patrimony). The existence of the ***Sondervermögen*** emphasizes the fact that the German law "accepts" the notion of "splitting-up" - owning of more than one patrimony by one person. Such separation of assets is determined by the concept of the patrimony than that of the property, because the German property law is not based on the distinction between a legal property and an equitable one.

Therefore, besides an apparent irreconcilable contradiction, the common law trust "crept" into the civil reality in the form of the ***trust-like mechanisms*** and "destroyed" Aubry and Rau's theory of the unicity of the ***patrimoine*** via facilitating the emergence of the notions of a segregated patrimony, an autonomous patrimony and "splitting-up". The given progress will boost the competitiveness of the European Union via the vitalization of the cross-border transactions.

Moreover, we believe that after the achievement of the apparent "splitting-up", France, Germany and Canada will have to be oriented on the implementation of the American models of pension and mutual funds. A special attention must be paid to the beginning of the utilization of an express trust, which will serve a great variety of social and economic purposes: the protection of property, tax planning, the administration of investments, the remuneration of staff, the management of jointly-owned property, etc. As a result, the EU's resilience and integrity will be raised.

Therefore, France's, Germany's and Canada's progress in reaching the internationalization of the ***trust instrument*** can become a useful example for all the members of the EU. However, during the implantation of the ***trust-like mechanisms,*** the greatest attention must be paid to the "improvement" of structural as well as linguistic issues. We have already made certain suggestions in the direction of "polishing" a contemporary lingual landscape via implementing new lexical units created by us. In our future scientific works, we will put an accent on the creation of some more terms.

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