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REVIEW

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TOWARD A BRIGHT EUROPEAN FUTURE

4liberty.eu is a network of several think tanks from CEE (Poland, Hungary, Slovakia, Slovenia, the Czech Republic, Bulgaria, Estonia, Lithuania, and Germany) and our partners from EaP countries. Our goals: to make the Central European perspective accessible to an international audience, to be a reliable source of information on regional issues, and act as the voice of the region. Our authors are experts, intellectuals, and researchers. We publish high-quality analyses, polemics, and articles in English, building bridges between nations to further understanding among experts from particular countries. Our website, 4liberty.eu, is designed to become a platform where experts and intellectuals representing liberal thought from Central and Eastern Europe can share their opinions and ideas.

4LIBERTY.eu
REVIEW

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Ensuring Our European Future

When trying to imagine what the future of the European Union (EU) should look like, people often fall either into the trap of wishful thinking or doomsaying. What is actually needed is a realistic and applicable plan for the further development of the greatest peace project on the European continent in the coming months, years, and decades.

“No one saves us but ourselves. No one can and no one may. We ourselves must walk the path,” we read in *Sayings of Buddha*. In this context, it should be rather easy to determine what the future would be like, as implementing a plan to ‘save our future’ means simply following a series of incremental changes. However, in reality, this is not how life works and so external factors and the geopolitical situation may significantly alter the once taken course.

The Russian invasion of Ukraine has turned the nearest future of Europe upside down. All member states had to take sides and either support the vulnerable neighbor or side with the vicious aggressor. As a result, the already existing divide between the EU and Hungary – reluctant to condemn Vladimir Putin’s actions and instead spreading pro-Russian disinformation – has deepened, splitting at the same time the once united Visegrad Group. Consequently, the so-called ‘mainstream’ EU has further integrated – a very welcome development indeed, but there is still a long way to go for the European project to be one every citizen can be proud of.

The areas that require special attention are numerous. Be it regulation, rule of law, security, or EU enlargement to include Ukraine, and potentially other states (like Bosnia and Herzegovina, for example) to ensure peace and safety in the region. This is precisely why Europeans cannot afford to spend another second on unproductive discussions. What we require now is *non loqui sed facere*¹. After all, to quote Seneca, *“Most powerful is he who has himself in his own power.”* Let us take control of the future of the European Union – our future. Let us make it, and ourselves, united, dependable, and strong. It is we who must ensure a bright European future.

Stay safe and strong,

O. Labendowicz

Editor-in-Chief of 4liberty.eu Review
Coordinator of the 4liberty.eu network



¹Latin for “not talk but action.”

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The Future of the EU: Strong or Weak Europe?



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ESZTER
NOVA

When one would like to ascertain whether a stronger or a weaker European Union is better, one has to ask two questions first: 1) For whom is it good or bad, and 2) for what purpose? In other words, one has to tackle the issue of a vantage point. At the very least, one has to make the distinction between the interests of the citizens and those of the ruling elite as they do not naturally converge. Especially in autocracies.

Once we have looked at the actual preferences of EU citizens – and the differences between EU27 and Eastern European citizens, if any – we have to make the case for good governance being different from local governance. In order to gain clarity, we shall dispose of all the proxies to good governance (such as local or grass root), because these will always be suboptimal methods of ascertaining the quality of governance.

National, local, and EU-level governance are poor proxies to ascertaining whether governance is good, because none are an assurance in itself of the respect for civil liberties, human rights, democracy, and the rule of law. Setting these various levels of governance in check of each other might be.

Then, one has to look at the nature of good governance and make the distinction between a strong state and a big state. Support may exist for one, but not for the other – both on the national and on the EU level. If we look at the list of what Eastern Europeans want or like about the EU, it can be observed that a strong (and value-based) EU is wanted, not a big one (in the sense of a *big state*, i.e., overregulation, meddling, and micromanagement). Surprisingly, the support for more decisions to be made on the EU level appears strong. It may, however, not be a sign of demand for a big state,

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DEMOCRACY,
AND THE RULE
OF LAW

but rather that the harmonization of regulations tends to benefit individual citizens, with only secondary attention paid to the content of those regulations.

On the one hand, harmonization eliminates the competition between jurisdictions, enabling suboptimal rules to persist without the possibility of an escape through exit. On the other hand, it reduces

cross-border bureaucracy and increases transparency. One may choose to get upset about alleged infamous regulations about bananas – but one may also realize that it would replace up to 27 national regulations of the same thing.

From this angle, it is a welcome relief for citizens – and the next best thing to an actual reduction of regulations. The national- and EU-wide management of the COVID-19 pandemic is an excellent case in point, when harmonized travel regulations were much desired and enabled citizens within the bloc.

Let us, therefore, try to answer the question of whether a stronger European Union would be beneficial for its Eastern European members.

'THE POINT OF VIEW' PROBLEM

If one would like to ascertain whether a stronger or a weaker European Union is better, one has to ask two questions first: 1) For whom is it good or bad, and 2) for what purpose?



THE INTERESTS OF THE LEADERS AND THE POPULATION DIVERGE MORE IN AUTOCRACIES

This may sound like a condescending *cliché*, but current public discourse lacks even this basic level of analytical clarity. Most importantly, it fails to refer to the difference between the citizens and that of their political elites. The problem becomes less and less theoretical, as emerging autocracies allow for leaders to neglect and ignore the interests of the public.

For the sake of clarity, let us focus on the interests of the citizens living in these countries and not their leaders (the latter being interested predominantly in staying in power and, potentially, in corruption). But the more autocratic a country, the less the interests of its people matter.

People can have different reasons for favoring the EU. At the very least, we have to make the distinction between the interests of the citizens and those of the ruling elite, as they do not naturally converge. It is a common first-world misconception that bad governance, or not governing in accordance with the people's interests would definitely unseat a politician. Emerging autocracies give plenty of lessons on how and in what stages those certainties can be defanged and how the seemingly logical election loss does not happen for autocratic leaders.

In a democratic society, the two interests (those of the citizens and their leaders) are linked by the need for the leaders to remain popular – but as their power grows, the leaders' need for love only lingers as a personality trait, rather than a cold, hard, political necessity. The more autocratic a country, the more its public opinion becomes managed by its politicians – rather than followed. As a consequence, public interest gets more and more neglected. By the time the chasm becomes apparent, the tools of democratic correction might be too deeply eroded to work.



BY THE TIME THE CHASM BECOMES APPARENT, THE TOOLS OF DEMOCRATIC CORRECTION MIGHT BE TOO DEEPLY ERODED TO WORK

As a rule, the political elite's top priority is to gain and keep power. It may or may not be related to good governance (the interest of the citizens) as illustrated below.

The interest of the citizens is for their freedoms to be respected and observed. According to the 2021 Eurobarometer¹, 91% of citizens agree with the statement 'All EU Member States should respect the core values of the EU, such as fundamental rights and democracy', while only 7% believe otherwise. In Europe's new, emerging autocracy – Hungary – this value is 89%/10% (slightly reduced in the last year but broadly in line with the European average). 78% in the EU27 also regarded free trade as a positive (Eastern European countries broadly in line), while 60% said the same about globalization. Here the results diverged more.

¹ European Commission (2021) *Eurobarometer 95*. Available [online]: <https://europa.eu/eurobarometer/surveys/detail/2532>

The top-expressed priorities of European citizens thus support that statement by putting peace and freedom of movement on the continent at the top of the advantages of the European project and associating the European Union primarily with its values of liberal democracy, the rule of law, and human rights. These choices point to an understanding that a citizen's interest is not to be materially served and be cared for by the political elite (national or otherwise) but to be left alone. But what do citizens – and citizens of Eastern Europe – really want?

WHAT IS THE INTEREST OF EUROPEAN CITIZENS?

What matters to the citizens is that the state refrains from impinging on their civil liberties and human rights. They need peace and a liberal democracy with functional checks and balances on power. They need the rule of law and good governance. They need effective protection from foreign powers that erode these liberties and values. European citizens also identify the EU with these values. And when it comes to their views on what is desirable in the European project, these things do indeed top the list.

When trying to understand the interests of European citizens, analyzing surveys about their preferences is not a bad place to start. It is also useful to check if there is any discernible pattern of public opinion differences between Eastern European countries and the rest of the EU and in regard to which issues.

According to the 2021 Eurobarometer survey², citizens of the European Union broadly identify the European project with peace, the rule of law, democracy, and freedom of movement.

² Ibid.

Table 1: Top benefits of the EU

Top benefits of the EU (Name three - %)	EU27
Peace among the member states	47
The free movement of people, goods, and services within the EU	51
The euro	23
Solidarity among member states	22
Education exchange programs (Erasmus)	19
The Common Agricultural Policy	9
The economic power of the EU	23
The political and diplomatic influence of the EU in the rest of the world	19
The level of social welfare (healthcare, education, pensions) in the EU	18
The protection of the environment	14
Care for human well-being	11

Source: Eurobarometer 2021

Table 2: Top 3 perceived benefits of the EU

Which of the following do you think is the most positive result of the EU? MAX 3 ANSWERS												
Top benefits of the EU (Name three - %)	EU27	BG	CZ	HR	LV	LT	HU	PL	RO	SK	FR	DE
Peace among the member states	47	37	50	41	40	36	33	35	28	41	55	67
The free movement of people, goods, and services within the EU	51	66	67	63	62	60	57	51	43	66	40	54
The euro	23	12	7	10	32	24	12	7	14	37	31	29

Source: Eurobarometer 2021

When given the chance to choose three of the clear benefits of EU membership the majority named peace (47%) and freedom of movement (51%) as their top choices. The third preference was membership in the Eurozone and the economic power of the EU (tied at 23%), but strongly lagging behind the first two answers³.

Solidarity among EU member states, educational exchange programs (Erasmus), and the Common Agricultural Policy were similarly lagging behind, signaling a strong appreciation of freedoms over perks [See: Table 1].

Peace, as the major advantage of the European Union, was more appreciated among old member states than new ones⁴, who appeared to appreciate freedom of movement (of people, goods, and services) more than old members [See: Table 2].

When it comes to distinctive preferences in Eastern Europe, an increased appreciation of freedom of movement is unsurprising, but it does not cause Eastern Europeans

³ There was a clear distinction between Eurozone members whose citizens favored the common currency more than those who were not members of the Eurozone.

⁴ As of July 2021, when the survey was taken – this is expected to change in 2022 with the Ukraine war.



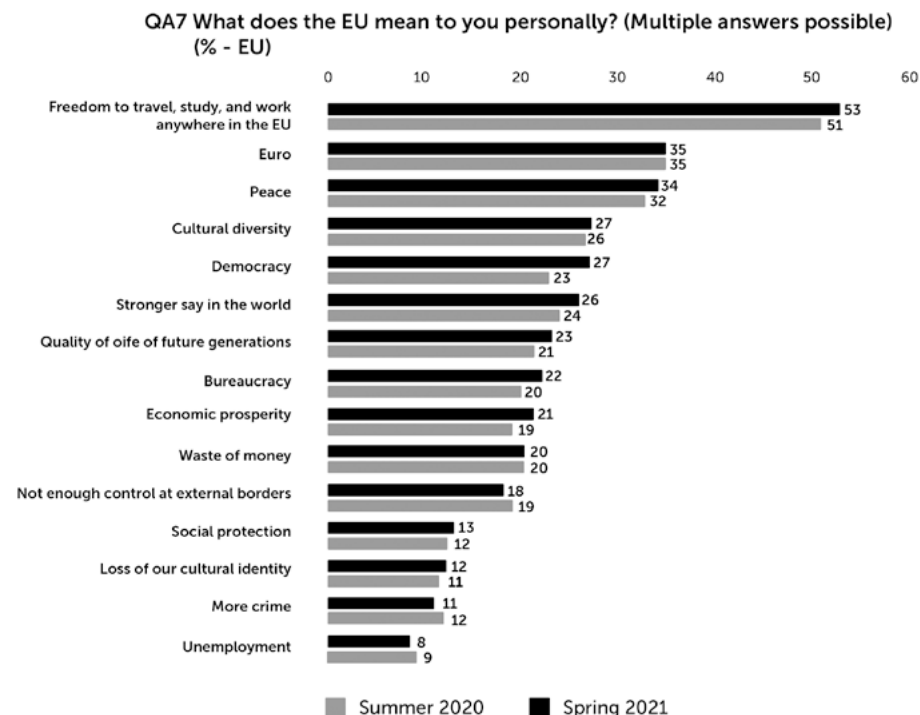
WHAT MATTERS TO THE CITIZENS IS THAT THE STATE REFRAINS FROM IMPINGING ON THEIR CIVIL LIBERTIES AND HUMAN RIGHTS

to identify the EU more with freedom of movement [See: Figures 1 and 2].

These choices refer to a value-based approach to the EU, where individual freedoms are the major attraction, while material benefits and redistributive values (such as the Common Agricultural Policy, social welfare, and environmental protection) do not make the top of the list of the EU's perceived advantages. It speaks clearly of the values Europeans seek in the EU – and Eastern Europe is not different from this perspective.

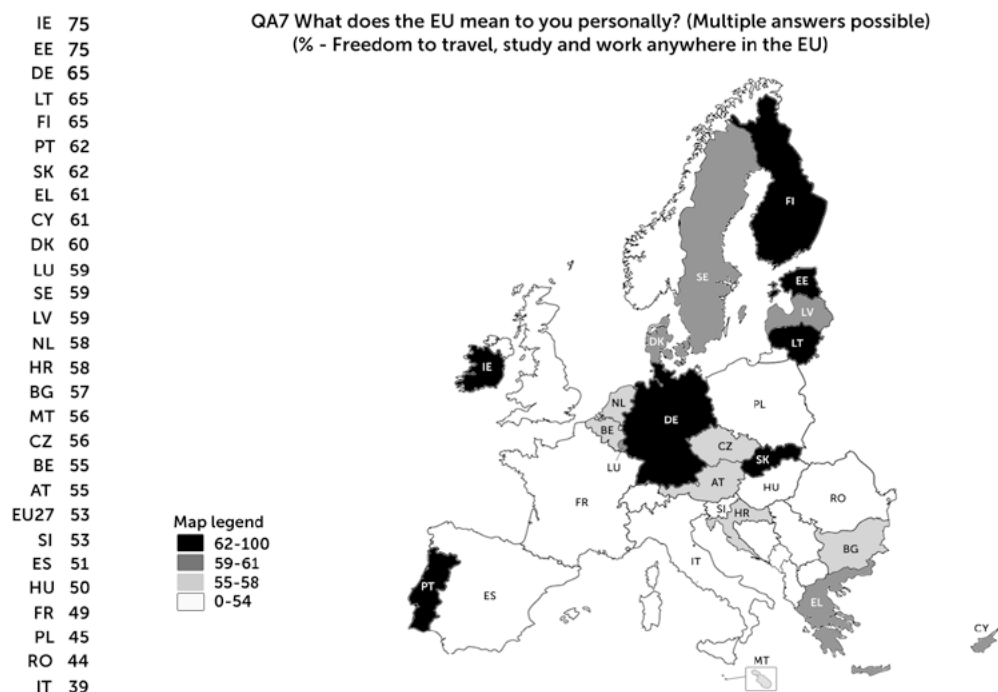
On domestic issues, citizens favor the freedoms the European Union provides, consistently marking 'peace and the freedom

Figure 1: Freedom of movement, peace, and democracy top the list of associations with the EU



Source: Eurobarometer 2021

Figure 2: Identifying the EU with freedom of movement



Source: Eurobarometer 2021



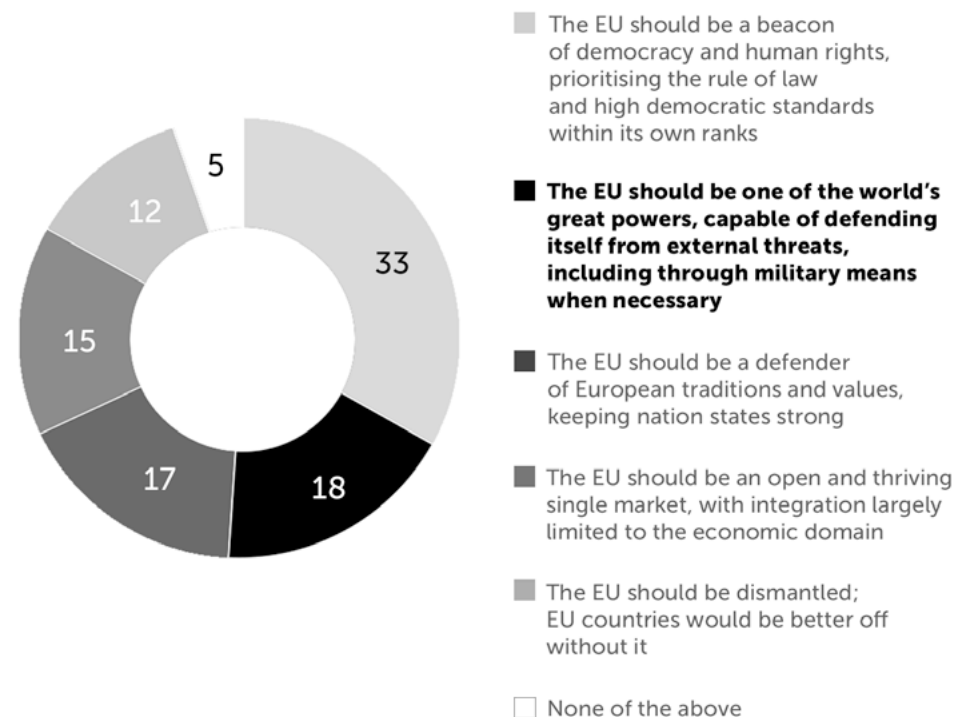
IN OTHER WORDS,
THEY HAVE UNDERSTOOD THAT
THEIR VALUES ALIGN
WITH THEIR MATERIAL INTERESTS
ON THE DOMESTIC
FRONT

of movement' and 'the single market' as the greatest advantages of the EU.

Redistributive benefits, such as the money poured into the less developed regions of the European Union, are not among the top answers given by European citizens about their reasons for favoring the European project, not even in Eastern European countries. The reason for this phenomenon is probably that citizens do not feel the benefits personally, and so these advantages mainly serve the ruling elites in the recipient countries by enabling them to buy votes and loyalty through the distribution of these funds.

Figure 3: 51% of respondents favored the EU as a beacon of its values as well as one of the great powers defending those values

Which of the following best reflects your preference for what the EU should be? Jointly for all 12 countries polled (%)



Source: ECFR 2021

Note: Survey conducted in April 2021. Excludes those who responded 'don't know.'

The absence of redistributive values from the list of EU citizens' most perceived advantages of EU membership is proof that the interests of the elites and the populations do not align perfectly, not even in liberal democracies.

ARE CITIZENS REALLY AS CYNICAL AS WE ASSUME?

When it comes to the desirable foreign policy of the European Union and its identity in the world, the picture is even more value based.

According to the 2021 ECFR study⁵, European citizens are far less cynical and are far less motivated by short-term, interest-based thinking when it comes to the European Union's foreign policy [See: Figure 3]. They may be looking out for their own interests, but they have realized that in this case their values *are* their interests.

⁵ Dennison, S. and J. Puglierin (2021) "Crisis of Confidence: How Europeans See Their Place in the World", [in]: ECFR Policy Brief, June 9. Available [online]: <https://ecfr.eu/publication/crisis-of-confidence-how-europeans-see-their-place-in-the-world/>

In the said study, Dennison and Puglierin found that building a stronger EU that protects citizens' freedoms, the rule of law, and democracy can increase their sense of safety in an increasingly uncertain world. Despite the popular assumption that people would mainly be motivated by short-term and material interests when it comes to the foreign policy of the European Union, the survey found that the plurality (33%) saw the EU as "a beacon of democracy and human rights, prioritizing the rule of law and democratic values within its own ranks".

A slightly different top answer came up in France, where the respondents also marked the vision of the EU as "one of the world's great powers, capable of defending itself from internal and external threats, through military means if necessary" as in their top values. This has especially been the case after Brexit and the presidency of Donald Trump, which left Europeans feeling that the transatlantic relations are more important than ever – but they must rely more on themselves. No doubt, Vladimir Putin's 2022 war on Ukraine has further increased the proportion of those who support both answers.

The assumptions about the supposed materialism and cynicism of European citizens have been undermined by the findings. Policymakers instinctively assume that a non-idealistic, 'interest-based' approach to foreign policy would please citizens the most and it would make them feel safer in the world. However, data suggest that European voters are not at all distanced from the foreign policy ambitions of the 2007 Lisbon Treaty, which declares that:

"the Union's action on the international scene shall be guided by the principles which have inspired its own creation ... and which it seeks to advance in the wider

”

WHEN DEFINED PROPERLY, VALUES ARE ONE'S INTERESTS

*world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity (...)."*⁶

Indeed, by favoring a strong, value-based Europe that is a beacon of democracy in its foreign policy, citizens contradict the cynical excuses of corrupt and interest-driven politicians who enter into unsavory deals on their behalf. Citizens regard soft power as a core part of the EU and, perhaps instinctively, understand that material wealth rests upon the basis of good values and principles, enforced at home, but also promoted in the world. The war in Ukraine is unlikely to weaken this sentiment.

When asked about possible trade-offs in the EU's relations with potential human rights violators and whether the EU should criticize violations of the rule of law, respondents had, once again, contradicted expectations. According to the plurality of citizens, the EU should not refrain from calling out human rights and rule of law violators in order to prioritize trade and

⁶ Article 10A (1.) of the Treaty of Lisbon – Amending the Treaty on European Union and the Treaty Establishing the European Community (2007/C 306/01). Available [online]: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

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GOOD IS GOOD, BAD IS BAD. ANY PROXY TO ASCERTAIN IT IS NECESSARILY SUBOPTIMAL

security. The only countries where this answer was not prevalent were Hungary and Bulgaria⁷. In July 2021, 72% in the EU27 were in favor of a common foreign policy of the EU, according to Eurobarometer 2021, with Eastern Europe split between below and above average values. In the same survey, 78% were in favor of a common defense and security policy, and Eastern Europe showed no discernible pattern in this regard for now. This value is likely to go up after the effect of the war in Ukraine makes its way into the survey in 2022. 76% of respondents supported having a common trade policy (no difference in Eastern Europe) and a majority a common immigration and energy policy. Here, however, countries showed a more pronounced difference according to their geographical position and exposure – only 46% of respondents in the EU27 were in favor of further enlargement of the bloc (with new member states being more in favor).

⁷ Dennison, S. and J., Puglierin, J. (2021) "Crisis of confidence: How Europeans see their place in the world", in: *ECFR Policy Brief*, 9 June 9. Available [online]: <https://ecfr.eu/publication/crisis-of-confidence-how-europeans-see-their-place-in-the-world/>.

IS LOCAL/NATIONAL GOVERNANCE A GOOD PROXY FOR GOOD GOVERNANCE?

Humankind has a fondness for rules of thumb – simplifications and oversimplifications through which one can form an opinion in an overwhelmingly complex world. Orwell's famous "four legs good, two legs bad" slogan from *Animal Farm* is an excellent example, and not just because it came with an immediate caveat to include poultry in the animal rule hierarchy. Another such simplistic rule of thumb is racism (equating *goodness* or *badness* with skin color) and, indeed, mindless localism – equating local governance with *good* or *morally superior* governance.

Equating the nation states with all sorts of positive outcomes might be the residue of the post-WW2 movements to dismember empires, but many truths have been lost in the turmoil of the 20th century. The oversimplification of identifying the national level with *goodness* may have served a political purpose in the hands of the hypocritical power grabbers of the late 20th century (just think about the Soviet Union claiming to be anti-imperialist somehow), but it has definitely run its course and is in dire need of rethinking. In truth, good governance and the level at which governance is conducted are two different issues.

From the citizen's perspective, more emphasis should be put on the question of *good* versus *bad* governance – as opposed to *national* versus *imperial/federal* governance, because one does not follow the other. Arguably, they might not even be closely correlated.

The quality of governance is a complex issue that cannot be dumbed down to a simple political slogan. Power can be abused, bad decisions can be made on a local level – just as much as on the

national, federal, or imperial levels. Escape from such power abuse can also be found on either level – for different reasons.

The question is what tools are at the disposal of an ordinary citizen to raise their voice (or, in the very least, to exit an abusive jurisdiction) and whether civil liberties are observed and legally enforced in order for the citizen to be protected from power abuse. Good governance cannot ultimately be ensured by any institutional setup – but there are definitely better and worse examples to aim for that goal. And the impossibility of perfection (of outcomes) must never be an excuse for not even trying. The question is not whether the outcomes and institutions are perfect, because they will never be, but what checks are in place to correct bad governance, bad decisions, and power abuse.

In order to ascertain whether governance is *good* or *bad*, whether power *is* abused or *not*, is to go case by case and have at one's disposal a good definition of what constitutes good governance and power abuse. According to Eurobarometer 2021, 60% of respondents 'agreed' or 'rather

agreed' with the statement '*The interests of (OUR COUNTRY) are well taken into account in the EU*', and only 34% 'disagreed' – taken during the coronavirus pandemic. What matters is arguably not the fact that decisions must be made on a local level (how local, anyway?), but that those steps be the same everywhere (harmonization), and that transparency is in place to correct mistakes and disable corruption opportunities.

When we disentangle the unrelated issues of local and good governance, we can focus on improving the latter. Good governance cannot be secured as an end, but institutions that would most likely root out bad ones can be created – on any level.

BIG VERSUS STRONG GOVERNANCE

A distinction also exists between a *strong* state and a *big* state – or, in this case, governance. A strong state refers to effectiveness in the spheres in which the state has business dealing with (like foreign policy, law enforcement, or justice). A big state means that the state has business dealing with way too many spheres of life (i.e., overregulation and meddlesome micro-management) and it usually justifies big redistribution.

Support may exist for one, but not for the other – both on the national and on the EU level. If we look at the list of what Eastern Europeans want or like about the EU, we can see that a strong (and value-based) EU is what is wanted, not a big one.

After the war in Ukraine, this sentiment might even increase, with an emphasis put on effective defense and a united foreign policy voice for the EU. The relative lack of appreciation for the EU's social and redistributive functions also points in the direction of a strong – but not big – EU governance.

THE PROS AND CONS OF HARMONIZATION

Once we disentangle big and strong, local versus national governance, we must raise the question of harmonization. How much of the support for EU-wide regulation stems from the practical benefits of harmonization, and how much from an actual desire for it to be done by the EU?

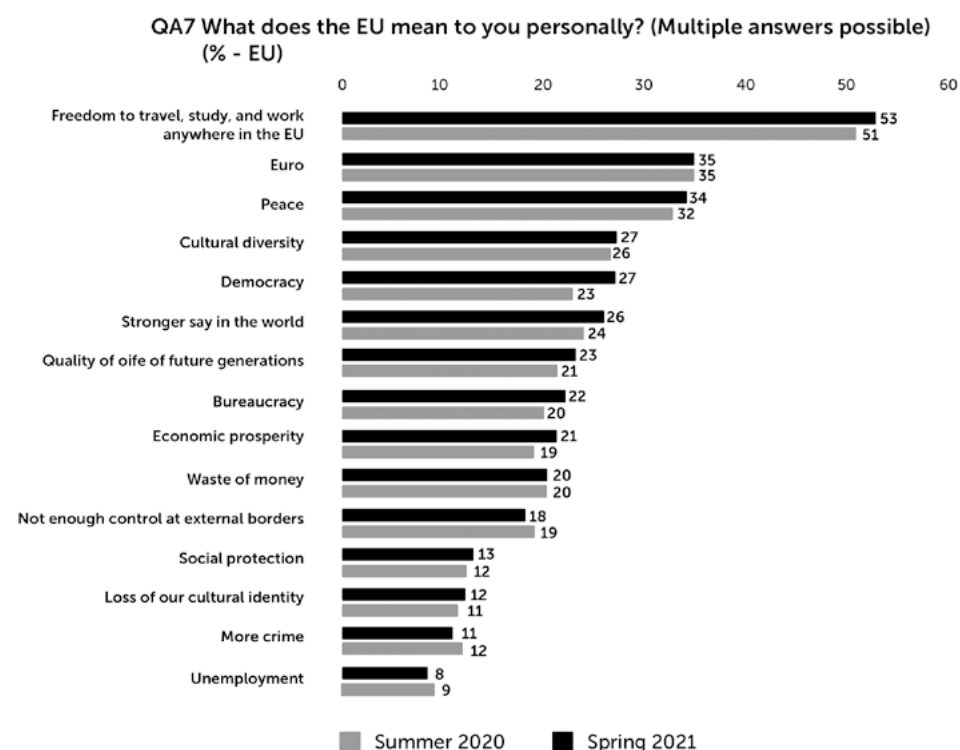
There are both benefits and disadvantages of the harmonization of regulations. On the one hand, harmonization eliminates the competition between jurisdictions, enabling suboptimal rules to persist without the possibility of an escape through exit. On the other hand, it reduces

cross-border bureaucracy and increases transparency in the form of homogeneous regulation throughout the bloc, as every EU-wide regulation potentially replaces up to 27 national ones.

According to the 2021 Eurobarometer survey, 59% of respondents 'agreed' or 'rather agreed' with the statement '*More decisions should be taken at EU level (%)*', while 34% 'disagreed'. Once again, Eastern European respondents showed no discernible difference in pattern [See: Figure 4].

The question is whether the support for EU-wide decisions comes from the trust in it to be of better quality or from the relief

Figure 4: A clear majority of respondents prefer more decisions to be taken on the EU level



Source: Eurobarometer 2021

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POWER
CAN BE ABUSED
IN A VILLAGE
AS WELL
AS IN A GALACTIC
EMPIRE

from the costly and disempowering red tape of up to 27 different sets of regulation of the same thing, as one tries to live or do business in the bloc? Is an EU-wide regulation a desirable thing in itself—referring to the trust placed in EU institutions— or just the next best thing to reduce red tape within the borders of the EU?

The handling of the COVID-19 pandemic is an excellent case in point to see the benefits of a harmonized set of rules – with the content of these rules being of secondary significance. With the onset of the COVID-19-related panic, European borders once again descended upon the continent; and even after they partially reopened, travel rules inside the bloc became a 27 by 27 matrix, with special rules applying based on the origin, the nationality, and the destination of the travelers, not to mention their vaccination and health status. A common set of rules regarding travel was superior to 27 different sets of requirements, and, as a result, provided immense relief for citizens who needed to travel. The reopening of the borders would have been even more chaotic without harmonized rules – indeed, it was still a pain in the cases in which harmonized rules were overwritten by overzealous national regulators.

It is thus not surprising that Europeans concluded that more decisions should be referred to the EU level – not necessarily because they trust the EU or agree with it, but because it is the next best thing to not being hindered by overregulation in the first place.

CONCLUSIONS

One cannot use simplistic rules of thumb if one is to ascertain whether something is *good or bad, moral or immoral*. One such criminally simplistic rule of thumb is that governance on the local or national level

is necessarily better than that on a higher level.

The inconvenient truth is that good governance will always be a topic of discussion that cannot be solved once and for all. It is a goal to thrive towards that cannot be secured by such simplistic means, and it will always be (and should be) debated and discussed. And the more autocratic a country becomes, the more the interest of its leaders and its population is allowed to diverge, with the latter neglected and then ignored completely. Europe's values of liberal democracy and the rule of law thus become even more important as being in the interest of citizens.

When studying the expressed preferences of EU citizens in the Eurobarometer survey conducted in July 2021, we have found that there is clear support for the European project. At the same time, a survey conducted by the European Council of Foreign Relations conducted at around the same time found that European citizens are surprisingly idealistic and value-based when it comes to their desired European foreign policy. They identify the European Union with its values of liberal democracy, the rule of law, and human rights, and expect the EU to defend those values and to protect citizens from attacks on these at home. The ECFR study even found that there was significant support for enforcing these values in the foreign trade relations of the EU and calling out human rights abuses in trade partners.

The common, unspoken assumption that citizens prefer a so-called "interest-based" or cynical foreign policy has thus been overturned, even though it serves as the go-to excuse of political elites to avoid confrontations and enable trade at all expenses. The ECFR survey was conducted months before the Russian invasion

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THE INCONVENIENT TRUTH IS THAT GOOD GOVERNANCE WILL ALWAYS BE A TOPIC OF DISCUSSION THAT CANNOT BE SOLVED ONCE AND FOR ALL

of Ukraine, so this sentiment is expected to grow even stronger in the long run, as Putin's war supports the conclusion that other countries' autocrats will, eventually, become our problem, even if we choose to ignore them for short-term business interests or with the intent of corruption.

Values and interests are thus not an 'either-or' choice. On the contrary, they are the same thing. Our values *are* our interests – when they are properly defined – and a clear plurality of citizens thought so too, even before the Russian invasion.

As of 2021, Eastern Europeans did not show a marked difference in their top answers regarding what they appreciate most in the EU. The answers were overwhelmingly freedom of movement (of people, goods, and services) and peace on the continent in both country groups. Eastern Europeans appreciated freedom of movement slightly more and peace a little less than citizens of old member states. (This too is expected to

change with the war on the eastern borders.) But the most important takeaway from the presented surveys is that preference is clearly given to freedoms over material benefits.

The social, welfare, and material benefits of EU membership did not even come close to the first two answers, signaling a clear preference for individual rights and civil liberties over perceived redistributive advantages. Even support for mixed choices (such as educational exchange programs that can be regarded both as material benefits and as instances of individual freedom) were dwarfed by the appreciation for peace and freedom of movement.

Eastern Europe gave a clear signal for a preference for a strong EU (but not a big one) and a more value-based European identity. The harmonization of national regulations might reduce competitiveness between countries, but it also provides a relief for the citizens from the costly burden of up to 27 different national regulations about any given issue. The COVID-19-induced closure of the borders and the slow and fragmented reopening rules have added to the pressure for a more unified set of rules – and lowered interest in the quality of those rules.



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The Value of Constitutionalism in the European Union



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TANJA
PORČNIK

The European Union (EU) has been thriving for decades. A subtle yet important factor in its achievement of economic prosperity and further institutional integration has been the agreement on and commitment to upholding common values laid out in Article 2 of the Treaty on European Union (TEU), providing that the EU is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”¹

These provisions of the EU legal system are not only fundamental values in a constitutional democracy, but are also the founding values of the European Union. These values form the core of the institutional identity of the EU.

In the last decade, the European Union has seen an increasing number of attacks on, or even rejection of, some of these founding values by none other than democratically elected governments of EU member states. The opposition to these EU constitutional values was most explicitly and systematically formed by political elites in two member states in Eastern Europe (Poland and Hungary).

The recent developments of constitutionalism backsliding pose risks of detrimental institutional effects not only on the political system and constitutional order of respective EU member states but also on the EU itself. Unless each EU member state upholds constitutional democracy in their respective society, the European Union, as it is defined and constituted today, does not have a future.

¹ The Treaty on European Union – Article 2. Available [online]: https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj

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THE EU NEEDS TO ENDORSE LIBERAL VALUES AND METHODOLOGICAL INDIVIDUALISM THAT UNDERPIN CONSTITUTIONALISM

For the European Union to persevere and keep thriving as a community of liberal societies and democratic political systems, it needs to show unwavering commitment to constitutionalism, which is defined by limited government and the rule of law. In doing that, the EU needs to endorse liberal values and methodological individualism that underpin constitutionalism by reaching out to as many open minds as possible to embrace constitutionalism. Consequently, the European Union, as we know it, will survive or fall depending on the strength and robustness of constitutionalism in its member states.

ON CONSTITUTIONALISM

In the pursuit of better effectuation of the fundamental principles of the political regime, constitutionalism defines and delimits the political ends and means within the realm of politics by imposing constraints on the power of the state and the discretion

“THE RIGHTS AND FREEDOMS OF INDIVIDUALS HAVE NOT ALWAYS BEEN GUARANTEED AND PROTECTED TO THE EXTENT THAT THEY ARE TODAY IN MANY CONSTITUTIONAL STATES AROUND THE WORLD

of its government officials.² With the aim to ensure that those who exercise state power in a constitutional state guarantee adequate legal protection and procedural respect of the fundamental principles, and not to infringe upon them, constitutionalism should be distinguished from the mere presence of a constitution. A constitution may, or may not, provide effective constitutional constraints on the people in government. On the other hand, constitutionalism, when embedded into constitutional order and protected by actors in the political system, is an effective constraint on constitutional government.

² Whittington, K. E. (2008) "Constitutionalism", [in]: K. E. Whittington, R. D. Kelemen, and G. A. Caldeira (ed.), *The Oxford Handbook of Law and Politics*, Oxford: Oxford University Press, pp. 281–299.

Constitutional democracy is grounded in constitutionalism. Thus, like the liberal political thought that is its foundation, it has a negative view of unlimited and arbitrary state power.

The centerpiece of constitutionalism is a constitution, which is defined and supported by constitutional principles of a liberal democracy. Among those are popular sovereignty, consent of the governed, accountability of individuals in power to the people, the rule of law, and limited government³.

Today, many constitutional democracies meaningfully limit the power of the state and the discretion of the government officials with the nation's constitutional order. Whereas in the history of politically organized societies, state power has often been limited significantly less, if at all. Consequently, the rights and freedoms of individuals have not always been guaranteed and protected to the extent that they are today in many constitutional states around the world⁴.

Early constitutionalism as a political theory sought to limit the power of the state through constitutional institutions, while its modern form focuses on constitutional institutes that disperse the power of state among state institutions to better protect individual rights against the state⁵.

³ Henkin, L. (1989) "Revolutions and Constitutions", [in]: *Louisiana Law Review*, Vol. 49(5), pp. 1023–1056. Available [online]: <https://digitalcommons.law.lsu.edu/lalrev/vol49/iss5/2/>

⁴ Porčnik, T. (2022) *Vloga sistema zavor in ravnovesij v Združenih državah Amerike pri spoštovanju pravic ujetnikov v Guantánamu*, a doctoral dissertation. Available [online]: <https://repozitorij.uni-lj.si/lzpis/Gradiva.php?id=135357> [in Slovene]

⁵ Lane, J.-E. (1996) *Constitutions and Political Theory*, Manchester: Manchester University Press.

“SOCIETIES HAVE DIFFERENT CONSTITUTIONAL VALUE PREFERENCES AND THEREFORE ARE NOT EQUALLY RESISTANT TO THE ATTACKS ON CONSTITUTIONALISM

Crucially, the mere presence of legal restrictions on the power of the state, spelled out in the legal system, is not a guarantee for constitutionalism, as the latter depends on whether these restrictions of a constitutional order are also effective⁶. Effective limitation of power should not only prevent the state from making steps from constitutional democracy toward absolutism, but, more importantly, should ensure that the power of the state in its arbitrariness and tyranny over the people ceased to protect human rights and freedoms and other fundamental principles of a political regime.

Societies have different constitutional value preferences and therefore are not equally resistant to the attacks on constitutionalism. As an example, those with strong commitments to fairness and the rule of law tend to

⁶ Friedrich, C. J. (1974) *Limited Government: A Comparison*, Englewood Cliffs, New Jersey: Prentice-Hall.

be better equipped for such events. However, while a constitutional democracy welcomes and even encourages different constitutional interpretations to be eventually settled through institutional process by political actors, the commitment of both political class and citizens at large to common values is a prerequisite for a constitutional state to persevere.

Richard S. Kay argues that consenting to constitutionalism, where life in a liberal society is subject to the constitutional order, is a risk-averse strategy, where the individual prefers strict restrictions on the power and functioning of state rather than the possibility of government unduly interfering with private lives of individuals when new circumstances arise⁷.

Importantly, limited government is the "ethos of constitutionalism," whereas how specifically these legal restraints ought to underpin and define the constitutional order in a modern liberal state remains a challenge⁸. Such a challenge also applies to the drafting and enforcing provisions of the constitutional order defining the political and legal consequences for those in government who act in conflict with provisions of the constitution – for instance, by not protecting constitutional values of a liberal democracy.

In a constitutional democracy, constitutional values are constraints on the people in government. When clearly specified in a constitution, these constitutional constraints are its hard-wired features. On the

⁷ Kay, R. (2001) "American Constitutionalism", [in]: L. Alexander (ed.), *Constitutionalism: Philosophical Foundations*, Cambridge: Cambridge University Press, pp. 16–63.

⁸ Vile, M. J. C. (1998) *Constitutionalism and the Separation of Powers*, 2nd Edition. Available [online]: <https://oll.libertyfund.org/title/vile-constitutionalism-and-the-separation-of-powers>

“ IN A CONSTITU- TIONAL DEMOC- RACY, CONSTITU- TIONAL VALUES ARE CONSTRAINTS ON THE PEOPLE IN GOVERNMENT

other hand, when not defined at a high level of specificity, they might be regarded as soft constraints on a constitutional government.

Richard A. Epstein notes that textual interpretation is only the first step in constitutional interpretation, as “[t]he key questions of constitutional law have to do with the articulations of doctrines that have no particular text origin, but whose inclusion is fairly required by the text itself”⁹. These articulations are in a constitutional state expected from the judicial and legislative branch. The two branches co-build and co-define the nation’s constitutional order with the application of a judicial review and political procedure of legislating.

The people in the government may fail to be bound by constitutional constraints because they might be resisting or contesting constitutional constraints, or they might even be unaware of them. In either event, constitutional constraints need to be made known to political actors and

enforced by the institutional ones – in all circumstances and for all political actors – if they are to be effective. Furthermore, no constitutional constraint can be written out of the constitutional order by way that is not constitutionally defined otherwise a society faces the crisis of constitutionalism. Most importantly, it is up to the society to defend it, as constitutionalism is not self-supporting.

THE BACKSLIDING OF CONSTITUTIONALISM IN THE EU

In the recent decade, the European Union has increasingly witnessed undermining of some of the founding values referred to in the core institutional provisions of the EU, laid out in Article 2 of the TEU:

*“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”*¹⁰

The governments of Hungary and Poland, while weakening constitutionalism in their countries, are resisting to adhere to EU constitutional constraints by not upholding the founding values of the EU. The political actors in these two member states do not possess the lack of judgment, but rather reject constitutionalism by undermining their elements of limited government and the rule of law. They have put their electoral or policy needs ahead of their desire to be faithful to constitutionalism.

¹⁰ The Treaty on European Union – Article 2. Available [online]: https://eur-lex.europa.eu/eli/treaty/teu/2012/art_2/oj

⁹ Epstein, R. A. (2006) *How Progressives Rewrote the Constitution*, Washington, D.C.: Cato Institute, p. 9.

“ THE CONSTITU- TIONAL PRINCIPLE OF JUDICIAL INDE- PENDENCE IS NOT ONLY A PRODUCT OF MODERN CON- STITUTIONALISM, BUT ALSO A COR- NERSTONE OF CON- STITUTIONAL DE- MOCRACY

The current political leaders in Hungary and Poland do not see a problem with the government’s rejection of constitutionalism at both levels – of a member state and the European Union. Still, these leaders – for other reasons – wish for their countries to remain EU member states, which includes that they keep contributing to and defining the EU’s constitutional order.

... THE ROLE OF JUDICIARY

One of the main components of the rejection of constitutionalism in EU member states has been the government’s undermining of judicial independence. The constitutional principle of judicial independence is not only a product of modern constitutionalism but also a cornerstone of constitutional democracy. Still, not all societies uphold judicial independence to the same degree. More individualistic societies

and those with higher trust in other members of a society are more likely to have high levels of (perceived) *de facto* judicial independence, whereas their expected level of *de jure* judicial independence is lower than that of collectivistic and low-trust societies¹¹.

As a constitutional principle of a constitutional democracy, judicial independence plays an *essential* role in upholding the EU constitutional order by enforcing EU law in member states, as the European Court of Justice (ECJ) concluded¹². Hence, maintaining and protecting judicial independence is not only necessary for the proper function of this branch of a constitutional government but also a precondition for the robustness, strength, and longevity of constitutionalism in a constitutional democracy.

By upholding its independence, the judiciary can perform three necessary functions. First, the judicial branch upholds the constitutional order. Second, it acts as a check against the political branches of government by interpreting and making constitutional constraints upon them effective. In particular, the presidential system tends to slip into constitutional noncompliance when an independent judiciary is not guaranteed¹³. Third, it protects human rights and freedoms of individuals when they are being violated. Through these three ways, the courts play a meaningful role in maintaining the rule of law and the system of

¹¹ Gutmann, J. and S. Voigt (2020) “Judicial Independence in the EU: a puzzle”, [in]: *European Journal of Law and Economics*, Vol. 49, pp. 83–100.

¹² C-64/16 - Associação Sindical dos Juizes Portugueses v Tribunal de Contas (2018) *ECLI:EU:C:2018:117*. Available [online]: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-64/16>

¹³ Gutmann, J. and S. Voigt (2021) “Militant Constitutionalism: A Promising Concept to Make Constitutional Backsliding Less Likely?”, [in]: *Public Choice*. Available [online]: <https://link.springer.com/article/10.1007/s11127-021-00874-1>

limited government with the aim of preventing arbitrary exercise of the power of the state.

The judges provide a detailed and lengthy examination of the law, which is often not a skill of other government officials¹⁴. As such, judges do not evaluate or take into account public opinion when trying to address constitutional neglect by political actors, but rather only speak on behalf of and enforce constitutional principles.

In a historical perspective, between the 1960s and 1990s, judicial review and independent constitutional adjudication were an effective obstacle to the concentration of state power in Europe¹⁵. However, this trend has been affected in the following period. As an example, Poland's ruling Law and Justice party (Prawo i Sprawiedliwość, PiS) packed the Constitutional Tribunal in Poland, the court vested with the power of judicial review, with party-loyalists to facilitate an additional tool of the governing majority party. Further, PiS imposed the political maneuvering on the Supreme Court with the aim of disciplining the judiciary into submission and non-objection to the removal of constraints on the party's power¹⁶.

In another case from the EU, between 2017 and 2019, the Romanian government led by the Social Democratic Party (Partidul Social Democrat, PSD) put in place the political control of the content of judicial decisions,

¹⁴ Hamilton, A. (2008) *No. 78: The Judiciary Department*. Available [online]: https://avalon.law.yale.edu/18th_century/fed78.asp

¹⁵ Sajó, A. (1999) *Limiting Government. An Introduction to Constitutionalism*, Budapest and New York, New York: Central European University Press.

¹⁶ Bojarski, Ł. (2021) "Civil Society Organizations for and with the Courts and Judges—Struggle for the Rule of Law and Judicial Independence: The Case of Poland 1976–2020", [in]: *German Law Journal*, 22(7): 1344–1384. DOI:10.1017/glj.2021.72

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THE ELECTORAL DEMOCRACY, WHICH REMAINS THE UNCONTESTED SOURCE OF LEGITIMACY IN LIBERAL DEMOCRACIES AROUND THE WORLD, HAS BECOME A CONVENIENT EXCUSE FOR THOSE WHO UNDERMINE CONSTITUTIONALISM IN THE EU

which was implemented by legislative amendments that defined the disciplinary regime applicable to judges and their personal liability for judicial error¹⁷.

¹⁷ Court of Justice of the European Union (2021, May 18). Press Release No 82/21: The Court of Justice rules on a series of Romanian reforms in the areas of judicial organization, the disciplinary regime applicable to judges, and the financial liability of the State and the personal liability of judges as a result of a judicial error. Available [online]: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-05/cp210082en.pdf>

The recent weakening of constitutionalism in the EU attests to a known axiom that (aspiring) autocrats attack judicial independency – where judges on independent and impartial courts are able to perform their duties free from interventions, pressures, and inducements that may corrupt or curtail their judgment or decisions by other actors – not overnight, but with a gradual, incremental, long-lasting process of political subordination of the judiciary¹⁸. Also, their toolbox of interference and attempts to bring judiciary under political control is particularly wide – from politically tailoring or controlling the nomination and appointment process for judges, prosecutors, and notaries, altering the retirement age of judges without an objective and proportionate justification, deploying disciplinary proceedings against them for questioning the ruling party's stand by a chamber that is not independent and impartial, and imposing procedural rules that paralyze courts¹⁹ to spurring a hate campaign²⁰ and using the national media to undermine credibility of those in the judiciary²¹.

... THE ROLE OF DEMOCRACY

The current process of eroding constitutionalism in some of the EU member states occurs under the democracy's watch.

¹⁸ Levitsky, S. and D. Ziblatt (2018) *How Democracies Die*, New York: Crown.

¹⁹ Walsh, A. (2019) "What Are Poland's Controversial Judicial Reforms?", [in]: *DW*, November 5. Available [online]: <https://www.dw.com/en/what-are-polands-controversial-judicial-reforms/a-51121696>

²⁰ Applebaum, A. (2020) "The Disturbing Campaign Against Poland's Judges", [in]: *The Atlantic*, January 28. Available [online]: <https://www.theatlantic.com/ideas/archive/2020/01/disturbing-campaign-against-polish-judges/605623/>

²¹ Gałczyńska, M. (2019) "Śledztwo Onetu. Farma trolli w Ministerstwie Sprawiedliwości, czyli 'za czynienie dobra nie wsadzamy'", [in]: *Onet.pl*, August 18. Available [online]: <https://wiadomosci.onet.pl/tylko-w-onecie/sledztwo-onetu-farma-trolli-w-ministerstwie-sprawiedliwosci-czyli-za-czynienie-dobra/j6hwp7f>

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FOR GENERATIONS, DEMOCRACY HAS BEEN A FAVORITE IN THE POLITICS OF WESTERN SOCIETIES

Democracy is not a panacea for all illnesses. Even worse, in the current situation, the electoral democracy, which remains the uncontested source of legitimacy in liberal democracies around the world, has become a convenient excuse for those who undermine constitutionalism in the EU.

For generations, democracy has been a favorite in the politics of Western societies. The perceived supremacy of democracy in relation to other political regimes has resulted in an acceptance and even praise of electoral majoritarianism at all costs. After all, a constituency has spoken.

Just because it is the best-known option, does not mean that democracy does not create perils for a constitutional state. Unbound electoral democracy can not only lead to the demise of constitutionalism, but will also eventually destroy democracy itself.

As Leo Strauss stressed, "the reason why we cannot allow ourselves to be the bootlickers of democracy is because we are its friends

“ CONSTITUTIONAL- ISM IS NOT DEFINED AND SHAPED ONLY BY LE- GAL SCHOLARS AND JUDGES, BUT ALSO BY THE POLITICAL PRISM

and allies.” Hence, constitutionalism is not an opponent of democracy, while it does not put it on a pedestal²².

IT IS THE POLITICS, STUPID!

To fully understand the role of judiciary and the role of democracy in the process of erosion – or possible future strengthening – of constitutionalism, the workings of the latter need to be viewed inside of politics. Constitutionalism is not defined and shaped only by legal scholars and judges but also by the political prism. Its influence is not *a priori* negative. Rather, an all-encompassing analysis of constitutionalism ought to take that vital component into account too.

²² Rosenfeld, M. and A. Sajó (2013) “Constitutionalism: Foundations for the New Millennium”, [in]: *New Millennium Constitutionalism: Paradigms of Reality and Challenges*, Yerevan: NJHAR. Available [online]: https://www.venice.coe.int/CoCentre/Harutyunyan_newmillenium.pdf

Politics has direct and indirect influence on constitutionalism. The most noticeable role is where politics shapes the structural, procedural, and substantive features of a constitution. With constitutional order constraining politics in a constitutional democracy, it turns out that politics has a significant say in defining and interpreting its own constitutional constraints.

In terms of interpreting them in the EU legal system, the Hungarian ruling Fidesz party’s membership in the European People’s Party (EPP Group), until it decided to leave its center-right European political family in 2021, critically weakened the European Parliament and European Commission’s exercise of the oversight function over the actions of the Hungarian government that were undermining or even rejecting constitutionalism.

In this case, some political actors at the EU level, who were mindful of votes Fidesz was contributing to the EPP Group, decided to give political considerations priority over the political enforcement of compliance with constitutional constraints²³. Instead of acting as guardians of the Treaties, the Commission secured its role as the driving force of integration by embracing dialogue with member state governments over robust enforcement of EU law²⁴. The constitutional neglect by EU political bodies enabled and contributed to further constitutionalism backsliding in the EU. On the other hand, Poland’s PiS did not find a political savior in its EU political family to pave the same path. A much smaller party group of European

²³ Kelemen, R. D. (2017) “Europe’s Other Democratic Deficit: National Authoritarianism in Europe’s Democratic Union”, [in]: *Government & Opposition*, Vol. 52(2), pp. 211–238.

²⁴ Kelemen, R. D. and T. Pavone (2022) *Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union*, APSA Preprints. DOI: 10.33774/apsa-2022-c0qjl

“ FIDESZ AND PIS SHARE A COMMON INTEREST IN IMPEDING THE EU INSTITUTIONS FROM ACTING AGAINST THE POL- ISH AND HUNGAR- IAN GOVERNMENT ENGAGED IN CON- STITUTIONALISM BACKSLIDING

Conservatives and Reformists (ECR), with marginal influence in the EU institutions, did not have a chance to instigate a bleak EU response to member state’s rejection of constitutionalism.

Further to the direct role of politics defining and interpreting its own constitutional constraints on the EU level, though they belong to different EU party groups, Fidesz and PiS share a common interest in impeding the EU institutions from acting against the Polish and Hungarian government engaged in constitutionalism backsliding. In 2020, these two governments jointly invoked a veto to block the EU budget and the recovery fund on the grounds of an

objection to making the EU funds conditional on respect for the rule of law and democratic norms²⁵.

Less obvious influence is the indirect role of a political context in cases when the judiciary is unwilling to exercise its power of judicial review by which it would perform its own role of an enforcer of the constitutional constraints on power and functioning of state actors. Such passivity or even apathy on the part of judicial behavior could be based on their political bias. It could also result from political intervention or pressure on the judges – in the case of Romania, a judicial body responsible for conducting disciplinary investigations and bringing disciplinary proceedings against judges and prosecutors was designed as such an instrument – which is yet another reason for it being essential to provide guarantees of the independence of the judiciary and to maintain the independence of the judges. Unless the judiciary has an interest in being an effective check on the political branches, it can not only be the *least dangerous* branch²⁶ but also the element that contributes to the demise of constitutionalism.

STRENGTHENING CONSTITUTIONALISM IN THE EU

With the process of eroding constitutionalism in the European Union in the last decade, which has been driven by leaders from a handful of EU member states who have found support in significant segments of the general public, it is essential that the remaining member states, as well as the EU institutions, are not only constitutionally

²⁵ Reuters (2020) *Hungary and Poland Stick to EU Budget Veto, Hungarian Minister Says*. Available [online]: <https://www.reuters.com/article/eu-budget-hungary-poland-idUSKBN28H1TI>

²⁶ Hamilton, A. (2008) No. 78: *The Judiciary Department*. Available [online]: https://avalon.law.yale.edu/18th_century/fed78.asp

faithful but also committed to constitutionalism. Constitutional pluralism in the EU requires that this commitment applies to both the EU and the member states' constitutional orders.

However, such commitment does not come without challenges. As such, the courts are in a possession of "weak judicial review," as defined by Jeremy Waldron²⁷, which authorizes the EU judges to opine on the government actions, whereas they may not invalidate them when in violation of constitutional constraints. Cancellation and possible replacement of such government policies need to come from political actors.

Concurrently to judicial scrutiny, other political actors need to remain committed to the principles of constitutionalism and constitutional implementation by marshaling political resources to promptly, well-thought through, and fiercely react to these developments by mobilizing political opposition in defense of the constitutional standards and call those that have committed constitutional violations to accountability. Often, their first move, as a damaged party, should be to appeal to the courts for a judicial review to trigger judicial scrutiny of a governmental action. In the meantime, the political actors may organize their own oversight efforts in the form of legislative hearings and investigations to monitor constitutional violations²⁸.

²⁷ Waldron, J. (2006) "The Core of the Case Against Judicial Review", [in]: *Yale Law Journal*, Vol. 115, pp. 1355–1356. Available [online]: <https://www.jstor.org/stable/20455656>

²⁸ McCubbins, M. D. and T. Schwartz (1984) "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms", [in]: *American Journal of Political Science*, Vol. 28, pp. 165–179. Available [online]: https://fbaum.unc.edu/teaching/PLSC541_Fall08/mcubbins_schwartz_1984.pdf

The call to adhere to constitutional constraints may be issued to individual politicians, political parties, or even member states. Currently, among legal and political procedures on the table in relation to government actions by the Hungarian and Polish governments are the Court of Justice

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BEYOND
THE IMPLEMENTATION OF THE CURRENT LEGAL SYSTEM IN THE EU, MEASURES AT THE INSTITUTIONAL LEVEL SHOULD BE REASSESSED AND POSSIBLY REDESIGNED TO MAKE CONSTITUTIONALISM MORE RESILIENT TO THE ATTACKS ON CONSTITUTIONAL DEMOCRACIES

of the European Union (CJEU) judgements and several measures by the European Commission²⁹.

Perhaps these measures will change the incentive matrix for the political leaders of the Hungarian and Polish governments in order for them to change their due course of government actions that have so far not been faithful to constitutionalism. Consequently, upon such and other political, judicial, and diplomatic response rests the further strength and existence of the European Union as the supranational political entity as we know it.

Beyond the implementation of the current legal system in the EU, measures at the institutional level should be reassessed and possibly redesigned to make constitutionalism more resilient to the attacks on constitutional democracies. There are elements in the current constitutional structures at both the member states and EU level that can be used to hinder or even prevent the further drift towards an autocracy.

Shortcomings are common heritage of constitutional structures in all democracies. Hence, a rethink about the constitutional democracy in the EU would be an endeavor with the aim to strengthen its constitutionalism. Economic prosperity and further institutional integration of the EU in the last few decades should not be mistaken for the robustness and strength of constitutionalism in the EU.

²⁹ These include launching infringement procedure, triggering Article 7 TEU procedure for a "clear risk of serious breach" of EU values, using the European Rule of Law mechanism based on the Rule of Law reports, and using a general regime of conditionality for the protection of the EU's budget, also known as a "conditionality regulation" that allows the EU to take measures to protect the EU budget.

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SHORTCOMINGS
ARE COMMON
HERITAGE
OF CONSTITUTIONAL STRUCTURES
IN ALL DEMOCRACIES

Notably, when the EU started observing the constitutionalism backsliding in Hungary a decade ago, the EU institutions were barely responding to the developments. Furthermore, at that time, the EU's enforcement capacity was not just very weak, but also might have been on questionable ground due to a democratic deficit and legitimacy problems in the EU³⁰.

In recent years – even though the EU legal system has remained more or less unchanged – the political, legal, and diplomatic response to the weakening of constitutionalism by the governments of Hungary and Poland has strengthened. Among major institutional developments were the triggering of the procedure laid down in Article 7 TEU after the European Parliament called on the Council to determine the existence of a clear risk of a serious breach by Hungary of

³⁰ Weiler, J. H. H. (2014) "Living in a Glass House: Europe, Democracy and the Rule of Law", [in]: C. Closa, D. Kochenov and J. H. H. Weiler (eds.), *Reinforcing the Rule of Law Oversight in the European Union*, Cambridge: Cambridge University Press. Available [online]: https://cadmus.eui.eu/bitstream/handle/1814/30117/RSCAS_2014_25_FINAL.pdf

“THE POLITICAL, LEGAL, AND DIPLOMATIC RESPONSE TO THE WEAKENING OF CONSTITUTIONALISM BY THE GOVERNMENTS OF HUNGARY AND POLAND HAS STRENGTHENED

the EU's founding values³¹, and the European Court of Justice (ECJ) ruling that Poland had violated the principles of the irremovability of judges and judicial independence when it passed the law lowering the age of retirement for Supreme Court judges³².

Still, it is unclear whether institutional safeguards can lead to the enforcement of constitutionalism in these two EU member states, which needs to be accepted and carried out by the governments of these countries. Political nudges and even institutional

checks from the EU institutions may eventually prove to be ineffective in returning these two member states to the upholding of constitutionalism. However, at that point the European Union will at least be at a point to find a way to resolve a question of what type of political union it wants to be. One where all member states uphold constitutionalism, which means that on the EU level it also endures, or one where constitutionalism is not its foundation.

The question also is about the strength and robustness of constitutionalism in the EU before or in the absence of the developments that were ignited by the Hungarian and Polish government.

Crucially, a major shortcoming of the EU legal structure is that while it clearly states its founding values, it is poorly equipped to withstand challenges to these values. What the European Union could do going forward is to reinforce the substantive principles of constitutionalism in its legal order – such as a presumption of liberty, respect for private property rights and human dignity. To guarantee that constitutionalism in the EU is not merely a package in a shiny wrapping paper into which any legal provision could be squeezed in, the legal system requires – along with formal and procedural principles – substantive principles that will define and protect limited government and the rule of law in the EU.

Finally, the European Union is a political experiment. Not only because it brings together more than two dozen member states with prior diverse political history, but also because its institutional structure and legal system have evolved since signing the Maastricht Treaty three decades ago. Debates on EU identity, structures, sovereignty, and legitimacy are still ongoing. This does not come as a surprise, considering that any constitutional democracy evolves

throughout time. Such constitutional development may be the consequence of shortcomings of the original design or the fundamental changes in a society. Either way, it is a part of strengthening constitutionalism.

THE ROLE OF THE WIDER POLITY

Importantly, the defense of constitutionalism does not depend only on the action of political actors but also on the support for it in the wider polity. When voters expect their politicians to adhere to constitutional principles, the chances for political actors to risk reelection by staying on the set course of constitutionalism undercutting decrease.

“A MAJOR SHORTCOMING OF THE EU LEGAL STRUCTURE IS THAT WHILE IT CLEARLY STATES ITS FOUNDING VALUES, IT IS POORLY EQUIPPED TO WITHSTAND CHALLENGES TO THESE VALUES

The opinion of the voters is a key component in the political calculation.

When two or more sides to the political question of constitutional values are presented in a constitutional democracy, the political class and citizens at large have the right to decide which one they accept and wish to see as a foundation of the political regime and legal system. This may also mean that if their values have changed and are no longer in alignment with those that were passed on to them by previous generations, the people may wish to see redefinition of constitutional values.

However, to keep upholding constitutionalism, all sovereign power in a society needs to be limited, including the one of people. The tyranny of the majority is no more acceptable than the tyranny of an autocrat. Crucially, commitment to constitutionalism is echoed in constitutional principles of representative government, separation of powers, constitutional rights, and the rule of law.

Finally, the defense of constitutionalism is conditioned also on the informed polity. For societies that were under repressive political regimes not that long ago, it is essential to put considerable emphasis on civic education and create space for civil society. By exercising their freedoms of speech, association, and assembly, people in an open society may freely share ideas and information on constitutional values and other constitutional constraints on the political actors.

CONCLUSIONS

Constitutional constraints have been contested in the European Union in the recent decade. These actions by political actors in member states were not a mistake rooted in the lack of understanding of constitutional values, but rather a deliberate, methodical

³¹ European Parliament (2018) *European Parliament Resolution of 12 September 2018 on a Proposal Calling on the Council to Determine, Pursuant to Article 7(1) of the Treaty on European Union, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union is Founded (2017/2131(INL))*. Available [online]: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html

³² C-192/18 - Commission v. Poland (2019) *ECLI:EU:C:2019:529*. Available [online]: <https://curia.europa.eu/juris/liste.jsf?num=C-192/18>



THE EUROPEAN UNION IS A POLITICAL EXPERIMENT. DEBATES ON EU IDENTITY, STRUCTURES, SOVEREIGNTY, AND LEGITIMACY ARE STILL ONGOING. ANY CONSTITUTIONAL DEMOCRACY EVOLVES THROUGHOUT TIME

attack on constitutionalism for political gains.

The current constitutionalism backsliding in the EU underlines two essential challenges. First, the European Union is faced with a disagreement of competing visions of a constitutional future. While the contest to constitutional meaning by political actors is not shocking, it is the first time in the history of the European project that we are witnessing an open clash on competing visions of the constitutional values.

The European Union should welcome these diverse arguments being put on the table. After they are evaluated and tested against the constitutional framework, the decision

on the future constitutional provisions of the EU should entrench preferred constitutional understandings. Legal realism would assume that under the same constitutional order multiple interpretations of the constitution may cohabit, as long as they agree on common parameters. Such an understanding may only be reached within politics.

Second, the EU law proclaims constitutional values; however, the substantive EU law is yet to emerge. The current disagreements on the constitutional values and constitutional interpretation may – if allowed to be settled through an institutional process within politics in the EU – lead to the development of the substantive principles of EU law.

Constitutionalism is a process of developing and acquiring constitutional values, text, structure, order, interpretation, and application. The constitutional development means an original conception that is in the later stage most likely reexamined and adjusted with the intent for constitutional order to better reflect people's evolving views on the nature, structure, boundaries, and purpose of the constitutional government. Three decades of such a process in the European Union may seem a long time for some observers, whereas we find this period as only the infant stage of EU constitutionalism, whose future rests on the shoulders of the people.



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Don't Look at Trump: The EU Needs Strategic Autonomy



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TOMASZ
KAMIŃSKI

Behind the story about the upcoming planetary catastrophe, the Hollywood blockbuster *Don't Look Up* talks a lot about American politics, the role of media in today's world, and difficulties faced by the scientific truths in a battle with fake news and popular beliefs. However, the movie also identifies something else – the absence of the European Union (EU) in fighting the planetary disaster. Apart from the United States, only China, Russia, and India play minor roles in the movie.

In the confrontation with the incoming comet, a united Europe does not exist. This absence shows how Europe is perceived in the U.S. – a lack of agency in the American eyes. On the other hand, it also indicates that Europe's ability to act autonomously is necessary if the EU wants to influence its fate. Europe needs strategic autonomy if it wants to shape its future.

'Strategic autonomy' of the EU shall be deconstructed as an ability in foreign policy, showing its different elements. The autonomous European Union is particularly beneficial for Central and Eastern European (CEE) nations.

AUTONOMY FROM WHOM AND FOR WHAT

In a nutshell, European strategic autonomy is about having the necessary means to achieve foreign policy goals while cooperating with partners – or acting alone if necessary. This concept appeared for the first time in the conclusions of the European Council in December 2013 and was then repeated and defined in the 2016 EU Global Strategy¹. Securing strategic autonomy

¹European Union (2016) *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*. Available [online]: https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf

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EUROPE NEEDS
STRATEGIC
AUTONOMY
IF IT WANTS
TO SHAPE
ITS FUTURE

took a more prominent role during Donald Trump's presidency, when it became clear that the United States does not share the EU's vision and cannot be treated as a reliable partner – at least for the time being.

"The times in which we could completely rely on others have somewhat passed", declared German Chancellor Angela Merkel in May 2017², expressing feelings of many European leaders advocating for greater autonomy from the U.S. Even if the majority still see Washington as the main ally, the alliance's future remains uncertain. Joe Biden's electoral victory was a relief and a chance to rebuild the alliance with Europe, but, at the same time, a confirmation that American reluctance or inability to be a sole leader of the liberal world is a fact. Donald Trump or a similar populist politician can come to power in the next election, putting America back on track of isolationism and disintegration of the transatlantic community. From this point of view, Europeans think about being less dependent on

²Morillas, P. (2021) *An Architecture Fit for Strategic Autonomy*, FEPS POLICY BRIEF, November. Available [online]: https://www.fepe-europe.eu/attachments/publications/211125%20policy%20brief_strategic-autonomy2.pdf

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EUROPEAN
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GOALS WHILE CO-
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WITH PARTNERS

U.S. elections when talking about strategic autonomy.

Furthermore, the EU politicians have started to talk even more. ‘The Strategic Autonomy’ has become a buzzword in Brussels, particularly during the COVID-19 pandemic and the frustrating consequences of being too dependent on outside countries and companies. Trying to secure access – first, to face masks and, later, to vaccines – the EU was forced to compete with selfish states driven by self-interests and looking for an answer to global scare in a suitcase labeled *re-nationalization*.

Even if it quickly turned out that international cooperation is necessary for an efficient fight with the global pandemic and that the nation-state is helpless trying to combat it

alone³, the experience of ruthless international competition at the beginning of the COVID-19 pandemic has left a trace in the minds of Europeans.

Widespread discussions on *strategic autonomy* detached this term from its original, narrow, military-related meaning. Now, the list of areas where the EU should seek *autonomy* is quite long [See: Figure 1].

Moreover, the experience of sudden lockdowns during the pandemic stressed the value of the ability to control trade – particularly, securing supply chains of key products and components. The domination of U.S.-based big technological companies, the GAFAM (Google, Apple, Facebook, Amazon, and Microsoft), which form a global oligopoly against the public interest⁴, forces Europe to build the Single Digital Market that can control and constrain the power of big tech. The rising geopolitical rivalry between the United States and China and the inward-looking foreign policy of Washington urged the EU to relearn *the language of power* when relating to the rest of the world⁵. The *geopolitical* EU, able to define and defend European interests, seems to be the logical response to more geopolitical world politics.

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EVEN IF THE MA-
JORITY STILL SEE
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THE ALLIANCE’S
FUTURE REMAINS
UNCERTAIN

Finally, the technological competition and the digital revolution driven by Artificial Intelligence (AI) and quantum computing drive the interest to invest more in research and development (R&D), looking not only for a European alternative to American GPS (system Galileo was launched in 2016), but also other reliable, secure space-related services provided by the European space agency⁶.

There are two reasons why the EU needs an autonomous position in world politics. Firstly, increasing autonomy is intended to reduce dependencies, to make Europe more resilient and less vulnerable in times of crisis. Secondly, it allows the EU to use its political potential, exploit opportunities on the world stage, and be more efficient in defending its interests.

As for dependencies – one cannot forget that the alliance with the United States has been a cornerstone of European policy, and trying to reach strategic independence,

Figure 1: Elements of the strategic autonomy



Source: Own elaboration

³Combating global pandemics together with organized crime, climate change, or financial crisis belongs to the long list of areas where a nation state is inefficient acting alone. See, for example: Beck, U. (2005) *Power in the Global Age: A New Global Political Economy*, Cambridge: Polity Press.

⁴Smyrniaios, N. (2016) “The GAFAM Effect: Strategies and Logics of the Internet Oligopoly”, [in]: *Communication & Languages*, Vol. 188(2), pp. 61-83. Available [online]: https://www.cairn-int.info/article-E_COMLA_188_0061--the-gafam-effect-strategies-and-logics.htm

⁵Morillas, P. (2021) *An Architecture Fit for Strategic Autonomy*, FEPS POLICY BRIEF, November. Available [online]: https://www.feps-europe.eu/attachments/publications/211125%20policy%20brief_strategic-autonomy2.pdf

⁶The European Union Agency for the Space Programme (EUSPA) was officially launched on May 12, 2021. See: <https://www.euspa.europa.eu/about/about-euspa>

“ THE GEOPOLITICAL EU, ABLE TO DEFINE AND DEFEND EUROPEAN INTERESTS, SEEMS TO BE THE LOGICAL RESPONSE TO MORE GEOPOLITICAL WORLD POLITICS

the EU should not forget about maintaining transatlantic links. However, the series of crises that Europe had to confront in the last decade has clearly shown that too much dependency on America puts the EU in quite an uncomfortable position.

Donald Trump's presidency made Europeans aware that the U.S. might not want to play the role of responsible leader of the liberal world. Instead of being 'the shining city on a hill,' Trump's America became rather inward-looking and a selfish power, trying to hide its weakness behind harsh patriotic rhetoric. It was particularly visible during the 2020 pandemic crisis when the COVID-19 geo-medical battles between great powers opened the eyes of the European public to its vulnerability⁷. Without its own medical and pharmaceutical supplies production, the EU could not provide security to its citizens.

⁷Van Middelaar, L. (2021) *Pandemonium: Saving Europe*, Newcastle upon Tyne: Agenda Publishing.

A similar situation occurs with raw materials, which have strategic value for economic security. The European Raw Materials Alliance (ERMA) aims to make Europe economically more resilient by addressing the challenge of securing access to raw materials, particularly so-called 'rare-earth.' Many of them are controlled by hostile countries outside Europe⁸.

The Biden presidency is giving Europeans some breathing space. In reaction to Russian aggression in Ukraine, Joe Biden mobilized collective action of the liberal world, giving a new hope that the West might be strong and reunited, and able to animate the institutions that advance collective security and prosperity. Biden's cooperative agenda gives the time needed to develop a European strategic turn to sovereignty, but should not delude that it will be a constant mood in American politics. The next president may be much less sensitive to its allies' needs and less prone to consult and coordinate with them than Joe Biden.

As for efficiency in defending European interests, market size and regulatory power give the European Union a big impact on international relations. The EU can set global standards in competition policy, environmental protection, food safety, the protection of privacy, or the regulations of hate speech in social media. It is called the 'Brussels Effect'⁹. Europe should seek to use those instruments more purposefully to defend European interests. Either through

⁸ ERMA is an initiative set up in 2020 by the European Commission. It aims to build resilience and strategic autonomy for Europe's rare earth and magnet value chains. It is open to different stakeholders, including business, EU countries and regions, trade unions, civil society, research and technology organizations, investors, and NGOs. See the official website of the European Raw Material Alliance: <https://erma.eu>

⁹ Bradford, A. (2020) *The Brussels Effect: How the European Union Rules the World*, New York, NY: Oxford University Press.

“ INCREASING AUTONOMY IS INTENDED TO REDUCE DEPENDENCIES, TO MAKE EUROPE MORE RESILIENT AND LESS VULNERABLE IN TIMES OF CRISIS

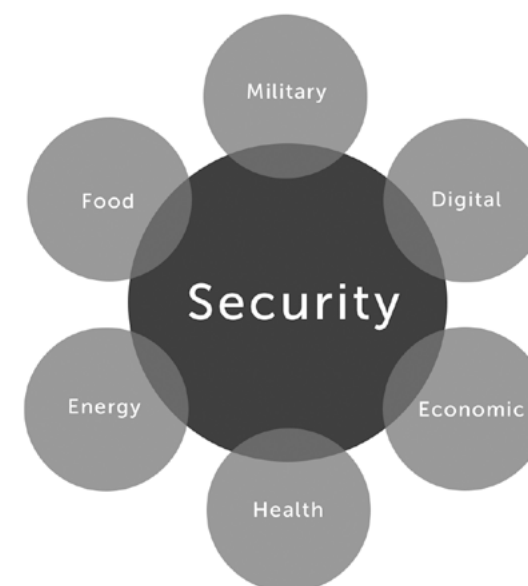
multilateral agreements or, if it proves impossible, by unilateral action, the EU should try to impose its regulations globally, particularly in the areas of digital economy, environment, market competition, and consumer health and safety.

The Russian invasion of Ukraine reinvigorated the discussion on European strategic autonomy and focused it on the security dimension. Building the ability to defend Europe has become a pressing need, and the question of how to do it is more important than ever.

AUTONOMOUS SECURITY PROVIDER

The traditional approach to security has been very much concentrated on military issues and confronting military threats. It is still a crucial security area, as the Russian invasion of Ukraine has shown. However,

Figure 2: The most important dimensions of European security



Source: Own elaboration

the Ukrainian war and the COVID-19 crisis exposed other dimensions of European security or rather, Europeans' security. If only we change the security referent from *territory and state* to *people*, we see a much more complex picture of what makes people insecure.

Everyday threats are related to topics such as health security (COVID-19 is a great example), climate change, access to food and energy, cyber-attacks that may affect our privacy, disinformation undermining our democracy, or migration flows, which may also cause some security challenges. In other words, sometimes, from the people's perspective, the number of beds in hospitals might be more important for their security than the number of tanks, and the number of doctors and nurses is more important than the number of soldiers¹⁰. There are, however, no *less or more* important security areas – they are all intersected.

Europe should be ready to provide security in all critical areas [See: Figure 2]), building a comprehensive defense system that connects military and non-military areas, respond to external and internal threats. This system should be autonomous as much as possible in the globalized world driven by complex interdependencies¹¹.

MILITARY SECURITY

The need for Europe's military autonomy is a long-discussed topic. It started during the Balkan Wars in the 1990s, when the European Union turned out to be incapable of dealing even with a relatively small security crisis in its neighborhood. Then, the debate was heated a few times when America

¹⁰ Kamiński, T. (2021) "Foreign and Security Policy", [in]: *Liberal White Book Europe 2030*, European Liberal Forum, p. 202.

¹¹ Keohane, R. and J. Nye (2001) *Power and Interdependence*, New York, NY: Longman.



THE UKRAINIAN WAR AND THE COVID-19 CRISIS EXPOSED OTHER DIMENSIONS OF EUROPEAN SECURITY OR RATHER, EUROPEANS' SECURITY

announced a "pivot to Asia", during the Arab Spring, the first Russian invasion of Ukraine in 2014, and, finally, during the second invasion in 2022. All those events signaled that the era of the so-called 'peace dividend'¹² was over.

Europe is, and has always been, a military power. Even if European military capabilities are limited due to the current fragmentation of defense markets, problems with interoperability, and lack of the European Army¹³, Europe is no longer a "military worm" – as Mark Eyskens, Belgium's foreign minister, summed it up in 1991¹⁴. The year 2020 was the sixth year to have seen an increase in defense spending by European NATO members, whose military expenditures

¹² After the collapse of the Soviet Union, many Western countries cut their military spending. It allowed them to redirect public money flows to social programs or decreased taxation rates.

¹³ Belhay, S. (2019) *A European Army by and For Europeans*, Initiative Policy Document, May.

¹⁴ Kamiński, T. (2021) "Foreign and Security Policy", [in]: *Liberal White Book Europe 2030*, European Liberal Forum, p. 202.

are comparable to Chinese, and which far exceed Russian spending in this area. Announcements of big increases in defense budgets (e.g., in Germany and Poland) in reaction to the Russian aggression signaled that this trend would accelerate.

Even more important is the fact that European citizens are not against further European integration in security and defense. Public support for it remained unchanged, at the level of 75% over the past thirty years. Europeans tend to express support for reducing government spending, but at the same time they counterintuitively prefer cutting civilian expenditures over the defense¹⁵. The Russian threat and fresh memories of Trump's reluctance to "pay for a European defense"¹⁶ create a favorable environment for profound changes in European defense policy and fostering European security cooperation.

Full military autonomy of Europe is both impossible and unnecessary. As Joseph Borell, the High Representative of the European Union for Foreign Affairs and Security Policy, a kind of EU Minister of Foreign Affairs, said: "*no one advocates the development of a fully autonomous European force outside NATO, which remains the only viable framework to ensure the territorial defense of Europe.*"¹⁷ What is needed is the European Army at the disposal of the EU, the internal defense market integrated around the

¹⁵ Schilde, K., Anderson S. B., and A. D. Garner (2019) "A More Martial Europe? Public Opinion, Permissive Consensus, and EU Defence Policy", [in]: *European Security*, No. 2, April 3, pp. 153–72.

¹⁶ Stupp C. (2017) "Trump Demands NATO Payment – But Makes No Defence Pledge", [in]: *Euroactive.com*, May 26. Available [online]: <https://www.euractiv.com/section/politics/news/trump-issues-ferocious-demand-for-nato-payments-but-makes-no-defence-pledge/>

¹⁷ Borell, J. (2020) Why European Strategic Autonomy Matters. Available [online]: https://eeas.europa.eu/headquarters/headquarters-homepage/89865/why-europe-an-strategic-autonomy-matters_en

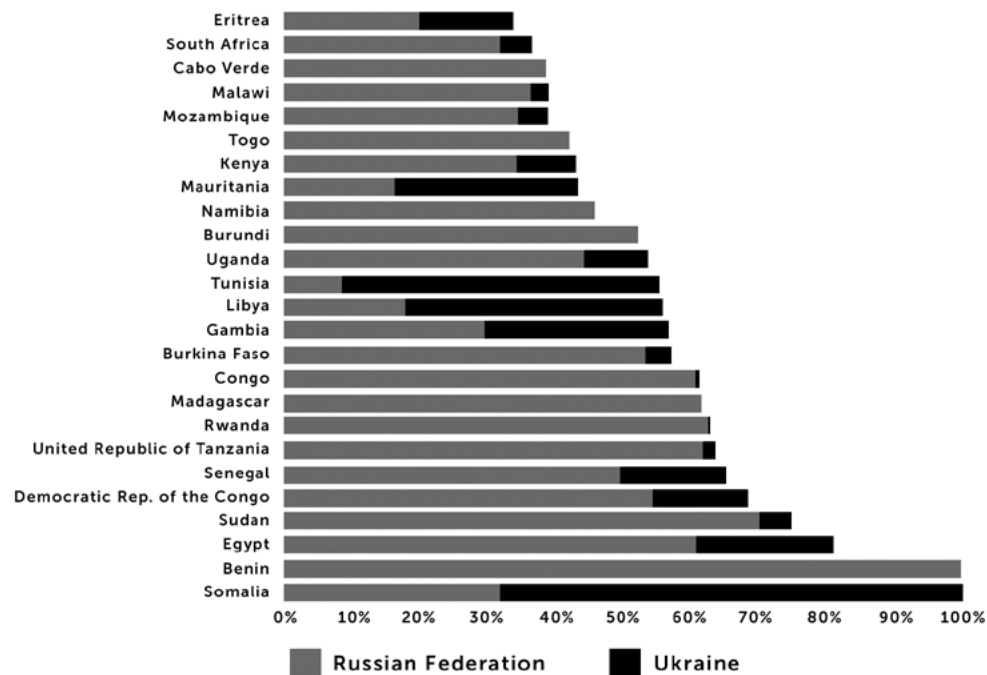


CONSIDER THE FACT THAT BEFORE THE WAR, RUSSIA AND UKRAINE TOGETHER EXPORTED MORE THAN A QUARTER OF THE WORLD'S WHEAT, THE CONSEQUENCES FOR THE FOOD INDUSTRY MIGHT BE LIFE-THREATENING FOR MILLIONS OF PEOPLE

European Defense Agency, and close political and military cooperation with the United States, which ensures coherence between the EU and NATO.

From the CEE perspective, directly endangered by Russian aggressive policy, the development of European military capabilities is welcomed. For many years, experts and politicians from the region have been warning of the risk of Russian aggression, advocating for an increase in defense spending that would make Europe better prepared for

Figure 3: African dependence on wheat from Russia and Ukraine



Source: UNCTAD

war. The history proved that those voices, often dismissed as paranoid, were right¹⁸.

FOOD SECURITY

The war in Ukraine also stressed the value of European independence as far as food production is concerned. The conflict between Russia and Ukraine not only provoked a major humanitarian crisis in Europe, with millions of refugees, rising unemployment, and the devastated economies of both countries, but also disturbed global supply chains. Consider the fact that before the war, Russia and Ukraine together exported more than

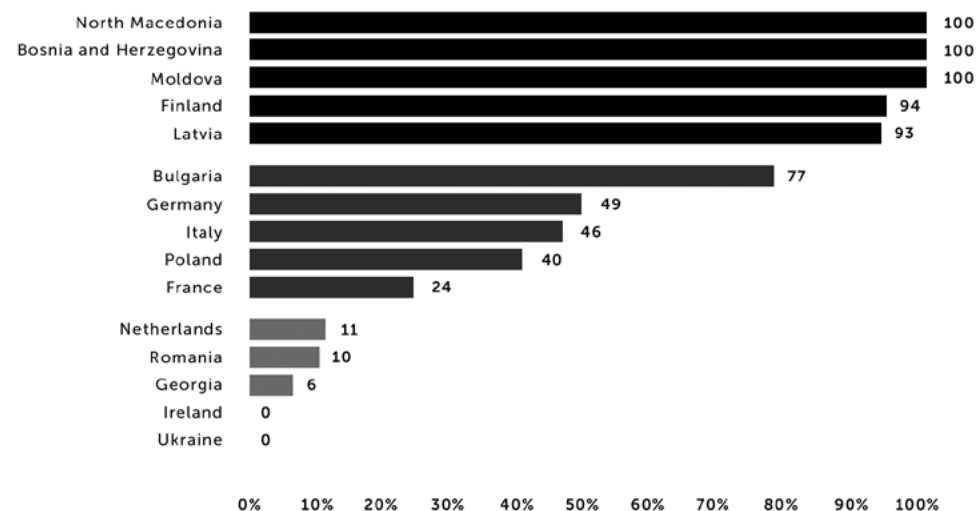
a quarter of the world's wheat, the consequences for the food industry might be life-threatening for millions of people. Opposite to the Middle East and many African countries [See: Figure 3], the EU is not dependent on food imported from abroad, which is why its food security is not endangered.

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AUTONOMY
HAS BROUGHT
FOOD SECURITY
IN EUROPE

¹⁸ *The Economist* (2020) "Why Poland Has Become NATO's Linchpin in the War in Ukraine", March 12. Available [online]: <https://www.economist.com/europe/poland-will-play-an-outsized-role-in-western-efforts-to-assist-ukraine/21808064>

Figure 4: European dependence on Russian gas

Source: Statista. Available [online]: <https://www.statista.com/chart/26768/dependence-on-russian-gas-by-european-country/>

This case clearly shows the benefits from years of investments in European autonomy in this domain. The EU Common Agricultural Policy (CAP) has been much contested for years as expensive, wasteful, ignoring the rules of supply and demand, and undermining farmers' livelihoods in developing countries¹⁹. Against all of this, the European Union has provided farmers with funds to encourage them to produce food in Europe, even if buying food from abroad looked like a much cheaper option to feed the citizens of Europe. In case of a major security crisis, the investments in CAP paid back – autonomy has brought food security in Europe.

For CEE countries, further investment in food autonomy might be economically beneficial, considering the fact that 25% of the rural population in the EU live in Poland

¹⁹ The list of the main arguments for and against the CAP may be found here: <https://www.debatingeurope.eu/focus/arguments-for-and-against-the-common-agricultural-policy/#.YjXWYerMLrc>

and Romania. Those two countries are also important food producers, employing more than 3 million people in agriculture²⁰.

ENERGY SECURITY

The opposite picture emerges when analyzing the impact of the invasion of Ukraine by Russian forces on energy security. Highly dependent on Russian resources, Europe is at risk of sliding into an energy crisis. In particular, disturbances in the natural gas supply might bring troubles to many European countries that rely on it [See: Figure 4]. Contrary to the oil supplies, they cannot be easily and quickly replaced by other countries' imports.

Dependence on energy supplies from Russia is very costly in times of economic war with this country, waged by the West in

²⁰ Eurostat (2021) *Statistical Factsheet European Union*, June. Available [online]: https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agri-statistical-factsheet-eu_en.pdf

response to the Russian invasion of Ukraine. It makes sanctions imposed on Moscow costly, and limits the eagerness of some member states to enforce even higher economic pressure on Russia. Obviously, it also has political implications, limiting the space for efficient European foreign policy. It is particularly important for the CEE states which are highly dependent on Russian energy sources, but also interested in containing this country.

In this area, the call for European autonomy is not only for greater diversification of energy suppliers, but also for a change in the European energy mix. The role of atomic and renewable energy in the European Green Deal, a flagship EU initiative that aims to put the European Union firmly on the path towards climate neutrality by 2050, has to be rethought. Greater autonomy in securing European energy needs to be at the forefront of climate policy.

HEALTH SECURITY

Probably in no other security-related sector, the experience of dependency has been so alarming for Europeans as in public health during the COVID-19 crisis. At the pandemic's beginning, ruthless international competition revealed medical vulnerability

and pharmaceutical dependency. Rich Europeans had no sufficient access to some medicines or medical treatments, or even simple protective masks. It was scary, but also sobering. As Luuk van Middelaar put it in his great book describing EU policy during the COVID-19 crisis:

*"The Covid crisis has reinforced the desire for a "strategic" economic, competition and industrial policy. The realization is dawning that the safeguarding of interests demands more than a free-market framework. This is clearly felt not just in Paris (where such thinking was never absent) but in Berlin, Brussels and even The Hague (traditionally reliant on the market's invisible hand). A historic turning point."*²¹

The necessity of being self-reliant in health security emerged as a public matter. European politicians, feeling pressure from citizens, have been forced to reconsider the role of the EU in health policy. Health has been put at the heart of Europe's priorities, and Europe's research-based pharmaceutical industry, which employs 830,000 people, started to be perceived as a strategic asset.

The European industry must be able to develop ground-breaking science to secure Europeans' health needs. In other words, it should be used to advance the European technological sovereignty in R&D²².

ECONOMIC SECURITY

Economic autonomy in an interdependent, globalized world is not possible. As Mark Leonard rightly observed in this domain, the

²¹ Van Middelaar, L. (2021) *Pandemonium: Saving Europe*, Newcastle upon Tyne: Agenda Publishing, p. 161.

²² Politico Studio (2022) "Can Europe Act in Time to Secure Its Strategic Autonomy in Health?", [in]: *Politico*, February 7. Available [online]: <https://www.politico.eu/sponsored-content/can-europe-act-in-time-to-secure-its-strategic-autonomy-in-health/>



ECONOMIC AUTONOMY IN INTERDEPENDENT, GLOBALIZED WORLD IS NOT POSSIBLE

Europeans should rather aim at being "able to decide for ourselves about our interests and bargain effectively within an interdependent system through credible counter-threats against threats and hostile actions."²³ This means that the European Union needs to be more assertive and politically capable of using economic statecraft in its foreign policy. Being the defender of an open economy and the rules-based international order requires having a toolbox of instruments to be used against rule-breakers.

And the rules are broken not only by autocrats from Russia or China, but also by democrats from the United States. Donald Trump's administration did not hesitate to threaten European companies with sanctions in cases involving Iran, Cuba, the Nord Stream pipeline, or the International Criminal Court²⁴. President Biden likes to stress the West's unity, but the dynamics of

²³ Hackenbroich, J., Oertel, J., Sander, P., and P. Zerka (2020) *Defending Europe's Economic Sovereignty: New Ways to Resist Economic Coercion*, ECFR Policy Brief, October 20. Available [online]: https://ecfr.eu/publication/defending_europe_economic_sovereignty_new_ways_to_resist_economic_coercion/

²⁴ Barigazzi, J. (2020) "Borrell Has 'Serious Concern' over US Sanctions against International Criminal Court", [in]: *Politico*, June 11. Available [online]: <https://www.politico.eu/article/josep-borrell-serious-concern-us-sanctions-international-criminal-court/>

great power rivalry today indicate that the economy is the main battlefield.

Economic interdependencies are being weaponized, and the economic war of the West with Russia may serve as a good illustration of this phenomenon. Europe has to be ready to face extraterritorial sanctions, forced sensitive data transfers, or extraterritorial export controls, having an ability to introduce countermeasures to secure the well-being of its citizens. The mere acquisition of such tools may have a deterrent effect on Europe's rivals²⁵.

Greater economic autonomy will mean moving some production processes back to Europe, which might be beneficial for the CEE countries. Being competitive in terms of labor costs and with quite a big potential of labor force (which, together with Ukraine, accounts for approximately 160 million people), the countries between the Baltic and Adriatic Seas may become a new production hub for Europe²⁶.

DIGITAL SECURITY

Last but not least, the European Union must try to strengthen its digital sovereignty. Like in the whole economy, in the fast-developing digital sector, the autonomy is neither possible nor desirable. China has been trying it for years, not without some success, but paying the high price of having a state-controlled, closed internet system – only for Chinese and without prospects for future development beyond the country. The EU

²⁵ Hackenbroich, J., Oertel, J., Sander, P., and P. Zerka (2020) *Defending Europe's Economic Sovereignty: New Ways to Resist Economic Coercion*, ECFR Policy Brief, October 20. Available [online]: https://ecfr.eu/publication/defending_europe_economic_sovereignty_new_ways_to_resist_economic_coercion/

²⁶ Czubkowska, S. (2022) "Oś Pekin-Moskwa to już jawny układ. Skoro odcięliśmy Rosję, to czy jesteśmy gotowi na koszty odciążenia się od Chin?", [in]: *SpidersWeb.com*. Available [online]: <https://spidersweb.pl/plus/2022/03/os-pekin-moskwa-wojna-ukraina-co-na-to-chiny> [in Polish]



HIGHLY DEPENDENT ON RUSSIAN RESOURCES, EUROPE IS AT RISK OF SLIDING INTO AN ENERGY CRISIS



DIGITAL SECURITY MEANS THAT THE EU AIMS AT SETTING FAIR RULES AND ENSURING THAT BIG TECH ONLINE COMPANIES WILL OPERATE ON THE EUROPEAN MARKET RESPECTING FUNDAMENTAL RIGHTS AND VALUES

is obviously not interested in building anything similar. On the contrary, as European Council President Charles Michel said: “We must use our new digital resources wisely to protect the ‘environment’ of our fundamental values – democracy and individual freedoms”²⁷.

Digital security means that the EU aims at setting fair rules and ensuring that big tech online companies will operate on the European market respecting fundamental rights

²⁷ Michel, C. (2021) *Digital Sovereignty Is Central to European Strategic Autonomy – Speech by President Charles Michel at “Masters of Digital 2021” Online Event*, February 3. Available [online]: <https://www.consilium.europa.eu/pl/press/press-releases/2021/02/03/speech-by-president-charles-michel-at-the-digitaleurope-masters-of-digital-online-event/>

and values. Digital security signifies also using European regulatory power to project those high standards across the world, to make European standards global. Digital security means that advanced equipment, such as chips and microprocessors, will be produced in Europe, which make supply chains less vulnerable to external crises.

The United States and U.S.-based big tech companies will not be always supportive of the European way to digital security. Therefore, the European Union has to remain in dialogue with them. Nevertheless, there will be a clash of different interests. However, autonomy in the digital sphere will allow the EU to become efficient in defending its stance.

CONCLUSIONS

The strategic autonomy means taking action to reduce the EU’s dependencies from the United States, China, Russia, or multinational companies. Achieving it will give Europe power to defend its interests in clashes or dialogues with friends and enemies, with allies and competitors.

When talking about autonomy, one talks about power politics. For many years, the European Union has been unable to act as geopolitical player, being rather the rule-making factory not set up to deal with sudden events²⁸. In the last few years, however, forced by various crises it had to confront, the new European politics has emerged, and visible efforts to build the strategic autonomy are the best evidence of this profound metamorphosis.

In some areas, such as food security, the EU is independent, which gives it power to act – including helping others. In other sectors, such as energy security, the recent events

²⁸ Van Middelaar, L. (2021) *Pandemonium: Saving Europe*, Newcastle upon Tyne: Agenda Publishing.



FOR MANY YEARS, THE EUROPEAN UNION HAS BEEN UNABLE TO ACT AS GEOPOLITICAL PLAYER, BEING RATHER THE RULE-MAKING FACTORY NOT SET UP TO DEAL WITH SUDDEN EVENTS

– such as Russian aggression in Ukraine, – proved that over-dependence reduces the European ability to act and increases the costs of political actions. It seems that the majority of European elites are now fully aware of the fact that the EU needs more resilience, influence, and autonomy.

From the perspective of Central and Eastern European countries, this long process of building the strategic autonomy of Europe is of crucial importance and potentially very beneficial. In an increasingly harsh world, they can defend their interests only through European integration, counting on allies and their support. Their security against aggressive Russia, assertive China, or algorithm-driven big techs depends on common European actions. Being over-dependent on

Europe, they have to advocate for greater sovereignty of the European Union.

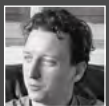
However, the CEE countries know that while searching for greater autonomy, the EU cannot turn its back from the United States. American engagement in Europe is beneficiary for both sides, and a united West is the one that is the scariest to its enemies. Therefore, reducing dependencies from the U.S. should not be done *against* America, but rather to make transatlantic alliance stronger.



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The Why and How: A Liberal and Democratic Future of the European Union



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ZSOLT
NAGY

People like to think about the European Union (EU) as a pragmatic, bureaucratic system, which is an institution enabling the member states to cooperate.

One could say that the European community is based on economic association, and the biggest problem for the EU is the shape of bananas.¹ Nevertheless, this perception could not be further from the truth.

Politics have been shaping the destiny of this community since the beginning of European cooperation. The founding fathers of the European Union and the leaders of the member states had lively political debates over the terminus of the project. While Altiero Spinelli and Jean Monnet argued for a more united union – even a federal one in the form of the so-called ‘United States of Europe’ – other political leaders, including Charles De Gaulle and Winston Churchill, wanted to give more sovereignty to the member states. The debate has not ended, and the two sides are still fighting for hegemony over the European Union and its future.

Over the decades, the European Economic Community (EEC) transformed into the European Union. As time goes by, more political decisions are being made at the EU level. However, the future of the EU is still unclear. It remains to be seen how the integration will end up, what the primary goal of the cooperation is and how will it be achieved. Nevertheless, the competition of visions is not a problem at all: the history of the integration is based on this cleavage, and there were periods (like the Empty Chair Crisis in 1965) when the sovereignty of the member states won the round, and other times (like

¹ European Parliament, Liaison Office in the United Kingdom (2016) *Bendy Bananas – The Myth to End All Myths*. Available [online]: <https://www.europarl.europa.eu/unitedkingdom/en/news-and-press-releases/euro-myths/bendybananas.HTML>

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THE FUTURE OF THE EU IS STILL UNCLEAR

the Delors white book in 1985) when the European integration could be deepened.

The real problem of the debate on the future of the European Union is the lack of innovation and encouragement on the federalist side. The failure of the European Constitution² and the series of crises in the past decade³ discouraged the reformers. Instead of thought-provoking discussions and bold new draft treaties, everyone is talking about failed small-scale reforms without new conceptions⁴, a partial increase of the power of the institutions⁵, and the “Conference on the Future of Europe,” which is just a proposal-collecting series for the decision-makers, without any binding consequences⁶. The European community needs original alternatives and progressive

² Podolnjak, R. (2007) “Explaining the Failure of the European Constitution: A Constitution-making Perspective”, [in]: *Collected Papers of Zagreb Law Faculty*, Zagreb Law Faculty, Vol. 57(1).

³ Riddervold, M., Trondal J., and A. Newsome (2020) *The Palgrave Handbook of EU Crises*, London: Palgrave MacMillan.

⁴ De Wilde, P. (2020) “The Fall of the Spitzenkandidaten: Political Parties and Conflict”, [in]: *Assessing the 2019 European Parliament Elections*, pp.37-53.

⁵ McGiffen, M. (2011) “Bloodless Coup d’Etat: The European Union’s Response to the Eurozone Crisis”, [in]: *Socialism and Democracy*, Vol. 25(2), pp. 25-43.

⁶ Kalas, V. (2021) “How Effective Can Citizens’ Participation Be in the Conference on the Future of Europe?”, [in]: *ludovika.hu*. Available [online]: <https://www.ludovika.hu/en/blogs/the-daily-european/2021/07/06/how-effective-can-citizens-participation-be-in-the-conference-on-the-future-of-europe/>

solutions that will redesign the shape of the EU and our thinking about politics. For this purpose, a federal Europe cannot stand without deep and all-encompassing democratization. Only democratic legitimacy could give enough power and authorization to a federal reform package.

If the European community wants to democratize the European Union, it should no longer operate within the framework of the old, representative shape of democracy. Instead, in the 21st century, they could reform how and what they think about democracy in general. With new digital solutions, they could involve citizens more actively, create a transparent environment, be more direct, and use new technologies that they could only dream of in the 1990s and which, right now, are at their disposal.

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THE EUROPEAN COMMUNITY NEEDS ORIGINAL ALTERNATIVES AND PROGRESSIVE SOLUTIONS THAT WILL REDESIGN THE SHAPE OF THE EU AND OUR THINKING ABOUT POLITICS

The EU could use this way of thinking and cutting-edge solutions to create a new kind of democracy that would meet its needs. A type of democracy that could be the next significant step in its progression and might serve as a blueprint for all member states and other countries for reforming their own democratic systems as well.

Of course, there is no democracy without *demos*. The main problem with European politics is the question of the existence of its citizens. For the sake of clarity, let us cut the Gordian knot with several paradigmatical presumptions, according to which: 1) right now, there is no European *demos* as a political entity; however, 2) it could be created by means of political institutions that have actual power, because 3) the common political sphere and the raising of direct political questions are able to create political camps and cleavages. This presumption is not a fact, but a rational theory, which shall help us focus on the institutional side of the matter at hand.

THE EVOLUTION OF THE DEMOCRATIC ELEMENT IN THE LIFE OF THE EUROPEAN COMMUNITY

Although the idea of European unity emerged before the 20th century⁷, it was only put seriously on the political table after the end of the Second World War⁸. The system, which was created in the 1950s (initially as the European Coal and Steel Community and the European Atomic Energy Community in 1952, and then the European Economic Community with the Treaty of Rome

⁷ Harste, G. (2009) "Kant's Theory of European Integration: Kant's "Toward Perpetual Peace" and Changing Forms of Separated Powers in the Evolution of Military and Politics", [in]: *Jahrbuch Für Recht Und Ethik / Annual Review of Law and Ethics*, Vol. 17, pp. 53–84. Available online: <http://www.jstor.org/stable/43593970>

⁸ Arotó, K. and B. Koller (2018) *Az Európai egység fejlődéstörténete és az EU jelenkori kihívásai*, Budapest, Gondolat Kiadó. [in Hungarian]

in 1958), was mainly concerned with finding solutions for economic and peacekeeping cooperation between the founding countries. However, political goals and ideas for the creation of a European community had already begun⁹.

Nevertheless, it is essential to note that the Communities did not yet have a democratic concept at the time. The European Economic Community was considered a purely intergovernmental institution, in which the Commission was independent of the states – but there was no democratic concept here either¹⁰. It is illustrated by the fact that in the 1950s, there was no parliament in the modern sense of the term, only an assembly of representatives from the parliaments of the member states, with consulting rights only. The Council of the European Union (hereinafter referred to as 'the Council') had the most significant democratic authority in decision-making – its members were the ministers of the member states, and the actual decision-making power was concentrated in their hands¹¹.

Until the new millennium, the most significant factor in the European community's democratization was the creation and expansion of one particular representative body: the European Parliament (EP). The key milestones in this process were the introduction of direct elections (1976) and their first implementation (1979), the recognition of the name 'Parliament' (1983), as opposed to the formerly used 'Assembly', and the extension of consultation power from the

⁹ Monnet, J. (1994) "A Ferment of Change", [in]: Nelsen, B.F. and A.C.G. Stubb (eds.) *The European Union*, London: Palgrave.

¹⁰ Moravcsik, A. (2002) "In Defense of the 'Democratic Deficit': Reassessing Legitimacy in the European Union", [in]: *Journal of Common Market Studies*, Vol. 40(4), pp. 603–624.

¹¹ Bóka, J., Gombos, K., and L. Szegedi (2019) *Az Európai Unió Intézményrendszere*, Budapest: Gondolat Campus Kiadó. [in Hungarian]

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IN ADDITION TO THE EUROPEAN PARLIAMENT, NATIONAL PARLIAMENTS ALSO STRENGTHEN REPRESENTATIVE DEMOCRACY IN DECISION-MAKING, ALTHOUGH TO AN INCREASINGLY LESSER EXTENT

1970s until the Lisbon Treaty, in which the European Parliament became a co-legislator in the statutory legislative procedure¹².

In addition to the European Parliament, national parliaments also strengthen representative democracy in decision-making, although to an increasingly lesser extent. Initially, the Parliament – which had only consultative rights – was composed of delegates from the Parliaments of the member states until the 1980s. Nowadays, national parliaments have only limited powers in EU decision-making – the most powerful instrument is the so-called 'yellow card'

¹² Arotó, K. and B. Koller (2018) *Az Európai egység fejlődéstörténete és az EU jelenkori kihívásai*, Budapest, Gondolat Kiadó. [in Hungarian]

procedure, whereby if one-third of national parliaments (9) consider a proposal to be negative in terms of subsidiarity, the European Commission has to reconsider its proposal¹³. Beyond this, however, national legislatures only have the right to request data.

While analyzing the democratic institutions in the European Union, it is also worth looking at the tools of direct democracy, which, although less prominent, are also a democratic feature in the functioning of the Communities¹⁴. In the initial stages of the Communities, as an intergovernmental organization, there was no direct contact between the European bodies and citizens. Referendums on various issues connected to European politics – membership, treaties, and policies – were held at the level of member states.

However, they were rather individual initiatives of the member states, as the Communities did not impose them, and the European community was not involved in any way in calling or conducting them¹⁵. It must be noted that the outcomes of the referendums were always respected¹⁶, even when they went against the interests of political elites and the European integration.

¹³ European Union, Subsidiarity Control Mechanism. Available [online]: https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments/subsidiarity-control-mechanism_hu

¹⁴ Oross, D. (2020) "Versengő demokrácia felfogások, új részvételi lehetőségek?", [in]: *Politikatudományi Szemle*, Vol. 29(4), pp. 105-120. [in Hungarian]

¹⁵ Chronowski, N. and A. Vincze (2019) "Népszavazások Uniós ügyekben és a magyar gyakorlat", [in]: *Közjogi Szemle*, Vol. XXI(1), pp. 17-24. [in Hungarian]

¹⁶ There were situations when a second referendum took place; after a non-favorable turnout, it did not undermine the democratic automatization. See more: Dinan, D. (2009) "Institutions and Governance: Saving the Lisbon Treaty an Irish Solution to European Problem", [in]: *Journal of Common Market Studies*, Vol. 47(Annual Review), pp. 113-132.

“ THE EUROPEAN CITIZENS' INITIATIVE IS A RELATIVELY NEW INSTRUMENT OF DIRECT DEMOCRACY

The failure of the European Constitution¹⁷, Norwegian accession¹⁸, or Brexit – even if the latter was attempted to be blocked by political elites on both sides¹⁹, – are all cases that illustrate how binding the results of referenda in respective member states are for the European project.

The short-lived Spitzenkandidat system would have also allowed the strengthening of democratic empowerment²⁰. The essence of the system, which was used only in 2014, was that the presumptive candidate of the political groups of the European Parliament with the most seats would have been nominated and elected for the presidency of the European Commission. In

¹⁷ Podolnjak, R. (2007) "Explaining the Failure of the European Constitution: A Constitution-making Perspective", [in]: *Collected Papers of Zagreb Law Faculty*, Zagreb Law Faculty, Vol. 57(1).

¹⁸ Narud, H. M. and K. Strøm (2000) "Adaptation Without EU Membership: Norway and the European Economic Area", [in]: *The Journal of Legislative Studies*, Vol. 6(1), pp. 125-150.

¹⁹ Macshane, D. (2015) *Brexit: How Britain Left the EU*, London: I.B. Tauris.

²⁰ De Wilde, P. (2020) "The Fall of the Spitzenkandidaten: Political Parties and Conflict in the 2019 European Elections", [in]: Kritzinger, S. et al. (eds.), *Assessing the 2019 European Parliament Elections*, Chapter 3, Abingdon: Routledge, pp. 37-53.

other words, citizens would have been able to vote on the composition of the Parliament, while at the same time voting for the President of the Commission, thus increasing the legitimacy of the President and their *de facto* 'head of government' status. While in 2014, the European People's Party's top candidate, Jean-Claude Juncker, was successfully elected, in 2019 the system failed, and the EPP's candidate, Manfred Weber, was replaced by Ursula Von der Leyen, the Minister of Defense of Germany, who was also from the EPP party but did not stand for election²¹.

The European Citizens' Initiative is a relatively new instrument of direct democracy²². This institution, which has existed since the Lisbon Treaty, aims to give European citizens a direct say in EU affairs. Thanks to the Initiative, if one million signatures are collected by specialized civil society organizations in at least seven countries (considering the minimum number of signatures obtained in each country), the European Commission will put the issue on the agenda²³.

Of lesser importance, but still a part of the toolbox of direct democracy, the European consultations system should also be mentioned. The aim of online consultations, managed by the European Commission, is to allow as many European citizens as possible to express their views on specific issues before adapting draft legislation. There is no ongoing consultation at the moment,

²¹ European Commission (2019) *The Von der Leyen Commission: For a Union That Strives for More*. Available [online]: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5542

²² Tárnok, B. (2020) *Az európai polgári kezdeményezés különös tekintettel a nemzeti kisebbségek jog- és érdekvédelmére*, a PhD dissertation. Available [online]: [https://jak.ppke.hu/uploads/articles/12332/file/Tarnok_Balazs_dolgozatv\(1\).pdf](https://jak.ppke.hu/uploads/articles/12332/file/Tarnok_Balazs_dolgozatv(1).pdf) [in Hungarian]

²³ <https://ec.europa.eu/info/about-european-commission/get-involved/european-citizens-initiative>

“ THE AIM OF ONLINE CONSULTATIONS, MANAGED BY THE EUROPEAN COMMISSION, IS TO ALLOW AS MANY EUROPEAN CITIZENS AS POSSIBLE TO EXPRESS THEIR VIEWS ON SPECIFIC ISSUES BEFORE ADAPTING DRAFT LEGISLATION

but since its launch in 2019, people have been asked their views on various EU issues more than 500 times²⁴.

Finally, the ongoing Conference on the Future of Europe initiative²⁵ aims to involve as many citizens as possible in the reforms that will shape the coming years of the Union. The consultation will help reshape the EU and reveal how it should transform its policies. A series of decentralized debates is underway, culminating in a plenary session

²⁴ <https://ec.europa.eu/info/consultations>

²⁵ The official website of the Conference on the Future of Europe: <https://futureu.europa.eu/>

” ACCORDING TO THE PRINCIPLE OF POPULAR SOVEREIGNTY, ALL POWER DERIVES FROM THE PEOPLE

to draw the lessons learned together. At the end of the process, a report will be produced and sent to the EU institutions – the Council, the Parliament, and the Commission – to consider the points relevant to them.

The abovementioned EU institutions are supposed to help its democratic legitimization. However, there is still some doubt as to whether or not they are useful. Could citizens actually use them to affect the course of the EU? Well, not really. There are several conceptual, theoretical, and pragmatic problems with these institutions, and, therefore, the democratic deficit is still a real problem within the European Union. So, what are these problems?

THE DEMOCRATIC NATURE OF THE EUROPEAN UNION

To put it bluntly, the institutional system of the European Union is not democratic enough. We can see that there are three main problems in the decision-making process: 1) the lack of the popular sovereignty in theoretical and practical ways; 2) the weakness of the European Parliament as the tool of representative democracy in the European Union; and 3) the weightlessness

of the direct democratic elements, like the consultations.

These elements could provide the democratic legitimacy of the EU; however, right now they are lame ducks in the system, which are the veterinary horses of the European Union. They show that there were ambitious ideas, yet without creativity, which leads to weak practical operations.

THE LACK OF PRINCIPLE OF POPULAR SOVEREIGNTY

According to the principle of popular sovereignty, all power derives from the people, i.e., they can choose the system they want to live in²⁶. This is a basic premise of democracies and one of the most critical cornerstones they have in common, no matter what kind of democracy one is talking about. Its expression has symbolic and practical importance in a constitution, which summarizes the principles of a given community.

Although the European Union does not have a constitution (the draft constitution planned in the 2000s failed to be ratified), the principle of sovereignty of the people was not mentioned even in the draft²⁷. Popular sovereignty as one of the foundations of the community is not mentioned in the Treaty of Rome²⁸, the Maastricht Treaty²⁹, – which formed the basis of the European

²⁶ Petrétei J. and P. Tilk (2014) *Magyarország alkotmány-jogának alapjai*, Pécs: Kodifikátor Alapítvány. [in Hungarian]

²⁷ The Constitutional Treaty (2004) Available [online]: http://publications.europa.eu/resource/ellar/7ae3fd7e-8820-413e-8350-b85f9daab0c.0011.02/DOC_1

²⁸ The Treaty of the European Economic Community (1957) Available [online]: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:11957E/TXT&from=HU>

²⁹ Treaty on European Union (1992) Available [online]: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992M/TXT&from=HU>

” THE EUROPEAN PARLIAMENT – AN INSTITUTION THAT REPRESENTS THE PEOPLE AND DEMOCRACY IN THE EUROPEAN UNION – HAS BEEN STRENGTHENING ITS POWER OVER THE PAST SIXTY YEARS

community – or even the Lisbon Treaty³⁰, the most recent document.

Although the Lisbon Treaty states that “the Union shall be based on representative democracy”³¹, so people’s sovereignty only partially applies to the EU, based on its structure in which the member states are empowered with the most important powers. Moreover, the treaties begin with a declaration of intent by the leaders of the countries to create the given document and confirm it with their signatures.

³⁰ The Treaty of Lisbon (2007). Available [online]: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=HU>

³¹ Treaty of Lisbon: Title II, 8a Article 1.

Moreover, the picture is nuanced by the fact that the adoption of the treaties is approved either by a referendum or a parliamentary decision in each country. This dichotomy is underlined by the now-standard legislative procedure, whereby the European Parliament and the European Council must both approve legislative proposals. If this fails, a joint committee is set up to resolve the dispute, with the Council and the Parliament equally represented.

One could say that an interstate organization does not need any kind of popular sovereignty. However, the EU is not a simple cooperation between independent states, like the United Nations. In 1992, in the Maastricht Treaty, the leader of the community declared that the European Union has citizens, with rights and direct connection with the EU. Therefore, there will have to be an agreement between the EU and its citizens, and the European Union has to adopt popular sovereignty if it really wants to create real citizenship.

THE WEAKNESS OF THE EUROPEAN PARLIAMENT

The European Parliament – an institution that represents the people and democracy in the European Union – has been strengthening its power over the past sixty years. From being a consultative body, it is now commonly referred to as a ‘co-decision-making body.’ Under the Lisbon Treaty, legislation must, as a primary rule, be accepted by both the Council of the European Union and the EP. Even so, it cannot be considered as a powerful body like the Council of the European Union or the European Commission.

Firstly, although the EP has a co-legislative duty as a general role, this does not cover all areas – some agreements can only be decided by the Council of the European Union, others are in the hands of the European

Commission³². In addition, the European Parliament's autonomous powers are mostly limited to political resolutions, which have only a few consequences. Thus, while this body has strong democratic legitimacy, the greatest center of power is not concentrated in the hands of this institution.

Secondly, the positional reinforcements outside the treaties of the European Union are exceedingly difficult to implement, mainly because of the internal division of the institution, as was seen with the failure of the Spitzenkandidat system. With Von der Leyen as the new Commission President, the role of the Parliament has weakened since she was not the top candidate of the EPP in the first round. The fact that the political groups were unable to overcome ideological battles meant that they failed to take advantage of the opportunity to strengthen the European Parliament's role in the institutional structure. While members of the European Commission and the Council are relatively united in their views on strengthening their institutions, paradoxically, the EP also contains MEPs whose political aim is to weaken it and strengthen intergovernmental decision-making³³.

The electoral mechanism also contributes to the weakness of the European Parliament. Although MEPs are directly elected, which gives the democratic legitimacy to the EP, the democracy of the EU is weakened by the fact that citizens can vote for national parties in the election.

³² Blom-Hansen, J. (2019) "Studying Power and Influence in the European Union: Exploiting the Complexity of Post-Lisbon Legislation with EUR-Lex", [in]: *European Union Politics*, Vol. 20(4), pp. 692-706.

³³ Euronews with AFP, AP (2021) "Nationalists Vow Joint Votes in European Parliament but Fall Short of Forming New Alliance", [in]: *Euronews*. Available [online]: <https://www.euronews.com/2021/12/04/europe-s-nationalist-leaders-meet-in-warsaw-in-bid-to-change-politics-of-brussels>

“ THE EUROPEAN PARLIAMENT'S AUTONOMOUS POWERS ARE MOSTLY LIMITED TO POLITICAL RESOLUTIONS

By not voting for single EU party lists, European politics is taken away from people. EP elections have become mostly secondary national elections³⁴. On the one hand, parties are not interested in strengthening their political group, but rather in improving their own position³⁵. On the other hand, voters consider them inferior to national elections. The latter phenomenon may explain the lower voter turnout than in national elections and the higher representation of smaller parties³⁶. For voters, these elections

³⁴ Koller, B. (2019) "Európai uniós polgárok mint a politikai rendszer szereplői", [in]: *Arató Krisztina – Koller Boglárka szerk.: Az Európai Unió politika rendszer*, Budapest Dialóg Campus Kiadó, pp. 173-184. [in Hungarian]

³⁵ A good example for this is the 2019 EP elections in Hungary, where the DK and the MSZP, as well as the Dialogue and the LMP, rivalled each other, even though they were (would have) finally joined the same faction in the EP. See: Pintér, B. (2019) "Mi az az EP-választás? Egy cikkben minden, amit tudnod kell!", [in]: *azonnali.hu*. Available [online]: https://azonnali.hu/cikk/20190515_mi-az-az-ep-valasztas-egy-cikkben-minden-amit-tudnod-kell [in Hungarian]

³⁶ Reif, K. and Schmitt, H. (1980) "Nine Second-Order Elections: A Conceptual Framework for the Analysis of European Election Results", [in]: *European Journal of Political Research*, Vol. 8(1), pp. 3-44.

are mostly about domestic politics, the European policies of the national parties, and the opportunity to support their favorite parties³⁷. It is rarely about the policies and the future of the European Union.

It should be added that the 2019 EP elections produced both higher turnout figures at the European level in member states and a much higher profile for the European Union itself during the campaigning, and national politics were less visible³⁸. This may signify a stronger European Parliament and a rise in public awareness, but one election does not necessarily give reason to draw such conclusions.

However, it is still true that the European elections are less important for EU citizens than the national elections. The main reason for this is that the European Union is distant from the electorate. There is no large-scale, direct dialogue to help people understand the weight and relevance of the EU to their daily lives. At present, Europeans have little idea of the changes that would result from voting in European elections, and, in most cases, they are not even aware of the powers of the European Parliament³⁹.

Finally, the weak cohesion of the political groups is also significant. The fact that MEPs are elected to the European Parliament through their national party, rather than their common European party, means that the latter is only a secondary identity-forming force for politicians. Therefore, the factional discipline in the EP is much weaker

³⁷ This is why small parties get more votes in EP elections than in national elections.

³⁸ Braun, D. and Schäfer, C. (2021) "Issues That Mobilise Europe. The Role of Key Policy Issues for Voter Turnout in the 2019 European Parliament Election", [in]: *European Union Politics*, Vol. 23(1), pp. 120-140.

³⁹ Valchev, B. (2017) "EU Weaknesses and the Debate about Its Future Reforms", [in]: *Trakia Journal of Sciences*, No 4, pp. 367-373.

“ THE DEMOCRACY OF THE EU IS WEAKENED BY THE FACT THAT CITIZENS CAN VOTE FOR NATIONAL PARTIES IN THE ELECTION. BY NOT VOTING FOR SINGLE EU PARTY LISTS, EUROPEAN POLITICS IS TAKEN AWAY FROM PEOPLE

than in a national parliament⁴⁰. Without the disciplining power of political groups, MEPs tend to vote based on their national party, which again gives room for the emergence of national politics in the European context.

⁴⁰ Biró-Nagy, A. (2019) "Az Európai Parlament", [in]: *Arató Krisztina – Koller Boglárka szerk.: Az Európai Unió politika rendszer*, Budapest: Dialóg Campus Kiadó, pp. 99-123. [in Hungarian]

“EUROPEANS HAVE LITTLE IDEA OF THE CHANGES THAT WOULD RESULT FROM VOTING IN EUROPEAN ELECTIONS

THE WEIGHTLESSNESS OF DIRECT DEMOCRATIC ELEMENTS

Since the Maastricht Treaty of 1992, the European Union's objectives have included the direct involvement of citizens in the life of the European community and direct contact between the institutions and the people, thus reducing the democratic deficit and the EU's complexity⁴¹. A critical step towards this goal could be the introduction of democratic instruments that directly consult European citizens, thus strengthening direct democracy.

At present, there are three major direct democracy-enhancing elements in the EU decision-making system: the European Citizens' Initiative (enshrined in the Lisbon Treaty), the European Consultation system, and the ongoing Conference for the Future of Europe series, which constitute a significant improvement; however, their design is still truncated and weak.

The abovementioned institutions are different in terms of their purpose and implementation. The Citizens' Initiative is a grassroots, proposal-driven process to collect signatures to support an idea. The consultations take place through an online questionnaire survey on a specific policy issue to be discussed, initiated by the European Commission. The Conference, on the other hand, is a series of deliberative debates on the long-term strategy of the European Union in the form of offline workshops and discussions. The main problem with these tools is the institutional weakness, coupled with underutilization and lack of public trust.

Through the European Citizens' Initiative people can present their proposals to the European Commission once they have enough signatures. However, statistics illustrate that the system does not work in practice – the data from 2021 show that only 7.8% of registered initiatives (six projects) have reached the required number of signatures with the country-specific criteria, and only two of these have been partially adopted by the Commission; the other four were rejected⁴². The European Commission is only obliged to examine these documents, and even if it does so, it does not have to propose a legislation.

This fact is fascinating in light of the fact that in the case of some proposals, the Commission does not start drafting legislation or taking other action because “*the existing legal framework provides sufficient rights for the purpose of this initiative*”⁴³ or

⁴² Berg, C. and T. Hieber (2021) “The European Citizens Initiative Is Now at a Crossroads – The Member States Can Show Which Path to Follow in the Future”, [in]: *EU Transnational Democracy Blog*. Available [online]: <https://blogs.eui.eu/transnational-democracy/author/carsten-berg-and-thomas-hieber/>

⁴³ See the assessment of the Minority Safepack: https://europa.eu/citizens-initiative/minority-safepack-one-million-signatures-diversity-europe_en

⁴¹ The Treaty of Lisbon: Title I, Chapter A.

“AT PRESENT, THERE ARE THREE MAJOR DIRECT DEMOCRACY-ENHANCING ELEMENTS IN THE EU DECISION-MAKING SYSTEM

“*there is already adequate legislation on (...)*”⁴⁴, just to mention the two most illogical reasons.

However, these proposals have prior legal control, i.e., they are checked, among other things, for compatibility with EU values and rules before being collected. In other words, it would be possible to modify or filter out initiatives that, from the outset, formulate requests to which the European Commission will have a negative response. Instead, they would be allowed, supported, and – if they fall within the small percentage for which a sufficient number of signatures can be obtained – summarily rejected on similar grounds to those above.

As a result, enthusiasm for initiatives has also waned, with fewer associations submitting their ideas to the Initiative. Thus, an essentially empty institution is being emp-

⁴⁴ See the assessment of End Cage Age: https://europa.eu/citizens-initiative/end-cage-age_en

ted even further, which undermines not only the Citizens' Initiatives, but also the citizens' faith in direct democracy and its institutions.

The European Commission's Consultations aim to get suggestions and guidance on the way forward from as many places as possible, including citizens, before drafting legislation. The aim is to make the European Union open to all⁴⁵. In comparison, it seems that people are unaware that such an opportunity exists and, if it does, there is little chance that they will vote⁴⁶. Moreover, people receive little information about what this vote is about, what weight is given to their vote, and what practical implications the completed consultations will have in the future⁴⁷.

The Conference for the Future of Europe series is essentially the next major evolutionary step of the European Union, which aims to assess citizens' views on a total of ten themes⁴⁸. However, since the project is still ongoing, one can only analyze the conclusions based on the already available information.

⁴⁵ Commission of the European Communities (2002) *Communication from The Commission: Towards a Reinforced Culture of Consultation and Dialogue – General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*. Available [online]: https://ec.europa.eu/governance/docs/comm_standards_en.pdf

⁴⁶ Røed, M. and V. Wøien Hansen (2018) *Explaining Participation Bias in the European Commission's Online Consultations: The Struggle for Policy Gain without Too Much Pain*. Available [online]: <https://doi.org/10.1111/jcms.12754>

⁴⁷ Hennen, L. (2020) “E-Democracy and the European Public Sphere”, [in]: Hennen, L. et al. (eds.) *European E-Democracy in Practice*, Cham: Springer.

⁴⁸ Fabbrini, F. (2021) *The Conference on the Future of Europe: Process and Prospects*. Available [online]: <https://doi.org/10.1111/eulj.12401>

The biggest question with the conference series is how it will play out⁴⁹. All we know from the official announcement is that

*"A report on the conference outcome will be submitted to the Joint Presidency. The Parliament, the Council, and the Commission will then examine whether, within their respective competencies and following the EU treaties, they can take what steps to implement the report effectively."*⁵⁰

It is not certain whether there will be any concrete results from the conference series, or at what level the knowledge gained will be applied. For the time being, it can be seen as little more than an experiment in deliberative democracy on a huge scale with a minimal effect⁵¹.

EUROPEAN DEMOCRACY: WHY DO WE NEED IT?

After having outlined where the EU's democratization has come from and discussing the shortcomings that makes it impossible today to call the European Union a democracy, the question is raised of why it is worth thinking about this issue. Simply put, why is it important whether the EU is a democracy or not? In this context, it does not seem empirically clear why an officially supranational or intergovernmental organization should be democratic. Meanwhile, this issue is rarely raised concerning NATO, the CIS, the African Union, or the UN.

⁴⁹ Kalas, V. (2021) "How Effective Can Citizens' Participation Be in the Conference on the Future of Europe?", [in]: *ludovika.hu*. Available [online]: <https://www.ludovika.hu/en/blogs/the-daily-european/2021/07/06/how-effective-can-citizens-participation-be-in-the-conference-on-the-future-of-europe/>

⁵⁰ See the official website of the Conference on the Future of Europe: <https://futureu.europa.eu/pages/plenary?locale=hu>

⁵¹ At the moment of writing, more than 350,000 citizens participated in the program.

Against the further democratization of the European Union, one can quote authors such as Giandomenico Majone, who argued that the democratic deficit is not a problem, but rather a solution, since a community of this size must necessarily be run technocratically at a certain level, and democracy can only be an additional element⁵².

Andrew Moravcsik⁵³ also argues that there is no need to introduce additional democratic elements into the system for several reasons. On the one hand, the present system already curbs the excesses of technocracy, and, on the other hand, the representatives of the member states also have democratic authority, albeit direct in many cases, and thus help to curb the deficit. His main argument is that the legitimacy of the European Union lies in the fact that the member states are based on liberal democracy, so the system they have set up must also be legitimate. Therefore, there is no need for other democratic institutions, as popular sovereignty is already established at the level of the member states.

There are several arguments for further democratizing the European Union. Simon Hix puts forward three main arguments: 1) democracy would allow for a much faster and more direct channeling of citizens' opinions and political and policy preferences; 2) without democratic debate, it is not possible to formulate opinions on complex policies, so democracy would help citizens to become more knowledgeable on more complex issues, which would improve the quality of decision-making; 3) democracy would help to create an identity for European citizenship, just as democ-

⁵² Majone, G. (2005) *Dilemmas of European Integration*, Oxford: Oxford University Press.

⁵³ Moravcsik, A. (2002) "In Defense of the 'Democratic Deficit': Reassessing Legitimacy in the European Union", [in]: *Journal of Common Market Studies*, Vol. 40(4), pp. 603-624.

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IF ONE ACCEPTS
THAT EU LAW
IS SUPERIOR,
IT IS ALSO
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TO HAVE
DEMOCRATIC
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BECAUSE
NATIONAL
DEMOCRACY
IS NOT SUFFICIENT
FOR CONTROLLING
THE EUROPEAN
SYSTEM

ratization has helped in the emergence of states and national identities in the Western world⁵⁴.

Another argument, quite topical today, is put forward in the manifesto of the Civitas Association⁵⁵: the primacy of the European law over national laws. The issue is increas-

⁵⁴ Hix, S. (2011) *The Political System of the European Union*, London: Bloomsbury Publishing.

⁵⁵ Civitas (2016) *Democracy in the EU*. Available [online]: <https://www.civitas.org.uk/content/files/CIT5.-Dem.pdf>

ingly being called into question by legal debates in Poland⁵⁶ and Romania⁵⁷ in 2021. However, if one accepts that EU law is superior, it is also necessary to have democratic control over it, because national democracy is not sufficient for controlling the European system, which leads to the idea of democratization of the European Union.

Finally, a more pragmatic argument of Markus Jachtenfuchs, who argues that democracy is a necessity because ultimately democratization is the best legitimation tool, and it is not possible to govern the Union and implement accurate decisions without the citizens. He believes that citizen involvement is necessary because the European Union is a highly decentralized organization with a weak scope, and without the citizens of the member states, the slightest dissatisfaction, however small, could be fatal to a reform⁵⁸.

ONCE-IN-A-LIFETIME OPPORTUNITY: HOW THE EU COULD USE TECHNOLOGY FOR DEMOCRATIZATION

The European Union does have certain problems with democracy, and democracy matters even in a *sui generis* organization like the European community. Without democratic legitimation, the EU will not be able to grow, develop, and provide the fundamental rights that constitute its very foundations. So now, the only remaining question is, how should we democratize the European Union?

⁵⁶ <https://www.theguardian.com/world/2021/oct/07/polish-court-rules-that-eu-laws-incompatible-with-its-constitution>

⁵⁷ <https://www.brusselstimes.com/199239/romania-constitutional-court-rejects-primacy-of-european-law>

⁵⁸ Jachtenfuchs, M. (1998) "Democracy and Governance in the European Union", [in]: Føllesdal A. and P. Koslowski (eds.), *Democracy and the European Union*, Cham: Springer.

As mentioned above, Moravcsik states that it is impossible to democratize the European Union because of its size as well as ethnic, national, economic, and historical diversities. Indeed, it is a considerable challenge, which could cause as many problems as it would solve – if one thinks in a more traditional way. However, in the 21st century, Europeans have the opportunity to use new tools and solutions. Some of the latest ideas could help create more ambitious plans for the future of the European community.

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A SYSTEM
WHERE EVERY
EUROPEAN
CITIZEN
COULD DEBATE
ON THE ACTUAL
PROBLEMS
OF THE EUROPEAN
UNION EVERY DAY
COULD BE CREATED
– JUST AS ALREADY
TAKES PLACE
ON FACEBOOK
OR TWITTER

In order to look into the possible future, let us consider the latest book by Jamie Susskind, *Future Politics*⁵⁹, in which the author puts forward five ‘new kinds of democracies.’ These five ways of how to use modern technology to improve democracy are, of course, not viable models in themselves; however, they may offer solutions for the problems of the democratization of the EU.

DIGITAL-DELIBERATIVE DEMOCRACY

The concept of deliberative democracy is not a new one – the term first occurred in the 1980s in the works of Joseph M. Bessette. Jürgen Habermas has been one of the greatest supporters of the concept, where people come together in small groups, debate the problems, and delegate their conclusions to a bigger group, repeating these circles until a national consensus is reached.

With digital tools, the idea is no longer a utopia. Right now, debates on wars, economics, and health crises happen daily on social media platforms. If one could solve the problem of anonymity and bots⁶⁰, a system where every European citizen could debate on the actual problems of the European Union every day could be created – just as already takes place on Facebook or Twitter. Moreover, since the European Union has many fewer issues to decide on than a state, there would not be as many topics that would have to be tackled, and so the process should not become a burden on the people.

This solution could improve the political life of the citizens, involve them in decision-making, and help them know more about the role of the European Union in

⁵⁹ Susskind, J. (2022) *Politika a jövőben*, Budapest: Athenaeum Kiadó Kft. [in Hungarian]

⁶⁰ A ‘bot’ is an automated software, which could potentially replace humans in general conversations – like a messenger bot on a service page.

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ACCORDING
TO THE ‘WIKIDEMO-
CRACY’ CONCEPT,
PEOPLE
FROM ALL OVER
EUROPE COULD
CREATE LAW PRO-
POSALS

their daily lives. The consultations of the European Commission are a good starting point; however, not many European citizens know about it and its scope is still extremely limited. And if we do not put any power in an institution, it will soon become hollow.

DIRECT DEMOCRACY

As mentioned before, the European Union does have tools based on the idea of direct democracy. However, they are limited and have only consultative power. Even in Switzerland, where the institution of the referendum is the most widely used, only 676 referendums have been held since the country’s foundation in 1848⁶¹, which means there were 3.8 referendums each year so far. It sounds like a lot, yet, only a very minor percentage of all issues was decided on in this way, considering the complexity of the said state.

⁶¹ See the official site of the Swiss referendums: https://swissvotes.ch/votes?sort_by=date&sort_order=descending

Nonetheless, with new technologies – and new political culture based on direct and continuous democratic thinking – Europeans could create an effective system by which citizens would be able to decide directly on many issues. With new mobile applications, people would get the necessary information and would be able to vote even on more complex questions, like the budget, via their smartphones.

This method is much faster than any other direct tool, so the European Union could use it in various ways – not just for tedious, administrative matters. Again, the EU does not have as many issues as a respective member state that would require consultation, so relying on citizens’ involvement would be much easier. Moreover, this innovation could help reduce the burdens of a political-bureaucratic system as well.

WIKIDEMOCRACY

With digital technology, people can participate in the same discussion, vote for the same question, and work together on the same proposal. According to the ‘wikidemocracy’ concept, people from all over Europe could create law proposals. Although it sounds utopian, there have been a few experiments where citizens created actual laws via an open-source system – just like Wikipedia or the development of Linux – and these proposals became *de facto* laws eventually⁶².

In this system, ordinary citizens could start their projects, and the EU could involve them in creating law proposals and help them see the complexity of the discussed questions. This way, the decision-making would be based on the cooperation of the citizens together with the political elite.

⁶² Susskind, J. (2022) *Politika a jövőben*, Budapest: Athenaeum Kiadó Kft, p. 200. [in Hungarian]

In the European Union, this kind of integration could be essential not only because it could involve the citizens in the process, but it would also connect people from different countries and channel people's various points of view. In the end, it is one of the most 'EU-things' that one could imagine: people pulling their knowledge together to create their united future as one.

DATADEMOCRACY

Nowadays, news about how Big Tech companies have stolen their users' data and how they misuse it comes to light on a daily basis. Indeed, data is the most valuable resource; however, it could be used for a greater good, and not merely for targeted advertising.

If we could collect our data from every aspect of our life – just like Facebook does, but with the consent of the citizens – the things we share could then allow us to transfer our 'selves' into the digital world. Our digital selves would have the same worldview and beliefs, because they would be our exact digital doppelgangers. Moreover, these digital selves could represent us anywhere anytime – such avatars could take our place in a 24-hour digital general meeting, where the avatars of all citizens are 'discussing' the ongoing questions and decide on them, based on our own thoughts previously uploaded onto the web.

European citizens already use their mobile phones every day, creating data. With a dedicated application, they could select and share these data (or part of them) with the European Union – thus creating their own avatars. These avatars would represent European citizens in an online field, where the EU makes its decisions, and vote on the questions just as they would had they the time to look through all the questions and read the relevant articles.

In the foreseeable future, politics could use these digital doppelgangers to decide how they shape our future and make their decisions easier. Eventually, it could automatize decision-making to some extent and completely change politics.

Data democracy would be ideal for the European Union, because 447 million people compose quite a large database, which makes the process much easier, and the EU political system would have a robust and direct connection to citizens. Data-democracy could collect and use the opinions of all citizens, allowing European citizens to decide on various issues within minutes, involving everyone.

AI-DEMOCRACY

Athenian democracy could not work in the 21st century, because a population of 447 million EU citizens simply cannot gather in one place at the same time. That is why Western politics invented representation. But there remains a question of why we need to be represented by other people.

With the fast development of artificial intelligence (AI), the futurist utopia of a robot-human common society is not so sci-fi anymore. People must deal with the fact that, eventually, they will be able to create machines with the intelligence of a human being. These creations could at some point be part of the society – or even lead it.

Citizens have lost trust in politicians⁶³ and always want to search for new faces or 'experts' to join the government. The European Union already has an institution full of experts whose main goal is to represent the EU without politics: this would be the European Commission by definition. Moreover,

⁶³ Enli, G. and L.T. Rosenberg (2018) "Trust in the Age of Social Media: Populist Politicians Seem More Authentic", [in]: *Social Media + Society*. Available [online]: <https://journals.sagepub.com/doi/10.1177/2056305118764430>

who could be a more perfect candidate for this kind of job than a computer?

AI could take over the executive power of the decisions: of course, humans would still be needed for making the actual decisions, but, after that, a computer could deliver the tasks perfectly, without the risk of corruption, political games, or deception. Its only task would be to identify the best way to solve a problem and then carry it out.

AI-democracy could help people to have more trust in the European Union and separate its political and apolitical sides. With the clarification of what politics *is*, and what it is *not*, one could also develop democracy in a more liberal way: artificial intelligence could be used to regulate the power of the political elite and of the majority. 'AI-government' may also help bring more stability into the EU's political system. This, in turn, could bring about a more pluralistic, debate-oriented politics in the European Parliament, which would translate into further developing European democracy.

CONCLUSIONS

The tools mentioned in this paper are not perfect at all. They face serious problems in terms of privacy, the media literacy of the citizens, the passivity of the people, among many others. However, these are not the solutions but only the tools that we could use to create something new – with due patience and attention. A new institute could solve our problems, but it could create new ones. Moreover, we should remember that these – just like the current democratic institutions – cannot be used on their own: we cannot trust the whole society to an AI, or the hope that people will vote on fifteen topics every week. These tools, however, are conceptual ideas rather than actual ready-to-use mechanisms.

What we should do is to think outside the box – just because we have a concept of democracy in mind right now, it does not mean that it has to be the same in the next decades. And we do not need to accept the current level of democracy in the European Union – as both it and we might change in time.

The current system of the EU is built on national politics, international relations, and bureaucracy, with democracy being only a small part of the overall idea. Even with the strength of the Parliament and with the introduction of new tools, like the consultation or the Conference on the Future of Europe, people do not have the opportunity to communicate their thoughts. Democracy could deepen and strengthen the Union; however, we cannot see a determined politician who would lead this fight in the Communities.

In the 21st century, we already have the tools to democratize the system, but this has not been the main problem so far. Creativity is always the second step, right after the political will: politicians and citizens must try to commit themselves to democratizing the communities. Without a clear and strong will, ideas will always stay on the desk, the creative ideas lose their power, and democracy remains as it is now – a dream for the European Union.



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ZSOLT
NAGY

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Policy Risks to the United Future of Europe



*
DANIEL
HINŠT

European integration has been the cornerstone of building and strengthening liberal democracies within the transatlantic world and allied countries. The European Union (EU) and NATO, together with the Anglo-Saxon countries and allies, represent the institutional architecture of liberal international order. However, freedom and democracy are facing policy risks that affect European integration, mostly due to rising populist disinformation as well as Russian aggressive policy.

Protecting the security, freedom, and democracy of the European future and NATO-led global order requires building a strong European central intelligence agency in addition to the existing national security systems.

Considerations about a new institutional architecture of Europe open up ideas for building the United States of Europe – fashioned after the United States of America, originally founded on the classical liberal and federalist ideas, as *A New Order of the Ages*. In line with that, building a renewed and potentially federal future of Europe in more liberty, equality, and fraternity shall be taken into consideration.

THE NEED FOR BASIC INSTITUTIONS

Together with the United States, the European Union is the building block of the liberal international order. Within that institutional context, NATO provides security infrastructure for this transatlantic alliance. Despite their certain differences, European and American institutions share common values of liberal democracy, including individual freedom, open society, the rule of law, and market economy.

However, those values have been put into question partly due to rising populist disinformation as well as Russian aggressive

policy. Attempts by various actors to decrease trust in the transatlantic institutions and European values – considered as liberal in a broader sense – directly affect the future of European integration and its enlargement, not to mention the federalist idea of the European Union.

In order to move toward a federal structure, the EU would need to build basic institutions – such as intelligence and armed forces. Let us, therefore, examine the initiatives and options for creating a European central intelligence agency, to support the existing Common Foreign and Security policy

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LANTIC ALLIANCE

within the NATO framework. This way, the EU would be strengthened institutionally as a U.S. partner, instead of relying on the false dilemma of *independence* from the United States.

THE UNITED STATES OF EUROPE

Ideas focused on European unification have been developing gradually. Since the very inception of the European project, these proposals did not only have a distinct European, but also a transatlantic character. Originally, the notions and heritage mostly associated with the Enlightenment had a major political influence on both the American founding and European integration. There were important actors behind this European idea, including notable and prominent Freemasons - such as Benjamin Franklin, George Washington, Giuseppe Mazzini, Giuseppe Garibaldi, Richard Coundenhove-Kalergi, and Winston Churchill.

Benjamin Franklin drew a European constitutional proposal¹ for a Federal Union and One Grand Republic based on free trade. Franklin even referred to the idea of a "Grand Design"². Moreover, George Washington also supported European unification³ while William Penn had an initiative for the European Parliament⁴.

Meanwhile, French poet Victor Hugo advocated the idea of European fraternity during his 1849 speech at the Internal Peace

¹ <https://www.europewatchdog.info/en/council-of-europe/united-europe/>.

² <http://www.sirjournal.org/research/2018/1/29/ben-franklin-and-the-united-states-of-europe>

³ Reding V. (2012) *Why We Need a United States of Europe Now*, a speech delivered on November 8, European Commission. Available [online]: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_796

⁴ <https://www.opendemocracy.net/en/can-europe-make-it/william-penn-englishman-who-invented-european-parliament/>

Congress in Paris. Furthermore, in the context of European liberal revolutions in 1848, leaders of the Italian unification Giuseppe Mazzini and Giuseppe Garibaldi saw European unification as a continuation of Italian unification. It is also worth to mention that a liberal English philosopher John Stuart Mill supported the idea of European unification.

During the First World War, German pastor and liberal politician Friedrich Naumann, in his 1915 book *Mitteleuropa*, advocated the Central European federation as a defense alliance and a single economic area. Within this proposal, Naumann did not put emphasis on government regulations, but rather on voluntary exchange of labor, ideas and culture, as well as well-organized German entrepreneurs. It could be assumed that

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Naumann's idea also envisaged a greater (continental) European federation⁵.

In 1931, Richard Coundenhove-Kalergi founded the Pan-European Movement in Vienna. Furthermore, French politician and Prime Minister Édouard Herriot and British politician Arthur Salter wrote books about the United States of Europe. Finally, Winston Churchill advocated the European Union between continental states, but without the United Kingdom. In 1942, he supported the idea of the United States of Europe with minimized barriers and unrestricted travel. After the Second World War, Churchill supported the same idea in 1946 during his speech at the University of Zurich.

After the Second World War, European integration started to be gradually realized. European institutions were built in various formations, as well as a much broader Council of Europe. Moreover, the 1957 Treaty of Rome and the 2009 Lisbon Treaty support the idea of an ever-closer union⁶.

Throughout the 21st century, several prominent politicians have also supported the idea of bringing European states closer together. Former European Commission's Vice President Viviane Reding advocated for a political union in the form of the United States of Europe as a logical next step after a common currency. In her 2012 speech in Passau, Reding referred primarily to the

⁵ Greiner F. (2015) *Articulating Europe During the Great War: Friedrich Naumann's Idea of Mitteleuropa and Its Public Reception in Germany, England and the USA*. Available [online]: <https://www.ledonline.it/index.php/LCM-Journal/article/view/912/774>

⁶ However, concrete planning to implement this federal idea would require a sufficient level of public and political support among Europeans and the member states. While it is necessary to have an open discussion about the European long-term future, it is also necessary to communicate potential reform ideas in a way that populists do not use for boosting already growing Euroscepticism.

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THATCHER WAS
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AND FEDERALISM

ideas of Victor Hugo⁷. Former European parliamentary liberal leader Guy Verhofstadt fosters the idea of the United States of Europe as a federation, but not a super-state⁸. Verhofstadt's book *Europe's Last Chance* (2017) advocates a fully-fledged federal Union⁹. It is worth remembering that Verhofstadt is a part of the Spinelli Group, a network of like-minded federalists in the European Parliament¹⁰ backed by the Union of European Federalist¹¹. It will be interesting to see to what extent the federalist idea has been present in the debate about Europe.

THE FEDERALIST DILEMMA

While, for example, the United States, Canada, Australia, Austria, and Germany are federations, consisting of states/districts, the

⁷ Reding V. (2012) *Why We Need a United States of Europe Now*, a speech delivered on November 8, European Commission. Available [online]: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_796

⁸ <https://www.euronews.com/2019/05/13/guy-verhofstadt-eu-presidential-hopeful-talks-to-euronews>

⁹ Verhofstadt, G. (2017) *Europe's Last Chance - Why the European States Must Form a More Perfect Union*, New York: Basic Books.

¹⁰ <https://thespinelligroup.eu/>

¹¹ https://www.federalists.eu/fileadmin/files_uef/Spinelli_Group_Page/2018_Manifesto_EN.pdf

European Union is a unique supranational and intergovernmental polity without a federal structure.

Although federalism is usually perceived as a progressive attempt to increase the size of the central government and its bureaucracy, the federalist idea should not be exclusively mixed with such perceptions. In this context, it is important to mention Margaret Thatcher who was strongly against European federal superstate as undemocratic. However, Thatcher noticed that, for example, American federalism means restoring power to states¹².

On the one hand, Thatcher was suspicious of European integration, a political union, and federalism. On the other hand, Thatcher was against creating a strongly bureaucratic superstate led by French ideas directed against neoliberalism, while she saw the importance of the single market. It seems that Thatcher put Europe in a classical dilemma – a federalist superstate led by the French, versus a Europe of strong nations connected by means of the single market.

European unity should certainly not be a projection and extension of national interests of particular member states, especially those who are critical to so-called *neoliberalism* and American foreign policy. Secondly, more European integration and even federalism should not be equalized with more bureaucracy and higher centralization, although these risks can appear even without further integration toward federalism. Therefore, a potential federalist option for Europe should rather be the classical American version adopted into the European context. Perhaps Thatcher would agree with that (especially nowadays, when the United Kingdom is not a part of the EU

¹² Thatcher, T. (2003) *Statecraft: Strategies for a Changing World*, London: HarperCollinsPublishers.

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anymore), the same way as Churchill supported the United States of Europe without the UK.

Federalism does not undermine national identities and member states' legacies – it can only strengthen their positions. However, Europe is not just about different nations coming together – the European vision stems from strong individuals, communities, and active citizens, who want to work on self-improvement and prosperity. Therefore, individuals are the main architects of

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AND MEMBER
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freedom and nations are as strong as individuals are free.

FORGOTTEN IMPORTANCE OF CIVIC EDUCATION

Especially due to rising Euroscepticism, European integration and the federalist idea need a common identity, values, and virtues. Despite the motto *United in Diversity*, the majority of Europeans still lack this sense of unity, in comparison to the United States of America. It is difficult to assume that America was founded without obstacles to federalist unification of different states.

Therefore, it is important to understand the legacy of the U.S. Founding Fathers' vision to create an exceptional historical experiment based on the enlightened classical liberal ideas inspired by Reformed Christianity, purified from medieval European legacies of clericalism, hierarchies, and corruptive

collusions with absolutist rulers. This newly formed American framework connected many Founding Fathers and other influential Americans within the Freemasonry as the leading manifestation of the Enlightenment, as the basis for building *A New Order of the Ages*¹³.

In his book on *The Political Theory of the American Founding* Thomas G. West (2017) describes the political ideas behind building the American federal experiment based on democratic self-government. West points out important policy areas for the American federal government, such as protecting the natural rights to life, liberty, and property through domestic and foreign policy; trade policy and market freedom; reliable money for exchanging goods and services; border protection; rule of law protected by free, impartial, and independent judiciary; basic safety net and public education. Concerning the latter, West refers to several Founding Fathers who emphasized the development of civic virtues to protect the constitution, to secure liberty, and promote civic humanism. He also mentions thoughts of Benjamin Franklin, according to whom only virtuous people have the capability for freedom, and thoughts of James Madison that government will fail without virtue. West goes on to state that the founders saw the need for moral education based on the rational knowledge of natural rights in order to support institutions and good government.

In particular, Thomas Jefferson emphasized the role of pre-university education to instruct about rights, interests, and duties, and the role of university education to understand principles of politics, order, and virtue. In line with that, West illustrates that the government supported state universities

¹³ The original reads *Novus Ordo Seclorum*. See: <https://www.greatseal.com/mottoes/seclorum.html>

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AND HIGH
SOCIAL TRUST

to develop reasoning faculties, enlarge minds, and cultivate morality based on liberal education, with a focus on training sober public servants¹⁴. In addition to this observation, West mentions the civic virtues of frugality, industry, liberality, moderation, temperance, prudence, wisdom, courage, and justice¹⁵ that were highly important to the Founding Fathers.

¹⁴ West, T.G. (2017) *The Political Theory of the American Founding – Natural Rights, Public Policy, and the Moral Conditions of Freedom*, Cambridge: Cambridge University Press.

¹⁵ Ibid. The author mentions several civic virtues in many parts of the book. For information on particular pages, see the Index of the book (p. 419).

Thomas G. West's book illustrates that a functioning democratic government and open society require a comprehensive public policy and political culture based on strong civic virtues and high social trust. Furthermore, the role of public education for civic life and democracy is crucial¹⁶.

EUROPEAN VALUES AND POLITICAL DILEMMAS

It is important to understand this context because good governance and democratic institutions even in Europe need to be supported by strong civic education. While national and even regional narratives are strong throughout Europe, there is a question of to what extent European identity and common values could be developed to support further European integration?

American Political Scientist Samuel Huntington emphasizes individuality as the central mark that distinguishes the West¹⁷. Moreover, Scottish Historian Niall Ferguson mentions many values and legacies of the Western civilization. Among them are devotion to work, accumulation of capital and Protestant work ethic, rational organization, individual freedom, the Enlightenment, scientific revolution, democracy and representative constitutional government, independent courts, property rights, and the freedom of worship¹⁸. Despite some differences and institutional deficits, these values are common on both sides of the Atlantic and represent the basis for the transatlantic institutions.

¹⁶ In line with that, a system of land-grant universities and colleges has been developed in the United States since the 19th century. Even the leading private universities, including the elite Ivy League universities (Harvard, Yale, Princeton, etc.) put a strong emphasis on civic education for democracy, together with their initial role of providing education for church ministers.

¹⁷ Huntington, S. (1996) *The Clash of Civilizations and the Remaking of World Order*, New York: Simon & Schuster.

¹⁸ Ferguson, N. (2012) *Civilization: The Six Killer Apps of Western Power*, London: Penguin Books.

As mentioned earlier, the federalist idea cannot afford itself another etiquette of a one-size-fits-all solution. Centralization and uniformity are certainly not European values, but differences in opinions and thoughts within the civilized and constructive framework. United Europe cannot afford exclusivist political ideologies and populism, whether it is backward clerical or fundamentalist agenda on the socially conservative side or progressive-leftist attempts to impose a cancel culture, radical intersectionality, and undermining essential traditions. Therefore, actors on both sides of the political spectrum should strive toward moderation, since center-right and center-left help democracies to consolidate, instead of producing strong ideological divisions.

THE FRAMEWORK FOR POTENTIAL FEDERAL EU REFORM

Considering the basic functions of the government and the current institutional context of the European Union, there should be a joint security system, including armed forces and the central intelligence agency. In addition to this, the EU already has the institutional framework shared with its member states to protect fundamental market freedoms and competition, as well as a foreign trade policy.

The EU should be based on a strong Parliament and a Council of ministers. The Parliament shall be elected through transnational voting lists, with each national parliament delegating its representatives. The European Commission, as the executive council, should be chosen by its president, and derive its legitimacy from the majority of the Parliament, independently of appointments from the member states¹⁹. In line with this,

¹⁹ Verhofstadt, G. (2017) *Europe's Last Chance – Why the European States Must Form a More Perfect Union*, New York: Basic Books.

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European Liberal Youth's proposals for a federal Europe²⁰ include institutional reforms focused on several areas. The European Commission should transform itself to a political executive branch with a reduced portfolio composed by a coalition and supported by a parliamentary majority²¹.

²⁰ https://www.lymec.eu/about_us

²¹ LYMEC's Vision on Institutional Reform – European Commission. Available [online]: <https://futureu.europa.eu/processes/Democracy/f/6/proposals/13234>

At the same time, the European Council should be merged with the Council of the EU²², while the European Parliament shall only have a single seat in Brussels²³. The Council and the Parliament should then have the right to submit legislative proposals, while the European Union ought to be represented by the President of the Commission²⁴. With respect to subsidiarity and the political limits, the EU should focus on trade, internal market, foreign affairs, defense, migration, asylum, fundamental rights, climate, and energy²⁵ since these policies are of a cross-border and common relevance for Europeans.

Although the European Monetary Union (EMU) exists, the euro is not a common currency in the whole EU. Moreover, unlike the European Free Trade Association (EFTA) and Switzerland, some member states are still not a part of the Schengen area, which guarantees European freedom of movement. Therefore, the federalist concept should consider including all the member states in the EMU and the Schengen area, instead of relying on several fragmentations.

Furthermore, the EU does not have a fiscal union, so the question is to what extent a potential federation would be authorized to collect joint taxes. If we assume that federalism supports a limited government, a potential federal government should not

require additional or at least excessive public money to be redistributed through the EU budget, although the EU budget is just around 1% of the GDP (significantly less than in the United States and even Switzerland). In any case, potential European tax policy should accept the tax competition between the member states in order to protect their freedoms concerning personal and corporate income taxes, as well

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²² LYMEC's Vision on Institutional Reform - European Council. Available [online]: <https://futureu.europa.eu/processes/Democracy/f/6/proposals/13236>

²³ LYMEC's Vision on Institutional Reform - European Parliament. Available [online]: <https://futureu.europa.eu/processes/Democracy/f/6/proposals/13237>

²⁴ LYMEC's Vision on the EU's Democratic Legitimacy. Available [online]: <https://futureu.europa.eu/processes/Democracy/f/6/proposals/13366>

²⁵ LYMEC's Vision on the EU's Political Limits. Available [online]: <https://futureu.europa.eu/processes/Democracy/f/6/proposals/13333>

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as a tax-free treatment of reinvested profits (like in Estonia and Latvia). Moreover, despite populist concerns that Europe costs a lot, the EU budget is less than one-fortieth of member state's budgets. Despite this fact, the EU has been referred to in some slogans as *the EUSSR*, although the former Soviet Union and its communist dictatorship controlled 100% of official national income²⁶.

²⁶ Verhofstadt, G. (2017) *Europe's Last Chance - Why the European States Must Form a More Perfect Union*, New York: Basic Books.

In the potential context of the United States of Europe, European Liberal Forum's *Liberal White Book Europe 2030*²⁷ mentions a common finance minister of the Eurozone. However, the *White Book* warns that this idea would not get a strong popular support, but may instead provoke a backlash and hamper further integration, since the large majority of EU citizens identify exclusively or primarily with their member states²⁸.

Furthermore, despite the need to control the overall level of European government, it is important to tackle populist-led misinformation about the European administration. Simplified conclusions about a large bureaucracy highly depend on the context. While the EU administration has a little bit more than 30.000 employees²⁹ (and a part of them are translators), the U.S. federal government's executive branch has more than 2.7 million civilian employees³⁰.

BUILDING THE EUROPEAN CIA

Security is one of the fundamental roles of any government. In liberal democracies, security provides a framework to protect values of individual liberty and our fundamental rights.

A united Europe needs a strong institutional framework at least in its bare minimum – and that is security. The EU has been facing

²⁷ European Liberal Forum (2020) *Liberal White Book Europe 2030, A Liberal Roadmap for a Resilient and Prosperous EMU 3.0*, Chapter 7, p. 248. Available [online]: <https://liberalforum.eu/think-tank/liberal-white-book-europe-2030/>

²⁸ Ibid.

²⁹ European Commission (2020) *HR Key Figures*. Available [online]: https://ec.europa.eu/info/sites/default/files/european-commission-hr-key-figures_2020_en.pdf

³⁰ Congressional Research Service (2021) *Federal Workforce Statistics Sources: OPM and OMB, Updated on June 24, 2021*, Table 3, Page 6. Available [online]: <https://fas.org/sqp/crs/misc/R43590.pdf>

“ EUROPE NEEDS A STRONG TRANSATLANTIC ALLIANCE, INCLUDING JOINT AND COORDINATED INTELLIGENCE COOPERATION WITHIN THE NATO ALLIANCE

a rising risk of Russian and Chinese authoritarian influence³¹ supported with disinformation against its member states. Terrorist threats should also be taken into account as well as Russian aggressive policy. These core reasons pose sufficiently big challenges that require a joint intelligence community and a dedicated central agency, in addition to the existing national agencies.

Europeans need a joint foreign and security policy, which would be easier to coordinate and cooperate within the EU and with the United States, set within the NATO framework. History shows that Europe was not able to solve any conflict alone, nor can Europe do much on its continent with regard to Russian aggression in Ukraine. Therefore, Europe needs a strong transatlantic alliance,

³¹ <https://www.kremlinwatch.eu/userfiles/handbook-on-countering-russian-and-chinese-interference-in-europe.pdf>

including joint and coordinated intelligence cooperation within the NATO alliance.

No matter how far the European integration would reach, security policy should remain the competence of the member states. However, rising cross-border security challenges, within the Union and throughout the world, from terrorism to rising authoritarian influence, justify the need to create a European central intelligence agency. Member states cannot solve these complex global risks alone, especially because these policy risks challenge the global role of Europe.

Although the EU has a certain institutional level concerning intelligence policy, it is far from a comprehensive and holistic framework. In 2012, the EU formed the European Union Intelligence and Situation Center (EU INT-CEN). Since 2011, it has been a part of the European External Action Service (EEAS) and under the authority of the EU's High Representative. EU INT-CEN succeeded the Joint Situation Center (SIT-CEN), whose mission was to focus on early warnings, diplomatic reporting, non-military intelligence, and crisis task force.

The current EU intelligence structures are flawed, and the intelligence sharing is selective, while the EU heavily relies on NATO's capacity. The central intelligence agency would help the EU to enter the international scene³², while the current capacity of the EU to produce its own security intelligence is low and depends on information sharing between the national agencies³³. So far, there have been intergovernmental initiatives to improve European intelligence

³² Christodoulos, I. (2013) *Is a European Union Central Intelligence Agency Needed?*, Research Paper No. 161. Available [online]: <https://rieas.gr/images/rieas161.pdf>

³³ Estevens, J. (2020) "Building Intelligence Cooperation in the European Union". [in]: *Janus.net*, E-Journal of International Relations, Vol. 11(2). Available [online]: <https://doi.org/10.26619/1647-7251.11.2.6>

cooperation. Therefore, the Intelligence College³⁴ in Europe was established in 2019³⁵ and the letter of intent was signed in 2020 in Zagreb³⁶.

In 2015, Guy Verhofstadt, the leader of liberals in the European Parliament, emphasized that the European intelligence cooperation is a failure, and so he initiated the creation of a European intelligence agency and expressed the need to activate article 42 (7) of the Lisbon Treaty³⁷, which guarantees assistance to member states that are victims of armed aggression on their territories³⁸. Considering the terrorist attacks on Madrid, Brussels, Paris, and London, Verhofstadt concluded that Europe could not continue with a fragmented security policy. However, establishing a single European intelligence would not mean abolishing national security services³⁹. Verhofstadt's proposal was to bundle all information about terrorists⁴⁰. However, forming a new agency was opposed by the German foreign intelligence

³⁴ This intergovernmental initiative fosters academic and professional views on intelligence-related topics and contributes to the strategic intelligence culture in Europe. For more information, see: <https://www.intelligence-college-europe.org/>

³⁵ <https://www.intelligence-college-europe.org/>

³⁶ *Letter of Intent concerning the development of the Intelligence College in Europe* (2020). Available [online]: <https://www.intelligence-college-europe.org/wp-content/uploads/2020/03/Lol-English.pdf>

³⁷ Euractiv (2015) *Verhofstadt Calls for Creation of EU Intelligence Agency*. Available [online]: <https://www.euractiv.com/section/justice-home-affairs/news/verhofstadt-calls-for-creation-of-eu-intelligence-agency/>

³⁸ Official Journal of the European Union (2012) *Consolidated Version of the Treaty of the European Union*. Available [online]: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e-6da6.0023.02/DOC_1&format=PDF

³⁹ Verhofstadt, G. (2017) *Europe's Last Chance - Why the European States Must Form a More Perfect Union*, New York: Basic Books.

⁴⁰ NOS News (2016) *Ook na aanslagen Brussel is een Europese CIA nog ver weg*, March 28. Available [online]: <https://nos.nl/artikel/2095686-ook-na-aanslagen-brussel-is-een-europese-cia-nog-ver-weg> [in Dutch]

“ THE CURRENT EU INTELLIGENCE STRUCTURES ARE FLAWED, AND THE INTELLIGENCE SHARING IS SELECTIVE

agency (BND)⁴¹, as well as several member states.

KEY POLICY RISKS TO THE EUROPEAN INTEGRATION

Rising populism and disinformation pose a significant risk for trust in the functioning of the current European institutions. There are many anti-EU narratives, claiming that the European Union is weak, paralyzed by conflicts, and unable to address crises⁴², that it is without democratic legitimacy, or that it is even totalitarian⁴³.

Disinformation is connected with the erosion of Enlightenment values. Post-truth narratives and alternative fact approaches

⁴¹ EUobserver (2017) *German Spy Chiefs Say 'No' to EU Intelligence Service*. Available [online]: <https://euobserver.com/justice/139311>

⁴² Greene, S. et al. (2021) *Mapping Fake News and Disinformation in the Western Balkans and Identifying Ways to Effectively Counter Them*. Available [online]: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO_STU\(2020\)653621_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653621/EXPO_STU(2020)653621_EN.pdf)

⁴³ Hinšt, D. (2021) "Disinformation as Geopolitical Risk for Transatlantic Institutions", [in]: *International Studies*, Vol. XXI(2). Available [online]: <https://hrcak.srce.hr/clinak/388303>

encourage *deep state* narratives, undermine the democratic processes, and erode trust in institutions like the EU and NATO.⁴⁴

To tackle this problem, the European Commission has adopted The Action Plan against disinformation (2018) and the European Democracy Action Plan (2020). Its aim is to counter disinformation and defend the stability of democratic institutions by focusing on democratic civic education, European values, critical thinking, and media literacy⁴⁵. It will be important to evaluate the implementation of these two key documents, especially with regard to specific member state's policies.

Detection and countering populist disinformation can strengthen the resilience of institutions, develop the civil society sector, and increase market opportunities for private intelligence services, researchers, policy analysts, digital marketers, and other actors⁴⁶. Despite the increasing domination of artificial intelligence, human intelligence will strengthen its competitiveness with regard to critical thinking, fact-based public policy process, and civic virtues⁴⁷. Without significant effort in this area, it will be extremely difficult to expect a further

European integration process, since obstacles and resistances will be even larger.

⁴⁴ Hayden, M. (2019) *The Assault on Intelligence. American National Security in an Age of Lies*, New York: Penguin Books.

⁴⁵ European Commission (2018) "Action Plan Against Disinformation", [in]: *JOIN* Vol. 36. Available [online]: https://eeas.europa.eu/sites/eeas/files/action_plan_against_disinformation.pdf; European Commission (2020) *European Democracy Action Plan*, COM(2020) 790. Available [online]: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0790&from=EN>

⁴⁶ Hinšt, D. (2020) "Populist Conspiracy Narratives and Other Forms of Disinformation in Croatia", [in]: *4liberty.eu* Review, No. 13, pp. 134-148. Available [online]: <http://4liberty.eu/review-13-populist-conspiracy-narratives-and-other-forms-of-disinformation-in-croatia/>

CONCLUSIONS

Building the United States of Europe would not be an easy feat, despite the popularity of the idea that goes back to the U.S. Founding Fathers. Europeans still fear that federalism will undermine national identities and increase centralized bureaucracy. Contrary to these misconceptions, federalism can support a more efficient and limited government, as well as strong national and other identities together with a common European identity.

European identity requires a political culture based on strong civic virtues, civic education for democracy, and high social trust, as the U.S. federalist experience testifies. In order to move toward federalism, the EU would need basic security institutions – starting with the central intelligence agency. This is especially important due to a rising risk of Russian and Chinese authoritarian influences, Russian aggressive policy and terrorist threats.



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DANIEL
HINŠT

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Putin's Unintentional Contribution to a Federal Europe



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JÁNOS
KÁRPÁTI

At the time of writing this article, a brutal military aggression by Russia on Ukraine is underway. How this war will end is still unclear, although Russian military superiority is evident, and NATO – in order to avoid a third world war – is not engaging in a direct fight against Russia. Nevertheless, Western nations are granting military support to Ukraine, and early assessments of a quick Russian military victory in a “Blitzkrieg” have proven to be unfounded.

Irrespective of the final outcome of this war, however, Vladimir Putin’s decision to attack a sovereign European country seems to have cemented Western cohesion on the old continent – both rhetorically and practically. The depth of new sanctions against Russia are unprecedented. It remains to be seen how effective these sanctions are going to be, but the direction is clear: Europe speaks almost with one voice.

This phenomenon will have an inevitable impact on the ideas of the European future as well. Those favoring deeper integration and unity in a more federal Europe – especially those who say there is an urgent need for a really common European foreign, security, and defense policy – are going to have fresh arguments against the advocates of a Europe of sovereign nations when they hint at the Russian threat.

Nevertheless, the war in Ukraine cannot be considered as the single turning point in the rivalry between these two concepts: it only strengthens a trend – or eventually even crowns a process – which can be observed since the elections to the European Parliament in 2019, when Eurosceptic parties performed below their expectations and the hopes of Hungarian Prime Minister Viktor Orbán to build a strong group of rightist parties on the European level were crushed.

ILLIBERALISM AND EUROSCEPTICISM

Viktor Orbán plays a unique role in the struggle between the two main European concepts mentioned above, which, with some simplification, can be referred to as *integrationist* and *Eurosceptic* concepts. PM Orbán’s narrative of sovereign European nations is connected with his illiberal state slogan and, what is even more important, with his illiberal practices.

Western European Eurosceptic forces are not in power at the present time and the upcoming French presidential election does not foretell a change either. Being in opposition, these forces evidently do not advocate the weakening of checks and balances and do not say they would undermine the rights of minority groups, the rule of law, or the foundations of liberal democracy. They criticize (and sometimes even attack) the Brussels bureaucracy and say more power should remain in the competence of member states. Their concerns are largely related to the handling of migration, reflecting

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VIKTOR
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A UNIQUE ROLE
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VIKTOR ORBÁN
USED THE TERM
ILLIBERALISM
FOR THE FIRST TIME
IN JULY 2014, I.E.,
AFTER THE RUSSIAN
ANNEXATION
OF CRIMEA
AND BEFORE
THE FIRST REFUGEE
WAVE

a strong opposition to the alleged multiculturalism of Brussels¹.

This attitude can be illustrated for example by an article of *The Independent*, dated April 18, 2017, stating that Marine Le Pen has claimed she will “protect France” with a vow to suspend immigration and defend the country against the threat of “savage globalization”².

The rise of Euroscepticism was primarily caused by the refugee wave in 2015, and its decline can be attributed to the easing of this phenomenon. (The war in Ukraine may change that.) Eurosceptics may be more

radical or less radical in demanding *less Europe*, but they do not demand *less democracy*, at least not in general terms³. The principle of subsidiarity, i.e., attributing more importance to the lower decision-making layers, e.g., that regions can be, theoretically, a useful answer to several – though not all – questions raised by Euroscepticism, as it is usually understood in Western Europe. This is not the case with Orbán’s Euroscepticism mixed with illiberalism.

Without going into sophisticated details of what Fareed Zakaria wrote about the illiberal state, we can conclude that Viktor Orbán’s definition is twofold: his illiberalism is the opposition of liberal democracy as a political structure on the one hand and the opposition of liberal political forces on the other hand. Against liberal democracy, his offer is the so-called “regime of national collaboration”⁴ with strong leadership – in his words: “the central force field”⁵ – which practically means the lack of checks and balances. A remaining democratic component is that elections still exist, although the circumstances are far from fair. Against liberal parties, Orbán’s offer is conservatism, with an emphasis on the traditional values of Christianity.

Orbán does not make a clear difference between these two layers. According to his narrative, as it is repeatedly reflected in his speeches, liberal democracy means liberals hold power, which would mean that liberals are happy only if they are in power⁶. In his

³ It must be noted, however, that certain democratic backsliding could be observed in Italy concerning the human rights of refugees during the period when Matteo Salvini’s League party was in power.

⁴ https://www.academia.edu/35905650/The_name_of_the_game_The_Regime_of_National_Collaboration

⁵ <https://2010-2014.kormany.hu/en/prime-minister-s-office/the-prime-ministers-speeches/prime-minister-viktor-orban-s-speech-on-hir-tv-s-versus-programme>

⁶ Ibid.

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THE LESS
INTEGRATION,
THE MORE ROOM
FOR MANEUVERING
FOR ILLIBERAL
PRACTICES

eyes, Christian democrats, if they are happy in a liberal democracy, are not really Christian democrats; in fact, they have given up their principles and deferred to the will of liberals. This came up several times in his speeches after Fidesz had to leave the European People’s Party. Orbán says he wants to build a Christian democracy, but it is not equal to Christian democrats holding governmental power in a liberal democracy. Instead, it means his democracy is not liberal, but Christian – or, with another word, *illiberal*.

This play upon words has an important role in the domestic political communication of Fidesz, the governing party, because it creates confusion over the meaning of ‘Christian democracy’. It implies you either have liberalism or Christian democracy, and so politics is about who can be victorious over the rivals, once and for all.

UNDERSTANDING ILLIBERALISM

It is important to note that Viktor Orbán used the term *illiberalism* for the first time in July 2014, i.e., after the Russian annexation of Crimea and before the first refugee wave. This fact indicates that illiberalism was not an answer to the migration crisis – it was already an existing tool to handle

the migration crisis in Orbán’s hands. It also indicates that promoting the idea of illiberalism may have been inspired, at least partly, by Vladimir Putin’s – then successful – move against Ukraine.

The question arises of whether illiberalism can be an acceptable alternative model to liberal democracy within the European Union, which is essentially based upon liberal democracy. In my assessment, the answer can only be yes in the case of the level of European integration being very weak and the idea of a Europe of sovereign nations being widely accepted.

The less integration, the more room for maneuvering for illiberal practices. If we realize this, it is clear that for Orbán, the Eurosceptic model for the future of Europe is a must if he wants to maintain the legitimacy of his illiberal state within the Union. (I do not speculate if he wants to remain in the EU at all.) PM Orbán must play on the European field if he wants to secure the foundations of his regime at home. And, in order to play on the European field, he needs allies.

Concerning Western ideological allies, Zoltan Bretter in his essay about the regime of national collaboration writes:

“It has all started with a reinterpretation of the meaning of 1968. Following Nicolas Sarkozy’s campaign speech, as he was running for presidency in France in May, Viktor Orbán delivered his lecture on July 21, 2007. (...) According to both politicians, 1968 was a counter-revolution that “shook the very foundations of traditional politics». The leaders of this counterrevolution declared that in order to achieve complete individual freedom the individual must be freed of all ties (...) one must free oneself of the ties that bind the individual to nation, family, language and sexual orientation. (...) However,

¹ See: <https://www.independent.co.uk/news/world/europe/french-elections-latest-marine-le-pen-immigration-suspend-protect-france-borders-front-national-fn-a7689326.html>

² Ibid.

as the counter-revolution, perceived as a creative force behind culture, is by now defunct, the new era of traditionalist politics will regain its leading role in shaping the future of Europe.”⁷

In 2007, Orbán was not a prime minister any more (he had lost the elections in 2002 and 2006), nor was he a prime minister yet – to be reelected with a constitutional majority in 2010. He was working on returning to power and, as part of this preparation process, he engaged himself with traditionalism with this lecture.

The reference to this speech may explain the emphasis on *traditionalist politics* but it does not give an answer to the *less Europe* demand, since, in theory, traditionalism in itself could also be one of the contenders aspiring for the position of the mainstream course in Europe. If traditionalism was the mainstream course within the EU, traditionalists would not need to be Eurosceptic – on the contrary, they would advocate as much integration as possible.

Indeed, Euroscepticism for Orbán is only “the next best thing”. From the mid-2010s, he tried to lead a European traditionalist attack against the EU, which he branded as unfaithful to the traditional Christian roots. However, as a result of the 2019 elections to the European Parliament, he had to realize that the expected breakthrough did not take place – the People’s Party (moderate right) and the social democrats (moderate left), together with the Renew faction (liberals), have preserved their majority. Orbán was forced to retreat, and – instead of trying to play a dominant role over Europe – he attempted to gain control over the Visegrad

⁷ Bretter Z. (2013) *The Name of the Game: The Regime of National Collaboration – Hungary and Poland in Times of Political Transition. Selected Issues*, a doctoral dissertation, Paják-Patkowska, B. and M. Rachwał (eds.), Department of Political Studies, University of Pécs.

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PM ORBÁN
MUST PLAY
ON THE EUROPEAN
FIELD IF HE WANTS
TO SECURE
THE FOUNDATIONS
OF HIS REGIME
AT HOME

Group, composed, apart from Hungary, of Poland, the Czech Republic, and Slovakia.

The common denominator between these four countries is that they are relatively new eastern member states, and thus net beneficiaries of EU funds. Now, the real question is if this common denominator can be a sound foundation of an alternative vision of the European future, opposing the mainstream European project.

THE HISTORICAL TURNING POINT: MAASTRICHT

In a speech delivered on June 19, 2021, Hungarian Prime Minister Viktor Orbán summarized his views on the future of Europe in seven key points. His basic statement was that the continent is heading towards an empire-style European Union. In his view, today’s Brussels is being guided by those who see integration not as a *means*, but rather as a *goal*, a goal for its own sake. PM Orbán claimed that

“Brussels has outsourced a considerable portion of its power and has handed it over

to networks organized and controlled from outside Europe, primarily to the Soros networks and the Democrats of the US behind them.”⁸

He stated that without a common economic success the European Union will fall apart and argued that the next decade would be a period of dangerous challenges: mass migration, epidemics, and pandemics.

Furthermore, he also sharply criticized EU institutions – especially the European Parliament, saying it has proved to be “a dead-end street as regards European democracy.”⁹ His last, “*ceterum censeo*” message touched upon EU enlargement: Serbia must be admitted, he demanded.

Most of these views (and the conclusions PM Orbán drew from them) originated from domestic political considerations. They were basically designed to give a Eurosceptic foundation to his illiberal practices in domestic politics, with the aim of extending his power. He needed to collect arguments against an *enemy* in order to mobilize his supporters, claiming there was a permanent *freedom fight* underway against Brussels and that he himself was the champion of this fight.

As pointed out above, Viktor Orbán was originally not interested in the future of Europe – he was simply interested in keeping power and building in Hungary a firm legal and political structure, his infamous *illiberal democracy*. Brussels, however, was a troubling and more or less hindering factor in building the illiberal state, with different rule-of-law requirements. As a consequence, the headquarters of the EU proved to be an ideal *piñata*. PM Orbán’s vision is

⁸ <https://primeminister.hu/vikstories/viktor-orbans-address-conference-entitled-free-thirty-years>

⁹ Ibid.

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TRADITIONALISM
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ALSO BE ONE
OF THE CONTEND-
ERS ASPIRING
FOR THE POSI-
TION OF THE MAIN-
STREAM COURSE
IN EUROPE

a European Union not strong enough to defend the rule of law, but generous enough to finance underdeveloped economies in eastern member states.

This leads us to partially understand why Orbán has so strongly emphasized the Serbian accession to the EU. Hungary, Serbia’s geographical neighbor, would evidently highly benefit from Serbian membership – but this is not the only reason. It may be equally important for PM Orbán to have one more illiberal leader – Aleksandar Vucic, the president of Serbia – among the members of the European Council.

The added value Vucic would represent within the EU in Orbán’s eyes is especially important if we consider that the Serbian leadership has traditionally had a close relationship with Russia. The Hungarian Prime Minister’s most reliable partner within the EU has been Jaroslaw Kaczynski, the *de facto* leader of Poland. Kaczynski shares – and in a certain respect even exceeds –

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VIKTOR ORBÁN WAS ORIGINALLY NOT INTERESTED IN THE FUTURE OF EUROPE – HE WAS SIMPLY INTERESTED IN KEEPING POWER AND BUILDING IN HUNGARY A FIRM LEGAL AND POLITICAL STRUCTURE

Orbán's conservatism, traditionalism, and his resistance to the European rule-of-law requirements. On the other hand, he definitely does not share Orbán's friendship with Vladimir Putin and the Hungarian government's so-called 'Opening to the East'.

If Viktor Orbán wants to avoid being disciplined in the EU for violating the rule of law, he may count on the Polish veto. But if the Hungarian PM is trying to keep his attachment to his pro-Russian stance, Poland would not stand by him. With Serbian EU membership, Orbán would be in a stronger position within the European Union. The fact that this Serbian accession has not

moved forward as speedily as desired is rather painful for Orbán now since the Russian invasion of Ukraine. However, let us return to the impact of this invasion later.

Looking back, Viktor Orbán's *freedom fight* narrative, which narrowly preceded the migration crisis and practically coincided with Russia's renewed aggressive behavior in the middle of the previous decade, was received by an unexpectedly broad audience. It was strengthened with similar voices heard in several European countries,¹⁰ demanding a halt and even the reversal of the integration process, claiming for less Europe and more sovereignty of free European nations. In most EU member states, however, as already pointed out, these tendencies could not break through and did not become the mainstream political *credo*.

In the academic sphere, supporters of PM Orbán's different vision for Europe usually suggest the return to the times before the Maastricht Treaty. Why Maastricht? Because the Treaty on European Union concluded in 1992 was the turning point in European integration and a presage of a federal Europe. In this Dutch university town, the member states of the European Communities founded the European Union with provisions for a shared European citizenship and the introduction of a single currency, among others.

Former Czech President and Prime Minister Vaclav Klaus, a recognized economist, expressed several times his views on how Europe, in his opinion, lost its way with the Maastricht (and later the Lisbon) Treaty. In his speech entitled "The EU Is Not Europe",¹¹ he wrote that both the Maastricht and the Lisbon Treaty (signed in 2007)

¹⁰ For example, France, Italy, the Netherlands, etc.

¹¹ Center for Financial Studies, Goethe University (2019) *CFS Presidential Lectures*, Frankfurt, March 12. Available [online]: <https://www.klaus.cz/clanky/4374>

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THE HUNGARIAN PRIME MINISTER'S MOST RELIABLE PARTNER WITHIN THE EU HAS BEEN JAROSLAW KACZYNSKI, THE *DE FACTO* LEADER OF POLAND

brought about significant changes in the EU (originally EC) arrangements: "Both of these treaties (...) were in my opinion historic mistakes. **They transformed the original concept of integration into something else, into unification**" [bold in the original]. These treaties, he argued, pushed the heterogeneous community of sovereign European states into a union of subordinated regions and provinces, and they "substantially augmented the power of the bureaucratic central agency in Brussels."¹²

Moreover, Klaus added that the treaties "suppressed democracy and turned it into a post-democracy (misleadingly called liberal democracy)."¹³ He also stated that instead of facilitating the mutually advantageous cooperation of European countries,

¹² Ibid.

¹³ Ibid.

unification measures – not respecting economic realities – created deep disparities inside Europe:

"Another unification measure, the liquidation of internal borders inside Europe, was supposed to facilitate the movements of the Europeans inside Europe and to create **a new European Man, Homo Europeus** [bold by the author]. It had an important side-effect. It led to the mass migration of non-Europeans who mostly didn't come to Europe as future Europeans (...), who don't intend to be assimilated and who don't want to accept European culture, religion, values, habits, ways of life."¹⁴

With this latter sentence quoted, Klaus essentially claims that cultural diversity in Europe is an illusion. He totally neglects the positive experiences of Germany and several other European countries concerning the inclusion of newcomers. He tries to attribute general relevance to extreme cases which, by their nature, always attract more attention in the media than the cases of non-existent successful inclusion.

The claims of Vaclav Klaus give a nearly complete toolbox of argumentation against the further deepening of European integration, which has been regularly repeated by Eurosceptic politicians in different EU countries. There is, however, a big difference between western and eastern member states with respect to the necessary or ideal level of EU financing projects. *Less Europe* in the frugal northwest usually goes hand in hand with *less money*, as it was reflected in several statements of, e.g., Dutch and Swedish government politicians, while certain eastern leaders would like to combine *less Europe* with *more money*. But it is not true for all eastern leaders. The picture is changing constantly and, since the beginning of

¹⁴ Ibid.

“THE PICTURE IS CHANGING CONSTANTLY AND, SINCE THE BEGINNING OF PUTIN’S WAR IN UKRAINE, THIS CHANGE HAS BEEN DRAMATIC

Putin’s war in Ukraine, this change has been dramatic.

V4 IS FAR FROM BEING HOMOGENEOUS

The most important country in the Visegrad Group is Poland where, in October 2015, the Polish Law and Justice Party (PiS) won an absolute majority in the Polish elections, and successfully established an illiberal one-party government. As Daniel Hegedüs reminded us in his 2018 essay,¹⁵ according to the already announced guideline “Budapest on the Vistula”, the new Polish government, officially led by Prime Minister Beata Szydło but practically under the control of PiS Party Chairman Jarosław Kaczyński, had promptly attacked the country’s Constitutional Tribunal and the media.

¹⁵ Hegedüs D. (2018) “Responding to Illiberal Democracies’ Shrinking Space for Human Rights in the EU”, [in]: *Will Human Rights Survive Illiberal Democracy?*, Muis A. and L. van Troost (eds.), Amnesty International Netherlands.

“It introduced illiberal state-building and a deconstruction of constitutional checks and balances second to none in the European Union. With two member states in the EU characterized by illiberal democratic backsliding, the sanctioning of these countries for their democratic and rule of law non-compliance with European standards became nearly impossible, at least according to the literal interpretation of Article 7 TEU.”¹⁶

The situation did not change much until recently. Poland and Hungary faced several infringement procedures and rule of law procedures in the EU institutions, and, last year, they went hand in hand to the European Court of Justice unsuccessfully seeking a remedy against a new conditionality mechanism.

Nevertheless, Warsaw and Budapest are evidently not considered to be outsiders and thus excluded from – or at least restricted from participating in – the debates about the future of the EU. As Gabor Halmai puts it in his 2018 essay, at the end of the day,

“the use of spending conditionality depends on the political will of the EU institutions, as well as on the future of the EU. (...) Concerning the future of the EU, the scenarios of the European Commission’s White Paper on the Future of Europe published on 1 March 2017 neither regarding general oversight mechanisms, nor particularly regarding financial sanctions seem to provide institutional guarantees against illiberal member states within the EU. Similarly, the Commission’s Reflection paper on the deepening of the economic and monetary union suggests to strengthen the Eurozone governance, and leave the rest, including Hungary and Poland with their rule of law,

¹⁶ Ibid., p. 58.

democracy and fundamental rights deficits behind.”¹⁷

PM Orbán has found a common language especially with Polish Prime Minister Mateusz Morawiecki. On April 1, 2021, the two heads of governments met with Italian Prime Minister Matteo Salvini in Budapest. According to the report of *MTI-Hungary Today*, Orbán said they had agreed to get involved in the debates about the future of Europe and prepare a programme. *“The debate will be a good opportunity to promote and strengthen our values in Europe,”* he said. Orbán explained the timing of the meeting with Morawiecki and Salvini by the fact that *“Fidesz decided to quit the European People’s Party (EPP).”¹⁸*

Viktor Orbán described PM Morawiecki as Hungary’s most faithful friend¹⁹. In a press statement, Morawiecki said they have trust in the future of Europe and the European Union and hold the firm conviction that they together would be able to build a road for Europe. European integration can further develop but *“for it to bear healthy fruits, its roots should not be neglected either,”²⁰* the Polish prime minister said, stressing the need to return to Europe’s Christian roots. He added that they believed Europe was “completely disintegrated” and damaged by various forces. The Brussels elite views Europe as a project for elite groups, he said,

¹⁷ Halmai, G. (2018) “How the EU Can and Should Cope with Illiberal Member States”, [in]: *Quaderni Costituzionali*, Vol. 38, pp. 334-335.

¹⁸ Hegedüs D. (2018) “Responding to Illiberal Democracies’ Shrinking Space for Human Rights in the EU”, [in]: *Will Human Rights Survive Illiberal Democracy?*, Muis A. and L. van Troost (eds.), Amnesty International Netherlands.

¹⁹ Hegedüs D. (2018) “Responding to Illiberal Democracies’ Shrinking Space for Human Rights in the EU”, [in]: *Will Human Rights Survive Illiberal Democracy?*, Muis A. and L. van Troost (eds.), Amnesty International Netherlands.

²⁰ Ibid.

“POLAND AND HUNGARY FACED SEVERAL INFRINGEMENT PROCEDURES AND RULE OF LAW PROCEDURES IN THE EU INSTITUTIONS, AND, LAST YEAR, THEY WENT HAND IN HAND TO THE EUROPEAN COURT OF JUSTICE UNSUCCESSFULLY SEEKING A REMEDY AGAINST A NEW CONDITIONALITY MECHANISM

adding that “we would like to represent a wide range of people.”²¹

Nevertheless, Warsaw and Budapest could not count on the full support of Prague and Bratislava in the debate about the future of

²¹ <https://hungarytoday.hu/orban-morawiecki-salvini-budapest/>

Europe. In the Czech Republic, during the previous years of Andrej Babiš's government, Eurosceptic tendencies strengthened considerably but after the elections in October 2021, Petr Fiala became the new Prime Minister and he formed a government coalition of pro-European parties.

An article of *Politico's* European edition dated January 7, 2022 wrote about the growing divergence between Poland and Hungary – dropping fast in most measures of what makes a liberal democracy – and Slovakia and the Czech Republic, both of which have seen recent government changes, sending them back into the EU mainstream. The article quoted Czech MEP Tomas Zdechovsky, a member of the center-right coalition party KDU-CSL, saying the new Czech government will prioritize relations with Slovakia and Poland, and will focus more on dialogue with Austria and Germany than the previous administration²².

As for the Slovak position, it was highlighted in a report of the European University Institute about the lecture by Ivan Korcok, the Minister of Foreign and European Affairs of Slovakia, held on November 22, 2021. Korcok was quite clear, saying that *"without rule of law there is no European Union, everything we have achieved so far is based on the Rule of Law. [...] One should not question this basic principle on which the European Union has been built."* Minister Korcok added *"from the perspective of my country, a Central European country, there is no better tool than trying to agree on common European solutions."*²³

We can conclude that different positions exist in the four Visegrad countries to-

²² <https://www.politico.eu/article/central-europe-divided-visegrad-v4-alliance/>

²³ <https://www.eui.eu/news-hub?id=slovakian-minister-ivan-korcok-joins-the-conversation-on-the-future-of-europe>

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WARSAW AND BUDAPEST ARE EVIDENTLY NOT CONSIDERED TO BE OUTSIDERS AND THUS EXCLUDED FROM – OR AT LEAST RESTRICTED FROM PARTICIPATING IN – THE DEBATES ABOUT THE FUTURE OF THE EU

wards the idea of Europe. The Czech Republic often identifies itself as part of the West, irrespective of its geographic location. Slovakia, the only country which has already introduced the euro, is somewhat more traditional and perhaps less open to the so-called 'Multikulti', but it is definitely pro-Western now. Poland and Hungary have heated rule of law debates with Brussels, but Warsaw's strong anti-Kremlin sentiments bring Poland closer to European countries that try to build a stronger European identity. Hungary, Poland's traditional friend, nevertheless, lags behind.

UKRAINE: A FRIEND IN NEED

The Russian aggression against Ukraine has dramatically changed the possible future posture of Europe on the global scene. We are in the midst of warfare in Ukraine at the present time and, in this situation, it is

too early to tell what the world will look like after the end of the fights. In any case, it is highly probable that without an eventual power change in Moscow, the relationship of Europe with Russia is going to be hostile. This is also true for the relationship between the United States and Russia. Europe will supposedly regain its importance in American strategic thinking.

Transatlantic solidarity is going to be strengthened, and there will be attempts to solidify cohesion among EU member states. If bipolar international order returns at least to the European continent, it will be extremely difficult – if not impossible – for the Hungarian government to maintain any ambiguity concerning its priorities. Viktor Orbán has been looked upon as Vladimir Putin's most important ally within the EU. This cannot be continued any longer and all EU member states, including Hungary, must take sides.

This new development does not necessarily undermine the very existence and the rivalry of alternative concepts in the European future. Nevertheless, it undoubtedly makes it difficult to argue against deeper integration – or at least coordination – in foreign, security, and defense policy.

At the same time, however, Vladimir Putin's war has highlighted the problems originating from the very different level of energy dependence in individual member states from Russia. This has provoked intensive discussions about possible means of answering this challenge and developing common European resilience. These debates reflect the fact that the debate about the future of the EU has swiftly – at least temporarily – changed its character. At the moment, it is not about theoretical institutional frameworks in a broader sense, but about practical steps to be taken without delay.

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THE RUSSIAN AGGRESSION AGAINST UKRAINE HAS DRAMATICALLY CHANGED THE POSSIBLE FUTURE POSTURE OF EUROPE ON THE GLOBAL SCENE

Another special aspect of this whole complexity brought to the surface with the war is the question of the eventual creation of a European army. The Russian aggression has brutally raised the awareness of the military threat to Europe's security, but it remains to be seen what countermeasures can be expected. NATO member states on the eastern flank would clearly prefer increased American military presence, while in Western Europe the French concept of the EU's strategic sovereignty has considerable support. In the short term, at least, American deterrent build-up seems to be an adequate answer to the Russian challenge.

The European Union did not only condemn the Kremlin's behavior with the strongest possible terms, but also decided to introduce sanctions against Russia on an unprecedented scale, in several steps following each other. Hungary has been among the few EU member states to oppose



THE RUSSIAN AGGRESSION HAS BRUTALLY RAISED THE AWARENESS OF THE MILITARY THREAT TO EUROPE'S SECURITY, BUT IT REMAINS TO BE SEEN WHAT COUNTER-MEASURES CAN BE EXPECTED

sanctions in the energy sector. It is understandable if we take into account that more than 80% of Hungary's gas consumption comes from Russia, while the EU average is 40%. As for sending weapons to Ukraine, it is again Hungary's refusal that is breaking the ranks, while Poland, with bitter historical experiences of Russian – not only Soviet but also Tsarist – oppression, is a fully dedicated supplier. In the Polish media, critical voices can be heard recently towards Orbán's government.

Nothing of these Polish-Hungarian tensions is touched upon in recent political declarations of the Visegrad Four. In their joint statement after their talks in London with British Prime Minister Boris Johnson

on March 8, 2022, the leaders of V4 condemned "Russia's aggression" against Ukraine. *"Together we offer our full support to the government and people of Ukraine as they stand up for the sovereignty of their country,"* the leaders added²⁴.

In conclusion, it is fair to say that the common denominator of the Visegrad countries does not give a solid foundation for this group to promote a coherent and viable alternative scenario for the future of the EU. If there was any real chance at all for opposing the mainstream European integration project, for advocating a loose cooperation of sovereign nation states within the EU, Vladimir Putin's decision to invade Ukraine swept it away overnight.

CONCLUSIONS

Even without the Russian invasion of Ukraine, the European landscape did not offer too many chances for Euroscepticism, mainly because there exists no clear and comprehensive alternative vision to the integration efforts. Different Eurosceptic players cannot agree exactly on what kind of 'Brussels centralization' they should fight against.

Hungary and Poland do not want to accept all European rule-of-law requirements – in this sense, they can be qualified as 'sovereignists' – but they claim they are entitled to receive EU funds without any restrictions. However, a certain level of funding requires an adequate level of integration, and in this respect, Warsaw and Budapest are rather 'integrationalists.'

The V4 countries do not want to accept migrants from Asia and Africa. The Ukrainian refugee wave has not changed this hesitance, and Hungary's unlawful border practices in the south remain in place. The

²⁴https://twitter.com/V4_PRES



THE EUROPEAN UNION DID NOT ONLY CONDEMN THE KREMLIN'S BEHAVIOR WITH THE STRONGEST POSSIBLE TERMS, BUT ALSO DECIDED TO INTRODUCE SANCTIONS AGAINST RUSSIA ON AN UNPRECEDENTED SCALE

Visegrad Four's 'solidarity' definition is highly restrictive, while they claim EU support for border defense should be much more extensive.

Nevertheless, even in Italy during the Salvini era, there was a kind of dichotomy to be observed. Italy wanted to push back migrants, which was an act of the denial of solidarity – and thus it contradicted integration – while Rome wanted other European countries to show solidarity and accept migrants to be resettled.

Each EU country has certain national interests and priorities. They support integration when they see it helps these national interests. Euroscepticism usually prevails only occasionally and in restricted topics. Fragmentation, *per definitionem*, does not constitute a complex idea of Europe.



JÁNOS KÁRPÁTI

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European Security: Is the European Army a Fantasy or Is It Necessary for Survival?



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ZUMRUD
PASHKIN

The discussion of the European army is a subject that has been present in the public debate since the beginning of the creation of a common Europe.

The answers to the question of whether it is crucial to create a European army to ensure the security of the European Union (EU) and its borders vary greatly. According to some experts¹, creating an army is an urgent necessity because the continent is not secure anymore. Therefore, Europe *must have* its joint army, which will respond to any security challenges. Another argument is that if the EU aims to become a global power, it cannot achieve it without its own military force.

On the other hand, for other people discussing this matter, the idea of a European army is a pure fantasy. The reason for this is the fact that military integration in the European Union has been discussed on various occasions, yet so far without success. This policy field still remains a sensitive area when it comes to national sovereignty of member states. Moreover, the militarization of the EU is also described as a challenge to its role of 'civilian power'

Nevertheless, considering the threat that Europe is now facing in light of the current war in the eastern part of Europe, namely the Russian invasion of Ukraine, this topic is becoming more critical than ever. Therefore, security challenges for Europe, the general views among the societies and political officials of the European Union about the possibility of creating a joint army, the obstacles preventing much closer integration in the military field shall be addressed.

¹ See: <https://euobserver.com/opinion/154311>; <https://www.brusselstimes.com/author/avgeorgiou489>; <https://carnegieeurope.eu/strategieurope/59312>

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IN THE 2000s,
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TO EUROPEAN
SECURITY INTERESTS

SECURITY CHALLENGES

The European Security Strategy published by the European Union in 2003, starts as follows: *“Europe has never been so prosperous, so secure nor so free. The violence of the first half of the 20th century has given way to a period of peace and stability unprecedented in European history.”*² This statement has, however, been recently rendered obsolete. The security environment compared with the time of drafting the document became far more complicated,

² Council of the European Union (2009) *European Security Agency: A Secure Europe in a Better World*, Brussels: DGF Communication/Publications.

and the situation on the European continent has deteriorated in terms of a peaceful coexistence. A range of challenges to security, in both civil and military spheres, appeared since the end of the Cold War. Moreover, the scope of the emerging and existing threats has also diversified.

In the 2000s, terrorism and organized crime, unregulated migration, energy security, and the proliferation of weapons of mass destruction were identified as threats and challenges to European security interests³, and, in fact, these threats did not demand a military response at the time. However, in the past years, these threats became more significant and complex. In addition, the unpredictability and uncertainty of the geopolitics became more evident. Of course, in the evolving international stage, the question of whether the EU should remain a completely civilian power, or whether the block should develop autonomous defense capability, is crucial.

Since the end of the World War II, NATO has been a key player in terms of defense and protection in the region, and European countries had never doubted that. However, the deteriorating transatlantic relations under President Donald Trump played a key role in bringing European countries much closer on the subject of strategic autonomy⁴.

Since taking office, Donald Trump and his administration have harshly criticized the European Union and individual member states. The now former president of the United States threatened to withdraw from NATO, as he was dissatisfied with NATO

” THE DETERIORATING TRANSATLANTIC RELATIONS UNDER PRESIDENT DONALD TRUMP PLAYED A KEY ROLE IN BRINGING EUROPEAN COUNTRIES MUCH CLOSER ON THE SUBJECT OF STRATEGIC AUTONOMY

spending. According to him, “NATO is unfair, economically because the US pays a disproportionate share.”⁵ In a recent interview, Former National Security Advisor to Trump, John Bolton, claimed that if Trump won a second term, he might have withdrawn the U.S. from NATO, what Russian President Vladimir Putin was waiting for⁶.

⁵ <https://www.washingtonpost.com/blogs/post-partisan/wp/2016/03/21/a-transcript-of-donald-trumps-meeting-with-the-washington-post-editorial-board/>

⁶ <https://www.businessinsider.com/bolton-putin-waiting-for-trump-to-withdraw-from-nato-in-2nd-term-2022-3>

Doubt about the U.S. security guarantees might disappear in the post-Trump era, but in many European countries, it has already changed the mindset of the people. Moreover, pressure on Europe to take more responsibility for its own security will remain in place regardless of who will be in power in the United States. More European responsibility can no longer be viewed simply as fair burden-sharing in NATO – it is also about Europe becoming a geopolitical player.

On the other hand, international rules-based order is becoming weaker, the influence of global institutions on the processes is decreasing, large powers are demonstrating an unwillingness to be bound by rules. All of this makes it urgent for the EU to think about safeguarding its security.

In 2017, President of the European Council, Donald Tusk, sent an open letter to EU member states outlining the three major threats Europe faces: an assertive China, an aggressive Russia, and terror and anarchy in the Middle East⁷. In this context, the most relevant example of those countries rejecting international order in these days would be Russia. The Kremlin’s wars in the neighborhood of Europe (in 2008 in Georgia, the 2014 invasion of Crimea, and the interference in the eastern part of Ukraine), and the threatening rhetoric of Moscow have served as a wake-up call for Europe. And, today, Russia is grossly violating international law and principles by waging an unjustified war and invading neighboring Ukraine.

These days, in response to Moscow, the solidarity and unity that the NATO alliance demonstrates is often highlighted by both NATO chief and officials of respective

⁷ <https://www.consilium.europa.eu/en/press/press-releases/2017/01/31/tusk-letter-future-europe/>

” MORE EUROPEAN RESPONSIBILITY CAN NO LONGER BE VIEWED SIMPLY AS FAIR BURDEN-SHARING IN NATO – IT IS ALSO ABOUT EUROPE BECOMING A GEOPOLITICAL PLAYER

member states. However, at the same time, there is still another question that should be borne in mind: if Donald Trump actually had won the second term, what performance would we have seen by NATO? The uncertainty that would have ensued makes it crucial to consider reducing dependency on others as a priority for Europe.

HISTORY OF THE EUROPEAN DEFENSE COOPERATION

In November 2018, on the eve of the centenary anniversary of the World War I Armistice, international media published the news on French President Emmanuel Macron’s call for a “true European army” to protect Europe from threats⁸. And this was not the first time President Macron had talked about creating a European army.

⁸ BBC (2018) *France’s Macron Pushes for “True European Army”*, November 6.

³ Ibid., pp. 11-14.

⁴ Zandee, D. et al. (2020) *European Strategic Autonomy in Security and Defence*, Clingendael Report, December, p.23.

“THE KREMLIN'S WARS IN THE NEIGHBORHOOD OF EUROPE AND THE THREATENING RHETORIC OF MOSCOW HAVE SERVED AS A WAKE-UP CALL FOR EUROPE

In his first radio interview since becoming the president in May 2017, he claimed Europe has to protect itself with respect to China, Russia, and even the United States. He also stated that *“We will not protect Europeans unless we decide to have a true European army.”*⁹ Looking at the history of European defense policy, one may see that the idea of collective European defense is as old as the story of European integration. France has been one of the leading countries to push forward this idea.

In 1950, Jean Monnet, the then General Commissioner of the French National Planning Board, expressed his will to launch a European defense on a supranational basis, an initiative inspired by French foreign minister Robert Schuman's plan for establishing the European Coal and Steel

Community (ECSC)¹⁰. Known today as the 'Pleven Plan,' it was submitted by French Prime Minister René Pleven to the National Assembly in October 1950. The proposal known as the 'European Defense Community' (EDC), which constituted one of the tenets of the said plan, proposed creating the European Army to be placed under the supranational authority and to be funded by a common budget.

According to this proposal, the management of European armament and equipment would be under the authority of a European Defense Minister operating under a European Defense Council. And founding member states of European integration (Germany, France, Italy, Belgium, the Netherlands, and Luxembourg) all signed it, with four of these states ratifying it. However, during the 1954 National Assembly, France rejected it¹¹.

After an unsuccessful attempt to launch the European Defense Community, throughout the years, a number of bilateral efforts aimed at strengthening and deepening cooperation in the defense area (such as the Elysée Treaty between France and West Germany) were launched. However, in general, in the Cold War era, the influence of NATO in defense and security issues of Europe was strong, and creating a separate army was not a goal on the agenda.

Nevertheless, within NATO, European members of the military block were interested in close cooperation. For example, thirteen European members created in 1976 a coordinating body, called the 'Independent European Program Group' (IEPG), whose mission was to stimulate

¹⁰The road to European defense cooperation (1947-1954). See: <https://eda.europa.eu/our-history/our-history.html>

¹¹<https://www.europarl.europa.eu/factsheets/en/sheet/1/the-first-treaties>

⁹Euractiv (2018) *Macron Calls for “True European Army to Defend against Russia, US, China”*, November 7.

“LOOKING AT THE HISTORY OF EUROPEAN DEFENSE POLICY, ONE MAY SEE THAT THE IDEA OF COLLECTIVE EUROPEAN DEFENSE IS AS OLD AS THE STORY OF EUROPEAN INTEGRATION

cooperation on armaments procurement among the countries¹². The paragraphs on cooperation in the field of security and defense are reflected in the signed treaties and agreements within the European Union. Later, in the 1990s, European governments made moves towards creating capabilities tailored for force projection and humanitarian intervention (for both conflict prevention and crisis management)¹³.

Then, the Maastricht Treaty, signed in 1992, redefined the integration process in Europe and created the European Union, based on three pillars. One of these pillars – Common Foreign and Security Policy (CFSP) – embraced the definition of a “Common Defense Policy”¹⁴. In the same year, the Western European Union (WEU), a former association (existing in the years 1955-2011) of ten countries, approved the Petersberg Declaration¹⁵, which defined the legal framework and procedures.

According to the declaration, the military intervention of WEU could be used for the so-called 'Petersberg Tasks,' which included: humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peace-making¹⁶. The Petersberg Declaration also presented a practical approach to crisis

management within and beyond European borders.

Although the Amsterdam Treaty, signed in 1997, did not create a common defense policy, it increased responsibilities in the realms of peacekeeping and humanitarian work. This Treaty underlined the possibility of developing a future common defense policy for the EU¹⁷. Later, at the Helsinki European Council in December 1999, the EU member states defined the Helsinki Headline Goal, which aimed at voluntary cooperation in EU-led operations. According to this goal, by 2003, member states were to be able to deploy within sixty days and sustain for at least one-year, military

¹²The road to European defense cooperation (1947-1954). See: <https://eda.europa.eu/our-history/our-history.html>

¹³Quille, G. (2006) *The European Security and Defense Policy: From the Helsinki Headline Goal to the EU Battlegroups*, Policy Department, European Parliament.

¹⁴Missiroli, A. (2000) “CFSP, Defence and Flexibility”, [in]: *Chaillot Papers*, Vol 38. Available [online]: <https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp038e.pdf>

¹⁵Western European Council of Ministers (1992) *Petersberg Declaration*. Available [online]: https://www.cvce.eu/content/publication/1999/1/1/16938094-bb79-41ff-951c-f6c7aae8a97a/publishable_en.pdf

¹⁶Pagani, F. (1998) “A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union”, [in]: *European Journal of International Law*, Vol. 9.

¹⁷<https://www.europarl.europa.eu/factsheets/en/sheet/3/the-maastricht-and-amsterdam-treaties>

“AFTER AN UNSUCCESSFUL ATTEMPT TO LAUNCH THE EUROPEAN DEFENSE COMMUNITY, A NUMBER OF BILATERAL EFFORTS AIMED AT STRENGTHENING AND DEEPENING COOPERATION IN THE DEFENSE AREA WERE LAUNCHED

forces of up to 50,000–60,000 persons capable of the full range of Petersberg tasks¹⁸.

In the Treaty of Lisbon (2009), Article 43(1) explained in which cases the European Union may use civilian and military means.

¹⁸ Quille, G. (2006) *The European Security and Defense Policy: From the Helsinki Headline Goal to the EU Battlegroups*, Policy Department, European Parliament.

“[I]t shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”¹⁹, the Treaty reads.

Eventually, in order to coordinate the process and put forward initiatives in terms of the development of defense cooperation within the EU, the European Defense Agency was established in 2004. It was the European Council which decided that an agency in the field of defense capabilities development, research, acquisition, and armaments should be created. It was designed to have four key roles: 1) developing defense capabilities in the field of crisis management; 2) promoting and enhancing European armaments cooperation; 3) strengthening the European defense industrial and technological base; and 4) creating a competitive European defense equipment market as well as promoting, in liaison with the community’s research activities, where appropriate, research aimed at leadership in strategic technologies for future defense, and security capabilities²⁰.

Another crucial moment in defense cooperation among member states of the EU was the launching of the Permanent Structured Cooperation (PESCO) in 2017.

Through PESCO, *“collaboration between the participating EU member states would*

¹⁹ Quille, G. (2009) *The Lisbon Treaty and Its Implications for CFSP/CSDP*, Policy Briefing.

²⁰ Quille, G. (2006) *The European Security and Defense Policy: From the Helsinki Headline Goal to the EU Battlegroups*, Policy Department, European Parliament.

be gradually shifted from isolated projects towards planned and impact-based cooperation activities with the objective to establish a more coherent European capability landscape. It is a framework and a structured process to gradually deepen defense cooperation to deliver the demanded capabilities to also undertake the most demanding missions and thereby provide improved security to EU citizens.”²¹

PESCO projects reflect both support for capability development and the provision of substantial support within means and capabilities to Common Security and Defense Policy operations and missions. It complements two other important current initiatives: the European Defense Fund, which shall support certain collaborative projects financially, and the Coordinated Annual Review on Defense (CARD) which supports member states’ efforts to better identify opportunities for new collaborative initiatives (in particular, the PESCO projects). The coherence of these initiatives with PESCO and their orientation towards the agreed EU Capability Development Priorities is key to focusing the new dynamic in European defense matters towards a more coherent European capability landscape and a full-spectrum force package usable for operations and missions.

WHAT EUROPEAN PUBLIC OPINION THINKS

It should be admitted that the concept of creating a defense identity of the European Union is ambiguously accepted. This is not just because people believe that the EU should retain its function of a normative, soft, and pure economic power, but also, at the same time, it remains to be seen how such a force shall be shaped and under what framework it would function needs to be clarified.

²¹ <https://pesco.europa.eu/about/>

“OVER THE YEARS, THERE HAS BEEN A RESURGENCE OF CALLS IN FAVOR OF A EUROPEAN ARMY – ESPECIALLY, SINCE 2014, WHEN RUSSIA INVADED EASTERN PARTS OF UKRAINE

However, it is true that, over the years, there has been a resurgence of calls in favor of a European army – especially, since 2014, when Russia invaded eastern parts of Ukraine. At that time, the security threat became more obvious, and the concept of a European army gained momentum. It must be noted that Europe’s defense has strongly depended on the military power of the United States and the NATO alliance. However, after the Russian invasion of the Crimean Peninsula, citing increasing security threats, European leaders began to seriously contemplate a future where the EU stands alone militarily.

At the highest level, the concept of a European army had already received support. Jean Claude Juncker, the former President of the European Commission, in his 2015 interview for the German newspaper *Welt am Sonntag*, said that a common army among the Europeans would convey to Russia that Europeans are serious about

defending the values of the European Union²².

According to Juncker, getting member states to combine militarily would make spending more efficient and would encourage further European integration. “Such an army would help us design a common foreign and security policy,” he stated²³. A common army would also strengthen Europe’s reputation. At that time, this approach received the support of others. Ursula von der Leyen, the then Defense Minister of Germany, said that the future of Europeans would one day be a European army, but “not in the short term.”²⁴ She added that such a move would “strengthen Europe’s security” as well as “a European pillar in the transatlantic alliance.”²⁵ As the President of the European Commission, she once again has demonstrated her determination on this matter. Ursula von der Leyen has said the EU should seek to strengthen its military capabilities to counter security threats and global crises. “It is time for Europe to step up to the next level,” Ms. von der Leyen claimed in her annual State of the Union address²⁶.

Former German chancellor Angela Merkel also supported the idea of creating a European army after French President Macron touched upon this issue in his interview in 2018. Merkel delivered a speech in the European Parliament, where she stated that “the EU has to look at the vision of one day

creating a real, true European army.”²⁷ The chancellor said the idea would complement NATO.

Hungarian, Czech Republic, and Italian officials had also expressed their support for the idea.²⁸ However, no one has given any details on when the ambitious idea could become a reality.

Opinions of European citizens about the creation of the European joint army are not negative either [See: Figure 1]. According to a poll on the subject conducted by Eurobarometer in 2017, 74% of respondents in the Netherlands and Belgium supported an EU army, 65% in France, and 55% in Germany, favored the concept. In the EU’s neutral countries, the support was at the levels of 45% in Austria, 46% Ireland, 42% in Finland, 55% in Malta, and 40% in Sweden, which is quite significant. According to a poll, the Central and Eastern European countries are also in favor of this idea, the percentage of respondents in Bulgaria, Romania, Hungary, Slovakia, Slovenia, Poland, Czech Republic, Latvia who support the joint European army is around 60%, even in Lithuania this figure is over 70%²⁹.

However, in general, various surveys and polls³⁰ show that European society heavily relies on the power which already exists: NATO. Across Europe, people have a positive view and trust NATO [See: Figure 2].

²⁷ <https://www.theguardian.com/world/2018/nov/13/merkel-joins-macron-in-calling-for-a-real-true-european-army>

²⁸ Reuters (2016) “Hungarian PM Orban Calls for Joint European Army” and “Czech PM Calls for Joint EU Army,” [in]: *EUobserver.com*, August 22.

²⁹ Statista (2019) *Where Support Is Highest for an EU Army*, January 24.

³⁰ <https://www.pewresearch.org/fact-tank/2021/06/10/nato-continues-to-be-seen-in-a-favorable-light-by-people-in-member-states/>; <https://www.romania-insider.com/survey-nato-eu-trust-jan-2022>; https://www.nato.int/cps/en/natohq/news_184687.htm

²² <https://www.theguardian.com/world/2015/mar/08/jean-claude-juncker-calls-for-eu-army-european-commission-military>

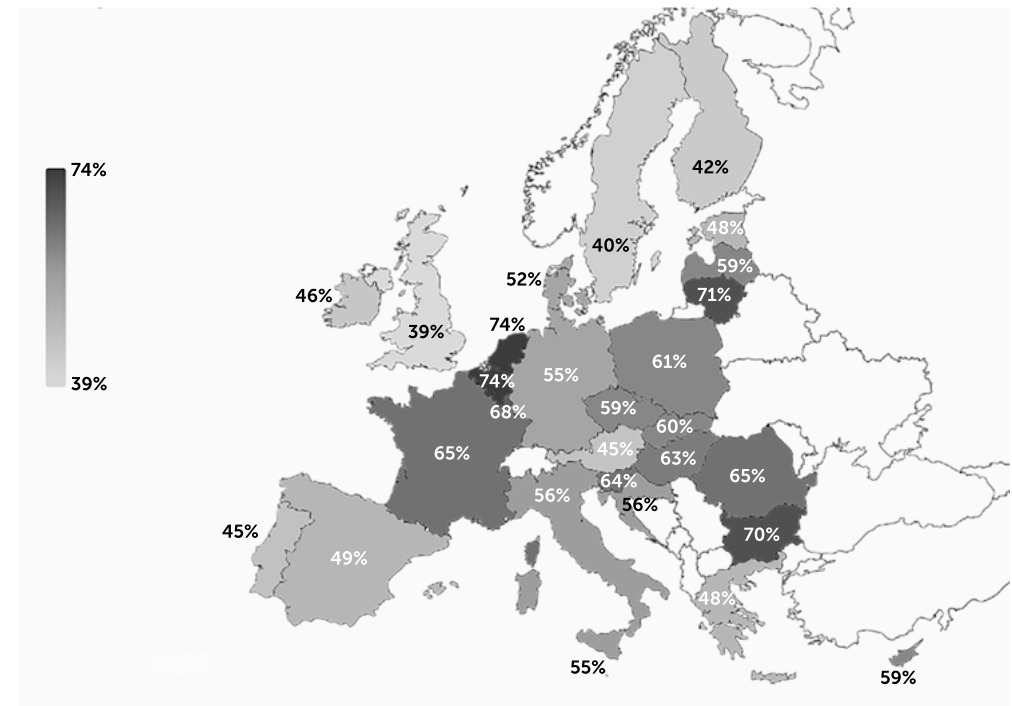
²³ Ibid.

²⁴ Mahony, H. (2015) “EU Commission Chief Makes Case for European Army,” [in]: *EUobserver.com*, March 9.

²⁵ Ibid.

²⁶ BBC (2021) *EU Must Step Up and Build Defence – Von der Leyen*, September 15.

Figure 1: The percentage of respondents supporting the creation of EU army (2017)



Source: Eurobarometer

According to the 2020 survey conducted by Pew Research, a median of 53% across sixteen member countries surveyed had a favorable view of the organization³¹.

Positive ratings of NATO among members of the European Union range from a high of 82% in Poland to 37% in Greece. The majority of people in Poland, Lithuania, the Netherlands, Italy, and Germany rate NATO positively in Europe. Opinions are also relatively positive in the Czech Republic, Slovakia, France, Spain, Hungary, and Bulgaria³². Interestingly, Eastern Europe and the Baltics trust on security issues the United States more than some EU countries.

³¹ <https://www.pewresearch.org/global/2020/02/09/nato-seen-favorably-across-member-states/>

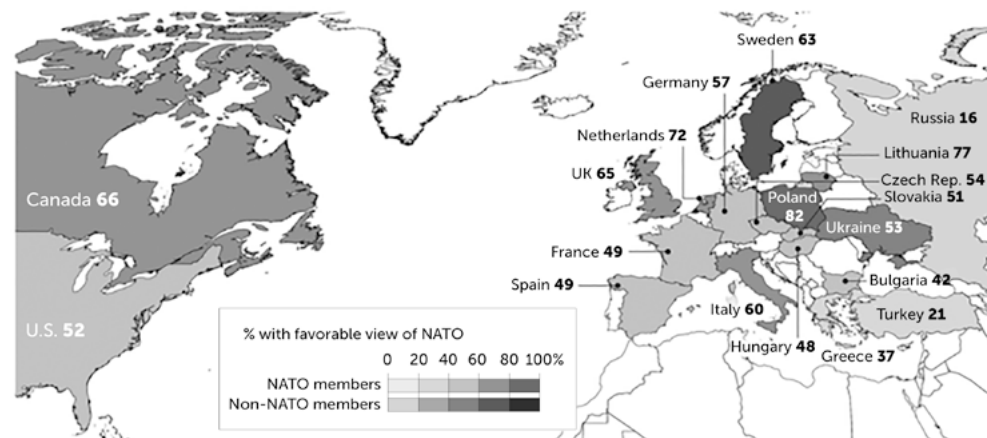
³² Ibid.

OBSTACLES IN MILITARY INTEGRATION

The European Union has achieved deep integration in different fields, with the economic sphere being a good example. However, when it comes to the integration of member states from the military perspective, and the possibility of the establishment of a common army, one cannot speak about the same level of success. So, why could an idea as old as that of European integration not have been implemented successfully so far?

When one considers the possibility of establishing a joint European military, conformists and Eurosceptics usually argue that there cannot be a European army unless there is a European nation or a ‘European identity.’ This argument may

Figure 2: Survey in member states on NATO

NATO seen favorably in member states, but few in Turkey agree*% who have favorable opinion of NATO*

Source: Spring 2019 Global Attitudes Survey, Pew Research Center

sound logical to a certain extent, but it is not enough. There are other firm reasons which explain why Europe has not created its own army, including capability, political will of states, fear of being ‘instrumentalized,’ financial regulations related to defense spending, and some questionable points in legislative acts. Let us make these reasons clear.

The confrontation can come out among the member states in terms of capabilities relating to three problems: some European states are not spending enough on defense. This is an argument that even former USA president Trump had criticized. In recent history, while other countries such as China, India, and Russia have continued to increase their military spending, the economic crisis has caused a sharp cut in the military and defense budgets of EU Member States.

According to the report published by the EUISS, the total defense spending of EU member states has declined 14.5% since 2007: in 2015 EU member states were annually spending EUR 36 billion less than in 2007 (from EUR 216 billion down to EUR 180 billion). EU Member States’ average defense spending remains at 1.5% of GDP on defense; below the target of 2% of GDP agreed by NATO members in the 2014 Wales Summit. It is a fact that defense spending by European NATO members fell by 35% between 1985 and 1995³³.

Maybe we can find a linkage between this fact and the collapse of the Soviet Union, thus European states felt safe after the dissolution of Soviet empire. Now we

³³ Wołkonowski, J. (2018) “NATO Defense Expenditures in 1949-2017,” [in]: *SHS Web of Conferences*, Vol. 57(01032).

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SMALL NATIONAL DEFENSE INDUSTRIES PRODUCING SIMILAR HARDWARE FOR SMALL NATIONAL MILITARIES ARE A RECIPE FOR DUPLICATION AND WASTE

understand better that even though the USSR collapsed almost thirty years ago, the Kremlin’s aggressive foreign policy has not changed. It should be acknowledged that ‘tranquility’ has disappeared after the Russian military attack on Ukraine, and now European countries are increasing defense spending.

Four days after Russia started the invasion of Ukraine, on February 27, German Chancellor Olaf Scholz announced a plan to increase the German military by pledging EUR 100 billion (USD 112.7 billion) of the 2022 budget for armed forces³⁴. It seems that others will follow suit³⁵.

The second issue is about the disparities between member states. Before Brexit,

France and the United Kingdom made up 45% of total EU defense spending, whereas the countries such as Cyprus, Bulgaria, Estonia, and Greece, were the only member states to spend around 2% of GDP, which NATO has deemed to be the minimum requirement, even other countries paid much less.

In 2017, only four nations met the threshold: the United States (3.6%), Greece (2.4%), the United Kingdom (2.1%), and Poland (2.0%) [See: Figure 3]. However, in 2021, ten countries reached the percentage target – among them, Croatia is in the third place with 2.79%, while Estonia (2.28%), Latvia (2.27%), Poland (2.1%), Lithuania (2.03%), Romania (2.02%), and France (2.01%) also made up the ten countries meeting NATO’s proportional 2% target³⁶. Fourteen EU member states which are also NATO members still cannot reach the NATO defense spending target, with their defense spending within NATO being under 2%³⁷.

The EU’s Member States have the second largest army in the world, however in the last decade, the consolidated number of military personnel has decreased by 23%. The total number of deployable and sustainable land forces has also fallen. Despite large workforce budgets, the scale of military manpower is not sufficient and not well prepared for immediate military operations³⁸.

Thirdly, the problem is related to the long-standing fragmentation of the defense market. Small national defense industries producing similar hardware for small

³⁴ <https://www.dw.com/en/germany-commits-100-billion-to-defense-spending/a-60933724>

³⁵ <https://breakingdefense.com/2022/03/seven-european-nations-have-increased-defense-budgets-in-one-month-who-will-be-next/>; <https://balkaninsight.com/2022/03/16/russian-invasion-prompts-region-to-rethink-defence-spending/>

³⁶ <https://www.forces.net/news/world/nato-which-countries-pay-their-share-defence>

³⁷ https://www.nato.int/nato_static_fl2014/assets/pdf/2021/6/pdf/210611-pr-2021-094-en.pdf

³⁸ https://www.eca.europa.eu/Lists/ECADocuments/REW19_09/REW_EU-defence_EN.pdf

Figure 3: Defense expenditure in NATO (2014-2021)

	2014	2021e	Real change 2014-2021 (%)	Share of real GDP 2014 (%)	Share of real GDP 2021e (%)
Albania	150	188	25.62	1.35	1.44
Belgium	4,400	5,404	22.81	0.97	1.12
Bulgaria	640	901	40.80	1.31	1.56
Canada	15,562	23,576	51.50	1.01	1.39
Croatia	892	1,512	69.47	1.85	2.79
Czech Republic	1,683	2,958	75.70	0.94	1.42
Denmark	3,399	4,758	40.00	1.15	1.41
Estonia	432	624	44.44	1.92	2.28
France	43,936	50,971	16.01	1.82	2.01
Germany	39,274	53,736	36.82	1.19	1.53
Greece	4,358	7,417	70.19	2.22	3.82
Hungary	1,035	2,333	125.27	0.86	1.60
Italy	20,788	25,595	23.12	1.14	1.41
Latvia	245	691	181.80	0.94	2.27
Lithuania	357	1,003	180.79	0.88	2.03
Luxembourg	212	380	79.63	0.38	0.57
Montenegro	59	76	28.27	1.50	1.74
Netherlands	8,650	12,027	39.04	1.15	1.45
North Macedonia	106	177	67.58	1.09	1.61
Norway	5,862	7,715	31.61	1.55	1.85
Poland	8,532	12,047	41.20	1.86	2.10
Portugal	2,562	3,272	27.72	1.31	1.54
Romania	2,324	4,432	90.74	1.35	2.02
Slovak Republic	832	1,700	104.25	0.99	1.73
Slovenia	411	629	53.04	0.97	1.28
Spain	10,608	12,749	20.19	0.92	1.02
Turkey	11,783	16,851	43.01	1.45	1.57
United Kingdom	61,378	69,082	12.55	2.14	2.29
United States	660,062	725,709	9.95	3.73	3.52

Source: Own calculation based on statistical data for Hungary

national militaries are a recipe for duplication and waste³⁹. There has been no shortage of neither declaratory nor practical initiatives aimed at solving this problem. Former French president Nicolas Sarkozy, in his speech at the Le Bourget Air Show in 2007, condemned the waste inherent in a system where each country demanded '*juste retour*', arguing that the "future is in joint programs"⁴⁰.

In 2009, two EU directives – one on defense procurement, the other on intra-EU transfers of defense products – were introduced, aiming to overcome these difficulties by making defense markets more efficient and opening them up to EU-wide competition. But still, member states make active use of offset requirements in defense procurement to shore up national industries and jobs, or circumvent the rules by referring to essential security interests.

The political will of European states is one of the arguments that have the possibility to be an obstacle to military integration. For instance, the International Institute for Strategic Studies (IISS) observed that the political will and ability to utilize the resources pose, indeed, a certain difficulty⁴¹. Some member states are more willing than others to agree on the use of force, and to sacrifice their own blood. Firstly, the political will is related to a fear of 'loss of sovereignty'. EU member states "fear relinquishing control over this policy."⁴²

Defense issues are a national competence, and the deepening of the Common Security and Defense Policy (CSDP) could result

³⁹ Genschel, P. and M. Jachtenfuchs (2013) *Beyond the Regulatory Polity? The European Integration of Core State Powers*, Oxford Scholarship Online, p.76.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

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DIFFERENT STRATEGIC CULTURES – MARKED BY DIFFERENT HISTORICAL EXPERIENCES OF EACH EU MEMBER STATE – CAN AFFECT THE SPEED OF INTEGRATION, TOO

in a loss in their autonomy of decision-making and, in certain cases, even a loss of sovereignty. This could be controversial for the member states that do not share the same interests and, are therefore not interested in the strengthened cooperation in this policy area. Together with the anxiety of loss of sovereignty, these member states fear being 'instrumentalized'. Here, let us recall the year 2006, when Germany declined to send its newly constituted battlegroup to the Democratic Republic of Congo (DRC), citing concerns over its lack of experience of high-risk deployments⁴³. Similarly, as fighting in the DRC intensified during the second half of 2008, those member states whose battlegroups were scheduled to be on standby (Germany and the United Kingdom) turned out to be among the most vocal opponents of intervention.

⁴³ Menon, A. (2009) "Empowering Paradise? The ESDP at Ten," [in]: *International Affairs*, Vol. 85(2), March.

Opposition to intervention by Germany stemmed from the reluctance to send troops to Africa, based on a growing suspicion that German soldiers were being used as a 'cover' by certain partners to legitimize an intervention in their former colonies. German officials revealed their fear of being, precisely, 'instrumentalized' by their French and Belgian counterparts, with some expressing the sentiment that the former colonial powers should deal with the issue themselves⁴⁴. Increasing resentment of such perceived 'instrumentalization' also played a part in provoking German hostility towards the idea of an EU intervention in Chad in 2008.

From a military perspective, internally, different strategic cultures – marked by different historical experiences of each EU member state – can affect the speed of integration, too. Regarding this aspect, along with the tradition of neutrality of some EU member states (Finland, Austria, Ireland, Sweden, and Malta) it seems evident that, for example, the north and east of Europe have their territorial defense against Russia at the core of their security strategies, while the south of Europe is more focused on the challenges coming from North Africa and the Middle East.

From an economic viewpoint, the presence of inflexible financial rules on the EU level is clear in the following aspects. First, the creation of a European Union start-up fund which would finance the costs of preparatory activities with military/defense implications⁴⁵. Second, the current list of 'common costs' covered by the Athena mechanism (made up of contributions from the EU member states according to

⁴⁴ Ibid.

⁴⁵ There is still no such start-up fund, hence the EU tries to address these issues through the European Defense Fund.

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LOOKING AT THE LEGISLATIVE ACTS, IT IS POSSIBLE TO SEE CERTAIN CONTROVERSIAL POINTS THAT CAN BE POTENTIAL OBSTACLES IN CLOSER INTEGRATION

their GDP)⁴⁶ is not sufficient. Third, the basic rule for financing military operations is the principle of "costs lie where they fall," under which "countries pay for most of the expenses that they incur when participating in an operation"⁴⁷. All three aspects emphasize the non-existence of strong financial cooperation and support, which prevents the European Union and its member states from developing the CSDP.

Looking at the legislative acts, it is possible to see certain controversial points that can be potential obstacles in closer integration. In the Treaty of Lisbon, the intragovernmental method is retained for the Common

⁴⁶ Council of the European Union (2014) *Financing of Military Operations: The ATHENA Mechanism*. Available [online]: <https://www.consilium.europa.eu/media/29090/139880.pdf>

⁴⁷ Chevleski, A. and A. Gligorova (2018) "Financing EU Military Operations: The Athena Mechanism," [in:] *International Refereed Scientific Journal Vision*, Vol. 3(2), December.

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FOR THE NEAR FUTURE, A JOINT EUROPEAN ARMY EQUIPPED WITH EUROPEAN-MADE AND OWNED WEAPONS, INSTEAD OF THE U.S EXPORTED ONES, IS UNREALISTIC

Foreign and Security Policy (CFSP), of which the CSDP is an integral part. Sovereignty is still paramount to member states with regard to the CSDP. Member states adopt decisions unanimously; this policy is not supranational and the European Commission – influential and considered the driving force of the EU in other fields – has so far remained in the background.

Although the Treaty of Lisbon provides for a qualified majority in various foreign policies, in particular, related to EU positions in the field of human-rights issues in international forums, decisions on sanctions, and on EU civilian missions⁴⁸, it does not apply to important decisions in military or

⁴⁸ https://pism.pl/publications/The_Introduction_of_Qualified_Majority_Voting_in_EU_Foreign_Policy_-_Member_State_Perspectives

defense policy. To ensure having effective and comprehensive integration of the military dimension, there should be a strong legal framework – binding legislative acts – and all member states must be obliged to pursue those acts.

Overall, there is no doubt that there exist certain problematic areas that affect close military cooperation at the EU level. National interests of the states, domestic factors, the level of development of the European states, among others, may be included in the list. In the current situation, it is impossible to predict future developments in terms of integration exactly. However, Brexit, the past experience under the Trump administration, and, most importantly, the current developments – increasing tensions between the West and Russia – suggest that the political will for a much closer defense and security cooperation within the European Union will strengthen.

For the near future, a joint European army equipped with European-made and owned weapons, instead of the U.S exported ones, is unrealistic. Nevertheless, the European Union has taken measures to develop defense capabilities and industry. The European Commission has already initiated the European Defense Fund, which supports collaborative research and development of capabilities in the defense field with the EU budget. This Defense Fund will financially support a consortia of companies from member states conducting cooperative defense research and development of defense products and technologies⁴⁹. This can accelerate the integration of a defense industry for European countries.

⁴⁹ https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes/european-defence-fund_en

CONCLUSIONS

Considering global developments, a more militarized European future is unavoidable. Defense spending is increasing globally, and Europe shall not lag behind. A common army of Europe is something that it is not a fantasy conjured for the sake of security and protection of European citizens; still, it is not a realistic goal for the near future. The European Union is unique and unlike any other political body across the globe. Major actions within this transnational union require unanimity, and this element makes the implementation of this idea complicated.

In a military context, deciding *how* and *when* to utilize a joint army would raise certain questions: Who will control such an army and who will decide when it takes action? Would it be a collective decision, or rather the decision of the EU's bureaucrats. According to a security expert of the Stockholm International Peace Research Institute, the idea of an EU army *"must be seen as an element of political rhetoric, rather than military reality."*⁵⁰ The European Union has the capacity to create a joint army, but it would require years of increased and sustained spending and defining its legal framework.

In the meantime, it seems crucial to strengthen cooperation among EU member states in the military platform that already exists, NATO, to create joint military projects that will allow European countries to share experiences and learn from each other, both *beyond* and *within* Europe, and to participate in joint missions – which would, in turn, strengthen mutual trust.

While writing this piece, we have already read the DPA's report on EU foreign and defense ministers adopting a new common defense policy allowing the European Union to establish rapid response forces. A major component of the new defense policy is the creation of joint forces made up of as many as 5,000 soldiers to respond quickly to the outbreak of crises⁵¹. How this development will materialize remains to be seen. Taking the latest developments in the Eastern Europe into the consideration, member states will most likely support the implementation of this initiative. However, sending response forces beyond European borders is not seen realistic.

⁵¹<https://www.hedged.media/politics/eu-eyes-security-player-role-with-new-rapid-response-forces-2/>



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⁵⁰ <https://www.courthousenews.com/europe-talks-of-an-eu-army-and-dreams-of-sovereignty/>

How Looking Back Can Help the EU Move Forward: The Case of Gold-Plating



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KAROLINA
MICKUTĖ



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ERNESTAS
EINORIS



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ROBERTAS
BAKULA

Gold-plating¹ is still one of the main factors disrupting the European Single Market. Not only does it unjustly disadvantage national businesses and consumers, but it also reduces the competitiveness of the European Union (EU) as a global player by increasing administrative costs and fracturing the internal market. Thus, preventing gold-plating is among the top explicit tasks of the EU in reducing barriers to the single market². The recent humanitarian crisis caused by Russia's aggression against Ukraine has, among other things, illuminated the path of de-bureaucratization and trusting more in the self-regulation of persons both for the EU and its member states as a way to move forward. This path aligns with the aforementioned task of the EU to abolish gold-plating.

The common practice among the member states to *overachieve* when transposing directives not only harms the functioning of the EU, but also hurts national economies and citizens. However, many of the countries do not have any serious concerns about gold-plating and practice it without taking due consideration of its effects. Given the multiple negative implications that gold-plating has – both at the EU and

¹ According to the OECD, “Over-implementation of an EC Directive through the imposition of national requirements going beyond the actual requirements of the Directive. Directives allow member states to choose how to meet the objectives set out in the Directive, adapting their approach to their own institutional and administrative cultures. It is often at this stage that additional details and refinements, not directly prescribed by the Directive, are introduced. These can go well beyond the requirements set out in the Directive, resulting in extra costs and burdens.” See: European Commission, OECD (2015) *Better Regulation in Europe: an OECD Assessment of Regulatory Capacity in the 15 Original Member States of the EU*. Available [online]: <https://www.oecd.org/gov/regulatory-policy/44952782.pdf>.

² European Commission (2020) *Communication on Identifying and Addressing Barriers to the Single Market*, No. COM (2020) 93 final. Available [online]: https://ec.europa.eu/info/sites/default/files/communication-eu-single-market-barriers-march-2020_en.pdf.

national level – tackling it should be in the crosshairs not only of the EU, but also its members.

Yet, the question of whether the European Union can be held as an example when talking about reducing gold-plating shall be considered. In recent years, the EU legislator has shown indications that it is on the verge of *gold-plating* itself out of the global market. Years of observations of both national- and EU-level lawmaking (its quality and culture in particular) suggest that there are, unfortunately, more similarities than differences.

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THE COMMON PRACTICE AMONG THE MEMBER STATES TO OVERACHIEVE WHEN TRANSPOSING DIRECTIVES NOT ONLY HARMS THE FUNCTIONING OF THE EU, BUT ALSO HURTS NATIONAL ECONOMIES AND CITIZENS

Meanwhile, the European Union should serve as an example of a non-gold-plating policy. The path to move forward is being motivated out of the willingness to create a fostering environment for all, rather than regulate based on fear of the unknown and by restricting a person's ability to act. The former is the impetus for connecting to the world (i.e., reality) to develop and thrive, while fear compels separation as a means of protection for oneself and the ones we care about.

THE PATH OF GOLD-PLATING DOES NOT LEAD TO A GOLDEN FUTURE

For matters that are not fully harmonized at the EU level, member states have a margin to set additional requirements at the national level for whatever reasons they may find fit.

GOLD-PLATING IS NOT IN LINE WITH THE EU LEGISLATURE'S PARADIGM

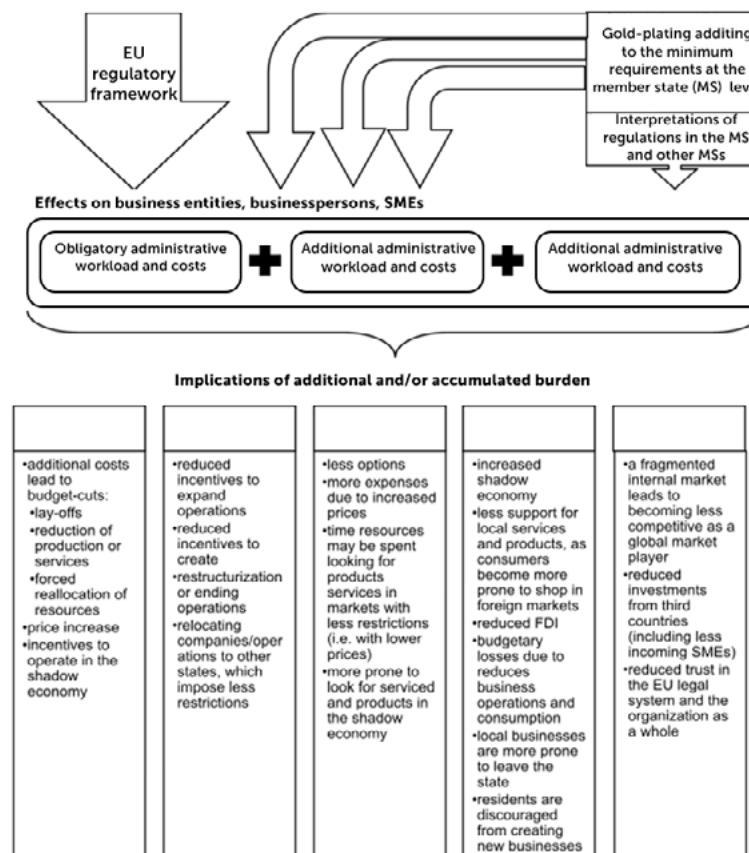
Under the EU law, any national derivations from the minimal EU requirements must meet the purposes set out in the directive transposed and generally not exceed the minimal requirements to ensure the smooth flow of the EU Single Market. When transposing directives, the European Commission (EC) has long urged the member states to refrain from creating additional burdens to its residents. Additional national requirements that go beyond what is set in the directives must be justified by an overriding reason of public interest, and must be proportionate, easy to understand, and compliant with the harmonized minimum rules³.

Moreover, the EC emphasizes that even within the legal rules, considering the objective of the single market differences must

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ANY DERIVATIONS FROM THE MINIMAL STANDARDS SET IN THE DIRECTIVES OFTEN TRANSLATE INTO AN ADDITIONAL REGULATORY OR ADMINISTRATIVE BURDEN FOR BUSINESSES, PUTTING THEM IN A DISADVANTAGED POSITION IN RELATION TO THE OTHER MEMBER STATES. GOLD-PLATING HAS MULTIFOLD EFFECTS

be kept to a minimum. Thus, the paradigm that the EU regulator insists on applying is that of minimum standards and costs. Juxtaposed to this, gold-plating implies the national legislator's intent to build upon the directives' minimal standards to fulfill its political agenda and thus shifts the focus from the true purposes of the directives. This is

Figure 1: The Multifold and Accumulated Effects of Gold-plating



Source: Lithuanian Free Market Institute (2021) Gold-Plating: How to Identify and Avoid. Available [online]: <https://www.lfri.lt/wp-content/uploads/2022/01/Gold-plating-final-2022-01-12.pdf>

achieved by masking over-regulation as an inevitable "side effect" of EU regulations without fully considering the burden it may bring.

GOLD-PLATING TYPICALLY TRANSLATES INTO UNDUE AND ADVERSE BURDENS TO ALL

Any derivations from the minimal standards set in the directives often translate into an additional regulatory or administrative burden for businesses, putting them in a disadvantaged position in relation to the other

member states. Gold-plating has multifold effects [See: Figure 1].

GOLD-PLATING HAS A PARTICULARLY DISADVANTAGEOUS IMPACT ON SMES AND EU GOALS TOWARDS THEM

According to the European Commission, small and medium-sized enterprises (SMEs) are the backbone of Europe's economy, as they represent 99% of all businesses in the EU, employ around 100 million people, account for more than half of Europe's GDP, and play a key role in adding value in every

³ European Commission (2018) *Communication of the Commission of 19 July 2018 on the Protection of Intra-EU Investment*.



SMALL AND MEDIUM-SIZED ENTERPRISES (SMES) ARE THE BACKBONE OF EUROPE'S ECONOMY

sector of the economy⁴. Thus, it is no surprise that the EU has set a strategic priority of unleashing the full potential of SMEs by creating a favorable regulatory environment for their development⁵ and therefore allowing SMEs to take due advantage of the key freedoms of the EU⁶.

The EC's strategic ambitions entail actions to remove regulatory and practical obstacles to doing business or scaling up within the Single Market and beyond and increasing the internationalization of SMEs⁷. The latter focuses on building the capacity and legal framework for SMEs to flourish not only in the EU but also globally. And vice versa, this also implies that the EU is interested in attracting foreign-based SMEs. Yet with a segmented internal market and severely divergent requirements of member

⁴ European Commission (2021) *Entrepreneurship and Small and Medium-Sized Enterprises (SMEs)*. Available [online]: https://ec.europa.eu/growth/smes_en

⁵ European Commission (2020) *Factsheet Unleashing the Full Potential of European SMEs*. Available [online]: https://ec.europa.eu/commission/presscorner/detail/en/fs_20_426

⁶ European Commission (2021) *SMEs' Access to Markets*. Available [online]: https://ec.europa.eu/growth/smes/sme-strategy/improving-smes-access-markets_en

⁷ Ibid.

states due to gold-plating, the possibilities of creating a fostering framework and attracting foreign SMEs to the EU are low.

WHAT IF THE EU IS GOLD-PLATING ITSELF OUT OF THE GLOBAL MARKET?

When analyzing the tendencies of the national- and EU-level lawmaking process and its flaws, common issues become evident. During recent years, the EU legislator in the fields of social security, competition, innovation, and economic activity has raised red flags to analysts indicating that the practice of gold-plating (or *overachieving*) is not that alien to the European Union itself.

The criteria to establish gold-plating⁸ refer to the need to adhere to the common lawmaking principles, e.g., proportionality, necessity, and subsidiarity. In addition, the general notion of lawmaking implies that measures that create additional burdens must be necessary and proportionate.

According to the EU law, the proportionality principle means that to achieve its aims, the EU will only take the action it needs to and no more⁹. However, just as in national law, the EU legislator can do a convenient impact assessment that would create the necessary arguments to justify the principle of proportionality. The opposite of this is the essence of gold-plating by its effect, and there were a number of *red-flag* initiatives of the EU legislator during recent years.

In addition, there are no mandatory requirements to do a gold-plating risk assessment when producing impact assessments of

⁸ See, for example: Europos Teisės Departamentas prie Lietuvos Respublikos Teisingumo ministerijos (2015) *Europos Sąjungos teisės aktų įgyvendinimo nacionalinėje teisėje ir administracinės naštos pagrįstumo įvertinimo rekomendacijos*. Available [online]: [https://tm.lrv.lt/uploads/tm/documents/files/Perteklinis_reguliavimas_rekomendacijos_galutinis_\(1\).pdf](https://tm.lrv.lt/uploads/tm/documents/files/Perteklinis_reguliavimas_rekomendacijos_galutinis_(1).pdf) [in Lithuanian]

⁹ Treaty on European Union, Article 5.



WHEN ANALYZING THE TENDENCIES OF THE NATIONAL- AND EU-LEVEL LAWMAKING PROCESS AND ITS FLAWS, COMMON ISSUES BECOME EVIDENT

new EU regulations or directives. In general, all the directives allow for more stringent regulations at the national level meaning that the EU will not only achieve its goal of harmonization but also in a sense invite gold-plating. Understandably, the EU cannot establish close-ended requirements, since this would contradict the principle of subsidiarity and the sovereignty of member states. Yet, by declining an impact assessment on the possible ways of gold-plating, the proposed directive in no way benefits the EU's goals of reducing this practice.

THE DIGITAL MARKETS ACT WITH ITS ANTI-MARKET MECHANISMS¹⁰

The European Parliament (EP), the EC, and the European Council continue negotiations on the Digital Markets Act (DMA) – a proposal aiming to curtail the anti-competitive behavior of big digital market players and create a level playing field for everybody.

¹⁰ See: Lithuanian Free Market Institute (2021) *The Economic Analysis of the Digital Market Act*.

The DMA is based on a dubious impact assessment with wishfully projected positive outcomes and underestimated negative consequences. Proclaiming goals to improve the innovative capacity of the EU and to improve the results in the digital sector of the market, the proposal, ironically, ignores both consumer interests and the basic mechanisms of competition and innovation.

USING A POLITICAL UMBRELLA TO ENACT REGULATIONS WITHOUT DULY ASSESSING THE COSTS

The debate about improving the functioning of the market is dominated by a political standpoint, marginalizing discussions about economic consequences. Failing to address how innovations and technologies are created and what motivates people to pursue them, the DMA will hinder Europe's creative potential.

The European Commission justifies the proposal by the need to avoid regulatory fragmentation in the single market, create a safer digital space, and establish a level playing field for businesses, considering that some large online platforms act as *gatekeepers* in digital markets. Although the authors of the DMA claim that the act will restrict only big firms, the enforcement of the proposed regulation will inevitably hurt SMEs and the end users, the protection of which is among the EU's explicit tasks mentioned in the first part of this article.

In addition, the DMA introduces vague, ambiguous, and poorly defined concepts while leaving unrestricted scope and powers of the regulator to interpret them. And this will surely lead to gold-plating on the part of member states. All the regulatory uncertainty associated with the DMA is likely to cost years of lawsuits just for the designation of gatekeepers. They may also impose



THE DMA INTRODUCES VAGUE, AMBIGUOUS, AND POORLY DEFINED CONCEPTS WHILE LEAVING UNRESTRICTED SCOPE AND POWERS OF THE REGULATOR TO INTERPRET THEM

a tremendous waste of finances and time for companies as they try to avoid – or to comply with – the new regulatory framework.

Under the DMA, however, such pioneers will be labeled as *gatekeepers* and will face the regulatory, administrative, and financial burden imposed by the regulator. Yet, as established above, this is in no way substantiated to prove that it is necessary and proportionate.

PERFECT SERVICES AND PERFECT PROVIDERS ARE AKIN TO WISHFUL THINKING

Like any other market or sector, the digital market constantly pursues improvement and development. The EC thinks that they can accelerate the development towards better outcomes “for consumers in terms of prices, quality, choice, and innovation” by

transforming or replacing the existing digital service providers¹¹. No argumentation is provided as to why these new winners, who will come after the DMA has been implemented and the rules of the game have been changed, will bring only positive effects and will not have any adverse impact on consumers, innovation, and market potential.

“WE MUST DO SOMETHING”: THE PREVAILING SPIRIT OF THE DMA

The European Commission claims that there is a legitimate fear that the market power that large platforms have acquired will be hard to challenge¹². It is difficult to judge how much of this strive to regulate comes from a naïve but genuine belief that it is possible to engineer the market and how much is being driven by various interests.

One of the reasons for such initiatives is a negative attitude towards big companies and technologies (the so-called “tech lash”) among certain groups and society. The EU legislator’s impact assessment lacked clear arguments and grounds as to why big companies are the primary source of discrepancies in the digital market and any other reasons were not considered, which could lead to an assumption that one of the key arguments for promoting the DMA is populism. And as populism always does, it seduces politicians with visibly easy and popular solutions for problems that are neither simple nor visible. And what is most regrettable is that it ultimately harms those actors and processes that were supposed to improve.

¹¹ European Commission (2020) *Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)*. Available [online] <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52020SC0363>

¹² Ibid.



AS POPULISM ALWAYS DOES, IT SEDUCES POLITICIANS WITH VISIBLY EASY AND POPULAR SOLUTIONS FOR PROBLEMS THAT ARE NEITHER SIMPLE NOR VISIBLE

The debate that is taking place around the regulation proposal is dominated by a political standpoint, marginalizing discussions about economic consequences. As a result, the political discourse fails to address how innovations and technologies are created, what motivates people to pursue them, and the effects the DMA will have on Europe’s creative potential.

THE PLATFORM WORK DIRECTIVE THAT WILL NOT DELIVER

At the end of 2021, the European Commission proposed a directive of the European Parliament and Council on improving working conditions on platform work¹³. The proposal lays down intricate requirements for platforms whose application is likely to have serious unintended consequences for the consumers and workers contrary to the directive objectives.

A “CONVENIENT” IMPACT ASSESSMENT

The impact assessment neglects the fact that individuals themselves decide to engage in platform work, which suggests that they regard certain conditions of platform work as more advantageous, and thus more attractive. Such behavior may also be indicative of the desire to distance oneself from employment relationships and related regulatory restrictions on work activities. The breakthrough of the gig economy was preconditioned by the laxity – or even absence – of regulation, i.e., more freedom to enterprise and act.

Juxtaposed to this, centralized rigid regulations of platform workers would negate the very essence of working through online

¹³ European Commission (2021) *Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work*. Available [online]: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12828-Improving-the-working-conditions-of-platform-workers_en

platforms, and the employment presumption would unjustly deprive individuals of the ability to decide on their preferred work module and conditions. Imposing labor standards on platform work will reduce the supply of services and increase their cost for the consumers. This may lead to a number of platform workers losing their income.

MISCONCEPTIONS OF KEY CONCEPTS AND BENEFITS

Rather than getting employed, the service provider (the self-employed) *purchases* the connectivity service through a platform. In many cases, it is not the platform but its users who rate each other. To minimize their risks due to the application of the Draft Directive, it is likely that platforms will start by abolishing the rating system, which will have a negative impact on both service providers and consumers.

The directive provides for a presumption of an employment relationship if certain criteria indicating control are met. Automatically

applying an employment status to any platform worker would unduly deprive the self-employed of the possibility of deciding for themselves their preferred model of organization and the conditions of their activity. It would also increase the uncertainty of the application of the directive. This, in turn, may force out platforms from the EU, since the potential risks of operating in this market would be too high to bear in comparison to other markets. Such market fragmentation could significantly reduce the competitiveness of the EU as a global market player and would make it less attractive for foreign investment and innovation.

Yet, this concept is applied at a higher level, meaning that *overachieving* and going further than what is necessary on the part of the EU legislator makes the European Union market less attractive on a global scale.

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FORCING PLATFORM WORKERS INTO A LEGAL VERTIGO

Forcing former service providers and atypical workers into formal and traditional employment relations poses another conundrum, given that the employment framework may be ill-prepared to handle unorthodox work through platforms. It must be kept in mind that platform workers may not wish to engage in traditional employment or are unable to do so due to the peculiarities of their status.

Most traditional employment contracts do not meet the need for flexibility that is provided by platform work. In such cases, an alternative could be zero-hour contracts, which are the closest alternative to platform work and could ensure the needed flexibility; however, the EU discourages such contracts.

THE EU DIRECTLY AIMS TO REGULATE WHAT IS ALREADY REGULATED

The directive on platform work duplicates effective control requirements, which can already be established under the EU acquis that covers labor relations and social protection. This implies that the issues that the European Commission aims to tackle are created not by an abundance of rules, but rather by the lack of their enforcement mechanisms.

In its impact assessment, the EC discloses that the issue of platform work is covered under various other EU regulations, yet it neglects to prove how current regulations are insufficient. The object of the directive is illegal work¹⁴, the avoidance of which is already enshrined in various directives, regulations, and national laws (for example, national labor codes, which provide for

¹⁴ 'Illegal work' is a situation where a person has signed a service provision contract when in fact based on certain control criteria the relationship between him and the enterprise is of employment nature.

the criteria of illegal work). And, in essence, duplicating the legal schemes that already exist is indeed gold-plating based on its effect¹⁵.

MAXIMIZING THE GLOBAL MINIMUM TAX

The European Commission released a *Proposal for a Council Directive* on ensuring a global minimum level of taxation for multinational groups in the Union, which puts a minimum 15% corporate income tax rate on large-scale enterprises¹⁶. The proposal is based on OECD's *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy*¹⁷, which consists of multiple rules aiming to ensure that the minimum tax rate is paid. The OECD agreement is in no way binding, as it states that EU countries: "are not required to adopt the global rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent [with the agreement]."

Meanwhile, the proposed directive makes the rules mandatory for all member states in the name of protection of the internal market. Additionally, the EU directive extends its scope to include purely domestic large companies, not only multinational enterprises, as stated in the OECD

¹⁵ See: Mickute, K. (2022) *EK direktyva mažins galimybes pavežėjais dirbti tiek vietiniams, tiek nuo karo siaubo besitraukiantiems žmonėms*, [in]: Delfi.lt. Available [online]: www.delfi.lt/verslas/nuomones/karolina-mickute-ek-direktyva-mazins-galimybes-pavezejais-dirbti-tiek-vietiniams-tiek-nuo-karo-siaubo-besitraukiantiems-zmonems.d?id=89580397 [in Lithuanian]

¹⁶ European Commission (2021) *Proposal for a Council Directive on Ensuring a Global Minimal Level of Taxation for Multinational Groups in the Union*. Available [online]: https://ec.europa.eu/taxation_customs/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf

¹⁷ OECD (2021) *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy*. Available [online]: <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalization-of-the-economy-october-2021.pdf>

agreement. Even though this significant change was made, the EU has not conducted its own impact assessment of the proposed rules, referring to an impact assessment done by OECD in 2020.

THE MOST 'CONVENIENT' IMPACT ASSESSMENT – NO IMPACT ASSESSMENT AT ALL

One of the most troubling aspects of the directive proposal is that no proper impact assessment has been conducted. The explanation given by the European Commission is that OECD has already conducted the impact assessment of the global minimum tax regime. That is true, but there are significant differences from the policy presumed in the OECD impact assessment and the EC proposal. Firstly, OECD assumes a 12.5% minimum tax rate, while the directive proposes 15%. Secondly, specific tax

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allowances called substance carve-outs are different in the impact assessment and the EU directive.

The impact assessment assumes a specific allowance for depreciation expenses, while the EU proposal allows a carve-out for a particular percentage value of tangible assets. Furthermore, no impact assessment was done if the EU enacts the minimum tax and other countries do not. Such a scenario would put the European business at a competitive disadvantage, but the costs are in no way evaluated. Additionally, the scope of the EU directive goes beyond what was agreed upon in the OECD as it also includes purely domestic groups, yet it is not considered a possible consequence of the regulation.

THE UNJUSTIFIED INCREASE IN ADMINISTRATIVE COSTS IS NOT EVEN CONSIDERED AS AN ARGUMENT

The directive might also create legal uncertainties for the countries with preferential CIT regimes to certain investment types or investments in specific locations. For example, Lithuania imposes no corporate income taxes in the case of investments exceeding

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PUBLIC CONSULTATIONS BOTH AT THE EU AND MEMBER STATES' LEVEL MUST BE HELD PROACTIVELY

20 million euros and creating at least 150 jobs. Before coming into effect, these provisions were agreed upon with the European Commission and recognized as non-harmful. However, the minimum tax directive does not acknowledge the latter. There is a question about a breach of the company's legitimate interests if it made investments in Lithuania because of the 0% tax rate but is now in the scope of the minimum tax rules and will have to pay the top-up tax. Adopting the proposed EC minimum tax directive would cause an increase in bureaucracy.

In addition, to comply with the directive, companies would have to calculate their effective tax rates paid in every jurisdiction. This requirement will force companies to conduct a parallel accounting according to the proposed rules, as eligible taxes, revenues, and costs will differ based on national rules. The parallel accounting will require additional time and effort by companies to comply with taxation, which could instead be spent in other productive ways.

LOOKING BACK IN ORDER TO PAVE A WAY FORWARD

Let us now analyze the key good practices and principles to adhere to when enacting laws both at the EU and the national level. For the latter, gold-plating may be avoided to better benefit its residents. And for the former, universal methods of increasing the quality of lawmaking and, in turn, trust in the European Union shall be discussed.

PUBLIC CONSULTATIONS ARE INSUFFICIENT TO SHOW THE VIEWS OF THE MANY

Motivation out of fear instead of love results in diminishing the powers of the many for the alleged protection of a few, and in most cases without even hearing the views of the key stakeholders – the users, the consumers, the self-employed, and the SMEs. For example, the DMA discussions involved only

a minor part of SMEs that would be directly affected by the regulation.

In a closed discussion held by the Lithuanian Free Market Institute in February 2022 on the quality of lawmaking, the majority of the smaller non-governmental organizations said that they are not motivated to engage in public consultations since they know that their opinions will not matter and preparing those takes up a lot of their valuable time. Given that small stakeholders have a lot on their plates, unfortunately, engaging in *fictional* public consultations costs them more than trying to work with new regulations and helping their peers.

This means that public consultations both at the EU and member states' level must be held proactively, and any responses to the public consultation materials must be (dis)agreed upon by using arguments. This is important to achieve greater cooperation with key stakeholders and maintain the EU's legality.

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THERE ARE NO CONCRETE FORMAL REQUIREMENTS FOR THE FORM OF TRANSPOSITION SET OUT BY THE EU LEGISLATOR

THE KNOWLEDGE OF THE UK AND SWEDEN SUGGESTS INSTRUMENTS ON CREATING A MORE FOSTERING REGULATORY ENVIRONMENT

To tackle the issue with gold-plating, it is best to seek advice from the two countries that were first to experience the phenomenon and to take concrete steps to tackle it. The first case is in the United Kingdom, whose coalition government of Conservatives and Liberal Democrats has taken several steps to limit the impacts that the adoption of EU legislation could have on UK businesses. Although the UK left the EU following the referendum vote in 2016, its developed practices to avoid gold-plating are relevant to date since they are universal, the best developed, and most of them were incorporated into the national recommendations of other EU member states.

THE UK SUGGESTED FOCUSING ON MINIMAL REQUIREMENTS AND BEST RESIDENT INTERESTS

An analysis (finalized in 2013) on the application of the UK's EU law transposition principles for eighteen months showed that the UK's government was successful in preventing the additional regulatory burden, and there were only a few cases in which the government went beyond the minimum requirements when applying the transposition principles. In the process of the implementation of the EU legislation, the UK ministries were forced to show how they were using the five principles for the adoption of the EU law.

In addition, there was an independent body (the Regulation Reducing sub-Committee) established to oversee how the principles are being applied and to which policymakers had to provide justifications for departing from the principles. Therefore, the principles of transposition were paired with enforcement mechanisms to ensure their

actual functioning¹⁸, making them *de facto* mandatory.

SEEKING ALTERNATIVE MEASURES

It is a crucial lesson to learn for other member states as the correct transposition of a directive does not automatically imply enacting new laws or implementing acts. There are no concrete formal requirements for the form of transposition set out by the EU legislator, as due transposition entails the process of giving effect to directives within their domestic legal systems.

This means that certain directive requirements may even manifest in the form of recommendations and guidelines – as long as the purpose of the directive is achieved¹⁹. Such a paradigm of seeking alternatives to laws is prudent in terms of reducing (or at least refraining from) creating additional burden to national residents. In addition, soft-law measures may offer more fluidity and flexibility to better meet the ever-changing needs of the market.

This principle could also benefit the European Union in its decision-making. Most impact assessments contain the *cliché* that other alternative measures have been shown to be insufficient without providing an impact assessment of the exact alternative measures applied. Keeping in mind the

¹⁸ UK Department for Business Innovation, & Skills (UK) (2013) *Gold-Plating Review*. Available [online]: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/137696/bis-13-683-gold-plating-review-the-operation-of-the-transposition-principles-in-the-governments-guiding-principles-for-eu-legislation.pdf

¹⁹ European Commission (2005) Commission Recommendation of 12 July 2004 on the transposition into national law of Directives affecting the internal market. Para. 1 of the Preamble: “Member States transposing Directives into national law can choose the form and methods for such transposition, but are bound by the terms of the Directive as to the result to be achieved and the deadline by which transposition should take place.” See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005H0309>

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– BUT NOT
THE OTHER WAY
AROUND

key universal lawmaking principle of *necessity*, it is important to show that other means are indeed insufficient before enacting the rule at the highest and most stringent level (regulation of directive).

For example, regarding the Platform Work Directive, the EU neglects the alternative to ensure more information and consultations for the platform workers. It also does not see that it duplicates already existing regulations, meaning that the situation is caused not by the abundance of rules, but rather the lack of enforcement. This, in turn, means that if any additional rules are established, they will also be of *paper value*.

‘ONE-IN’, ‘ONE-OUT’ AS A LEGAL OBLIGATION

The UK government had also introduced an approach entitled *one-in, one-out* (OIOO)²⁰, which meant that no new primary

²⁰ RRC (2011) The OIOO Framework. Available [online]: https://www.regulation.org.uk/library/2011_oioo_methodology.pdf

or secondary legislation of the United Kingdom, which would create new expenses for businesses, could be introduced without the identification of an existing regulation with an equivalent financial burden that could be removed. This was a key requirement for both enacting new national laws and transposing EU laws. Such a measure would help combat the accumulation of burdens to persons in respective EU member states.

This principle could also be envisaged in the legal acts of the European Union. Currently, most of the EU laws allow for more stringent regulations – but not the other way around. Envisaging a notion that the implementation of the directive requires applying the OIOO principle would directly benefit the goal to diminish the unjust practice of gold-plating.

COPY-OUT PRINCIPLE WHEN TRANSPOSING RULES

The *copy-out* principle implies the obligation to use the exact wording of the directive in national laws when possible and reasonable. This is another important lesson to learn, as the administrative burden consists not only of additional new requirements, but also of the burden to understand the content of the rules. Simply put, the more complex the rules are, the more burden businesses face to comprehend and comply with them. The *copy-out* technique helps with avoiding such additional costs as it provides clear wording and ensures more legal clarity for persons.

For the European Union, this principle means establishing such definitions and notions that would be clear and easily understandable. Complex and ambiguous concepts (e.g., with the DMA, as described in the previous section) would undoubtedly lead to gold-plating.

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SIMPLY PUT,
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PAIRING PRINCIPLES WITH ENFORCEMENT MECHANISMS

A key role in the UK’s commitment to abolish gold-plating was played by the Regulation Reducing sub-Committee (RRC) – an independent control body overseeing the implementation of the OIOO strategy and keeping a check on other government bodies. Policymakers also had the obligation to justify derivations from the UK’s principles before the RRC. An analysis by the Department for Business & Skills²¹ showed that these transposition principles were, therefore, an effective tool to ensure appropriate control of the measures adopted as a result of the EU legislation. The crucial aspect is to have the individual departments uphold these rules and avoid adopting additional measures.

²¹ UK Department for Business Innovation, & Skills (2013) *Gold-Plating Review*. Available [online]: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/137696/bis-13-683-gold-plating-review-the-operation-of-the-transposition-principles-in-the-governments-guiding-principles-for-eu-legislation.pdf



SWEDEN IS AN EXAMPLE OF A PROACTIVE BUSINESS COMMUNITY, WHICH CAME FORWARD WITH A SET OF RECOMMENDATIONS THAT FOCUSED ON THE PRACTICE OF THE ADOPTION OF THE NEW EU LEGISLATION

In terms of the European Union, there are no internalized mechanisms to enforce the IA and the RIAs presented during the public consultations. Thus, incorporating mechanisms or even separate lawmaking quality ombudsmen would significantly benefit the goals of the EU.

SWEDEN RELIES ON A PROACTIVE BUSINESS COMMUNITY AND PROMOTES COST-CONSCIOUS DECISION MAKING

Based on previous research, the example of Sweden was chosen due to a different kind of positive example it can provide to other European countries. Unlike the Unit-

ed Kingdom, where the bulk of the initiative was orchestrated by the public sector, Sweden is an example of a proactive business community, which came forward with a set of recommendations that focused on the practice of the adoption of the new EU legislation.

THE BETTER-REGULATION CONCERN IS SHARED BY BOTH THE PRIVATE AND PUBLIC SECTOR

A distinguishing feature about Sweden is the existence of the Board of Swedish Industry and Commerce for Better Regulation (Näringslivets Regelrådet, NNR) and the Swedish Better Regulation Council (Regelrådet). The NNR is an independent, non-party political organization, which speaks for more than a third of all active companies in Sweden and represents businesses of all sizes and sectors. NNR is unique among business advocates in that its sole focus is on bringing about regulatory reform and a more business-friendly regulatory environment in Sweden and the EU²². NNR's input is beneficial in terms of analyzing existing rules and providing policy changes.

The dedicated counterpart in the government is the Swedish Better Regulation Council (Regelrådet), which is a designated decision-making body whose members are appointed by the government. The Regelrådet primarily examines the proposals for new and amended regulations that may have effects on the working conditions of enterprises and their competitiveness, considers whether the statutory impact assessments were carried out, and assesses the quality of the impact assessment.²³

²² European Economic and Social Committee, Tsipouri, L. J. (2014) *Smart Governance of the Internal Market for Business*. Available [online]: <https://www.eesc.europa.eu/sites/default/files/resources/docs/qe-01-14-863-en-n.pdf>

²³ Ibid.



SYNERGY BETWEEN THE PRIVATE AND PUBLIC SECTORS ENSURED A BETTER AND MORE THOROUGH EXCHANGE OF PRACTICAL ISSUES RELATED TO EU LAW TRANSPOSITION

ABOLISHING GOLD-PLATING IS A JOINT PROJECT OF THE PRIVATE AND PUBLIC SECTOR

The Regelrådet and the NNR enacted a joint analysis-position²⁴, which provided not only the *status quo* analysis of the phenomenon of gold-plating, but also an exhaustive list of recommendations to tackle it. It was considered as a ground-breaking novel approach to tackle gold-plating in the form of a joint project involving a business organization and a government-appointed committee. Such synergy between the private and public sectors ensured a better and

²⁴ Althoff, K. and M. Wallgren (2012) *Clarifying Gold-Plating – Better Implementation of EU Legislation*. Available [online]: <https://www.regelradet.se/wp-content/uploads/2012/03/Clarifying-Gold-Plating.pdf>

more thorough exchange of practical issues related to EU law transposition.

The role of the Regelrådet as a decision-making quality-control subject in the legislative process, in cooperation with the NRE, ensures that the transposition of EU laws is well-justified. This is a significantly prudent measure to tackle gold-plating, since the implications of it may be identified before they are enacted.

CHECK YOURSELF BEFORE YOU WRECK YOURSELF: THE PARAMOUNT IMPORTANCE OF RIA

The institution of regulatory impact assessments (RIA) plays a key role in preventing gold-plating. Many EU member states have guidelines and principles in their national systems to avoid gold-plating; however, they are recommendatory in nature, and their application relies on the will of policymakers. These individuals may not only lack certain knowledge or resources when transposing directives but may also have their own political agendas, which they may fulfill through gold-plating. Thus, good practices must be paired with enforcement mechanisms. This can be achieved by incorporating them into the formal legislative procedure, particularly in the *ex-ante* and *ex-post* RIA.

THE IMPETUS FOR GOLD-PLATING MAY BE HALTED AT THE DIRECTIVE NEGOTIATIONS STAGE

The OECD urges to conduct a thorough *ex-ante* RIA both during the negotiations of EU directives and when transposing them. Typically, an impact assessment at a national level is not carried out during the negotiations phase. It is recommended that the government should review current processes for the negotiation and transposition of EU regulations, to map strengths and weaknesses, deepen the involvement of the Interior, Finance, and Economic Affairs



IMPACT ASSESSMENTS OF EU REGULATIONS – BOTH AT THE NEGOTIATION AND TRANSPOSITION PHASES SHOULD BE MADE A FORMAL REQUIREMENT AND AN INTEGRAL PART OF THE NEW IMPACT ASSESSMENT PROCESS

ministries, and strengthen procedures and guidance aimed at addressing substantive issues. Such impact assessments of EU regulations – both at the negotiation and transposition phases should be made a formal requirement and an integral part of the new impact assessment process²⁵.

²⁵ Organization for Economic Co-operation and Development (2010) “The Interface Between the Member States and the European Union”, [in]: *Better Regulation in Europe*. Available [online]: <https://www.oecd.org/gov/regulatory-policy/44912396.pdf>

The Ministry of Justice of the Republic of Lithuania suggests that stakeholder consultations during the negotiation phase can not only effectively contribute to the identification of important interests that determine the national position, but the discussions, information, and suggestions received from stakeholders can also help to design the necessary and effective measures for the implementation of the EU law while it is still under consideration. By discussing and finding appropriate and reasonable measures and methods for the implementation of the future EU law during the consultations, the probability of excessive regulation in the later stage of the implementation of the EU law would be significantly reduced²⁶.

RIA STANDARDS APPLY WHEN TRANSPOSING EU DIRECTIVES

Due transposition entails carrying out a thorough RIA before even registering a draft law, which transposes a directive. According to the OECD and the European Law Department under the Ministry of Justice of the Republic of Lithuania, directives are transposed through a national legislation procedure, in which case the basic legislative methods apply, i.e., the identification of the problem/objective (from the directive), an impact assessment of alternatives to achieve the objective, and the selecting of the least burdensome solution²⁷.

An *ex-post* RIA helps to identify gold-plating cases and any regulations that may have gold-plating effects. Gold-plating can also occur after legislation has been

²⁶ Europos Teisės Departamentas prie Lietuvos Respublikos Teisingumo ministerijos (2015) *Europos Sąjungos teisės aktų įgyvendinimo nacionalinėje teisėje ir administracinės naštos pagrįstumo įvertinimo rekomendacijos*. Available [online]: [https://tm.lrv.lt/uploads/tm/documents/files/Pertekliinis_reguliavimas_rekomendacijos_galutinis_\(1\).pdf](https://tm.lrv.lt/uploads/tm/documents/files/Pertekliinis_reguliavimas_rekomendacijos_galutinis_(1).pdf) [in Lithuanian]

²⁷ Ibid.



DIRECTIVES ARE TRANSPOSED THROUGH A NATIONAL LEGISLATION PROCEDURE, IN WHICH CASE THE BASIC LEGISLATIVE METHODS APPLY

adopted (even if it has not been identified in the *ex-ante* assessment). According to the OECD, as regards the importance and methodological conduct of the *ex-post* evaluation, combining *ex-ante* and *ex-post* in the transposition of EU law would help to avoid gold-plating²⁸. Monitoring national measures implementing EU law (i.e., carrying out an *ex-post* RIA) would help both to identify cases of over-regulation and to assess whether over-regulation that seemed justified and necessary at the time of the drafting of the national legislation is still necessary, sufficient, and effective.

It is also recommended to incorporate review obligations in the legal acts themselves as a measure to undertake *ex-post* RIA responsibility; however, this practice is rarely used. In this light, it would be prudent for the EU legislator to include a) an RIA checkpoint to evaluate the possibilities of enabling gold-plating, and b) an enforcing mechanism to stop itself from gold-plating.

CONCLUSIONS

Regardless of the efforts, gold-plating both at the member state and EU level has not been abolished. This is primarily due to the reason that gold-plating tackling measures are not accompanied by responsibility and enforcement. At the EU level, the legislator does not undergo an *overachievement inspection*, even though its actions are *de facto* gold-plating. Thus, it would be efficient to commit to a national- and EU- level priority to protect their residents in terms of not putting them at a competitive disadvantage and employing all possible means to reduce their administrative burden by creating a fostering environment for the subject to thrive in.

²⁸ OECD (2010) “The Interface Between the Member States and the European Union”, [in]: *Better Regulation in Europe*. Available [online]: <https://www.oecd.org/gov/regulatory-policy/44912396.pdf>

It is prudent to find common ground in order to tackle gold-plating among the European Union, member states, and the private sector, and create a functioning cooperation synergy. However, this should be the legislator’s proactive initiative. No law with gold-plated provisions or an EU legal proposal with no gold-plating risk assessment should be submitted to the plenary without an estimation of the regulatory burdens. Moreover, no draft should move forward without a proper RIA. This could be achieved by establishing an independent body that would verify the quality (sic!) and not the arguments of the impact assessment.

In terms of the European Union, it would be most prudent to connect the *ex-ante* and *ex-post* RIA mechanisms and make it an



IT WOULD BE MOST PRUDENT TO CONNECT THE *EX-ANTE* AND *EX-POST* RIA MECHANISMS AND MAKE IT AN OBLIGATORY CYCLE OF THE LEGISLATIVE PROCESS

obligatory cycle of the legislative process. The *ex-ante* RIA would act as a checklist for the forthcoming *ex-post* RIA. The purpose of the latter would be to evaluate whether the expected outcomes (both positive and negative) foreseen during the *ex-ante* RIA were achieved. Accordingly, amendments must be initiated if the primary goals were not met or if the negative implications outweighed the expected benefits of the regulation.

Lastly, the initiative of Single Market Directives²⁹ by the European Commission should include a gold-plating monitoring system. The initiative could add a task to assess the extent to which EU provisions are gold-plat-

²⁹ European Commission (2022) *Single Market Scoreboard*. Available [online]: https://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm

ed and call the member state to explain the necessity of this action. The overall objective of the Single Market Directives monitoring system is to ensure that Single Market law is implemented properly.



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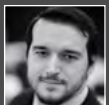


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Bosnia and Herzegovina in the European Union: An Unfulfilled Dream or Reality?



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ADMIR
ČAVALIĆ



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HARIS
DELIĆ

On February 15, 2016, Bosnia and Herzegovina (B&H) submitted their application for membership in the European Union (EU). It seemed at the time that this could result in candidate status, especially given that neighboring countries such as Croatia, Montenegro, Serbia, or Northern Macedonia were granted candidate status within two years of applying. However, almost six years after applying for membership, Bosnia and Herzegovina has not received candidate status, setting a record in the length of waiting for it.

In May 2019, the European Commission (EC) adopted Opinion on Bosnia and Herzegovina's application for Membership of the European Union and pointed out that the said state will need to fundamentally improve its legislative and institutional framework to ensure it meets the fourteen priorities (including Rule of Law, Public Administration Reform, Fundamental Rights, and Democracy).

Bosnia and Herzegovina is a country with a very complex system of government – entities, districts, ten cantons, a certain number of cities, and municipalities. Therefore, decision-making procedures are very slow and complex and require compromises, which ultimately results in the fact that out of all priorities set by the EU for Bosnia and Herzegovina's membership after submitting the application, only one has been fully implemented, and a few have been partially met, and there are no indications of any activities to fulfill others.

At the same time, while the country's path to the European Union appears to be completely blocked, the country is in its greatest crisis since the signing of the Dayton Peace Agreement in 1995 which ended the bloody war in Bosnia and Herzegovina. Decision-making by the state government is stopped,

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BOSNIA AND HERZEGOVINA IS A COUNTRY WITH A VERY COMPLEX SYSTEM OF GOVERNMENT – ENTITIES, DISTRICTS, TEN CANTONS, A CERTAIN NUMBER OF CITIES, AND MUNICIPALITIES

different types of blackmail are used by some of the politicians with separatist tendencies to achieve different political goals (especially when voting for certain laws such as The Election Law¹), and it seems that membership in the EU has never been less likely, as well as all the benefits that it brings for a country like this.

The possibility of Bosnia and Herzegovina's membership in the European Union in the future will depend on how to resolve the current crisis now.

Meanwhile, the presence of the EU is paramount for peace and stability in the Western Balkans, as well as long-term prosperity. Brussels' bureaucratic institutions are,

¹ Find out more at: <https://faktor.ba/vijest/ucjene-cov-icevog-hns-a-ili-izborni-zakon-ili-herceg-bosna-ovo-su-zakljucci/154056> [in Bosnian]

paradoxically, welcome in an area without developed institutions and the rule of law.

EU ENLARGEMENT PROCESS

One of the key reasons for the creation of the European Union in the 1950s was the promotion of peace, progress, and European values on the continent. Any country in Europe can apply for membership of the European Union, while meeting the accession criteria known as the Copenhagen Criteria². These criteria were established by the Copenhagen European Council in 1993 and supplemented by the Madrid European Council in 1995³.

The strengthening of the cooperation between member states allows to intensify the enlargement process. There were seven phases of enlargement until now. The countries considered to be the founders of the EU (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands) joined in 1973, in the first phase of enlargement, followed by Denmark, the United Kingdom, and Ireland. Then, in 1981, Greece joined; in 1986, Portugal and Spain; in 1995, Austria, Finland, and Sweden.

The largest enlargement of the European Union took place in 2004, when it was joined by the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. In 2007, Bulgaria and Romania became member states, and the last enlargement took place in 2013, when Croatia joined the EU. Thus, the European Union has expanded from 6 to 28 member states and today stretches from the Atlantic to the Black Sea and covers a population of 500 million people. In a referendum held in 2016, the United Kingdom decided to leave

² <https://www.parlament.ba/Content/Read/125?title=Put-do-%C4%8Dlanstva-u-Evropskoj-uniji> [in Bosnian]

³ Find out more about the Copenhagen criteria at: https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/glossary/accession-criteria_hr



THE PATH TO EU MEMBERSHIP IS VERY COMPLEX AND IMPLIES THAT COUNTRIES WISHING TO BE MEMBERS MUST SHOW THAT THEY ARE CAPABLE OF BEING PART OF THE EU

the European Union (also known as 'Brexit'), so that today there are 27 member states (EU-27)⁴. This is the first and only case so far that a member state has left the Union.

However, the path to EU membership is very complex and implies that countries wishing to be members must show that they are capable of being part of the EU, i.e., that they have great support from citizens, and that they politically, legally, and technically meet EU standards and norms. The path to membership implies three phases, and the next phase can be passed only when all the conditions from the previous phase are met. Once reforms and negotiations are completed with the consent of both sides, a candidate country can join the EU only if all member states agree.

⁴ Find out more about Brexit at: <https://www.investopedia.com/terms/b/brexit.asp>



FULL MEMBERSHIP WAS NEVER A REASONABLY REALISTIC AND PRAGMATIC GOAL, AS TURKEY HAS ALWAYS DEVIATED IN TERMS OF LIBERAL DEMOCRACY AND CIVIL LIBERTIES FROM THE AVERAGE EU NORMS

The complexity of this process is the reason why the European Union has not been enlarged for nine years. Currently, five states are in the status of candidate countries – Albania, the Republic of Northern Macedonia, Montenegro, Serbia, and Turkey, while Bosnia and Herzegovina and Kosovo are potential candidates.

Albania and Northern Macedonia are currently closest to membership, but Northern Macedonia's path has been blocked due to Bulgaria's veto, demanding that Northern Macedonia recognize the Bulgarian minority and resolve other contentious issues related

to history and language.⁵ Bulgaria's veto also affects Albania, as its path to the European Union is linked to Northern Macedonia, prompting some countries (including Bulgaria) to demand that the two countries be viewed separately in terms of their membership in the European Union.

Serbia and Montenegro's path to the European Union have also slowed down. Montenegro has opened all chapters in accession negotiations but has managed to close only three. Serbia's path largely depends, above all, on resolving disputed issues with Kosovo⁶. For years, Turkey has been a candidate for membership in the European Union only on paper, without any action to resolve disputes that have blocked its path to the EU. However, full membership was never a reasonably realistic and pragmatic goal, as Turkey has always deviated in terms of liberal democracy and civil liberties from the average EU norms⁷.

The rest of the countries, except for Turkey, make up the Western Balkans region. The main feature of this region of countries is that it shares a land border with EU member states on all sides [See: Figure 1].

The war in Ukraine, and fears that it could spread to other countries, prompted some of them to seek urgent accession to the European Union. Thus, Ukrainian President Volodymyr Zelensky first submitted a request for urgent admission of Ukraine to the EU⁸,

⁵ Find out more about this issue at: <https://www.euractiv.com/section/enlargement/interview/bulgarias-veto-hurts-future-of-north-macedonia-diaspora-leader/>

⁶ <https://www.euronews.com/2021/12/14/serbia-a-step-closer-to-eu-membership-but-kosovo-relations-remain-key>

⁷ Kollias, C. (2021) "Turkey's Road to EU Accession: A Bridge Too Far?", [in]: *Journal of Contemporary European Studies*, pp. 1-21.

⁸ <https://www.theguardian.com/world/2022/mar/02/ukraine-bid-fast-track-membership-eu-likely-end-disappointment-zelenskiy>

Figure 1: Western Balkans and the European Union



Source: Eyes on Europe. Available [online]: <https://www.eyes-on-europe.eu/wp-content/uploads/image1-1024x788.png>

Georgia⁹, and Moldova¹⁰ also applied for the EU membership. However, although this is a good time to do so, the question arises as to what extent the EU is ready to accept these countries as members, given that they have not undergone the necessary reform process that is binding on any country aspiring to join the EU¹¹.

⁹ <https://www.dw.com/en/georgia-formally-applies-for-eu-membership/a-61001839>

¹⁰ <https://www.aljazeera.com/news/2022/3/3/moldova-officially-applies-for-eu-membership>

¹¹ According to Transparency International, in 2021, Ukraine ranked 121st out of 180 countries in terms of corruption in the public sector. See: <https://www.transparency.org/en/countries/ukraine>

The possibility of fast-tracking EU membership for Ukraine was also discussed at the Summit held in Versailles on March 10th and 11th. While Estonia, Hungary, Latvia, Lithuania, and Poland supported the option, France, Germany, Spain, and the Netherlands opposed it. French President Emmanuel Macron cited as a reason for France's opposition that it is not possible to open an accession procedure with a country at war. The Latvian Prime Minister, Christianis Karins, said it was important to show a clear, open door for EU membership for Ukraine.

It remains to be seen whether the momentum in which the world finds itself after Russia's attack on Ukraine will lead to a faster

and more flexible enlargement of the EU, for the first time in almost ten years.

BOSNIA AND HERZEGOVINA AND THE EU

One of the main strategic goals of Bosnia and Herzegovina as a country is full membership in the European Union. The process of the state's accession to the EU implies the existence of political consensus, continuous cooperation, and undertaking numerous reforms in society with the aim of successful integration into the EU. The necessary steps make the process long and complex, especially for a country with a very specific political system – a state with three presidents, two entities¹², one district, ten cantons, with over ten prime ministers and over a hundred ministers.¹³

After the General Framework Agreement for Peace in Bosnia and Herzegovina (known as the 'Dayton Agreement') was signed in December 1995, ending the war, the first activities in the process of the state's accession to the European Union began. In 1998, the EU/B&H Consultative Working Group (CTF) was established to provide technical assistance in the areas of administration, regulatory framework, and policy. In the same year, the *Declaration on Special Relations between the EU and B&H* was signed, and it can be said that these were the first steps in the process of B&H's accession to the Union.

In 1999, the Stabilization and Association Process was launched, which gave Bosnia and Herzegovina the opportunity to join the European Union. One year later, in March

¹² The State of Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska.

¹³ Find out more about the complexity of Bosnia and Herzegovina's administrative system at: http://4liberty.eu/wp-content/uploads/2018/05/ADMIR-ČAVALIĆ-_THE-CURIOUS-CASE-OF-DECENTRALIZATION-IN-BOSNIA-AND-HERZEGOVINA.pdf

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THE WAR IN UKRAINE, AND FEARS THAT IT COULD SPREAD TO OTHER COUNTRIES, PROMPTED SOME OF THEM TO SEEK URGENT ACCESSION TO THE EUROPEAN UNION

2000, the EU Roadmap was published by EU Enlargement Commissioner Chris Patten, defining eighteen key conditions that the country must meet to start drafting a Feasibility Study to kick off negotiations on a Stabilization and Association Agreement¹⁴. The actual work on the said Feasibility Study began in March 2003.

At that time, the European Commission handed over to the Council of Ministers of Bosnia and Herzegovina a questionnaire of 346 questions on the economic and political organization of the state and other areas relevant to the Stabilization and Association Agreement. In November 2003, the European Commission adopted an evaluation of the Feasibility Study, which identified sixteen

¹⁴ EU Enlargement Commissioner Chris Patten.

priority areas for reform for the European Commission to recommend to the Council of the European Union to open Stabilization and Association negotiations with B&H.

Negotiations on a Stabilization and Association Agreement were officially launched in November 2005, and, in June 2008, the agreement was signed between Bosnia and Herzegovina and the EU, which entered into force on June 1, 2015. In December 2010, following the fulfillment of 174 technical requirements by the authorities in country, the EU Justice and Home Affairs Council decided to abolish the visa regime for citizens of Bosnia and Herzegovina, allowing them to travel freely to signatory countries of the Schengen Area.

It is important to mention the so-called 'British-German Initiative for B&H' from November 2014. The Initiative addressed the domestic authorities to commit in writing to implement institutional reforms at all levels, and to work with the European Union to develop a reform plan known as the 'Reform Agenda'. The main goal was to accelerate Bosnia and Herzegovina's progress towards EU membership.

On February 15, 2016, Bosnia and Herzegovina submitted a formal application for membership in the European Union. In December, the European Commission handed B&H a questionnaire, which allows the EU to assess a country's readiness to begin the accession process. Almost 1,200 people participated in the preparation of the answers to the questionnaire, and over 20,000 pages of text were prepared, all of which were submitted in February 2018 to the European Commission.

In June 2018, the European Commission submitted to the Council of Ministers an additional 655 questions to be answered to prepare an Opinion on Bosnia and

Herzegovina's application for membership in the European Union. B&H submitted answers in March 2019 (with a five-month delay).

In May 2019, the European Commission issued an Opinion on Bosnia and Herzegovina's application for membership in the European Union. The document identified fourteen key priorities that the country needed to achieve to open EU accession negotiations. It mentioned the need to undertake comprehensive reforms to ensure the stability of institutions that guarantee democracy, the rule of law, human rights, and the protection of minorities.

It was stated that Bosnia and Herzegovina is at an early stage when it comes to the level of readiness to take on the obligations arising from membership in the European Union. In December 2019, the EU Council adopted conclusions on the abovementioned Commission opinion on Bosnia and Herzegovina's application. Accord-

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ing to a May 2021 survey by Transparency International, two years after publishing the European Commission's Opinion, only one of the fourteen priorities had been fully implemented in a way that creates formal preconditions for its fulfillment, while five priorities were partially realized.

When it comes to the public's position on the accession process, the citizens of Bosnia and Herzegovina are mostly in favor of entry into the EU. According to a survey conducted in October 2020 by the Directorate for European Integration¹⁵, which operates as an agent of B&H Council of Ministers, as many as 3/4 of citizens would vote for the country's entry into the EU, and the reasons for this are primarily a guarantee of lasting peace and political stability, and increased freedom of movement for people, goods, and capital.

According to the same research, B&H citizens believe that the EU is interested in Bosnia and Herzegovina becoming a member because of its natural resources and ensuring stability and peace, as well as professional and skilled workers. This is probably a perception based on the current trend of departure of skilled labor. It is estimated that half a million residents left the B&H in nine years,¹⁶ mostly to EU countries for work. This is a lot for a country that, according to the last census from 2013, had 3.5 million inhabitants.

CURRENT CHALLENGES

There are many challenges that Bosnia and Herzegovina face on its path to the EU. First, these reasons are political in nature. According to the European Parliamentary

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THE CITIZENS
OF BOSNIA
AND HERZEGOVINA
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IN FAVOR OF ENTRY
INTO THE EU

Research Service¹⁷, Bosnia and Herzegovina received around EUR 1.19 billion in pre-accession funding between 2007 and 2020. However, according to a 2020 report by the European Commission¹⁸, the commitment of representatives of all levels of government to achieving the EU's strategic goals of integration remained largely declarative, without specifically undertaken activities.

Adopting the European Commission's 2019/2020 report for Bosnia and Herzegovina, the European Parliament sent a clear message welcoming the efforts made so far to become an EU member. However, many more reforms are still needed – especially those that relate to the efficient functioning of independent and accountable democratic institutions, which are contained in the fourteen priorities¹⁹. Bosnia and Herzegovina has also not implemented key economic

¹⁷ <https://cor.europa.eu/en/events/Documents/CIVEX/6th-enlargement-day/Bosnia%20and%20Herzegovina%20-%20Difficult%20path%20towards%20EU%20membership.pdf>

¹⁸ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/bosnia_and_herzegovina_report_2020.pdf

¹⁹ <https://www.slobodnaevropa.org/a/evropski-parlament-usvojio-rezoliciju-o-bih/31324670.html> [in Bosnian]

¹⁵ <http://vpi.ba/en/2021/08/12/bih-citizens-support-for-eu-accession-how-relevant-is-it/>

¹⁶ <https://www.aa.com.tr/ba/balkan/bih-za-devet-godina-napustilo-skoro-pola-miliona-gradana-ljudi-najviše-odlaze-zbog-nestabilne-političke-situacije/2452190> [in Bosnian]

reforms²⁰, leading to modest economic growth of 2-3% per year²¹ during the period of 2015-2020²², which is insufficient in line with the existing development base.

From all the above, it can be concluded that Bosnia and Herzegovina's path to EU membership has been halted for the time being. The situation has been further aggravated by the war in Ukraine and fears that the conflict could spread to the Western Balkans. Therefore, the European Union has sent an additional 500 troops to Bosnia and Herzegovina as a precaution in case of any instability²³.

Some experts believe²⁴ that Vladimir Putin might want to expand the conflict into Bosnia and Herzegovina in a bid to divert the attention of the West from Ukraine. The sending of EUFOR troops to B&H speaks as a precautionary measure. In addition, EUFOR stated that 3,500 reserve forces were on standby and could be deployed at any time²⁵. Apart from soldiers, military equipment was also sent, including armored personnel carriers and unarmored vehicles²⁶.

As announced in early March 2022, French military planes will fly over Bosnia and Herzegovina in order to, according to EUFOR,

²⁰ The text of Reform Agenda for Bosnia and Herzegovina 2015-2018 is available here: <https://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>

²¹ https://www.freiheit.org/sites/default/files/2022-01/rer_qr_2021_bhs.pdf

²² <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BA>

²³ <https://www.aljazeera.com/news/2022/2/24/eu-boosts-bosnia-force-after-russias-invasion-of-ukraine>

²⁴ <https://www.euractiv.com/section/enlargement/opinion/serbias-loyalty-to-putin-threatens-renewed-conflict-in-the-heart-of-europe/>

²⁵ <https://www.klix.ba/vijesti/bih/oklopna-vozila-eufora-pristizu-u-bih-preko-prijelaza-u-bosanskom-samcu/220306059> [in Bosnian]

²⁶ Ibid.

show the EU's commitment to a safe and stable environment in the country²⁷. The Ukrainian crisis could very quickly turn into the Balkan crisis, and the highest price would be paid by Bosnia and Herzegovina as the greatest victim of the wars fought in the 1990s. Russia's ambassador to Bosnia and Herzegovina, Igor Kalbukhov said that the country could suffer the same fate as Ukraine if it decides to join NATO²⁸. Certainly, the increased interest of the European Union in the fate of the country can be beneficial to its European path.

Due to this danger, former high representatives in B&H, Valentin Inzko and Cristian Schwarz Shilling²⁹, addressed the European Commission, demanding that the European Union admit Bosnia and Herzegovina to membership as quickly and unbureaucratically as possible. In their address, the presidents of the European Commission stated that Serbia and Bosnian entity Republic of Srpska did not achieve their goals during the 1990s (the Greater Serbia ideology meaning 'all Serbs living in one state'), and that there is a risk that they could try to achieve that again.

Another reason that is blocking the EU path is the strengthening of nationalist and separatist rhetoric coming from one member of the Presidency of B&H, Milorad Dodik. He openly threatens the sovereignty and territorial integrity as well as the constitutional order and implementation of the Dayton Peace Agreement, which poses a security threat. The UN High Representative for

²⁷ <https://www.klix.ba/vijesti/svijet/francuski-vojni-avioni-u-narednim-danima-obavljat-ce-trenazne-letove-bh-nebom/220305040> [in Bosnian]

²⁸ <https://www.independent.co.uk/news/world/europe/russia-bosnia-herzegovina-ukraine-nato-b2038436.html>

²⁹ <https://www.dw.com/hr/apel-biv%C5%A1ih-visokih-predstavnika-za-brzi-prijam-bih-u-eu/a-60985759> [in Bosnian]

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AS PRESIDENT
VOLODYMYR
ZELENSKY GETS
A STANDING
OVATION
IN THE EUROPEAN
PARLIAMENT,
AND WINS SUPPORT
FOR UKRAINE'S
EU MEMBERSHIP
APPLICATION,
WESTERN BALKAN
WOULD-BE EU
MEMBERS, STUCK
IN THE WAITING
ROOM FOR YEARS,
ARE WONDERING
WHAT THIS MAY
MEAN FOR THEM

Bosnia and Herzegovina, Valentin Inzko, said in May 2021 that Milorad Dodik was pursuing a policy aimed at disintegrating the country. This is why the implementation of the reforms set before B&H for it to become a member of the EU is at a complete standstill.

Political representatives of the Bosniak Serbs blocked the work of state institutions. They want to show that B&H cannot function and exists as an independent and sovereign state. Because of all these actions, many European countries are considering imposing sanctions on Milorad Dodik, his associates, and the companies associated with them³⁰. The U.S. Department of Treasury's Office of Foreign Assets Control imposed sanctions on him in January 2022³¹, and similar decisions are expected in European countries in the coming months.

Although the EU adopted in 2018 a new enlargement strategy for the Balkans, in which it acknowledged a "historic window of opportunity" for binding the six countries that are still not members with the European Union, another challenge is strengthening right-wing movements within the EU that are blocking the progress. Contrarian voices within the EU that seek to slow down – or even stop – enlargement in the Balkans continue to be effective at stopping the efforts of the Balkan countries to advance the process³².

When it comes to B&H, there is another aspect that complicates the accession process. Bosnia and Herzegovina is a predominantly Muslim country, with more of 50% of Muslims living there. These are European Muslims – mostly representatives of the Bosniak nation. Right-wing policies within the EU, such as Orbán's or Janša's do not favor the idea of joining a predominantly Muslim country within the EU. The political arena is riddled with anti-immigration

³⁰ See, for example: <https://hr.n1info.com/english/news/uk-confirm-their-support-for-sanctions-against-bosnian-serb-leader-dodik/>

³¹ More at: <https://home.treasury.gov/news/press-releases/jy0549>

³² <https://www.euractiv.com/section/enlargement/opinion/the-eu-should-resist-moves-to-halt-balkan-enlargement/>

attitudes, which are often presented as xenophobic.

Anti-immigrant extremist attitudes in Europe can be classified as racist, which is confirmed by the fact that 38% of Europeans believe that immigration outside the EU is a bigger problem than an opportunity³³. On the other hand, poll results show that support for EU membership is strongest in Bosnia's Muslim (Bosniak) community (with 97% in favor), followed by 85% of Bosnian Croats, and 78% of Bosnian Serbs³⁴.

Dodik's renewed, purposeful and increased usage of the term 'Muslim' aims to reduce the entire Bosniak people to a religious group only, and portray them as foreigners in Europe. He finds open support from Viktor Orbán, the Prime Minister of Hungary, and Janez Janša, the Prime Minister of Slovenia, two of the most xenophobic and openly vocal anti-Muslim leaders in Europe³⁵. These politicians seem united in what they call the 'defense of Europe,' a familiar line that was often used in the 1990s³⁶.

POTENTIAL SCENARIOS AND ALTERNATIVES

As President Volodymyr Zelensky gets a standing ovation in the European Parliament, and wins support for Ukraine's EU membership application, Western Balkan would-be EU members, stuck in the waiting room for years, are wondering what this may

³³ <https://vpi.ba/en/2021/07/09/epidemic-of-neo-nazism-in-europe/>

³⁴ Brljavac, B. (2011) "Europeanisation Process of Bosnia and Herzegovina: Responsibility of the European Union?", *Balkanologie*, Vol.XIII(1-2).

³⁵ See, for example: <https://www.aljazeera.com/news/2019/2/10/hungarys-orban-vows-defence-of-christian-europe>, and: <https://www.total-slovenia-news.com/politics/2442-jansa-calls-on-european-people-party-s-to-defend-europe-from-cultural-marxism-islam>

³⁶ <https://newlinesmag.com/argument/in-bosnia-the-eastern-question-is-rising-again/>



THERE ARE CURRENTLY THREE SCENARIOS FOR BOSNIA AND HERZEGOVINA IN TERMS OF ITS POSITION IN/TOWARD THE EU

mean for them³⁷. Membership in the European Union should certainly be a priority for Bosnia and Herzegovina and the region. This move will ensure peace and open the opportunity for economic progress, entry into the European Union market, greater freedom of trade in goods and services, and the access to various projects that will ultimately contribute to the country's development. Therefore, the current historical moment should be taken advantage of and, possibly – following the example of Ukraine and Georgia, – the EU should be formally asked to accept B&H as a member due to the security threats that the country is facing. This idea is currently gaining more traction in Bosnia and Herzegovina.

Due to the delay in the process of joining the European Union, the Open Balkans initiative emerged as one of the opportunities for freer trade of goods and services between the Western Balkans and non-EU countries. Serbia, Albania, and North Macedonia

³⁷ <https://balkaninsight.com/2022/03/07/western-balkans-eu-hopes-rise-amid-clamour-of-war/>

already entered several agreements on the introduction of numerous privileges and facilitation in business.

On the other hand, Bosnia and Herzegovina, Kosovo, and Montenegro did not join the initiative for fear that it would strengthen Serbia's influence in the region. If Bosnia and Herzegovina joined the Open Balkans, and if the idea comes to life, the exchange of goods between the countries of the Western Balkans could be intensified. This is the reason why the initiative is called 'Mini Schengen'. Economically, the "Open Balkans" goes beyond the previous CEFTA agreement and offers better integration of the region. Moreover, it also has the support of Western European countries, which have urged Montenegro to join it³⁸.

Another scenario is economic integration with the European Union. Without a clear prospect of enlargement, the countries of the Balkans will remain exposed to the destabilizing forces (nationalism that led to the war in the 1990s with hundreds of thousands of victims). This solution would come in handy to those actors who are already seeking influence over the Balkans – Russia, Turkey, the Arab states, and China are trying to expand their influence across the Balkans, whether covertly, through soft power, or through targeted investments³⁹. Considering that EU accession seems to be still some way for most or all of the Western Balkans, an interim step in economic terms needs to be considered.

However, many fear half measures, and understandably: it can look like second-class membership which could become permanent. Yet, it is certainly better than the *status*

³⁸ <https://balkaninsight.com/2022/01/18/montenegro-being-urged-to-join-risky-open-balkan-initiative-analyst/>

³⁹ <https://ba.boell.org/en/2019/05/23/what-direction-western-balkans-more-right-wing-eu>



EU INTEGRATION IS A GUARANTEE OF PEACE AND SECURITY FOR BOSNIA AND HERZEGOVINA, AND, CONSEQUENTLY, FOR THE ENTIRE WESTERN BALKANS

quo and could provide many of the economic benefits of accession ahead of full membership. This, in turn, might help the region to start bridging the gap in terms of economic development when compared to the European Union and Central and Eastern Europe. This could include fuller integration into the EU single market and customs union, greater access to the EU budget (with the necessary conditionality attached), and more direct EU support for industrial development in the Western Balkans. This, however, implies that a deepening of regional ties is more a consequence of, rather than a prerequisite for, EU accession⁴⁰.

In short, there are currently three scenarios for Bosnia and Herzegovina in terms of its position in/toward the EU: entry of the

⁴⁰ <https://biepag.eu/blog/western-balkan-economic-integration-with-the-eu-time-for-more-ambition/>



BOSNIA AND HERZEGOVINA SHOULD NOT SHY AWAY FROM TEMPORARY SOLUTIONS

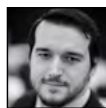
Western Balkans into the European Union as the best way forward, and Open Balkan initiative as well as the economic integration with the EU as temporary or second-best options. Still, each of these alternatives is better than the current stagnation, which is why Bosnia and Herzegovina needs to start on one of these routes soon.

CONCLUSIONS

EU integration is a guarantee of peace and security for Bosnia and Herzegovina, and, consequently, for the entire Western Balkans. This is precisely what the citizens of this country believe, as exemplified above. However, at the moment, the process of accession is at a standstill, mostly due to the inaction of the institutions of Bosnia and Herzegovina and the current political crisis.

Of course, there are certain forces within the European Union that are blocking the accession process – from the current Ukrainian crisis and the consequences for the Western Balkans, through the strengthening of right-wing movements within B&H, but also the EU, with the failure to meet the basic conditions for entry.

At this point, it is extremely important that the accession process continues. At the same time, Bosnia and Herzegovina should not shy away from temporary solutions. These alternative paths could include the Open Balkans initiative or economic integration with the European Union. A common future is the ultimate goal, and so now is the right time to turn it into action



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A Wake-Up Call for the European Union



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MIŁOSZ
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When in 2019 the idea of the Conference on the Future of Europe was announced, there was a lot of optimism – both official and spontaneous. The Conference was supposed to be the cure for Europe’s ills under current political circumstances. It placed citizens at the centre of reform in the European Union. The European Parliament, the Council of Europe, and the European Commission have committed to listening to Europeans and to following up, within their sphere of competences, on the recommendations made.

Discussions have started. Politicians were excited. Liberals from the Renew Group proposed, among others, drafting the European Citizenship Statute, which would outline the existing rights for citizens – such as the right to vote and to stand as a candidate in elections to the European Parliament, and also in municipal elections. It shall ensure as well consular rights, the right of petition, the European Citizens’ Initiative, and freedom of movement. Many interesting ideas were put on the table. Numerous uninteresting ones too.

But citizens were less excited about the process. Most of them have probably never heard about it, and only few – the most determined and dedicated ones – have participated in discussions. Also, experts, even the most pro-European ones, were skeptical about the success of the Conference. Scholars and activists have stressed that EU institutions had no idea about its purpose. Now, in April 2022, shortly before the end of the CoFoE (an acronym recognized only in the Brussels bubble), the organizers are still not sure what they will do with citizens’ recommendations. Original enthusiasm became replaced by increasing doubts. It looked like the answers to the key questions would not be delivered.

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POPULISM
AND REJECTION
OF THE RULE
OF LAW MAKES
EUROPE MORE VULNERABLE
TOWARDS
EXTERNAL THREATS

Then, on February 24, 2022, everything changed. Russia, unprovoked, brutally attacked independent Ukraine. A war in Europe has ensued. A brutal, inhumane war that after a month has cost lives of thousands innocent civilians. The Russian invasion was a tragic wake-up call for Europe. No institution and no leader can now avoid serious discussion about the future of Europe. The time of *business as usual* and thinking only about better comfort are gone. European citizens – definitely those in Central and Eastern Europe – understand that we must act not only to protect our democracies and rights, but also to defend our freedom and independence. The discussion about the future of Europe has truly begun, and the voices coming from the CEE region are and will be heard.

This discussion will cover many topics, and some of them are not that obvious. It must start with a debate about the general structure of the European Union. Liberals have a clear view of the European integration being the only way to ensure peace and security on the continent. We can clearly see that a federal dream is not over yet. There

are many arguments in favor of a federal structure of the EU, but the label is not the most important. What matters is building a European Union that works, is efficient, and can protect its interests. An EU that can guarantee its own democracy and promote it in other countries. It is evident that more bureaucracy is something that nobody wants, but strong institutions that respect European values are necessary to protect our values.

In this context, it became more obvious than ever that all alternative visions of Europe, presented by corrupted autocrats and Putin-admirers, are not only foolish, but also extremely dangerous. Populism and rejection of the rule of law makes Europe more vulnerable towards external threats. Therefore, if a member of the European Council calls the president of the country invaded by Putin's Russia 'an enemy', he should be immediately pushed out of the European family. By tolerating such a person and his methods we allow the whole of Europe to drift away toward an illiberal future.

Foreign relations and security policy will see probably the most visible changes, as they will happen before our very eyes, as an immediate response to Putin's actions. A European army, discussed for so many years and mocked by numerous politicians, can become a reality. Germany has already announced that it will dramatically increase its defense, and other countries will follow. Neutral states are discussing what their status really means these days and how to protect their citizens. The EU can be born as a military player. Eurocorps could be expanded to the size of a true corps and entered into the EU's Common Defense and Security Policy. Permanent Structured Cooperation (PESCO) could be developed. European strategic autonomy may be developed in close cooperation with the United States, for the benefit of both sides of the Atlantic.

The current situation forces us to consider EU enlargement. A fast-track membership for Ukraine – so divisive even among liberal leaders – may sound merely symbolic when the country is at war, but it will have to be addressed directly after the invasion ends. Similarly, there is still the question of Georgia and Moldova, the two states which asked to become members when faced with Russian aggression. All this has been happening in the face of European ambitions of the Western Balkans and, eventually, some states may lose their patience with the EU's undelivered promises and immediately fall into Russian (or other) arms.

The Russian invasion of Ukraine is a wake-up call for all European decision makers. A frighteningly loud alarm that must wake Europe up immediately, if it wants to survive – literally. European leaders lost any excuses to remain passive. A real Conference on the Future of Europe is now needed like never before. Europe must get stronger.

What does it mean? The European Union needs better integration, more democracy and freedom, less susceptibility to external blackmail, and no tolerance for those who violate common values. Changes should embrace areas from security and foreign affairs to employment and culture. It is high time to reform the EU, a moment for courageous visionaries who can listen to the voice of a European demos. A demos which is currently being born.

Хай живе вільна Україна у спільний Європі!



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ESZTER NOVA
THE FUTURE OF THE EU: STRONG OR WEAK EUROPE?

PAGE 004

The absence of redistributive values from the list of EU citizens' most perceived advantages of EU membership is proof that the interests of the elites and the populations do not align perfectly, not even in liberal democracies.

TANJA PORČNIK
THE VALUE OF CONSTITUTIONALISM IN THE EUROPEAN UNION

PAGE 018

Constitutional constraints have been contested in the European Union in the recent decade. These actions by political actors in member states were not a mistake rooted in the lack of understanding of constitutional values, but rather a deliberate, methodical attack on constitutionalism for political gains.

TOMASZ KAMIŃSKI
DON'T LOOK AT TRUMP: THE EU NEEDS STRATEGIC AUTONOMY

PAGE 034

For many years, the European Union has been unable to act as geopolitical player, being rather the rule-making factory not set up to deal with sudden events. In the last few years, however, forced by various crises it had to confront, the new European politics has emerged, and visible efforts to build the strategic autonomy are the best evidence of this profound metamorphosis.

ZSOLT NAGY
THE WHY AND HOW: A LIBERAL AND DEMOCRATIC FUTURE OF THE EUROPEAN UNION

PAGE 048

The current system of the EU is built on national politics, international relations, and bureaucracy, with democracy being only a small part of the overall idea.

JÁNOS KÁRPÁTI
PUTIN'S UNINTENTIONAL CONTRIBUTION TO A FEDERAL EUROPE

PAGE 082

Even without the Russian invasion of Ukraine, the European landscape did not offer too many chances for Euroscepticism, mainly because there exists no clear and comprehensive alternative vision to the integration efforts. Different Eurosceptic players cannot agree exactly on what kind of 'Brussels centralization' they should fight against.

ZUMRUD PASHKIN
EUROPEAN SECURITY: IS THE EUROPEAN ARMY A FANTASY OR IS IT NECESSARY FOR SURVIVAL?

PAGE 098

Considering global developments, a more militarized European future is unavoidable. Defense spending is increasing globally, and Europe shall not lag behind.

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