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ARTICLES





Bogdan Góralczyk★

New Division Lines in the European Union: How to Cope with Them?

Abstract

The situation in the European Union (the EU) is undergoing in recent years a very dynamic, if not dramatic, change. During the process current liberal mainstream has found itself under growing pressure of many anti-establishment forces, mainly of far-right, more and more frequently described as (what depend from the perspective of the analysis) as “counter-revolutionary” or “revolutionary change”. What are the reasons of those deep social and political controversies in the EU and what they can produce? Author of this study is coming to conclusion, that multiple crises need creative thinking. It is already more than obvious that Europe now is facing many complicated problems to be resolved. Especially by those, who are concerned about the future of the EU and its member states. Because, if they will not find a solution, their “populist” and “nationalist” opponents will prevail.

Key words: the European Union: Crises, Axiology, Integration, Disintegration, Right-Wing Forces, Liberalism, Illiberalism, Eurosceptic

Foreword: At the Crossroads

The European Union (EU) in recent years has been undergoing dramatic change. At least since 2005, when the citizens of France and Netherlands rejected the Treaty establishing a Constitution for Europe (or Constitutional Treaty) the EU institutions and leaders have lost their guidance and blueprint. The former vision of supranationality and federation,

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or even a United States of Europe, according to the neofunctional theory of international relations (Ernst Haas, Leon Lindberg) lost its attractiveness to many participants of the European integration process.

Then came the deep economic crisis of 2008, increasing the dissatisfaction of most social strata. It was expressed mostly by the younger generation, with a high degree of unemployment, but also the middle class, unhappy that their previous social achievements and guarantees were endangered. Finally, in 2014 and 2015, the Europeans (or the EU member states), suddenly discovered that their external security (due to the crisis in Ukraine, combined with the rise of ISIS/Daesh in different parts of the world) is no longer guaranteed. Further, the massive big wave of more than one million migrants from outside (mostly Muslims) next year has also proved that our internal or domestic security is now undermined. Suddenly, the Europeans living peacefully, “like donuts in butter”, for so many decades, discovered a kind of ring of fire on their external borders and started to feel insecure at the domestic scene. In effect, the famous motto of 1990’s and later, “it’s the economy, stupid”, has to be replaced by another one: “it’s the security, stupid”. Unexpectedly, refugees, migrants, terrorist attacks, and multi-ethnicity came to the fore in public discourse, instead of the former constant optimism of European progress.

The issues mentioned above are the major factors beyond the current problems visible in the EU. However, there are many more reasons for social tensions, public dissatisfaction, or even a clash of different values under the pressure of events. Some observers, like Jan Zielonka, see it as a “counterrevolution” and “decline of liberal order” in Europe, others, like Ivan Krastev, are describing it as an “illiberal revolution”;¹ some (William Drozdiak) see Europe as a “fractured continent”, while many, mostly economists (Thomas Piketty, Joseph Stiglitz, Branko Milanovic), define the major reasons of current discontent in the previous absolute domination of the markets (or even “market fundamentalism”) of the neoliberal school. According to them, as a result we have another phenomenon, wage and wealth inequality (both between the states and social strata inside of them). Thus, another issue emerged on the European agenda: differentiation (of all kinds, which will be explained later in this text).

What is obvious is that the events in the recent decade or so in the EU and its external neighborhood have proved that the European elites were mostly dreaming of a bright future, neglecting some fundamental issues and values, first of all, the creation of common, all-European identity (never created), the sense of social cohesion, and solidarity or guarantees

¹ I. Krastev, *Eastern Europe’s Illiberal Revolution*, <https://www.foreignaffairs.com/articles/hungary/2018-04-16/eastern-europes-illiberal-revolution> (10.06.2018).

for external security. The multiple crises after 2005 once again confirmed the original sin of the European project, which is the concept of the elites, where societies were left behind.

Thus, when in 2005 public opinion (in France and Netherlands in this case) was finally asked to express its will, it produced a surprise, if not a shock for the ruling elites. Since then, step by step, not only the European institutions and liberal governments, attached to the Copenhagen Criteria of the liberal order, market economy and rule of law, have found themselves to be under growing pressure. Since then we could observe more and more clashes and on this track, so soon even the fundamental system of values and fundamental requirements of checks and balances has been put under a question mark. Almost day by day and month by month a counterproposal to the current official policy line was created by politicians, sometimes new, sometimes wearing new feathers. They claim they have new proposals and vision, but according to the liberal elites, we have another new phenomenon: an upsurge of “populist” and “nationalist” forces, ready to change not only the current ruling elites, but also the value system. Why that is so?

New Division Lines in the Wake of Several Consecutive Pro-National Impulse

It seems that we are observing in recent years in the EU a certain sequence of events, which broadly can be described as “pro-national impulses”. It looks that each consecutive episode is giving more and more to say to the social and political forces (also parties), mostly from the right, or even extreme-right part of the scene (less frequently from the left) to demand intergovernmental instead of supranational cooperation and integration. Instead of earlier promoted values of federalism, solidarity and – at least verbally – European identity, step by step new values and demands were put on the agenda: to “return to sovereignty,” to fight for “national interests,” to have its own identity. Those are the countermeasures and new (rather old by content) concepts towards previous federal and supranational mantra.

In effect, we can observe some New Division Lines on the European continent, created by the following sequence of events, when each of them was giving another impulse for national, nationalistic or even native force to rise:

- Lack of vision and strategic confusion of the elites in the wake of the French and Dutch national referenda of 2005. For the first time we could observe a spark of revolt against the ruling elites and the emergence of

social movements and political forces openly undermining previous institutional foundations and the obligatory norms of the liberal order. It was the first pro-national impulse.

- Social and economic divisions as a result of the deep economic crisis of 2008, which came to the EU from the US after a short time, and originally were identified with Grexit, that is, the deep economic crisis and high indebtedness of Greece, with the dangerous scenario of leaving the Eurozone, or even the EU by this country. Simultaneously it was also identified with the economic problems of almost all countries of the Mediterranean, colorfully described as PIGS (Portugal, Italy, Greece and Spain, but Cyprus also can easily be included here, if not France). It was the second pro-national impulse, which, unfortunately, later went so far to create another division, between the creditors and debtors. The latter put on the agenda another important issue, that of “German hegemony” within the EU. Thus, the next division line was created on the continent, on the North – South axis, with social and economic inequalities, and disparities in its background, leading towards open dispute and contention, if not feud along this line.

- External and Internal security crisis. The first one is strictly linked to the problems in Ukraine, which started in autumn 2013 and led not only towards internal upheaval, but also the forced annexation of Crimea by Russia (March 2014) and later to occupation and open conflict in the region of Donbas (unfortunately, still on the agenda until today). Thus, the Eastern border of the EU (and NATO) was put on fire. Further, in the same year of 2014 another issue emerged as dangerous for Europe (and the world), that is the emergence of so called Muslim state of ISIS/Daesh with its brutal impact and behavior. Constant conflict linked to ISIS’s appearance, combined with domestic war in Syria and destabilization of Iraq, produced, as is well known, another challenge for the EU and its member states, which is an unprecedented wave of migrants which came to Europe, mainly from the Middle East, but also Africa and partially Asia in 2015. It almost immediately produced the second, internal security crisis, as well as further controversies among the ruling European elites. As is known, Chancellor Angela Merkel came out with her *Willkommen Politik*, which clashed with another approach, promoted by Hungarian Prime Minister Viktor Orbán, in power, almost uncontested on domestic scene, since spring 2010. It was he who decided to bring back to Europe the walls and barbed wires. And later, when the European Commission came out with an idea of quotas for the member states to absorb the refugees and migrants coming to the continent, not only Budapest, but also Visegrad Group (V-4) countries (Czechia – the Czech Republic, Poland and Slova-

kia) openly refused to adjust to this decision. In response, in wide Western European political elites and even wider media coverage, especially in Germany, the V-4 countries started to be described as a “gathering of renegades” or “doubtful member states”. Thus, the so well-known and so badly remembered East – West axis has unfortunately re-appeared on the continent. Meanwhile, both external and internal security crises gave as a result the third and fourth pro-national impulses, probably the strongest one could imagine, with the biggest impact on events to come. How strong and important was this “refugee factor”, was seen perfectly well in several following elections in the EU member states, which in some cases, like Austria, Czechia, Italy and Slovenia, brought about the same kind of anti-migration governments as in Budapest. No surprise then, that Austrian Chancellor Sebastian Kurz has come up with the idea of “anti-migrant coalition of willing,” or even an “axis” of Rome – Vienna and Berlin.² The latter came to this agenda due to Orbán’s old friend, Horst Seehofer of Bavaria, who became the new interior minister in re-created German Grand Coalition and is constantly threatening to implement his anti-migration platform without Chancellor’s Merkel approval. The situation in Germany is so dynamic at this writing that the media is openly afraid of undermining the stability of the government in Berlin, not even excluding the dramatic scenario of bringing down the Coalition, which could put Mrs. Merkel’s rule even further in doubt.³

• When migrants and refugees, in some cases equalized with a danger of terrorist attacks, which took place at that time in Europe,⁴ were already dominating the public sphere, the year of 2016 has brought about another unexpected (by ruling elites) event: the British referendum on Brexit with the decision to leave the Union. This popular vote in the UK, instigated by Nigel Farage and his (at that time) United Kingdom Independence Party, UKIP, has shown the world public not only a new charismatic leader, who is ready to fight against the establishment, but especially that he and his like are supported by a political force ready to change the system. Among many new features exposed by Brexit, it is easy to detect many

² V. Golod, *Austria’s Kurz wants ‘axis of willing against illegal immigration*, <https://www.politico.eu/article/austrias-sebastian-kurz-wants-axis-of-willing-against-illegal-migration/> (15.06.2018).

³ J. Delcker, *Bavaria’s man in Berlin pushes Merkel to brink*, <https://www.politico.eu/article/horst-seehofer-bavarias-man-in-berlin-pushes-angela-merkel-to-brink-on-migration-policy/> (15.06.2018).

⁴ See their description until the mid of 2017: A. Foster, *Terror attacks timeline: From Paris and Brussels terror to most recent attacks in Europe*, <https://www.express.co.uk/news/world/693421/Terror-attacks-timeline-France-Brussels-Europe-ISIS-killings-Germany-dates-terrorism> (15.06.2018).

new domestic dividing lines: for instance between England and Scotland, major cities and provincial ones, better and less educated parts of society. Simultaneously all of this is combined with mixed feelings and in some section of society with strong distrust towards the migrants (not only Muslims, but also those from Central and Eastern Europe, mainly Poland, who arrived on the island after 2004 enlargement of the EU). This way the previous slogan of “ever closer Union” has to be replaced by another one: “ever looser Union”. What is worse, the previous uninterrupted integration process for the first time ever was replaced by another option: disintegration. It was the fifth pro-national impulse, with a clear-cut message: national interests are more important than regional or continental.

• Then came the year 2017 when once again the US, as in 2008 has produced another factor with special meaning to the EU: election of anti-establishment Donald Trump as the American president. He came out with his strong anti-immigration and national agenda, encapsulated by the loud slogan: *America First*. As president, Donald Trump invigorated not only a farewell to already advanced process of creating TTIP (Transatlantic Trade and Investment Partnership) with the EU, but also created some real disruptions in relations with the Community (with Germany especially) and also other G-7 member states.⁵ “The Trump factor” has produced a big split in the transatlantic relationship, until now treated in Europe as the cornerstone of its security. Former high-ranking Clinton administration official Strobe Talbot is harsh with his judgments: Trump “is the democratic world’s worst nightmare. He has crippled NATO, the North Atlantic community, the European Union and now the G7. In Putin’s zero-sum worldview, that is a dream come true”.⁶ In effect, in the EU once again the security factor emerged as crucial on the agenda. For the Europeans it was the sixth pro-national impulse with another very important message to all nationalistic forces everywhere: even the United States of America, the cradle of liberal democracy and the neoliberal course in economy has rejected them, why shouldn’t we?

• Finally parliamentary elections in Italy in spring 2018 have produced another shock wave in the European elites. Mark Leonard, the head of the European Council of Foreign Relations, is probably right, when he writes: “An Italian government combining two very different strands of populism will pose a serious threat to the European project, because it could form the core of a new federation of populists and Euroskeptics that

⁵ S. Talbott, *Trump just ruined G7. Now what*, <https://www.politico.eu/article/trump-just-blew-up-the-g7-now-what/> (12.06.2018).

⁶ *Ibidem*.

have hitherto operated separately”.⁷ However, there is even something deeper than that. After Hungary with Mr. Orbán since 2010 and Poland ruled (from the back seat) by its “strongman” Jarosław Kaczyński since late 2015, some other countries followed their “populist” and “nationalist” footsteps: Czechia and Austria in late 2017 and Italy with Slovenia in the first half of 2018. Thus, we have not only the populism which reached Rome, as the influential Foreign Affairs magazine has observed,⁸ but we have also a group of countries openly Euroskeptic and national by content. As a result yet another division line has appeared in the EU: between federalists and inter-governmental cooperation proponents, as well as liberals versus illiberal forces. Since then, not only commercial or trade and economic issues were under dispute, but also the political systems, institutional frameworks, and the system of values. Thus the final, until now, pro-national impulse has come to the fore.

• All episode, incidents or occurrences described above lead us to probably the major and most important division lines as we can detect in the EU now: on the domestic scene of every EU member state (to a different extent), where liberals are fighting with “illiberal” forces (mostly right-wing conservatives), proponents of federalism with believers in inter-governmental cooperation, rich versus poor, educated versus less educated, Christian versus non-Christian, citizens of big cities with countrymen, etc. Due to this upheaval, a whole palette of new leaders has emerged, openly contesting the current elites. To mention just the most important, emblematic ones: Beppe Grillo and Matteo Salvini in Italy, Viktor Orbán in Hungary, Jarosław Kaczyński in Poland, Hans-Christian Strache, Sebastian Kurz, and Norbert Hofer in Austria, Nigel Farage in the UK, Marine Le Pen in France, Timo Soini in Finland, Geert Wilders in Netherlands, Andrej Babiš and Tomio Okamura in Czechia, Andrej Danko in Slovakia, Janez Janša in Slovenia. Of course, the line is much longer than that. However, what has to be said in this respect: all of them are strong, charismatic leaders: sometimes even in their governments and countries, but without exclusion in their political movements or parties. Thus we have another list, which seems to be as rich and colorful as a rainbow. Some of them are already ruling in their particular countries: Five Stars (leftist) and Northern League (right wing) in Italy (ruling since June 2018), Fidesz in Hungary (since May 2010), Law and Justice (PiS in its

⁷ M. Leonard, *Will Italy's Populists Upend Europe?*, <https://www.project-syndicate.org/commentary/italy-five-star-league-government-by-mark-leonard-2018-05> (10.06.2018).

⁸ E. Jones, *Italy's Revolt Against the EU*, <https://www.foreignaffairs.com/articles/italy/2018-05-24/italys-revolt-against-eu> (10.06.2018).

Polish abbreviation, since November 2015) in Poland, ANO in Czechia and Freedom Party and Austrian People's Party in Austria (since Fall 2017), and the Slovenian Democratic Party since June 2018. We also have those, who had or have an enormous or at least an important role in the political landscapes of their particular countries, like United Kingdom Independence Party, National Front (recently National Union) in France, the Finns Party in Finland, Sweden Democrats, People's Party in Denmark, Vlaams Belang (Flemish Interest) in Belgium, the Party for Freedom in Netherlands, Freedom and Direct Democracy in Czechia, Slovak National Party or Slovenian Democratic Party. Only few, like Five Stars in Italy, Syriza in Greece or Podemos in Spain, are left-oriented. All the others are right-wing or extreme-right political groupings, sharing the same anti-immigration platform, doubtful in the shape of the European integration process, ready to fight for sovereignty and national interest. Following the footsteps of Donald Trump they are constantly ready to shout in big public meetings or rallies: Italy, Hungary, Slovakia, or Slovenia – first.

What Is the Future?

Observing the current European scene in the middle of 2018, one thing seems to be more than obvious: nothing can be resolved within the EU and Eurozone without German involvement and engagement. To combat this “German hegemony,” which obviously has grown also due to the Brexit and recent domination of Italian domestic scene by Euroskeptical forces, probably the only good scenario for their Euro-enthusiastic opponents is re-creation of the (so effective for so long) Berlin – Paris axis, especially after the double win (presidential and parliamentary) of Emmanuel Macron in France in 2017. It is even more relevant because the new French president has exposed himself as a strong believer in European integration in its liberal and open form, as it was known for decades.

Probably an even better concept for whole of Europe would be the reemergence of Weimar Triangle, of Germany, France and Poland, unifying major forces of “old” and “new” Europe (to use Donald Rumsfeld's famous formula from the beginning of this century).⁹ However, the current strongly Euroskeptical authorities in Poland, engaged in open debate with Brussels on the rule of law and legal overhaul, and after triggering infringement proceedings by the European Commission of art. 7.1. of

⁹ *US: Rumsfeld's “Old” and “New” Europe Touches on Uneasy Divide*, Radio Free Europe – Radio Liberty, January 24, 2003, <https://www.rferl.org/a/1102012.html> (10.06.2018).

the EU Treaty,¹⁰ are not ready to reinvigorate this triangular cooperation, initially instigated, by the way, by Warsaw. Especially that after the year of sometimes passionate, and not only legal, debate, in June 2018 the Commission has triggered a second step, that is a disciplinary hearing on the rule of law in the country (another candidate for this procedure is Hungary).

It is a pity, because the new, or rather after a long debate reincarnated, Grand Coalition in Germany has declared in its program readiness to re-invent the Weimar Triangle. This is important statement, as Germany and France seem to have different opinions what to do next, under the pressure of so many challenges and direct threats towards the dominant (until now) liberal order. Germany, and Chancellor Merkel herself are openly stating that they would like to have a “multi-speed Europe” scenario, which means: we want as many participants of the integration process, even including the Western Balkans, to keep the continent under the same umbrella and system of values. It is in German best interests as well, as the borders of Poland and Czechia are so close to Germany’s center and capital city.

Emmanuel Macron, on the other hand, is sympathetic to an old French idea of “concentric circles,” where there is of course a hard core inside. The problem is not only who belongs to it (Eurozone, initial six “forefathers” of integration, or even a “Versaille Four” of France, Germany, Italy and Spain – and how to get it with the current Italian government?), but also that it almost automatically creates some other division lines, among the core or center and periphery, with some countries in the Eastern part of the continent or Mediterranean basin as obvious candidates for a “second category” of membership, if not outcasts immediately.

On the other hand, the major problems with all the proposals given by such diversified national forces in the EU now is their unilateralism. In their vocabulary and value system, national interests obviously prevail, with solidarity and collective identity overshadowed by “sovereign state rights”. Unfortunately, these kinds of narrow minded programs, full of particular interests and egoistic instincts, create nothing else than a European continent divided and fragmented or fractured, if not split. As such, the EU is not a candidate for a major power-center anymore, even in the meaning of its strengths until now, such as its pioneering nature in normative or institutional framework or soft power hub status.

¹⁰ Initiation of the process: <http://www.thenews.pl/1/10/Artykul/318027,EU-launching-proceedings-against-Poland-over-legal-overhaul>. Current state of affairs at the time of writing this text: D.M. Herszenhorn, J. Barigazzi, M. De La Baume, *Poland will face disciplinary hearing on rule-of-law dispute with EU*, <https://www.politico.eu/article/poland-rule-of-law-will-face-disciplinary-hearing-on-with-eu/> (15.06.2018).

In these circumstances, for all the other power centers, from the US, through Russia to China, the EU presents an open invitation to again impose a (in)famous divide and rule formula. It is more than obvious that especially in the current globalized era of strictly united markets, and of multiple links among the people, Europe can be strong and effective only as a united force, not fragmented into several smaller or larger nation states, loosely linked by their intergovernmental cooperation. The EU is in crisis, but its need to be re-invented, as soon as possible, is obvious.

What is to be done, however? Even for this simple question, we have no one approach. Once again liberal elites are clashing with illiberal forces, each of them producing their own proposals and solutions. Liberals are still ready to fight for an open continent, ready to accept foreigners, which was confirmed by Chancellor Merkel's words: "I consider illegal immigration to be one of the biggest challenges for the European Union and think that we therefore should not act unilaterally, without consultation and at the expense of third parties".¹¹ Her opponents, however, in Bavaria and elsewhere, are ready to act exactly unilaterally, to close the frontiers and their domestic scene (just to have it for themselves), and to stage a showdown with "those ugly liberals," ready to fight a "rotten democracy" and "decadent life-style," as it goes in their rich and colorful vocabulary.

If liberal forces want to prevail and not to give power to their vocal and ever-stronger opponents, probably the first thing they should do is to come back to *demos*, to the people, so deeply disappointed and ready to support new charismatic leaders, promising anything, any miracle and short-cuts just to achieve their particular goals, starting from money and power (prime minister Andrej Babiš is the second richest man in his country, he is also accused of alleged frauds of stemming from misuse of EU sources; one of Hungarian authors, Bálint Magyar, describes the new regime in his country as "post-communist mafia state").¹²

Yes, we can arrange a regime change, but it doesn't mean better than before. The case of Hungary and Poland, until Italy's new appearance the most spectacular cases of the triumph of "illiberal regimes," only confirms that what is going on under this "counterrevolutionary" umbrella, is mainly the a change of elites, with the new one already corrupted or un-transparent at the very beginning. What the new regimes produce, is not necessarily better governance, since the rule of law is frequently un-

¹¹ M. Karnitschnig, *Angela Merkel's political near-death experience in Bavarian brawl*, <https://www.politico.eu/article/angela-merkels-battle-with-bavaria-refugees-migration-masterplan/> (15.06.2018).

¹² B. Magyar, *Post-Communist Mafia State: The Case of Hungary*, Budapest 2016.

dermined or replaced by the rule by law of one party, or its leader. At the same time the new state media is not public, but partial and ideologically biased, the budget and decision making process is highly centralized, and checks and balances replaced by charismatic leaders and the principle of one man rule. Is that what we want on the whole continent?

Europe should be a continent of inclusive politics, of moderate (not without borders) tolerance, and not another example of power politics (of Donald Trump on the one hand, or some famous autocrats, starting from Vladimir Putin or Recep Tayyip Erdoğan on the other). Once again, we need equal – political, social, economic – rights for all, with a social safety net, and public pension, education and health systems as countermeasures to the previous domination of markets and the private sector. Yes, liberals must sound partially like social-democrats if they want to survive in power under the new wave of populism.

Simultaneously, liberal forces, not so good in their self-criticism, have to say one thing openly: after the previous domination of “market fundamentalism” and the private sector, which were promoting mostly the rich, and what is proved in rather wide literature already, it is time to come back to some traditional European strong points, like public values overwhelming individual egoism and narrow interpretations. Thirdly, social justice must be back on the agenda as soon as possible. At the same time, liberal elites cannot retreat from some of their fundamental principles, and especially those concerning freedoms, instead of coercion, centralization and narrow nationalism.

Without that effort, without self-examination of liberal mainstream, the European scene soon would be or even will be soon dominated by real populists and demagogues, centralizing their power, dismantling the separation of powers into strong domination of the executive branch, and explaining all current problems in narrow nationalist terms, blaming for troubles and problems all the others (refugees, migrants, Islamic terrorists, foreign powers, or even colonial centers, starting from Brussels, not Moscow).¹³

Mitchell A. Orenstein is absolutely right, coming to this conclusion: “Those who care about democracy in Poland, Hungary, and elsewhere in Europe and beyond should acknowledge that many voters are buying into the nationalist right’s vision of a social state that advances national priorities, cares for the poor, and supports families. Liberal democrats cannot out-xenophobe the nationalist right. But they can and should slip their

¹³ As prime minister V. Orbán has done in a public speech in March 2012, claiming: “Nem leszünk gyarmat” (We will not be a colony again), https://www.youtube.com/watch?v=B_yVAobI2d0 (in Hungarian, 12.06.2018).

own ideological blinders and learn a thing or two from their adversaries about policies that work for the people”.¹⁴

The EU and its institutions have two major exams in front of them: the finalization of Brexit negotiations and process, with the UK as a first piece of disintegration on the European landscape, followed by the next elections to the European Parliament in May 2019. As of now it has some 220 out of 751 parliamentarians which qualify themselves as Euroskeptics. How many of them we will have afterwards? It is a game of highest possible stakes, no doubt about it. Instead of sharing values and interests, the divided EU (also the G-7), as described in this study, is producing a gathering of clashes and open disputes. Each side, liberal and anti-liberal, is accusing each other of producing “false statements”. Can the EU survive this polarization?

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¹⁴ <https://www.project-syndicate.org/commentary/socialism-and-populism-in-poland-by-mitchell-a--orenstein-2018-06> (15.06.2018).

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The EU's Common Trade Policy: Implementation of the Concept of Sustainable Development and Free Trade in the Era of De-Globalization Processes?

Abstract

The purpose of the article is to show the importance of the European Union's common commercial policy in implementing the concept of sustainable development. The article uses the qualitative and quantitative method, analysis of Polish and foreign literature and analysis of a number of free trade agreements, signed or negotiated in the form of free trade zones and the system of customs preferences (GSP).

The analysis concerns EU trade relations in the context of the implementation of sustainable development assumptions. In the new generation trade agreements, economic growth is served by the use of both the idea of free trade and sustainable development.

The starting point for the analysis is the discussion of the promotion of the idea of sustainable development by the European Union based on accepted liberal solutions in the common EU trade policy, currently used in the period of weak development of international trade. The second point discusses the European Union's strategy in the common trade policy, developed on the basis of UN resolutions on sustainable economic development. The third point examines the issue of problems in achieving the goals of sustainable economic development in the case of developing countries.

Key words: Free Trade, Sustainable Development, Common Trade Policy, Trade Agreements, System of Customs Preferences

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Introduction

The European Union is, next to the United States and China, one of the largest trading partners in the world. In terms of the cumulative nominal value of exports and imports, it ranks first, which shows that it is one of the most open and externally oriented economies in the world. The strength of the EU economy is largely due to the fact that it is the world's largest area that guarantees free movement of goods, services, capital and people. The basic instrument for strengthening its position in international trade is the common commercial policy, which enables the benefits of trade to be obtained, in particular during recession and marginal economic recovery on a global scale. The importance of the European Union in shaping sustainable economic development and measures for free trade, taking into account the common commercial policy, results mainly from the most important EU Member States', such as Germany, France, Italy and until now Great Britain, position in international trade. Economic development issues were included in the common EU trade policy in the 1970s only pertaining to commercial relations with African, Caribbean and Pacific states due to economic connections in the colonial past. It was not until the first decades of the 21st century that the issue of development was expanded on the basis of the Millennium Development Goals, and now the Sustainable Development Goals, adopted by the United Nations Agenda (Agenda 2030) and included in common trade policy in EU trade agreements with third countries. These goals allow for the pursuit of economic interests in Africa, creating consumer purchasing power in African countries for potential exports from the European Union. At present, the continent of Africa is of interest for political and economic reasons to the United States, China, India and Canada.

The general provisions of the Treaty on the Functioning of the European Union of 2009 recognized that the implementation of economic policies requires the promotion of sustainable development, in particular requirements regarding environmental protection (Article 11 of the TFEU).

After the Lisbon Treaty came into force, the decision making process in adopting the tools of the common trade policy changed and the role of the European Parliament in negotiating trade agreements has increased.

In relations with developed countries, implementation of the assumptions of sustainable development under the conditions of free trade within free trade zones will allow for achieving economic benefits, in particular during the period of small-scale development of international trade. In the

case of developing countries, trade liberalization is not sufficient to benefit from the elimination or reduction of trade barriers, and development assistance is necessary, including industrial development, development and modernization of their economies' infrastructure and environmental protection. Taking into account the postulates of developing countries themselves in the field of development assistance, the EU has been participating extensively in aid programs for developing countries for many years. The European Union is one of the most important entities providing development assistance to developing countries under ODA (Official Development Assistance).

The article aims to show the importance of the European Union's common commercial policy in implementing the concept of sustainable development. The article uses a qualitative and quantitative method, analysis of Polish and foreign literature and analysis of a number of free trade agreements, signed or negotiated in the form of free trade zones and the system of customs preferences (GSP).

Common Commercial Policy of the European Union – Promotion of Sustainable Development and Liberal Ideas

The common commercial policy of the European Union in the 21st century was based on the idea of free trade synchronized with the Millennium Development Goals and now with the Balanced Development Goals. While the concept of free trade is widespread in economic literature, the definition of sustainable economic development is not clear. The concept of sustainable development spread in the second half of the twentieth century, while the implementation of the principles of sustainable development under the aegis of the United Nations fell on the period of a global economic crisis, when as a result of, among others, anti-crisis actions taken by the states as part of their economic policy in subsequent years, deglobalization processes took place in international trade. In 2016, the annual growth rate of international trade amounted to only 1.3% compared to 2.6% in 2015.¹ When deglobalization processes took place, there was no pressure on European Union institutions to tighten restrictions on access to the EU market. The processes of deglobalization in international trade and the lack of progress in trade liberalization at multilateral level in the WTO have led the EU to intensify its actions to conclude bilateral trade agreements on a much wider scale than ever before in seeking more

¹ World Trade Organization, *World Trade Statistical Review 2017*, Geneva 2017, s. 18.

and more export markets from the EU and maintaining the idea of free trade in the EU commercial policy.

At the end of the second decade of the 21st century, these agreements contain provisions for the implementation of the common commercial policy based on the principle of the EU's responsibility for sustainable development.

Since the adoption of the Millennium Development Goals in 2000, trade agreements negotiated by the EU with third countries in all geographical directions relate to the liberalization of trade within the customs union, free trade areas, trade preferences, economic growth of the parties to contracts, while respecting the standards of protection environment and workers' rights. The European Union decided on a policy of liberalizing trade with the most important trading partners (Figure 1). The EU has negotiated a free-trade agreement with the United States as part of the Transatlantic Trade and Investment Partnership (TTIP) and Japan, with whom negotiations on the creation of a free trade area have been concluded in 2017. The European Union intends to extend the agreement on cooperation with the European Free Trade Association (EFTA) to include the issues of liberalization of agricultural trade within the European Economic Area.

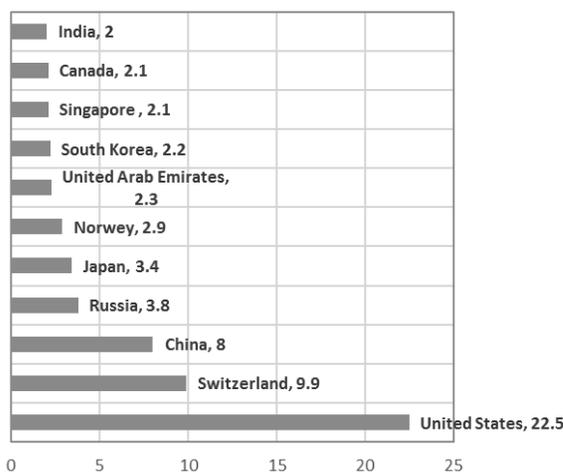


Figure 1. The European Union's main trade partners in 2017 as regards trade in goods and services (in %)

Source: European Commission, DG Trade Statistical Guide, DG Trade, June 2018, Publications Office of the European Union, Luxembourg 2018, p. 55.

Many European Union trade agreements have been signed in an earlier period, in particular with the African, Caribbean and Pacific region, thanks to the Lome Convention, followed by the Cotonou Agreement of 2000. The European Union has negotiated with selected European Economic Partnership Agreements (EPAs) ACP countries. An important trading partner for the European Union is India, with whom negotiations on the free trade area began in 2007. The European Union's exports to India in 2017 were over 2% (Figure 2).

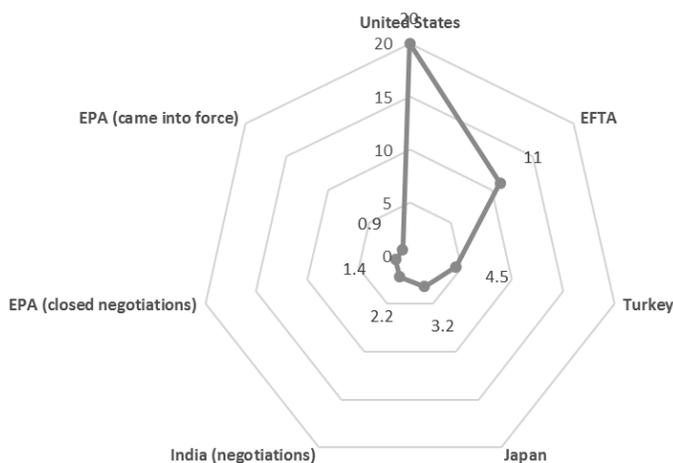


Figure 2. EU trade agreements: signed, negotiated contracts, participation in the export

Source: European Commission, DG Trade Statistical Guide, DG Trade, June 2018, Publications Office of the European Union, Luxembourg 2018, p. 56.

The European Union is pursuing a liberal policy that has led to a significant reduction of customs duties on industrial goods, and to a lesser extent on agricultural commodities. In addition, many non-tariff barriers still apply in the EU trade exchange, hence the European Union's interest in such barriers in trade agreements with important trading partners: the United States and Japan. Liberalization of customs and tariff barriers may lead to economic growth of the states that are parties to the agreement.

Negotiations between the United States and the European Union began in June 2013. After three years of talks, negotiations were suspended in 2016. The creation of a free trade area according to the CEPR calculations, assuming amendments to 2027, would increase exports from the European Union to the US by about 28%, while from the USA to the EU

by 36.57% (Figure 3). The total EU exports in this period will increase by less than 6%, while for the United States the export growth would be at the level of 8%.

The TTIP agreement was to include broad regulations regarding sustainable development and liberalization of trade between the EU and the United States. The problem of negotiating TTIP is associated with various non-tariff barriers in the EU and in the United States. Negotiations also included the subjects of sustainable development, environmental protection issues and employee rights.²

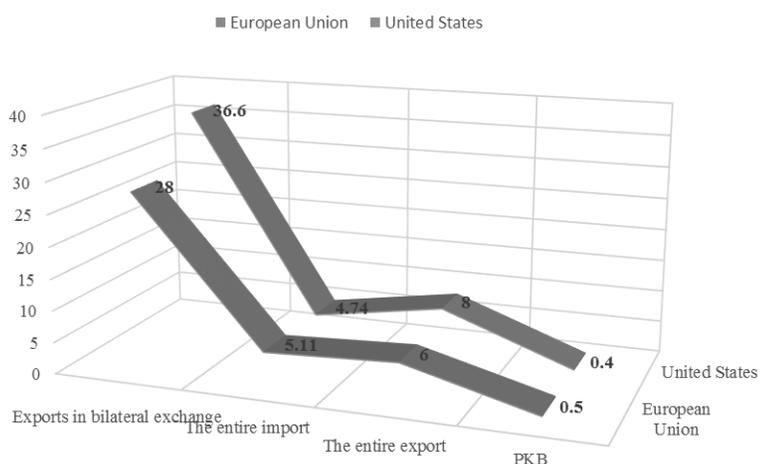


Figure 3. Changes in bilateral trade between the European Union and the United States, total exchange and GDP (in %)

Source: J. Francois (et. al.), *Reducing Transatlantic Barriers to Trade and Investment An Economic Assessment*, London 2013, pp. 48–52.

The European Union has also made efforts to negotiate a trade agreement with Australia.³ On 18th June 2018, formal negotiations were started on the creation of a free trade zone between the European Union and Australia. Negotiations with Australia concern trade in goods, investment flows and issues of sustainable development. In the case of the Asian region, negotiations on a free trade zone between the European Union and

² F. De Ville, J. Orbie, L. Van den Putte, *Sustainable development in TTIP: a highest common denominator compromise?*, “European Journal of Risk Regulation”, no. 2/2016, p. 291.

³ International Centre for Trade and Sustainable Development, *EU, Australia Launch Negotiations for Free Trade Pact*, “Bridges”, vol. 22, no. 22, 21 June 2018.

Singapore, aimed at liberalizing trade and implementing the assumptions of sustainable development, concluded in 2012. Trade negotiations with Vietnam, initiated in 2012, are in progress, and negotiations with Thailand were launched in 2013. Since 2016, the European Union has been conducting talks on the trade agreement with the Philippines and Indonesia, and since 2017 with the entire ASEAN group.

The EU resumed negotiations in 2016 on the signing of a trade agreement with the Mercosur countries. Negotiations on trade agreements with Mexico in 2016 and Chile started in 2017.⁴

In 2013, EU negotiations with Japan were initiated, which ended in 2017 reaching an agreement on the main elements of the EPA. The agreement contains provisions on the abolition of customs duties upon entry into force of the agreement for around 90% of total EU exports to Japan. The reciprocity of the concessions granted relies on the fact that the Agreement takes into account the European Union's interests in the export of agricultural products, while in the case of Japan, mainly exports of cars and their parts to the EU market.⁵ According to calculations of the IFO Institute, the entry into force of the agreement will lead to an increase in Japanese exports to the European Union market by 55%, while the European Union's exports to Japan by 61% (Figure 4). The main beneficiaries of this Agreement are the Netherlands (increase in exports by almost 60%, GDP growth by 0.14%); Ireland (increase in exports by almost 50%, GDP by 0.19%); Luxembourg (increase in exports by 55.9%, GDP by 0.13%); Germany (increase in exports by 73%, GDP by only 0.11%); Belgium (increase in exports by 75%, GDP by 0.11%). The issues of liberalization of non-tariff barriers are also regulated.

For developing countries, the EU has granted LDCs access to its market for goods for which tariffs have been eliminated and a total quota of EUR 35 billion annually has been abolished. The literature discusses the impact of bilateral trade agreements on economic development and the implementation of the principles of sustainable development adopted by the UN in the context of the future of trade relations with developing countries.⁶

⁴ European Commission, Overview of FTA and other Trade Negotiations Updated May 2018 – Updates in red, Brussels 2018.

⁵ H.G. Hilpert, *The Japan-EU Economic Partnership Agreement, Economic Potentials and Policy Perspectives*, Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, "SWP Comments", no. 49, November 2017.

⁶ L. Fontagne, D. Laborde, C. Mitaritonna, *An Impact Study of the Economic Partnership Agreements in the Six ACP Regions*, "Journal of African Economies", vol. 20,

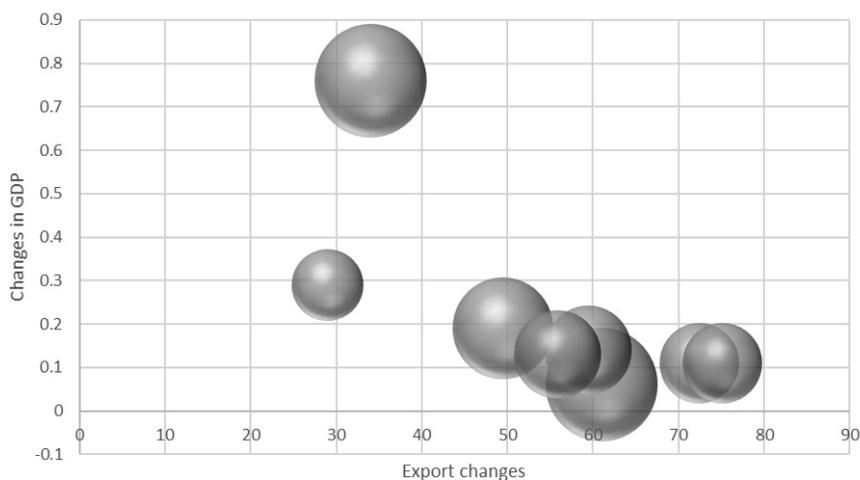


Figure 4. The effects of signing a free trade agreement between the EU and Japan

Source: G. Felbermayr et al., *GED Study, On the Economics of an EU-Japan Free Trade Agreement*, Study of the Ifo Institute on behalf of the Bertelsmann Foundation Final Report on March 3, 2017, p. 59.

United Nations' Activities For Sustainable Development and the Common Commercial Policy of the European Union

Critical evaluation of the effects of agreements with the EBA initiative (Everything But Arms) led to the intensification of work in the European Union on the implementation of the assumptions of sustainable development in the subsequent years.⁷

Taking into account the need for economic development through trade, in 2013 the European Commission presented a report titled *A Decent Life for all: Ending poverty and giving the world a sustainable future*, which announced the European Union's strategy for a policy of sustainable economic development. Developmental issues were addressed to a very limited extent, mainly in relation to EU development policy and development

no. 2/2008, pp. 179–216; A.-L. Chané, M. Killander, *EU Cooperation with Regional Organizations in Africa*, "Working Paper", no. 197, January 2018.

⁷ J. Gallezot, J.-Ch. Bureau, *The Trade Effects of the EU's Everything But Arms Initiative*, Economic Analysis in Support of Bilateral and Multilateral Trade Negotiations, N° Trade 2002/-A2-01, CEPII, Commission of the European Union – Directorate-General for Trade, Paris 2002.

aid for developing countries, indicating that since 2000, the European Union's aid for the least developed countries had increased by 70% and amounted to EUR 96 billion.⁸ However, no fundamental issues regarding the growth of exports from developing countries to the European Union market were presented.

The European Commission has positively assessed the results of the development of foreign trade in developing countries. The increase in the value of exports from developing countries in 2000–2009 amounted to 80%, compared to 40% on a global scale. The European Commission has pointed out that the EU has been the first global player to grant access to all LDC products.⁹ This faster growth in foreign trade of Least Developed Countries has not solved the problems of economic development of those countries, which still occupy a minor position in world trade.

While continuing its activities for sustainable development, in its strategy *A Global Partnership for Poverty Eradication and Sustainable Development after 2015*,¹⁰ published in 2015, the EU decided to adopt unilateral trade policy tools regarding the implementation of the concept of sustainable development, in particular the Generalized System of Preferences (GSP) and GSP+, in which trade preferences were granted to the economies of the least developed countries. Commercial agreements containing the GSP+ clause contain not only provisions regarding tariff tools (elimination of customs duties) but also non-trade concerns, including human rights, labour standards with specific labour rights, and environmental protection issues. However, the European Union initiative called “Everything But Arms” applies to duty-free and quota-free access to the European Union market for all products from the Least Developed Country (LDC), with the exception of the supply of arms.

The European Union is paying more and more attention to including the concept of sustainable development in trade policy, in particular measures to maintain high labour and environmental standards, in trade agreements signed by the EU not only with developing countries, where these standards may be understated, but also with developed countries.

The future of the European Union's trade relations depends on the legal framework of the UN resolution on sustainable development. At the

⁸ Communication from the Commission to The European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, *A Decent Life for all: Ending poverty and giving the world a sustainable future*, Brussels, 27.2.2013 COM(2013) 92 final, s. 5.

⁹ *Ibidem*.

¹⁰ European Commission, *A Global Partnership for Poverty Eradication and Sustainable Development after 2015*, Brussels 2015.

UN Summit in New York on 25–27 September 2015, the Agenda for Sustainable Development 2030 was adopted, which underlined the importance of multilateral measures in poverty reduction. The agenda includes seventeen goals (thematic areas) for sustainable development activities. In particular, the eighth objective, “economic growth and decent work” in the Agenda for Sustainable Development 2030, which reflects the need to create global, multilateral regulations conducive to the economic development of countries, is associated with trade issues. Multilateral regulation of international trade and finance should be based on the principle of non-discrimination, promotion of sustainable development, activities for the elimination of poverty, taking into account the needs of Least Developed Countries by increasing their access to the markets of developed countries, and development aid.

Undertaking increased institutional efforts to include the measures for sustainable development under the common trade policy, the European Union mainly implements development aid, in particular for the least developed countries. The European Union is the largest entity in the world that provides assistance to developing countries as part of the Official Development Assistance (ODA). In 2017, 57% of the total value of development assistance came from the EU,¹¹ while the share of the United States in the total expenditure on assistance under ODA amounted to approx. 24%, Japan 7.8%, Canada 2.91%, Norway 2.81%, and Switzerland with 2.11%.¹²

Some of the sustainable development goals set out in Agenda 2030 are related to trade. As part of the 10th goal on Agenda 2030, named “less inequality”, attention was drawn to the growing inequality of income within countries and the growing scale of poverty in the world. In accordance with the Agenda, it is the job for the developed countries to implement the principle of special and differential treatment, facilitating access to the market of developed countries for the least developed countries and providing them with Official Development Assistance as part of UNCTAD.

The second goal of the 2030 Agenda, named “zero starvation”, concerns food security and sustainable development of agriculture, including

¹¹ European Commission, European External Action Service, EU remains the world’s leading donor of development assistance, Bruxelles 12.04.2018, https://eeas.europa.eu/delegations/barbados/42844/eu-remains-worlds-leading-donor-development-assistance_en (7.07.2018).

¹² Own Calculations based on OECD Development aid stable in 2017 with more sent to poorest countries: <http://www.oecd.org/development/financing-sustainable-development/development-finance-data/ODA-2017-complete-data-tables.pdf> (7.07.2018).

the development of the agricultural sector in developing countries and the reduction of tariff and non-tariff barriers in international trade in these goods. It is difficult to expect the implementation of this objective by EU Member States due to the application by the European Union of various forms of internal protection under the common agricultural policy and external barriers that limit the positive effects of the elimination of export subsidies in agricultural trade.¹³

The Problem of Achieving the Goals of Sustainable Economic Development by Developing Countries

According to the European Union's declaration, sustainable development issues, in particular concerning labour and environmental standards, have been included in all trade agreements with both developed and developing countries.¹⁴

The European Union strongly supports the implementation of Sustainable Development Goals through trade and development aid. According to Objective 2, WTO member states, supported by the European Union, negotiated the elimination of export subsidies in agricultural trade.

Strengthening mutual trade and sustainable development can also be promoted by reducing or eliminating tariff and non-tariff barriers to trade, the flow of environmental technologies and services, as well as environmentally friendly products. The EU conducts activities supporting the conclusion of a WTO multilateral agreement on products and services related to environmental protection.

The implementation of the idea of sustainable development in the EU's trade policy consists in reducing, as well as completely eliminating, tariff and non-tariff barriers to goods and services related to environmental issues. The EU actively participates in the global effort to establish a multilateral agreement on products and services related to environmental protection.¹⁵

In 2001, the European Union granted duty-free market access to the least developed countries (LDCs), which include Afghanistan, Bangladesh, Bhutan, Cambodia, Laos, Maldives, Myanmar/Burma, Nepal and

¹³ International Centre for Trade and Sustainable Development, *UN Members Sign Off on Sustainable Development Agenda*, "Bridges", vol. 19, no. 12, 1 October 2015.

¹⁴ European Commission, Communication From the Commission to The European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. A Global Partnership for Poverty Eradication and Sustainable Development after 2015, Brussels, 5.2.2015, s. 10.

¹⁵ *Ibidem*.

Yemen. In order to guarantee duty-free and quota-free access to the market for exports from the least developed countries, the EU's trade relations with these countries have been based on the Everything But Arms (EBA) document.¹⁶

The institutional solutions of the European Union show that the Universal System of EU Preferences (GSP) has increased access to the EU market for developing countries. The relevant European Union regulations regarding GSP have been in force since 1st January 2014, the provisions on sustainable development, and the "GSP plus" formula consisted in the elimination of duties on most tariff lines have been adopted.¹⁷

The number of beneficiary countries using the GSP has been reduced to a total of 177 (by 31st December 2013) and then to 92, effective from 1st January 2014. These changes in the number of countries previously receiving preferences resulted from the transition of some countries to the group of countries with medium incomes, which are not entitled to preferences.

As the European Commission points out, trade agreements include not only trade policy tools concerning customs, but also issues of investment, public procurement, competition, and protection of intellectual property.

The ACP group of states was established in 1975 under the agreement concluded at Georgetown. The group includes 79 countries: 48 in sub-Saharan Africa, 16 in the Caribbean, and 15 in the Pacific region. These countries represent huge variations in terms of production structure. A common feature among them is their frequent dependence on exports of only one or two products. Seven groups of countries in the framework of the ACP are negotiating with the European Union a trade agreement that will come into force after 2020, after the expiry of the current Cotonou agreement, signed in 2000 for a period of twenty years.¹⁸

The preferences granted to the ACP countries have not produced positive results in the development of the "fledgling industries" that could become competitive with EU imports as well as on the internal EU

¹⁶ European Commission, Commission Staff Working Document Report on the implementation of the European Commission Communication on "Trade, Growth and Development" and follow-up to the Council Conclusions on "EU's approach to trade, growth and development in the next decade", Brussels, 25.2.2016.

¹⁷ Regulation (EU) No 978/2012 of the European Parliament And Of The Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. Official Journal of the European Union L 303/1, 31.10.2012.

¹⁸ UNCTAD, Key Statistics and Trends in Economic Integration: ACP Region, United Nation, New York and Geneva, 2018.

market.¹⁹ Despite trade preferences, the export from ACP countries to the EU has not increased. According to some analyses, the European Union's decision on reciprocity in trade with the ACP countries will not benefit the ACP countries.²⁰

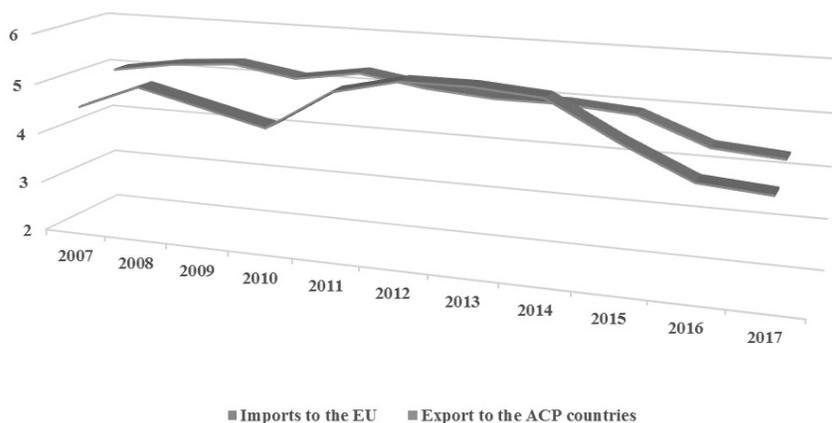


Figure 5. Participation of the ACP countries in EU exports and imports, in % of total trade in 2007–2017

Source: European Commission, European Union, Trade in goods with ACP Total (African Caribbean and Pacific Countries), Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113340.pdf (7.07.2018).

The ACP countries are not among the most important trade partners of the European Union, asymmetry is visible in trade relations between the parties (Table 1). The ACP countries, located in different geographical groups, accounted for only 4.3% of total EU exports, and 4% of total imports to the European Union in 2017 (Figure 5).

There is still significant asymmetry in trade relations between the European Union and the ACP countries, which was emphasized in literature in the first decade of the 21st century.²¹ The asymmetry in trade relations lies in very high importance of the European Union as a trading partner to this group of countries. The achievement of the Millennium Sustainable Development Goals did not help to change the conditions of trade

¹⁹ The Economist, Finance and Economics: Falling out of favour, London, May 28, 2005.

²⁰ M. Langan, *A moral economy approach to Africa-EU ties: the case of the European Investment Bank*, "Review of International Studies", no. 40/2014, pp. 465–485.

²¹ L. Fontagne, D. Laborde, C. Mitaritonna, op. cit., pp. 179–216.

between the ACP and EU countries. The ACP countries export to the European Union in 2017 accounted for over 24% of their total exports, the European Union occupied the first position in terms of the most important trade partners of the ACP countries. On the import side, the European Union is also one of the most important trading partners of the ACP countries. The European Union's share in total imports of the ACP countries in 2017 was less than 26% (Table 2). For individual groups of ACP countries, the European Union remains among the most important trade partners, with the exception of the Pacific region.

Table 1. Import to the EU from individual groups of ACP countries (in %)

Year	Central Africa	East Africa	South East Africa	South Africa	West Africa	The Caribbean	The Pacific
2007	0.5	0.1	0.2	2.1	1.2	0.3	0.1
2008	0.6	0.1	0.2	2.2	1.4	0.4	0.1
2009	0.4	0.2	0.2	2.1	1.4	0.3	0.1
2010	0.5	0.1	0.2	1.8	1.4	0.3	0.1
2011	0.6	0.1	0.2	2.0	2.0	0.3	0.1
2012	0.6	0.1	0.2	1.9	2.4	0.2	0.1
2013	0.6	0.1	0.2	1.8	2.3	0.3	0.1
2014	0.6	0.1	0.2	1.9	2.2	0.3	0.1
2015	0.5	0.2	0.2	1.8	1.7	0.3	0.1
2016	0.4	0.1	0.2	1.9	1.2	0.2	0.1
2017	0.3	0.1	0.2	1.6	1.3	0.2	0.1

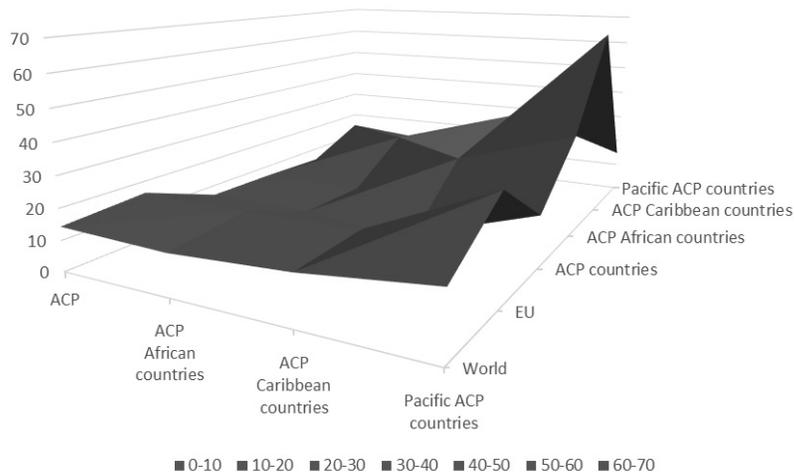
Source: European Commission, European Union, Trade in goods with ACP – Central Africa, Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151899.pdf (7.07.2018); European Commission, European Union, Trade in goods with ACP – East African Community (EAC), Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151901.pdf (7.07.2018); European Commission, European Union, Trade in goods with ACP – Eastern and Southern Africa (ESA), Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151900.pdf (7.07.2018); European Commission, European Union, Trade in goods with ACP – Southern African Development Community (SADC), Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151902.pdf (7.07.2018); European Commission, European Union, Trade in goods with ACP – West Africa, Directorate-General for Trade, Brussels 2018; European Commission, European Union, Trade in goods with ACP – Caribbean Countries, Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113476.pdf (7.07.2018); European Commission, European Union, Trade in goods with ACP – Pacific Countries, Directorate-General for Trade, Brussels 2018, http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147359.pdf (7.07.2018)

Table 2. Trade exchange between the ACP countries and the EU, by groups with the European Union, in 2017 (in %)

Regions	Export	Import
ACP countries (all)	24.3 (1)	25.6 (1)
Central Africa	25.5 (2)	34.6 (1)
East Africa	21.9 (1)	12.8 (2)
South East Africa	19.5 (1)	14.6 (2)
South Africa	22.4 (2)	33.3 (1)
West Africa	26.2 (1)	29.1 (1)
The Caribbean	14.4 (2)	14.5 (2)
The Pacific	11.3 (5)	4.0 (7)

Source: See Table 1. The positions of the European Union in foreign trade of a given group of countries are given in brackets.

For many ACP countries, exports depend on one product. At the end of the first decade of the 21st century, in some ACP countries very often only one product was responsible for more than 70% of total exports, in Nigeria about 90% of total exports are oil, coffee constitutes almost 70% of total exports in Burundi, cotton in Burkina Faso. The average customs duty on access to the ACP market for agricultural commodities was over 14% in 2016 (Figure 6).

**Figure 6. Average customs duty ACP countries in imports of agricultural goods in 2016 in imports (in %)**

Source: UNCTAD, *Key Statistics and Trends in Economic Integration ACP Region*, New York and Geneva, United Nations 2018, p. 38.

The average customs duty in the ACP countries in accessing their market for industrial goods in 2016 amounted to over 9% (Figure 7). ACP countries have higher tariffs in mutual trade than with non-African trading partners.

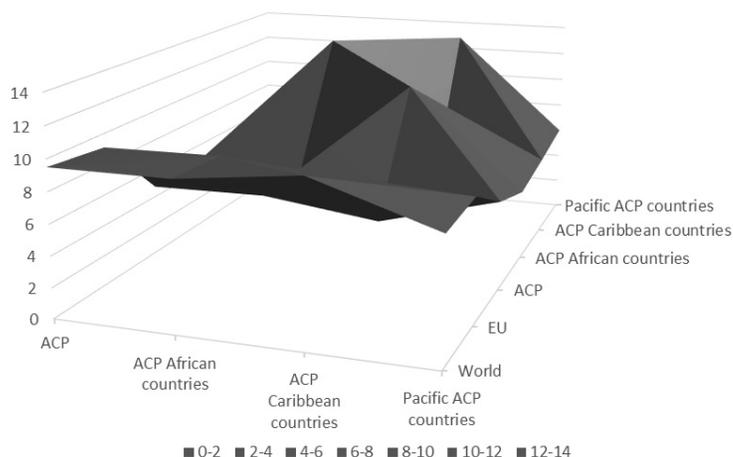


Figure 7. Average customs duty ACP countries in imports of industrial goods in 2016 in imports (in %)

Source: UNCTAD, Key Statistics and Trends in Economic Integration ACP Region, United Nations New York and Geneva 2018, p. 38.

In the European Union’s EPA agreements with the ACP countries, economic development through trade and thus greater access to the EU market were adopted as the main objective of the agreement implementation. Part of the EPAs entered into force in the Caribbean and Pacific region (Papua New Guinea and Fiji), in the regions in the east and south of Africa (Madagascar, Mauritius, Seychelles, Zimbabwe), and also in Central Africa (Cameroon). In 2014, the European Union concluded negotiations with the West African region, the Southern African Development Community – the EPA states and the East African Community with which the signing and ratification process is underway.²²

The European Union applies a variety of cooperation tools to Africa in the political and economic dimension, as proclaimed in the following

²² European Commission, Commission Staff Working Document Report on the implementation of the European Commission Communication on “Trade, Growth and Development” and follow-up to the Council Conclusions on “EU’s approach to trade, growth and development in the next decade”, Brussels, 25.02.2016.

strategies: Joint Africa-EU Strategy of 2007, and three regional strategies for the countries of the Horn of Africa, Gulf of Guinea and the Sahel. The EU recognized the need for formal dialogue as part of the EU-Africa summits.²³ The implementation of the assumptions of individual strategic documents and political dialogue will enable the fulfilment of diversified conditions of economic cooperation based on the creation of democratic principles in African countries.

The Joint Africa-EU Strategy (JAES), adopted at the Lisbon Summit in 2007, is one of several important documents in which the criteria for cooperation with countries of the African continent were adopted.²⁴ The cooperation was to cover economic, social and political issues regarding 55 African countries.²⁵ According to its provisions, a common long-term vision was developed to ensure peace and security, accelerate socio-economic development and implement a sustainable development strategy in Africa.²⁶ The four main goals of this strategy are:

- strengthening institutional cooperation for peace and national security,
- strengthening and promoting peace activities around the world, democratic governance and human rights, fundamental freedoms, gender equality, sustainable development including industrialization, as well as regional and continental integration in Africa,
- maintaining effective multilateral cooperation with international organizations and developing international trade,
- key developmental problems.

The development of foreign trade and regional integration on the continent was recognized as the most important area of cooperation. Regional integration plays a key role in creating larger and more integrated markets which, combined with strengthened harmonization of regulations, will help attract investment, increase production capacity, and therefore promote sustainable economic growth. Africa and the EU are also working together with other international partners to promote fair trade. Promotion of investment and business environment is a key prerequisite for the development of the private sector within a stable political environ-

²³ EU-Africa relations, <https://www.consilium.europa.eu/en/policies/eu-africa/> (7.11.2018).

²⁴ Council Of The European Union, The Africa-EU Strategic Partnership A Joint Africa-EU Strategy, Lisbon, 9 December 2007 16344/07 (Presse 291), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/97496.pdf (7.11.2018).

²⁵ https://www.africa-eu-partnership.org/sites/default/files/documents/eas2007_joint_strategy_en.pdf (7.11.2018).

²⁶ Fact Sheets on the European Union, http://www.europarl.europa.eu/atyourservice/pl/displayFtu.html?ftuId=FTU_5.6.6.html (7.11.2018).

ment. These efforts should be supported by relevant African economic growth strategies aimed at maintaining macroeconomic stability, promoting regulatory reforms and harmonization, protecting intellectual property rights, promoting investment codes and setting reliable rules and guarantee schemes. In this context, it will also be necessary to take into account the key factors discouraging such occurrences as fraud, corruption, money laundering and organized crime. Among others, in order to facilitate and simplify investment procedures, a program supporting EU-SADC investments (ESIPP) aimed at strengthening the potential of the private sector, including by organizing events and contacting them with potential investors from the region or from Europe,²⁷ was implemented in member states of the Southern African Development Community.

For the underdeveloped and developing countries, the natural environment plays a key role in the economy, as many of these countries are involved in agricultural production. Degradation of the natural environment is a huge threat to the way citizens live in African countries. Under the Africa-EU Strategy, the European Union emphasises sustainable management and protection of natural resources. It does so by means of remedies that address specific ecological problems and cross-measures that are related to other areas of cooperation. Environmental protection is one of the elements of the process leading to sustainable reduction of poverty and stimulation of sustainable development of African countries, including members of the ACP group, which thus affects long-term economic and social development. EU initiatives in the ACP countries include actions in the field of climate change, desertification, marine resources, forests, chemical waste, or promoting the development of renewable energy.²⁸ In turn, in order to protect and rationally use forest areas in Central Africa, the European Union has created the ECOFAC program implemented with the support of seven Central African countries, namely Cameroon, Central African Republic, Equatorial Guinea, Gabon, São Tomé and Príncipe, Congo and Democratic Republic Congo. The tropical forests of Central Africa are the second largest area of tropical forests in the world, cover over 1.62 million km² of the territory of the indicated region and have enormous potential to fuel economic and social development.²⁹ This ecosystem can be a driving force of development only if its

²⁷ *Ibidem.*

²⁸ Komisja Europejska, *Partnerstwo na rzecz zmian Współpraca rozwojowa Unii Europejskiej z krajami Afryki, Karaibów i Pacyfiku*, Luksemburg: Urząd Publikacji Unii Europejskiej, 2010, https://ec.europa.eu/europeaid/sites/devco/files/publication-acc-partnership-for-change-2010_pl.pdf (7.11.2018).

²⁹ *Ibidem.*

operation is rational, while at present the biological wealth found there is systematically being destroyed as a result of, among others, illegal logging. From the perspective of biodiversity, bush meat trade creates the risk of extinction of particular species of wild animals. As part of the ECOFAC project, the European Union created a network of protected areas in Central Africa, from 1.62 million km² of tropical forest area, up to 180,000 km² was in protected zones.³⁰ Thanks to cooperation with African countries specializing in wood production, the Union combated deforestation and illegal logging of tropical forests.

In accordance with the assumptions of the Africa-EU Strategy, cooperation between both entities should cover the development of infrastructure, transport and communication in African countries. Transport infrastructure in Africa, including the ACP countries, is a barrier limiting economic development. In addition to transport infrastructure, important factors of economic development also include access to health, work and education systems. The availability of these factors to citizens cannot be expensive and has to be offered by the state or private entities at reasonable prices, i.e. low, with the least negative impact on the environment. Support for transport infrastructure is a priority in the development cooperation programme between the EU and the ACP countries. In 2007, the European Union created a trust fund for infrastructure in Africa for the implementation of projects related to energy, transport, telecommunications and water management. The fund aims to increase investments in the development of regional infrastructure and communication in cooperation with other entities and initiatives on the assumption of responsibility by African countries. Efficient infrastructure is of great importance from the perspective of economic growth, sustainable development and poverty reduction. Investment needs for infrastructure development in sub-Saharan Africa alone were estimated at 60 billion euros annually in 2012–2017, with the EU providing around 400 million euros for this purpose. The African Development Bank participates in the work of a trust fund.

From the point of view of the European Union, the rule of law as well as peace and security are the priority elements of cooperation with African countries, including the ACP group. Reforms in this area are aimed at providing support for non-state actors as well as local governments. Support programmes for democratic development in African countries should necessarily lead to such support of institutions at every level of management to ensure fair and free elections that will provide an oppor-

³⁰ Ibidem.

tunity for faster economic development due to the necessary economic reforms. Contractual cooperation between the European Union and African countries will be conditional on the promotion of democratic principles and respect for freedom and other basic human rights.³¹

The European Union strongly declares the issues of peace and security to be the necessary factors for the development of a state in the political as well as economic sense. In the absence of stability and internal security, there will be no faster economic growth for various reasons, lack of transparency of actions for domestic and foreign companies, or prevailing corruption. The Union supports African countries in their efforts to prevent armed conflicts and resolve existing ones through technical assistance, capacity building and financing of stabilization and peaceful missions. In 2004, it created the Instrument for Peace in Africa in response to the needs of the heads of governments of the African Union countries, which focuses on three basic assumptions, i.e. strengthening dialogue between the EU and Africa on threats to internal security and peace, support in the form of activities aimed at supporting peace and creating a security and peace architecture.³² In turn, in the Africa-EU Strategy, it was deemed necessary to work towards a comprehensive approach to conflicts as a prerequisite necessary for political, economic and social development. These activities should be related to management and sustainable development. As part of these activities, the creation of a mechanism for restoring and building peace, the African Architecture of Peace and Security (APSA), was envisaged. At the same time, it should be emphasized that despite the actions taken, the security situation in Africa is still a key problem in this part of the world. It seems to have been even more important for Europe since 2015, when there was a dramatic increase in the number of refugees and immigrants to the EU, which in turn involved the creation by the EU of an extraordinary trust fund for stability and fight against the causes of illegal migration and displacement in Africa. It should be emphasized here that close developmental cooperation is connected with counteracting armed conflicts, as these have significant impact on development, involving huge losses in people, weakening or even halting agricultural and industrial production as well as trade exchange, losses in infrastructure,

³¹ Ibidem.

³² Komisja Europejska, Partnerstwo na rzecz zmian Współpraca rozwojowa Unii Europejskiej z krajami Afryki, Karaibów i Pacyfiku (*Partnership for change. Development cooperation of the European Union with the countries of the Caribbean and Pacific Europe*), Luksemburg: Urząd Publikacji Unii Europejskiej, 2010, https://ec.europa.eu/europeaid/sites/devco/files/publication-acp-partnership-for-change-2010_pl.pdf (7.11.2018).

and many other negative consequences for Africa. On the other hand, it should also be remembered that unfair trade rules historically and geographically conditioned directions of Africa's development or climate change are the causes of both new wars and extreme poverty in this part of the world.³³ For the reforms implemented in African countries, supported by the European Union, to have an opportunity to contribute to permanent changes in these countries, the focus should be on developing human potential and improving the social situation. Escape from poverty is possible only when people have access to basic services, education, health care, and decent work.

Conclusion

In recent years, there has been a significant change in the balance of power in the global economy. The European Union as an organization is struggling with both economic and political challenges, after the controlled bankruptcy of Greece, Brexit and a migration crisis. These challenges may decide on further disintegration of the European Union in the future. The balance of forces in the global economy in the coming years will depend on how these challenges will be met. In external relations, the common EU trade policy based on the idea of liberal solutions, at least in selected sectors, leads to faster economic development of the European Union Member States as well as trade partners. The adoption of liberal regulations in the common trade policy of the EU promotes the increase of prosperity, the accomplishment of which is combined with the idea presented at the UN forum on sustainable economic development. The implementation of the sustainable development goals will create problems in the future, because the European Union will not want to give up protectionism in agricultural trade, which is important from the point of view of developing countries. The problem of economic infrastructure in developing countries is still unsolved.

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³³ F. Kaczmarek, *Znaczenie pokoju i stabilizacji dla europejskiej polityki rozwojowej wobec Afryki Subsaharyjskiej (The Importance of Peace and Stability for European Development Policy Towards Sub-Saharan Africa)*, „Przegląd Politologiczny”, no. 1/2017, pp. 157–172, <http://przeglad.amu.edu.pl/wp-content/uploads/2017/05/pp-2017-1-11.pdf> (7.11.2018).

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Citizens' Participation and Participatory Governance in the EU

Abstract

In a complex and rapidly changing global order continuous political courage, inspiration and citizen-centric practices are needed to shape and strengthen the values that are connected with the EU. We clearly affirm the value premises of the EU as a community responsible for security and stability and for guaranteeing the welfare and well-being of its citizens.

The paper is structured in 3 parts: The first part focusses on the importance of citizens' participation and citizens' dialogue in the future developments of the EU. Growing complexity and interconnection between and within societies have become intrinsic characteristics of European societies, impacting the dialogue of institutions with citizens. In a second part, the paper deals with participatory democracy and civil dialogue as legally embedded concepts in the Lisbon Treaty. This implies an analysis and assessment of the phased development of EU practices in participatory democracy and civil dialogue. The last part concerns the instruments and practices of participatory governance that the EU has developed to respond to the citizens' demands for a more values-based community.

Key words: Participatory Democracy, Governance, Citizenship, Civil Dialogue

Point of Departure: A Values-Based Community

The main point of departure for recognising Europe as a values-based Community is legally embedded in Art. 2 of the Lisbon Treaty (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

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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”.

In a rapidly changing world, continuous political courage, inspiration and human-centric practices are needed to shape and strengthen the values, which are connected with “Europe”. The promotion of these values should be conceived as a task that goes beyond the European territory and is recognised worldwide as a model of society. We must foster our Europe as a space of unity in diversity, based on relations of reciprocity and fraternity. Europe’s mission today is to redefine its post-war concept of peace and social order in the context of a globalising world. That consists of a system of global relations based on the principles of an eco-social market economy where free exchange is balanced with strong institutions of social welfare, ecological commitment and distributive justice. To realise this mission, we are convinced that Europe should strengthen its resources in relational identity-building to further a common sense of belonging and to respond jointly to global challenges. This should be done in the spirit of the European personalist tradition, respecting the significance, uniqueness and inviolability of the person, as well as the person’s essentially relational or social dimension.

Reflecting on the recent problems of the financial crisis, the Grexit and Brexit threats and terrorist attacks, the migration question, and certainly the (human) security issue, overall priority should be given to consolidating a values-oriented European project that can protect, guarantee and inspire not only European citizens, but, hopefully also the future world organisation with peace, human rights and the basics of a state of law. Therefore, we should focus on the values that are common to all European nations/states, given common cultural traditions and varied expressions.

We clearly affirm the value premises of Europe as a community in dealing with the welfare and wellbeing of its current and future citizens, although acknowledging negative reactions and criticisms to its (non-) application and implementation.

– Europe as a Community of Destiny: The process of European integration has led to an increasing interdependence and complexity of the interactions and relations that shape our common destiny in a globalising world. The maintenance of peace, the conservation of the environment, and the means of enabling people to live their lives with dignity all demand common policies, respecting diversities. All Europeans are called upon to work responsibly together to build a peaceful European order in dialogue.

– Europe as a Community of Values: The aim of European integration and inclusion is to carry out, develop and safeguard the community

of shared values. These are rooted in common legal principles, acknowledging the freedom of individuals and social responsibility. Fundamental European values are based on human dignity, tolerance, humanity and fraternity. These principles have opened the way to a free and peaceful future in international relations.

– Europe as a Community of Life: In order for the European Union to become a citizens' Europe, it must develop into a tangible and living community. To that end, citizens must be given the opportunity to participate more fully in the process of European integration. A unified Europe implies further developing European citizenship to the point at which all citizens in all member states have the same rights and duties.

– Europe as an Economic and Social Community: The first steps were taken when six countries founded the European Coal and Steel Community, in which basic industries important for the conduct of war were placed under a common authority. This neo-functional approach resulted in the European Economic Community, and eventually developed into the European Union, in a process that led to peace between the member states and a higher standard of living.

– Europe as a Community of Purpose and Responsibility: In today's globalising and individualising world, the European Union carries a particular responsibility. The European continent has close economic, political and cultural ties with many regions of the world, set in various cooperation agreements. Conflicts and crises, whether within or beyond Europe, threaten all European states and citizens alike. Only through cooperation, solidarity and unity can Europe effectively help to solve world problems. Discord in European policies would be irresponsible and can only lead to chaos.

– Europe as a Community and Meeting Place of Multiple Identities: Freedom, peace, human dignity, equality and social justice are Europe's greatest common goods. To protect and further develop these aims, Europe needs a morally acceptable political structure and policies which strengthen the sense of common purpose while establishing the credibility of the European Union and making its citizens proud to be Europeans through the building of meeting places and the recognition of the wealth of its multiple identities.

– Europe as a Community of Multicultural Learning: In order to build up a common European identity as an added value, a common background and future of the citizens' dialogue is needed, which takes into account the specific multilayered and diversified institutional and cultural European environment in education and learning.

Citizens' Participation and Citizens' Dialogue in the EU

Global context

Growing complexity and interconnection between and within societies have become intrinsic characteristics of European societies. They are having an impact on the dialogue with citizens. While power is increasingly globalised, the State is no longer an exclusive actor in the system, despite attempts to return to national solutions, as the current migration and refugee crisis illustrates.

This leads to multiple identities, different duties and rights, diverse tasks and roles for citizens. It has also resulted in a widening gap and mistrust between citizens and their institutions. This kind of fragmentation brings many people to confusion and uncertainty.

In order to stimulate a true values-based EU within a fluid global context, some conditions need to be fulfilled:

- A clear, coherent and critical vision is required about the essentials of information, communication and dialogue, as well as on the limits of each. The ongoing and radical process of transformation needs to be put into its proper context. Citizens' concerns about identity, citizenship, governance, borders, democracy and dialogue need tangible answers.

- The Union's responses must place citizens at the centre of political action, with full respect for their diversity. This implies the need to have a more global and flexible approach for the EU's information and communication. This approach will help reinforce positive messaging, narratives and perspectives to achieve more effective and focused cooperation among EU institutions and other governance levels.

- The concept of 'community' should be strengthened. This embraces the local, regional, national and international contexts that individuals live in to create a common public space, within which individuals can act together on a values-based foundation.

- The Union should offer a true identity of reference and an added value to existing regional and national notions of belonging. Indeed, due to the radical changes affecting our societies, the sense of belonging to a community has to be underscored with a clear vision and be sustained by tangible and visible results.

- The role of education in responding to the challenges of globalisation and increasing societal complexity is therefore fundamental. Indeed, learning to live together positively with our differences and diversity is becoming the central dimension of active citizenship.¹

¹ L. Bekemans, *A Values-driven Education for Intercultural Dialogue*, in: *Identity Issues and Intercultural Challenges. A European and Global Perspective on Peace in the World*, ed. L. Moccia, Kuwait 2017, pp. 73–97.

Citizen-centric context: Citizens as co-owners and protagonists of the European project

The new social and communicational framework also affects the way politics is conducted. Traditional representative democracy (i.e. parliamentary government) is now challenged by other forms of democratic expression, namely participatory and deliberative democracy. There is no question of replacing one with the other, but we need to ensure that the two complement each other. Some examples of recent developments have emerged.²

Social media platforms facilitate civic participation in the policy-making process, and new methods of public governance are being implemented by different public authorities that attempt to integrate citizen know-how into the decision-making process, as well as through societal and communicational frameworks. Therefore, it can provide more democratic legitimacy, as has been shown by the opposition to the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States.

In addition to their representation by an elected politician, citizens now also want to have real, personal ownership of and involvement in the different public spheres. The best way to regain citizens' trust is to make them feel as though they are protagonists in policy-making, not to appear as mere passive receivers.

Participatory Democracy in the EU

Main legal basis

The Lisbon Treaty's Preamble calls for enhancing the legitimacy of the Union, underlined with Treaty Articles 10 on representative democracy and 11 on participatory democracy. Despite self-imposed obligations and the Treaties' clear commitment to citizen participation, the Union's institutions appear to be slow to fully embrace it. Still the legal reference for participatory democracy in the EU is presented by these two articles.

Article 10 of the TFEU reads as follows: "(1) The functioning of the Union shall be founded on representative democracy; (2) Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens; (3) Every citizen shall have the right to participate in the demo-

² See: the French Project "Parlement et Citoyens" (<https://www.republique-numerique.fr>) or the European project "Eucrowd" (<http://www.inepa.si/eucrowd>).

cratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen; (4) Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.”

Article 11 of the TFEU reads as follows: “(1) The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action; (2) The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society; (3) The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent; (4) Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

An applied vision for civil dialogue

– A general theoretical framework of Civil Society Organisations (CSOs)

An empowered civil society is a crucial component of any democratic system, and is an asset in itself. It represents and fosters pluralism and can contribute to more effective policies, equitable and sustainable development and inclusive growth. It is an important player in fostering peace and in conflict resolution. By articulating citizens’ concerns, CSOs are active in the public arena, engaging in initiatives to further participatory democracy and governance.

The UN has recognised Civil Societies Organizations’ legitimacy to participate to global governance through Art. 71 of the UN Charter.³ The conceptualisation of Civil Society has developed through various interpretations from the political theory of Aristotle and the pre-modern thinkers of Locke, Hobbes and Rousseau⁴ to the contemporary theories

³ See: United Nations, The Charter of the United Nations, Available at: <http://www.un.org/en/sections/un-charter/introductory-note/index.html> (24.05.2018), Article 71: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned”.

⁴ Essays, UK, *Comparative Analysis Of Hobbes Locke And Rousseau Philosophy Essay*, November 2013. Retrieved from <https://www.google.it/?vref=1> (13.03.2018).

of civil society. Laura Pedraza-Farina provides a theoretical framework that provides an accurate description of civil society.⁵ She proposes a useful typology that distinguishes civil society organisations into their possible functions and purposes, ranging from apolitical and individualistic to policy-oriented and state-integrated. She argues that five groups of theories of civil society, each espousing different value systems and emphasising particular functions of civil society, map into this framework – (1) market liberal, (2) civic republican and social capital, (3) Habermasian critical; (4) Third World, feminist and minority critical; and (5) governance and state-society synergy theories – exposing fundamentally different normative understandings of civil society. In line with Salamon and others, CSOs are classified in five main categories: organisations, private, non-governmental, self-governing and voluntary.⁶

A European application of this search for conceptualisation of civil society is given by the very interesting AUGUR Study proposed by the European Commission.⁷ CSOs' actions are linked either to service provision or advocacy. Advocacy CSOs define their mission as democracy building. It is a top-down approach⁸ and its aimed at influencing and impacting authorities and their policies by expressing cultural, social, environmental, political concerns. The main strategies used by advocacy CSOs are the “name and shame” critical approach and the awareness campaigns. Service provision CSOs adopt a bottom-up approach that offers welfare services in fields such as education, recreation, health, family, humanitarian support, development project implementation and expertise services acting as a socio-economic agent by providing concrete services to the population, business or governments and international institutions.

In short, this very brief theoretical overview of the definition and role of civil society through the historical developments tells us that CSOs can have a good impact on the community in general and more specifically, on the strengthening of democratic practices. CSOs offer spaces where cultural, social, recreational, artistic and spiritual aspects can be expressed, enriching the community and contributing to its social and cultural vital-

⁵ L. Pedraza-Fariña, *Conceptions Of Civil Society in International Lawmaking and Implementation: A Theoretical Framework*, “Michigan Journal of International Law”, vol. 34, is. 3/2013, pp. 605–673.

⁶ L. Salamon et al., *Global Civil Society: Dimensions of the Nonprofit Sector*, vol. 2, Baltimore, MD 2004.

⁷ F. Desse, *Challenges for Europe in the world in 2030, The Role and Structure of Civil Society Organizations in National and Global Governance Evolution and outlook between now and 2030*, AUGUR, European Commission (2012), Project no. SSH-CT-2009-244565, p. 71.

⁸ *Ibidem*, p. 9.

ity. Moreover, CSOs, both on local and international levels, can potentially contribute to local economic and cultural development and improve the wellbeing of their own communities and others. We believe that in the current conjuncture, we are moving towards a ‘dominance’ of ‘commons’ format for societal development. The commons format assumes a mode of development that indicates civil society and community as critical initiators and guardians of common value

– A European policy-oriented conceptual framework of CSOs

The EU considers CSOs to include all non-State, not-for-profit structures, non-partisan and non-violent, through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic. Operating from the local to the national, regional and international levels, they comprise urban and rural, formal and informal organisations.

In conceptual terms, the civil dialogue with the European CSO framework refers to the following content elements:

– Civil dialogue reaches out to, involves and includes representative associations and civil society at all levels – local, regional, national and European. It is multi-level, open, transparent and inclusive.

– Civil dialogue supplements direct participation methods: citizens, organised in associations representing their interests, will be able to participate in and contribute to civil dialogue at the level that best suits them.

– Civil dialogue gives an overarching structure to existing dialogues, as well as those yet to be developed, between EU institutions and civil society focused on particular themes. Any confusion between dialogue, consultation and communication should be avoided. It builds on, but does not duplicate existing dialogues or consultations.

– Civil dialogue is a process for exchanging expertise and connecting with innovation in grassroots citizens’ organisations. It is a space for identifying, reflecting and building on the values, principles and objectives of the European project, creating a European public sphere by closing the gap between policymakers and citizens and also harnessing the potential of direct participation by the citizens. It should lead to better policy development for the common good, closer to the citizens’ needs and expectations, generating a greater sense of common ownership. The role of civil dialogue is crucial in stimulating ideas for a “new” Europe as well as in drafting legislation, as it allows the impact of the legislation on the citizens to be assessed.

– Civil dialogue may favour joint actions on agreed EU priorities. It serves as a place for civil society and the EU institutions to cooperate and

build joint projects for a better implementation of EU policies, contributing to better understanding amongst citizens of the added value of the European Union and evaluating the impact that policies have on civil society and citizens. The value of cross-sector and cross-thematic initiatives should be borne in mind.

– European integration through civil society: Civil dialogue is an opportunity to create links between the citizens themselves and their elected representatives from across the EU. It can lead to EU-wide cooperation, exchange and projects for change, encouraging the development of stronger ownership and a stronger sense of European identity, underpinning the process of European integration.

In short, civil dialogue favours interactive dynamics expressed by virtue of the extensive and complex net of channels of access that EU is providing to actors of non-state or non-governmental nature (e.g. CSOs, NGOs, Networks, and Platforms). Moreover, it is linked to the democratisation of international system, to the participatory dimension of democracy at the European level and to the characteristics of “good governance” as it was defined in the White Paper on European Governance (i.e. openness, participation, responsibility, effectiveness and consistency).⁹

Phased development of EU practices in participatory democracy, governance and civil dialogue: horizontal, vertical and structural dialogue¹⁰

Although modest attempts of participatory practices started with the creation of the European Economic Community, in particular with the Social Dialogue institutionalised in the European Economic and Social Committee (EESC) and financed through the European Social Fund and the political dialogue set up in the European Political Cooperation, real EU practices of participatory democracy only emerged with the Treaty of Lisbon. Only then the role and impact of civil society organisations became recognised. It is good to recall the major recent constructive steps of this formalised awareness and increased institutionalisation of civil society in EU affairs.

– The White Paper on European Governance by the European Commission¹¹ clearly stated that “The Union must renew the Community

⁹ Commission of the European Communities, *White Paper on European Governance*, Brussels, COM(2001) 428 final, Brussels 25/07/2001.

¹⁰ A good critical overview is given by J. Pichler, *Civil dialogue and Participatory Democracy in the EU Institutions*, Brussels 2015, p. 110.

¹¹ European Commission, *The White Paper on European Governance*, COM(2001) 428 final.

method by following a less top-down approach.” It also implied intent to “establish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy and [...] a stronger interaction with [...] civil society.”

– The Opinion of the European Economic and Social Committee on Civil Dialogue in 2001¹² clearly defined what is meant by civil dialogue in the European context:

- dialogue within European organisations that represent civil society on the theme of development and the future of the European Union and its policies;
- structured, regular dialogue between these organisations as a whole and the EU;
- day-to-day sectoral dialogue between civil society organisations and their partners in legislative and executive bodies.

– Civil Dialogue Platform of European Social NGOs¹³: “Civil dialogue is not just about consultation, it is about ensuring all stakeholders are given the opportunity to influence policy issues where they have expertise [...]” The Platform conceives the dialogue as an on-going process involving local, national and European levels, within a specific sector as well as on horizontal issues. Focus is on social justice, inclusion, employment, right, civil dialogue, etc. This process is channelled up to the EU institutions by the European NGOs which have been mandated by their constituencies to represent them and advocate on their behalf. This close link between the EU NGOs and their national networks explains why the EU institutions value so much the direct consultation with civil society organisations.

– The Riga Process on participation, launched by the NGO Forum – RIGA 2015 offers an Action Roadmap towards dialogue at different levels for the implementation of Article 11.1 and 11.2 of the Lisbon Treaty.¹⁴ It has been supported by European Economic Area Grants, European Economic and Social Committee (EESC), the EESC Liaison Group, and EU NGO networks – the Konrad Adenauer Stiftung and King Baudouin Foundation. It clearly emphasised that: “Only a qualitative dialogue between decision makers and society can provide decision-making process in accordance to society needs. In order to ensure a successful dialogue,

¹² European Economic and Social Committee on Civil Dialogue, Opinion of the EESC 535/2001.

¹³ See: <http://www.socialplatform.org>.

¹⁴ See: NGO Forum – Riga 2015, <http://ecas.org/roadmap-better-civil-dialogue-agreed-upon-ngo-forum-riga> (13.03.2018).

the exchange of experience and cooperation among state institutions, non-governmental organizations, experts, and society is essential. There is no doubt – the recourses and skills are needed to for an active participation.”

The objective of the Roadmap is to promote civil society participation in decision-making at both national and EU level, as well as to identify future actions to be taken by people, organisations, communities, state, and European Union. It outlines a vision, a structure and actions needed for the implementation of better civil dialogue in the EU and the involvement of citizens. In short, it reflects citizens' calls for better decisions, better policymaking and better governance responding to citizens' needs. It lays the concrete groundwork for civil dialogue in which representative associations play a key role while, at the same time, the full potential of individuals is harnessed.

The roadmap outlines three levels of dialogue reflecting Article 11(1) and (2):

a) Dialogue with representative associations and civil society at national level focusses on:

– Structure (Article 11.2): Although national traditions and legal frameworks differ considerably, EU decisions are, to a large extent, prepared by national departments and have greatest impact at national, regional and local levels. Treaties are binding upon Member States and joint commitments and aims (such as the Europe2020 Strategy) cannot be achieved without broad ownership and participation by the citizens. The thematic dialogues that often already exist at national level need better EU recognition and support measures so that they can be extended to other Member States. National dialogues should form part of the debate in the annual EU dialogue.

– Building on: Existing dialogues on EU issues at national level (e.g. health, youth, sport, trade etc.) as well as the EU Citizens' Dialogues should be adapted and restructured.

– Partners: Member States, European Commission DGs, civil society representatives involved in the dialogues (also via Economic and Social Councils (where existing).

b) Dialogue with representative associations and civil society at EU level focusses on:

– Structure (Article 11.2): Appropriate regular and structured dialogue forums to link each and all the EU institutions with civil society while creating synergies between the institutions where possible. Existing best practice should be extended and strengthened. The organisation of a yearly event would bring together EU institutions represented at the highest

levels and representative associations/civil society as well as representatives from sectoral dialogues at local, regional and national level. This annual meeting could be structured along the lines of the Open Days, with workshops and thematic meetings feeding into a comprehensive closing session and a final joint declaration or annual work plan. Online engagement and ad-hoc structures could be developed over time. Any declaration would be forwarded to all the EU institutions, and all would be required to issue a formal reaction.

– Building on the European Economic and Social Committee NGO Liaison group, EESC Civil Society Day.

– Partners: European Economic and Social Committee, European Commission, European Parliament and European Council, Committee of Regions.

c) Opportunities for citizens and representative associations to make known and publicly exchange views in all areas of Union action in local, regional, national and EU Dialogues) (Article 11.1) focuses on:

– Structure: All citizens, through the associations representing their interests, should be able to access civil dialogue at the level that suits them best – be that local, regional, national or EU level. These dialogues should be self-organised by the representative association/civil society organisations, with the support of the relevant public authority, thus getting as close to the citizens as possible and helping to reduce feelings of isolation and distance. Citizens should also be able to feed in as individuals.

The format, agenda and topics for discussion would be decided by the representative association/civil society organisations themselves. Agreed reports and representatives would feed into the national and EU-level dialogue process.

– Building on NGO networks, councils, initiatives, EYC 2013 National Alliances;

– Partners: Public authorities from different levels, Member State European Affairs Departments, Economic and Social Councils (where existing), civil society platforms.

Implementing participatory democracy

Based on legal references, the strengthening of participatory democracy within the EU acts on different levels and dimensions:

– The implementation of the Horizontal Civil Dialogue (Art 11(1) TEU) was long overdue. It is all the more relevant as young people prefer more activity-related, issue-related politics. More recently, we have seen some interesting attempts at horizontal civil dialogue, which could serve as pilot projects for a more structured horizontal dialogue with citizens,

such as the EESC *My Europe... Tomorrow*,¹⁵ the *Eleven-One-Austria Project*¹⁶ run by the Austrian Institute for European Law and Policy together with the University of Graz, or the *REIsearch* project¹⁷ and the foresight project *Futurium*,¹⁸ an open-source tool launched in July 2011 by the European Commission's Directorate General for Communications Networks, Content and Technology (DG CONNECT).

– Also the Vertical Civil Dialogue has to be enforced and opened up as widely as possible.¹⁹ The fragmentary, lobbyist-dominated character of

¹⁵ The *My Europe...tomorrow!* project established a dialogue in the form of a two-way exchange with citizens. During the pilot phase the EESC has cooperated with partner organisations in three Member States (Austria, Estonia and Spain) in order to debate the issues of youth (un)employment and immigration. The online platform was launched on 28th October 2014. See also: *Final Report on the 'EESC's Online Tool "My Europe...Tomorrow Bridging the Gap between Europe and its citizens"*, eds. J. Pichler, A. Wolfschwenger, "Publications of Legal Policy Publications of the Austrian Institute for European Law and Policy", vol. 38/2015, <http://portal.eesc.europa.eu/myeuropa/Pages/aboutmyeuropa.aspx> (12.02.2018).

¹⁶ The aim of the project Eleven One Austria is to conceptualize, develop and implement a pan-Austrian open access online platform for all official and other institutions as well as for all forms of organized civil society devoted to all areas of Union action for mutual exchange and exploitation of synergies. This would create a closed "European policy network" within which each participant has full knowledge of the activities of the other participants of the network. Participating partners include: Austrian Institute for European Law and Policy, University of Graz, University of Salzburg, State of Styria, State of Salzburg, Federal Chancellery of Austria. The final outcome of the project Eleven One Austria is the first open access online tool for the Austrian civil society and their associations for a lively European discussion in the sense of collaborative and cooperative democracy. It is meant to serve as a role model in the development of European Participatory Democracy that can be extended to other EU member states, <https://legalpolicy.org/2015/12/06/eleven-one-austria> (12.02.2018).

¹⁷ The REIsearch platform has been created as a bridge to connect citizens, researchers and policy makers on topics linked to the scientific research and to societal challenges that Europe is facing. It was launched in 2016, with the support of the European Parliament and European Commission, with the objective of showing how a technological tool, coupled to a broad network of leading media, research institutions, researchers, civil society organisations, and citizens, can help policy makers to make better use of all knowledge and experience, to make better decisions, based on evidence and experience, for the benefit of society as a whole, <http://www.eismd.eu/reisearch> (12.02.2018).

¹⁸ Futurium was initially developed as an online space for European citizens to discuss digital topics. Now, the platform serves as a space for European citizens to discuss any topics related to the European Union. The platform hosts an online foresight toolkit to facilitate the joint creation of ideas to help design future policies, <https://ec.europa.eu/futurium/en/egovernment4eu> (15.03.2018).

¹⁹ See: *Detailed suggestions*, in: J. Pichler, S. Hinghofer, P. Pichler, *Civil Dialogue and Participatory Democracy in the Practice of the European Union Institutions*, Vienna 2016.

vertical civil dialogue should be replaced and opened up to allow for inputs from the average European citizen. Agenda-setting needs to be from the bottom-up, letting citizens co-decide in a reformed model that reaches consensus from below. The *Eleven One Austria* network or the *Futurium* platform are trying to give concrete responses to the long overdue vertical European dialogue. Quality has to be chosen over quantity, and the Commission has to sustain a 'dialogue-regime' where the European Institutions should focus on delivering on substance rather than concentrating on procedures.

– The EU Citizens' Initiative (ECI) is legally embedded in Art 11 (4) TEU: "Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties." This legal instrument needs significant changes and should be used as 'a window of opportunity', and unnecessary barriers and hurdles should be eliminated. The ECI mechanism needs to change if it is to perform better in the future. It should be an intimate platform of exchange between the citizens and their Commission, creating one single handling entity, preferably run by an outsourced body. This would imply a removal of the Commission's power to decide on the admissibility of incoming ECIs, an involvement in non-successful but interesting ECIs as well as granting successful ones a chance to become a partner in the vertical civil dialogue. It would also mean a reduction of the data requirements at the regional and local levels.

A legal status for citizens' committees could be pursued and non-productive administrative burdens eliminated. An increasing general awareness and knowledge of the ECI could only benefit the actual implementation of this potentially strong participatory democracy tool.

– For the first time in EU primary law, the Treaty of Lisbon under Article 17 TFEU explicitly introduces a dialogue between European institutions and churches, religious associations or communities as well as with philosophical and non-confessional organisations. The Treaty provision for the Dialogue of European Values states that: "(1) The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States; (2) The Union equally respects the status under national law of philosophical and non-confessional organisation; (3) Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations."

In order to frame the dialogue and give guidance to interlocutors in the context of the implementation of Art 17 (3) TFEU, the European Commission adopted guidelines based on the principle of open, transparent and regular dialogue: this dialogue has to be opened up to the members of all accredited organisations. It also has to diversify the dialogue away from a Brussels' dialogue to a genuinely open and European dialogue. In short, only an enriching and open dialogue can make it a broad and fruitful public dialogue, connected to communities and citizens.

Assessment

The ongoing EU practices of participatory democracy and the debate on its future developments clearly show the need for citizen-friendly and direct democratic innovations that are attractive to citizens. Deepening democratic representation at the European level should therefore be strengthened, such as the direct election of a President of the Union or an EU-wide electoral constituency.

– The idea of the introduction of a directly-elected president of the Union is not new. The results of the Eurobarometer survey of 6.09.2013 showed that 60% of the Europeans favoured such a direct-democratic right. Initiating the “Spitzenkandidaten” process during the last elections for the European Parliament was already a step forward in improving citizens' legitimisation of the nomination of the President of the European Commission, but additional steps are needed to improve this further.

– An EU-wide election of the European Parliament could also be a step towards a more democratic Europe. The EP has become a vital democratic institution of the EU. It plays an important role as co-legislator, and has become the parliamentary voice at the Union level. The election of MEPs according to Member-State-determined constituencies should nevertheless be questioned. An EU-wide electoral circumscription could further improve the full European dimension of the European Parliament.

Participatory governance in the EU Context

Participatory governance is gaining momentum as a means for countering the ‘democratic deficit’ in the contemporary political systems. In fact, over the past twenty years, the need for bridging the gap between institutions and citizens and constructing a new relationship between citizens and public bodies has been high on the rhetoric of political agenda, although the Eurobarometer findings over recent years show less concrete and positive outcomes. The future of the EU is at stake. A change from

a mere output-focused democratic legitimacy to a more input-oriented legitimacy would be more than welcomed. Some concrete steps have been taken in the last year.

– On February 14, 2017 a pro-European Appeal by over 300 leading European intellectuals and academics was published all over Europe addressing the Heads of State and Government meeting in Rome on 25 March to celebrate the 60th anniversary of the Treaties of Rome. The Appeal “A genuine European Union to ensure welfare, security and democracy”²⁰ called for a re-foundation of the EU on the basis of European Parliament’s recent proposals to strengthen EU institutions and policies and to pave the way towards a true European democratic government. The Appeal invited European citizens to participate to the March for Europe in Rome on 25 March.

– On March 1, 2017 the European Commission presented a White Paper²¹ as a contribution to the 60th anniversary summit of the Treaty of Rome. It contained five possible paths for the future of the EU: *Carrying On* (the EU27 focuses on delivering its positive reform agenda); *Nothing but the Single Market* (the EU27 is gradually re-centred on the single market); *Those Who Want More To Do* (the EU27 allows willing Member States to do more together in specific areas); *Doing Less More Efficiently* (the EU27 focuses on delivering more and faster in selected policy areas, while doing less elsewhere); *Doing Much More Together* (Member States decide to do much more together across policy areas).

– On the date of the celebrations many manifestations, events and debates took place in Rome. They mainly dealt with the future challenges of the EU and focussed on rethinking Europe in a global perspective. A good example of such a forward looking, but policy-oriented event has been the geo-thematic conference on “The future of the EU: a commitment for You(th)” organised by the EU Jean Monnet Programme. Most of the activities, however, referred to the needed Citizens’ Dialogue, such as the Citizens’ Dialogue with High Representative and Vice-President Ms Federica Mogherini bringing together some 250 people to discuss the future of Europe; the Symposium at Rome 3 University on “Europe Fights Back: Re-building vision, Re-gaining Trust, Re-launching”; The Civil Society Forum coordinated by the European Federalist Movement at the Sapienza University; or the *March for Europe* on 25 March 2017, organised by the Spinelli Group.²²

²⁰ http://www.marchforeurope2017.eu/wp-content/uploads/2017/02/Appeal-EU-Re-foundation_EN.pdf (12.03.2018).

²¹ https://ec.europa.eu/commission/white-paper-future-europe-reflections-and-scenarios-eu27_en (12.03.2018).

²² www.marchforeurope2017.eu (12.03.2018).

Finally, the policy context of participatory governance is showing in the last years a growing awareness that more democratic structures are needed in order to build up a real European citizens-driven public space. Citizens 'dialogues on the future of Europe have become a priority issue.

– The Report by Luc Van den Brande, Special Adviser to the President of the European Commission Jean-Claude Juncker, “Reaching out to EU citizens: a new opportunity About us, with us, for us”²³ in October 2017 contains a number of concrete policy proposals on vertical and horizontal policy dialogue, youth, intergenerational solidarity and education.

– On February 14, 2018 the European Commission presented a Leaders' Agenda with a number of practical steps that could make the EU's work more efficient, and improve the connection between the leaders of the EU institutions and the citizens of Europe²⁴: further building on the 2014 “Spitzenkandidaten” experience, the composition of the European Parliament and the European Commission, and the idea of a double-hatted President for the Commission and Council.

– On 5–6 May 2018, the Commission convened for the first time in the history of the EU a Citizens' Panel to prepare a public consultation on the Future of Europe.²⁵ A group of 80 Europeans came to Brussels from 27 Member States, and worked together to draft a 12-question online consultation. This exercise in participative democracy will involve citizens in shaping the conversation on the Future of Europe ahead of the European Parliament elections in May 2019. In addition to the European Commission's work, Citizens' consultations are now also organised in all Member States, following an initiative launched by French President Macron.

Governance in perspective

Understanding participatory governance is much related to the concept of governance, expressed at different levels. Governance can be defined as follows: “The process whereby elements/actors in society (institutions & civil society) wield power and authority, influence and enact policies and decisions concerning public life, economic, social and cultural development.” It focusses on the construction of effective, accountable and legitimate governing arrangements within diverse institutional settings of the public, private and voluntary sectors. It deals with the legitimacy and effectiveness of a political system in terms of democracy and inclu-

²³ L. Van den Brande, *Reaching Out to EU Citizens: A New Opportunity „about Us, with Us, for Us”*, Brussels, October 2017, p. 35.

²⁴ http://europa.eu/rapid/press-release_IP-18-743_en.htm (17.03.2018).

²⁵ http://europa.eu/rapid/press-release_AGENDA-18-3603_en.htm (17.05.2018).

siveness. As such it presents a normative approach to assess the capacity and ability of different levels of governance.

Of course this needs to be put in perspective: good governance in perspective implies national, local and regional, European and global levels of capabilities. These are often interconnected and linked:

- National capabilities and policies for a good national governance are a well-functioning democratic political system responsive to people's needs and the rule of law, with effective administration of justice and an equitable institutional structure. This implies a new and different role of the State, being not any longer the exclusive actor in internal and external affairs.

- Local capabilities and policies are mainly based on the principle of subsidiarity and decentralisation. Governance should take place at the lowest level at which it is effective. It implies that community-driven and values-based approaches create trust, social capital and cohesive societies. States must protect and nurture the local space, create and support opportunities for cross-border networking, cooperation and exchange in view of creating strong, democratic and accountable local institutions.

- (Macro-) Regional capabilities and policies refer to regional cooperation/integration processes that can strengthen participatory democracy. These mechanisms allow for empowering people to better manage socio-economic forces, improving negotiating power and building capabilities to profit from global opportunities, including a strong social dimension, democratic accountability and social dialogue.

- Global capabilities and policies relate to the importance of input democratic legitimacy for international organisations, taking into account global public goods and global civil society organisations.

EU Practice of participatory governance

In the last section, we give an overview and assessment of some of the more recent practices of participatory governance in the EU context.

- A White Paper on *European Governance*,²⁶ was adopted by the European Commission in July 2001 with the aim of establishing more democratic forms of governance at all levels – global, European, national, regional and local.

When taking office in 1999, Commission President Romano Prodi drew attention to the need for fundamental reform of the EU decision-making process and the way that the EU institutions function. Promoting new forms of European governance then was made one of the four strate-

²⁶ Commission of the European Communities, *European Governance: A White Paper*, Brussels, 25.07.2001, COM(2001) 428 final.

gic priorities of the Prodi Commission at the beginning of 2000. Although the need to improve the quality of and to simplify regulation has been recognised both at EU level and within individual Member States since the mid-1980s, only in the early 2000s was the renewal of the long-standing efforts for institutional and policy-making reform was put into practice.

The White Paper forwards a set of proposals focusing on the role of the EU institutions, better involvement, better regulation, and the contribution the European Union can make to world governance. The White Paper and its ensuing action plans were intended to involve the Parliament, Council and Commission and Member State governments in improving the way in which legislation and policies are prepared and implemented under the existing EU treaties. The Commission defined governance as “the rules, processes and practices that affect how powers are exercised at the European level,” as defined by the treaties as they stand. The choice of promoting new forms of governance under the existing institutional framework became the only option available following the decision of the Nice European Council in December 2000 to call for an Intergovernmental Conference (IGC) on institutional reform in 2003.

The content of the White Paper based good governance on the core principles of openness, participation, accountability, effectiveness and coherence. It dealt with four main action themes: (1) Better involvement and more openness: instituting openness through all stages of decision-making; ensuring consultation with regional and local governments and with civil society networks; (2) Better policies, regulation and delivery: simplifying EU law and related national rules; promoting different policy tools; establishing guidelines on the use of expert advice; defining criteria for the creation of new regulatory agencies; (3) Contributing to global governance: reviewing how the EU can speak more often with a single voice in international affairs; improving dialogue with actors in third countries; and (4) Refocusing policies and institutions (Commission, Council of Ministers and Parliament): ensuring policy coherence and long-term objectives; clarifying and reinforcing the powers of the institutions; formulating proposals for the Intergovernmental Conference (IGC) based on the governance policy consultation.

– In 2009 the Committee of the Regions (CoR) published a White Paper on *Multi-level Governance*²⁷, reflecting its determination to “build Europe in partnership”. Multi-level governance was defined as “coordinated action by the European Union, the Member States and local and regional authorities, according to the principles of subsidiarity and proportional-

²⁷ <http://cor.europa.eu/en/activities/governance/Documents/CoR%27s%20White%20Paper%20on%20Multilevel%20Governance/EN.pdf> (17.05.2018).

ity and in partnership, tasking the form of operational and institutionalised cooperation in the drawing-up and implementation of the EU policies.” By publishing this political document, the CoR took the initiative to submit its vision of an inclusive European decision making process and political debate, based on a mode of governance which involves local and regional authorities in the formulation and implementation of European policies.

The White Paper set two main strategic objectives: encouraging participation in the European process and reinforcing the efficiency of Community action. It proposed Regional Action Plans, tools, territorial pacts, inclusive method of coordination, vertical and horizontal partnerships. The European Grouping of Territorial Cooperation (EGTC) represents a good practice of territorial cooperation (cross-border, transnational and interregional cooperation), involving regional and local authorities, in view of strengthening the economic and social cohesion of the European Union.²⁸ The EGTC Regulation was established in 2006 and was the first European cooperation structure with a legal personality defined by the European Law.

– A new kind of political thinking was accurately expressed in 2014 by the Charter for Multi-Level Governance by the Committee of the Regions.²⁹ It refers to the principles of “togetherness, partnership, awareness of interdependence, multi-actor community, efficiency, subsidiarity, transparency, sharing best practices [...] developing a transparent, open and inclusive policy-making process, promoting participation and partnership, involving relevant public and private stakeholders [...], inclusive through use of appropriate digital tools [...] respecting subsidiarity and proportionality in policy making and ensuring maximum fundamental rights protection at all levels of governance to strengthen institutional capacity building and investing in policy learning among all levels of governance...”

The Charter’s focus was on better lawmaking, growth in partnership, territorial, economic and social cohesion, European Neighbourhood Policy and decentralised cooperation. It establishes a set of common values and identifies practical processes of good European governance. It commits its signatories to implement multi-level governance principles and mechanisms and to actively inspire and promote practical multi-level cooperation projects. It serves as a guide for local and regional authorities

²⁸ L. Bekemans, *Territorial Cooperation and Multi-level Governance; The Stimulating Role of the Committee of the Regions*, in: L. Bekemans, *Globalisation vs Europeanisation. A Human-centric Interaction*, Brussels–Bern 2013, pp. 289–304.

²⁹ <https://portal.cor.europa.eu/mlgcharter/Pages/default.aspx> (17.05.2018).

to implement fundamental Rights in partnership to “making rights real”. After the adoption of the Charter for Multi-Level Governance, the concept of multi-level/multi-actor governance has gained increasing importance as a policy tool in managing diversity and cross-border challenges, enhancing the citizen-ownership of the European project.

In short, the EU can be considered a system of multi-level governance in continuous evolution and a policy response for active adaptivity to the changing international environment and its challenges, bringing participatory democracy closer to the citizens.

Despite the general emphasis on the participative forms of political decision-making as a means to improve the quality of public intervention in various fields, participatory governance does not always assure a more effective and sustainable policy-making. Firstly, participatory governance contains the risk of dominance by pseudo-democratic elites who have good resources and organisational strength. Such practice has led to the motivation of some authors to refer to ‘participation as tyranny’³⁰ that is being practiced and reproduced to reinforce the interests of the already powerful. Secondly, participatory governance is deemed to negatively affect the quality of public decisions because it gives power to non-expert citizens that replace knowledge with opinion. According to this argument, citizens would focus on short-term, easily manageable decisions that are not effective and sustainable in the long run. In general, participation is increasingly seen as a buzzword in the contemporary development lexicon. Due to the fact that the concept is ambiguous and value-laden, the actual discourse indicates mounting disillusionment with its nature and outcome. This is why more evidence-based research on the impacts of participatory approaches in political decision-making is needed, in order to determine whether, and under what conditions, participatory governance improves the sustainability of policies.

Conclusion

There is again a need for an enlarging and mobilising vision which can raise a new élan and a regained connection with the citizen.³¹ Furthermore, we must dare to recall the enthusiasm and faith in the European project, as it was embodied by the Founding Fathers of Europe. They

³⁰ B. Cooke, U. Kothari, *The case for participation as tyranny: Participation: the New Tyranny?*, in: *Participation: the New Tyranny?*, London 2001, pp. 1–15.

³¹ L. Bekemans, *European concerns, reflections and perspectives*, in: M. Simeoni, *Europe or not? Multiple Conversations with Alberto Martinelli, Vittorio Cotesta, Alain Touraine, Nadia Urbinati*, Brussels–Bern 2016, pp. iii–xii.

wanted to guarantee a sustainable peace within the European borders, and combined a long term vision with a pragmatic policy approach. Economic arguments supported political goodwill. Therefore, Europe needs bridge builders who can concretely complete the rhetoric of the European story, underscore the European ideals of peace, unity in diversity, freedom and solidarity and mobilise the young people for the European model of society. The rhetoric still needs to be translated into a workable and forward looking reality amidst a radically changing world.

The role of education is fundamental in this.³² Only through integral human development in education and learning processes true citizens' dialogue can develop and link EU citizenship to democracy. Indeed, learning to live together with our differences and diversity is becoming the central dimension of active citizenship education.³³ Also, new forms and places of dialogue, active citizenship and cooperation emerge outside the existing institutionalised structures of representation with an increasing role of the formal and non-formal civil society.

In short, I am convinced that, in spite of failures and imperfections in the integration process, the project of "Europe" remains a valid working place to define the European common good and to develop a unique institutional and operational framework in which citizens are important actors of true participatory governance. I distinguish four fundamental tasks:

– Firstly, Europe has the moral responsibility to build a best practice of cooperation internally and externally. Individual and collective well-being depends more and more on a comprehension of man's capacity to read the signs of time and act accordingly in the pursuit of economic and social welfare within a world of global competition. We are in need of a radical change in vision and method to survive as a European civilisation.

– Secondly the Europeans have the moral responsibility to show that people can live together in the world, despite differences in language, culture, religion, origin, etc. In practice EU citizens still need to show that they can form an international public space where a cultural diaspora can exist in mutual respect, tolerance and dialogue. Clear and coherent messages, examples and testimonies are important and meaningful instruments to inspire citizens.

– Thirdly the European countries and regions have to search continuously to make their social and economic systems more efficient so that the

³² L. Bekemans, *The Role of Education in the rethinking of Europe in a global perspective*, "Educatio Catholica, Populorum progressio and education", Congregation for Catholic Education, Roma, Anno III, no. 1–2/2017, pp. 139–155.

³³ L. Bekemans, *Role and Responsibilities of educational institutions and strategies for intercultural citizenship education in a globalising world*, Berlin Dec. 2016, p. 30.

weaknesses of the one can be compensated with the strength of others. This implies the importance to encourage individual initiative, to aim for a broad and just distribution of the benefits of economic welfare and to revalorise the sense of responsibility in a value-driven education with European dimension.

– Finally, the Europeans should play a more courageous and dynamic role on the international political scene by defending its model of peace and transnational cooperation and strengthening its method of collaboration with other macro regions. Europe should work for a transition of the traditional management of geopolitical and global economic conflicts to a new transversal policy of the global political and economic landscape.

A values-based EU will only survive if it is based on citizens' participation and participatory governance.

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More Efficient or More Uncertain? The Main Dilemmas of the EU's Foreign and Security Policy

Abstract

The purpose of this article is to analyse the main characteristics of the EU's foreign and security policy that can affect its functioning at present and in the future. Being part of the broader category which is the EU's external policy, the EU's foreign and security policy is plagued with numerous flaws. Reducing their impact would greatly strengthen this policy, but at the same time this depends on the resolution of the main axiological dilemma. It concerns the future shape of the whole European Union, which means that the EU needs to clearly formulate its *finalité politique*. The resolution of this dilemma will determine not only the future of the EU, but also the present and future shape of its foreign and security policy.

Key words: EU's External Policy, EU's Foreign and Security Policy, *Finalité Politique* of the EU, Models of European Integration, Future of the EU

What Is the EU's Foreign Policy?

One of the main factors influencing the European Union's position as a global player is the functioning of the system of regulating and managing the broad sphere of the EU's relations with the external world. To better present it, it is first necessary to briefly analyse the principles, goals and mechanisms governing this sphere.

In most general terms, it includes the European Union's relations with third countries, their groupings, international organisations, etc. The scope of this sphere has been undergoing constant changes over the years, which involved a gradual increase in the number of issues, as well as their

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growing complexity and interdependence. The system of links between the EU and other participants in international relations is becoming increasingly complex and covers a multitude of diverse spheres of life: politics, economy, defence, social and cultural issues, etc. Faced with the need to regulate this broad sphere of relations with the external world, the European Union (and earlier the European Communities) created a series of rules and principles, established specific institutions and introduced procedures, which all make up a complex category that can be referred to as the EU's external policy. It resembles the classical foreign policy conducted by states in terms of its objectives and functions, but at the same time it exhibits its own special characteristics, as one would expect of an entity as unique as the Union.¹

These special characteristics involve the existence of certain mechanisms that can either improve the functioning of the EU's external policy or in fact weaken it. The weakening might result from the complex and unclear internal structure of the policy. In practice, this means that the sphere of the Union's relations with the external world has not been precisely defined; it is composed of various components and lacks clearly delineated mechanisms. This vagueness is further increased by the chaos surrounding the terminology and the use of various names: EU foreign policy, EU external relations, European foreign policy, etc.

Despite the aforementioned problems, we can still say that the EU's external policy has two main components: an economic one and a political/military one. The first one concerns the economic relations with foreign countries in the form of the Common Commercial Policy, along with development assistance and humanitarian aid, and the second one concerns foreign and security policy in the form of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP). The factors that hinder the implementation of the EU's external policy include the fact that its two components do not share the same philosophy: economic issues fall mainly within the competences of EU institutions (accordingly to the community method), while in foreign and security policy it is the Member States that have the final say (intergovernmental cooperation). Consequently, the external policy is a conglomeration including elements of policies conducted on the EU level and of national foreign policies.

¹ For more see: O. Barbarska, *Polityka zagraniczna Unii Europejskiej: aspekty teoretyczne i metodologiczne (Foreign Policy of the European Union: Theoretical and Methodological Aspects)*, „Studia Europejskie”, no. 3/2016; *The SAGE Handbook of European Foreign Policy*, ed. K.E. Jørgensen et al., London 2015; J. Starzyk, *Wspólna Polityka Zagraniczna i Bezpieczeństwa Unii Europejskiej (Common Foreign and Security Policy of the European Union)*, Warszawa 2001.

Main Deficiencies of the EU's Foreign Policy

It is only natural that this state of affairs gives rise to tensions and conflicts in various spheres and dimensions.² Examples of this are manifold, such as the ongoing strong controversies related to the migration crisis. These controversies have both a political and an ideological dimension, which only raises the gravity of the crisis because it affects “many areas of key significance for the existence of the common integration space: from axiology and the understanding of human rights to the functioning of the Schengen rules”.³ Just as it is the case with the internal functioning of the European Union, also in the sphere of the EU's external policy disputes may arise between EU bodies and the Member States, between different EU institutions, as well as between individual Member States, leading to more or less serious tensions or even crises.

One of the main reasons behind this is that the EU's external policy has not supplanted the foreign policies of the individual Member States. Moreover, while agreeing to the emergence of this policy, the Member States largely seek to take advantage of it to consolidate their own political and economic positions in relations with third countries. The situation is made even worse by the crisis the EU has been going through and the striving of the individual Member States to protect their own interests.

All this results in general ineffectiveness of the EU's external policy. In functional terms, its main flaw seems to be the lack of consistency in political as well as institutional and legal terms. The Treaty of Lisbon represented an attempt to provide solutions to this deficiency. It introduced “Part Five: The Union's External Action” to the Treaty on the Functioning of the European Union (TFEU), which consolidates the previous resolutions regulating the EU's relations with foreign countries in terms of external economic relations. At the same time, the Treaty on European Union (TEU) confirmed the significance of the rules of consistency, complementarity and coordination in external policy; of particular importance in this context is Article 21(3), according to which “[t]he Union shall ensure consistency between the different areas of its external action and between these and its other policies”.⁴ Unfortunately, the sig-

² K. Zajączkowski, *O brakach i niedostatkach w polityce zagranicznej UE (On the Shortcomings and Deficiencies of the EU Foreign Policy)*, „Studia Europejskie”, no. 3/2014.

³ S. Pióciennik, *Zróżnicowana integracja – remedium na kryzysy w UE? (Differentiated Integration: A Remedy for the EU Crisis?)*, „Sprawy Międzynarodowe”, no. 2/2016, p. 13.

⁴ *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, O.J., C 326, 26.10.2012.

nificance of these provisions is diminished by the fact that the political and defence component of the external policy, meaning the CFSP and the CSDP, is still treated as a separate issue: the relevant provisions were placed in Title V TEU (Articles 23–46) and not in TFEU, where the other external policies of the EU are addressed.

All this means that the provisions addressing consistency of the EU's external policy are largely declarative. There is clear inconsistency between the striving to conduct this policy in the comprehensive way that the Union has been preaching and its actual implementation. Furthermore, despite the existence of relevant Treaty provisions, the Member States still show considerable scepticism towards closer coordination of their own foreign policies within the framework of the EU. It should therefore come as no surprise that the European Union has not developed a truly common and consistent institutional system that could successfully represent it and its members in relations with the rest of the world.

This is especially true of the political and defence component of the EU's external policy, that is the foreign and security policy. In this case we are often dealing with, as Nicole Gnesotto put it, examples of an actual “national obsession”: whenever the European Union “touches upon [...] diplomacy and the use of military force, states immediately start to cling to their national prerogatives”.⁵ While the very fact that the CFSP and the CSDP were established can already be considered a success, these policies obviously suffer from many flaws. What seems to be the biggest problem is the lack of an efficient decision-making centre at the Union level, one that would initiate, execute, coordinate and supervise undertakings in all areas covered by this policy.

The Treaty of Lisbon failed to solve this problem, but it introduced a new, justified and long-awaited solution by establishing the post of High Representative of the Union for Foreign Affairs and Security Policy and the European External Action Service (EEAS). At the same time, however, the Treaty retained the special nature of the EU's foreign and security policy, basing it on the principles of intergovernmental cooperation, unanimous decision-making and not adopting legislative acts. The Treaty of Lisbon also introduced minor changes to the distribution of competences, to legal instruments and to the decision-making process within the CFSP and the CSDP. It did not introduce, however, any mechanisms that would facilitate or enforce greater consistency of the Member States' actions.

The results of the establishment of the said new positions and institutions turned out to be far from clearly positive as well. The new office

⁵ N. Gnesotto, *Przyszłość Europy strategicznej (The Future of Strategic Europe)*, Warszawa 2012, p. 80.

of High Representative was created as a result of merging the positions of High Representative for CFSP and European Commissioner for External Relations, which could theoretically increase the institutional effectiveness of the EU in the sphere of external policy. This merger of the two functions is, however, only a personal union and does not change the existing legal order. In addition, the “double-hatted” nature of the new office undermines its effectiveness: on the one hand, the High Representative presides over the Foreign Affairs Council configuration of the Council of the EU, and on the other hand, is a Vice-President of the European Commission. The High Representative’s activity is therefore based on two different systems: the one founded on the principles of intergovernmental cooperation and, at the same time, the one that works in accordance with the community model.

It is therefore likely that a conflict of interests or rivalry between these two institutions will emerge. In practice, much depends on the quality of the personal cooperation between the High Representative and the President of the European Council. Certain tensions that might emerge between these politicians only prove the fact that, from the systemic point of view, the rivalry between them is an intrinsic part of the logic of functioning of the two offices. Besides, without questioning the qualities of Catherine Ashton and Federica Mogherini, who have held the High Representative post so far, they do not seem to be first-line EU politicians. It appears that the EU Member States, especially the most powerful ones, set things up in a way that gives them, rather than the EU institutions, the final word on the sensitive issues of foreign policy. Consequently, so far neither the formal prerogatives nor the actual significance of the office of High Representatives have introduced any new quality to the functioning of the EU’s foreign and security policy.

Another example of adopting institutional solutions that are not very effective is the establishment of the European External Action Service, which is the long-advocated EU diplomatic service. It is composed of both EU officials and diplomats from the Member States, and it is headed by the High Representative. The functioning of the Service suffers, however, from competition-related problems, as it has not been given competences in the field of external trade, development and enlargement policy, which remain with the European Commission. Those who criticise the adopted solutions stress that there is no clear division of tasks between these institutions, which could lead to considerable divergences and thus prevent the EU from being successful in the international arena.⁶

⁶ K. Zajączkowski, *European Union’s Development Assistance – Framework, Priorities and Directions*, in: *Introduction to European Studies: A New Approach to Uniting Europe*, eds. D. Milczarek, A. Adamczyk, K. Zajączkowski, Warsaw 2013, pp. 653–654.

Due to all the structural, legal and institutional deficiencies, other flaws in the EU's foreign and security policy emerge. These include, among others, the vague and inconsistent formulation of the main goals and tasks. Even the adoption of the programme document titled "European Security Strategy" (ESS) in 2003 failed to remedy this. While the ESS indeed contained a number of justified theses and requests, overall it was considered incomplete, lacking a broader vision and failing to address the fundamental question: "How could military measures help Europe in achieving political goals?"⁷

Yet another problem is the highly insufficient funding the EU's foreign and security policy receives. Although the funds allocated to this aim have been systematically growing, they still constitute around a mere 4% of what is spent on the entire external policy of the EU (which, in turn, has been receiving in consecutive multiannual financial frameworks the lowest funding among all the main budget items). This is further linked to an even more serious problem, namely the lack of sufficient expenditure on military goals and improper use of the available funds by a vast majority of the Member States. They spend only some 1.5% of GDP (compared to the United States' 4.5%) for this purpose, and only a few among them (e.g., the United Kingdom and Poland) try to reach the 2% GDP mark recommended by NATO. Further, "the funds are spent irrationally, often anachronistically, on the national level and without any preliminary consultation among the Member States"⁸.

Consequently, the European Union does not have a well-developed autonomous military potential at its disposal, although it should be a key element of its foreign and security policy. We shall not delve into historical deliberations on the attempts to build such a potential;⁹ it is sufficient to note that the implementation of the ambitious initiative of establishing a rapid reaction force, initiated in 1999, has not yielded any greater success. The only relative success has been the achievement of readiness in 2003 to launch civilian and military missions abroad. In total, the EU has so far executed 17 such missions, mainly civilian ones, in Europe, Africa and Asia, and there is a similar number of ongoing missions. All these are, however, only ad-hoc solutions and in most cases only complementary to the operations conducted by the UN and NATO or regional organisations, such as the African Union. Thus, it is still long before EU inter-

⁷ J. Lindley-French, *W cieniu Locarno? Dlaczego europejska polityka obronna nie zdaje egzaminu (In the Shadow of Locarno? Why Is It That the European Defence Policy Does Not Work?)*, „Nowa Europa”, no. 2/2005, p. 51.

⁸ N. Gnesotto, op. cit., p. 76.

⁹ For more see: D. Milczarek, *Foreign and Security Policy – A Challenge for the European Union*, in: *Introduction to European...*, op. cit.

vention forces will be able to independently conduct major operations abroad. Beyond this, there is also the risk that, as Julian Lindley-French rather sarcastically put it, such operations will become “an end in themselves, a means of proving that the Union is capable of mustering a military force, regardless of whether it will actually prove globally useful”.¹⁰

Generally speaking, the weaknesses of the EU’s foreign and security policy seem to have one thing in common: the lack of political will of European decision-makers to introduce the necessary changes. This is especially true of the governments of the Member States, which evidently do not want to give up their traditional, sovereign rights in the sphere of foreign policy. On the Union level, in turn, there is obviously not enough determination to change this state of affairs. Thus the following question arises: How can the European Union change this highly unsatisfactory situation?

How to Improve the EU’s Foreign Policy?

The simplest solution would be to ameliorate the deficiencies described above, since the EU foreign and security policy requires reducing or removing the main political, institutional and legal barriers that hamper its development. Although the list of barriers is long, remedial actions are indeed undertaken with regard to some of them. For example, we should note that despite the quite reasonable criticism of their activity, the establishment of the office of High Representative of the Union for Foreign Affairs and Security Policy and the EU’s diplomatic service was undeniably a step forward compared with the previous state of affairs. We should also remember that the Treaty of Lisbon introduced important new solutions, formally giving the EU legal personality under international law or even introducing certain elements of military alliance in the form of a clause obligating the Member States to provide assistance in the event of an armed aggression against one of them (under Article 42(7) TEU).

EU decision-makers are also becoming increasingly aware of the need to develop a more consistent strategy for the Union in the area of its relations with the rest of the world, as evidenced by “European Security Strategy”, among others. While the Strategy certainly deserves criticism, it also contains the following statement: “Greater coherence is needed not only among EU instruments but also embracing the external activities of the individual Member States”.¹¹ Furthermore, it seems that the provi-

¹⁰ J. Lindley-French, *op. cit.*, p. 57.

¹¹ *A secure Europe in a better world – European security strategy*, p. 13, European Council, Brussels 12.12.2003, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf> (11.11.2016).

sions of the new “Global Strategy for the EU’s Foreign and Security Policy” adopted in 2017, are heading in the right direction. Already the very title of this document: *Shared Vision, Common Action: A Stronger Europe* indicates that emphasis has been placed on increasing the consistency of the foreign and security policy activities. Moreover, while the Strategy confirms the peaceful and conciliatory nature of this policy (“The European Union has always prided itself on its soft power”), it also underlines that having only soft power as the foundation “does not do justice to an evolving reality”. As a result, “for Europe, soft and hard power go hand in hand”, which indeed seems to signify better understanding of the challenges of modern times.¹²

This does not necessarily mean, however, a breakthrough regarding another important flaw of the EU’s foreign and security policy, namely the insufficient spending on military issues. The situation in this area is not showing any significant improvement, but one has to admit that even here there are some actions towards at least optimising the efforts that are already being made. One of them was the establishment in 2004 of the European Defence Agency, whose tasks include supporting the development of the Union’s military potential. This is supposed to take place through, for example, better coordination and harmonisation of the production of the EU Member States’ armaments industries. Among the various undertakings in this regard, one noteworthy examples is the initiative of the European Commission to establish a special European Defence Research Fund by 2020.

As regards autonomous armed forces, in turn, the EU has at least initiated the process of forming some of its elements. Starting from 2004, the so called Battle Groups were being formed, which were supposed to be able to rapidly react to crisis situations. Combined with various earlier undertakings (such as the Eurocorps and other joint European units) this already forms a certain military infrastructure. This is even more the case of the deployment of military mission outside the European Union: in order to streamline this type of activity, a special mechanism of joint funding under the name Athena has been introduced. At the same time, it is necessary to bear in mind that foreign EU missions are large undertakings, involving of as many as several dozen thousand military and civilian personnel, as well as large quantities of equipment and considerable funds.

All these more or less significant remedial activities cannot, however, remove the most serious flaw of the EU’s foreign policy, namely the lack of political will to implement a deep policy reform. This, in turn, is a direct consequence of the general principle that governs this sphere of the Union’s

¹² *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign And Security Policy*, p. 4, European Council, Brussels 2016, https://eeas.europa.eu/top_stories/pdf/eugs_review_web.pdf (7.11.2016).

international activity, namely the domination of the model based on inter-governmental cooperation. It is understandable why the Member States are so fiercely clinging to this model: one of the main reasons is that they have anxiety about transferring competences to supranational bodies in such sensitive areas as determining their own diplomacy and having their own armed forces, which are traditionally considered crucial for a state to retain sovereignty. This does not change the fact that in the contemporary world, globalised and full of interdependences, the notion of sovereignty is shifting from its classical meaning, as no international actors, not even the most powerful global players, remain fully independent.¹³

What Future for the EU's Foreign and Security Policy?

All this means that the domination of the Member States in the EU's foreign and security policy in the form of intergovernmental cooperation does not suit the challenges the European Union is facing in the early 21st century. Although this domination enjoys continuous strong political and ideological support, the main argument against it is very simple: it is ineffective. Not only scientific analyses but also political practice show that the present model of EU's foreign policy simply does not fulfil the tasks and goals it should.¹⁴

Shortcomings of this model have shown the scale of the problems that affect the very foundations of the European Union. These problems have various sources, but one of the most important and fundamental ones is the lack of a long-term strategic vision for the further development of the European Union as a whole – in other words, the lack of its clearly formulated *finalité politique*. Today, the EU is standing at a historical crossroads because it has apparently exhausted the capabilities of the current model, and a new model of European integration must be chosen for the future. This essentially means that the European Union needs to choose to either further develop its transnational structures and strengthen the Community competences in all areas (which implies a more rigorous intro-

¹³ See: O. Barburska, *Jaka UE w jakim świecie? Wpływ czynników międzynarodowych na obecny i przyszły stan Unii Europejskiej (What EU in What World? Impact of International Factors on Present and Future Shape of the European Union)*, „Studia Europejskie”, no. 4/2017.

¹⁴ For more see: A. Adamczyk, *Perspektywy rozszerzania UE (Perspectives of the EU's Enlargement)*, in: *Geopolityczne powiązania Europy a system polityczny Unii Europejskiej i możliwe kierunki jego ewolucji (Geopolitical Connections of Europe and Political System of the European Union and Possibilities of Its Evolution)*, ed. J. Niżnik, Warszawa 2016; G. Majone, *Rethinking the Union of Europe Post-Crisis: Has Integration Gone Too Far?*, Cambridge 2014.

duction of the federal/community model) or improve the current mixed model (largely based on intergovernmental cooperation with elements of federalism and neo-functionalism) or develop new forms of activity, based on the differentiated or flexible integration model, in practice using the mechanisms of the other models. The resolution of this dilemma will determine the future of the EU and thus also the future shape of its foreign and security policy.

The use of the federal/community model would involve granting greater competences to supranational institutions, extending the scope of application of EU law, expanding common procedures and regulation mechanisms, etc. In other words, it is simply about greater communitisation, which is not a new concept in the history of the European Union. We can clearly see that despite controversies and open opposition the EU's foreign and security policy has indeed been evolving in this particular direction, albeit very slowly and one small step at a time. One of the many signs of this process was the establishment of the said offices of High Representative for CFSP and then High Representative of the Union for Foreign Affairs and Security Policy together with the EU's diplomatic service. Regardless of all their political and competence-related limitations, these High Representatives were tasked with looking after the interest of the Union as a whole.

At the same time there are strong tendencies negating the need for communitisation of the EU's foreign and security policy. Many politicians, commentators and researchers advocate the development of the model based on intergovernmental cooperation and negate the utility of community solutions. The same is true of Polish researchers, some of whom, such as Roman Kuźniar, have for years expressed the view that “the most desirable model is the intergovernmental one with strong leadership” because the community model would not have sufficient political and social legitimacy for the EU to play a significant international role.¹⁵ On the other hand, numerous voices support the further federalisation of foreign and security policy. One of the researchers supporting this view is Dariusz Milczarek. According to him, the federalist model “seems to be more useful”, while continuing with the intergovernmental model “would only consolidate the present, unsatisfactory state of affairs”.¹⁶

¹⁵ R. Kuźniar, *Międzynarodowa tożsamość Europy (UE) (Europe's International Identity [UE])*, in: *Unia Europejska. Nowy typ wspólnoty międzynarodowej (The European Union as a New Type of International Community)*, eds. E. Halizak, S. Parzymies, Warszawa 2002, p. 29.

¹⁶ D. Milczarek, *Unia Europejska we współczesnym świecie (The European Union in the Contemporary World)*, Warszawa 2005, p. 151.

The visions that represent these two options: more communitisation or more intergovernmentality still keep clashing, and prominent EU politicians become involved in the dispute. For example, Guy Verhofstadt believes that too many decisions are made on the intergovernmental level and that the Member States use their veto right too often. He further believes that a new European Union is needed because the one we have now has an institutional problem: “it is not a union but a confederation of nation states”.¹⁷ On the other hand, President of the European Council Donald Tusk stated that “Europe without nation states” is merely a utopia and pointed out that decision-makers got obsessed with “the idea of instant and total integration”, failing to notice that ordinary EU citizens did not share this enthusiasm.¹⁸

The third model of the future European Union is based on the concept of differentiated/flexible integration. In most general terms, it is about letting those Member States that want to cooperate to take steps to strengthen the capabilities and the effectiveness of their undertakings while not minding their other partners and not being held back by them. In legal terms, this is made possible by the principles of so-called enhanced cooperation, enshrined in Article 20 TEU, which allows for a diversification of the pace of deepening integration within the EU between smaller groups of Member States (at least nine states per group), and may create new forms of cooperation between them.

The concept of differentiated/flexible integration advocates (as its name suggests) greater differentiation and dispersion of integration activity so as to better adapt them to specific conditions. Jan Techau described this as follows: “Some needs point toward more integration, but others perhaps point toward less”.¹⁹ Other researchers who support similar solutions include Simon Hix, who believes that the Union should be transformed into a “decentralised federation”, where groups of Member States with similar interests would conclude agreements between themselves and create their own structures.²⁰

Considering all these determinants, we now need to ask the key question: What future awaits the EU’s foreign and security policy? Of course,

¹⁷ *Przyszłość UE: konieczne reformy (Future of the EU: Necessary Reforms)*, EurActiv, 14.10.2016, <http://www.euractiv.pl/institucje/artkuly/przyszlo-ue-konieczne-reformy-009094> (22.10.2016).

¹⁸ *Speech by President Donald Tusk at the event marking the 40th anniversary of European People Party (EPP)*, 30.05.2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/05/30-pec-speech-epp/> (9.11.2016).

¹⁹ J. Techau, *Four Predictions on the Future of Europe*, 12.01.2016, <http://carnegieeuropa.eu> (22.01.2016).

²⁰ *Przyszłość UE: konieczne reformy...*, op. cit.

in matters such as this is it hard to provide any clear predictions, even more so because the forecasts vary considerably in this regard: from disaster scenarios that predict a more or less imminent collapse of the entire Union to the optimistic forecasts that assume the EU could be playing an important or even leading role in the future world order.²¹ What seems to be the decisive issue here is the fundamental problem of how the relations between the EU institutions and the Member States are to be structured as regards their competences in the field of foreign and security policy. It is necessary to adopt clearly defined, legally binding solutions at the EU level, which must be accepted and loyally implemented by all the Member States. As shown by political practice, it is difficult to imagine such a solution with the current political structure of the Union.

So which model of European integration would be best suited for this purpose? From the theoretical point of view, the federal model with strong supranational institutions would be the best one, because it would be most effective in pushing through the adoption of common solutions for the entire European Union. The promotion of federal solutions, however, raises political and ideological opposition, so it is also possible to use the mechanisms of the other models. They may include closer inter-governmental cooperation and/or more individualized solutions adopted by groups of individual EU countries. Such measures are actually already taking place in the context of the EU's foreign and security policy and will most likely be increasingly used in the future.

It seems that what is the most important is not to adopt necessarily a single option but much rather to adopt a consistent approach that would result from the resolution of the historical dilemma concerning the future of the EU as a whole. The European Union simply needs to know in which direction it is going; it must know whether it will be more federal, intergovernmental or flexible. Adopting a clearly defined ideological and political course will help it to solve various problems, including different shortcomings of its foreign and security policy.

Despite all the efforts made in this regard, the European Union still has no strategic vision of what Europe is to become in the future. EU foreign and security policy is lacking clearly defined goals and well considered

²¹ For more see two articles of O. Barburska: *New Challenges vs. Old Formulas: What Would Make the European Union a Greater Global Player?*, „Journal of Liberty and International Affairs” 2017, Special Issue: *Towards an Avant-Garde Europe: The Meaning Behind the Words*, ed. G. Ilik and *Przyszłość polityki zagranicznej i bezpieczeństwa Unii Europejskiej a pozycja UE w świecie – nieuchronny regres czy możliwy renesans? (Future of the Foreign and Security Policy of the European Union: Inevitable Decline or Possible Renaissance?)*, „Przyszłość. Świat – Europa – Polska”, no. 4/2016.

actions to achieve them. Given all this, our concerns about the future of this policy are well-founded. The multifaceted crisis the EU is going through facilitates the emergence of anti-democratic, populist and anti-EU sentiments as well as national egoisms, which are highly dangerous, especially in the sphere of foreign policy. Today, however, we still do not know whether the European Union will be able to make the much-needed effort to redefine itself. All this means that the EU's foreign and security policy will, in general, greatly depend on the future shape of the whole European Union.

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*Martin Dahl**

Germany and the Common Security and Defense Policy

Abstract

In the face of changes taking place in the global order and challenges in the immediate vicinity of the European Union, the member states are forced to redefine their own security priorities. The directions of the desired changes in the EU Common Security and Defense Policy have been the subject of numerous discussions and analyses. One of the key countries that have a significant impact on the architecture of European security is Germany. That is why the main goal of the article is to answer the question about the role and importance of Germany in shaping the European Union's security policy. The main conclusion resulting from the conducted analysis is the following: in the field of security policy, Germany's attitude is characterized by high ambivalence between the implementation of foreign policy goals by means of the so-called soft instruments and the necessity and inevitability of increasing its own military involvement. The resolution of this dilemma is fundamental to the future architecture of the Common Security and Defense Policy.

Key words: Germany, European Union, Common Security and Defense Policy

Introduction

The second decade of the 21st century has been a period of crises, political upheavals and increasing instability for the member states of the European Union. This refers both to the situation within the integration group and in the immediate neighborhood of the EU. Such events as the prolonged crisis of the Eurozone, Brexit and the migrant crisis shook the

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foundations of European solidarity and exposed the institutional weakness of the European Union in the face of serious challenges. At the same time we are observing growing instabilities and unpredictability of processes taking place in the immediate vicinity of the European Union.¹ On the one hand, there is the increasingly expansive and aggressive policy of the Russian Federation that aims to regain its former superpower status and expand its sphere of influence.² On the other hand, actions taken by the American president Donald Trump are very worrying. For instance, his withdrawal from numerous international agreements such as the Paris Agreement or the nuclear agreement with Iran, as well as questioning the current framework for transatlantic cooperation. Because of the factors mentioned above the EU member states are forced to face completely new problems and challenges that contribute to disintegration processes³ and pose a threat to European security.

One of the most serious challenges for the European Union is Brexit. In June 2016, the citizens of Great Britain for the first time in the history of the European Union made a referendum decision to leave the integration group. It is certainly a breakthrough moment in the history of united Europe, and makes it necessary to think over the future shape of the European Union, including the evolution of the Common Security and Defense Policy.⁴ The British decision on Brexit will have a fundamental impact on the future shape of the Common Security and Defense Policy, at least because Great Britain is a state that has so far consistently opposed attempts to strengthen the EU defense policy,⁵ which at first glance, may be an impulse for closer cooperation between the other states. However, it should be noted that Great Britain is leaving the European Union while being one of the two most militarily powerful EU states and one of the

¹ B. Piskorska, *Nowa strategia na nowe czasy – konieczność redefinicji polityki zagranicznej Unii Europejskiej w jej sąsiedztwie (A new strategy for new times – the need to redefine the European Union's foreign policy in its neighborhood)*, "Myśl Ekonomiczna i Polityczna", no. 4/2015, pp. 208–241.

² J.M. Fiszer, *Zadania i cele polityki zagranicznej Władimira Putina (Tasks and goals of the foreign policy of Vladimir Putin)*, "Myśl Ekonomiczna i Polityczna", no. 1/2016, pp. 167–201.

³ M. Holko, *Disintegration of European Union*, "Journal of Modern Science", vol. 2, no. 29/2016, pp. 199–236.

⁴ T. Usewicz, *Brexit i jego konsekwencje dla Wspólnej Polityki Bezpieczeństwa i Obrony Unii Europejskiej (Brexit and its consequences for the Common Security and Defense Policy of the European Union)*, "Rocznik Bezpieczeństwa Międzynarodowego", vol. 11, no. 1/2017, pp. 119–121.

⁵ K. Szubart, *Unia Europejska „dwóch prędkości”? Niemcy i WFPBiO po Brexicie (The European Union of "two speeds"? Germany and CSDP after Brexit)*, "Biuletyn Instytutu Zachodniego", no. 281/2016, p. 1.

two European nuclear powers. All mentioned above puts a question mark over an array of military initiatives undertaken within the CSDP.

In the face of numerous threats in the immediate environment of the European Union, it should be emphasized that without the development of the Common Security and Defense Policy, the member states will not be able to achieve their strategic goals, and the integration group itself will become an inefficient and unreliable partner of international politics.⁶ In this context, the question of the future shape of the CSDP in the light of the existing challenges and the role of Germany in the process of change and evolution of the European Union's security policy becomes a fundamental issue. This study attempts to examine this issue.

Genesis and Development of the European Union's Common Security and Defense Policy

The security of the citizens of the European Union is determined by internal and external factors, particularly by processes that take place in its immediate neighborhood. The contemporary security paradigm involves a holistic approach and applies a systematic point of view. The consequence of this approach was the establishment of the European Security and Defense Policy in the late 1990s as part of the Common Foreign and Security Policy.⁷ According to Teresa Usewicz, "the initiation of this policy was an extremely important phenomenon in the development of the EU, but at that stage it was somewhat forced. The exacerbating situation in the Balkans and finally the war in Kosovo in 1999 drew attention to the impotence of the European armed forces".⁸ It was a turning point in the history of the European Union, as in the face of the ongoing war in Yugoslavia, European economic power and political integration were insufficient to resolve the conflict.

⁶ K. Miszczak, *Przyszłość Polityki Bezpieczeństwa i Obrony Unii Europejskiej (The future of the Security and Defense Policy of the European Union)*, "Krakowskie Studia Międzynarodowe", no. 1/2017, p. 53.

⁷ B.R. Posen, *European Union Security and Defense Policy: Response to Unipolarity?*, "Security Studies", vol. 15/2006, pp. 149–186; S. Sandawi, *Gemeinsame Sicherheits- und Verteidigungspolitik (Common Security and Defense Policy)*, "Jahrbuch der Europäischen Integration" 2010, p. 251; J. Karlas, *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*, Cambridge University Press, Cambridge 2004; A. Ciupiński, *Wspólna Polityka Bezpieczeństwa i Obrony Unii Europejskiej. Geneza. Rozwój. Funkcjonowanie (Common Security and Defense Policy of the European Union. Genesis. Development. Functioning)*, Warszawa 2013.

⁸ T. Usewicz, op. cit., p. 121.

The development of European defense policy for a long time remained in the shadow of initiatives undertaken within the framework of NATO. Besides that, the United Kingdom was not interested in building autonomous and independent European capabilities in the field of military and security policy. Traditionally, a different position was represented by France, for which the EU was and still is an important guarantor of security. Germany's policy on this matter, on the one hand, is similar to that of France. On the other hand, Germany has been using the United States' security umbrella for years, which has led to a limitation of the necessary increase of defense expenditures. At the beginning of the 21st century, Germany, in cooperation with France, supported the initiative of creating the European Union Security Policy, the main objective of which was to continue the process of communitarisation of security policy and later the defense policy of European states.⁹

After the Treaty of Lisbon came into force in 2009, Germany sought to strengthen the civilian-military capabilities of the European Union and establish permanent multinational structures, accelerating the process of civil-military integration within the framework of EU structures. According to Germany's stance, closer cooperation within the Weimar Triangle would play a special role in this respect,¹⁰ which corresponded with the German vision that the European External Action Service must form an integral part of the Common Security and Defense Policy.¹¹ The goal of such an approach was to increase Europe's defense capabilities. One of the steps towards this was a decision taken by the defense ministers of the member states on the 22nd October 2004 to create 13 EU battle groups. Each battle group has from 1500 to 3000 thousand soldiers and must be prepared to commence a military operation in a maximum of 15 days after a political decision is made.¹² Combat groups can be of two types: national or multinational. National groups are created by wealthy EU countries that make up the so-called motor of Europe, i.e. France, Great Britain, Spain and Italy. The Federal Republic of Germany hasn't set up its own battle group, but focused more on cooperation with smaller

⁹ K. Miszczak, *Polska i Niemcy a realizacja Wspólnej Polityki Zagranicznej, Bezpieczeństwa i Obrony Unii Europejskiej (Poland and Germany in the global strategy of the European Union as a conceptual foundation for European security)*, „Krakowskie Studia Międzynarodowe”, no. 1/2016, p. 88.

¹⁰ *Ibidem*, p. 92.

¹¹ A. Chojan, *Europejska Służba Działań Zewnętrznych – postęp czy regres w politycznej integracji Europy? (European External Action Service – progress or regression in the political integration of Europe)*, „Myśl Ekonomiczna i Polityczna”, no. 1/2012, pp. 142–179.

¹² T. Stępniewski, *European Union Battlegroups – Challenges and Risks at the Time of Brexit*, „Myśl Ekonomiczna i Polityczna”, no. 4/2017, p. 287.

EU countries. As a result, Germany is a member of 4 out of 9 multinational battle groups.¹³ Battle Groups of the European Union are, however, created within the framework of the European Rapid Reaction Force assuming that they form their core and carry out tasks resulting from the European Security Strategy. It was also assumed that these would be anti-crisis measures.¹⁴ The European Union is currently conducting 15 CSDP missions and operations. Six of them are of a military nature.¹⁵

When analyzing the current implementation of the European Union security and defense policy, it should be noted that it has been focused on civilian and military crisis management based on the capabilities of the member states. The European Union has had limited military and civilian missions with low intensity in the eastern and southern neighborhoods of the EU. The rapid-reaction forces in the form of battle groups that were developed in the EU have not been used so far. The European Defense Agency has supported projects that aim at strengthening the industrial cooperation of the member states to a limited extent, however. The reason behind the poor capability of the Common Security and Defense Policy mainly comes from the reluctance of the member states to expand EU competences in this field.¹⁶ The situation changed in mid-2016. Such events as Brexit, Donald Trump's victory in the United States presidential election and the adoption of the Global Strategy for the European Union's Foreign and Security Policy by the European Council, which took place in June of 2016, have revived the discussion on the development of EU security policy.

¹³ J. Stańczyk, *Grupy Bojowe jako instrument polityki reagowania kryzysowego Unii Europejskiej (Combat Groups as an instrument of the European Union crisis response policy)*, „Studia Europejskie”, no. 4/2009, pp. 33–58; A. Konarzewska, *Grupy Bojowe UE. Zaczątek Euroarmii? (EU Battle Groups. The beginning of a Euroarmy?)*, „Bezpieczeństwo Narodowe”, no. 3–4/2007, pp. 154–173; *European security and defence: Core documents 2007*, ed. C. Gliere, ISS EU, “Chaillot Paper”, vol. VIII, Paris 2007.

¹⁴ J. Stańczyk, *Znaczenie Grup Bojowych w rozwoju Wspólnej Polityki Bezpieczeństwa i Obrony Unii Europejskiej (The importance of Combat Groups in the development of the Common Security and Defense Policy of the European Union)*, „Doctrina. Studia Społeczno-Polityczne”, no. 6/2009, p. 146.

¹⁵ A. Czekaj, T. Usewicz, *Koncepcja sieci węzłów transportowych na potrzeby Wspólnej Polityki Bezpieczeństwa i Obrony Unii Europejskiej (The concept of a network of transport nodes for the needs of the Common Security and Defense Policy of the European Union)*, „Unia Europejska.pl”, no. 3/2017, p. 37.

¹⁶ J. Gotkowska, *Renesans wspólnej polityki bezpieczeństwa i obrony UE. Szanse i wyzwania dla wschodniej flanki (The renaissance of the common EU security and defense policy. Chances and challenges for the eastern flank)*, „Komentarze OSW”, no. 243/2017, p. 1.

Germany and the Global Strategy for the European Union's Foreign and Security Policy and PESCO

The adoption of the EU Global Strategy in 2016 was a very important step in building and strengthening European security policy. The most important element of this process was the launch of the project of Permanent Structured Cooperation (PESCO) at the end of 2017.¹⁷ What was stressed in the Global Strategy is the strengthening of the European Union as a security community and its protection against external threats and conflicts.¹⁸ In addition, the strategy points to the issues of developing operational activity in the area of civil management, support missions, training and missions supervising civil-military operations.¹⁹

The points adopted in the Global Strategy assume a deviation from the European Union playing the role of a global player in the structures of international order, moving towards extended regionalism, including Eastern Europe with its Central Asian extension and areas of the Mediterranean and North Africa.²⁰ The strategy also draws attention to threats such as transnational terrorism, countries' economic weakness, climate change, cyberattacks, organized crime and the incursion of external borders. One of its important elements is a close connection between internal and external security policy, especially in the context of terrorism and migration processes.²¹ It should be emphasized that the Global Strategy for the European Union's Foreign and Security Policy does not deal with the protection of territories of the member states. It instead focuses on diplomacy.

After the United Kingdom made a decision to leave the European Union, Germany took steps to intensify CSDP activities. France has been Germany's important partner in this respect, as it has been willing to develop European defense capabilities over the years.²² Both states presented a joint document demonstrating mutual aspirations to strengthen integra-

¹⁷ S. Koziej, *Polityka Bezpieczeństwa i Obrony Unii Europejskiej: od Strategii Globalnej do PESCO (Security and Defense Policy of the European Union: from the Global Strategy to PESCO)*, "Pulaski Policy Papers", no. 1/2018, p. 1.

¹⁸ A. Bendiek, *The Global Strategy for the EU's Foreign and Security Policy*, "SWP Comment 38" 2016.

¹⁹ J. Bund, D. Fiott, T. Tardy, Z. Stanley-Lockmann, *EUISS Yearbook of European Security*, 2017, p. 15.

²⁰ K. Miszczak, *Przyszłość Polityki...*, op. cit., p. 61.

²¹ S. Koziej, *Strategia globalna Unii Europejskiej jako koncepcyjny fundament bezpieczeństwa europejskiego (The global strategy of the European Union as a conceptual foundation for European security)*, „Myśl Ekonomiczna i Polityczna”, no. 4/2017, p. 187.

²² K. Szubart, op. cit., p. 1.

tion processes, including reinforcing cooperation within the framework of the CSDP. The presentation of the document took place just several days after the announcement of the result of the British referendum. Germany recognizes the CSDP as one of the key pillars of Germany's security and a forum for articulating German strategic interests. Due to the historical past, German interests must be included in the framework of wider multilateral cooperation with the participation of partner and allied countries. Moreover, one can get the impression that some German politicians perceive attempts to intensify cooperation within the CSDP as the last chance to fulfil the EU's global ambitions.²³ Therefore, Germany and France together intend to strive to create and make the European Union an international player with the right to directly influence the political, economic and military systems of the immediate surroundings. Germany also indicates the willingness to actively influence the creation of a new international order to ensure a peaceful balance of interests.²⁴

On June 28, 2016 Frederica Mogherini presented information on the new EU Security Strategy at the European Council meeting. The same day, the foreign Ministers of Foreign Affairs of France and Germany, Jean-Marc Ayrault and Frank-Walter Steinmeier, presented a proposal of strengthening the CSDP, which was an attempt to balance the seriousness of the threats coming from the east and south of Europe. In addition, on September 12, 2016, Ministers of National Defense of two countries, Jean-Yves Le Drian and Ursula von der Layen, presented another initiative within the European security policy. It was a document entitled "Revitalizing CSDP. Towards comprehensive, realistic and credible Defense in the EU".²⁵ The document once again underlined the will to accelerate the creation of a common European Union security and defense policy.

In 2017, Permanent Structured Cooperation (PESCO) became an essential initiative within the CSDP. The initiative is expected to significantly increase the contribution of the EU countries to ensure European security. However, from the very beginning the differences between countries in terms of expected commitment have become apparent. Germany turned out to be restrained in the use of its military instruments in solving crises and conflicts, treating PESCO primarily in political terms. Berlin rejects the idea of creating an EU military vanguard, fearing that this will increase Germany's military involvement in Africa and the Middle East. Germany was also opposed to making any additional divisions in the EU that would exclude Central European countries. Considering the above,

²³ Ibidem, p. 2.

²⁴ K. Miszczak, *Przyszłość Polityki...*, op. cit., p. 65.

²⁵ Ibidem, p. 65.

the Federal Republic of Germany put forward some proposals, which it had already tried to submit previously. The proposals were expected to be implemented within the framework of PESCO and aimed at strengthening the competence mainly in non-combat zones (including medical service or logistics). The issue of integration of arms industries in the EU is also important from the Berlin's point of view, as it will be profitable for German companies.²⁶

Germany's moderate and conservative attitude towards the expansion of military and defense capabilities of Germany, and thus also of the European Union, is primarily influenced by two factors. The first factor is the wide-spread pacifism of German society, which is a result of historical experience. The second factor is that Germany lacks the feeling of a real threat. It comes neither from the Russian Federation, nor from an unstable Africa and Middle East. Nevertheless, it should be noted that Germany's attitude is gradually changing and evolving. Officially, Germany took the stance that Europe must show the world that it is united and safe, because in the face of the growing strength and influence of other global powers, no European country is capable of facing and resist global challenges alone in a long-term perspective. In this context, the German President, Frank-Walter Steinmeier, advocated the development of specific instruments of European foreign policy, because of which the EU's effectiveness in the international arena will increase. Germany strives to ensure that the European Union has effective tools for resolving conflicts in the immediate neighborhood, and is able to limit the negative effects of, for example, migration and climate change.²⁷ That is why Germany is an advocate of closer cooperation within the framework of the European Security and Defense Policy and strives to establish a joint European army. The problem, however, is that the actions of the Federal Republic of Germany are still characterized by great ambivalence. On the one hand, Germany declares the increase of its commitment to European security issues, while on the other hand, Germany constantly fails to comply with the declared 2% of GDP by NATO member states for defense purposes. German defense spending oscillates around 1.3% of GDP. Another example of German ambiguity may be Angela Merkel's statement that she gave to the German newspaper *Frankfurter Allgemeine Sonntagszeitung* on

²⁶ J. Gotkowska, *The Trouble with PESCO. The Mirages of European Defence*, "Point of View", no. 69/2018, p. 9; H. Linnenkamp, *Germany and the CSDP in: The Common Security and Defence Policy: National Perspectives*, ed. D. Fiott, Brussels 2015, pp. 31–32.

²⁷ F.-W. Steinmeier, *Europa ist die Lösung. Churchills Vermächtnis (Europe is the solution. Churchill's legacy)*, Wals bei Salzburg 2016, pp. 34–35.

June 3, 2018. In that interview, she declared her support for the French plans to set up the armed forces of the European Union and subsequently stated that the Bundeswehr will not have to participate in all of the organized military missions.²⁸ This approach is a part of an eternal dilemma, German but also European, between the need to increase military involvement and the lack of political will of the member states to carry out military activities on a large scale.²⁹

Conclusion

According to the official position of the German government, the priority for Germany's international policy is to strengthen the European Union through the development of the European integration process. This approach results from the fact that the objectives of German foreign policy and economic policy are implemented through the European Union to a large extent. One of the key elements of deepening and strengthening the European integration process is reinforcing the Common Security and Defense Policy. The paradox of the situation is that Germany is very cautious and greatly restrained about increasing its military involvement. German foreign policy is known for referring mainly to so-called soft power tools. Unfortunately, this comes at the expense of the decline in the defense capabilities of the country, and thus the European Union as a whole.

Germany declares its support in all initiatives aimed at strengthening European security, but to a large extent uses diplomatic and non-military instruments, while the challenges of the modern world increasingly require the use of military means to safeguard the nations of Europe and protect their own interests. The unpredictability of the processes taking place in the immediate neighborhood of the European Union, as well as the ongoing transformations of the global order, however, force the European states to increase their commitment to their own security. The development and strengthening of the Common Security and Defense Policy of the European Union is a priority to guarantee the security of the member states. The Germans, if they desire to pursue their regional and global ambition, must focus on increasing the operational capabilities of their

²⁸ *Europa muss handlungsfähig sein – nach außen und innen (Europe must be able to act – externally and internally)*, „Frankfurter Allgemeine Sonntagszeitung“, 3.06.2018.

²⁹ B. Piskorska, *Nie tylko mięka siła: Unia Europejska jako aktor w dziedzinie bezpieczeństwa europejskiego (Not only soft power: the European Union as an actor in the field of European security)*, „Roczniki Nauk Społecznych”, no. 3/2013, p. 123.

armed forces.³⁰ This cannot be achieved without a significant increase of defense expenditures and investment in the Bundeswehr. In addition, Germany also must demonstrate its readiness to extend its commitment to European security, both at financial and military level, because this is the only way for the state to be able to guarantee itself the possibility of pursuing its strategic national interests.

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³⁰ J.A. Stacey, *Merkel's Military Revival*, <http://foreignpolicy.com/2018/03/28/merkel-military-revival/> (1.06.2018).

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From a “Ring of Friends” to a “Ring of Fire” – The Failed Dream of Middle Europe

Abstract

Officially, the European Neighbourhood Policy was born in 2004. After the eastern enlargement of the European Union, it became necessary to come up with a coherent strategy with regard to the neighbouring states of the EU. However, although the problem seems to have been caused by the fall of the Iron Curtain, the underlying issue is in fact much older. Already during the 19th century European economists wondered how Europe’s position could be ensured in a world where players like the Russian Empire and the USA made their appearance. Establishing a safe environment and international market European countries have access to has preoccupied economists for more than 160 years.

Evidently, Europe has been – and still is – an international player active in *security and peace* – just not a successful one.

Key words: European Neighbourhood Policy, European Investment Bank, International Trade, Economic History

Introduction

Since 1990, or more exactly since 2004, the European enlargement policy is in a dilemma. Theoretically, every state has a keen interest in a neighbouring country that is in peace and whose economy is thriving. Preferably, these countries should be active on different product markets. Relationships and trade with such countries are relatively uncomplicated.

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The same logic applies to the European Community. Though not a country, it is no surprise that it wants to be surrounded by countries that are in peace and profit from an economy that allows them to develop steadily and maintain healthy trade relationships. This direct engagement in the neighbourhood can also be interpreted as a mutually beneficial trade: By investing time, effort and money now, one can make sure that neighbour develops more positively in the future. That way, the European Union avoids potential future (and certainly costly) interventions.

From a strictly economic point of view, this problem is far from new. Since David Ricardo, we know that countries have good reason to participate in international trade and to specialise in the production of the good they have a relative comparative advantage for.¹ For this constellation to be profitable for everyone, there are a number of requirements that have to be met. In short, the situation must be apt to reduce the so called “border effect”.² In general, the border effect describes any effect that is able to reduce economic trade between two neighbouring regions that are divided by a border. There are obvious culprits as wars and tariffs, and also less obvious ones as different languages, cultures, laws and institutions. The American-Canadian example shows how complicated reducing the border effect can actually be. Although both countries are culturally similar, have (mostly) the same language and share a long history of successful trade, McCallum still found the border effect to be quite influential.³ There is good reason to argue that European economic integration serves to reduce the border effect.

The “Middle-Europe” Idea

Already during the 19th century, European economists were aware of the fact that their future will not be easy in the face of two states that have the potential to become superpowers. In the West, there was the USA, in the East the Russian Empire. Both countries were large and blessed with natural resources, a potentially big and growing population and – as a consequence – a big domestic market. Although Europe was the clear economic leader of the 19th century, there was good reason to fear that this

¹ W. Abelshauser, *Ricardo neu gedacht: Komparative institutionelle Vorteile von Wirtschaftskulturen (Ricardo rethought: comparative institutional advantages of economic cultures)*, in: *Kulturen der Weltwirtschaft (Cultures of the world economy)*, eds. W. Abelshauser, D. Gilgen, A. Leutzsch, Göttingen 2012, pp. 29–56.

² J. McCallum, *National Borders Matter: Canada-US Regional Trade Patterns*, “American Economic Review”, no. 3/1995, pp. 613–623.

³ *Ibidem*.

might change in the near future. With space being less abundant and also with less natural resources compared to both Russia and the United States, the Western European countries could quickly be at a disadvantage. The German economist Friedrich List was among the first who raised that issue publicly. He favoured a European customs union that did not just include the relatively densely populated Western European countries, but also the Central and Eastern European regions. The establishment of such a vast economically integrated region would allow Europe to be able to compete in the long run. A side-effect of that policy could have been that for the hundreds of thousands of Europeans who left the continent for the USA, a “Middle Europe” could have been an incentive not to leave the continent for the USA and South America.⁴ One must not underestimate the loss of people the European continent suffered during the 19th century. Germany alone lost more than four million people between 1841 and 1885.⁵ And only 360 000 people remained in Europe.

A pan-European customs-union, as List put it, would have been a strong market on par with the USA and Russia. That is not to say that every country picked this up immediately. Great Britain, for instance, never really warmed up to that idea.⁶ Its world market orientation always seemed to suffice, which is why establishing, maintaining and protecting a safe harbour in Europe never really became an issue.

List was not the only one with such ideas. The French economist Gustave de Molinari and the Hungarian deputy Guido von Bauszern launched initiatives that caught the attention of Otto von Bismarck, Chancellor of the German Empire. In 1878, de Molinari proposed the establishment of a customs union of Germany, France, Austria-Hungary, Holland, Belgium, Denmark and Switzerland. Two years later, von Bauszern had a similar proposition.⁷ Ironically, these as well as similar ideas lost their appeal once globalization hit during the 1880s. With world market orientation, securing a middle-European customs union as a safe harbour did not seem to be a top priority.⁸ This is why Georg-Henri Soutou is convinced that “on the governmental level, the subject of an economic *Middle Europe* was certainly no subject before 1914. (Le thème du *Mit-*

⁴ W. Abelshauser, “*Mittleuropa*” und die deutsche Außenwirtschaftspolitik („*Central Europe*“ and the German foreign trade policy), in: *Zerrissene Zwischenkriegszeit: Wirtschaftshistorische Beiträge* (*Torn interwar period: Economic history contributions*), ed. C. Buchheim, Baden-Baden 1994, p. 266.

⁵ *Ibidem*.

⁶ *Ibidem*, p. 268.

⁷ W. Abelshauser, *Mittleuropa...*, *op.cit.*, p. 268.

⁸ *Ibidem*, p. 270.

teleuropa économique ne fut certainement pas un thème gouvernemental avant 1914)”.⁹

During the interwar period, the idea of a middle-European customs union lost even more of its appeal. The appearance of seven new countries (Finland, Lithuania, Latvia, Estonia, Poland, Czechoslovakia and Austria) and six profoundly changed ones (Hungary, Yugoslavia, Bulgaria, Albania, Greece, Rumania), made such an endeavour much more challenging. Moreover, most of these countries were more interested in establishing themselves as fully fledged members among the nation states. Evidently, the relationships were not stable enough to establish such a high level of cooperation. The economic crisis of 1931 destroyed any remaining hopes and ambitions. Ironically, there is good reason to argue that the economic crisis would have been less severe if such a customs union had already been in place. For obvious reasons, the Cold War put a hold on all these ideas.¹⁰

Old Wine in New Bottles?

In fact, the problem disappeared for 45 years, until it resurfaced after the events of 1989 and 1990. And it resurfaced with force. For almost fifty years, the Iron Curtain was what one might call a “natural Eastern border” of the European Community. For the Central and European States it was virtually impossible to become member of the European Community. Evidently, there was no need for the member states to agree on a neighbourhood policy.

After 1990, the situation became much more complicated. It did not take long for the European Community to decide to start a process which should lead to future membership of numerous Central and Eastern European Countries, an enlargement that added 10 new members to the European Union in 2004.¹¹

Ironically, the eastern enlargement also brought up another question: How to deal with non-member countries? After that year, the EU found itself in a situation where it not only received new members, but also new neighbouring countries. This did not just concern distant countries like Turkey or Albania, but also closer ones as Sweden and Finland.¹²

⁹ G.H. Soutou, *L'or et le sang. Les buts de guerres économiques de la première guerre mondiale (Gold and blood. Goals of economic wars during the First World War)*, Paris 1989, p. 23.

¹⁰ W. Abelshausen, *Mitteleuropa...*, op. cit., p. 273.

¹¹ A. Wirsching, *Demokratie und Globalisierung. Europa seit 1989 (Democracy and globalization. Europe since 1989)*, Munich 2015, pp. 150–152.

¹² I. Berend, *The History of European Integration. A New Perspective*, London/New York 2016, p. 175.

Especially the Finnish case showed why Europe was so important, at least from an economic point of view. Until 1990, the USSR absorbed one fifth of all Finnish exports. The Russian economic crisis that came hit Finland hard, and its economy plummeted. Suddenly, EU-membership became a matter of economic survival.¹³

Although there is currently no analysis that attempts to quantify the border effect within the European Union, it is safe to assume that the outer EU-border showed a strong effect. How the EU deals with countries beyond its borders has been up for debate for a long time. At least in theory, there are three kinds of relationships the EC/EU can maintain with its neighbouring countries. It can watch the development, and if it seems favourable, it can initiate friendly diplomatic and trade relationships. If not, they can keep their distance. The second strategy is to use the prospect of a future membership as an incentive to help the country develop its economy as well as its legal regime. Ideally, the country becomes “European” and compatible enough to be a fruitful member of the community. The downside of this approach is that it is not possible to continue this policy indefinitely. At a certain point, it will be necessary to define an outer border for the European Community.

Before 1990, these two strategies seemed to suffice. With the Atlantic in the West and the Iron Curtain in the East, there were not many countries that could even be subjected to these strategies. Trade with countries from behind the Iron Curtain was at a minimum, and with the Cold War, there was no reason to believe that would change in the near future. After 1990, all that changed profoundly. Although the option of future membership of many of the freed countries had been offered rather quickly, it also made the matter of an Eastern border for the European Union much more urgent. And the more the current Eastern border of the EU moved to the East, the more urgent it became. Leaving Eastern neighbouring countries on their own was no option, as was offering membership.

It was then that the EU had to come up with a third option. There have been numerous names for it. The German Christian Democrats called it “Privileged Partnership”, specifically while referring to Turkey. The name the EU came up with was the “European Neighbourhood Policy” (ENP).

Clearly, market access was part of the European Union’s attraction, and this motive played a vital role in the documents.¹⁴ Consequently, the old problem was once again at hand: How is it possible to integrate Cen-

¹³ Ibidem.

¹⁴ L. Beauguitte, Y. Richard, F. Guérin-Pace, *The EU and Its Neighbourhoods: A Textual Analysis on Key Documents of the European Neighbourhood Policy*, “Geopolitics”, no. 20/2015, p. 872.

tral and Eastern European countries economically? It was then that the ENP was born. Its aims are intriguing: “The European Neighbourhood Policy’s vision involves a ring of countries, sharing the EU’s fundamental values and objectives, drawn into an increasingly close relationship, going beyond co-operation to involve a significant measure of economic and political integration”.¹⁵

As Kleenmann wrote, the ENP policy framework is a toolbox the EU can make use of in order to promote “good governance” in other states. The three tools are (1) technical and non-technical assistance, (2) (positive) conditionality and (3) political dialogue.¹⁶ Evidently, all these tools demanded financial involvement. Especially “conditionality” could only work if it was possible there was a credible threat behind it. The two levers with the biggest impact were access to market and trade as well as financial support.¹⁷

Direct Financial Support – a Success?

Financial support seems to be a somewhat logical strategy to maintain contact and influence. As argued before, the European Union has a high interest in neighbouring countries that are at peace, show healthy growth and are politically stable. Obviously, access to financial capital can help to achieve higher growth rates, which in turn lead to social peace and political stability. As Romano Prodi, 1999 to 2004 President of the European Commission, expressed in 2002, it must be the European Union’s aim to be surrounded by a “ring of friends”.¹⁸

As Kleenmann shows, from the very beginning of the European Neighbourhood Policy in 2004, financial support played a major role. The agenda, however, could change profoundly. While funding for good governance related programmes made up more than 40 per cent of total funding for the specific country, it only covered 11.92 per cent in the South of Europe.¹⁹

Positive conditionality was not the only one to instrument at the EU’s disposal to pursue this policy. The European Investment Bank (EIB) is in

¹⁵ Communication from the Commission (COM), No. 373/2004 European Neighbourhood Policy (Strategy Paper), Brussels, p. 5.

¹⁶ K. Kleenmann, *The European Neighbourhood Policy – A Reality Check. How effective is the European Neighbourhood Policy in promoting good governance?*, “Romanian Journal of Political Science”, no. 2/2010, p. 124.

¹⁷ Ibidem, p. 125.

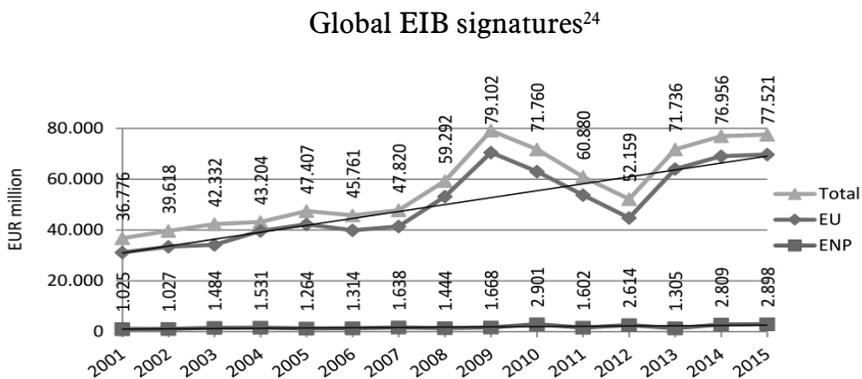
¹⁸ P. Blom et al., *Dealing with Neighbours: Fighting a Ring of Fire or Building a Ring of Friends?*, Guetersloh 2016, quoted in A. Mattmann, *Policy Countries and Turkey. Evidence from the Global Financial Crisis, the Arab Spring and the Conflict in Ukraine*, “Bruges Political Research Papers”, no. 65/2017, p. 1.

¹⁹ K. Kleenmann, op. cit., p. 126.

fact the most likely candidate to put such a policy in motion. It is the world’s largest multilateral financial institution.²⁰ Although it is usually not in the centre of the public or political discussion, its influence is impressive. As a bank, it is in direct contact with both public and private actors.²¹ With operations reaching up to 2.9 billion Euros annually, it is safe to assume that it has become influential.²² Moreover, these funds were not officially linked with conditionality. The general aim of the attempts to help these countries financially was the expectation that the country as a whole would develop positively. That is why the European Investment Bank, a bank bigger than the World Bank, made several investments in these regions.

They show that the EIB made and increased investments, among others, in Eastern European countries. Clearly, investment levels grew with the political tensions, or in other words: When it was already too late. In the end, the European Union was not surrounded by a ring of friends, but by a “ring of fire”.²³

What exactly did the “multilateral development bank” do? As the graph shows, the EIB invested growing amounts of financial capital. Having started with little more than one billion Euros in 2001, it almost tripled its operations until 2015.



Graph 1: Global EIB signatures⁵⁴

²⁰ EIB, *The European Investment Bank at a Glance*, Luxembourg 2017, p. 1.

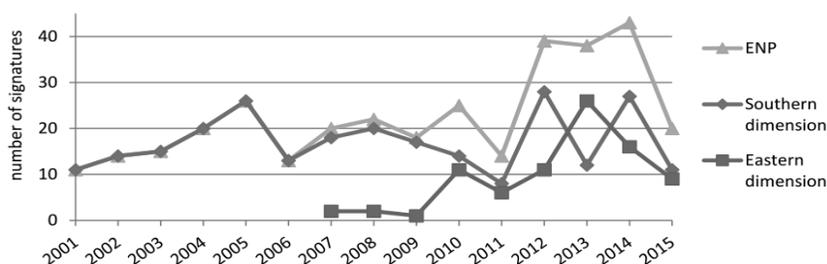
²¹ D. Dinan, *Encyclopedia of the European Union*, London 2000, p. 202.

²² The EIB starts operating 1994 in the Southern dimension and 2006 in the Eastern dimension of the future ENP; http://www.eib.org/about/key_figures/timeline/index.htm (11.07.2018).

²³ https://www.deutschlandfunk.de/debatte-um-zukunft-der-eu-wolfgang-schuessel-lobt-junckers.694.de.html?dram:article_id=380245 (11.07.2018).

²⁴ A. Mattmann, op. cit., p. 11.

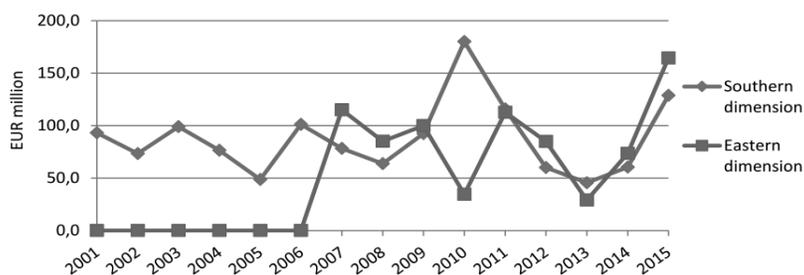
Number of signatures in the ENP dimensions²⁵



Graph 3: Number of signatures in the ENP dimensions⁵⁶

Moreover, the number of treaties signed shows a clear upward trend. The years after 2013 showed an impressive surge, followed by a decline in 2015. Additionally, “investments” among the Eastern EU-neighbours clearly led to higher financial engagements.

Average signature size²⁶



Graph 4: Average signature size⁵⁷

As often in those cases, it is hard to tell whether the millions the EIB invested are money well spent. What is obvious, though, is that EIB’s activities were a reaction to a situation when a number of deteriorating states needed support for a variety of reasons.

Conclusion

Most authors are unconvinced that the ENP has been effective since its establishment. Clearly, the expectation to “solve the problems where

²⁵ Ibidem, p. 12.

²⁶ Ibidem, p. 13.

they are made” was not fulfilled,²⁷ as it was impossible to achieve “democratization without enlargement”.²⁸ Some countries, such as Belarus, even fought the ENP.²⁹ Evidently, it is easy to blame the European Commission for a seemingly imperial economic policy on foreign soil. That might be the reason why some go so far as to say that the European Union behaves like an empire.³⁰

I would recommend seeing it otherwise. Yet whatever the true intentions of the European Union are: The paper argued that although the EU clearly is an international actor with an economic agenda, its efforts hitherto have met with limited success. To answer the question whether the EU is an “Actor in Security and Peace?” the answer is: yes, but not a successful one. Given how little positive effects have emerged out of the ENP, convincing someone that the establishment of a ring of friends around the European Union is a virtually impossible endeavour. And with Russia, Belarus, Ukraine, Serbia, Turkey, Kosovo and Albania, it is hard to argue that European Neighbourhood Policy ever had a decent chance at succeeding.

As the inclusion of 19th-century propositions as the concept of “Middle Europe” shows, the problem the European Union wanted to solve is a historically old one. Economically and politically, the challenge will not disappear, for nobody has come up with a better alternative. Unsurprisingly, the proposal of a “privileged partnership”, that was not supposed to end in full EU-membership, was only of limited appeal. Moreover, post-soviet Russia had a strong interest in a European Union that does not get too close to the Russian borders. Under these circumstances, the EU has not yet come up with a convincing strategy.

Coming up with a new strategy, however, might be worth the effort, since there is much to gain, and – given the lack of popularity of the ENP – little to lose: “The general perception among ENP partners is thus that – everything else being equal – the European Neighbourhood Policy offers them little added value”.³¹

²⁷ A. Wierich, *Solving Problems Where They Are Made? The European Neighbourhood Policy and Its Effects on the Context of Other Migration-Related Policies of the European Union*, “Perspectives on European Politics and Society”, no. 3/2011, pp. 225–241.

²⁸ D. Silander, M. Nilsson, op. cit., p. 441.

²⁹ E. Korosteleva, *The limits of EU governance: Belarus’s response to the European Neighbourhood Policy*, “Contemporary Politics”, no. 2/2009, pp. 229–245.

³⁰ B. Dimitrova, *Imperial re-bordering of Europe: the case of the European Neighbourhood Policy*, “Cambridge Review of International Affairs”, no. 2/2012, p. 263.

³¹ E. Barbé, E. Johansson-Nogués, *The EU as a modest ‘force for good’: the European Neighbourhood Policy*, “International Affairs”, no. 1/2008, p. 96.

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Brexit Negotiations: Interests, Red Lines, and Stumbling Blocks

Abstract

Brexit will officially fall on 29 March 2019 at midnight, Brussels time, and will undoubtedly represent a milestone in the history of European integration: after long years of deepening and enlarging, this is the first time a sovereign member state will leave the EU. This article is a humble effort to provide an overview of Brexit, by identifying the interests and red lines of the EU and the UK, as well as pointing to the key elements of negotiations, as they are known at the time of writing, the end of May 2018. For the research primary and secondary sources have been analysed, and historical methodology has been combined with the critical analysis method to understand the background of the process and point to its main stumbling blocks. The paper concludes that despite apparent rigidities and deadlocks, mutual trust and goodwill, as well as time constraint and practical considerations, may help overcome divides and find technically workable solutions.

Key words: Brexit, Disintegration, EU, UK, Withdrawal Negotiations

Introduction

Although the referendum on the United Kingdom's EU membership, which took place on 23rd June 2016, had only advisory status (i.e. not legally binding), its result is taken most seriously by the main political parties of the UK. They do so not only because there was a clear difference (both percentage-wise and in absolute terms) between Leave and Remain

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voters, but also for the considerable support within the electorate for the UK's withdrawal from the European Union (see: Table 1).

Table 1. Comparison of referendums concerning real support for winners

			Votes (absolute numbers)	Percentage A/B (victory)	Percentage A/C (real sup- port)
United Kingdom EU membership (Brexit) Referen- dum (2016)	A	“Leave” votes	17 410 742	51.9%	37.4%
	B	Valid votes	33 551 983		
	C	Registered voters	46 500 001		
Norwegian EU membership ref- erendum (1994)	A	“No” votes	1 516 803	52.2%	46.4%
	B	Valid votes	2 906 750		
	C	Registered voters	3 266 064		
French presi- dential election (2017) first round	A	Votes for Macron	8 656 346	24.0%	18.2%
	B	Valid votes	36 054 394		
	C	Registered voters	47 582 183		
French legislative election (2017) first round	A	REM + MoDem	7 323 496	32.2%	15.4%
	B	Valid votes	22 654 164		
	C	Registered voters	47 570 988		
French legislative election (2017) second round	A	REM + MoDem	8 926 901	49.1%	18.9 %
	B	Valid votes	18 176 066		
	C	Registered voters	47 293 103		

Source: Statistics Norway; The Electoral Commission; French Government.

Even if the “Leave” side received somewhat weaker support than the “No” side had had in a similar vote on EU membership in Norway – held more than 20 years earlier and enjoying an extremely high turnout (89%) – it received much stronger support than for example Emmanuel Macron did in the first round of the presidential election or his presidential majority (his party, the REM¹ and the party of his partners, named MoDem²) did in either round of the legislative election, all held in France in 2017. Therefore, the robust support behind Brexit makes a second vote highly unlikely, at least in the short run, in the same manner as the opportunity

¹ La République En Marche is the ruling political party in France, sometimes called by its old name En Marche (EM), matching the initials of its own founder, Emmanuel Macron.

² Le Mouvement Démocrate secured an agreement with REM in the 2017 legislative election after his founder and leader (François Bayrou) endorsed the candidacy of Macron to be president of France a couple of months earlier.

for Scotland to keep her membership in the European Union if Britain leaves.³

Speculations about the future started well before the referendum, and the momentum continues to this day. Most papers concentrate on Britain's economy without knowing anything about the nature of the future relationship between the EU and the UK, and most of them predict lower growth due to Brexit. There are, however, a few think tanks (e.g. Economists for Free Trade) expecting GDP to be higher in 15 years than if the country remained in the EU. They assert that escaping from the EU would boost economic growth and raise living standards across Britain, especially for the poorest.⁴ Many fewer papers deal with the EU's future,⁵ and even fewer try to propose a new form of cooperation – as Pisani-Ferry et al.⁶ do so, suggesting a so-called continental partnership – which could also serve as a model for Europe's relations with other partners like the EEA countries,⁷ Switzerland, Turkey or Ukraine.⁸

By departing from the facts and, more generally, from what can be known about the Brexit process this late May 2018, this article first gives a short overview of the main interests and red lines for both of the nego-

³ As there are worries in more than one EU member state (e.g. in France or Spain) about secessionist trends, it is unlikely that any of them would encourage or agree to the precedent of swift accession of a successor state to the EU in case the United Kingdom disintegrates.

⁴ R. Bootle, J. Jessop, G. Lyons, P. Minford, *Alternative Brexit Economic Analysis*, 2018, p. 16, <https://www.economistsforfreetrade.com/publication/> (21.05.2018).

⁵ For example, some deal with the agri-food sector, to which Brexit may cause harm in two ways: through limiting the budget available for the CAP (common agricultural policy) – with reductions amounting up to EUR 1 billion a year e.g. for Poland – and through a deterioration in terms of mutual trade, with a potential breakdown of the Polish exports of agri-food products to the UK (K. Kosior, Ł. Ambroziak, *Brexit-Potential Implications for the Polish Food Sector*, in: *The Common Agricultural Policy of the European Union-the present and the future. EU Member States point of view*, eds. M. Wigier, A. Kowalski, Warsaw 2018, p. 159).

⁶ J. Pisani-Ferry, N. Röttgen, A. Sapir, P. Tucker, G.B. Wolff, *Europe after Brexit: A proposal for a continental partnership*, vol. 25, Brussels, Bruegel 2016, <https://ces.fas.harvard.edu/uploads/files/Reports-Articles/Europe-after-Brexit.pdf> (23.05.2018).

⁷ Norway, Iceland, Liechtenstein.

⁸ The proposed continental partnership (CP) would be less deep than EU membership but mean a clearly closer relationship than a free trade agreement. The UK would fully participate in goods, services and capital mobility, some temporary labour mobility, also in a new CP system of inter-governmental decision making and enforcement – while the ultimate formal authority would remain with the EU. The UK would continue to contribute to the common budget and co-operate with the EU-27 on such issues as foreign policy, security and possibly defence (J. Pisani-Ferry, N. Röttgen, A. Sapir, P. Tucker, G.B. Wolff, op. cit., pp. 1, 3, 6).

tiating parties (i.e. the European Commission and the UK Government), and then explores the key elements of the negotiations, focusing on the main stumbling blocks in the way of achieving an orderly withdrawal of the UK from the European Union.

Interests & Red Lines

Let us first go through the main conflicts of interest which may arise in the context of Brexit. There is one between labour and capital, although they obviously have common interests too, such as the success of the enterprises. Businesses are basically interested in keeping costs at the lowest possible level. For them, it has been a blessing to have all these people arriving first from the Commonwealth countries, then from Eastern and Southern Europe, willing to work for less than natives. Not that immigrant workers are more efficient or frugal than natives, but for most of them, to work in the UK means a relatively short period, whereas for natives it is a whole life long. Immigrants only come and live to work. They work hard, do not participate in strikes, try to gain and save as much as they can, and send a fair portion of their salary back home. With Brexit and a regulated immigration policy, pay levels will certainly have to increase, which is in the interest of native workers.⁹

There is another conflict of interest between the enterprises according to their size. Big businesses are likely to be involved in international trade; for them the free access to the European single market is of utmost importance. But there are a myriad of micro, small and medium-sized businesses in the United Kingdom – most of them without any major in-

⁹ Interestingly enough, part of the problem has recently been resolved. During the run-up to the referendum, Brexit campaigners argued that free movement was undermining British workers in e.g. construction and food processing, with some firms importing cheap workers from Poland and Romania. In case of 'posted workers', despite obligations for employers to pay these workers the minimum wage of the importing country, legal loopholes allowed undercutting the local workforce, e.g. by deducting from wages travel and accommodation expenses. Finally, in May 2018 – and not independently from what could be learnt from the lessons of the Brexit campaign – the EU has addressed the issue. In future, employers of 'posted workers' will be obliged to offer equal pay, the same allowances, and reimbursement for travel and accommodation costs as soon as from the start of the posting. J. Kirton-Darling, A. Jongerius, *The EU has just passed a law that could end the problems with free movement which led to Brexit in the first place*, "Independent", 30 May 2018, <https://www.independent.co.uk/voices/eu-brexite-uk-labour-laws-migrant-workers-a8375836.html> (2.08.2018); BBC, EU tightens law on foreign temporary workers. *BBC News* 29 May 2018, <https://www.bbc.co.uk/news/world-europe-44293265> (2.08.2018).

ternational relationships – that employ more people than the big ones.¹⁰ Despite having relatively weak international embeddedness, SMEs still must observe EU standards. For them, complying with regulation is more expensive than for larger firms. This is so not only because they have to spread their costs – in most cases consisting of fixed components which are the same for large and small firms – against lower turnover, but also because they are generally price takers and find it difficult to pass the incurred costs onto their customers.¹¹ For SMEs, there would certainly be some benefit from Brexit by getting rid of most of these regulations.

A third type of conflict of interest exists between the UK Parliament and the devolved administrations (those of Scotland, Wales, and Northern Ireland). The current devolution settlements were created in the context of the country's EU membership. Consequently, the devolved legislatures only have legislative competence in the devolved areas – such as agriculture and fisheries, environment and some transport issues – as long as the rules created by them are compatible with EU law.¹² So, even though they have been devolved, the responsibility for these policy areas has in practice been excised largely at EU level for the last couple of decades. The point is that upon Brexit whereby certain competences will be repatriated from the EU, if there are no changes to the devolution settlements, responsibility will fall automatically to the devolved jurisdictions. This could potentially lead to regulatory divergence, and thus – by altering the competitive neutrality – could undermine the integrity of the UK's

¹⁰ According to data from 2016, 99.9% of UK private companies belong to the small and medium-sized (SMEs) category. They together account for 47% of all private sector turnover (GBP 1,800 billion) and 60% of jobs (15.7 million people) [*UK Small Business Statistics – Business Population Estimates for the UK and Regions in 2016*, The Federation of Small Businesses, <https://www.fsb.org.uk/media-centre/small-business-statistics> (30.05.2018)]. While there are plenty of reasons behind the Brexit, one cannot exclude that the special attention which has, for decades, been paid to big companies, and the fact that economic policy, laws and regulations have been tailored for them, were also playing a role. Meanwhile, a growing proportion of smaller companies feel completely let down by the incumbent government.

¹¹ EU regulatory cost to business in Britain was estimated at EUR 99.89 billion for the period of 1998-2008, i.e. a yearly EUR 9.1 billion. T. Ambler, F. Chittenden, A. Bashir, *Counting the Cost of EU Regulation to Business*, Brussels 2009, p. 19; F. Chittenden, T. Ambler, *A question of perspective: Impact Assessment and the perceived costs and benefits of new regulations for SMEs*, "Environment and Planning C: Government and Policy", no. 33(1)/2015, pp. 9–24.

¹² UK Government, *The United Kingdom's exit from and new partnership with the European Union* (White Paper), February 2017, HM Government CM9417.

internal market.¹³ On the other side, of course, also the British government has a huge responsibility not to take advantage of the situation of having the authority to deal with international relations, including negotiations with the EU, and – on the pretext of “technical constraints,” e.g. maintaining common standards and ensuring stability and certainty for business – re-centralize too much decision-making power to Westminster. The impact of Brexit on UK’s devolution settlements is incontestably one of the most (technically) complex (and politically sensitive) elements of the whole withdrawal process.¹⁴

Finally, there are conflicting interests between the UK and the EU-27. Normally, there should not be any major problems, as they are supposed to serve the interests of the people they represent. Therefore, they should focus on protecting jobs and businesses, which could be best achieved by maintaining the closest possible economic relationship with each other. Apparently, this is only the goal of the UK,¹⁵ while the EU – fearing that a Brexit not deterrent enough to stop other member states from reconsidering their own situation could lead to total disintegration – is adamant the UK cannot maintain as good a relationship with the EU-27 as it has as a member.¹⁶

With this, we have arrived to the question of red lines. The EU-27’s most important red line for Brexit is related to the dogma¹⁷ of the indi-

¹³ UK Parliament, *Brexit: devolution*. European Union Committee, 4th Report of Session 2017-19 – published 19 July 2017, HL (House of Lords) Paper 9.

¹⁴ As England’s fellow-nations usually have a greater share of EU’s agricultural funds than their share in UK’s population, it would be a most critical step towards creating a climate of trust if the existing population-based method of allocation of funding to the devolved (the so-called ‘Barnett formula’) were replaced with a more appropriate needs-based funding arrangement. Only in such a way could the devolved be compensated for the loss of EU funding, caused by Brexit in the long-term. [Under the Barnett Formula, devolved governments in Scotland, Wales and Northern Ireland receive a population-based proportion of changes in planned UK government spending on comparable services, either in England, or in England and Wales together, or in Great Britain, as it is appropriate. House of Commons Library, *The Barnett formula: a quick guide*, June 27, 2017 <https://commonslibrary.parliament.uk/parliament-and-elections/devolution/the-barnett-formula-a-quick-guide/> (1.05.2018).

¹⁵ As it is stated in the Brexit White Paper “*The Government will prioritise securing the freest and most frictionless trade possible in goods and services between the UK and the EU...*” (UK Government, *The United Kingdom’s exit from and new...*, op. cit.).

¹⁶ „A non-member of the Union ... cannot have the same rights and enjoy the same benefits as a member”. Consilium, *European Council (Art. 50) guidelines for Brexit negotiations*, 29 April 2017, p. 3, <http://www.consilium.europa.eu/media/21763/29-euco-art50-guidelinesen.pdf> (25.02.2018).

¹⁷ The four freedoms can be each other’s substitutes – e.g. free movement of goods and persons, as the quantity of work embodied in imports have circa the same effect on local wages than when those products are produced by immigrant workers [W.

visibility of the four freedoms, which sums up in the notorious notion of “no cherry picking”.¹⁸ In the British government’s opinion, every trade arrangement is cherry-picking in the sense that it contains varying market access depending on the respective interests of the countries involved. The EU itself is taking a tailored approach, for example, to the fisheries sector in relation to which “the Commission has been clear that no precedents exist for the sort of access it wants from the UK” (May 2018).¹⁹ As for the UK’s red lines, they arise from the desire of gaining back control over laws (ending the jurisdiction of the European Court of Justice), borders (ending free immigration of workers from the EU), money (ending excessive net contribution to the common budget), and trade (being able to conduct a fully independent external trade policy, and forge agreements with non-EU countries).

Kohler, G. Müller, *Brexit, the four freedoms and the indivisibility dogma*, LSE Brexit, 2017, <http://eprints.lse.ac.uk/86187/1/brexit-2017-11-27-brexit-the-four-freedoms-and-the-indivisibility.pdf> (23.02.2018)]. The notion of ‘four freedoms’ does not appear in the Treaties, but the promotion of free movement of persons, capital, goods and services is already mentioned in the Treaty of Rome (Article 3) as the very essence of the integration. So, the logic of the four freedoms is not based on economic but political reasoning [W. Münchau, *Europe’s four freedoms are its very essence*, “Financial Times”, November 12, 2017, <https://www.ft.com/content/49dc02dc-c637-11e7-a1d2-6786f39ef675> (28.12.2017)]. As a matter of fact, after more than 25 years since Maastricht, those four freedoms (particularly the one of services) are not yet fully achieved. In the relationship of the EU with Switzerland, there is free movement of people (to a very high degree), but there is no freedom of services as banks cannot provide services to each other’s customers. Is it sacrilege to ask for the opposite, like Britons do, seeking freedom of services but controlled labour inflow? P. Carrel, *Indivisible or flexible? Brexit battle looms over EU freedoms*, Reuters, November 7, 2016, <https://www.reuters.com/article/us-britain-eu-freedoms-analysis/indivisible-or-flexible-brexit-battle-looms-over-eu-freedoms-idUSKBN1320MS?il=0> (25.05.2018).

¹⁸ “... the four freedoms of the Single Market are indivisible and ... there can be no ‘cherry picking’.” Consilium, *European Council (Art. 50)...*, op. cit., p. 3.

¹⁹ It is to be noted here that, in 2015, EU vessels caught more than 6 times more in tonnage and 4 times more in value in UK waters than UK vessels caught in EU-27 waters [UK Government, *Government response to House of Lords EU Energy and Environment Sub-Committee Report into the future of fisheries in the light of the vote to leave the EU*, 2017, p. 1, <http://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/Brexit-fisheries/Gvt-Response.pdf> (1.06.2018)] What makes this issue more complex is that the evolution of the fishing industry led to specialisation, so that EU countries fish for different species in each other’s waters. As, from fishing gears to processing factories, it would take decades to reverse this process, it seems unlikely the UK could reasonably deny access to its waters to the EU-27 even if its plan for a non-painful withdrawal from the EU were to fail. House of Lords, *Brexit: fisheries*. European Union Committee 8th Report of Session 2016-17, 17 December 2016, HL Paper 78, pp. 38–39.

There is an issue, concerning the land border between Northern Ireland and the Republic of Ireland – which is very important for both negotiating parties in that they have repeatedly expressed their commitment to supporting and upholding the Peace Process and the Belfast (or Good Friday) Agreement, and particularly avoiding a hard border with a physical infrastructure or any related checks and controls – in relation to which there are red lines on both sides. The essence of these red lines is that any solutions at the Irish border will have to respect both the integrity of the Union legal order (EU-27's red line²⁰), and the constitutional integrity of the United Kingdom.²¹

Key Elements of the Negotiations

Withdrawal negotiations between the EU and the UK formally started on 19th June 2017 and Brexit will officially fall at midnight, Brussels time, on 29th March 2019. This paper cannot cover the whole exit process – for an (almost) complete chronology, see Consilium online – but will focus instead on some key elements, stumbling blocks and milestones of the negotiations. One of the main stumbling blocks in the way of achieving an orderly withdrawal of the UK from the EU is related to the fact that the two most important treaties – one of which is vital to the one party, while the other is to the counterparty – cannot be completed simultaneously, but only in succession. This problem's origins lie in the difference in the interpretation of Article 50.²² In the Commission's understanding, first the exit agreement should be concluded and only after the UK has become a third country to the EU will it be possible for the parties to finalise their deal on the framework of their future cooperation.²³

Although this so-called 'phased approach' has never been the British Government's view – as, in their reading, it is not possible to have a prop-

²⁰ European Council, *European Council (Art. 50) guidelines for Brexit negotiations*, 2017, p. 6, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines/> (29.05.2018).

²¹ The issue of the Irish border will be further discussed in more detail in the next chapter [the UK's red line – D. Davis, *The progress of the UK's negotiations on EU withdrawal*. Exiting the European Union Committee, 25 April 2018, 10:03, <https://www.parliamentlive.tv/Event/Index/08a8fed4-919d-4cb5-94ec-c9c0fecf60f0> (2.06.2018)].

²² Paragraph 2 of Article 50 says: "...the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, **taking account** of the framework for its future relationship with the Union" (The Lisbon Treaty).

²³ European Council, *European Council (Art. 50)*..., op. cit., p. 4.

er withdrawal treaty negotiation unless they know where they are going²⁴ – London did not shy away from discussing the main issues in an order which corresponded to the EU guidelines.²⁵ But the problem remains, and towards end 2018 or early 2019 – when the UK Parliament will have to vote on the exit deal – MPs will face two documents:

- the withdrawal agreement, which will be a treaty setting out the terms of the UK's withdrawal from the EU, including the financial settlement,²⁶ and once ratified, having the force of international law, on the one hand;
- and a mere political declaration, setting out the terms of the EU-UK future partnership which will not be legally binding, on the other hand.

Even if both sides are interested in having the political declaration to be substantive enough – about e.g. the details of the future free trade agreement, mutual recognition of standards, or rules of origin – it will be difficult for the UK government to explain to MPs what the country will have got by the declaration.²⁷

Certainty is important not only for MPs (before they vote), but also for businesses all over Europe. The single biggest risk to them posed by Brexit comes from the uncertainty about whether and to what extent they could retain access to each other's markets. They need two pieces of information: what the UK's future relationship with the EU will look like, and what the bridge arrangement will be between leaving and getting to that relationship. In the absence of clarity, firms may pre-empt uncertainty by restructuring or relocating based on a worst-case scenario. In this respect, it was an important step towards clarity when, following the December 2017 European Council decision²⁸ to move to the second phase of Brexit

²⁴ I. Rogers, European Scrutiny Committee, Oral evidence: EU-UK Relations in Preparation for Brexit. HC 791, Wednesday 1 February 2017, Witness: Sir Ivan Rogers KCMG, former Perm. Repr. to the EU, 10:27, <http://parliamentlive.tv/Event/Index/0d6145fa-5329-426d-8300-8eda8f215184> (27.05.2018).

²⁵ Accordingly, the first rounds of negotiation followed the agenda proposed by the Commission, dealing with the permeability of the UK's land border with Ireland, the acquired rights of EU citizens in Britain and British citizens in EU-27, the disentanglement of the UK from the EU budget and its financial liabilities, and other separation issues (like Euratom, goods placed on the market, on-going Union procedures, judicial cooperation in civil and criminal matters, and the relocation of EU banking and medicines agencies originally headquartered in the UK). Consilium, *Brexit*, <http://www.consilium.europa.eu/en/policies/eu-uk-after-referendum/> (3.06.2018).

²⁶ The exit bill, or the sum of money the UK will have to pay on leaving, is estimated to be between £35 billion and £39 billion (D. Davis, op. cit., 10:06).

²⁷ *Ibidem*.

²⁸ The decision was based on the progress achieved in key areas of negotiations (i.e. citizens' rights, Irish border, exit bill) and reflected in the so-called Joint Report

negotiations, the issue of a transition period has appeared on the negotiation agenda.

As it was in both parties' interests, a settlement was quickly drawn up on transition and presented to the public as part of the Draft Withdrawal Agreement (DWA) of 19 March 2018, the so-called coloured version²⁹ which is the biggest milestone of the negotiations to date. During the transition period, lasting from Brexit day in March 2019 to the end of 2020, almost nothing will change – e.g. the Britons remaining in both the single market and customs union, hence under the jurisdiction of the European Court of Justice – but the UK will no longer take part in the decision-making of the EU institutions, save when invited to do so. Although, the UK obtained some concessions for the transition period – like the possibility to negotiate, sign and ratify international agreements with non-EU countries; being treated as a member state for the purposes of international agreements concluded by the EU; and abstaining from European foreign policy measures it would have vetoed as a member – it had to, in exchange, soften its position on fisheries catch issues (by agreeing to delay the renegotiation of fishing quotas until 2020),³⁰ and immigration (by postponing the specified date – by which EU citizens can exercise their free movement rights – from Brexit day to the end of transition).³¹

(JR) of 8th December 2017. In JR, both parties agreed upon principles about how to protect rights of their citizens residing on each other's territory, how to avoid a hard border between Northern Ireland and Ireland, and how to calculate the value of the financial settlement. As for the latter element, its essence is that the UK will participate in the common budget in 2019 and 2020 (so, matching the end of the current Multiannual Financial Framework) as if it remained in the EU. London has agreed to pay its share of EU's outstanding liabilities incurred before end 2020, as well as of EU's contingent liabilities as established at the date of withdrawal. The UK's 'share' will be calculated based on the UK's percentage share of member states' total contributions to the common budget in the period of 2014–2020. European Commission, *Joint report from the negotiators of the EU and the UK Government on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU*, 2017, https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf (7.06.2018).

²⁹ The rows of the DWA have been highlighted with different colours depending on whether there is agreement on the text (green), the policy objectives (yellow) or none of them (white).

³⁰ The fact that they will have to wait until 2020 to assume full control over the British waters caused great disappointment in coastal fishing communities which had massively voted for Brexit even in Scotland.

³¹ European Commission (2018). *Draft Agreement on the withdrawal of the UK from the EU (coloured version)*, 16–19 March 2018, https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf (8.06.2018).

With the DWA, the negotiators have achieved significant progress towards finalising an exit treaty. Several chapters, like rules on the transition period, citizens' rights or the financial settlement are already completely, or almost completely agreed upon.³² Other issues, like some of the separation provisions (e.g. pending criminal and police proceedings, pending ECJ cases and administrative proceedings, and first of all data protection³³), general rules on dispute settlement and the most important element of Irish border issues (i.e. free movement of goods) are still waiting to be resolved. As the latter problem seems to be the single largest risk factor to derailment of the Brexit negotiations (i.e. timely conclusion of the withdrawal agreement), it needs to be treated separately.

Customs controls were first introduced at the land border between Northern Ireland and Ireland in 1923 and maintained until the establishment of the European single market in 1992. During the 'Troubles' (ethno-nationalist conflict in Northern Ireland lasting from 1969 to 1998), the border was manned by substantial military presence (including "watch-towers") and a number of roads were blocked by security forces. Today, this is an invisible and open border, as following the conclusion of the Belfast (Good Friday) Agreement in 1998, all military security installations and other physical infrastructure were removed.³⁴ Apart facilitating cross-border trade, the importance of this open border lies in that it is a symbol of the success of the peace process, and something supporting

³² There are some exceptions. E.g. on voting rights (i.e. the right to vote in local elections) the UK still have to agree with member states bilaterally, while on onward movement (i.e. the ability to continue to move freely across the member states after Brexit) with the EU (D. Davis, op. cit., 9:43). As for the financial settlement, a dilemma still exists: the prospects of the UK being able to negotiate its future relationship with the EU without having to contribute significantly to the common budget would imply a violation of the principle whereby poorer members have over average access to EU funds in exchange for opening up their markets to companies of the more developed. But, for the British, having to contribute to the EU budget as before would be the same as betraying one of the main tenets behind Brexit referendum: taking back control of their money.

³³ "Both parties want the GDPR rulebook to apply in the UK without considering as yet an equivalent UK law to be applied in Europe. In a worst case scenario (if this problem is not resolved) "new clauses dealing with third country transfers would need to be added into every contract between an EU and UK entity where data is processed". KPMG, *Draft agreement on UK withdrawal from EU and transition*, 2018, <https://assets.kpmg.com/content/dam/kpmg/ie/pdf/2018/03/ie-brexit-withdrawal-agreement-eu.pdf> (9.06.2018).

³⁴ UK Government, *Northern Ireland and Ireland – Position Paper 16 August 2017*, p. 12, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf (10.06.2018).

the normalisation of relations between Protestant and Catholic communities in both Northern Ireland and across the border.³⁵

Having all the above as well as the related sensitivities in mind, it is no wonder discussion about the Irish border issue seems extremely emotional and exaggerated. First, control of people is not an issue here, as there is no need for immigration controls thanks to the historic CTA (Common Travel Area, an arrangement between the UK and Ireland relating to the movement of persons) recognised in EU law (Protocol 20, TFEU).³⁶ So, the issue is primarily about the trade border.³⁷

Second, since most of the necessary trading formalities are conducted electronically, 95 per cent of goods pass the border without any checks there. Only animals and animal products must, in theory, pass through specific entry points where veterinary checks can be done, which would be made redundant either by maintaining the current mutual recognition of accreditations and inspection regimes (which exists between member states), or agreeing on it in an FTA (free trade agreement).³⁸

An ambitious and comprehensive (zero-tariff) FTA, incorporating a chapter on a highly streamlined customs arrangement (known as “maximum facilitation” or MaxFac), has always been option “A” for the UK government.³⁹ There are many examples of how this sort of system could work, e.g. such as Authorised Economic Operator scheme or new form of electronic documentation. The technology (e.g. electronic/bar code tag-

³⁵ T. Durrant, A. Stojanovic, *The Irish border after Brexit*, IfG Insight June 2018, p. 4, <https://www.instituteforgovernment.org.uk/sites/default/files/publications/irish-border-after-brexit-final.pdf> (10.06.2018).

³⁶ Instead of being ensured at the border, migration control can be performed via checks in workplaces, banks, universities and on landlords, as is currently done for non-EU citizens. S. Peers, *The Day the Unicorns Cried: the deal on phase 1 of the Brexit talks*, 2017, <http://eulawanalysis.blogspot.com/2017/12/the-day-unicorns-cried-deal-on-phase-1.html> (10.06.2018).

³⁷ S. Singham, *How to fix the Irish border problem*, 2018, <https://capx.co/how-to-fix-the-irish-border-problem/> (11.06.2018).

³⁸ Even in the absence of a full FTA, a bilateral border arrangement can be agreed based on the exception to the MFN (most-favoured-nation) principle (described in GATT XXIV/3) concerning frontier traffic in a frontier zone of 10–15 km on each side of the border. K. Hydert, *Exceptions in Favour of Frontier Traffic, Customs Unions, Free Trade Areas and Discrimination*, in: *Equality of Treatment and Trade Discrimination in International Law*, Dordrecht 1968, p. 98.

³⁹ Option ‘B’ would be the so-called new customs partnership whereby the UK would apply EU’s customs regime to imports from third countries destined for the EU market. As this option, mentioned in both the JR and the DWA, would require sophisticated tracking technology and/or a costly tariff repayment system, is now considered a non-starter. J. Jessop, *The case for ‘MaxFac*, 2018, <https://iea.org.uk/wp-content/uploads/2018/05/BU-Briefing-on-MaxFac-2.pdf> (11.06.2018)

ging, number-plate recognition, secure smartphone apps, GPS tagging) for all aspects of monitoring this process remotely already exists for larger traders (and can certainly be developed for smaller local traders), but it would require close cooperation between the customs services of the two countries.⁴⁰

In the absence of agreed solutions, both the JR and the DWA foresees a third option (option “C” or a “backstop agreement”) which would compel the UK (in respect of Northern Ireland) to maintain full alignment with EU’s internal market and customs union. But that scenario will be unlikely to come true.⁴¹ Especially, because the wording of the DWA (“The territory of Northern Ireland... shall be considered to be part of the customs territory of the Union”), would be unacceptable for any UK government – as it would effectively start a process of breaking up the United Kingdom.⁴²

Many argue that the best solution would be option “A”.⁴³ At the other extreme, remaining in some form of customs union, or – having in mind the relatively limited economic significance of the Irish border⁴⁴ – seeing its entire customs arrangements constrained by the supposed needs of this border, would prevent the UK from achieving regulatory autonomy and pursuing an independent trade policy.⁴⁵ Although MaxFac would not eliminate trade frictions completely, and even some additional customs costs and some others, related to rules of origin, would be incurred, gains coming from trade liberalisation (i.e. the ability to lower barrier to trade with third countries and reduce market distortions at home) would exceed the costs.⁴⁶

Conclusion

Brexit negotiations seem to be proceeding at a slower pace recently, as talks are more and more concentrated on the hottest issues. Although

⁴⁰ S. Singham, op. cit.

⁴¹ “It is currently difficult to see how the ‘fall-back’ option will work in practice” (KPMG, *Draft agreement on UK...*, op. cit.).

⁴² D. Davis, op. cit., 10:03.

⁴³ Even the European Council confirmed its readiness to work towards an ambitious and wide-ranging FTA; European Council, *EU Council (Art. 50) guidelines on the framework for the future EU-UK relationship*, 23 March 2018, p. 3, <http://www.consilium.europa.eu/media/33458/23-euco-art50-guidelines.pdf> (12.06.2018).

⁴⁴ For both Northern Ireland’s and Ireland’s economies, intra-Irish trade is marginal compared to sales going to mainland Great Britain. S. Singham, op. cit.

⁴⁵ D. Blake, *How bright are the prospects for UK trade and prosperity post-Brexit?*, London 2018, p. 56.

⁴⁶ J. Jessop, op. cit.

most of the remaining problems can only be solved by ditching some of the EU's or UK's redlines, it seems, from a neutral observer's perspective, to be quite possible to find technically workable solutions. Obviously, this would require mutual trust and goodwill, and that negotiating parties cease to stick to their perceived political interests. As for the latter, let us hope that time constraints and practical considerations will help overcome them. Let us finish with a recent evidence given by DExEU minister David Davis before a parliamentary select committee: "[...] in all of this negotiation... when we get into the detail and work through detail it tends to unblock things rather than block things [...]"⁴⁷

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⁴⁷ D. Davis, op. cit., 10:11/12.

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Prospects for Extending the European Union to the Countries of the Western Balkans

Abstract

The main objective of the article is to present the prospect of extending the European Union to the countries of the Western Balkans. It presents the criteria to be met by the candidates for EU accession, followed by an analysis of the most important problems related to the accession process, both those afflicting the Member States (*enlargement fatigue* – lack of acceptance for further enlargements among societies) and those faced by the Western Balkan countries – lack of political stability, widespread corruption, organized crime, unresolved disputes with neighbours, lack of preparation for functioning in the common market. Subsequently, the perspectives of possible EU enlargements for the Balkan countries are outlined.

Key words: European Union, Enlargement Process, Western Balkans

Introduction

When analysing the history of European integration, it can be observed that the enlargement of the European Communities/European Union is a regular component of this process. The European Communities, which initially consisted of 6 countries with a total population of about 200 million and covered part of Western Europe, currently consist of 28 members within the EU with a demographic potential of over 500 million and occupy the majority of the European continent. The structure, built on the foundations of democracy, the rule of law, respect for human rights and implementing the principles of free market, has been recognized as a “sanctuary” of peace, stability and economic prosperity. It was because

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of these features that after the collapse of the two-block system, membership in the European Union became the main goal of the majority of Central and Eastern European countries. For the EU itself, the possibility of enlargement meant stabilization of its surroundings, gradual removal of potential threats and expansion of the markets. In addition, considering the European Union's superpower ambitions at the beginning of the 21st century, its demographic, political, economic and territorial potential was (and still is) an important attribute in the international arena.

The attractiveness of the European Union and the prospect of membership in this structure has been the most effective instrument of its impact in both the immediate and more distant neighbourhood. The policy of open doors motivated the countries of Central and Eastern Europe to implement painful economic and political reforms. The effort paid off, as owing to the work undertaken in 2004, 2007 and 2013, 13 new members joined the European Union. After that wave of enlargements, however, there was a marked change in the attitude towards further expansion among the European Union's societies. At present, one can observe this process decelerating.¹ A peculiar expression of that was the statement of the head of the European Commission, Jean-Claude Juncker, who said at the commencement of his function in 2014 that during the next term of office he does not anticipate any accession to the EU. This means that by the end of 2019 no extension will take place. This, however, should not be interpreted as a signal of the EU's resignation from wanting to influence its surroundings. Brussels is still pursuing an open door policy towards its neighbours, in particular towards the Balkan countries.

Increasingly Stricter Membership Criteria

Based on its historical experience related to the enlargement process, the European Union has created a catalogue of conditions that must be met by an applicant country.² Article 49 of the Treaty on European Union clearly states that any European state that respects the values listed in Article 2 of the Treaty, namely "respect for the dignity of a person, freedom, democracy, equality, the rule of law, including the rights of per-

¹ See: O. Barburska, D. Milczarek, *Polityka wschodnia Unii Europejskiej: porażka czy sukces? (Eastern Policy of the European Union: Failure or Success?)*, Warszawa 2014, pp. 26 and further.

² See: A. Szymański, *Zmiana polityki rozszerzenia Unii Europejskiej. Ujęcie instytucjonalne (Change of the European Union's Enlargement Policy. Institutional Frame)*, Warszawa 2014; A. Szymański, *Rozszerzenie Unii Europejskiej. Współczesne uwarunkowania i perspektywy kontynuacji procesu (Enlargement of the European Union. Contemporary Conditions and Prospects for the Continuation of the Process)*, Warszawa 2012.

sons belonging to minorities, can apply for EU membership. These values are common to the Member States in a society based on pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men”³

The criteria adopted by the European Council in 1993 in Copenhagen (the so-called Copenhagen criteria) and in 1995 in Madrid (the so-called Madrid criteria)⁴ supplement the requirements laid down in the Treaty. The Copenhagen criteria constitute a catalogue of political, legal and economic standards that a country interested in membership must meet:

- having stable institutions to guarantee democracy, rule of law, human rights, as well as respect and protection of minorities;
- a functioning market economy and an ability to withstand competition and cope with the market forces within the EU;
- readiness to take on the responsibilities of an EU Member, including adjustments to the objectives of a political, economic and monetary union;
- introduction of common regulations, standards and policies which form the EU legislation (*acquis communautaire*).

The Madrid criteria, in turn, indicate the need to adapt the administrative structures of the candidate state to enable the effective implementation of community policies and the enforcement of EU law after accession.⁵

In 2006, the European Union introduced another obligation related to the accession process.⁶ This time, however, it was not an additional condition addressed to the candidate state, but a self-limiting criterion adopted by the European Council, ordering the EU to acquire integration capacity, i.e. absorption capacity: the EU's readiness to extend both in institutional and financial terms.⁷

Problems related to the accession process of Bulgaria and Romania forced the European Union to re-verify its enlargement policy after 2007. In these two cases it turned out that despite the fact that accession negotiations ended in 2004, these countries, which were already members of the EU, were unable to effectively carry out their responsibilities in the

³ Art. 2 TUE: <https://eur-lex.europa.eu/legal-content/EN/> (18.08.2018).

⁴ <http://www.consilium.europa.eu/pl/european-council/conclusions/1993-2003/> (18.08.2018).

⁵ *Ibidem*.

⁶ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/PL/ec/92216.pdf (18.08.2018).

⁷ W. Bąba, *Bariery dalszych rozszerzeń Unii Europejskiej (Barriers to Further Enlargements of the European Union)*, in: *Bariery integracji Unii Europejskiej (Barriers to European Union Integration)*, ed. H. Tender-Właszczyk, Kraków 2009, p. 169.

fight against corruption, organized crime and money laundering. Moreover, the problems also appeared concerning effective control over the management of EU funds.⁸

The problems arose due to the fact that the governments in Sofia and Budapest had already received confirmation of the date of entering the EU, which resulted in a slowdown in the implementation of reforms. While assessing both countries and concluding their accession negotiations, the European Commission was aware of their shortcomings and deficiencies, and yet decided to give both candidates a loan of trust. However, this policy proved to be naïve and ineffective, thus forcing the EU to implement the Cooperation and Verification Mechanism, which obliged Bulgaria and Romania to quickly implement reforms of the judiciary and apply effective methods of combating organized crime. This specific lesson contributed to the decision taken at the 2011 European Council to apply a new enlargement policy strategy, based on special treatment of the so-called fundamental issues: the rule of law, fundamental rights, strengthening of democratic institutions including public administration reform, especially in the area of the judiciary. Negotiation chapters on these issues (i.e. chapters 23 and 24 – the areas of freedom, justice and security, and fundamental rights and the judiciary)⁹ are to be opened by the European Commission and the candidate country as one of the first in the accession negotiation process and closed as the last, at the time when the candidate for accession has achieved its full readiness.¹⁰

The introduction of such strict rules by the EU is related to the fact that subsequent potential members are characterized by an increasing deficit in compliance with EU values and fulfilment of EU standards. Brussels pays particular attention to the accession of the Western Balkan states, which participated in the bloody disintegration of Yugoslavia in the 1990s. The European Union demanded that they cooperate effectively with the International Criminal Tribunal for the

⁸ W. Manteuffell, *Koniec piątej fali rozszerzenia: Bułgaria i Rumunia w UE (The End of the Fifth Wave of Enlargement: Bulgaria and Romania in the EU)*, <http://www.psz.pl/127-unia-europejska/wladyslaw-manteuffel-koniec-piatej-fali-rozszerzenia-bulgaria-i-rumunia-w-ue> (18.08.2018).

⁹ T. Żornaczuk, *Serbia w pierwszym roku negocjacji z UE powolniejsza niż Chorwacja i Czarnogóra (Serbia in the First Year of Negotiations with the EU Slower than Croatia and Montenegro)*, PISM 27.01.2015, https://blog.pism.pl/blog/?id_blog=28&lang_id=12&id_post=480 (11.07.2018).

¹⁰ M. Müftüler-Baç, *The European Union Enlargement: A Preliminary Look into External and Internal Scope Conditions*, MAXCAP, 18 November 2015, p. 14, <http://research.sabanciuniv.edu/27938/1/muftulerbacMaxcapD4.32015.pdf> (19.07.2018).

former Yugoslavia,¹¹ enable the return of refugees and intensify efforts to develop regional cooperation, conciliation and settlement of bilateral disputes. The European Union countries are particularly sensitive to the threats coming from this region, which is why security issues and adherence to solutions adopted by the Balkan states under individual peace agreements, including Dayton, Kumanovo, Ohrid and Belgrade, are especially monitored by the European Commission. Observation of the political situation in this area is carried out in cooperation with the Council of Europe, the Organization for Security and Cooperation in Europe and non-governmental organizations.¹²

This behaviour of the European Commission results from the fact that another unofficial criterion for accepting new members is in operation, according to which the European Union does not want to invite countries involved in disputes and conflicts of either international or internal character (e.g. with national minorities). This constitutes a barrier for countries currently interested in becoming a member of the EU, especially for Western Balkan countries.

Diagnosis of Problems and Barriers Slowing Down the Enlargement Process

Reduced interest in the enlargement process in the EU

The slowdown of the enlargement process on the part of the European Union is related to a number of factors. The first group of factors is related to the situation within the European Union itself. The recent wave of accessions has resulted in the phenomenon of enlargement fatigue in the society and among some European politicians, who associate them with the weakening of the EU's cohesion and high expenditure. The accession to the EU in 2004 and 2007 of a large number of countries characterized by a lower level of socio-economic development (apart from Cyprus and Malta) and a lower degree of democracy and stability contributed to a *post factum* wave of scepticism among the societies of the old "Fifteen" regarding the validity of this decision and thus extending towards the further enlargement process.

¹¹ These requirements referred to the accession negotiations of Croatia, which had to issue to the International Criminal Tribunal for the former Yugoslavia its national heroes Ante Gotovina and Mladen Markac.

¹² The *Western Balkans and UE Enlargement: Lessons learned, ways forward and prospects ahead*, European Parliament Directorate-General For External Policies, November 2015, p. 13, [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA\(2015\)534999_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA(2015)534999_EN.pdf) (24.06.2018).

This wave of reluctance was associated mainly with fears of incurring huge costs due to this enlargement, which would increase contributions to the EU budget. The outflow of capital, the flooding of the “old fifteen’s” markets with cheap products from new Member States and an “invasion” of cheap labour force into the western labour markets, resulting in their destabilization, were also feared. An additional burden related to this accession in the eyes of Western European societies was a threat to the security of the European societies coming from the direction of Central and Eastern Europe. There was a fear of a crime wave associated with young democracies, not yet well-educated nor equipped with experienced administrative and legal structures as well as effective law enforcement agencies.¹³

As if in confirmation of the abovementioned concerns, in subsequent years (after 2009) the European Union was affected by a recession and debt crisis in the euro area, which forced European politicians to focus on internal EU affairs and attempts to save the financial and economic situation of some Member States, such as Greece, Ireland, Spain, Portugal and Cyprus.¹⁴ An additional problem negatively impacting the internal processes in the EU is the decision of the British society to leave the EU.

Another group of factors influencing the reluctance of both the society and European politicians towards the enlargement process results from external processes and events that directly affect the EU or pose a potential threat to it. The first of these factors concerns the inflow of refugees to the European Union. The refugee crisis, which peaked in the EU in 2015, caused divisions among EU members and destabilized the Schengen area. The influx of thousands of foreigners to Europe has a direct impact on Brussels’ open door policy. One of the refugee routes to rich EU countries runs through the Balkan states, which has a negative impact on the perception of these countries by EU citizens. European societies therefore associate the appearance of “strangers” with the EU’s enlargement policy. A problem complementing the refugee issue is the escalation of terrorism in Europe, mainly associated with Islamic fundamentalists, which additionally enhances the desire to consolidate the present shape of the EU by closing its borders. Recent terrorist attacks in France and Belgium have strengthened the arguments of enlargement opponents and supporters of

¹³ As a result of this negative attitude there was a social rebound and the rejection of a new integration project, the Constitutional Treaty, in 2005 in France and the Netherlands in referenda.

¹⁴ K. Archick, *The European Union: Current Challenges and Future Prospects*, Congressional Research Service Report, 15th February 2016, s. 5, <https://www.fas.org/sgp/crs/row/R44249.pdf> (18.08.2018).

building a peculiar European fortress. A wave of enlargement scepticism is especially present in Austria, the Netherlands, Finland, France and Germany.¹⁵

An additional and extremely important element affecting the slow-down in enlargement is the issue of politicizing the accession process. It concerns a situation where one of the members of the European Union is in a bilateral dispute with a candidate for membership or a state interested in membership. As unanimity of all Member States is required in the accession procedure, i.e. each of them has the right of veto, they try to use this situation to force the solution to their problems.¹⁶ This constitutes a type of political blackmail. It is obvious that this procedure has always been politicized and many historical examples of this phenomenon can be found. However, due to the increasing number of EU members and more frequent references to nationalist slogans in political discourse and argumentation among the Member States, the scale of politicization, or re-nationalization, of the enlargement process is increasing. Obtaining unanimity on the part of the EU in the negotiation process will be much more difficult and the course of accession will be extended over time.¹⁷ The problems in Cypriot-Turkish, Greek-Macedonian, Greek-Albanian, Croatian-Serbian and Croatian-Bosnian relations can be seen as a contemporary example of this politicization of the process.

Taking into account all the above-mentioned factors resulting both from the internal as well as external problems of the European Union, it is not surprising that while acceding to the office in 2014, the President of the European Commission stated that the European Union should take a break from the enlargement process, as its existing achievements must be consolidated. At the same time, he stressed that there will be no enlargement in the next term, i.e. until 2019.¹⁸ The symbol of this approach was the change in the structure of the European Commission elected in 2014, where two areas were merged into one and the “European Neighbourhood Policy and accession negotiations” portfolio was created.

The European Union has therefore pushed the issue of enlargement to the background, focusing the emphasis on resolving internal difficul-

¹⁵ The *Western Balkans and UE Enlargement...*, op. cit., s. 11.

¹⁶ J. Wódka, *Granice Europy. Perspektywy Rozszerzenia Unii Europejskiej (The Borders of Europe. Perspectives Enlargements of the European Union)*, „Studia Polityczne”, no. 1/2015, p. 119.

¹⁷ M. Müftüler-Baç, op. cit., p. 4.

¹⁸ J.-C. Juncker, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*, Strasbourg, 15 July 2014, <https://www.eesc.europa.eu/resources/docs/jean-claude-juncker---political-guidelines.pdf> (18.08.2018).

ties, namely how to conduct the UK's "divorce" with the EU, end the economic crisis in Greece and stop the influx of immigrants. When it comes to external issues that have a negative impact on the enlargement process, what comes into focus are a lack of any visions and the desire to wait through these problems.

Problems of the countries interested in EU membership

It is hardly surprising that the president of the European Commission, Jean-Claude Juncker, will not have the prospect of expanding the European Union in the coming years. It results not only from the lack of readiness of the European Union itself, but also from the lack of preparedness to accession in the aspiring countries. The words of the head of the Commission were certainly thought out, and resulted from the analysis of the situation among potential members of the European Union. These may include the countries of the Western Balkans: Albania, Bosnia and Herzegovina, Montenegro, FYROM, Kosovo and Serbia, to which the Union previously offered the prospect of accession. Considering the situation of the first group, i.e. the Balkan states, it should be emphasized that at the time of the Thessaloniki European Council in 2003, EU representatives presented the prospect of accession to these countries provided that they meet membership criteria.¹⁹ However, the region of the Western Balkans is a specific part of our continent. It is characterized by high sensitivity and prejudice against dependence on external actors, which results from historical events. And this is how the membership in the EU is identified by parts of these countries' society. It is a region of deep national, religious and social divisions that have been the cause of numerous wars. These divisions, despite the fact that conflicts have been officially resolved, are still alive among the newly formed states.²⁰

Despite the conciliation steps taken by politicians of these countries, also resulting from external pressure (EU, OSCE, UN, and NATO), the heritage of the wars of the 1990s can still be sensed. Revanchism policy, revenge, distrust and fear are still the background for political decisions in these countries. The extremely divided and diverse Balkan states in no way resemble the group of Central and Eastern European countries that

¹⁹ A. Nowak-Far, *Balkany Zachodnie a Unia Europejska – prawidłowości procesu integracji (Western Balkans and the European Union – the Correctness of the Integration Process)*, in: *Integracja Bałkanów Zachodnich z Unią Europejską (Integration of the Western Balkans with the European Union)*, ed. A. Nowak-Far, Warszawa 2012, pp. 60–63.

²⁰ *EU member states and enlargement towards the Balkans*, eds. R. Balfour, C. Stratulat, European Policy Centre, "Issue Paper", no. 79/2015, p. 17.

joined the European Union in 2004 and 2007. The biggest problems are political, and arise from the fact that there are still unregulated bilateral issues, e.g. Serbia's lack of recognition for Kosovo's independence, border disputes and the fragile foundations of statehood in Bosnia and Herzegovina. These particular characteristics of the region, as well as historical events, make it much more difficult for this group of countries to adapt, meet the criteria and implement EU standards. It may be said that the region is "delayed" in the implementation of democratic principles. The difficulties of these countries in approaching the EU result mainly from the fact that they are slowly implementing the reforms required by the European Union, and the greatest resistance concerns the rule of law, media freedom and the fight against corruption. Moreover, the Western Balkans are slower in economic reconstruction. They are perceived as fragile and lawless countries consumed by corruption, which makes it very difficult for them to encourage external partners to invest their capital there. These are countries with high unemployment rates, reaching an average of about 30% and low GDP growth. In addition, as they are mainly dependent on trade with the European Union, the financial crisis in the EU has hit them hard.²¹

However, this is not the end of problems related to the accession processes. The Western Balkan states also have unregulated bilateral relations with EU members, mainly concerning the relations between Greece and FYROM, Greece and Albania, Croatia and Montenegro, and Croatia and Serbia. An important factor influencing the directions of foreign policy of the Western Balkans is their sympathy towards Russia. This applies mainly to Serbia and the Republika Srpska in Bosnia and Herzegovina.²²

The elements mentioned above are the reason why pro-European sentiments are not particularly strong among the societies of the Western Balkans countries, which is particularly visible in Bosnia and Herzegovina, Kosovo²³ and until recently in FYROM. The European Union has definitely lost its attractiveness for the Western Balkan states because of the problems it is facing: the economic crisis in Greece and the UK's decision to leave the EU – Brexit.

²¹ E. Teqja, *Western Balkans Integration Prospects to EU: Obstacles and Prospects*, "Wulfenia Journal", vol. 22, no. 1/2015, p. 62.

²² T. Żornaczuk, *Forever on the Periphery? The Return of Geopolitics to EU Enlargement to the Balkans*, "PISM Policy Papers", no. 6/2016.

²³ D. Di Mauro, M. Fraile, *Who Wants More? Attitudes Towards EU Enlargement in Time of Crisis*, <http://www.eui.eu/Projects/EUDO/Documents/2012/Spotlight4.pdf> (18.08.2018).

The State of the Relations Between the EU and the Countries of the Western Balkans

The basis for building cooperation between the European Union and the Western Balkan states is the Stabilization and Assurance Process (SAP) initiated in 1999, under which the EU concludes bilateral Stabilization and Association Agreements with individual countries in the region (Stabilization and Association Agreement, SAA). The objective of this process is the gradual approximation of the countries of the Western Balkans to the European Union, while the agreements concern political and economic cooperation, as well as the creation of free trade zones with the countries of the region. By signing the agreements, the Balkan states choose the pro-EU path and undertake to carry out reforms to make their future membership possible. Positive results and advancement in the implementation of political and economic reforms give interested countries the arguments to apply for the official status of a candidate to become a member of the European Union, and then open the possibility of starting accession negotiations. During the RE summit in Thessaloniki in 2003, the Programme for the Western Balkans: towards European integration²⁴ was established, which provides for the membership of these countries in the EU after fulfilling the required criteria.

The European Commission regularly prepares reports in which it presents the state of preparations in the EU candidate countries and indicates what steps these countries should take to become closer to this organization. The last such reports were prepared by the EC in April 2018.

Montenegro

After separating from Serbia and gaining independence in 2006, Montenegro (with about 630 thousand inhabitants) took the pro-European direction. In 2007, the Stabilization and Association Agreement with the EU was signed, and a year later the government in Podgorica officially applied for the status of a candidate in this organization. In May 2010, the SAA system came into force, and in December the same year Montenegro became a candidate. In 2011, the European Commission praised Montenegro for progress in priority areas, including fight against corruption, organized crime and the implementation of legal

²⁴ P. Turczyński, *Dylematy i perspektywy kolejnych rozszerzeń (Dilemmas and Prospects of Further Enlargements)*, in: *Procesy integracyjne i dezintegracyjne w Europie (Integration and Disintegration Processes in Europe)*, eds. A. Paczeński, M. Klimowicz, Wrocław 2014, p. 330.

principles.²⁵ The outcome of the Podgorica success was the commencement of accession negotiations in 2012. So far (August 2018), 31 chapters have already been opened, of which 3 have been temporarily closed.²⁶

In the EC opinion of April 2018,²⁷ Montenegro has made moderate efforts to implement the political criteria. These moderate evaluations apply to the reform of the judicial system, the fight against corruption, the fight against organized crime, and cooperation between the government and civil society organizations. The EC positively assessed public administration reforms and the adoption of a legal framework in the area of human rights protection, however pointed to clear deficiencies in their implementation. Moreover, the EC pointed out political interference in the principles of media freedom: this refers to interference in the managing council of the national public broadcaster and the Agency for Electronic Media. It also observed a lack of a culture of compromise among the political class of the country.²⁸

In terms of economic criteria, the efforts and achievements were praised as regards preparing the functioning of an efficient market economy, as well as facing competitive pressure and EU market forces.

It was emphasized that Montenegro has made progress in the implementation of the *acquis communautaire*, in particular in the area of commercial law and the Common Foreign and Security Policy. It was suggested that the government in Podgorica should pay more attention to implementing solutions in the area of competition policy, as well as environmental protection and climate issues.²⁹

(Former Yugoslav Republic of) Macedonia

(Former Yugoslav Republic of) Macedonia (with about 2 million inhabitants) decided to adopt the pro-European direction after the end of internal conflict with the Albanian minority (about 25% of the population) in 2001, which was averted thanks to mediation from Brussels. In 2004, the Skopje government asked for candidate status, which entered into force in the same year the Stabilization and Association Agreement between

²⁵ A. Sączuk, *Balkany Zachodnie – stan i perspektywy polityki rozszerzeniowej Unii Europejskiej (Western Balkans – The State and Prospects of the Enlargement Policy of the European Union)*, in: *Integracja Bałkanów Zachodnich z Unią Europejską (Integration of the Western Balkans with the European Union)*, ed. A. Nowak-Far, Warszawa 2012, p. 209.

²⁶ <http://www.consilium.europa.eu/en/policies/enlargement/montenegro/> (18.08.2018).

²⁷ Montenegro 2018 Report, Commission Staff Working Document, European Commission, SWD(2018) 150 final, Strasbourg, 17.4.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-montenegro-report.pdf> (18.08.2018).

²⁸ *Ibidem*.

²⁹ *Ibidem*.

FYROM and the EU. In December 2005, the European Council granted the candidate status to the Former Yugoslav Republic of Macedonia, and four years later the European Commission recommended FYROM's readiness to start accession negotiations to the Council. Due to the veto of the government in Athens, which is in dispute with Skopje about the name of the Macedonian state, the negotiations have not started yet.³⁰

Macedonia, which at the beginning of the 21st century was the top in the implementation of reforms aimed at integration with the EU, clearly disappeared from the path of democratic change. It was certainly influenced by the Greek resistance vetoing the start of accession negotiations. As a result of the parliamentary elections held in December 2016, a new government was formed, which returned to the pro-European path and intensified efforts towards becoming a candidate. Starting in May 2017, the government in Skopje has focused on implementing internal reforms, restoring the checks and balances principle and resolving the dispute with Greece. The EC report from April 2018³¹ appreciated the progress in public administration reform and restoring the principle of judicial independence. The efforts to fight corruption were positively evaluated, however emphasizing that it is one of the most important problems in the country. FYROM has also made some progress in combating organized crime. Furthermore, the efforts to protect fundamental rights and freedom of speech were positively evaluated.

In terms of economic criteria, steps were taken to prepare for the development of a functioning market economy. The country has a stable macroeconomic environment, supported by good monetary policy. The public finance management system and its transparency have been improved.

The overall assessment of the fulfilment of membership requirements is positive, especially in the areas of competitiveness, transport, energy, company law, customs union, science and research.³² FYROM's biggest achievement has been the signing in July 2018 of an agreement with Greece on the change of the country's name to the Republic of Northern Macedonia. This agreement should unblock the process of further

³⁰ More on the dispute between Greece and FYROM: M. Karadzowski, A. Adamczyk, *Macedonia's Difficult Path to the European Union*, „Rocznik Instytutu Europy Środkowo-Wschodniej”, no. 3/2014.

³¹ *The former Yugoslav Republic of Macedonia 2018 Report*, Commission Staff Working Document, European Commission, SWD(2018) 154 final, Strasbourg, 17.04.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-the-former-yugoslav-republic-of-macedonia-report.pdf> (18.08.2018).

³² *Ibidem*.

integration of Skopje with the European Union, as well as with NATO. The European Council recommended starting accession negotiations in June 2019.³³

Bosnia and Herzegovina

The territory of Bosnia and Herzegovina (with 3.7 million inhabitants) was home to the spectacle of the bloodiest events during the war in the former Yugoslavia. Established by the Dayton decision, the country is a peculiar creation, a federation composed of two constituent parts, Republika Srpska (49% of the territory) and the Federation of Bosnia and Herzegovina (51% of the territory) and the autonomous district of Brcko, directly subordinate to the central government. It is a very fragile country, dominated by the moods resultant from the aftermath of a cruel war. The state is primarily bound together by international assistance, initially carried out mainly by the NATO forces, and then by the EU mission.³⁴ State politicians are mainly focused on solving internal problems, which is why the issues of setting the European direction and implementing reforms have been far in the background of their political decisions for many years. The Stabilization and Association Agreement between BiH and the EU only came into force on 1 June 2015, and on 15 February 2016 the government in Sarajevo submitted an application for the status of an EU candidate.

The EC opinion of April 2018 clearly indicates large deficiencies in meeting the political criteria. First of all, the state's constitution violates the provisions of the European Convention on Human Rights. The norms of law in the area of human rights and the protection of minorities require amendments. Recently, there has been a violation of the principles of freedom of speech. The country is only at the initial stage of preparation of regulations in the area of public administration reform, the judicial system, combating corruption and organized crime. The EC also noticed significant shortages in fulfilling the economic criteria – “Bosnia and Herzegovina is at an early stage of developing a functioning market economy”.³⁵ The same is true for dealing with competitive pressure and EU market forces.

³³ <http://www.consilium.europa.eu/en/policies/enlargement/former-yugoslav-republic-macedonia/> (18.08.2018).

³⁴ P. Turczyński, op. cit., p. 331.

³⁵ *Bosnia and Herzegovina 2018 Report*, Commission Staff Working Document, European Commission, SWD(2018) 155 final, Strasbourg, 17.04.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf> (18.08.2018).

Bosnia and Herzegovina currently awaits a positive opinion from the EC, which would allow it to obtain the status of an EU candidate.

Serbia

The pro-European course of Serbia (with around 7 million inhabitants) could be observed since 2005, when negotiations with the EU on signing the Stabilization and Association Agreement started. However, these talks were frozen due to the government's lack of cooperation in Belgrade with the International Criminal Tribunal for the Former Yugoslavia. It was only after the cooperation with the Tribunal started that the talks were resumed and the agreement was signed in 2008. In 2009, Serbia applied for the status of a candidate, which was only granted by the Union three years later. In 2013, the European Council officially authorized the European Commission to start negotiations with the government in Belgrade, and the Stabilization and Association Agreement also entered into force. Due to Serbia's lack of progress in relations with Kosovo, the European Commission delayed the start of negotiations, which started in January 2014. To date, Belgrade has begun negotiations in 14 chapters out of 35, of which two have been temporarily closed.³⁶ The European Commission clearly emphasizes that the process of Serbia's integration with the EU depends on the progress in normalization of the relations between Belgrade and Kosovo.

In the European Commission's opinion of April 2018, Serbia is moderately implementing the reforms aimed at meeting the political criteria.³⁷ This applies to the reform of public administration, the judicial system, and the prevention and fight against corruption and organized crime. In the last of the mentioned areas, some progress has been made by increasing efficiency in detecting financial crimes. The EC positively assessed the implementation of institutional reforms in the field of guaranteeing the fundamental rights.

In terms of economic criteria, the EC has also noticed progress in developing a functioning market economy. It points to the need to continue the process of economic reforms with particular focus on restructuring state-owned enterprises and public utilities. Serbia is also moderately pre-

³⁶ *EU opened new chapters with Serbia and Montenegro*, <https://europeanwesternbalkans.com/2018/06/26/eu-opened-chapters-13-33-serbia-chapter-17-montenegro/> (18.08.2018).

³⁷ *Serbia 2018 Report*, Commission Staff Working Document, European Commission, SWD(2018) 152 final, Strasbourg, 17.04.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf> (18.08.2018).

pared to face the competitive pressure and market forces of the European Union.³⁸

When it comes to normalizing the relations between Belgrade and Kosovo, the Commission has noticed Serbia's involvement in the dialogue, however it also pointed out the lack of binding agreement signed by both countries.

Kosovo

Kosovo (with around 2 million inhabitants) declared its independence in 2008 through secession from Serbia. The government in Belgrade and five EU countries, Greece, Cyprus, Spain, Slovakia and Romania, did not recognize the independence of this region. The Stabilization and Association Agreement between Kosovo and the EU came into force only on 1 April 2016. The lack of recognition of the sovereignty of this country by some EU countries will definitely hinder the process of Kosovo's accession.

Nevertheless, the new government of Kosovo (formed in 2017) made efforts to become closer to the EU, the efforts however have a limited dimension due to the lack of consensus in the Kosovo society regarding this political direction. It is also worth noting the lack of strong public support for the European Union in Kosovo and strong anti-Serbian sentiments. The EU's efforts to reconcile both countries are criticized in Kosovo, which may hinder conciliation and block not only the European prospects for Kosovo, but also the process of Serbia's accession to the EU. However, the EU has required Kosovo to sign an agreement with Montenegro, which regulated the dispute over the border crossing between these countries. This was one of the criteria the fulfilment of which enabled the liberalization of the visa regime between the EU and Kosovo.

In the EC's opinion of 2018, some efforts to adapt to the political criteria of membership were noticed. The government has begun preparations for reforms in public administration, the judicial system, the fight against corruption and organized crime. A package on the protection of human rights was adopted, however the EC pointed to the delays in its implementation. In terms of meeting the economic criteria, Kosovo is at a very early stage in the preparation of effective free market economy and in coping with competitive pressure and market forces in the EU. There is a high trade deficit in the country, the gray zone is developing and un-

³⁸ *Kosovo 2018 Report*, Commission Staff Working Document, European Commission, SWD(2018) 156 final, Strasbourg, 17.04.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf> (18.08.2018).

employment is very high, up to 35%. The existence of the society depends on the transfers from the emigrants abroad.

As regards the normalization of relations with Serbia, the dialogue is ongoing, but the Commission underlines the lack of a binding agreement signed between the two parties.

Albania

Fortunately, Albania (about 3 million inhabitants) went bloodlessly through the collapse of the two-bloc system and did not take part in the Balkan wars in the 1990s. Its pro-European aspirations were expressed through the preparation of a Stabilization and Association Agreement with the EU, which came into force 1 April 2009. In the same month, the government in Tirana applied for EU membership, which was only approved by the Council in 2014.³⁹

According to the latest report of the European Commission in 2018 regarding the state of Albania's preparations to meet the political criteria, moderate and good marks prevail.⁴⁰ This applies to the reform of public administration, the judicial system, the fight against corruption, the fight against organized crime, and respect for freedom of speech. The legal framework for protection of human rights has been assessed as the best, but there have been reservations regarding its implementation. In terms of economic criteria, Albania is also moderately prepared to implement an effective market economy and to some extent prepared to face competitive pressure and EU market forces.⁴¹ In the report, the EC indicates the most important areas in which efforts should be made to start accession negotiations with Albania. These requirements concern professionalization and de-politicization of public administration, strengthening the independence and transparency of judicial institutions, and increasing efficiency in the fight against corruption and organized crime. Meeting these criteria gives hope for Albania's accession negotiations to start in June 2019.⁴²

³⁹ http://ec.europa.eu/enlargement/countries/detailed-country-information/albania/index_en.htm (17.08.2018).

⁴⁰ *Albania 2018 Report*, Commission Staff Working Document, European Commission, SWD(2018) 151 final, Strasbourg, 17.04.2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf> (18.08.2018).

⁴¹ *Ibidem*.

⁴² *European Commission: Accession Negotiation with Albania May open in 2019*, <https://exit.al/en/2018/01/16/european-commission-accession-negotiations-with-albania-may-open-in-2019> (25.08.2018); <http://www.consilium.europa.eu/en/policies/enlargement/albania/> (25.08.2018).

Further Enlargements of the EU?

The initiatives taken in 2018 by the institutions of the European Union show that Brussels has again started focusing its attention on the countries of the Western Balkans. In February 2018, the European Commission adopted a new strategy for the countries of the region, in which it presented a European perspective for these countries.⁴³ The Commission explicitly declared that the next enlargement could take place in 2025 and would concern Montenegro and Serbia. Other countries would also have an open road to the EU, provided that they meet the criteria and prove their readiness for membership. To confirm these declarations, a European Union – Western Balkans summit has been organized for the first time since 2003. It took place in May 2018 in Sofia during Bulgarian presidency of the EU Council. EU Member States want to stabilize the situation in the Balkans, as this is where the biggest problems reach the EU from, including terrorism, organized crime, drugs and illegal immigration. European politicians are aware that by presenting the European perspective to the Balkan countries, they export and guarantee themselves stability. The lack of this perspective means importing instabilities and crises into the EU. It is true that during the summit in Sofia, the European Council did not confirm the date of the next enlargement suggested by the European Commission, but it indicated that the Balkans are a key direction in the EU policy. This interest is also related to the appearance of other players in the region, i.e. Russia, China and Turkey, whose activity will certainly not aim to stabilize the situation or strengthen democracy in this area, which in itself is a security threat to the European Union.

The lack of explicit time declarations by state leaders is mainly related to the lack of acceptance of such a step in many Member States' societies. Considering the length of the negotiating process of the youngest member of the EU – Croatia. Six years elapsed between the beginning of the negotiations in 2005 and the end. The ratification process took another two years. In total, the process took eight years. Observing the state of advancements in meeting EU criteria by all current candidates, in fact only one has a chance to conclude negotiations

⁴³ *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strasbourg, 6.02.2018, COM(2018) 65 final, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf (25.08.2018).

by 2020.⁴⁴ This is Montenegro, which is negotiating 31 out of 35 chapters, (as of August 2018) and which has already temporarily closed the third chapter. The second country that has declared the willingness to conclude negotiations by 2020 is Serbia, which has opened 14 chapters so far. Other countries in the region have not set such ambitious scenarios, but this is due to a variety of different conditions. After the negotiations have been concluded, a difficult and time-consuming ratification process is still to be carried out, in which EU politicians and society must be persuaded to accept new members.

The biggest problem for the candidates from the Western Balkans is the negative image of this region, characterized by conflict, unhealed wounds after hostilities of the 1990s, mutual hatred, distrust and lack of legal regulations in the field of border crossing. Therefore, it is in the interest of the Western Balkan states to change this image and make this region more attractive in the eyes of the European Union's societies. The main factor to increase this attractiveness would be to show that the Western Balkans are a region of peace, stability, security and predictability. The very fact that Croatia's political and economic transformation as a country in this region has been successful shows that such a metamorphosis is possible. The European Union itself offered assistance in this respect, leading towards development of regional cooperation (Regional Cooperation Council, Central European Free Trade Agreement – CEFTA). This was the inspiration for the so-called the Berlin process in 2014, due to which all the countries of the Western Balkans aspiring to the EU signed a declaration on the resolution of bilateral disputes.⁴⁵ Therefore, the desire to join the EU forces the Balkan states to make mutual gestures of reconciliation. Declarations regarding avoidance of bilateral problems in the accession process may, however, be illusory. An example is the attitude of Croatia, which in 2011, during its accession negotiations, committed to not blocking the accession of new countries to the EU, mainly regarding Serbia. Despite these declarations, Croatia used its veto to block the opening of subsequent negotiation chapters with Serbia and hindered the development of cooperation between Bosnia and Herzegovina and the EU. This is a lesson to be taken into account by Brussels in subsequent enlargements, and in particular as regards Serbia, in the context of Kosovo. Potential

⁴⁴ A. Dimitrova, *Time for domestic political debate on future EU enlargement*, 12.01.2016, <https://eurosearch.wordpress.com/2016/01/12/time-for-domestic-political-debate-on-future-eu-enlargement/> (27.08.2018).

⁴⁵ M. Kmezić, F. Bieber, *Western Balkans and the EU: Beyond the Autopilot Mode*, Balkans in Europe Policy Advisory Group, 2016, <http://www.suedosteuropa.uni-graz.at/biepag/> (17.08.2018).

membership of Serbia, without the simultaneous entry of Kosovo, means further trouble for Brussels in the future. It also upsets the peculiar balance of the situation between these two countries. The best solution for the EU would be for Serbia to recognize Kosovo's independence, which would then have to be recognized by the other EU Member States (which have not done so far) and invite both countries to the EU at the same time, of course after all the criteria have been met.

The European perspective is also opening for Macedonia and Albania. The ratification of the Skopje agreement with the government in Athens regarding the change of name to the Republic of Macedonia guarantees a clear road to the relations with the EU and the start of accession negotiations in 2019. The perspective is similar for Albania, which so far has not been certain of Greece's position. Athens, threatened by the revisionist policy of Turkey and the expansion of Turkish influence in the Balkans, began to seek faster and more effective integration of their northern neighbours with the EU.

To sum up the situation in the Balkans, Montenegro has the biggest chance for accession in 2020–2030. Other countries that could be in the EU, but definitely further in the future, are Serbia and Kosovo, Macedonia and Albania. Bosnia and Herzegovina is rather at the end of the queue and its accession will only be possible after Serbia's accession to the EU. The issues of the future of BiH are connected with the Croatian-Serbian-Bosnian reconciliation.

Therefore, the question should be asked: will Western Balkan countries want to wait so long for accession? It seems that the countries of this region are already so strongly economically connected with the EU that they have no other alternative. Brussels should think about encouraging the Balkan countries and proposing an offer that would keep these countries on a pro-European course. It seems necessary to start accession negotiations with all countries of the region. Past experience shows that most reforms are implemented by the candidate countries only after the negotiations have started. The way in which they are conducted, supported by investments, by liberalization of trade, cooperation in all possible areas of life, and above all the exchange of young people, can contribute to maintaining the direction in which integration is supposed to go. A favourable factor in the rapprochement of the Western Balkan states and the EU is the fact that the situation in the region will be of particular interest to the next presidencies in the EU Council, i.e. Austria, Romania and Croatia.

Conclusion

As the European Commission itself points out in its report, “EU enlargement policy is an investment into peace, security and stability in Europe. It provides greater economic and trade opportunities, bringing mutual benefits to the EU and countries aspiring to membership”.⁴⁶ The European Union must therefore expand. However, the enlargement process will become increasingly more difficult, due to the experience that the EU has gained in the enlargement process, because of which it does not intend to repeat its previous mistakes. The EU does not intend to take in the countries that adopt European standards and declare fulfilment of membership criteria during the accession process, but do not actually implement them, as a result of which it turns out that European standards are not being implemented after accession.⁴⁷

Therefore, future Member States must earnestly go through the accession process: in other words, they must pass a peculiar maturity exam. It requires effort, patience and time. Countries interested in membership must prove that they are prepared for membership and encourage an effective ratification process through their positive image.

Obligations are therefore on the side of countries interested in membership, but also on the part of the EU and the Member States. It is an enormous task for the institutions of the European Union and the governments of the Member States to “disenchant” the enlargement process as unfavourable and dangerous for EU citizens. For several years, surveys have indicated that the majority of EU citizens, especially those from richer countries, such as Germany, France, the Netherlands, Denmark, Austria, the United Kingdom, and Finland, are opposed to enlargement.⁴⁸ Enlargement is associated with increased spending, economic migrants and increased crime rates. These stereotypes result from the fact that there is no reliable public debate in which the benefits and costs of enlargement would be transparent. The author assumes that for the European Union, accepting new members prepared for accession and extending the EU borders means expanding the influence of this organization by spreading European standards, building a stable, predictable environment, consolidating a high level of existence, quality of life, etc. Therefore it is neces-

⁴⁶ *EU Enlargement Strategy* Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 10.11.2015, COM(2015) 611 final, p. 33.

⁴⁷ F. Emmert, A. Petrovi, *The Past, Present, and Future of EU Enlargement*, “Fordham International Law Journal”, vol. 37, is. 5/2014, p. 1409.

⁴⁸ *What Do Citizens’ Opinions and Perceptions Mean for EU Enlargement?*, “MAX-CAP Policy Brief”, no. 3/2016, pp. 3–4.

sary to work on changing the perception of the process enlargement in the eyes of European societies. This requires a broad public debate.

As long as EU societies will not be able to accept further enlargements, EU politicians should work on developing a new cooperation formula to encourage Western Balkan states to stay on course in European reforms. The formula of incomplete membership, and yet membership, as well as economic aid and investment will certainly be enough of a “carrot” for candidates with a long perspective of full membership.⁴⁹

The European Union should also launch a campaign to combat stereotypes related to the enlargement process as well as to aspiring countries. In order to do this, however, it is necessary to create an image of potential members as attractive for the EU. In the case of Western Balkan countries, it is mainly about showing that they are able to cooperate with each other and treat each other's wounds after conflicts. An appropriate step in this case was the signing in 2015 of the Final Declaration on the resolution of bilateral disputes, which shows the willingness of regional cooperation over historical divisions.⁵⁰

Considering the abovementioned factors, the European Union should expand. This process will probably be carried out gradually and carefully. The European Commission, while conducting talks with potential members, should clearly identify the tasks and indicate shortcomings and deficiencies. It seems that the first possible accession can take place between 2020 and 2030 and it will concern the Western Balkans.

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⁴⁹ K. Niklewicz, *The Long March Towards the EU. Candidates, Neighbours and the Prospects for Enlargement*, Brussels 2016, pp. 58 and further.

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*Agnieszka Kłos**

New Proposals for Financing the EU Budget after 2020

Abstract

The present study concerns the issue of financing the budget of the European Union. The article presents selected factors in the evolution of EU finances and delineates the attempts at replacing the sources of financing taken up in 2011 and pertaining to the financial perspective of 2014–2020. Scenarios for EU development have been indicated, with particular emphasis on their implications for the future shape of the EU budget. The article also presents the main priorities and assumptions of EU financing after 2020 in the context of accepted multiannual financial framework.

Key words: EU Budget, Multiannual Financial Framework, Cohesion Policy, EU Finances

Introduction

Every seven years, the EU decides about the directions of Europe's development, about the Union one would like to see in the future. This moment is always critical, as it is accompanied by extensive debate on the subject of the manner of financing the new challenges arising in the changing regional and global conditions.

The purpose of the study is to present selected factors in the evolution of EU finances, new proposals from the European Commission as regards the introduction of changes in the sources of financing the EU budget, which would ensure financing of activities to date as well as new challenges faced by the EU. Moreover, it is to indicate possible variants of

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financing the future development of the Union, and to present the main priorities and assumptions of the EU budget after 2020.

The preparation for the study was mainly based on literature of the subject, communications and documents of the European Commission, the European Parliament, High Level Group reports as well as other topical information. The research method applied was analysis and synthesis. Due to its thematic scope, the study constitutes a voice in the discussion on the subject of future financing of the EU budget and in its character does not constitute a complete study.

Selected Factors in the Evolution of EU Finances

The present shape of EU finances is determined by the evolution of common policies, which are of great importance to the development of the Union's finances.

In the 1980s and 1990s, the Member States and the European Parliament introduced changes in the EU founding treaties, thus broadening the scope of the EU's competences. Acknowledging the need to support the new, single market, they increased the resources available within the structural funds in order to support economic, social and territorial cohesion. At the same time, the EU's significance in all the areas of economic development, i.e. transport, outer space, healthcare, education, culture, consumer protection, environmental protection, scientific research, judicial cooperation and foreign policy. Since 2000, the EU budget has been shaped by accession of 13 new Member States in varying socio-economic situations, as well as by successive EU strategies for economic and employment growth. European resources were also supporting the growing role of the Union on the international arena as an organization actively participating in climate change control and as the main donor of humanitarian and development aid in the world. The EU budget still constitutes only a small part of total public expenditure in the EU, as it represents less than 1% of income and only approximately 2% of public expenditure in the EU.¹ With time, the structure of the EU budget is changing. Despite its reduction, the total expenditure on agriculture and cohesion policy still exceeds 70% of all expenditure. Currently, the expenditure of the EU budget increasingly concentrates on scientific research, trans-European networks and external activities, as well as programmes managed directly

¹ Communication From The Commission To The European Parliament, The European Council And The Council, *A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020*, European Commission, Brussels, 14.02.2018, COM(2018) 98 final, p. 2.

at the European level. Apart from the abovementioned expenses, the EU budget was also used to finance efforts related to mitigating the migration crisis and combating organized crime and terrorist activity. As regards the migration crisis, the resources allocated to security and migration were doubled in order to support, for example, the new European Border and Coast Guard and providing aid to the Member States where significant numbers of refugees arrive.²

Along with the increasing needs for financing new challenges and emerging economic and social problems, the structure of the expenditure and the ways of obtaining the resources for financing them change. In contrast to national budgets, the EU cannot adopt a budget which results in a deficit, which implies inability to incur debt.

In its construction, the budget is based upon financing the expenses through the mechanism of “own resources”. There are currently three main types of own resources: contributions from the Member States based upon their income levels, measured as Gross National Income (GNI), contributions based upon VAT and customs fees collected on the external borders of the Union. Currently over 80% of the EU budget comes from national contributions based upon GNI and VAT.

In response to the growing needs for financing, the EU budget has been supplemented with a series of new instruments. Some of them function outside the EU budget and are subject to separate regulations, e.g. the European Investment Bank, the European Investment Fund³ or other bodies operating on the basis of intergovernmental agreements, i.e. the European Development Fund. EU mutual funds, as well as other instruments have also been created in order to contribute resources from the EU budget, the funds of the Member States, and other donors for the benefit of the activities related to preventing any possible crisis situations. On the one hand, such extended financial architecture enables the EU to mobilize additional resources, yet on the other hand it leads to increased complexity of the Union’s finances.⁴

² *Dokument otwierający debatę na temat przyszłości finansów UE (A document opening the debate on the future of EU finances)*, European Commission, COM(2017) 358 of 28th June 2017, pp. 6–7.

³ EIB together with EIF forms the so-called European Investment Bank Group.

⁴ *Dokument otwierający debatę...*, op. cit., pp. 7–9.

Proposals by the High Level Group Regarding Changes in the Sources of Financing the EU Budget

For over a decade, discussions have been held on the necessity to introduce new reform as regards obtaining funds for financing the European Union and the execution of its tasks. The European Parliament, which has little impact on the shape of the income side of the EU budget, has been signalling the need for reform of the own resources system for a long time. The Parliament has emphasized that the purpose of the reform is not to raise the amount of EU expenditure, but to improve the manner in which funding for its coverage is obtained. A significant obstacle to reforming the system is the decision-making mechanism, which requires unanimity and ratification by all Member States. The most recent reform proposal was submitted by the European Commission in 2011, within the multiannual financial framework proposal package for the years 2014–2020. Its objective was to transform the system and improve its functioning through introducing changes in the problematic areas. In particular, though, the objective was to introduce new, original own resources in order to diminish the role of national contributions.⁵ The need to introduce new sources of financing the EU's tasks results also from the fact that in the recent years, the amount of overdue payments increased up to 24.7 billion EUR at the end of 2014. The issue of overdue payments emphasises that the budget is mainly financed from member-state contributions, and the timeliness of them being paid is closely connected to the state of the public finances of the Member States. The new resources should be constructed in such a way as to guarantee the realisation of all EU programmes.

One of the premises of the European Parliament expressing agreement to multiannual financial framework for the years 2014–2020 was the establishment of the High Level Group consisting of the members of three institutions, i.e. the European Parliament, the European Commission and the Council. The Group was established in order to conduct a general review of the financing of the EU.⁶

⁵ A. D'Alfonso, *Monti' Group's first assessment of EU own resources*, Briefing February 2015, PE 548.979 European Parliamentary Research Service, European Parliament, p. 2.

⁶ The president of the Group is Mario Monti – Rector of the University of Bocconi, former Prime Minister of Italy and European Commissioner. Members:

a) appointed by the European Parliament: Ivailo Kalfin (Group of the Progressive Alliance of Socialists and Democrats in the European Parliament), Alain Lamassoure (European People's Party), Guy Verhofstadt (Alliance of Liberals and Democrats for Europe); b) appointed by the Council: Daniel Dăianu, former Member of the Europe-

The first report of the Group's work proposed possible elements of global European financial package applicable to both expenditure and revenue, i.e.:

- a restructured multiannual financial framework, due to increased common expenditure on public goods, focused on achieving a higher value added at the EU level and corresponding to the character of the relevant challenges,
- introduction of new own resources, in addition to traditional own resources and GNI-based own resources, that would meet the standard criteria of sufficiency and stability, vertical and horizontal aspects of the requirements of “justice”, and would also allow to pursue EU policy objectives,
- examination of other sources of income resulting from EU policies and programmes that would be recorded in the EU budget as ordinary income rather than own resources,
- implementation of minimum procedural reform,
- introduction of elements of differentiation, such as closer cooperation, if it is accurately justified.⁷

Moreover, a close-down of all rebates and corrective mechanisms was proposed. The liquidation of rebates was also proposed by C. Fuest,⁸ who claims that it is necessary to depart from VAT-related payments and base budget revenues on payments related to GNI, which would significantly increase the transparency of the EU budget. At the same time, it is not excluded that the payments could be progressive or regressive, depending on political decisions.⁹

an Parliament and Minister of Finance of Romania, prof. Clemens Fuest, president of the Center for European Economic Research in Germany, Ingrida Šimonytė, former Lithuanian finance minister; c) appointed by the Commission: Janusz Lewandowski, commissioner for financial programming and budget, Maroš Šefčovič, vice-president of the European Commission responsible for interinstitutional relations and administration, Algirdas Šemeta, commissioner for taxes and customs union, statistics, audit and anti-fraud, High Level Group on own resources, Press release, Brussels, 3rd April 2014, http://europa.eu/rapid/press-release_IP-14-367_pl.htm (1.05.2017); see also: M. Proczek, *The European Union Budget: The Reform of Own Sources*, in: *Facing the Challenges in the European Union. Re-thinking EU Education and Research for Smart and Inclusive Growth (EuInteg)*, Warsaw 2015, p. 473.

⁷ M. Monti, *Grupa Wysokiego Szczebla ds. Zasobów Własnych, Streszczenie i zalecenia (High Level Group on Own Resources, Summary and Recommendations)*, December 2016, pp. 3–8.

⁸ The President of the Munich Ifo Institut and Professor of the University of Munich, in the article “Reform of the European Union budget: small changes can lead to significant improvement” (Ifo Schnelldienst 6/2017).

⁹ W. Gadomski, *Jak poprawić budżet Unii Europejskiej (How to improve the European Union budget)*, Obserwator Finansowy, 6.04.2017, <https://www.obserwatorfinansowy.pl/forma/rotator/jak-poprawic-budzet-unii-europejskiej/> (1.05.2017).

The report and recommendation from the session of the High Level Group proposed to introduce new sources for financial resources acquisition, i.e.:

- CO₂/coal price fee,
- fees related to EU emissions trading schemes,
- motor fuel charge (fossil fuel taxes/excise tax),
- electricity taxation-based own resource,
- CCCTB (Common Consolidated Corporate Tax Base Including Consolidation Regime and Apportionment Mechanism), common consolidated corporate tax base, including a system of consolidation and a mechanism for vote distribution,
- a tax on financial transactions or an alternative option,
- a bank tax or a tax on financial activities,
- reformed VAT-based own resource, and
- *seigniorage* – the central bank's revenue or government revenue resulting from the difference between the nominal value of banknotes and coins in circulation and their production costs. In the euro area (EA) this revenue is currently collected by the European Central Bank (ECB).¹⁰

Practically speaking, the abovementioned proposals for introducing new sources of obtaining funds are not new. In fact, they are being returned to periodically, depending on the political and economic conditions in the Member States and the general political climate of the European Union. The introduction of a fee based on CO₂ emissions, a corporate tax on legal entities, and a modification of VAT were already raised by the Commission in 1998 and 2004.¹¹

As regards income tax proposals, it should be noted that corporate income tax rates differ significantly from consumer taxes throughout the EU and are also less stable over time. At present, CIT revenue accounts for 2.4% of EU-28 GDP (data from Eurostat, 2014), but with a very significant difference in individual Member States, ranging from 1.4% of GDP in Hungary, Lithuania and Slovenia to 4.45% in Luxembourg, 6% in Malta and 6.4% in Cyprus. A general decline in CIT can be observed. The actual trend towards a decreasing interest rate in CIT in the EU was much more noticeable than in other OECD countries, the most likely ex-

¹⁰ M. Monti, *Future Financing of the EU*. Final report and recommendations of the High Level Group on Own Resources, December 2016, Brussel, pp. 40–55.

¹¹ J. Núñez Ferrer, J. Le Cacheux, G. Benedetto, M. Saunier, *Study on the Potential and Limitations of Reforming the Financing of the EU Budget*, Expertise commissioned by the European Commission on behalf of the High Level Group on Own Resources under service contract No. 14/PO/04, 3 June 2016, p. 77.

planation for which is tax competition aimed at attracting companies by reducing the tax base and obtaining profits from the single market. The UK government announced that the CIT rate, amounting to 30% in 2008, was reduced to 20% and it is to reach 17% in 2020. The practical aspects of introducing CIT in the EU would have to include the introduction of the CCCTB (proposed by the Commission), making it mandatory for the enterprises concerned and establishing a common rate for financing the EU budget. Such reform may be considered necessary in terms of integrity, as multinational corporations pay a lower effective tax rate than small and medium-sized enterprises in Europe. The introduction of the CCCTB would reduce “aggressive” tax optimization and would probably increase the overall efficiency of CIT in the EU.¹²

The mandatory implementation of the CCCTB, in line with the European Commission’s action plan for fair and effective taxation of legal entities in the European Union, can effectively reduce the gaps in sustainable development. Harmonisation of the rules for building the tax base would eliminate the differences between nominal and effective tax rates for enterprises. In addition, governments and all enterprises subject to the CCCTB system will have symmetrical information about the effective tax rate.¹³

Energy tax and carbon taxes have been proposed by the Commission multiple times since 1991. These taxes may be justified by the financing of a stable budget due to their low short-term volatility and high long-term flexibility. Moreover, these taxes have the advantage of internalizing cross-border externalities and can reduce the level of carbon imbalance once it has been established at the EU level. In fact, fighting pollution at the Member State level has been quite disappointing. While emissions from the manufacturing and construction industries decreased by 327 million tons of CO₂ in 1990-2012, emissions in transport increased by 221 million tons. There are at least two reasons for this state of affairs. The first is that reduction of emissions from the manufacturing industry results not only from technological advances, but may also come from external relocation. The second is that the increase in transport emissions does not come from a small polluting sector: transport accounted for around 20% of total EU emissions in 2012. It is also worth noting that the latest progress in reducing greenhouse gas emissions coincided with a recession in the UK. A significant part of the decline can be attributed to lower growth levels, not structural changes resulting from technologi-

¹² Ibidem, pp. 88–90.

¹³ D. Nerudová, V. Solilová, M. Dobranschi, *Sustainability-oriented Future EU Funding: The case of a C(C)CTB*, “Working Paper Series”, no. 4, November 2016, p. 9.

cal changes and environmental policy. As a result, to achieve the goals (40% reduction by 2030 and 85–90% by 2050), it is necessary to introduce changes to the relevant EU environmental policies. However, it cannot be unequivocally believed that the agreement reached at the UN Climate Change Conference in 2015 in Paris is going to strengthen this EU instrument, meant to generate revenue for the Union budget.¹⁴ In 2017, the President of the United States, Donald Trump, announced the decision to withdraw the United States from the Paris climate agreement, because in the President's opinion it is "extremely unfavourable to the US, but works in favour of other countries". In addition, "environmental objectives approved by the previous administration of Barack Obama are too costly for the American economy". The withdrawal of the US from the Paris Agreement might mean a decline in its importance on a global scale, and consequently the delay of or departure from planned revenue reforms in the area of environmental policy.

The EU excise duty on fossil fuels or the EU tax on petrol and diesel fuel is often seen as a way to finance infrastructure, such as road construction. Given that a significant part of the EU budget would be spent on infrastructure, such a tax at the EU level to finance these public goods may seem justified. Fuel charges have not been designed to be derived from environmental taxes, but the role of this policy instrument for climate change has to be fully appreciated as it is one of the few tools that have helped to reduce fuel consumption in many countries, in particular in Europe. Economists agree that such taxes would encourage environmental conservation and technological change (e.g. more efficient engines).¹⁵

Five Scenarios for the Future of the Budget of the European Union

While analysing the proposals for new sources of financing the EU budget, current internal conditions in the EU need to be taken into account. On 1st March 2017, the European Commission presented the so-called *White Paper on the future of Europe: Avenues for unity for the EU at 27*, where five scenarios for 27 countries (not including the United Kingdom) until the year 2025 had been described, i.e.:

1. EU-27 continues the implementation of the positive reform programme,

¹⁴ J. Núñez Ferrer, J. Le Cacheux, G. Benedetto, M. Saunier, op. cit., pp. 91–92.

¹⁵ *Ibidem*, p. 92.

2. EU-27 jointly undertakes fewer actions in all policy areas,
3. EU-27 allows groups of Member States to undertake more actions in specified areas,
4. EU-27 undertakes more actions in some areas, but fewer in other ones,
5. EU-27 decides to jointly undertake more actions in all policy areas.

Table 1. Five scenarios for EU development until 2025 – implications for the EU budget

<p>EU-27 continues the implementation of the positive reform programme</p>	<p><u>General principles:</u> Overall stable budget. Reflects the current reform programme of EU-27. Lower relative participation of cohesion policy and agricultural policy in order to finance new priorities. Greater utilisation of financial instruments and guarantees.</p> <p><u>Revenue:</u> Current system of no rebates. EU budget is being financed from other sources of income or fees.</p>
<p>EU-27 jointly undertakes fewer actions in all policy areas</p>	<p><u>General principles:</u> Significantly limited budget. Emphasis on the functioning of the internal market. Significantly limited funds for cohesion policy and agricultural policy. Significantly higher utilization of financial instruments and guarantees.</p> <p><u>Revenue:</u> Current no rebates system.</p>
<p>EU-27 allows groups of Member States to undertake more actions in specified areas (multi-speed Europe)</p>	<p><u>General principles:</u> Overall stable budget with the possibility to increase it to include areas of joint action. Greater utilization of financial instruments and guarantees.</p> <p><u>Revenue:</u> Same as in Scenario No. 1 + new policies financed solely by participating Member States, through the medium of the current system, or new own resources (e.g. financial transaction tax). A new stream of revenue outside the current financing system or ad hoc financial contributions.</p>

<p>EU-27 undertakes more actions in some areas, but fewer in other ones</p>	<p><u>General principles:</u> Smaller budget. Limited participation of cohesion policy and common agricultural policy. Focus on the priorities with very high European value added. Significantly greater utilization of financial instruments and guarantees.</p> <p><u>Revenue:</u> Simplification of the current system: scrapping all rebates, reform or abolition of VAT-based own resources. New own resources finance part of the EU budget and contribute to the achievement of policy objectives (e.g. environmental tax, financial transaction tax, common consolidated corporate tax base). EU budget is financed from other sources of income or fees.</p>
<p>UE-27 postanawia podejmować wspólnie więcej działań we wszystkich obszarach polityki</p>	<p><u>General principles:</u> Significantly increased budget. Significant additional financing of new priorities and external actions. Greater utilisation of financial instruments and guarantees. Raised own resources ceiling.</p> <p><u>Revenue:</u> A thorough reform exceeding the assumptions of Scenario No. 4. New own resources finance a large part of the EU budget and contribute to the achievement of policy objectives. The EU budget is financed from other sources of income or fees.</p>

Source: own study based on: *Dokument otwierający debatę na temat przyszłości finansów UE (Document opening the debate on the future of EU finances)*, European Commission, COM(2017) 358 of June 28th, 2017, pp. 31–35.

Each of the abovementioned options bears different consequences to the EU budget, and consequently it is important to pay attention to the proposals from the areas subject to financing from EU resources.

The first variant proposes to direct support towards farmers who find themselves in particularly difficult circumstances (e.g. small farms, mountainous areas and sparsely populated areas) and to prepare tools for risk management for all farms. It would be necessary to invest in the development of rural areas (particularly in the agro-environmental area). Within the framework of economic, social and territorial cohesion, the introduction of the first variant would be tied to lowered level of investment in all regions, but a higher level of national co-financing and utilization of

financial instruments. It would be advisable to put greater emphasis on social inclusion, employment, skills, innovation, climate change, energy and ecological transformation. It is also stipulated to include new financing priorities, i.e. internal/external security, migration and border control, defence (research and development, capacity).

As regards version 2, support for farmers who find themselves in particularly difficult circumstances would also be necessary. Within the framework of economic, social and territorial cohesion, help would only be granted to countries covered by cohesion policy and for the benefit of cross-border cooperation. At the same time, there would be no funding for new EU priorities and other programmes such as Erasmus, scientific research and innovation, assistance for those in the greatest need, health, culture, citizenship etc.

In the third scenario, the scope of financing expenditure would be the same as in the first one. Introduction of additional sources of financing and innovative financial instruments is proposed. Expenditure on enhanced cooperation would be included into the EU budget (e.g. European Public Prosecutor's Office). Resources outside the EU budget, e.g. mutual funds, would be combined. For euro area countries, instruments would be introduced to stabilise the macro-economic level through investment protection/unemployment reinsurance/a "rainy day" fund.

In the fourth scenario, within the framework of common agricultural policy, direct payments would be limited. The focus would be on farmers in especially difficult circumstances. Apart from financial support for the poorer regions only and for cross-border cooperation, emphasis would be exclusively on social inclusion, employment, skills, innovation, climate change, energy and ecological transformation. There are plans to include new priorities for financing, including funding for the counter-terrorism agency and management of migrations with border control and coast guard using common equipment. Intelligent transport and smart energy grids, world class scientific research and development, and e-transport would all be subject to enhancement.

Making the last variant a reality would necessitate allocating a higher amount to expenses related to the implementation of common agricultural policy. Economic, social and territorial cohesion would be implemented on the same principles as in the first scenario, with enhanced social dimension, territorial cooperation and urban dimension. In this scenario, new priorities and priorities with high value added would be included, as in the fourth scenario. It would be necessary to introduce structural reforms connected to the European Semester. Within the common security and defence policy, common funding and public procurement, the EU

budget would be supplemented by an extra-budgetary fund. A venture capital fund instrument would also be introduced, as well as a fully functional euro area budget and the European Monetary Fund. All external activities would be subject to enhancement, and the European Monetary Fund would be included in the budget.¹⁶

The fifth, so-called federalist, version means significant expansion, and a need to secure own revenue sources for the EU, perhaps even in the form of a certain type of European tax. The smallest changes would be present in the first scenario, where a common budget would be “partially modernised and adjusted to the reforms agreed upon by the 27 countries”. The choice of one of the remaining options would lead to a change in goals on which the common funding would be spent. In case of variant No. 3, i.e. “multi speed Europe”, being chosen, countries willing to cooperate more closely in a particular area would have to assign additional resources to that cause. It is particularly important to note that the United Kingdom might exit the EU, and it is the second biggest net contributor after Germany.¹⁷

According to W. Gadomski, the proposals of changes in the rules regarding the EU budget amount to a small reform which will not violate the basic principles, i.e. a balanced, small and static budget. Meanwhile, the countries of the euro area have decided to create their own budget, which is going to be more flexible and its size will enable active fiscal policy, or more broadly, a policy mix. The European Economic and Social Committee of March 10th, 2017 expressed an opinion in this respect, stating that: “It is necessary to make progress on the way to an adequate own budget for the euro area, which would be accompanied by common regulations. This is the only solution that will allow us to take steps towards a common tax policy and shock absorption that may occur in the future”.¹⁸

In the 1970s, the British economist D. MacDougall emphasized the fact that “in order to work and absorb shocks, the monetary union would require a budget of 5–7% of GDP, which is 500–700 billion euro,” which is four times more than the current budget for the whole Union. In its report

¹⁶ *Dokument otwierający debatę...*, op. cit., s. 31–35.

¹⁷ A. Godlewski, *Scenariusze przyszłości Unii Europejskiej (Scenarios of the future of the European Union)*, Obserwator Finansowy, 22.03.2017, <https://www.obserwator-finansowy.pl/tematyka/makroekonomia/scenariusze-przyszlosci-unii-europejskiej/> (1.05.2017).

¹⁸ W. Gadomski, *Jak poprawić budżet Unii Europejskiej (How to improve the budget of the European Union)*, Obserwator Finansowy, 6.04.2017, <https://www.obserwator-finansowy.pl/forma/rotator/jak-poprawic-budzet-unii-europejskiej/> (1.05.2017).

on the possibility to create a budget for the euro area (May 2016), the Committee on Budgets and the Committee on Economic and Monetary Affairs of the European Parliament accepted these values as a starting point. The countries of the euro area would have to allocate approximately 10% of state expenditure to create a federal budget. However, it is unknown how it would be created, whether in proportion to GNI or taking into account the wealth of particular states. In addition, it is not yet settled which positions in the expenditure would be moved to the federal level and what the rules for financing the federal debt would be.¹⁹ A big challenge should be taken into account related to coordinating the euro area budget with the EU budget. It is emphasised in the European Parliament Committee report that “the mechanism of fiscal capacity must be created upon the basis of existing EU financial instruments, within their legal framework, in order to provide cohesive growth of Euro area Member States, as well as Member States from outside this area”. If a separate budget will indeed be created for the euro area countries, they will need to take into account a diminished cash inflow from the EU budget.²⁰

The Main Priorities and Assumptions for Financing the EU Budget after 2020

At the meeting on 23rd February 2018, the leaders of the EU discussed the ways to ensure that the EU priorities agreed upon on 16th September 2016 in Bratislava and on 25th March 2017 in the Rome Declaration²¹ are properly implemented. These two aspects, i.e. delineating common priorities and guaranteeing appropriate resources for the EU to implement them, are inextricably connected to each other. While discussing the subjects of undertaking action in the area of protecting external EU borders, support for a true European Defence Union, supporting digital transformation of Europe, or increasing the effectiveness of EU cohesion policy and agricultural policy, it is important that the decision-makers realise the degree to which their decisions will cause practical consequences for establishing the sources of financing from the EU budget of the abovementioned priorities. The European Commission estimates that if EU leaders decide in favour of including the new priorities regarding better protection of the external borders of the EU, the expense of 20–25 billion EUR should be expected within the next seven years, and even up to 150 billion

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ <http://www.consilium.europa.eu/pl/press/press-releases/2017/03/25/rome-declaration/> (24.04.2018).

if a fully developed EU border management system was to be created (currently, the budget is 4 billion EUR). In case of further development of the European Defence Fund,²² out of which the European Defence Agency is funded, expenditure of approximately 10 billion EUR is to be expected in the years 2021–2027. Similarly, at least around 7 billion EUR is estimated to co-finance part of the development costs of the defence industry in 2021–2027 (currently the budget for 2017–2020 is 90 million EUR for defence research and 500 million EUR for defence industry development). In case of increased funding for the Erasmus + programme, expenses of around 90 billion EUR are to be expected from 2021–2027 (current funding is approximately 14.7 billion EUR). Increasing the EU support for the European data, connectivity and digital literacy infrastructure would involve the necessity to assign approximately 70 billion EUR in the period 2021–2027 (current funding is approx. 35 billion EUR). However in terms of boosting competitiveness through scientific research and innovation, it is planned to double the available resources by 2040, from the current 80 billion EUR to 160 billion EUR. In December 2017, the Committee presented the way in which the euro area and the EU as a whole could be strengthened due to the use of the EU budget, at present and in the future. Four specific functions were presented: supporting structural reforms on the national level, facilitating the convergence of Member States on their way to joining the euro area, ensuring a protective mechanism for the banking union and developing a stabilisation mechanism through merging of a variety of funds and instruments on the EU and euro area level. This would be supposed to help in maintaining investment levels in case of a serious asymmetric shock. However, these functions require a change in attitude exceeding the limitations of the present EU budget. It is estimated that assistance after 2020 will amount to at least 25 billion EUR over the period of seven years. In terms of implementing the cohesion policy, the decision whether to continue the aforementioned approach or to limit the support for less developed regions and countries, will be key. If it was decided that the European Regional Development Fund and European Social Fund support for more developed regions and transition regions is to be terminated, it would mean that resources would be diminished by approx. 95 billion EUR in the entire period. However, if a decision was made to further limit the aid, only to countries covered by cohesion policy, it would necessitate the investment into less developed regions of France, Italy and Spain to be discontinued. This in turn would lead to diminishing the allocated resources by 124 billion EUR over the

²² Inaugurated in June 2017.

entire period. Applying the same assumptions to scenarios No. 2 and 3, support for economic, social and territorial challenges would have to be taken over by national, regional and local authorities, following the principle of subsidiarity.²³

In fact, all political priorities, beginning with the European Defence Union, support for young people's mobility, supporting digital transformation of Europe, stimulating research and innovation, and closing with activities to facilitate the establishment of real economic and monetary union, will require appropriate funding in order for them to acquire some realistic shape. The Committee is considering possible ways to modernise the EU budget, including through stronger ties between the objectives of the EU budget and the methods of funding it. It is also considering the possibility of making the financing from the EU budget more strongly dependent on respect for fundamental EU values, which is often described as "conditionality".²⁴

The United Kingdom's exit from the EU is going to result in losing an important contributor, contributing to the funding of EU policies and programmes. Practically it will bring around the necessity to analyse which areas might be the ones to make savings on and implement the assumed priorities more effectively. Assuming that due to the process of exiting the EU, the United Kingdom is going to stop making its contribution to the EU budget, and membership fees for the years 2021–2027 will not be increased, a deficit of 94 billion EUR will arise in the common budget, while new priorities constitute an additional expense of at least 100 billion EUR. This is why the final decisions regarding the areas in which expenditure will be frozen or diminished are key. The deficit of resources could be covered by, among others, freezing the expenditure on common agricultural policy and cohesion policy. However, such a decision would mean decreasing such expenses in real terms. Another way of financing the aforementioned areas may be to raise the required contribution for all EU Member States or to introduce new sources of financing.²⁵

Analysts from the Bruegel think tank emphasize that the discussion on the new budget cannot be limited to the aspect of balancing income and expenditure, it should however mostly concern long-term effects on the common market. Currently, the net recipients of the EU budget in-

²³ Communication From The Commission To The European Parliament, The European Council And The Council, *A new...* op. cit., pp. 7–13.

²⁴ http://europa.eu/rapid/press-release_IP-18-745_pl.htm (24.04.2018).

²⁵ K. Stańko, *Budżet UE musi przejść zmiany* (*The EU budget must undergo changes*), Obserwator Finansowy, 19th April 2018, <https://www.obserwatorfinansowy.pl/forma/rotator/budzet-ue-musi-przejsc-zmiany/> (25.04.2018).

clude the countries of Eastern and Southern Europe. This fact should not, however, be interpreted as a loss for taxpayers in the countries which are contributors to the budget, but as a specific type of contribution to the unification of the European market, the development of which constitutes a common interest for all Europeans.²⁶

When taking decisions so important from the point of view of the future development of the EU, readiness to openly consider the resources necessary to translate the new priorities into measurable results will be required. The decision as to the shape of the EU budget will be a decision regarding the direction of the future development of Europe. It will also be an important test of the EU's unity and its ability to act in a changing world.

Conclusion

Due to the role and function of the budget, the structure of the EU budget income will constantly evolve. It cannot be assumed that once established sources of financing the EU budget will be so forever, as the EU, as an international organisation, functions within certain political, economic and social conditions. Its functioning is determined by numerous factors, subject to changes over time. It is natural that the structure of income and expenditure of the EU budget will undergo corrections depending on arising needs of the Member States, as well as global challenges. These factors and challenges will also shape the discussion on the shape of the EU budget in the future. Indirectly, they will also bear a lot of importance for the Member States, as considering new sources of financing the EU budget will be dependent on the condition of the public finances of each Member State. A feedback loop is formed, as on the one hand Member States make contributions to the common budget and on the other, countries may use the resources from that budget for the benefit of their own economic growth. This connection highlights the importance of the decisions impacting the future directions of Europe's development and its financing.

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²⁶ Ibidem.

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Willem Molle★

EU Membership and Budget Allocation Conditionality

Abstract

The world is shaken by many new developments. In this turbulence, the EU should provide an area of stability and security. It can only be so in case its internal cohesion is strengthened. The EU is a community based on values. Members have committed themselves to respect European values. But in case of a breach of the contract the Union has only two means to enforce respect for its values. Some have a legal character, others a financial one. The legal method is not very effective in this respect. This paper deals with the financial method. It argues that the conditionality of the budget needs to be increased; non-respect of values by Member States should entail loss of allocations. The recent proposals of the European Commission in this matter fall short of this.

Key words: European Union, Fundamental Values, Conditionality, Budget Allocation, Structural Funds, Legal Instruments

Introduction

The illusion of a unidirectional development

Until some years ago, one could think that the world would develop into a direction that we thought of as a universal model. It is defined in the political field by a parliamentary democracy; in the legal field by the rule of law and human rights and in the economic field by liberalism. This model was strengthened on the national level by strong institutions and by a whole set of regulations for socio-economic relations, for safeguard-

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ing fair competition, etc. On the international scene it was strengthened by an ever more dense set of international institutions such as the WTO, the IMF, etc. that supplanted the free fight of all against all by compliance with predictable rules. In the European sphere, the model has been elaborated in a dense net of regulations and institutions, with recent examples including the regulation of the financial markets and institutions like the European Stability Mechanism for preventing major financial and budgetary crises. These were the spirits in which most of the literature was written.¹

In theoretical terms we knew that integration can be turned back. A second chapter in my book on European Integration² deals with the events in the 1930's when this actually happened. The trade chapter in my book on international institutions³ showed that simple trade games lead to generalised protectionism. We did not think, however, that this would occur in our times, as people and countries had learnt their lessons and the mechanisms of democratic institutions and multilateral institutions had built in safeguards against falling back.

We now know that we were wrong on all these scores. Around the world, democracies falter and slip into autocracies. The multilateral system is shaken in its principles by the president of the USA, still the largest power the world, who has imposed old fashioned protectionist measures on its closest allies. Brexit has shown that people may want to subtract from European cooperation; tearing apart nations that have been integrating for two generations. And within the EU, some member countries that have subscribed to the values of the EU on accession now blatantly infringe upon them.

How to get back on track?

There is much discontent with the negative aspects of the present form of the neo liberal economic governance;⁴ in particular due to its recurrent crisis (financial, migration, social). It opens a breach for populist discourses that assume that the retreat from internationalism to nationalism and even regionalism is a better solution. It opens opportunities for governments to closely control the major parts of their society, on the argu-

¹ Including my books on the EU and world governance: W. Molle, *European Economic Governance; the quest for consistency and effectiveness*, Abingdon, Routledge 2011; W. Molle, *Governing the World Economy*, Abingdon, Routledge 2014.

² W. Molle, *The Economics of European Integration: Theory, Practice, Policy*, Aldershot, Ashgate, 1st to 5th ed. 1990–2006.

³ W. Molle, *Governing the World Economy*, Abingdon, Routledge 2014.

⁴ J. Zielonka, *Counter revolution; Liberal Europe in retreat*, Oxford 2018.

ments that nationalist solutions are best. But these are dead end streets. A realistic way out of the problems takes a good look at the new exigencies of the international situation and formulates effective solutions. These are no longer effective on the national level. So one needs to find common answers to common problems.⁵ Fostering stability and security in the EU seems the best way to contribute to stability and security in the whole world.

So, there is much reason to analyse, what the main areas are in which stability and security of the EU citizens and enterprises are at risk and need to be reinforced.

A Union of Values at Risk

From an economic union to a union of values

The beginning of the European integration process was basically economic. However, already in the beginning there was a clear underpinning of the whole process with a set of principles. These became apparent for instance in the refusal of the EU to consider membership of the Southern countries like Portugal, Spain and Greece as long as they were not democracies. The importance of the observance of common values became even greater when the EU was confronted with the Eastern enlargement. The EU opened its doors, but on the condition that the new entrants would observe the basic criteria; henceforth known as the Copenhagen criteria. This essentially political arrangement needed to be translated in legal terms. With the treaty of Lisbon of 2007 the basic values and the accession criteria have been enshrined in the EU Constitution (resp. art 2 and 49.1). Article 2 of the TEU now reads:⁶ “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, 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.”

This constitutional shrine makes clear that the EU is not only a community of interests, but a community of values that Member States, other public bodies, enterprises and private persons have to respect.

⁵ W. Molle, *European Integration; Past performance, present challenges, future action*, Warsaw 2017 conference. 2018.

⁶ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/2-article-2.html> (5.07.2018).

Values are trampled on, even democracy is at risk

It has been a mistake to think that the laying down of principles and values in a basic legal text would be sufficient to keep respect for them. In many countries liberal democracies have been hijacked by authoritarian leaders that have bent the rules and institutions to such an extent that they no longer serve their original purpose. This holds for the world level, for countries in our neighbourhood like Turkey, but also for some Member States of the EU; in particular Poland and Hungary.

The change has been operated by a very subtle mechanism.⁷ Democracy's assassin's use the very institutions of democracy to take their place. They do that not brutally but silently and apparently in all legality. There is no military coup. There is neither extremist demagoguery. Those in power maintain the veneer of democracy while eviscerating its substance. They operate gradually, which means that there is no formal moment in which values are forsaken or red lines are crossed. All institutions remain nominally in place.

In this process, one can distinguish three stages. First there is the election of an authoritarian leader, who seizes as many levers of power that he can get. The second stage is the gradual luring in of people into this system by distributing favours that are paid for by the abuse of governmental power. The third stage is the complete repression of political opposition and of institutional counterbalancing forces.⁸ The judiciary is muzzled, which is portrayed as combating of corruption and striving for efficiency. The newspapers are bullied into self-censorship either by magnates that have links to those in power, or by government. The private sector is bought off by promises of public sector contracts. Neutral agencies are gradually taken over by sympathisers, and become centres through which the remaining independent parts of society can be influenced to join in. Tight networks are then established between representatives of business, government and the bureaucracy all interested in keeping the system in place.

The problems are great in the fields where there are large sums of money involved

A central element in the process described before is the use of public money for creating networks of influence and power. The system is well known; and consists of covert corruption and fraud. Public sector con-

⁷ S. Levitsky, D. Ziblatt, *How democracies die; What history tells us about our future*, New York 2018.

⁸ A description of this process in literary way is to be found in: E. Ionesco, *Rhinoceros*, Paris 1959.

tracts are awarded nominally on the basis of open and transparent procedures, but in practice tenders are written and governed in such a way that government-friendly firms will obtain them. In some way or another, funds will then be channelled to organisations and persons that support the political administrative system. Organisations that could get in the way of the smooth functioning of this corrupted system, such as independent observers and the judiciary are then made ineffective by regulation and by nominations of people who accept playing the game.⁹ In the worst case, these practices become intermingled with those of organised crime.

In the countries that are large beneficiaries of the EU cohesion policy, a large part of the public investment contracts are actually financed by EU money, brought up by EU taxpayers. The risk of the abuse of this money for the purposes described above is real. The European Anti-Fraud Office and the European Court of Auditors provide ample evidence showing that the European Structural and Investment Funds (ESIF) are particularly amenable to abuse and fraud. This need not surprise: problems with corruption occur always there where the largest money flows. For some time, the European Commission has tried to get a good picture of the extent to which corruption and fraud are a problem in the use of the ESIF and has developed programmes to limit these issues.¹⁰

However, the effectiveness of the EU corrective system is (according to many observers such as Transparency International) very limited. So one has to admit that a significant part of the EU money given out of reasons of solidarity and cohesion, is actually used in ways that go contrary to the interests of the EU as such. It is used to support practices that put at risk the values on which the EU system is based. These basic values are not only important from a moral point of view; they are also consistent with sound economics. If there is disrespect for the rule of law and the authority of the courts of justice, investors will no longer trust the environment in which they invest. They want to be sure that they can refer to an independent judiciary in case they run into a problem with other

⁹ See in this respect for instance: M. Fazekas, I.J. Toth, L.P. King, *Corruption manual for beginners*, Budapest, Corruption Research Centre Budapest, CRCB, WP 2013.1; M. Fazekas, I.J. Toth, L.P. King, *Anatomy of grand corruption; A composite corruption risk index based on objective data*, Budapest, Corruption Research Centre Budapest CRCB, WP 2013.2; M. Fazekas, I.J. Toth, *From corruption to state capture; a new analytical framework with empirical applications from Hungary*, "Political Research Quarterly", vol. 69.2/2016, pp. 320–334.

¹⁰ European Commission, *EU anti-corruption report*, Brussels, COM(2014) 38 final; K. Schmidt-Pfister, H. Moroff, *Fighting corruption in Eastern Europe, a multi-level approach*, Abingdon, Routledge 2012.

private parties, or with the public sector. So the safeguarding of values is a fundamental issue for the good functioning of the EU internal market, and hence for the safeguarding of the benefits of the EU integration. Indeed, it is of the greatest importance to see what can be done to bring the deviant practice in some Member States back in line with fundamental EU values.

The Lack of Effectiveness of the Legal Option

EU legal means tend to fall short of ambitions

The European Union is an experiment in cooperation among nations. It could not build on the experiences of similar constructions. Each time the Union decided to move into a new area of integration, it had to decide how much central power this would require, and thus how large the inroads would have to be into national sovereignty. Each time, national governments have tended to limit as much as possible this loss of national political and administrative power, with the consequence that many new integration enterprises started without sufficient mechanisms in place for safeguarding the effective work of the scheme. A recent example is the Economic and Monetary Union, that has been created with minimal rules for the maintaining of budgetary equilibrium and stability in financial markets. It took the financial crisis to bring into the open the flaws of the system. Only then could the political support be mobilised for the set-up of the various mechanisms that are essential to prevent further crises. Another example is the creation of the Schengen area of internal free movement of people but without sufficient common measures to control immigration. It took the recent migration crisis to make EU countries accept the need for common outer border controls (for instance Frontex). Other examples can be found.

This is also the case for the enforcement of the respect for values

The case of the respect of EU values is not different from the examples given before. The EU has only two treaty provisions at its disposal. It has introduced in the Amsterdam treaty (prior to enlargement) the possibility of sanctions in the case of non-respect of the basic values of the EU. The main sanction is the suspension of the voting rights in the Council. This seemed too bold an instrument to be made effective. So, the Treaty of Lisbon has introduced a preventive mechanism (now article 7 of the Treaty on the European Union). The preventive mechanism can be triggered in case of a serious breach of EU values by an EU Member State, either by the Council (if one third of the Member States agree), by the Commission,

or by the Parliament. As a result, it is an essentially a political procedure; the European Court of Justice (ECJ) has a very limited role.

Most observers do not put much confidence in this mechanism. It is rather difficult to put into effect due to its political character, to the high thresholds for coming to a decision and to the limited instruments available.

So new mechanisms have been proposed

In view of the lack of effectiveness of the treaty provisions, a number of complementary mechanisms have been proposed by scholars, by politicians and by EU institutions.¹¹ The European Parliament has launched the idea of a “European Fundamental rights policy cycle”. This mechanism would incorporate an early warning system with formal notices to Member States where a breach in the rule of law appears likely, before formal proceedings under article 7 and a freezing procedure for national measures infringing upon EU values. The European Commission launched in 2014 the “New framework to strengthen the rule of law.” This text provides for a three stage procedure. In the first stage the Commission makes an investigation and an assessment of the situation in a Member State. In the second stage it makes a recommendation for changes and in the third stage it checks on the follow up of the recommendations.

Poland has been on the radar of the Commission for two years, in particular for its controversial reforms of the judiciary. It has been subject to scrutiny under the procedure but has rebutted any allegations. The problem with this country, and with other countries that infringe the values, is that the political procedures based on the legal and regulatory provisions are unlikely to lead to effect.

So Another Option Is Needed: Conditionality of Disbursement from the EU Budget

Some basic ideas and questions

The EU has a number of instruments at its disposal to put its policies into practice. The weakest one is coordination. The one most used is regulation. Less used but in general very powerful is the financial support

¹¹ See for instance: *The enforcement of EU law and values; Ensuring Member State’s compliance*, eds. A. Jakab, D. Kochenov, Oxford 2017; E.-M. Poptcheva, *Member States and the Rule of Law; dealing with a breach of EU values*, EPRS, Briefing, March 2015, www.europarl.europa.eu/thinktank (5.07.2018); A. Dauvergne, *Entorses a l’état de droit: quelle dissuasion Européenne?*, 2017, ww.institutdelors.eu.

from the EU budget.¹² The previous sections have shown that the regulatory method is not very effective in forcing a Member State's compliance with values. Coordination will be even less effective. So, it seems logical to turn to the financial instrument; the power of the purse. In practice the use of the financial instrument would mean that disbursements from the EU budget are made conditional upon respect for EU basic values. In plain words: a country that does violate the rule of law, the independence of the judiciary or other basic EU values would no longer be entitled to certain EU funds. This instrument would potentially be very effective. We may recall that under the present financial framework (2014–2020) Poland receives almost a billion euro a month under various titles of the cohesion policy.

The idea is straightforward but runs into a number of objections. The first is legal, and assesses the fact that there is no treaty provision on which this could be vested. The second is economic, and says that if spending for specific purposes is withheld, it impairs the quality and effectiveness of the EU policy to reach certain goals. The third is a practical one; it says that conditions for an effective implementation cannot be made operational. We will deal with these arguments in the next sections.

What is conditionality?¹³

Conditionality comes in very different shapes and in various forms of complexity and detail. In general the setting of conditions is necessary for aligning actions according to clear priority objectives across several levels of government. Non-compliance with the conditions by one of the lower levels then triggers a sanction; which can range from a simple notification via a partial withholding of finances to exclusion from the club.¹⁴

Generally one distinguishes between *ex-ante* and *ex-post* conditionality:

- *Ex-ante* conditionality requires a country to fulfil, before it will receive any reward (for instance financial aid), certain precise conditions and prove it does fulfil them. *Ex-ante* conditions often imply policy and institutional reforms. When the country does not fulfil the conditions the donor in general decides to withhold its financial support.

¹² W. Molle, *European Economic Governance...*, op. cit.

¹³ This section is a literal citation from W. Molle, *Cohesion and growth; the theory and practice of European policy making*, Abingdon, Routledge 2015, p. 156.

¹⁴ Conditionality can take different legal forms. For instance the conditions for membership of the EU or of the EMU are defined in the fundamental treaties. Conditionality for a specific loan of the European Investment Bank will be in the form of a (simple) contract. Conditionality in matters of cohesion takes an intermediary position that of the regulation.

- *In ex-post* conditionality, the recipient country agrees to pursue a set of actions during the period in which it benefits from aid permitting it to meet certain conditions set by the donor. So performance or policy outcomes are specified and need to be delivered. In order to stimulate compliance aid is often split up in instalments and disbursements are made conditional on progress towards the agreed objectives.

Can conditionally work?

There is much experience with conditionality in matters of financial support to policies. This comes partly from International Financial Institutions like the IMF. Other useful experiences come from the conditionality used by the EU in matters of accession to the EU (Copenhagen criteria) and accession to the Eurozone (Maastricht criteria). These experiences show that the effectiveness of conditionality for entitlement to funding depends on many factors. First parties need to be convinced that the conditions set are the appropriate tool for reaching a target. Next the recipients need to show ownership; they need to agree to the target set and to the need for action on their part. Third the process needs to be credible; in case of non-compliance the donors need to apply the sanction instead of being lenient to the recipient.

The question is, however, whether this experience is applicable in matters of the EU cohesion policy financed from the large European Structural and Investment Funds. Initially, there was some doubt about the legality of conditions to the disbursement of the ESIF because there is no specific treaty provision mentioning the possibility. However these doubts have been lifted in the preparation of the 2014–2020 programming period. Indeed, a very large part of the spending (around 2/3rds) has been made subject to a series of *ex-ante* conditions. The EU thereby requires all programmes to be framed in such a way that they comply with accepted general EU priorities, such as environment, digital plans, education, etc. Without the correct framing Member States do not receive the envelope of money from the ESIF to which they are in principle entitled to. In some cases (particularly where a country suffers from a weak administrative capacity) conditionality has been made very specific; the European Commission requires the country to put in place a specific programme to address these weaknesses; in particular to promote the efficient working together of administrative levels. This is fully justified in the framework of cohesion policy, as an efficient public administration is key to the success of investment programmes.¹⁵ A similar form of conditionality exists

¹⁵ European Commission, *The value added of ex ante conditionalities in the European Structural and Investment Funds* (SWD(2017) 127 final; available from EC website).

with respect to the consistency of the EU macro-economic governance (the European Semester and its country specific recommendations) and cohesion. Member States are supposed to comply with both.

The main argument against conditionality is that the cohesion policy is a form of redistribution that comes as a materialisation of the notion of solidarity from the rich with the poor. A somewhat weaker form of this argument is that the ESIF are meant to boost the growth possibilities of the countries that are less well-off, and in this sense they are the reflection of a high degree of inter-country solidarity in the EU.¹⁶ It follows that any withholding of funds would go against solidarity and would be inefficient as it would hamper not only the growth of the targeted recipient, but also due to interregional interrelations, even overall EU growth. However, this argument is flawed, as non-compliance with the other objectives of the cohesion policy and with the higher objectives included in EU values can be shown to involve considerable losses of resources, and to have a negative impact on growth due to the creation of barriers.

A final argument against conditionality is that provisions cannot be made effective as a cohesion policy tool. Indeed many practitioners were sceptical about the way in which this innovation in EU policy making brought about in the present programming period would work out in practice. So an evaluation of the experience in the first years of the 2014–2020 period imposed itself. One such evaluation has been made by the European Commission (2017), which concluded that these ex ante conditionalities have proven to be a powerful incentive for Member States and regions to realise policy consistency and to carry out pro-growth reforms which would otherwise have been delayed or not have been implemented at all. Another evaluation has been made by independent observers; their assessments show conditionalities as a generally accepted effective legal/administrative instrument to realise policy consistency in the EU.¹⁷

Plea for stricter conditionality

The question is now justified whether the conditions already put in place and those that are proposed in the previous section are sufficient to reach all major EU goals. The answer is a clear no. The EU is confronted with a big problem, in the sense that the quality of government is very

¹⁶ K. Pantazatou, *Promoting solidarity in crisis times; Building on the EU budget and the EU Funds*, “Perspectives on Federalism”, vol. 7.3/2015.

¹⁷ V. Vita, *Revisiting the dominant discourse on conditionality in the EU: the case of EU spending conditionality*, “Cambridge Yearbook of European Legal Studies”, no. 19/2017, pp. 116–143; M. Koelling, *Policy conditionality – a new instrument in the EU budget post-2020?*, 2017, www.sieps.se.

weak in a number of its Member States and seems to deteriorate even further.¹⁸ This hampers the good functioning of the EU system, as quality investment is dependent on quality government. In that respect, we have made pleas to further conditioning of the disbursements of the ESIF on the significant improvement not only of administrative capacity but more in general of government quality.

Molle wrote:¹⁹ “One way is to impose strict conditionality with respect to quality governance and thereby force a change in political and administrative culture. It would involve the introduction of a conditionality check on quality governance before funds are committed, coupled with a compulsory participation in a considerably stepped up participation in programmes financed by the ESI funds to improve the quality of government in convergence countries. There is a list of actions that the EU can impose on Member States to realize efficient and transparent institutions that are resistant to fraud and corruption. However they may take quite some time to produce significant effects. Mind that the option of (this enhanced) conditionality has been proposed for the present programming period²⁰ but finally not adopted on the argument that piling up conditions would make the whole instrument ineffective.”

There is also a functional link between basic values and effectiveness of funds

Given the problems at hand and the inadequacy of the legal option to make Member States comply with the basic values of the EU we think that the mere extension of conditionality to quality government is not enough. We think that there is all reason for the extension of the conditionality of the cohesion policy with the criterion: “respect for basic values.” We think that this position is justified because the compliance with EU basic values has a direct link with effective spending of money and stable growth. We can explain this as follows:

Investment flourishes under certain conditions. As such, we mention the assurance of competitive procurement processes, a stable and predictable legal system, an impartial bureaucracy and an independent judiciary. If investors lack confidence in a country because of insufficiencies on one or more of these points they are likely to put off their investment. Poorly governed places are unlikely to attract the best investment, and so will lack growth possibilities. Where corruption creeps in, public money ends up in the pockets of business as rent, and in the pockets of corrupt

¹⁸ W. Molle, *European Economic Governance...*, op. cit.

¹⁹ W. Molle, *Cohesion and growth...*, op. cit., p. 300.

²⁰ See for instance: W. Molle, *European Economic Governance...*, op. cit.

officials that will sustain the forces that have been permitted to erode the values of the EU. So the EU money in the end finances the wrongdoings of the system and the maintenance in power of an elite that helps itself and its associates at the expense of the contributions of ordinary EU taxpayers. As a matter of principle, the EU should not finance the erosion of its basic values.

Now, in a highly integrated EU this problem is not confined to single Member State. Citizens and business need to be sure that if they are active in a different Member State, they work on a level playing field with the local businesses and citizens. In case of a conflict, they must be able to count on the impartiality of the courts in the host state. If not, the functioning of the EU single market is undermined, and the benefits of integration are foregone. So, the respect for EU values and the impartial enforcement of EU law is an essential prerequisite for the economic base of the EU. In that sense the national judicial system is an essential part of the European one and should reveal the same high quality.²¹

Up till now, such pleas for increased conditionality have not been listened to, mainly on the basis of the argument that the piling up of conditions would make it more difficult to make the countries comply. This position should be abandoned.

The Position of the Commission

Reflection paper

In the early spring of 2018 the Commission has published a reflection paper on the recast of the European budget. In its chapter 4 the Commission wrote:²² “It has been suggested that the disbursement of EU budget funds could be linked to the respect for the values set out in Article 2 of the EU Treaty and in particular to the state of the rule of law in Member States. Some have gone further, arguing that serious breaches of EU law should have consequences and should lead to the suspension of disbursements of the EU budget.”

The Commission seemed to support the reasoning behind these suggestions as it stated further: “The respect for fundamental values is an

²¹ Indeed respect for values is not only a question of morality it is also good economics. There is a growing literature about the economic benefits of the respect of the rule of law, see e.g.: *S. Yu, S. Beugelsdijk, J. de Haan, Trade, trust and the rule of law, “European Journal of Political Economy”, no. 37/2015, pp. 102–115.*

²² European Commission, *A budget for our Union at 27; A new modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020*; COM(2018) 98 final (available from EC website).

essential precondition for sound financial management and effective EU funding. Respect for the rule of law is important for European citizens as well as for business initiatives innovation and investment. The European economy flourishes most where the legal and institutional framework adheres fully to the common values of the Union.” The Commission states further that any such conditionality needs to be made legally watertight, should be proportionate, should reveal as much as possible a direct link, and should protect groups such as Erasmus students, civil society organisations, etc.

The Proposals for a new regulation

The Commission has presented its policy proposals on the Multiannual Financial Framework on the 2nd of May 2018²³ and its views on Cohesion on the 29th of May 2018.²⁴ In the latter its initial position on conditionalities has been changed.²⁵

Conditions come under two different headings in the proposals. The first form applies to macroeconomic governance. The link between cohesion policy and the EU’s economic governance will be strengthened. The draft Regulation says: “When a Member State fails to take effective or corrective action in the context of key EU economic governance mechanisms or fails to implement the measures required by a stability support programme, the Commission shall make a proposal to the Council to suspend all or part of the commitments or payments for one or more of the programmes of a Member State. However, the Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned, recommend that the Council cancels the suspension”.²⁶

The second set of conditionalities proposed are now called “enabling conditions.” They maintain to a large extent the former ex-ante conditions with respect to thematic issues such as smart specialisation strategies and horizontal issues such as state aid. New in this draft regulation

²³ Ibidem.

²⁴ European Commission, *Regional Development and Cohesion Policy beyond 2020; Questions and answers*; European Commission; *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, The European Social Fund Plus, The Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa instrument*, COM(2018) 375 final Annexes (all available from EC website)

²⁵ European Commission, *Proposal for a Regulation of the European Parliament...*, op. cit.

²⁶ European Commission, *Regional Development and Cohesion Policy...*, op. cit.

are the effective application and implementation of the EU Charter of Fundamental Rights and of the United Nations Convention on the Rights of Persons with Disabilities.

There is nothing here about values: apparently the notion could not be made legally watertight. The reference to Fundamental Rights is legally of a more limited scope than would have been a reference to values, but it is based on more solid ground. Indeed, the EU already has quite some experience in the application of Fundamental Rights: there is an Agency specifically dedicated to the task and an annual reporting procedure. However, its effectiveness in making Member States comply with values in the framework of cohesion needs to be seen.

Conclusion

The EU is a community based on values. Members have committed themselves to respect these values. Compliance with the rules deduced from such basic values is not only important for moral reasons but also for good economic reasons. Where values are in danger, the economic system becomes less effective and productive.

The European Union has seen in the past decade an increasing number of infringements of EU values. It has had to admit that its legal instruments are insufficiently effective in forcing compliance. Therefore, it is important to see what other instruments can be used. The budget is the logical option. Its use would imply withholding payments of different budget lines to countries that do not respect basic values.

The past has shown that such conditionality can be made operational. There is much to say that this conditionality should be extended to the respect for the basic values of the EU such as the rule of law and an independent judiciary, as a direct link can be established between the effectiveness of the use of the Funds and the respect of values.

It is sad to see that the Commission has missed the opportunity to propose strong measures in its recent draft Regulation. The introduction of the Charter of Fundamental Rights in the enabling conditions does, however, give hope for the putting in place of at least some levers to exert pressure on wrong-doers.

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EU Budget Challenged by the Present Migration and Refugee Crises – External Dimension of Actions

Abstract

The present migration and refugee crises in Europe required not only operational and legal EU responses but also budgetary ones. Additionally, the EU has resorted to use funds allocated to external action for migration purposes much more extensively than ever. This has turned the authors' attention to the external dimension of the EU migration and asylum budget. In a spirit of emergency accompanied with the urgent search for flexibility the following budgetary measures on the external side were proposed: two trust funds: the EU Emergency Trust Fund for Africa and Regional Trust Fund in Response to the Syrian Crisis along with the EU Facility for Refugees in Turkey. These actions had serious budgetary consequences since they resulted in establishment of new financial solutions and hence caused budget reorganisation, refocus and reprioritisation. The new external developments have not only introduced cash pooling but also diminished the role of the European Parliament at the expense of the European Commission's one. Such an approach may have far-reaching consequences for the EU as it conveys new flexibility, limits the role of the long-term programming and redefines the relationship between the EU and third countries.

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Key words: EU Budget, External Financial Tools, Migration and Refugee Crises, Trust Funds, European Agenda for Migration

Introduction

The European Union (EU) is aware of the threats, challenges and problems which have been brought on by the present migration and refugee crises, and thus these crises are currently one of the most important subjects of discussions in EU institutions, particularly when financial issues are being decided upon. As the only international organisation of supranational character, the EU has at its disposal particular non-financial and financial resources.¹ The latter are extensive, especially when compared with other international organisations. The EU's financial resources constitute a form of "economic power" in the international arena.² Based on them, the EU is able to solve crucial global problems, like the aforementioned migration and refugee crises. It can thus be argued that the EU is an important entity whose role is to manage global international affairs, including migration and refugee issues.

Faced with a massive influx of migrants and asylum seekers in the first half of 2015, in May 2015 the EU has developed a comprehensive set of legal, financial and operational measures called the European Agenda on Migration (EAM) in order to address the challenges arising from the deteriorating migratory situation within and outside the EU. The European Agenda on Migration³ specifies four pillars of better migration management that are built around (1) reducing incentives for irregular migration, (2) managing EU's external borders effectively, including saving lives and securing external borders, (3) formulating a strong common asylum policy in the EU and (4) developing a new policy on legal migration. It represents a chief migration policy-making document where, from the very beginning, the significance of sufficient funding needed to implement the proposed measures effectively has been emphasized. The EAM, though developed in response to an emergency with regard to comes to funding sources, falls under the same budgetary rules as all other EU policies.

¹ M. Rewizorski, *Poza „kompleksową współzależność” – w poszukiwaniu nowych rozwiązań dla starych problemów (Beyond "Comprehensive Interdependencies" – in Search for New Solutions for Old Problems)*, in: *Globalne zarządzanie i jego aktorzy (Global Management and Its Actors)*, ed. M. Rewizorski, Warszawa 2016, pp. 19–21.

² J.S. Nye, *The Future of Power*, New York 2011, p. 22.

³ European Commission (EC), *Communication from the Commission to the European Parliament, the Council, the European economic and Social Committee and the Committee of the Regions, A European Agenda on Migration*, COM(2015) 240 final.

Therefore, its funding has to come from the already binding Multiannual Financial Framework (MFF) and respective annual budgets or additional resources have to be requested or generated mainly through new financial solutions, sometimes based on co-funding. This study focuses on the new financial developments under the EU budget (within the MFF for the years 2014–2020) addressing the EU's external actions directed at managing the contemporary twin migration and refugee crises. It is a very topical and important issue, as the consequences of the crises will be felt worldwide for many years to come, and their scale requires enormous, and thoughtfully managed financial input. Certainly funding is needed both internally and externally, however, from the authors' perspective, a focus on the root causes of irregular migration and countries of origin of migrants needs special attention. Therefore, the scope of research has been limited only to the external dimension of financial developments rooted in the EU budget. Moreover, the issue of EU budgetary resources, especially for external actions, dedicated to migration and refugee problems has not yet been widely examined in the professional primary sources on the subject.

The main objective of this paper is to examine the EU's budgetary responses to the contemporary twin migration and refugee crises in Europe against the backdrop of EU budget and regular budgetary procedure (within the MFF and annual budgeting) as it comes to external dimension of EU's actions. The paper also presents the new role of the European Commission (EC) as a chief budget coordinator and supervisor, and makes the case for the EU external migration policymaking through funding. Additionally, it argues that the EU's newly established external financial solutions might set a dangerous precedent for tackling urgent budgetary needs, as they are highly dependent on individual Member States (MS) and on third countries' willingness to play according to EU rules: they redirect funds from already established budget categories, as well as exclude close scrutiny by the European Parliament (EP) embedded in the regular EU budgeting. The additional purpose of this paper is to confront these new financial solutions, dedicated to tackling migration and refugee issues outside the EU with the well-established rules governing the EU budget, and analyse them in terms of flexibility.

Analysis and synthesis were used interchangeably in the present study, based on professional primary sources, documents and reports by the EU institutions, as well as statistical data available in official statistical sources. The conceptual apparatus typical for research in economics and international finance, as well as international relations, was applied. Research was completed on the April 30 2018.

The Unique Nature of the EU Budget

The EU budget constitutes one of the most important sources of financing the measures to mitigate the ongoing twin migration and refugee crises. It is a unique budget, since it constitutes the balance of EU's revenue and expenditure in a single document⁴ for the period of one calendar year.⁵ The fact that the expenditure is planned first is an important characteristic. The expenditure concerns specific EU priorities⁶ for the upcoming years that are adopted under the Multiannual Financial Framework, i.e. a medium-term (currently seven-year) expenditure plan. The financial resources within the MFF are allocated to the tasks partly delegated to the supranational level by the MS, including the task of resolving the contemporary migration and refugee crises inside and outside the EU. The MFF for the years 2014–2020 has been divided into six areas: “Competitiveness for growth and jobs”, “Sustainable growth: natural resources”, “Security and citizenship”, “Global Europe”, “Administration” and “Compensations”.⁷ It has to be stressed that the EU budget is used to cover the cost of both internal and external functioning of the EU, which is untypical for other international organizations. The internal dimension of the EU's migration and refugee policy is in principle related to expenditure included in the third section of the 2014–2020 MFF, “Security and citizenship”, whereas the external dimension refers to the fourth section, “Global Europe” of the 2014–2020 MFF. However, it is worth mentioning that in response to the present migration and refugee crises the EU has resorted to financial resources under the fourth section of the current MFF much more extensively than ever. Hence, the budgetary perspective of the external actions aimed at tackling migration and refugee problems constitutes the subject of this study.

Although the current MFF ensures greater flexibility in the execution of the expenditure from the EU budget than the previous one (effective until the end of 2013), both in particular expenditure groups and between these groups, as well as in creating ad hoc special-purpose new financial solutions, it has still proved rather rigid when confronted

⁴ A.D. Alfonso, *How the EU budget is financed: The “own resources” system and the debate on its reform*, European Union 2014, p. 6.

⁵ M. Proczek, M. Janczak, *Przegląd budżetu ogólnego WE – stanowisko Polski (Overview of the EC General Budget – Polish Position)*, in: *Gospodarka Polski w Unii Europejskiej. Wybrane zagadnienia (Polish Economy in the European Union. Selected Issues)*, eds. H. Bąk, G. Wojtkowska-Łodej, Warszawa 2009, pp. 72–73.

⁶ G. Cipriani, *Financing the EU Budget*, London 2014, pp. 76–77.

⁷ <http://www.consilium.europa.eu/pl/policies/multiannual-financial-framework/mff-2014-2020/> (13.12.2017).

with the present migration and refugee crises. Flexibility is designed to make the EU budget more adjustable to changing circumstances and priorities. The lack of it constituted a serious obstacle to the EU's capacity to react to the new challenges.⁸ However, applying it hastily might pose a threat to the long-term spending of the EU budget, which in turn may translate into further EU problems when it comes to financing priority areas and regular expenditure mainly based on long-term programming.

As for the EU budget revenue, instead of members' subscriptions, voluntary donations or share capital contributions, the EU and its MS have worked out a system of own resources⁹ that ensures financial autonomy of this organisation and independence from its MS.¹⁰ In consequence, the annual functioning of the EU is based upon a sustainable and upfront planned budget which provides sufficient resources for financing its tasks and objectives determined under the MFF, taking strict budgetary and uniform discipline into consideration. The European Commission, the Council of the EU and the European Parliament are always involved in the annual budgetary process based on the MFF, although the latter two, as the budgetary authority, play the primary role. It has to be emphasised that ever since the Lisbon Treaty, the role of the Parliament in the process of passing the EU budget has considerably strengthened. The Treaty has made the Parliament equal to the Council as regards this procedure, not, as before, an advisory institution making non-binding decisions.¹¹

From the EU budget's perspective, the EU funding supporting external dimension of migration and refugee issues is mainly guaranteed under and channelled through the fourth section "Global Europe" of the MFF. This section covers regular expenditure under the EU budget related to migration and mobility and asylum policies of non-MS under the Global Approach to Migration and Mobility (GAMM) and the European Agenda on Migration.

⁸ Resolution (EP) of 13 June 2012 on the Multiannual Financial Framework and own resources, P7_TA(2012)02452012.

⁹ Currently, EU's own resources include:

- agricultural customs duties and sugar payments,
- customs duties on industrial products collected at EU customs borders,
- VAT payments,
- payments from the so-called "fourth source", proportional to the Member States' national gross income,
- other, e.g. fees, fines or taxes.

¹⁰ European Commission (EC), *European Union Public Finance*, 5th Edition, Luxembourg 2014, p. 22.

¹¹ Treaty of Lisbon (TL) amending the Treaty on European Union and the Treaty Establishing the European Community, OJ 2007 C306.

As a result of the threats, challenges and problems caused by the current twin migration and refugee crises in Europe and other parts of the world, the EC has reached out for new, flexible financial solutions. Outside the EU, two trust funds have been created for third countries: the EU Emergency Trust Fund for Africa and Regional Trust Fund in Response to the Syrian Crisis, and the Facility for Refugees in Turkey has been launched. These actions have had serious consequences for budgetary expenditure, since they resulted in establishment of new financial solutions and, hence, in budget reorganisation, refocus and reprioritisation. These new solutions are flexible, oriented toward quick fixes, and tend to bypass the regular budgetary procedure, diminishing the important role of the EP as a budgetary authority. These moves establish a precedent for the budgeting process in the EU.

Financial Measures to Address External Migration Issues

One of the EAM's main aims, described under its first pillar, is to tackle the root causes of irregular migration and forced displacement in countries of origin and transit through close partnership with these countries. To address this issue the EU has resorted, among others, to the new financial solutions, which are: the EU Regional Trust Fund in Response to the Syrian crisis (the Madad Trust Fund), the EU Emergency Trust Fund for Africa (EUTF for Africa) and the EU Facility for Refugees in Turkey. The novelty of these solutions is evident in their composition and emergency nature that implies flexibility. As for structure these financial solutions combine the existing EU funding (in particular the EU budget's fourth section "Global Europe", and non-budgetary European Development Fund (EDF)) with extra contributions from EU MS or other donors in order to achieve the leverage effect that in turn ensures greater coordination and effectiveness of actions. Hence, the structure is new, but the funding comes, at least partially, from the "good old" budget which implies substantial EU budget relabelling, redeployment and shifting.¹² Also, the issue of transferring bilateral funds by MS for external EU facilities on top of standard EU budget and EDF contributions evokes a debate on the ownership and increased role of the EC which takes over the management of these funds by acting as a final decision maker. Therefore, MS are not enthusiastic about making commitments, especially because trust funds require a minimum EUR 3m donation to ensure voting rights on their boards. With regard to flexibility of funding, the contemporary

¹² L. den Hertog, *EU budgetary Responses to the 'Refugee Crisis' reconfiguring the Funding Landscape*, "Liberty and Security in Europe", no. 93/2016, p. 5.

migration and refugee crises have proven that the EU needs simple, quick and flexible financial solutions to address emergencies. However, flexibility in the budgetary context might be risky as it translates into simplification or shortening of the standard procedure, which often means bypassing some of its stages, which in turn limits thorough scrutiny, and poses a threat of not delivering on long-term goals arising from the funding regulations and programming. Therefore, the application of new funding might have dangerous consequences mainly on the long-term budget execution, accomplishment of external action long-term goals, international and internal relations.

Starting from 2013, in the area of external action the EC can establish and administer trust funds for emergency, post-emergency or thematic actions with the main purpose of strengthening the international role of the EU as a visible and efficient external action actor and development aid provider.¹³ Trust funds, though not integrated in the budget, are in fact using EU's budgetary and non-budgetary funds as major part of their funding. They operate based on constitutive acts signed with donors, which determine their objectives, composition, bodies, operational rules and duration. They can be created exclusively when their objectives can be better addressed at the EU level, they create new value added or they bring clear Union political visibility and managerial advantages.¹⁴ The Commission plays a leading role in trust funds as it acts as a trust fund maker and manager. It establishes trust funds based on the new comitology rules, namely, by submitting a draft decision to create a trust fund to a relevant committee with a request for opinion which, in turn, constitutes a basis for the trust fund's establishment. The EP's involvement is limited to the right of scrutiny for draft implementing acts relating to a basic act adopted under the ordinary legislative procedure, a request to discontinue appropriations or to seize operations of a trust fund, and annual information on activities. So far, the EU has established four trust funds in external action, of which two, the Madad Trust Fund and the Emergency Trust Fund for Africa, deserve special attention due to their thematic scope.

The EU Regional Trust Fund in Response to the Syrian crisis is considered the first EU regional trust fund leveraging on joint efforts of the EU and its MS, as well as other donors, to address the migration and refugee crises created by the civil war in Syria. It was set up in 2014 with

¹³ Regulation (EU, EURATOM) no. 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) no. 1605/2002, OJ 2012 L 298/1.

¹⁴ *Ibidem*, art. 187(3).

an initial budget of EUR 41m¹⁵ that increased substantially in the subsequent years to reach EUR 1.3bn in December 2017, including contributions from 22 EU MS, amounting to over EUR 105m.¹⁶ The Trust Fund operates under the European Neighbourhood Instrument (ENI), however, other instruments currently used in response to the Syrian crisis may contribute to it as well.¹⁷ The Trust Fund's objectives are in line with the actions addressing the root causes of irregular migration, hence the Fund promotes equal and qualitative education for all children and young people, both refugees and the vulnerable in host communities, and reduces the pressure on host countries through investments in livelihoods, food, health, sanitary infrastructure, jobs, education and social cohesion.¹⁸ The projects already approved amount to EUR 1.2m, of which more than EUR 550m have been contracted in 30 projects to the Trust Fund's implementing partners on the ground¹⁹ which provides for evidence that funds under this trust fund are effectively implemented.

The Emergency Trust Fund for Africa was set up at the Valetta Summit in 2015 as part of the EAM to address the root causes of irregular migration. Through its unique composition²⁰ of three windows for the Sahel region and Lake Chad, the Horn of Africa, and the North Africa it brings a new focus on migration²¹ where aid meets the most urgent regional needs. Its initial budget of EUR 1.8bn has increased to over EUR 3.2bn of which over EUR 2.9bn comes from the EDF and EU budget: ENI, Development Cooperation Instrument (DCI), EU Humanitarian Aid and Civil Protection (DG ECHO) and DG Migration and Home Affairs (DG HOME), and EUR 260.5m from MS and other partners. Up to

¹⁵ A.D. Alfonso, B. Immenkamp, *Briefing: EU Trust Funds for external action, First uses of a new tool*, 2015, p. 6, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572797/EPRS_BRI\(2015\)572797_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572797/EPRS_BRI(2015)572797_EN.pdf) (23.12.2017).

¹⁶ European Commission, *Factsheet on the EU Regional Trust Fund in response to the Syrian Crisis*, https://ec.europa.eu/europeaid/sites/devco/files/eu-emergency-trust-fund-africa-20171124-3_en.pdf (23.12.2017).

¹⁷ European Commission, *Agreement establishing the European Union Regional Trust Fund in Response to the Syrian Crisis, 'the Madad Fund', and its internal rules*, 2016.

¹⁸ European Commission, *EU Regional Trust Fund in response to the Syrian Crisis*, 2016, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/syria/madad_en (23.12.2017).

¹⁹ Ibidem.

²⁰ European Commission, *Factsheet on the EU Trust Fund for Africa*, p. 1, https://ec.europa.eu/europeaid/sites/devco/files/eu-emergency-trust-fund-africa-20171218_en.pdf (23.12.2017).

²¹ European Commission, *Report from the Commission to the European Parliament, the European Council and the Council, Progress report on the European Agenda on Migration*, p. 12, COM(2017) 669 final.

December 2017, 117 programmes were approved for approximately EUR 1.9b, of which Horn of Africa received EUR 665m, North of Africa – EUR 255.4m, Sahel/Lake Chad – EUR 988.9m, and Cross-Window Projects – EUR 21.6m²² proving that this trust fund serves its purpose by supporting jobs and economic development with an emphasis on vocational training and micro and small enterprises, securing food and basic services for local populations, ensuring effective migration and border management, including combating illegal immigration and human trafficking, as well as promoting stability and good governance.

The EUTF for Africa as a complementary development tool for managing emergency or post-emergency needs raises concerns over the aid's original purpose: that it should address the structural causes of poverty and pursue long-term external action goals.²³ The reports on the EUTF for Africa²⁴ conclude that:

- it responds to a political emergency in Europe rather than to African long-term needs as it focuses on pursuing EU domestic agenda and delivering quick results, which contradicts the principle of sustainable development;
- mixing funds for external action and crisis management, combined with flexible operations, makes it even easier to divert attention from long-term goals;
- a separation of political roots of the EUTF for Africa from its current operations is needed, as curbed migration flows should not be a driver;
- implementing partners may be anxious, as their mandate to implement projects guided by local input is undermined, which is not in line with internationally agreed aid effectiveness principles since it minimises country ownership of aid programmes and does not address national priorities putting migration-related issues first;
- the good governance, accountability and transparency principles of the Trust Fund might raise some concerns, as there is evidence for the lack of open project selection procedure, clear project eligibility criteria and chaotic EU communication.

²² European Commission, *Factsheet on the EU Trust Fund for Africa*, p. 1, op. cit.

²³ C. Castillejo, *The European Union Trust Fund for Africa: A Glimpse of the Future for EU Development Cooperation*, “Discussion Paper”, no. 22/2016, p. 28.

²⁴ Global Health Advocates, *Misplaced Trust: diverting EU Aid to Stop Migration, The EU Emergency Trust Fund for Africa*, http://www.ghadvocates.eu/wp-content/uploads/2017/09/Misplaced-Trust_FINAL-VERSION.pdf (23.12.2017); E. Kervyn, R. Shilhav, *Briefing note. An emergency for whom? The EU Emergency Trust Fund for Africa – migratory routes and development aid in Africa*, Oxford 2017.

From the EP's point of view, both trust funds were set up as complementary financial envelopes to the EU existing funding and as flexible tools for effective crisis management. Therefore, the EP:²⁵

- expects greater contributions from MS comparable to the EU's share, stressing that the low and volatile contributions prove that financial tools outside the EU budget are not a viable way to collect additional funds;
- recognises the ad hoc nature of the existing tool and, hence, calls for the development of a more holistic solution and consideration of the inclusion of the crisis mechanisms in the MFF for the sake of the EU budget's unity;
- is also concerned with the fact of diverting appropriations from the established instruments to channel them through trust funds, as this may jeopardise the success of the EU long-term external policy. In that respect the set-up of financial solutions outside the EU budget must remain exceptional, as it bypasses the budgetary authority and undermines budget unity.

The third new coordination solution, The EU Facility for Refugees in Turkey, has been established in 2015 by an EC decision, then amended in 2016.²⁶ It is meant to help Turkey in addressing current migratory pressures, especially humanitarian needs of refugees and host communities. It has a budget of EUR 3bn for 2016–2017, of which EUR 1bn comes from the EU budget, and EUR 2bn from contributions of MS, as it is designed as a fund pooling tool.²⁷ After the first period the Facility could be prolonged into the second one (2018) with an additional EUR 3bn to be allocated. The extension depends on the implementation by Turkey of its commitments under the EU-Turkey Joint Action Plan, but commitments from MS are crucial as well. The Facility coordinates the external funding from: humanitarian aid, ENI, DCI, Instrument for Pre-Accession Assistance (IPA II) and Instrument contributing to Stability and Peace (IcSP).²⁸ It is managed by a steering committee chaired by the EC and composed of representatives of MS, with Turkey exercising an

²⁵ European Parliament, *Report (2015/2341(INI)) on the EU Trust Fund for Africa: the implications for development and humanitarian aid*, 2016, p. 6, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2016-0221+0+DOC+PDF+V0//EN> (23.12.2017).

²⁶ Decision (EC) on the Facility for Refugees in Turkey amending Commission Decision C92015 9500 of 24 November 2015, OJ 2016 C 60/03.

²⁷ European Commission, *Communication from the Commission to the European Parliament and the Council, First Annual Report on the Facility for Refugees in Turkey*, COM(2017) 130 final, p. 4.

²⁸ *Ibidem*, p. 6.

advisory function. Since its operationalisation in February 2016 over EUR 2.5bn has been contracted under 58 projects, of which over EUR 1.1bn has been disbursed.²⁹ The international organisations running humanitarian projects, namely the World Food Programme, World Bank, UNICEF and UNHCR received substantial funding. The instrument is providing humanitarian (EUR 1.4bn) and non-humanitarian assistance (EUR 1.6bn).³⁰

The criticism of the Facility centres on its dependence on the delivery of the pledges made by MS and its dependence on the third country, in this case Turkey, and willingness of this country to play according to the EU rules.³¹ The solution rests upon considerable contributions from MS, therefore, its continuation in 2018 is jeopardized by insufficient pledges. In August 2017 European Commissioner for Budget, Günther Oettinger, asked MS for more pledges to fund the continuation of the Facility. The uncertainty has led to increased tensions with Turkey, and has been reinforced by the public misperception that all money goes to the Turkish government to block refugees from entering the EU.³² This situation has also started a discussion on reorganisation of national budgets that are supposed to find extra funds for solving migration related issues.³³ Additionally, the dependence on Turkey has turned out to be expensive, as Turkey asked for another EUR 3bn during negotiations with the EU. Additionally, the EU's reputation has been questioned as Turkey has not respected human rights and maintained appropriate standards in the detention camps.³⁴

Conclusion

Newly developed financing solutions involving budgetary reorganisation measures represent the cross-cutting element for the EC to reform and adjust its policies, as well as to respond to contemporary problems, including the ongoing migration and refugee crises. The crises manage-

²⁹ European Commission, *Factsheet on the EU Facility for Refugees in Turkey*, p. 1, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/frit_factsheet.pdf (23.12.2017).

³⁰ *Ibidem*, p. 7.

³¹ L. den Hertog, *op. cit.*, p. 2.

³² T. Reno, *The EU Facility for Refugees in Turkey – Prevailing Misperception vs. Actual State of Play*, 2017, p. 2, <http://www.iris-france.org/wp-content/uploads/2017/09/Obs-Turkey-TReno-21-sept-2017.pdf> (23.12.2017).

³³ L. den Hertog, *op. cit.*, p. 1.

³⁴ L. Haferlach, D. Kurban, *Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries*, "Global Policy", vol. 8, sup. 4/2017, p. 88.

ment sets an example of the phenomenon of so called “policy-making through funding,” which has been employed by the EC.³⁵ This approach is justified, because the EU budget constitutes one of the most important sources of financing this challenge. It is a unique budget, differing from the budgets of other international organisations in numerous aspects, especially in the scale of financial resources available which represent a form of “economic power” making the EU the main international player addressing effectively great contemporary challenges.

As a result of numerous threats and challenges caused by the ongoing migration and refugee crises, the EC has reached out for new, flexible financial solutions in external dimension of the EU’s operations. Outside the EU, two trust funds have been established for third countries: the EU Emergency Trust Fund for Africa and Regional Trust Fund in Response to the Syrian Crisis, and the Facility for Refugees in Turkey has been developed. These actions have had immediate budgetary consequences, since they brought budget reorganisation, refocus and reprioritisation. Newly established financial solutions tend to be result-oriented and concentrate on quick fixes. Also they bypass the regular budgetary procedure diminishing the important role of the EP as a budgetary authority, expanding the role of the EC instead.

In comparison with the existing external action instruments, trust funds ensure faster decision making process and flexibility, which can be of great importance in emergency and post-emergency situations. As they combine funding from the EU, MS and other donors, they guarantee greater resources for external action. The fund pooling also translates into better coordination between different EU donors in selected areas of intervention. However, along with the benefits, some risks need to be stressed. The MS’ involvement in trust funds is insufficient, possibly due to the increased role of the EC and funding ownership issues. The EC’s reinforced powers are also criticised by the EP, which feels excluded from the management of funds partially sourced from the EU budget. This proves that in order to address the aspect of flexibility a new tool, facility or mechanism within EU budget should be developed that will address external emergencies.

The role of the EC as a key player in the migration and refugee crises management is also reflected in the nature of the EAM and hence its role in the trust funds and facility established in Turkey.

Next, the EU’s dependence on third countries, especially in the context of the EU Facility for Refugees in Turkey, where the EU’s policy

³⁵ L. den Hertog, *op. cit.*, p. 7.

objective of reducing the numbers of asylum seekers was outsourced to Turkey, comes with a price. On the one hand, financial resources are at stake, on the other internal and international relations, as well as reputation of the EU.

Finally, an extremely important issue is that all “new” financial solutions focus predominantly on migration and asylum, prioritising it over other long-term goals set under EU external action programming. Pushing the EU’s current domestic agenda at the expense of long-term external programming goals is rather short-sighted and therefore widely criticised. Such goals cannot be limited to immediate reaction to a crisis with an emphasis on quick fixes, as this contradicts the inherent nature of sustainable development.

Last but not least, the most profound effects may lead to a process of undermining the role of third countries in defining aid needs and introducing some unprecedented changes to the relationship between migration and EU’s development policy. This relationship is more often based on an approach in which cooperation between the EU and a third country is dominated by the EU’s external agenda on migration.

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Innovation Policy for Promoting Inclusive Growth and Competitiveness in the EU and in Asian Countries

Abstract

When taking actions to promote the competitiveness of a given country or group, the benefits of higher growth and dynamic development should be reaped by all members of a given community or group and, thus, this growth should be inclusive. The aim of the paper is to present the role of the innovation policy in fostering inclusive growth in China and in the EU. It is arguable that this policy should, in particular, support the growth of inclusive innovation irrespective of the level or value of the economic growth of a given country. However, given the diverse conditions of each country and, thus, different issues to be tackled, inclusive innovation must consider how unique such countries are. Supporting and developing inclusive innovation is not only the exclusive policy of developing countries such as China. In the EU, fostering this kind of innovation is highly encouraged, which contributes to achieving sustainable growth and ensuring benefits from inclusive innovations to EU inhabitants given that this is the major priority of this union and the foundation on which further continued growth of the EU is built.

Key words: Inclusive Innovation, Inclusive Growth, Innovation Policy

Introduction

When taking actions to promote the competitiveness of a given country or group, the benefits of higher growth and dynamic development should be reaped by all members of a given community or group and,

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thus, this growth should be inclusive. Given the changing external conditions, including the economic and financial crisis, it is necessary to provide even more support for socially less advantaged groups. The Treaty on the Functioning of the European Union underlines the necessity to ensure the well-being of all its inhabitants and indicates that the objective is “to ensure the economic and social progress of their States by common action to eliminate the barriers which divide Europe” and “affirming as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples”.¹ In EU documents – mainly in the Europe 2020 strategy – one of the priorities is not only smart and sustainable but also inclusive growth, which means that a high-employment economy will be fostered with a view to achieving economic, social, and territorial cohesion. The growth of this type also includes investing in skills, fighting poverty, and taking actions to modernise labour markets or social protection.² There is no doubt that the spectrum of planned and implemented actions in this respect is broad both at the level of the EU and individual Member States. In particular, this spectrum is fostered considerably in terms of innovation policy by implementing inclusive innovation.

The issue of inclusive growth is also discussed in various regions of the world, including Asian countries. Compared to other parts of the world, the economic growth of China is still relatively high, which is accompanied by problems of a different nature, including social ones. Even though China has no official policy concerning inclusive innovation, the government’s policies, including the economic policy, have supported inclusive innovation; furthermore, the well-being of the Chinese has been improved by scientific and technical innovations since 2002.³ By seeking directions and tools for achieving even more sustainable and inclusive growth and, thus, providing inclusiveness for marginal people and groups, it was decided that a policy supporting innovative solutions should be considered.

The aim of the paper is to present the role of the innovation policy in fostering inclusive growth in China and in the EU. It is arguable that

¹ *Preamble, Consolidated version of the Treaty on the functioning of the European Union*, Official Journal of the European Union, 2016/C 202/47.

² *Europe 2020, Strategy for smart, sustainable and inclusive growth*, Communication from the Commission, Brussels, 3.3.2010, COM(2010) 2020 final, pp. 5, 11–12, 20–22.

³ *Overview of inclusive innovation policies in the People’s Republic of China*, Chinese Academy of Science and Technology for Development, Beijing, December 2016, https://www.innovationpolicyplatform.org/system/files/imce/InclusiveInnovation-PoliciesChina_FINAL.pdf (17.05.2018).

this policy should, in particular, support the growth of inclusive innovation irrespective of the level or value of the economic growth of a given country. However, given the diverse conditions of each country and, thus, different issues to be tackled, inclusive innovation must consider how unique each country is.

Some Considerations on Inclusive Innovation

The lines for action taken in each country and group are aimed at fostering economic growth, which, in turn, ought to contribute to improving the well-being of the society of such countries and integration groups. Still, it is not always the case that benefits of increased material well-being are disseminated evenly within different social groups; as a result, growth is not inclusive. Further, the issue of inclusiveness is itself multi-dimensional since it refers not only to poverty and income distribution between people or households but also to well-being or participation in the social life of individuals.⁴ Therefore, it may be indicated that inclusive growth is the one “that is both sustainable and broad-based in terms of employment opportunities”⁵ or, in broader terms, the one that brings benefits to numerous people and social groups. As a result, actions are implemented, including innovative ones, which aim to contribute to achieving the aforementioned objective.

Innovations are launched to accomplish numerous diverse objectives, which include both improving the competitiveness of a country or company and supporting social inclusiveness. With that in mind, inclusive innovation, i.e. “initiatives that directly serve the welfare of lower-income and excluded groups”⁶ is considered and present in different areas and spheres of life. Inclusive innovation may also be described as “the means by which goods and services are developed for and by marginal groups (the poor, women, the disabled, ethnic minorities, etc.)”⁷ or as “any innovation that helps expand affordable access to quality products and services which help create livelihood opportunities for excluded populations

⁴ *Promoting inclusive growth. Challenges and policies*, eds. L. de Mello, M.A. Dutz, OECD, the World Bank, OECD Publishing 2012, pp. 9–10, <http://dx.doi.org/10.1787/9789264168305-en> (17.05.2018).

⁵ M.H. Khan, *The political economy of inclusive growth*, in: *Promoting inclusive growth...*, op. cit., p. 16.

⁶ *Innovation policies for inclusive growth*, OECD, OECD Publishing 2015, p. 5, <http://dx.doi.org/10.1787/9789264229488-en> (17.05.2018).

⁷ Ch. Foster, R. Heeks, *Policies to support inclusive innovation*, “Manchester Centre for Development Informatics Working Paper”, no. 61/2015, p. 2.

– on a sustainable basis and with significant outreach”.⁸ Innovations of this type also refer to new ideas that will improve the economic well-being of groups of marginal, vulnerable people or those on low incomes.⁹

Still, the following innovation aspects should be considered: the necessity of scaling innovations, i.e. initiatives undertaken in this respect, require broad propagation and focus on creating financially sustainable business models. It is important for marginal people and those with low incomes to participate in such initiatives and, thus, to focus on their integration and inclusiveness;¹⁰ on the other hand, there is another aspect that describes inclusive innovation: the issue of which members of marginal groups should be included in innovations. As for inclusive innovation, the question is on which marginal/marginalised groups such innovations should focus, given that they include different categories/groups of people. The idea is that they should focus on the poor with the lowest incomes, and the innovation that provides inclusiveness for marginal groups should be prioritized.¹¹

Therefore, a comprehensive approach to inclusive innovation should be taken into consideration. This approach presents innovations in the form of the so-called ladder of inclusive innovation, each level of which allows you to have a deeper understanding of this type of innovation and, thus, inclusiveness. At the same time, it is the next step that involves deepening and/or widening the range of inclusiveness of such marginal groups. Level 1 concerns intention, as innovations are to address the needs or problems of marginal groups. The next level concerns consumption in the sense that inclusive innovation is adopted and used by marginal groups; therefore, concrete goods or services have to be developed. The third level tackles the impact of innovation on the livelihoods of marginal groups; this impact has various definitions, e.g. in the context of improving productivity, well-being, usefulness; livelihoods in the qualitative context; and opportunities in the quantitative one. The next level, process, is when the marginal group is involved in the development of the innovation, while the fifth level is characterised by an inclusive structure,

⁸ *China: Inclusive innovation for sustainable inclusive growth*, Document of the World Bank, October 2013, p. iii, http://www.worldbank.org/content/dam/Worldbank/document/EAP/China/china-inclusive-innovation-policy-report_en.pdf (17.05.2018).

⁹ *Overview of inclusive innovation policies...*, op. cit., p. 3, https://www.innovation-policyplatform.org/system/files/imce/InclusiveInnovationPoliciesChina_FINAL.pdf (7.07.2016).

¹⁰ *Innovation policies for inclusive growth...*, op. cit., pp. 5, 10.

¹¹ R. Heeks, M. Amalia, R. Kintu, N. Shah, *Inclusive innovation: definition, conceptualisation and future research priorities*, “Manchester Centre for Development Informatics Working Paper”, no. 53/2013, pp. 4–6.

Table 1. Inclusive and standard innovations

Types of innovation and their impact	Costs of providing innovations
<p>Standard innovations</p> <ul style="list-style-type: none"> • opportunities provided for radical and incremental types of innovation; demand and supply conditions allow exploring a variety of demands; • demand for individual firm characterised by volatility depending on various trends, less prone to exogenous shocks; • higher incomes provide opportunities for consumption of products with longer-term benefits and corresponding investments; • consumers are often better informed about product benefits and uses. 	<p>Larger opportunities for innovation development compared to inclusive innovators, as public goods provide adequate market infrastructure.</p>
<p>Inclusive innovation</p> <ul style="list-style-type: none"> • demand requires innovations that substitute for absent public services; • demand for innovations is characterised by uncertainty: new products often create new markets, whose prospects are hard to evaluate; • grassroots innovations need to emphasise economic activities relevant to the poor; • inclusive innovation provides returns to consumers; for grassroots innovations, additional contributions stem from integrating the poor into economic activities; • the constrained budgets of the poor entail a low willingness and ability to pay for products and services without immediate tangible benefits. 	<ul style="list-style-type: none"> • lack of baseline conditions; • lack of infrastructure raises costs of supplying the lowest-income market with products, “difficult-to-reach” markets increase prices charged for products.
Differential policy approaches for inclusive innovation	
<ul style="list-style-type: none"> • ensure regulatory impediments do not prohibit or constrain innovations serving the poor; • facilitate access to training and capital; • developing credit options; • credit options to smooth consumption patterns and, as a result, providing firms with more stable income; • training/providing consumer information is critical to the uptake of relevant products. 	<ul style="list-style-type: none"> • product provision should be devised in a way that either does not require basic infrastructure or simultaneously supplies infrastructure. • continued efforts to provide basic infrastructure can raise opportunities for inclusive innovations.

Source: *Innovation policies for inclusive growth...*, op. cit., pp. 19–20 and the author’s modification.

on the basis of which inclusive innovations are developed and created as part of an innovation system. The sixth and last level, post-structure, refers to the fact that inclusive innovation is created within a frame of knowledge and discourse that is itself inclusive.¹² Table 1 presents differences between inclusive and standard innovations.

It is without doubt that innovations affect inclusive growth experienced by people with low and middle incomes through a direct impact on income distribution, frugal innovation, the aim of which is to find solutions that enhance incomes of various groups. In general, such innovations involve changed versions of products already in use so that such products are available for people with low incomes or innovations concerning the business process. Example of inclusive innovations include healthcare service providers in India using ICT to reduce treatment costs, while new healthcare centres are being built in remote areas for rural communities, and the Tata Nano, which is the cheapest car. Another type of innovation includes grassroots innovations undertaken and developed by people with low and low-middle incomes by gaining traditional and externally-developed sources of knowledge; still, it is a local dimension of such innovations that is important. Grassroots innovations are undertaken by the poor and associated with the informal economy; yet, they can be supported by other actors in the innovation system such as universities, private firms, or non-governmental organisations. At the same time, the role of the poor in these innovations may vary: from a minor role e.g. as product distributors to a more extensive one, for example sanitary napkin-making machines in India. This concerns the adoption of innovative/revealing solutions using the existing technologies.¹³

Role of Innovation Policy in Supporting Inclusive Growth

The aim of implementing inclusive innovation policies is to solve the misallocation of resources in the economy, to create jobs and promote economic growth/development.¹⁴ The question is: what the weaknesses of the innovation system that does not support inclusive innovation are? They include development failures, i.e. such innovations are not being

¹² Ibidem, pp. 4–7.

¹³ C. Paunov, *Innovation and inclusive development: a discussion of the main policy issues*, “Working Paper Series DSTI/DOC”, no. 1/2013, pp. 6, 9–11; *Innovation policies for inclusive growth...*, op. cit., pp. 10–12.

¹⁴ S. Planes-Satorra, C. Paunov, *Inclusive innovation policies. Lessons from international case studies*, “OECD Science, Technology and Industry Working Papers”, no. 2/2017, p. 27, <http://dx.doi.org/10.1787/a09a3a5d-en> (18.05.2018).

developed enough; design failures and, thus, failures in the existing mismatch between needs and the context of marginalised groups. Another weakness is a diffusion failure, i.e. it is because innovations do not disseminate: do not scale, do not increase; or there are issues with their dissemination and failures when it comes to their use, which result from the fact that these innovations are not used effectively enough for their impact to be sufficient, the example being when they are used in a limited scope.¹⁵

Inclusive innovation policies are therefore indicated and considered as such policies that “aim to remove barriers to the participation of individuals, social groups, firms, sectors and regions that are underrepresented in innovation activities. Their objective is to provide all segments of society with equal opportunities to successfully participate in and benefit from innovation”.¹⁶ However, these policies address the challenges associated with social, industrial, and territorial inclusiveness using available instruments. What is more, they contribute to achieving social inclusiveness, i.e. including individuals and groups in activities in terms of research, entrepreneurship, and innovation activities. Industrial inclusiveness, on the other hand, concerns actions in favour of implementing innovation activities in less innovative companies, whereas territorial inclusiveness focuses on less innovative regions in order to reduce differences between less and more innovative regions. The instruments used by the policy are aimed to include disadvantaged groups in innovation activities, to meet challenges associated with barriers to entrepreneurship, and to enhance innovation in disadvantaged areas.¹⁷

The necessity to provide inclusive growth is an essential issue to be tackled not only in countries with strong economic growth and, at the same time, with a lower development level such as China, but also in highly-developed EU countries, in which there are various problems and it is necessary to support inclusive growth.

Innovation Policy for Inclusive Growth in the EU

The Europe 2020 strategy for the EU emphasises the need to support inclusive growth, which became one of the development priorities. What is more, it stresses that the number of marginal people has to be reduced by at least 20 million.¹⁸ Still, the progress in this regard is measured us-

¹⁵ Ch. Foster, R. Heeks, op. cit., p. 3.

¹⁶ S. Planes-Satorra, C. Paunov, op. cit., pp. 17–27.

¹⁷ Ibidem, p. 17.

¹⁸ *Europe 2020, Strategy for smart, sustainable and inclusive growth...*, op. cit.

ing the following indicators: people at risk of poverty or social exclusion – being a headline indicator and described further by sub-indicators, and three dimensions of poverty are considered, which include monetary poverty. Other sub-indicators include severe material deprivation and very low work household intensity, which describe social exclusion. However, an individual does not have to experience all three dimensions of poverty. In 2016, 23.8% of the EU population was threatened by poverty or social exclusion,¹⁹ while the following groups of people were particularly threatened by poverty or social exclusion in the EU: women, children, also young or unemployed people, lone parents, people with a lower level of education, those born in a different country, or those living in rural areas²⁰ (Table 2).

Table 2. Indicators characterised in the EU and related to the priority of the Europe 2020 strategy – inclusive growth

Headline Indicator – people at risk of poverty or social exclusion	Unit	2010	2013	2014	2015	2016	2017
People at risk of poverty or social exclusion ⁽¹⁾	Cumulative difference from 2008 in thousand	516	5,458	4,635	1,819	810	(:)
	% of total population	23.8	24.6	24.4	23.8	23.5	(:)
People living in households with very low work intensity	Thousand	38,978	41,147	42,134	39,830	39,135	(:)
	% of total population	10.3	11.0	11.3	10.7	10.5	(:)
People at risk of poverty after social transfers	Thousand	82,020	83,419	85,969	86,752	86,904	(:)
	% of total population	16.5	16.7	17.2	17.3	17.3	(:)
People severely materially deprived	Thousand	41,682	48,076	44,465	40,361	37,800	33,384 ^(e)
	% of total population	8.4	9.6	8.9	8.1	7.5	6.7 ^(e)

Source: Headline indicators scoreboard, <http://ec.europa.eu/eurostat/web/europe-2020-indicators/europe-2020-strategy/headline-indicators-scoreboard> and related websites (31.07.2018).

¹⁹ *Smarter, greener, more inclusive? Indicators to support the Europe 2020 strategy*, 2017 edition, Publications Office of the European Union, Luxembourg 2017, p. 130.

²⁰ *Ibidem*, pp. 143–151.

The EU implements actions related to promoting societal challenges, including inclusiveness, through research programmes as part of the activities supported by European funds. The Horizon 2020 programme includes diverse areas such as: Societal Challenges, on which USD 35.4 billion PPP (EUR 29.7 billion) was allocated and distributed along 7 challenges: health, demographic change and well-being; food security, sustainable agriculture and forestry, marine, maritime and inland water research and the bioeconomy; smart, green and integrated transport systems; climate action, the environment, and resource efficiency and raw materials; inclusive, innovative and reflective societies; secure societies.²¹ Financial resources are also launched under other programmes, including those supported from the European Social Fund. The EU Programme for Employment and Social Innovation is being implemented as a financial instrument that supports sustainable employment and counteracts social exclusion and poverty. It includes the instruments that were in use from 2007–2013: Progress, EURES, and Progress Microfinance. The last instrument – the Microfinance and Social Entrepreneurship axis – provides support for microcredits, micro-loans, and social entrepreneurship.²²

Individual EU Member States also take appropriate measures in favour of social innovations. For example, there is an initiative concerning start-ups and business transfer in the State of Baden–Württemberg (since 2012) in order to support immigrant entrepreneurship. The implemented instrument included – public awareness campaigns, financial support for training and counselling initiatives for immigrant entrepreneurs provided by business chambers.²³ In 2007–2013, there was a programme in Lithuania (the European Progress Microfinance Facility Programme) that fostered women’s entrepreneurship by facilitating their access to financial services. Micro-loans with favourable conditions on credit provision and repayment were granted.²⁴ In Ireland, on the other hand, there was an innovation vouchers programme for the design sector when it was discovered that start-ups in the design sector experienced issues due to the lack of resources. Therefore, as part of the programme, young SMEs in this sector were granted funds so that they could achieve their technical and trade milestones and introduce new products onto the international market. The instrument involved equity investment and technical

²¹ <https://www.innovationpolicyplatform.org/content/european-union> (1.08.2018).

²² *Guide to EU funding 2014–2020*, European Parliamentary Research Service, European Union 2017, pp. 37–39, http://www.europarl.europa.eu/EPRS/Funding_Guide.pdf.

²³ S. Planes-Satorra, C. Paunov, op. cit., p. 50.

²⁴ *Ibidem*, p. 51.

support for firms.²⁵ Including several countries, the EuroAgri Foodchain project provides support for R&D in the agricultural and food sector from 2014–2020 and involves SMEs, large companies, universities, and research establishments. The project features the participation of companies from 12 countries in order to support international R&D cooperation in terms of the agri-food industry. Established in 1985, it is being developed as part of the EUREKA network that includes over 40 countries; EuroAgri FoodChain is one of the EUREKA network platforms and aims at supporting productivity and competitiveness of the agri-food industry in Europe through aiding R&D-related projects in this industry. This support revolves around introducing potential partners, financing, promoting products and technologies developed within the frame of the project, counselling, and accessing EuroAgri foodChain information.²⁶

Promoting Inclusive Innovation in Asian Countries Through the Innovation Policy – The China Example

Supporting inclusive growth is also becoming an important objective in China due to the scale of the problems experienced there. In 2017, the Gini index was 42.2 (2012 World Bank estimate); income share held by the highest 10% – 31.4%; by the highest 20% – 47.9%; by the lowest 10% – 2.1%; and the lowest 20% – 5.2%, which is also associated with strong economic growth in this Asian country.²⁷ Still, China has no policy concerning inclusive innovation promotion; instead, numerous initiatives, including policies, aimed at doing so have been implemented since 1978. At first, the Chinese government focused on the development of the infrastructure and the creation of a new one; then efficiency became the top priority. As a result, strong economic growth was recorded in China. However, the notion that scientific and technological innovations are a crucial strategy for improving the well-being of the Chinese has been fostered since 2002. It is inclusive innovation that is important, nonetheless. There is an ongoing implementation of policies that promote inclusive innovations for public well-being, agricultural and rural development, regional development, industrial development, small- and micro-enterprises, and grassroots innovation. The public well-being area should be considered

²⁵ *Ibidem*, p. 54.

²⁶ *Innovation policies for inclusiveness – policy cases. EuroAgri Foodchain. Country: Participating EUREKA countries*, January 2017, https://www.innovationpolicyplatform.org/sites/default/files/EUREKAcountries_EuroagriFoodchain_0.pdf (1.07.2018).

²⁷ *World Development Indicators – Poverty and Shared Prosperity*: <http://wdi.worldbank.org/tables> (1.07.2018).

because the 12th Five-Year Plan on National Economic and Social Development (2011–2015) provides details on various types of support provided for people's livelihoods. As for grassroots innovation, on the other hand, policies are aimed to support S&T education in rural areas through programmes being launched, providing S&T services, financing loans, and providing technological counselling.²⁸ The National Programme for Medium and Long-Term Scientific and Technological Development (2006–2020) identified agriculture, environment, health and livelihoods as priority themes. The 12th Five-Year Plan for the Development of Science and Technology of China states that the country must use science and technology to benefit people's welfare, connect scientific and technological progress and innovation with improving people's living standards and quality of life; and strengthen the application of advanced scientific and technological achievements to promote the popularisation of science and technology.²⁹

An example of a policy implemented as part of inclusive innovation constitutes the Innovation Fund for SMEs, which has been developed since 1999 and focuses on enhancing the capability of SMEs to engage in S&T innovation, as well as on encouraging various entities to increase investment in technology innovation by SMEs. The objective of this policy's instruments is to support territorial and industrial inclusiveness. The Fund features the following instruments: financial support for S&T SMEs in the early stage and advisory support.³⁰

Despite all the actions and activities undertaken through inclusive innovation practices, China still faces various problems: a high share of people with low incomes, unsustainable regional development, or inequality in access to basic public services. Further lines for action include the necessity of considering the significance of making this policy more inclusiveness-oriented, supporting grassroots group innovators and companies in developing inclusive innovations, identifying the demand for inclusive innovations in individual regions and social groups, making improvements to the policy system so that it could reflect the low-income people's demand. Therefore, the fact that inclusive innovation should not be associated with low costs and prices is also to be considered, with the need to retain the protection of intellectual property rights.³¹

²⁸ *Overview of inclusive innovation policies...*, op. cit., pp. 3–4, 7.

²⁹ *Ibidem*, pp. 7–8.

³⁰ *Innovation Fund for SMEs. Innovation Policies for Inclusiveness - policy cases, Country: People's Republic of China*, https://www.innovationpolicyplatform.org/sites/default/files/China_InnovationFundforSMEs_0.pdf (1.07.2018).

³¹ *Overview of inclusive innovation policies...*, op. cit., pp. 32–33.

Conclusion

To conclude, the social dimension of economic growth is becoming increasingly important these days. To support inclusiveness in various dimensions, innovative solutions are being implemented as part of the innovation policy. The positive impact of inclusive innovation is reflected in its scaling, and this scaling depends on where consumers are located and what market segmentation is like. Therefore, appropriate demand is significant. As indicated by the experience gained from the implementation of the innovations that have been successful in scaling (including mobile phones and other mobile services), this scale was possible as a result of strong demand, gaining a deep understanding of the requirements of the poor, developing profitable business models, favourable regulatory conditions, private entrepreneurial initiative, open access to the ICT infrastructure, building on existing infrastructures.³² Supporting and developing inclusive innovation is not only the exclusive policy of developing countries such as China. In the EU, fostering this kind of innovation is highly encouraged, which contributes to achieving sustainable growth and ensuring benefits from inclusive innovations to EU inhabitants, given that this is a major priority of this union and the foundation on which further continued growth of the EU is built.

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³² *Innovation policies for inclusive growth...*, op. cit., pp. 24–28.

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Global Value Chain of Clusters Enhancing EU Competitiveness

Abstract

For many years European Union has been putting more and more effort toward boosting innovation and becoming the most competitive global economy. The aim of the article is to explore the concept of the global value chain of clusters and the role clusters might play in enhancing the EU competitiveness. The authors develop the concept of integration between clusters and present the examples of clusters cooperation within the global value chain (GVC), both in terms of horizontal and vertical integration. Cooperation of clusters within the global value chains gets more and more intense with the processes of globalisation and, paradoxically, is boosting the significance of regions. Regions with strong cluster structures are becoming platforms for creating knowledge and innovation and enhancing cooperation on the regional, national and even global scale. The idea of cluster cooperation networks in the EU is developed in light of smart specialisation strategy: a tool for enhancing regional innovation-based growth, facilitating the role played by the SME sector and aimed to reduce imbalances in development, both spatial and social. Well-defined and well-managed clusters, operating in line with the economic specialisations of regions, provide opportunities to strengthen the competitive position of local and regional companies and enhance the innovation and technology transfer within the GVC.

Key words: Clusters, Global Value Chain, Internationalisation, Smart Specialisation

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Introduction

Global value chains (GVCs) and the innovation performance

The concept of the value chain (VC) is used to analyse the complex process of delivering goods and services to the market – from the product conceptualisation/design, through its production, distribution, marketing and its delivery to final consumer. In the model environment, the product gets added value at each stage of its VC, however the contributions to the total value added for the product at different stages of the VC are not necessarily equal. In the great majority of cases, the first stages of a VC generate the low share of value (e.g. raw materials processing), while the high value-added activities are limited to the final stages of the product.

With the increasing globalisation of economies, the value chains become global as well. The concept of global value chains (GVCs) developed mainly under the international trade theories and development theories, provides the framework for analyzing the global flow of goods and services. The term “global value chain” was proposed by Gereffi *et al.* in a comprehensive study on the value distribution among countries.¹ They proposed a theory of value chain governance that is based on three factors: complexity of transactions, ability to codify transactions and capabilities in the supply base. The combinations of these factors determine the value chain type.

Nowadays researchers and policy makers focus on the role the GVCs play in terms of: industrialisation strategy, labour issues, regional development, innovation and technological spillovers, economic crisis, supply chain resilience, environmental protection, consumer protection, poverty alleviation, trade regimes or national accounts.²

As companies locate their production processes in different countries or regions trying to optimise their costs, the fragmentation of GVCs increases and so does the polarisation of countries in terms of value they add in the GVCs. It raises concerns of policy makers towards countries or groups of countries engaged in the low value-added activities in the GVCs, especially in terms of their limited participation in innovation and technology transfer. The recent OECD policy paper “The links between global value chains and global innovation networks” highlights this issue, trying to ask questions on how to foster innovation performance of

¹ G. Gereffi, J. Humphrey, T. Sturgeon, *The Governance of Global Value Chains*, “Review of International Political Economy”, no. 12(1)/2005, pp. 78–104.

² S. Inomata, *Analytical Frameworks for Global Value Chains: An Overview*, Global Value Chain Development Report 2017.

countries involved in trade and production networks within the GVCs and increase international co-operation in innovation.³

The role of clusters in the smart specialisation approach to innovation policy

The idea to increase the contribution of regions in the co-invention of innovations is reflected in the smart specialisation approach adapted in the innovation policy of the European Union and is relevant to the Europe 2020 strategy for smart, sustainable and inclusive growth.⁴ The smart specialisation is a place-based approach, meaning that the competitive advantage of countries/regions should be based on the specific strengths and assets of the country/region, that is, their specialisations. The smart specialisation approach towards innovation policy assumes then that the national/regional efforts and investments towards innovation development should be allocated within the economic areas of smart specialisations. The national/regional priorities of EU Member States are listed in the research and innovation strategies for smart specialisation (RIS3). The process that reveals the national/regional specialisations is described as an *entrepreneurial discovery process* – a long-term, bottom-up, participatory process with multiple actors involved (companies, scientific units, business environment institutions).

The European Commission highlights an important role of economic clusters in smart specialisation strategies.⁵ The concept of clusters was introduced to management science by M.E. Porter, who defined clusters as “geographic concentrations of interconnected companies and institutions in a particular field”.⁶ Clustering is defined by OECD as “the tendency of vertically and/or horizontally integrated firms in related lines of business to concentrate geographically” and clusters as “geographic concentrations of inter-connected firms and related actors (specialised service providers, universities, etc.)”. Clusters do reflect, then, the specialisations of regional economies. They foster inter- and cross-sectoral cooperation within the geographic area and offer resources for implementing smart specialisation strategies. Clusters are to provide a fertile ground for fostering industry

³ *The links between global value chains and global innovation networks: An exploration*, “OECD Science, Technology and Industry Policy Papers”, no. 37/2017.

⁴ *EUROPE 2020: A strategy for smart, sustainable and inclusive growth*, European Commission 2010.

⁵ *The role of clusters in smart specialisation strategies*, European Commission 2013.

⁶ M.E. Porter, *Clusters and New Economics of Competition*, “Harvard Business Review”, no. 76(6)/1998, pp. 77–90.

transformation and the development of emerging industries.⁷ Well-defined and well-managed clusters contribute extensively to the development of regional competitiveness.

A number of studies indicate the important role of clusters in fostering the international and innovation performance of companies.⁸ Clusters belong to the group of institutional entities important in the internationalisation process of SME.⁹ Individual cluster members may use a cluster's resources and knowledge sharing possibilities in various stages of internationalisation.

In terms of clusters development policy, the smart specialisation strategies provide tools to:

1. increase international capabilities of individual companies operating in clusters;
2. establish international cluster cooperation in the fields of strategic interest, fostering clusters' role in the GVCs.

This article presents the possible cluster cooperation models in the global value chains.

Cooperation of Clusters in the GVCs

The approach to analyse the role of clusters in the GVCs is based on the approach to mapping global value chains by UNIDO: it highlights the importance of relations between value chain actors and partners involved in various roles within the process value creation.¹⁰ The value chain mapping provides also the characteristics of the final product and target markets. Figure 1 presents six group of questions to be answered while mapping the global value chain: *roles, actors, partners, relations, final product and target markets*.

⁷ Ch. Ketels, S. Protsiv, *European Cluster Panorama*, European Commission 2016.

⁸ E.g. B. Jankowska, C. Główska, *Clusters on the road to internationalization – evidence from a CEE economy*, "Competitiveness Review", vol. 26, is. 4/2016, pp. 395–414; A. Colovic, O. Lamotte, *The role of formal industry clusters in the internationalization of new ventures*, "European Business Review", vol. 26, is. 5/2014, pp. 449–470; D. Libaers, M. Meyer, *Highly innovative small technology firms, industrial clusters and firm internationalization*, "Research Policy", vol. 40, no. 10/2011, pp. 1426–1437; S. Andersson, N. Evers, C. Griot, *Local and international networks in small firm internationalization: cases from the Rhône-Alpes medical technology regional cluster*, "Entrepreneurship and Regional Development", 25:9-10, pp. 867–888.

⁹ E. Costa, A.L. Soares, J. Pinho de Sousa, *Institutional networks for supporting the internationalisation of SMEs: the case of industrial business associations*, "Journal of Business & Industrial Marketing", vol. 32, is. 8/2017, pp. 1182–1202.

¹⁰ *Agro-Value Chain Analysis and Development, The UNIDO Approach, A staff working paper*, UNIDO 2009.

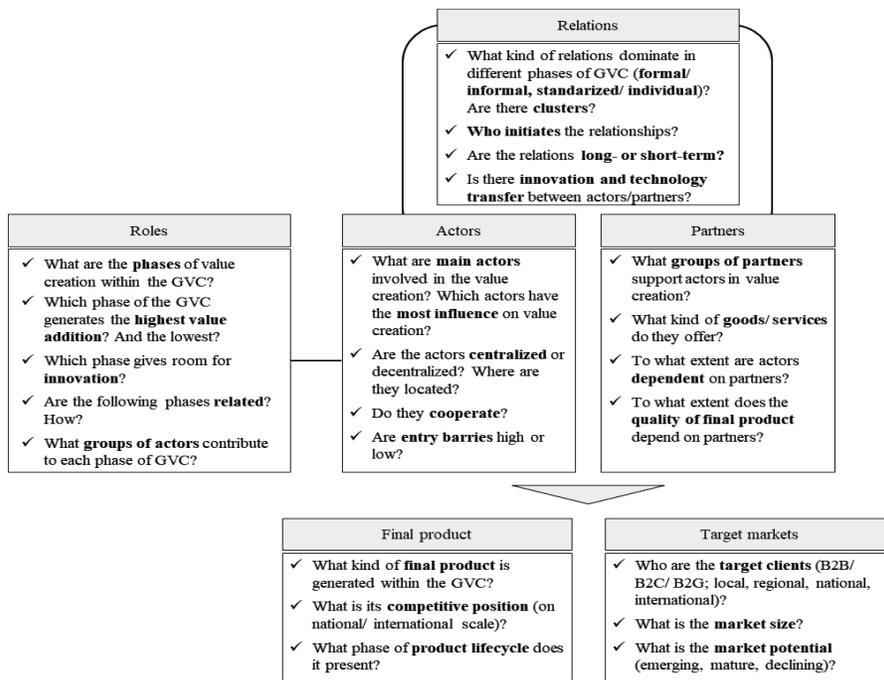


Figure 1. The approach to map the GVC

Source: own elaboration based on UNIDO.

Strengthening the relations between actors representing the same geographical area within the global value chain may lead to cluster integration: horizontal (with actors involved in the same role within the value chain) or vertical (with actors involved in different roles within the value chain). The competitive position of individual companies cooperating within a clustered structures gets stronger in terms of their relationships with both other actors involved in the value chain (involved in different stages of the value chain) and partners (operating inside and outside of the cluster).

The next step in the process of company integration within a value chain is the cooperation between clusters. Similarly, as in the case of company integration within the cluster, the cluster cooperation may be horizontal (with clusters from different geographic areas involved in the same role within the value chain) or vertical (with clusters from the same or different geographic areas involved in the different roles within the value chain). In both cases the importance of clusters among GVC actors increases.

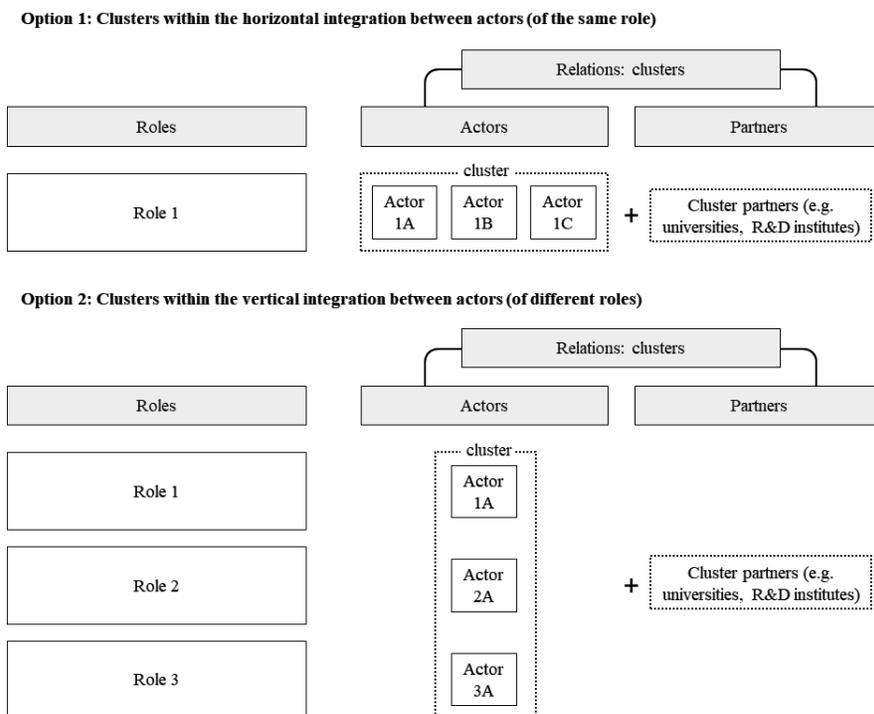


Figure 2. Clusters within the GVC

Source: own elaboration.

The idea of cluster cooperation along value chains in light of the smart specialisation approach is implemented within the European Cluster Collaboration Platform.¹¹ The initiative provides tools for: 1. Cluster cooperation mapping (with hundreds of cluster organisation profiles to be filtered within the European Cluster Observatory), 2. Matchmaking events (*C2C* – cluster to cluster and *C2B* – cluster to business meeting), 3. International cooperation (key information sources helping clusters and SMEs cooperate with strategic countries beyond Europe), 4. Partner search (a virtual “marketplace” to trigger direct dialogue with other clusters), 5. EU cluster partnerships (presentation of ECPS – European Strategic Cluster Partnerships).¹² Silicon Europe Worldwide is an example of cluster coop-

¹¹ www.clustercollaboration.eu (15.20.2018).

¹² C. Schierenbeck, *Support actions for cluster cooperation along value chains towards industrial modernization*, Industry 4.0: opportunities, challenges and strategies for the industry of the future Toscana Tech, Florence, 28.02.2017.

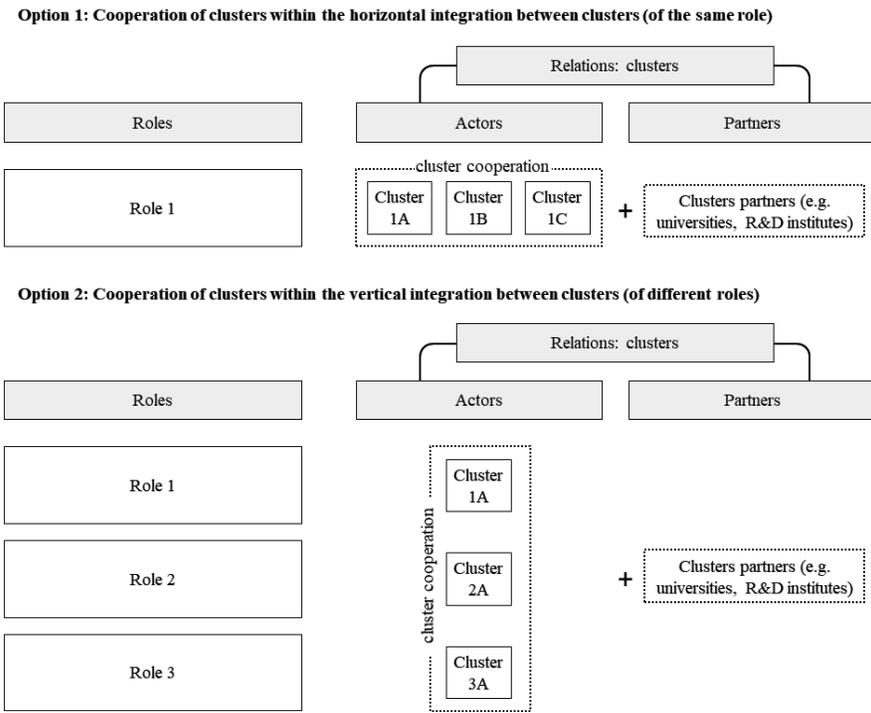


Figure 3. Cooperations of clusters within the GVC

Source: own elaboration.

eration established within the European Strategic Cluster Partnerships for Going International (ECPS-4i). The partnership was built in 2016 by 6 clusters: mi-Cluster, Minalogic, High Tech NL, Fondazione Distretto Green & High Tech Monza-Brianza, Silicon Saxony and DSP Valley. The aim of the initiative was to strengthen the global position of cluster members on non-European markets by establishing relationships on an intermediary level with selected regions: Taiwan, The Northeastern region of the USA and South East Asia.¹³

The individual members of clusters may benefit from clusters integration on many ways. Apart from benefits related directly to internationalisation support, the integration between clusters provides better access to domestic target markets, increases bargaining power (towards clients, suppliers or policy makers), provides greater access to capital, human or

¹³ *European Semiconductor Cluster internationalisation Project – Silicon Europe Worldwide* – the project description.

technical resources and strengthens the umbrella brand of regional actors. The vertical integration of clusters provides additionally great opportunities for cross-sectoral cooperation and development of emerging industries, both with actors playing the same or different roles within the global value chain.

The cooperation of clusters within the horizontal integration models are common in the agricultural industries. The joint activity of agricultural producers, in form of capital or functional integration, allows for many advantages for individual farmers – it brings the possibility to obtain higher prices for products, provides greater access to financial resources and information.¹⁴ The further integration within the value chain, in form of agriculture clusters integration, brings for advantages for the whole industry – it strengthens the position of the country/region in the global scale and consequently increases the position of individual farmers in the global value chain. A good example here is the ASEMESA, the Spanish Association of Exporters and Industry of Table Olives that is the peak industry body representing the interests of the whole table olives sector in Spain and promoting the Spanish table olives worldwide, thus strengthening the competitiveness of individual produces on the global scale.¹⁵

The Aviation Valley Association – an industrial cluster created in 2003 in the Podkarpackie region in Poland, is a good example of the vertical integration of regional actors operating in different roles within the aviation industry. One of the main goals of the association is to enhance the cooperation between companies, scientific units and R&D aviation-related base in order to create favorable conditions for the development of the aviation industry of the region. The Aviation Valley cooperates with other regional clusters operating in related (e.g. space technologies) and distant industries (e.g. life quality) to create a genuine platform and to revive the ecosystem of the region as a whole.¹⁶ The regional cluster cooperation is developed in line with the regional smart specialisation strategy, with focus on the cross-sectoral innovations.¹⁷

Another example of vertically integrated cluster is the Mazovian Chemical Cluster that aims to improve the competitiveness of companies from the chemical sector by developing innovative technologies and en-

¹⁴ A. Nowak, *Rural producers horizontal integration as innovation symptom as well as its opportunities*, “Contemporary Management Quarterly”, no. 4/2011, pp. 163–171.

¹⁵ www.asesmesa.es (15.02.2018).

¹⁶ L. Suwała, G. Micek, *Beyond clusters? Field configuration and regional platforming: the Aviation Valley initiative in the Polish Podkarpackie region*, “Cambridge Journal of Regions, Economy and Society”, vol. 11, is. 2, 7 June 2018, pp. 353–372.

¹⁷ www.dolinalotnicza.pl (15.02.2018).

vironmentally friendly products, together with the science sector in the Mazovia region of Poland. The members of the cluster cover all roles within the value chain of chemical production. Thanks to integrating the cluster within the European Chemical Regions Network (ECRN), the members of the cluster have the opportunity to cooperate and run research projects with partners of 20 member regions with a well-developed chemical industry throughout Europe, e.g. Bavaria (Germany), Brandenburg (Germany), Cheshire West and Chester (UK), Flanders (Belgium), Hesse (Germany) or Ida Virumaa (Estonia).¹⁸

Finally it is worth mentioning an advanced form of the cooperation between clusters that can be observed in the state of Baden-Württemberg in Germany, with medical technology industry predominantly organised in clusters represented by SMEs located in different parts of the state, e.g. the Black Forest-Baar-Heuberg area with surgical and endoscopic instruments, the Rhine-Neckar and Stuttgart/Tübingen areas with personalised medicine and diagnostics, and the northern Black Forest focused on dental supplies and instruments. The close cooperation of clusters has made the state one of the largest markets for medical device in the world, with about 47 thousand people working in 818 companies generating turnover of approx. 12 billion euros in 2014.¹⁹

Conclusion

Particular attention should be paid to the growth of the cluster system and the collaboration of networks of clusters within the global value chains as companies become more and more open for cooperation. Clusters may increase the competitive position of companies involved in global value chains by strengthening their relationships with other actors and partners involved in the process of value creation. Clusters are to provide access to specialist knowledge, skills and other resources typically not available for SMEs. By concentrating enterprises and research institutions in a small geographic area, they provide room for developing rapidly-implemented innovations.

The idea of collaboration network of European clusters representing different geographic areas within the global value chain might be execut-

¹⁸ A. Masłoń-Oracz, M. Proczek, *Klastry a zrównoważony rozwój Unii Europejskiej w świetle inteligentnej specjalizacji na przykładzie Mazowieckiego Klastra Chemicznego (Clusters and the sustainable development of the European Union in terms of the smart specialisation – the case of Mazovian Chemical Cluster)*, „Przemysł Chemiczny” 2017.

¹⁹ *Medical Technology 2016 Facts and Figures for Baden-Württemberg*, BIOPRO Baden-Württemberg GmbH 2016.

ed in light of the smart specialisation strategy: by establishing partnerships between business and scientific communities and undertaking joint research and development projects with many clusters involved. Clusters might then play an important role in fostering innovation and technology transfer within the global value chain, which is especially important for countries/regions that are involved in low value-added activities with the value chain. Cluster partnerships might also facilitate the internationalisation process of SME towards non-European markets and thus enhance the competitiveness of the European Union on the global scale. A significant role is also to be played by public administration that provides resources that might be transferred directly and indirectly to clusters.

The development of clusters cooperation should be accompanied by further empirical research and recommendations for policy makers on how to support the process most effectively, with special focus on the role of clusters in fostering innovation within the smart specialisation framework.

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Gender Stereotypes and EU Antidiscrimination Case Law: (Fighting) a Hidden Threat to the EU Value of Equality?

Abstract

Nowadays law is considered to be an effective instrument of shaping social reality. In this context special attention must be paid to gender equality law and jurisprudence which setting protection against unequal treatment because of someone's gender intend to make a balance between individual's identity and social expectations related to his or her role. These social preconceptions based on gender stereotypes must be contested insofar as they serve as an instrument to rationalize inequality between women and men.

The aim of the article to explore the gender stereotypes in the anti-discriminatory judgments of the Court of Justice of the European Union. The article claims that the CJEU's case law is unambiguous with respect to this. On the one hand the Court contributes to eradication of stereotypes based on gender in some cases, on the other – it reinforces them in the other. The article starts with explanation of the role of the gender equality principle in the EU legal system. It also makes some general remarks on stereotypes, biases and discrimination. The second part is devoted to the CJEU case law in which the Court, explicitly or implicitly, avoids applying the gender stereotypes lens to equality issue. The third part of the article analyses those of the CJEU judgments which, unfortunately, can be considered as perpetuating gender stereotypes and as such discrimination based on them.

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Key words: Gender Stereotypes, Gender Equality, Anti-discrimination Law, CJEU Case Law, EU Values

Introduction

Stereotypes constitute a part of society and an indispensable element of law, which is inevitably based on categories. The problem with stereotypes occurs when they are used to create hierarchy between majority and minority group and serve as an instrument to rationalize inequality. This is quite visible when it comes to gender equality. As masculinity and femininity are not considered equally, stereotypes attached to the social roles of men and women result in gender discrimination. Thus gender stereotypes must be eradicated, as they hinder one of the EU values: equality between women and men.

The aim of the article is to explore the gender stereotypes in the antidiscriminatory judgments of the Court of Justice of the European Union. The article claims that the CJEU's case law is unambiguous with respect to that. On the one hand, the Court contributes to eradication of gender stereotypes in some cases, on the other – it reinforces them. The article starts with an explanation of the role of the gender equality principle in the EU legal system. It also makes some general remarks on stereotypes, biases and discrimination. The second part is devoted to the CJEU case law in which the Court, explicitly or implicitly, avoids applying the gender lens to equality issues. The third part of the article analyses those of the CJEU judgments which, unfortunately, can be considered as perpetuating gender stereotypes and as such discrimination based on them.

The EU Equality Principle: A Tool for Breaking the Discrimination Chain?

The relevance of EU gender equality law results from the role of the gender equality principle in the EU system. Equality, including gender equality, is an ideal underlying the European Union.¹ It is clear from the art. 2 TEU, which stipulates that “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”. What's important is that these values, including gender equality, are common to the Member States “in a society in which plu-

¹ See also: E. Ellis, P. Watson, *EU Anti-Discrimination Law*, Oxford 2014, p. 23.

ralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (art. 2 TEU). Despite being criticized for an illusory character,² the EU values are not only “a beautiful declaration, both righteous and self-congratulatory”.³ They are intended to be a black letter setting operational aims for the EU and its Member States (art. 3 TEU) and imposing on them obligations to observe these values, violation of which may be sanctioned under the enforcement mechanism described in art. 7 TEU. This is particularly true with respect to gender equality, which as a horizontal principle shall be observed in all EU activities. This obligation of the EU is expressed in art. 8 TFEU (“...the Union shall aim to eliminate inequalities, and to promote equality, between men and women”) and art. 10 TFEU (“In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”). When it comes to Member States, their gender equality obligations cannot be reduced to ensuring that the principle of equal pay for male and female workers for equal work or work of equal value is applied as a basic element of construction of the Internal Market (art. 157.1 TFEU) as equality between men and women must be ensured in all areas by the Member States while implementing EU law (art. 23 of the Charter of the Fundamental Rights). The aim of the gender equality instruments is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in all matters covered by the EU law⁴ and the Court of Justice has constantly supported achieving this substantive equality. Ensuring full equality in practice between men and women requires fighting stereotypes.

Stereotypes are preconceptions about the characteristics, roles and attributes of groups of people that are attributed to all individual representative of the group in question, regardless of his or her individual’s actual situation.⁵ As such, they give rise to prejudices that refer to a person’s feelings or attitudes about a group and its members. Prejudice is commonly associated with stereotypes as evaluations of others reflect what is

² See especially: D. Kochenov, *On Policing Article 2 TEU Compliance – Reverse Solange and Systemic Infringements Analyzed*, “Polish Yearbook of International Law”, no. XXXIII/2013, p. 149.

³ Ibidem.

⁴ See i.a.: art. 1 of the directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006 L 204/23.

⁵ A. Timmer, *Gender Stereotyping in the case law of the EU Court of Justice*, “European Equality Law Review”, is. 1/2016, p. 38.

believed to be true about them.⁶ This is always based on generalization and refer to actual or assumed abnormality typified by such characteristics as gender. It is the assumption for existence or inexistence of certain attributes (e.g. motivation, driving skills, productivity or competitiveness) based on this characteristic that gives rise to the discrimination.⁷ When it comes to gender stereotypes they contribute to maintaining a hierarchical/unequal relationship between the genders. As masculinity and femininity are not considered equally, this leads to gender discrimination, despite changes to the social roles of men and women and the stereotypes attached to them.⁸

Contesting stereotypes thus inevitably leads to creating a sphere in which one can express his or her identity on equal footing with the rest of society and therefore is closely connected to the anti-discrimination law: the set of legal norms created in order to ensure the principle of equality. One of the best developed anti-discriminatory legal systems is the EU legal system, in which the equality principle plays a fundamental role. It would not be possible to achieve if not for the instances of CJEU case law that can be pointed out as milestones on the road to substantive gender equality.

Good Practices in Contesting Stereotypes: Examples from Jurisprudence of the Court of Justice of the European Union

The CJEU has played an extremely important role in contesting gender stereotypes when dealing with interpretation of EU equality provisions. In this way the Court has contributed to broadening the personal and material scope of application of equality principle.

With respect to gender equality the case law of the CJEU on stereotypes aims, first and foremost, to enhance the position of women in the labour market. In this context the CJEU noticed that “it appears that even where male and female candidates are equally qualified, male candidates tend to be promoted in preference to female candidates, particularly be-

⁶ <https://cultureplusconsulting.com/2015/05/24/unconscious-bias-stereotypes-prejudice-discrimination/> (3.05.2018).

⁷ Cf. Z. Poposka, *Stereotypes and Prejudices as Cause for Discriminatory Practices – Review of the Case-law of the European Court of Human Rights*, <http://eprints.ugd.edu.mk/16385/>, p. 36 (24.04.2018).

⁸ This development is traced i.a. by E. Lopez-Zafra, R. Garcia-Retamero, *Do gender stereotypes change? The dynamic of gender stereotypes in Spain*, “*Journal of Gender Studies*”, vol. 21 (2)/2012, pp. 169–183.

cause of prejudices and stereotypes concerning the role and capacities of women in working life and the fear, for example, that women will interrupt their careers more frequently, that owing to household and family duties they will be less flexible in their working hours, or that they will be absent from work more frequently because of pregnancy, childbirth and breastfeeding. For these reasons, the mere fact that a male candidate and a female candidate are equally qualified does not mean that they have the same chances”.⁹ Hence, the Court accepts, under some conditions, so called positive actions, i.e. measures intended to give priority in promotion to women in sectors of the public service where they are under-represented, as compatible with EU anti-discriminatory law.¹⁰ In order to prevent negative consequences women face because of the above-mentioned reasons, namely social attitudes toward pregnancy, the CJEU stated that an employer is in direct contravention of the principle of equal treatment embodied in gender equality directives if they refuse to enter into a contract of employment with a female candidate whom they consider to be suitable for the job if this is caused by the possible adverse consequences for them of employing a pregnant woman, because of the rules on unfitness for work adopted by the public authorities, which include inability to work on account of pregnancy and confinement to inability to work on account of illness¹¹ as well as if they terminate the employment contract of a female worker on account of her pregnancy even if she is unable, because of pregnancy, to perform the task for which she was recruited. This kind of protection granted to women is justified, as incapability of reason of pregnancy of performing professional duties “cannot be compared with that of a man similarly incapable for medical or other reasons, since pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds”.¹²

The CJEU also takes steps to contest male gender role stereotypes and to enhance the position of men in household activities. In the *Roca Álvarez* case the Court found the Spanish law under which only a mother whose status is that of an employed person could be granted the right to leave during the first nine months following the child’s birth, including ‘breastfeeding’ leave, which as a result of the evolution of the national legislation and interpretation by the national courts was detached from the biological fact of breastfeeding, whereas a father with the same status could only enjoy this right but not be the holder of it, incompetent with

⁹ C-409/95 Marschall [1997] ECR I-06363, paras. 29–30.

¹⁰ C-158/97 Badeck [2000] ECR I-01875, par. 23.

¹¹ C-177/88 Dekker [1990] ECR I-03941.

¹² C- 32/93 Webb [1994] ECR I-03567.

gender equality provisions. This is because, among other reasons, this kind of national law perpetuates, in the Court's view, a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties.¹³

The CJEU contributed to contest gender stereotypes also outside the employment, namely in access to good and services. The Court encountered them, although it didn't address them directly, in the milestone *Test Achats* case in which the Court dealt with car insurance premium calculated differently for men and women that fell under art. 5(2) of the directive 2004/113. When analyzing this exception to gender equality principle in the context of a car insurance company, the Court confirmed the comparability of the respective situations of men and women with regard to insurance premiums and benefits that implies that the use of sex as an actuarial factor must not result in differences in premiums and benefits for insured individuals.¹⁴ As a result, the use of a person's sex as a kind of substitute criterion for other distinguishing and objective features, such as the kind and extent of the professional activity carried out, the family and social environment, eating habits, consumption of stimulants and/or drugs, leisure activities and sporting activities, that strongly affects life expectancy of insured persons and as such must be taken into account when calculating insurance risk and insurance premiums and benefits, was prohibited. This risk factor, in view of social change and the accompanying loss of meaning of traditional role models, cannot from the outset be linked to one or other of the sexes and social preconceptions about the sexes.¹⁵ The equality between men and women with respect to insurance services requires, in a light of the *Test Achats* case, that premiums and benefits cannot be calculated due to the use of stereotypical thinking about gender essential features. It does not, however, prohibit the use of gender as an objective risk-rating factor where certain physiological differences between men and women may constitute the basis of differentiation of calculation of premiums and benefits at the aggregate level.¹⁶

¹³ C-104/09 Roca Álvarez [2010] ECR I-08661, para. 36.

¹⁴ C-236/09 Test-Achats [2011] ECR I-00773, para. 30.

¹⁵ See: Opinion of Advocate General Kokott C-236/09 Test-Achats [2011] ECR I-00773, paras. 62–63.

¹⁶ See: A. Szczerba-Zawada, *Zasada równego traktowania kobiet i mężczyzn w zakresie składek i świadczeń ubezpieczeniowych – glosa do wyroku TS z 01.03.2011 r. w sprawie C-236/09 Association Belge des Consommateurs Test-Achats ASBL i inni przeciwko Conseil des ministres (The Principle of Equal Treatment of Women and Men in the Field of Insurance Premiums and Benefits – Comment on the Judgment of the CoJ of 1 March 2011 in Case C-236/09 Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres)*, „Europejski Przegląd Sądowy”, no. 6/2012, pp. 43 et seq.

The CJEU and Gender Stereotypes: The Missed Opportunity to Strengthen the Equality Principle

Despite its leading role in fighting biases and discrimination based on gender stereotypes the CJEU in some of its judgments has contributed to reinforcing stereotypes as well. This thesis will be further verified through the prism of equality cases which have arisen on the ground of gender (motherhood issues).

With respect to the protection granted to women during pregnancy and maternity leave, it must be noted that the relevant EU provisions are adopted in the area of employment considered as a public sphere, but they affect the sphere deemed to be private (and in fact outside the scope of EU competences) – the area of family life. Considering the rights of women and men in the sphere of family life as subordinated to economic aspects of integration influenced the law at issue, which inevitably normalized the existing social relations, based largely on the stereotypical division of gender roles and legitimized dichotomous division between the female private family sphere and male public sphere, which includes the sphere of employment. That perpetuated the picture of women as caregivers and men as breadwinners, and gave priority to the respective model of family life. This model of family was sanctified by the CJEU, which stated that the aim of the gender equality directive is neither to settle questions concerned with the organization of the family, nor to alter the division of responsibility between parents.¹⁷ This division was based on the biological differences between sexes according to which pregnancy and childbirth as characteristics exclusively to one sex (what *per se* is based on stereotypical gender binarism) is considered as justification for the female primary obligation to take care of the newborn child. This is confirmed by the aim of maternity leave in EU law, which is to “protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment.”¹⁸ This is discriminatory in a twofold way. First, it constitutes an obstacle to women’s wide and active participation in the labour market, and second, it limits the rights of males to performing a fatherly role, proving that “gender stereotypes are concerned with the social and cultural construction of men and women, due to their different physical, biological, sexual and social functions”.¹⁹

¹⁷ C-184/83 Hoffman [1984] ECR 03047, par. 24.

¹⁸ Ibidem, para. 25.

¹⁹ R. Cook, S. Cusack, *Gender Stereotyping Transnational Legal Perspectives*, Pennsylvania 2010, p. 20.

At the same time, it applies a paternalistic approach aiming at the protection of women.²⁰ This protective language embeds images of women as the delicate sex, which is in conformity with the Court's view that mothers are 'burdened' if they are professionally active next to their role as caregivers.²¹ This woman's role as primary caregiver was taken for granted by the CJEU. This is confirmed by its judgment in the case *Commission v Italy* (C-163/82), in which, without detailed explanation, the Court accepted as compatible with gender equality the difference in treatment in national law, to the effect that the adoptive father does not have the right given to the adoptive mother of maternity leave for the first three months following the actual entry of the child into the adoptive family. That distinction, the Court argued, is justified by the legitimate concern to assimilate as far as possible the conditions of entry of the child into the adoptive family to those of the arrival of a new-born child in the family during the very delicate initial period.²² During this period, it is a woman's obligation to take care of a child as results from the settled case-law of the CJEU. Similarly, in the *Hoffman* case the Court concluded that equality directives do not require the Member States to grant to fathers, respectively, a period of maternity leave which the state encourages women to take by the payment of an allowance, even when the parents would wish otherwise. This differentiation of treatment is justified, in Court's opinion, by the (stereotypical) fact that it is only the mother who may find herself subject to undesirable pressures to return to work prematurely.²³ Suffice to say, the stereotypical approach to pregnancy as exclusively a women's issue can also adversely affect women.

Conclusion

The purpose of EU anti-discrimination law is twofold: to combat exclusion on the grounds of ascribed otherness and protecting individuation as well as respecting social diversity. Ascribing otherness is a process through which persons are categorized by society.²⁴ Such categorization may affect an individual's right to participate in different spheres of ac-

²⁰ Although in the cases concerning prohibition women from doing night work CJEU found this kind of explanation as not able to justify the difference in treatment between men and women. See: A. Timmer, op. cit., p. 43.

²¹ See: especially M. Weldon-Johns, *EU work-family policies – Challenging parental roles or reinforcing gendered stereotypes?*, "European Law Journal", vol. 19(5)/2013, pp. 666–667.

²² C-163/82 *Commission v Italy* [1983] ECR 03273.

²³ C-184/83, *Hofmann*, paras. 26 and 28.

²⁴ See: D. Schiek, *Intersectionality and the Notion of Disability in EU discrimination law*, "Common Market Law Review", is. 53/2016, p. 62.

tivities on an equal footing with others. This happens when arbitrary and prejudicial assumptions about the capabilities of representatives of minority groups is used to define their proper place in society. These kinds of social expectations is particularly strong with respect to gender roles. EU anti-discrimination law should be used in this perspective to break down such harmful stereotypes.²⁵

This should be the main objective of CJEU activity while deciding on interpretation and validity of EU gender equality law. Nevertheless, as the above analysis has proven, the Court's case law lacks consistency with regard to fighting gender stereotypes. In many cases the CJEU has contributed to combating them, in some others – it has either reinforced them or missed the opportunity to eradicate them. This dualism is a *signum specificum* of all CJEU anti-discriminatory case law and can be exemplified by judgments in cases claiming disability discrimination. As a result of the Court's progressive interpretation, the mode of protection against discrimination based on disability has evolved into a definition of disability grounded in the social model, enhancing the level of protection against discrimination based on this characteristic, but on the other hand, the CJEU has failed to include stereotypes, prejudices and stigma as sources of attitudinal and psychological barriers to the full and effective participation of an individual with disability in professional life.²⁶ As CJEU case law determines the meaning and the scope of application of the EU equality principle, the Court should unequivocally contest stereotypes and biases as a source of discrimination, constituting a threat to one of the fundamental EU values. This refers first and foremost to the gender equality principle.

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²⁵ M. Bell, *Shifting Conceptions of Sexual Discrimination at the Court of Justice: from P v S to Grant v SWT*, "European Law Journal", vol. 5 (1)/1999, p. 65.

²⁶ P. McTigu, *From Navas to Kaltoft: The European Court of Justice's evolving definition of disability and the implications for HIV-positive individuals*, "International Journal of Discrimination and the Law", no. 15(4)/2015, pp. 11 *et seq.*

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Civil Society, Democracy and the European Citizens' Initiative: What's the Missing Link?

Abstract

Starting with an analysis of EU legal sources, this article will first highlight the rising interest in the participation of Civil Society in the EU integration process as a possible remedy to bridge the gap between supranational governance and citizens; in a second step, it will discuss the ambiguous use of the term "Civil Society" in the European debate.

Hence it will present the role of Civil Society in the policy-making process as an organized actor in multilevel governance, specifically with regard to the European citizens' initiatives (ECIs) (art. 11.4 TEU) launched so far. The article aims to analyze ECIs from the perspective of Civil Society participation at the EU level.

In the conclusion, the article – on the limited issue of the ECI – draws some critical conclusions regarding the actual outcomes that the active promotion of Civil Society participation has achieved and some questions about the democratic added-value that Civil Society could bring to a more grounded legitimacy of EU decisions.

Key words: European Process of Integration, Democracy, Civil Society, ECI, Reforms

Introduction

It is quite easy to say that Civil Society may play an important role in forging European identity. Nevertheless, it is important to first examine

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what is meant by Civil Society, and what role it does and should play in everyday EU policy making.

The concept of European Civil Society was never defined in the EU founding treaties or the secondary EU norms; neither the EC Treaty nor the Lisbon Treaty describe what its role should be.

Only a very broad definition has been given by the Economic and Social Committee, according to which: “Civil Society is a collective term for all types of social action, by individuals or groups that do not emanate from the state and are not run by it”.¹

In spite of a generally relevant value attributed to Civil Society in the political system of the EU,² on closer scrutiny it becomes apparent that, throughout the years, its definition has never been an issue of debate, nor has what is represented by “Civil Society”; such vagueness has led to misleading ideas regarding its meaning, linked to the different normative theories of democracy and to the different national images of the nature of the European polity, as if it was a projection of the real existing democracies of the home countries onto the European Union.³

On the basis of experience, it can be affirmed that within the EU system, Civil Society has a particular meaning and a dominant role: it is an important actor that contributes, or ought to contribute, to EU policy making in order to enhance the quality and legitimacy of the substantial input through participation, thereby improving policy output.⁴ In other words, Civil Society (by which we mean groups of citizens with common ideas, professional stakeholder organizations, interest groups, the employers’ and trade union organizations, organized interests and actors coming from the sphere of economic life, as well as more or less all the spontaneously emergent associations, organizations, movements, and charities) is a major element in strengthening the performance-based, “output” legitimacy of the EU.

It is at the same time a counterpart in opposition to formal governmental power and a constituent element and integrated player in political processes.

¹ See: Opinion of the Economic and Social Committee on “The role and contribution of Civil Society organizations in the building of Europe”, OJ 1999 C 329/30, p. 30, spec. p. 32.

² J. Steffek, C. Kissling, P. Lanz, *Civil Society participation in European and Global governance*, Houndmills 2008.

³ As B. Kohler-Koch argues: “The broad definition was rather a free-floating signifier with positive connotation”. See: *The three worlds of European Civil Society – What role for Civil Society for what kind of Europe?*, “Policy and Society” 2009, pp. 47–57.

⁴ For a more detailed analysis, see: B. Finke, *Civil Society participation in EU governance*, “Living Reviews in European Governance”, vol. 2/2007, pp. 4–31, <http://www.livingreviews.org/lreg-2007-2>.

As Smismans strategically pointed out, the concept of “European Civil Society” has spontaneously emerged in the EU’s official documents precisely to stress the role of intermediary associations in European governance, but for the citizens, its existence was assumed rather than given a central place and without conceiving of such participation in terms of active citizenship.⁵

Civil Society in the EU

In the history of the EU, Civil Society was widely absent from the research agenda for the first decades of European integration. It is well known that the European integration process started as a functional project of economic cooperation between nation states, but as the European Communities and later the European Union increasingly engaged in more policy fields, it has also become an exercise in polity building.

The Treaty of Rome (1957) provided for the participation of Civil Society in European affairs through the European Economic and Social Committee (EESC) and until the mid-1980s, the institutions and bodies of the European Economic Community (EEC) conceptualized Civil Society mostly in terms of all those groups representing organized interests. The role of Civil Society, therefore, was mostly seen as that of providing consultancy and feedback to EEC policy making in the context of a “social dialogue”. The EESC’s role has been enhanced by treaty changes over the years, but it still remains (only) a consultative body.⁶

This perspective changed radically in 1990s: the topic of Civil Society participation has become even more prominent since the Maastricht Treaty in 1993, when for the first time Civil Society appeared as the source of a European public opinion in the making policy governance and as a privileged actor in fostering the union’s democratic legitimacy. Suddenly Civil Society participation in democratic governance was considered the “panacea to the democratic deficit”.⁷ Over the subsequent years the lack

⁵ S. Smismans, *European Civil Society and Citizenship: Complementary or Exclusionary Concepts?*, “Policy and Society”, no. 28(1)/2009, pp. 59–70. See also: S. Smismans, *European Civil Society: shaped by discourses and institutional interests*, “European Law Journal”, vol. 9, no. 4/2003, pp. 473–495.

⁶ The Lisbon Treaty strengthened the role of the EESC and called on EU institutions to have “open, transparent, and regular dialogue with representative associations and Civil Society”, and the Commission is required to hold broad consultations with all concerned parties.

⁷ S. Elder-Wollenstein, B. Kohler-Koch, *It’s about participation, stupid*, in: *Changing images of Civil Society: from protest to governance*, eds. J. Bruno, B. Kohler-Koch, London 2008, p. 196.

of a European “*affectio societatis*” and the complexity of the decision-making machinery became even more evident. The Convention of the Future of Europe dedicated itself particularly to listening to the demands of Civil Society, hoping to produce policies that were closer to citizens’ needs and to disseminate knowledge of EU issues to a wider public. However, all the proposals of reforms aiming at a more inclusive, voluntary, informal, and participatory forms of European governance – including the active involvement of Civil Society – failed due to the negative results of the French and Dutch *refenda*.

The Lisbon Treaty

Civil Society’s role in shaping Europe received greater recognition through the Lisbon Treaty of the European Union. In order to fill the gap between European men and women and EU institutions – which were widely regarded as detached from the daily lives of those who were greatly affected by their decisions – several tools for consultation and dialogue were introduced.

The Treaty was inspired by a deeply felt need for a stronger voice and influence for citizens and for the active involvement of citizens and Civil Society organizations as participating actors in the governing structures of the European Union; thus, a new form of democracy was achieved through the introduction of a whole new chapter dedicated to this purpose (Title II art. 9–12).⁸

The references to the consultation of Civil Society and the idea of interaction with intermediary organizations has found its place under the new title of “provisions on democratic principles,” which brings together several different ways through which citizens and Civil Society can participate or are represented in European policy making. According to the new vision, the core legitimacy of the EU is in the representative democracy (mainly via European Parliamentary elections), and participative democracy (such as large base participation) has to be integrated into the representative model of governance.⁹

⁸ See V. Cuesta Lopez, *The Lisbon Treaty’s Provisions on Democratic Principles: A legal framework for participatory democracy*, “European Public Law” 2010, pp. 133–138. See also: M. Thiel, O. Petrescu, *Institutional Instruments for Citizen Involvement and Participation: Their Impact on the EU’s Political Processes and Institutional Legitimacy*, in: *Democratic Legitimacy in the European Union and Global Governance, Building a European Demos*, ed. B. Pérez de las Heras, Palgrave Macmillan, London 2017, pp. 9–39.

⁹ According to J. Greenwood, *Review article: Organized Civil Society and democratic legitimacy in the European Union*, “British Journal of Political Studies”, vol. 37/2007, pp. 333–357, participatory tools are only established as secondary to the other mecha-

ECI

Within the framework of Title II of TEU, the most prominent example of the treaty's new vision of democracy and a new "bottoms-up" approach for Civil Society is the European Citizens' Initiative (ECI); launched in April 2012, it creates, for the first time, an instrument for citizens and Civil Society to call upon the Commission to initiate legislation.¹⁰

According to Article 11.4, no fewer than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit an appropriate proposal on matters in which the citizens deem a legal act of the Union necessary for the implementing of treaties. In order to facilitate such "grassroots initiatives", three other paragraphs within the same Article 11 of TEU request that EU institutions: 1) give citizens and representative associations, by appropriate means, the opportunity to make known and publicly exchange their views in all areas of Union action (par. 1); 2) maintain an open, transparent and regular dialogue with representative associations and Civil Society (par. 2); and, 3) that the Commission, in particular, carry out broad consultations with concerned parties in order to ensure that the Union's actions are coherent and transparent (par. 3).

All in all, this provision is not only very innovative, because it provides the most concrete new instrument to involve citizens and Civil Society directly, but it is also symbolic, since it is the formal expression of the link between the official citizenship rights granted by the EU and the more elusive notion of a European Civil Society.

Other than the consultation regime that offers purely informal participation options for Civil Society, the Citizens' Initiative allows citizens (individually or in organized groups) to play an active role in the EU's democratic life, giving them the opportunity to express their concerns in a very concrete way and to influence the European political and legislative agenda through submitting a request to the European Commission to make a proposal for a legal act.

nisms of representative democracy. See also: G. Majone, *The common sense of European Integration*, "Journal of European Public Policy", vol. 13, pp. 607–626.

¹⁰ There is a very broad literature on the issue. Among others see: E. Amnå, *New form of citizens participation*, Baden-Baden 2010; F. Esposito, *Vers un nouveau pouvoir citoyen?*, Louvain-la-Neuve 2007; B. Kaufmann, *The European Citizens Initiative handbook*, Bruxelles, November 2010; J.W. Pichler, B. Kaufmann, *The European Citizen's Initiative: into new democratic territory*, Mortsels 2010; J.W. Pichler, B. Kaufmann, *The next big thing, making Europe ready for the Citizens' Initiative*, Mortsels 2011.

According to the ECI Regulation,¹¹ ECI organizers must first set up a citizens' committee (consisting of at least seven people, all residing in different Member States) and ask the Commission to register their initiative. After two months, if the Commission concludes that the proposed initiative does not "manifestly fall" outside its powers and complies with other formal conditions in Article 4.2 of the ECI Regulation (the legal admissibility test), it can be registered.

After registration, organizers have to collect at least 1 million signatures in at least a quarter of the Member States (i.e. seven of the 28 Member States) within no more than 12 months. In addition, specific quotas for the number of signatures requested from each Member States apply according to the relative size of the populations. It is expressly stated that initiatives may not be run by organizations or by members of the European Parliament,¹² but may be supported by them. Collected statements of support, either on paper or in an electronic format, are then forwarded to authorities in the Member States for verification, and then to the Commission; finally, once all requirements for submitting an initiative have been met, the organizers will meet with the Commission representatives and have the opportunity to present their initiative at a public hearing in the European Parliament with the participation of other relevant EU institutions. Within three months the Commission decides whether to act on it or not, and in either case it must publish a reasoned response (which will take the form of a communication). This will then be formally adopted by the College of Commissioners and published in all official EU languages.

Thus, while the initiative gives a limited and indirect right to citizens and organized Civil Society to initiate legislation, the Commission, indeed, has a monopoly on legislative initiatives (articles 7 and 225 of the TFEU) and is not legally obliged to follow up on any such initiative.

Updated Focus on the ECI

The eleven years since the signing of the Treaty of Lisbon and the five years since the regulation (EU) no. 211/2011 entered into force is enough time to take preliminary stock of ECI.

¹¹ The procedures and conditions for exercising this right are governed by Regulation (EU) No 211/2011, of the European Parliament and of the Council of 16 February 2011 on the Citizens' Initiative, OJ 2011 L 65/1, adopted on the basis of article 24 TFEU.

¹² Members of the European Parliament may be members of citizens' committees but cannot be counted as one of the requisite 7 citizens, meaning that they may not be mentioned on the committee registration form.

Between 2012 and February of 2018, the Commission has received 67 ECI proposals:

- 7 are currently open for signature: 1) “EU Citizenship for Europeans: United in Diversity in Spite of jus solis and jus sanguinis”; 2) “Minority Safe Pack – one million signatures for diversity in Europe”; 3) “Retaining European citizenship”; 4) “Let us reduce the wage and economic differences that tear the EU apart!”; 5) “Stop Extremism; 6) “Stop TTIP”; and 7) “We are a welcoming Europe, let us help!”.
- 19 ECI registration requests (among others, “Stop Brexit”), have been rejected by the Commission, mostly because they fall outside of its competence, and 14 have been withdrawn by ECI organisers.
- 23 ECI requests did not gather sufficient support over the 12-month period for collecting signatures.
- The Commission has formally replied to 4 initiatives which gained 1 million signatures, namely, “Stop Vivisection”, “One of Us”, “Water is a public good, not a commodity”,¹³ and “Ban glyphosate and protect people and the environment from toxic pesticides by adopting communications”, but none of them has become law yet.

It should be specified that ECI organizers can utilise a number of judicial and extrajudicial remedies: they can submit an action to the General Court (in the first instance) and to the Court (on appeal) under art. 263 of TFEU asking for the annulment of the Commission’s refusal to register, or asking the Ombudsman to intervene.

As of today:

- 7 Commission decisions to reject ECIs have been challenged before the General Court, and the Court overruled the Commission’s refusals to register “Minority Safe Pack – for diversity in Europe” and “Stop TTIP”. Both initiatives are now open for signature.
- in 4 other cases (“Ethics for Animals and Kids”, “Cohesion policy for the equality of the regions and the preservation of regional cultures”, “One Million Signatures for a Europe of solidarity”, and “Right to Lifelong Care”), the General Court confirmed the Commission’s refusal and the organizers appealed.

¹³ A proposal for the revision of the Directive on Drinking water was adopted by the Commission on 1.2.2018. Further information on this initiative can be found on the dedicated Commission website.

Table 1. ECI's by status

	2012	2013	2014	2015	2016	2017	TOT
Number of requests for registration	27	16	8	5	5	5	66
Number of registered initiatives	16	9	5	6	3	8	47
Number of refused requests for registration	7	8	5	0	0	1	21

Source: <http://ec.europa.eu/citizens-initiative/>.

Discussion on the ECI's Function and Suggestions for Reform

In light of the practice, it is evident that the Commission's efforts to make it known and accessible to all potential stakeholders¹⁴ has not lived up to the expectations it raised when it was introduced and that it did not work efficiently in alleviating the democratic deficit of Europe; not only are very few citizens aware that ECI exists,¹⁵ there is little guarantee that a successful ECI will actually have an impact on EU legislation. Empirical data shows a progressive lack of interest in this tool: in fact, three initiatives that reached positive conclusions were proposed in 2012, and the use of ECI has dramatically declined since 2013.

Over the past two years, following the Commission's first triennial report to the European Parliament and to the Council dedicated to the implementation of Regulation no. 211/2011 on the legislative initiative,¹⁶ the ECI instrument has been subject to a review process.

EU institutions, ECI organizers, the Members of the European Parliament, the Commission, the Committee of Regions and the European Economic and Social Committee all agreed that the ECI was unnecessarily complex and significant changes to its procedures were urgently needed in order to restore citizen confidence in the popular legislative tool and to fulfil its promise of participatory democracy.¹⁷

¹⁴ By adopting appropriate Implementing Regulation (EU) No 1179/2011, by implementing a series of non-legislative measures to facilitate the use of the instrument and by activating a detailed website dedicated to the initiatives launched (ec.europa.eu/citizens-initiative/public/welcome).

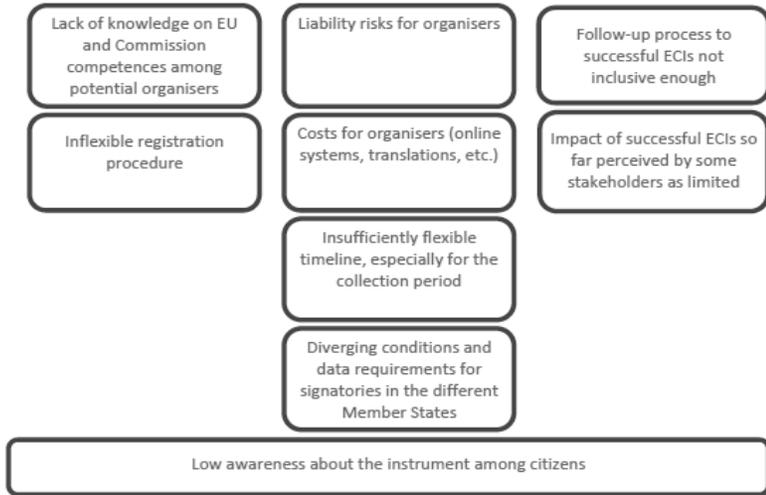
¹⁵ According to the Commission staff document dated 13.09.2017, SWD(2017) 294 final, only 37% of the public consulted had not heard about the ECI.

¹⁶ The first triennial report on application was adopted on 31.03.2015, COM(2015) 145 fin. See at: http://ec.europa.eu/transparency/eci_report_2015_en.pdf (15.06.2018).

¹⁷ The problems have been highlighted in several documents, all available on line. See two European Parliament studies, "European Citizens' Initiative – First lessons of

Figure 1: Summary tree

DRIVERS:



PROBLEMS:



CONSEQUENCES:



Figure 1. Framework of the reform

Source: Commission staff working document, SWD (2017)294 final.

implementation” and “Implementation of the European Citizens’ Initiative”; The conclusions of the “ECI Days” of April 2015 and 20.1.2016; the Opinion of the Committee of the Regions of October 2015; the Resolution of the European Parliament of October 2015; the REFIT Platform Opinion of June 2016; and the Opinion of the European Economic and Social Committee of July 2016. The Ombudsman report, a so-called own-initiative inquiry on the effectiveness of the ECI procedure, can be found at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark>.

The problems identified can be summarized with regard to the following three aspects:

- h) the difficulties for citizens to propose legally admissible initiatives – this is evidenced by the relatively high rate of refusals of registration (30% of requests for registration could not be registered by the Commission as they were manifestly outside the scope of the Commission's competences);
- i) a complex and burdensome process for organisers of initiatives to collect statements of support, as evidenced by the low rate of successful initiatives, i.e. initiatives that manage to reach the required number of signatories within the one-year collection period;
- j) limited debate and impact generated so far.

Several proposals have been made in order to improve the ECI's functioning, and at this time a reform of Regulation 211/2011 is in discussion.¹⁸

Commission Proposal for Review of the ECI Regulation

Following a public consultation on ECIs held between May-August 2017, in September 2017 the Commission proposed a review of the ECI Regulation.¹⁹

The core of the proposal is twofold: to make the ECI more accessible, less burdensome and easier to use for organizers and supporters, but also for other actors like Member States' competent authorities and the Commission itself; and, in addition, to achieve the full potential of the ECI as a tool to foster debate and participation at the European level, to include young people, and to bring the EU closer to its citizens.

The improvements to make the ECI more user-friendly include specifically: the possibility to establish citizens' committees (now groups of organizers) as legal entities; reinforced advice and support measures; the possibility for organizers to use a central online collection system under the responsibility of the Commission and without the need for certification; a period of a maximum of three months between the date of regis-

¹⁸ The revision of the Regulation on the citizens' initiative was publicly announced by the Commission First Vice-President, Frans Timmermans, on the occasion of the "ECI Day" Conference on 11.04.2017, as a result of a two-year review process triggered by the Commission Report on the application of the Regulation on the citizens' initiative of 31.03.2015.

¹⁹ The results of the public consultation are available on the web: see P8_TA(2016)0021, as well as the Proposal for a Regulation of the European Parliament and of The Council on the European citizens' initiative, COM(2017) 482 final, on 13.09.2017.

tration and the start of collection, allowing organizers to prepare their campaign and their online collection system should they decide not to use the central system; simplified forms for the collection of statements of support and a unified approach based on nationality, allowing all EU citizens to sign; and provisions on communication activities to be carried out by the Commission.

Table 2. Main innovations in the proposal

MAIN INNOVATIONS IN THE PROPOSAL		
	Current Regulation	The Proposal
Minimum age for signatories	Age to vote in EP elections (18, except in Austria where it is 16)	16 -> 10 million more potential signatories
Possible forms to collect support	13 possible forms, depending on the Member State	Only 2 possible forms available
Online collection	One online collection system per initiative to be built by its organisers	One central online collection system provided by the Commission (with the possibility for organisers to build their own, if they so wish)
Potential signatories	Some cases where citizens cannot give support	All EU citizens regardless of their place of residence can give their support
Examination phase	3 months	5 months allowing more inclusive public hearing and more time for Commission to consult stakeholders and analyse.

Source: https://ec.europa.eu/commission/sites/beta-political/files/european-citizens-initiative-factsheet-sept2017_en.pdf (18.06.2018).

In a nutshell, the proposal of reform attempts to solve several relevant technical, administrative, logistical and communication problems; however, it seems to fail to address the more fundamental and politically salient issues which threaten the future of the instrument, i.e. the contributions (and limitations) of citizens and civil society to a democratic representation in EU governance.

The European Economic and Social Committee and the European Committee of the Regions²⁰ have already developed their opinions, as well as the Ombudsman.²¹ On April 2018 European Parliament rapporteur György Schöpflin published his draft report on the Commission's proposal highlighting nine measures that should be considered, all of which referred to the necessity of stressing a more relevant participation of the

²⁰ See online the opinion dated 14.03.2018: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/regulation-european-citizens-initiative-sub-committee> and the opinion dated 22–23.03.2018 named Regulation on the European Citizens' Initiative, CIVEX-VI/028, <http://cor.europa.eu/en/activities/opinions/pages/opinion> (15.06.2018).

²¹ The Ombudsman's full list of suggestions is available online at "Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission". ombudsman.europa.eu (30.01.2018).

EP, which should develop its opinion and vote in plenary on every single successful ECI before the Commission takes in a position.²² Over the course of the next months, both the European Parliament and the Council of the European Union will finalize their own positions on the proposal and will enter into negotiations with one another until an agreement on the new regulation is reached and approved by both legislative bodies (according to article 289 TFEU).

Conclusion and Outlook

Why hasn't the world's first tool of participatory, transnational and digital democracy responded to the expectations it raised when it was introduced? What's the Missing Link among Civil Society, the European Citizen's Initiative and Democracy?

ECI seemed to be a revolutionary tool for the inclusion of organized and activated Civil Society groups in EU policy making; yet, the doubts about its capacity to keep the promise of enhancing the democratic quality of the EU legal system, referring to its weak device incapable of influencing the agenda of EU institutions (since it leaves the Commission's monopoly on legislative initiative untouched), made it less attractive for citizens and Civil Society.²³

However, if on the one hand it fails to "automatically" bring EU policy-making closer to the citizens, on the other hand it has to be considered that the main effect of the ECI may not be the passing of large amounts of new legislation, but rather the enlargement of the Brussels policy-making community to new constituencies and the fostering of a transnational European public opinion and transnational debate on European issues.

To achieve this goal it is necessary to pursue every useful path in order to make the process more effective, known and used by all those who should have the greatest interest in using it. At the moment, looking at the wide range of participation levels in the various Member States, it seems that there is not a homogeneous awareness of the potential effects of this legal instrument among Civil Society at the transnational level.

²² The amendments to the new legislative proposal for the European Citizens' Initiative Regulation (2017/0220(COD) – Rapporteur György Schöpflin are available online: <http://www.europarl.europa.eu/committees/it/AFCO/home.html>. A comment is at <http://www.citizens-initiative.eu/9-ways-improve-commissions-eci-revision-proposal/> (15.06.2018).

²³ J. Sauron, *The European Citizens' Initiative: not such a good idea*, Fondation Robert Schuman, no. 192, 31.01.2011.

The revision of the tool, offers an opportunity to simplify the current structure of the Regulations related to it to make it more accessible by improving ECI clarity and consistency and, consequently, to forge links with like-minded citizens across the Union. The final goal should be to facilitate a pan-European debate on issues of concern for citizens, helping to build an EU-wide public sphere, and in this respect ECI has the potential to bring the political system of the EU closer to a participatory model of democracy.

Nowadays the missing link among Civil Society, the European Citizen's Initiative, and democracy seems to be the fact that the dialogue between EU institutions and Civil Society has tended to create a constituency of EU-level organisations specialising in policy advocacy but relatively disconnected from grassroots activism.²⁴ In general, the professionalization of representation in Europe and a bureaucratisation of interest groups in terms of staff, experts, lawyers and lobbyists have led to limited participation of Civil Society and citizens, due to a marginal level of communication with the grassroots.²⁵

In order to exploit the full potential of the ECI and to give visibility to the important role that Civil Society could play in EU decision-making it is necessary to foster a broader civic participation based on active citizenship, because an active citizenry creates a participative Civil Society.²⁶

²⁴ On the contrary: J. De Clerck-Sachsse, *Civil Society and Democracy in the EU: The Paradox of the European Citizens' Initiative*, "Perspectives on European Politics and Society" 2012, pp. 299–311, DOI: 10.1080/15705854.2012.702574 argues that the legislative proposal introducing the ECI succeeded due to strategic lobbying of policy-makers by Civil Society organizations (CSOs), arguing that ECI's genesis illustrates that structural problems inhibit CSOs in mobilizing broad sections of the public in EU policy-making.

²⁵ About citizens' interest organisations established in Brussels which are distant from stakeholders see: B. Kohler-Koch, *Civil Society and EU democracy: 'astroturf' representation?*, "Journal of European Public Policy" 2010, pp. 100–116, <http://eiop.or.at/eiop/texte/2002-006a.htm> (15.06.2018) and P. Bernhagen, R. Rose, *European Interest Intermediation versus Representation of European Citizens*, presented at the Fifth Pan-European Conference on EU Politics, Porto, 23–26.06.2010, retrieved the 20.04.2011, <http://www.jhubc.it/ecpr-porto/virtualpaperroom/156.pdf> (17.06.2018).

²⁶ The approach to Civil Society which underscores the significance of active citizenship is in D. Gawin, P. Glinski, *Civil Society in the making*, Warsaw 2006, pp. 7–15; B. Hoskins, J. Jesinghaus, M. Mascherini, *Measuring active citizenship in Europe*, CRELL Research Paper n.4, EUR 22530 EN, 2006. Some critical conclusions are in E.G. Heidbreder, *Civil Society participation in EU governance*, "Living Reviews in European Governance", vol. 7, no. 2/2012, pp. 1–30, <http://www.livingreviews.org/lreg-2012-2>.

However, as long as there is no deep sense of belonging to Europe, there will not be strong active citizenship (and the common feeling, at best, will be mainly limited to the right of citizens to express their views through voting); consequently, the conceptualisation of Civil Society will be “an amorphous sphere of individual citizens”, and awareness of its role will be “a minimal one”.²⁷

On the contrary, a “bottoms-up” mobilisation, intended not as a voluntaristic action but as a specific right to take part in governance policy may not only change the way in which the EU agenda is established, but it may also increase a transnational “civil dialogue” generating a real and effective societal integration within the Union’s States and, furthermore, it may enhance the democratic quality of the EU through a “cultural” growth.²⁸ European Civil Society is not a given but it is a social construct; consequently, the development of Civil Society’s role is mainly a cultural process.²⁹

As long as we are not fully conscious of the value of European citizenship, the promotion of democratic legitimacy and the debates on Civil Society run the risk of simply being a rhetorical self-declared goal of any EU initiative.

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²⁷ *Civil Society and Legitimate European Governance*, ed. S. Smismans, Cheltenham 2006, p. 299.

²⁸ Some useful thoughts about how Civil Society and stakeholders will contribute to bringing about a higher standard of governance in Europe in the years to come are in a case study commissioned by the European Economic and Social Committee (EESC) from CNVOS (Centre for information service, cooperation and development of NGOs, Slovenia) and ENNA (European Network of National Civil Society Associations), dated December 2017, T. Divjak, G. Forbici, *The future evolution of Civil Society in the European Union by 2030*, CES/CSS/01/2017.

²⁹ An interdisciplinary study of the citizens’ role in the European political scenario that can serve as a basis for the analyses of the EU’s democratic legitimacy is in *Democratic Legitimacy in the European Union and Global Governance, Building a European Demos*, ed. B. Pérez de las Heras, Palgrave Macmillan, 2017.

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Digitalisation in the Regional Context: The Case of E-Government Services in Latvia

Abstract

This article examines problems related to digital trends in economies and societies from two perspectives: the extension of a digital economy to social dimensions, and the role of digital government services in regional cohesion perspectives in Latvia. This methodological approach could serve as a tool for integrating a number of main goals related to the digitalisation trends in the EU, that require support of societies as well as the improvement of social welfare at the regional and national levels. The contribution aims to offer insight into the concept of social investment and innovation as well as co-creation concept and the impact of digitalisation of public services on regional cohesion. The study observes these implications in relation to the need to expand and adapt the content and approach of the digital services implementation. The further digital development as a precondition for diminishing regional and wellbeing divide, facilitating administrative processes for people and entrepreneurs, as well as e-services availability in Latvia is discussed. The article concludes that efficient decision-making related to social

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investment and innovation for improving social welfare at regional and national levels needs implementation of digitalised services in a wider scale as they inevitably become more important due to the increased digital competitiveness of countries.

Key words: Social Investment and Innovation, Regional Cohesion, Digital Government Services, Digital Literacy

Introduction

Digitalisation of economic and social dimensions has become an unavoidable subject in political and social debates, which are based on current technological, social and economic tendencies. However, as revealed by a literature review carried out by the authors, there is a lack of consensus on the founding principles of the digital economy, its structures and their implementation.¹ Furthermore, scholars have agreed that, digitised information, digitalisation and automation have become a strategic resource for economies, their competitiveness and digital networks, the fundamental organising principle of the economy and society as a whole. In addition, there is a never-ending search for new types of work organisation which would allow for more efficiency of the labour market in a platform economy and the increase of digital competitiveness of the participating parties, as pointed out in the a EU document “A Digital Single Market Strategy for Europe”.²

In the EU, the Juncker Commission’s aims at creating a Digital Single Market (DSM) and its completion could generate economic and social benefits to Europe, mainly by creating growth and jobs, improving productivity as well as reducing public spending and improving development of less developed regions in the EU and its Member States.³ The impact of the digital economy clearly extends to such areas as citizens, their society and its governance.

The implementation of a DSM demands commonly agreed and implemented regulatory conditions for business environments and digital networks. The EU explicitly recognizes the importance of these issues in “Eu-

¹ G. Valenduc, P. Vendramin, *Work in the Digital Economy: Sorting the Old From the New*, European Trade Union Institute, Brussels 2016, p. 51; Ch. Degryse, *Digitalisation of the Economy and its Impact on Labour Markets*, European Trade Union Institute, Brussels, 2016, pp. 10–30.

² *A Digital Single Market Strategy for Europe*, COM(2015) 0192 final.

³ *The Digital Economy*. OECD DAF/COMP(2012) 22.

rope in a changing world – Inclusive, innovative and reflective societies”.⁴ It is also a fundamental element, for example, in the implementation of the *Smart Specialization Strategies*⁵ aimed at increasing the level of regional cohesion and to understand the reasons for limited growth in EU regions, especially in support to lagging regions (S3 Platform Research and Innovation Strategies for Smart Specialisation – RIS3).

This article will make an attempt to better understand the numerous challenges affecting implementation of the DSM in the context of the digital economy and related social dimension, social innovation, co-creation and regional cohesion issues.

Current discussions in the article are focused on an assessment of digitalisation trends and its fundamental principles, at the same time considering the impact of social innovation on regional cohesion by reducing the digital regional divide, particularly in Latvia, while applying different measures and viewpoints. By using the results of the available relevant studies, the authors discuss and demonstrate the need to agree in common on regulatory conditions in implementation of a digital services in regional context for further cohesion, and thus an increase in wellbeing at all levels.

Finally, we discuss digital development in Latvia as an indicator of competitiveness and digital government services in Latvia, pointing out reasons for a regional digital divide based on the case of applying e-services in the context of social investment and wellbeing.

Digitalisation Trends and Social Investment

The trend of digitalisation is transforming both manufacturing and services. As a result, societies and citizens in the EU face significant opportunities and challenges. According to Eurostat, Europe’s high-tech industry and knowledge-intensive services are increasing with record levels of investment in 2016.⁶ Many parts of the EU led the world in e-government, demonstrating high levels of electronic engagement with their citizens and in using digital technology to update public services.⁷ However, there are high regulatory impediments that do not allow EU Member States

⁴ *Europe in a Changing World – Inclusive, Innovative and Reflective Societies*, EC C (2016) 4614 of 25 July 2016.

⁵ *Innovation and Research Strategy for Smart Specialisation. The Initial Position of Latvia*. LR Ministry of Education and Science, LR Ministry of Economy, March 2013, p. 20.

⁶ *Digital Economy and Society Statistics- Households and Individuals*, Eurostat, 2017.

⁷ *Europe’s Digital Progress Report 2017*, European Commission, 2017.

to reach the levels of many world economies.⁸ More broadly, the EU should emphasise the role of openness and collaboration by providing open access to the results of publicly funded research, promoting open science, engaging more transparently with citizens and endorsing open innovation models to tackle societal challenges and long-term goals.⁹ Although the EC promised to create a SDM as one of the Commission's priorities, estimating that it could boost the EU's economy by 415 billion euros annually¹⁰ there is a little optimism among stakeholders about achieving this goal. However, critics see the digitalisation and DSM measures favouring old traditional corporatist industries, despite the fact that high quality public services constitute the backbone of citizens' social welfare, as well as a region's competitiveness and entrepreneurship, which currently faces significant challenges. This is acknowledged in the European Digital Progress Report: Review of Member States' Progress Towards Digital Priorities.¹¹ The challenges of using e-government services are revealed by results of interviews conducted in the framework of the EC H2020 CITADEL project and the outcomes of a study on the use of these services.¹²

Another significant factors that influences social development and wellbeing in the digital era and new business environment in the DSM is the social investment and innovation as well as co-creation concepts, which is the subject of current discussions at the EU level. Recent studies¹³ have indicated the potential for social investment and social innovation as well as highlighted differences in outcomes across EU Member States that have implemented different welfare state models. The main comparative theoretical approaches employed regarding the emerging of the social investment paradigm are Neo-Keynesianism and Neo-Liberalism.¹⁴ Social investment should contribute to the development of innovative

⁸ *Science, Research and Innovation Performance of the EU. Strengthening the foundations for Europe's future*, European Commission, 2018, pp. 431–433.

⁹ European Parliamentary Research Services (EPRS), Briefing, 25 March 2014, pp. 2–4.

¹⁰ A Digital Single Market Strategy for Europe, COM(2015) 0192 final.

¹¹ European Digital Progress Report: Review of Member States' Progress Towards Digital Priorities, European Commission, 2017.

¹² CITADEL project is being implemented under the "Horizon-2020" programme, Grant agreement No 726755.

¹³ Ch. Grootaert, T. VanBastelaer, *Understanding and Measuring Social Capital: A Synthesis and Findings from the Social Capital Initiative*, World Bank, "Working Paper", no. 24/2001; J. Jenson, *Redesigning Citizenship Regimes After Neoliberalism: Moving Towards Social Investment*, in: *Towards a Social Investment State? Ideas, Policies and Challenges*, eds. N. Morel, B. Palier, J. Palme, Bristol 2012, pp. 61–87.

¹⁴ A. Hemerijck, F. Vandenbroucke, *Social Investment and the Euro Crisis: The Necessity of a Unifying Social Policy Concept*, "Intereconomics", no. 47(4)/2012, pp. 200–206.

approaches related to the social innovation and competitive business environment of the digital market in the EU. It also should contribute to regional cohesion. An in-depth analysis of the scientific literature, legal and policy documents of international institutions elucidates the various versions and meanings of social investments, such as the paradigm of New Institutional Economics, the World Bank's Social Capital Initiative and others. Mainstream scholars view social investment as a strategy highlighting the shifting internal equilibrium between: public expenditure, private expenditure and banking tools that are identified as "social investments". The above approach to social investment is fundamental for the EU social innovation and regional cohesion policies. The most important instruments in reducing regional disparities are the European Commission's funds such as the European Fund for Strategic Investments and the Employment and Social Innovation Programme.¹⁵ However, the contribution of these funds to reduce regional disparities in the current context of digitalisation and high unemployment in EU economies and associated social risks requires new actions by governments and social partners. Governments are looking for new sources of growth to boost the productivity and competitiveness of their economies and industries, to generate jobs and to promote the wellbeing of their citizens. As highlighted in the OECD Ministerial Council Statement,¹⁶ governments have to respond to rising inequality, as it could endanger social cohesion and hamper the economic resilience and inclusive societies. Furthermore, governments will need to anticipate and address the need for regulatory structures development to minimize disruptive effects of challenges in the digital environment such as privacy, new jobs, intellectual property rights, competition and taxation.

The relationship between information technologies (IT) and economic development of peripheral territories and industrial areas has been of interest for scholars. In this respect, more attention should be given to a regional digital divide existing in many economies. The term "digital divide" refers to the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard to both their opportunities to access information and communication technologies and to their use of the Internet for a wide variety of activities.¹⁷ The

¹⁵ *European Fund for Strategic Investments*. Official Journal of the European Union, L 169/1 Regulation (EU) No 2015/1017 of the European Parliament and the Council of 25 June 2015.

¹⁶ *Resilient Economies and Inclusive Societies – Empowering People for Jobs and Growth*, OECD, Ministerial Council Statement, 2014.

¹⁷ *Understanding the Digital Divide*, OECD, 2001.

digital assessment of regional development has been subject of scholarly articles¹⁸ with the main conclusion that the lack of digitalisation is not necessarily the cause of social and economic under-development phenomena of regions, but is a consequence of low social and economic status in terms of regional geography and wellbeing. The lack of information technologies and digital infrastructure, as well as digital literacy, such as digital knowledge, skills and practices are likely to reinforce initial social inequalities.

Social Innovation and Co-creation

The notion of co-creation emerged in the private sector with the motivation to increase high quality service associated with corporate profits. However, the concept is relevant to the public sector. As has been noted by scholars¹⁹ the public sector is dominated by the production of services that due to their discretionary and intangible character, the simultaneous process of production and consumption and the service recipient's central role in the process provide excellent conditions for co-creation.²⁰ Providers and consumers of public services bring together different resources and capabilities in the joint creation of the value of the service in question and both parties have an interest in maximizing public value creation.²¹ It is important to stress that the role of a citizen as a client and a partner in the provision of public services is known as a concept of co-production and/or a concept of co-creation of public services and is foreseen as the next stage of evolution²² in the relationship between public administration and society.²³ Both concepts involve active participation of citizens in public service delivery by creating sustainable partnerships with citizens. However, the literature makes a distinction between three types of involvement: 1) citizens as co-implementers of public policy, 2) citizens as

¹⁸ A. Hogan, M. Young, *Rural and Regional Futures*, Routledge, London, 2015, p. 363.

¹⁹ S. Osborne, Z. Radnor, G. Nasi, *A New Theory for Public Service Management?: Toward a (Public) Service-Dominant Approach?*, "American Review of Public Administration", vol. 43, no. 2, 1.03.2013, pp. 135–158.

²⁰ Ibidem.

²¹ J. Torfing, E. Sørensen, A. Røiseland, *Transforming the Public Sector Into an Arena for Co-Creation: Barriers, Drivers, Benefits, and Ways Forward*, "Administration and Society" 2016, pp. 1–31.

²² M. Petrescu, D. Popescu, I. Barbu, R. Dinescu, *Public Management: between the Traditional and New Model*, "Review of International Comparative Management", no. 11(3)/2010, pp. 408–415.

²³ B. Verschuere, T. Brandsen, V. Pestoff, *Co-production As a Maturing Concept*, in: *New Public Governance, the Third Sector and Co-Production*, eds. V. Pestoff, T. Brandsen, B. Verschuere, New York 2012, pp. 1–12, 424, 466.

co-designers and 3) citizens as co-initiators.²⁴ According to the scholars, the first type is the most frequently represented.

Co-creation depends on the cultural context of a country or administrative region as well as differences between country regions determined by the relationship existing between state and society.²⁵ Co-creation and citizens' participation in the public sector procedures has gained serious attention in recent years. The interest in co-creation and other ways of introducing social innovation has become more intense as a consequence of the recent economic and financial crises and austerity measures implemented in the public sector of many EU economies. Furthermore, in most records, specific objectives that the involvement must achieve are often not formulated. In addition, according to the abovementioned authors, it appeared that most studies are aimed at the identification of influential factors. These factors can be identified on the organizational side (for instance the compatibility of public organizations, the attitude of public officials or the administrative culture) or on the citizen side (for instance personal characteristics, awareness of citizens and social capital).²⁶ As a result, systematically gained empirical evidence of the outcomes of co-creation/co-production processes is often lacking.

However, all approaches highlight co-operation between public administrations and recipients of government services or civic society, and emphasises the involvement of recipients of services in the decision-making processes in relation to public policies and public services provision. This form of cooperation has also resulted from the recognition of a citizen as a client of public administration's services and has promoted the improvement of public services provision as one of the principal aspects of the public administration reform focused on the new public governance and management.²⁷

The post-industrial civil society paradigm is increasingly strengthening in modern democratic public administration systems; among other principles, it is also characterised by societal equality and participation

²⁴ W.H. Voorberg, V. Bekker, L. Tummers, *A Systematic Review of Co-Creation and Co-Production: Embarking on the Social Innovation Journey*, "Public Management Review", vol. 17, is. 9/2015, pp. 1333–1357.

²⁵ S. Parrado, G. Van Ryzin, T. Bovaird, E. Löffler, *Correlates of Co-production: Evidence From a Five-Nation Survey of Citizens*, "International Public Management Journal", vol. 16, no. 1/2013, pp. 85–112.

²⁶ R. Putans, *Public Administration's Customer Care*, in: *Baltic Business and Socio-Economic Development 2008*, eds. T. Muravska, G. Prause, Berlin 2009, pp. 300–316, 548.

²⁷ R. Putans, I. Nartisa, T. Muravska, *Strategic Planning and Management in Public and Private Sector Organizations in Europe: Comparative Analysis and Opportunities for Improvement*, "European Integration Studies", no. 6/2012, pp. 240–248.

opportunities; as a result state power is focusing more on the needs of society, which in turn, results in broad public administration reforms²⁸ carried out to improve the efficiency of the state power implementation according to the needs of society.

To ensure the systematic improvement of the provision of public services it is essential to understand why citizens as clients are satisfied or not by public services and its delivery, which allows applying the best practices for other services and clients' target groups.

The main critique of the concept related to the definition of a citizen as a client of public administration services relies on the diminished role of the citizens' civic participation and thus the positioning the individuals of the society as passive service recipients.²⁹ This situation can often be crucial for better-informed decision-making. Besides, the often-uncertain variability of the public administration's client's roles has a negative impact on the work motivation of civil servants³⁰ in terms of the implementation of public functions and delivery of public services.

Public administration reforms are continuously taking place in many countries implementing new ideas, changing and improving policies, processes, structures and other management mechanisms and instruments, boosting efficiency and solving problems and challenges.³¹ The concept of co-creation is strongly connected to the concept of co-production, and these two concepts complement each other well. The close interaction between these two concepts to a large extent changes the roles of contemporary public service provision system's participants: politicians, officials of the governmental institutions and the recipients of public services.³² However, most studies focus on the identification of influential factors, with little attention given to the results of interaction of the two concepts, which need to be in the centre of future research. Furthermore, quantitative studies are badly needed, counterbalancing the more qualitative and case studies oriented approach that prevails.

²⁸ M. Daglio, D. Gerson, H. Kitchen, *Building Organisational Capacity for Public Sector Innovation*. Background Paper, OECD Conference "Innovating the Public Sector: from Ideas to Impact", Paris, 12–13 November 2015, p. 40.

²⁹ L. Briggs, *Citizens, Customers, Clients or Unwilling Clients? Putting Citizens First. Engagement in Policy and Service Delivery for the 21st Century*, Canberra, 2013, pp. 83–94, 220.

³⁰ C. Andrews, *Integrating Public Services Motivation and Self-Determination Theory: A Framework*, "International Journal of Public Sector Management", no. 29(3)/2016, p. 12, 1–34.

³¹ M. Daglio, D. Gerson, H. Kitchen, op. cit., p. 40.

³² CITADEL project is being implemented under the "Horizon-2020" programme, Grant agreement No 726755.

These changing roles are defined by both the characterizing principles and values of the respective public administration model, as well as by the mechanisms of cooperation among the participants of the process of “producing” and receiving of public services.

National and local governments increasingly aim to involve citizens actively in providing public welfare services and in solving social and political problems and challenges. National governments forge networks of public and private actors that produce and monitor regulatory policies and standards, and the European Union supports regional partnerships aiming to stimulate growth and employment in rural areas. In some countries, there are long traditions of citizens, civil society organizations, and public authorities joining forces and co-creating solutions to common problems.³³

Additionally, the new public governance is based on innovation and the digitalization of public services’ provision that ensures wider and easier accessibility of public services as well as saving clients’ resources.

Collaborative Technologies and Regional Divide in Latvia

The digitalisation trends and development of a platform economy impact developments of social collaborative technologies and scope of e-participation on societies. Although citizen participation has already been studied by scholars regularly, there is a lot of interest in better understanding the role of customers in certain public sectors in order to provide methodologies and tools for enhancing co-creation in public services where technology is a requirement.

In 2017 the IMD World Competitiveness Centre introduced the IMD World Digital Competitiveness Ranking³⁴, which measures a country’s ability to adopt and explore digital technologies leading to transformation in government practices, business models, and society in general. The significance of digitalization is stressed by a strong positive correlation of this ranking with results of the Global Competitiveness Report.

In the World Digital Competitiveness Ranking Latvia holds 35th position among 63 countries analysed. At the same time Latvia ranks 41st in terms of future readiness, which indicates a country’s preparedness for digital transformation. The three main factors which determine future readiness are 1) Adaptive Attitudes (Latvia – 41); 2) Business Agility

³³ M. Fotaki, *Towards Developing New Partnerships in Public Services*, “Public Administration”, no. 89/2010, pp. 933–955.

³⁴ IMD World Digital Competitiveness Yearbook 2017 Results. International Institute for Management Development, Switzerland.

(Latvia – 46) and IT Integration (Latvia – 36). The Adaptive Attitudes indicator shows the willingness of a society to participate in digital-related processes. The Business Agility indicator reflects the ability of firms to transform their business models in order to take advantage of new opportunities. It also relates to the level of business innovation. These are the main areas Latvia would have to improve to advance digital and overall competitiveness, as well as to reduce digital divide (IMD, 2017).

Europe's digital performance is measured by the Digital Economy and Society Index (DESI). According to DESI 2017, Latvia has strongly increased the share of broadband subscriptions and improved delivery of public services. Fixed broadband connections are widely accessible, while only 55% of rural households of Latvia had fixed broadband connections in 2015 (EU-91%). Also, the use of e-Government services has been gradually increasing, which has been greatly facilitated by implementing CSCs in major regional centres of Latvia since 2015. At the same time, according to DESI, around half of the population has low or no digital skills and businesses are exploiting technologies in a limited way. This indicates that much greater cooperation of national government, regional and local administrations with society and businesses is required to co-create better services and increase participation in digital processes.

Discussion related to the demand for high quality public services that constitute the backbone of citizens' social welfare as well as a region's competitiveness and entrepreneurship was elaborated by authors during 2016–2017 in the joint research conducted in the framework of the H2020 CITADEL project "Empowering Citizens to Transform European Public Administration" and International Institute for Management Development in Switzerland. The research has a main focus on electronic government services for non-users.

Latvia has around 2 million inhabitants, of which one third live in the capital. Municipalities have on average 8900 inhabitants. There are a total of 75 CSCs, jointly operated by state and local governments. Of these centres, 3 are operated by various central government agencies, and 72 are municipal service centres located in centres of regional significance. The centres are distributed over rural and non-rural areas and cover all five of Latvia's planning regions.

The authors aimed at selecting a representative group of 8 municipal CSCs, both rural and non-rural, with a sufficient number of customers. The municipal CSCs have been selected as they show institutional homogeneity and provide a similar range of services, unlike those located in larger cities. The CSCs that have been operational for less than one year have been excluded in the research. Seven out of eight CSCs were located

in regions with fewer than 9000 inhabitants. The 8 CSCs selected were: Ape, Auce, Charnikava, Dagda, Roja, Salaspils, Strenči, and Viļaka. After having selection selected the CSCs, we proceeded with the stratified quota sampling in each of the eight CSCs. The stratifications are made based on age, education, income, and gender (Table 1). To avoid bias, all interviews were conducted during lunch time or after working hours (but before closure of the CSC), the period when most customers go to the CSCs. In order to satisfy the quota requirements, it was necessary to visit some CSCs several times. Some additional selection criteria were used such as 1) only included customers who wanted to apply for, or have rendered, government services (State revenue services, social security, etc.), 2) customers using non-digital services only were excluded 3), only Latvian citizens or long-term residents were included.

The 141 short interviews provided a total of 279 text fragments to be analysed. The assessment of reasons for non-use are related to socio-demographic characteristics based on the research done in eight regional CSCs. Five of eight CSCs, where interviews were conducted are located in remote areas close to Latvia's external border: Viļaka CSC, is located near the border with Russia; Ape and Strenči CSCs are located near the border with Estonia; Auce CSC is close to the border with Lithuania; and Dagda CSC is near the border with Belarus. Two of 8 CSCs, Carnikava and Roja, are located near the Baltic Sea. In all cases CSCs are located in centres of regional significance. Broadband connections in these areas are not as good as elsewhere in Latvia and the Internet is not accessible everywhere. According to the Eurostat only 75% of rural households had access to Internet by broadband connection in 2016, which makes a negative impact on the use of Internet and public services, as well as on the computer literacy of inhabitants. People living in these areas are accustomed to having a lower income level and many households can't afford computers and Internet at home. Seven of eight selected regions have from 3444 inhabitants in Strenči to 8884 inhabitants in Carnikava. Only one, the Salaspils region, has 23 432 inhabitants. Taking into account that most of the visited CSCs are located in remote rural areas, this factor makes an impact on the income level and education level of respondents, as well as on the accessibility of computers and Internet, as well as knowledge and skills to use them. Customers visit CSCs and do not use Internet services individually for several non-use related reasons: low or absent skills and competence, and the perceived lack of them. The technology and complexity of entering data to request services, especially in the cases of State Revenue Service or State Social Insurance Agency systems, make these customers afraid, especially to make mistakes. Many of the people reporting lack

of skills also mention not having a computer or a scanner and a scanning service is their reason to visit CSC. Respondents find the system too complicated, and in some cases contrasted this with the simplicity of just visiting the CSC. Yet, we do not find evidence that persons labelling the system as too complicated have already used it before. This means concerns about the complicatedness of the system are likely to be a perception issue rather than an experience-related issue. This is further confirmed by the fact that 16 out of 40 respondents with higher education also mention skills and the complicatedness of the online system as a reason to come to the CSC. Some respondents indicated visiting the CSC in order to obtain information about using the online system. Several respondents mentioned a lack of Internet access as a reason for coming to the CSC and some reported on the complexity of the electronic system. An educational effect is another indicator for non- using e-services. Most non-users have only a degree in secondary education. Another group of reasons related to non-use are convenience and support: a lack of interest or need to use the electronic service. In particular, the fact that it was still possible to submit required documents on a paper, and that the CSC alternative was available anyway and free, makes customers visit the CSC. Respondents also mention geographic proximity of the CSC (close to home and to the place of work) as a reason for using the CSC. A related factor is that respondents can receive in-person help at the CSCs. Staff at the CSCs are seen to be experienced and as knowledgeable. Respondents also cite the possibility of asking additional questions and getting additional help, both about using the system and about the services sought. The following assumptions that produce digital regional divide in Latvia have been made: low income individuals that are unable to have Internet and computer, level of education that affects personal decision-making and peoples' abilities and interest to use electronic services. Taking into account that education level also very often impacts the income level of people, then less educated people are less likely to spend money to buy computers and pay for the Internet. Another factor influencing the use the electronic service is age. The authors have observed that individuals of about 50–65 years old tend not rely on e-services. The complexity of the electronic system and fear of making a mistake, as well as a lack of understanding of the procedure have a strong negative impact on the use of the electronic services. An important factor in rural areas is the desire to discuss the procedure in person and receive help. This is also a way of socializing, especially for older people or unemployed, who have the opportunity to meet other people with similar problems and/or interests and discuss them. Training courses for learning to work with online services rather than just

offering offline alternatives are also required.³⁵ In addition, simple courses for people to do Internet banking in cooperation with commercial banks would also be needed, and could help to understand how to access and use government services online, as according to the Eurostat 62% of people used internet banking in Latvia in 2016.³⁶ The state subsidies for cheap Internet and computer access for people with low income in rural areas, and extension of broadband to cover 100% of Latvia are both needed for regional cohesion and to minimize the regional digital divide.

Conclusion

Development of a concept of the social investment and innovation is a core element in digitalisation public services. The authors suggest to stress in social research a distinct understanding of the co-creation as local, regional, and national governments rely on digital provision of government services.

In the assessment of the current developments related to social innovation and co-creation, the authors concluded that issues of non-use of digital services are not widely discussed. Further research is badly needed to gain a better understanding of why citizens fail to use digital government services.

Since the emergence of the Internet, the digital divide has become an enormously popular concept. Great inequalities in IT implementation, uses and skills exist. The digital divide has several dimensions: social, economic and political. Poor or less educated people, and people leaving in rural areas show low IT indicators. There is evidence that low-income people, communities and regions are only partially digital.

The authors highlighted that digitalisation and technological infrastructure are considered as fundamental factors in competitiveness of countries and regions. The further digital development is a precondition for diminishing regional and wellbeing divide and a facilitator of administrative processes towards better services and achievements in wellbeing of citizens.

³⁵ T. Muravska, S. Stacenko, Z. Zeibote, *Digital Single Market Conducive to the Promotion of Social Dialogue and Social Investment in the Regional Cohesion Contextin*, New Challenges of Economic and Business Development – 2017 Digital Economy, Riga 2017, pp. 631-641.

³⁶ Digital Economy and Society Statistics – Households and Individuals, Eurostat, 2017.

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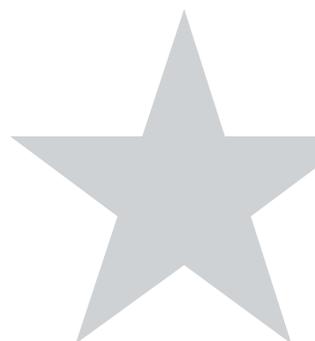
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