EUROPEAN POLICY REVIEW

Edited by
Nguyen Dang Dao & Luke Cavanaugh
Assisted by Kaitlyn Green, Harvey
Dryer & James Balzer

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EUROPEAN POLICY REVIEW

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In 2014, the European Student Think Tank established the *European Policy Review*, a peer-reviewed journal. The journal aims to publish academic papers by undergraduate and postgraduate students on topics related to policy-making in the European Union. All papers are submitted to an anonymous peer-review process conducted by graduate and doctoral students. The journal is published annually.

EDITORIAL POLICIES

THE REVIEW PROCESS

In order to determine the submitted papers' suitability for publication, the journal applies the requirements of a peer-review process as follows.

All submitted papers are read by the editorial team. Only those papers that are most likely to meet the quality criteria and are judged to be of potential interest to the intended audience are sent for formal review, typically two reviewers. Reviewers are expected to identify weaknesses in argumentation or content-related errors, assess the work's novelty and offer suggestions for improvement. On the basis of their evaluation, reviewers give advice to the editorial team by choosing from among several possibilities

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Each reviewer returns a peer-review form to the editorial team. The editorial team evaluates the reviewers' comments before passing a judgement back to the authors. As well as providing feedback to the authors, the editorial team edits the papers' content and checks the grammar, spelling and style. The authors of the papers modify their submission in line with the editors' comments and send a revised version back to the editor; this process is repeated until the editor is satisfied and the paper is accepted by the Editor-in-Chief.

SELECTING PEER REVIEWERS

CONTACT

European Student Think Tank

Email: editorinchief@esthinktank.com

Web: http://esthinktank.com

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EDITOR'S NOTE

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This year has seen countries across Europe begin their slow recovery from the Covid-19 Pandemic. The global health crisis is a real test for the unity of the EU, and the European Student Think Tank (EST) as a major platform for the European youth. Despite that, EST remains committed to providing opportunities for young people across Europe to get involved in the European policy-making process. The European Policy Review 2021, the flagship publication of EST, represents our effort to gather voices of students and young professionals and talk about issues that matter to them.

The European Policy Review is a peer-reviewed journal that publishes academic and policy papers on a wide range of topics related to European affairs. The journal consciously chooses to cover a broad spectrum of topics and to incorporate multiple disciplines. As such, the eleven articles in this volume provide numerous angles from which EU policy and European affairs can be studied and discussed. This year, EPR is registered with the British Library and assigned an International Standard Serial Number (ISSN).

Regarding the peer-review process, the Editorial Office received valuable feedback and consultation from our newly-formed Academic Advisory Board. The Board is made up of leading professors and experts in European affairs from the University of Cambridge, College of Europe, Loughborough University, the University of Bologna, and EUROPEUM Institute for European Policy. Furthermore, a team of qualified editors and 26 peer reviewers has examined all submissions and made a careful selection based on academic quality and contributions to the journals.

The fourth volume of the European Policy Review covers several salient issues to the present day and future of Europe. This year, our authors provide readers with critical analyses, thought-provoking insights and practical policy recommendations. Opening the volume is Stan Bruus, the winner of the European Policy Prize 2021, who examines the lack of knowledge among mobile workers and employers about their core European labour rights and proposes three recommendations for this issue. Sarah Lehmkuehler explores the potential for further political and

territorial integration in the EU and the likelihood of it being fulfilled, as well as the likelihood of its opposite, disintegration, taking place. Tjadina Herbert in her article appraises the probability of Russia using its nuclear resources, in the context of the Russo-Hungarian nuclear partnership, as a political tool against Hungary, and its implications for the EU's energy policies. Alexandra Smith chooses to address the evolving role of the 'European Union Rule of Law Mission in Kosovo' (EULEX) in engendering the rule of law in Kosovo's institutions, and the mechanisms for cooperation implemented by the European Union in its mission. Ákos Baumgartner seeks to understand the current state of affairs concerning the post-Cotonou Agreement through the lens of Keohane's non-hegemonic cooperation theory, using a liberal theoretical framework to make sense of contemporary EU relations with Africa, Carribean and Pacific states. Aurélie Gillet takes a look at the role of the space defence industry in the international relations of the European Union, as well as the benefits and challenges of international cooperation in this sector. Simon Eckert analyses the underlying causes of the Visegrád Group during the Schengen Crisis in 2015. Thais Ayuso Deshmukh, Sean Cotter-Lem, and Nils Dubois point out in their article that the EU is facing a dilemma concerning data collection of its citizens and present three policy recommendations that help tackle this dilemma. Iliriana Gjoni, Julia Vázquez Santiago, and Gagantika Sidhu raise the question of how the European Union is using its foreign policy to advance human rights globally and evaluate the shift in EU's foreign policy in three angles. Likewise, while examining EU's foreign policy towards Africa, Guido Lanfranchi reviews the extent to which EU development cooperation projects adopted under the EUTF for Africa have been aligned with the concept of inclusive development. Lastly, in terms of EU enlargement policy, Irakli Gabidzashvili identifies the major impediments to accession and tracks the accession process for North Macedonia and Albania since the EU accession negotiations began.

On behalf of EST and the Editorial Office, we are glad to see the increasing number of students and young professionals who actively get involved and contribute to the European studies. It has been our honour to work with experts and brightest young minds across the continent, and it makes us optimistic about the future of our think tank and for Europe at large. We hope you, our readers, enjoy this edition, and we look forward to welcoming your suggestions for our future editions.

What Pioneering Policy Solution Should the European Union Employ to Advance the European Project and to Build a more European Union in the Decades Ahead?

By Stan Bruurs

Stan Bruurs is the winner of the first ever European Policy Prize 2021, The Future of Europe in the Age of Crisis. Stan is a doctoral researcher and teaching assistant at the Institute for Labour Law at KU Leuven University. In his dissertation, he is researching the legal position of smart workers in a European labour market within the European legal framework of labour mobility. In 2020, he graduated from the KU Leuven University (Leuven) with a LLM in social and economic law. His field of interest includes both international and European labour law, and the policy-making process within the European Union. This article is the winning essay of the EPP.

ABSTRACT

This policy memo goes beyond the traditional juxtaposition between the economic and social dimension of the European Union (EU). It aims to translate labour ideals into a European Labour Contract (ELAC) within the European Labour Market. The 27 Member States, each with their own legal system, sustain a very diverse set of European employment regimes. However, the diverging labour rights across the European Labour Market exacerbates the knowledge of labour rights among employers and workers hence cumbering the effective use thereof. The lack of enforcement leads moreover to unfair labour conditions and even social dumping. Nevertheless, the EU needs transnational labour mobility to safeguard its competitive social market economy. An ELAC under the coordination of the European Labour Authority (ELA) can establish fair labour mobility by informing mobile workers and facilitating the enforcement of their labour rights. Eventually, it establishes a flexible and resilient European Labour Market by anticipating potential adverse shocks. The resulting integrated, full-fledged European Labour Market is a hefty adjustment mechanism which would increase the employability, efficiency and adaptability of the current labour markets.

Keywords: Labour Market, Mobility, European Labour Contract, European Labour Authority

1. INTRODUCTION

In 2019, an active population of 7.3 million citizens was working in a different EU Member State than their country of origin (European Commission, 2020). The applicable labour rights of mobile workers strongly depend on the national legal systems because there is no harmonized European labour law approach (Countouris and Freedland, 2013; Verscheuren, 2015). The omnipresent ambiguity regarding the application of home and host country labour rights creates a particular unawareness among mobile workers of their labour rights and obligations. There are not enough possibilities for mobile workers to inform themselves about their labour rights, despite previous attempts such as the provision of a National Contact Point. Consequently, workers fear victimization and refrain from using their rights under the free movement provisions. Furthermore, the lack of effective enforcement regarding labour rights of mobile workers maintains the freedom of employers to impose unfair labour conditions and bogus self-employment on them (Wagner, 2015). The current legal framework does not overcome these shortcomings and exposes the need for European coordination of the different labour markets. Because of the high number of workers involved, this policy memo suggests creating an ELAC. The EU can make its social progress objectives explicit via the ELAC. Lastly, the mobile workers' position on the European Labour Market falls within the competences of the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission and the ELA. Thus, the establishment of an ELAC is their concern.

2. PROBLEM DESCRIPTION

The difficulties for mobile workers to receive adequate information about their labour rights and the enforceability thereof generate a problematic unawareness about their legal position. This lack of knowledge about the applicable labour rights leads to the under-utilization of transnational mobility which hampers establishing a Single European Labour Market. In fact, the unfamiliarity with labour rights perpetuates unacceptable violations of labour conditions which does not coincide with the European standards. It also depreciates labour mobility necessary to preserve the highly competitive social market economy of the EU. Labour mobility is the cornerstone of the European internal market and must be stimulated.

Also, the lack of amplified intra-EU mobility causes substantial detriments for the economies of both receiving and sending countries, resulting in more unemployment costs and less public revenue via tax and social contributions. Moreover, research has not yet proven the alleged counterpart of intra-EU mobility as having a significant negative impact on the remuneration of local workers or the employment conditions in the broader sense (European Commission, 2020). National authorities often have difficulties in applying the correct labour rights themselves, because contracts are complicated and unclear, which leads to a lack of enforcement.

Furthermore, the little knowledge about labour rights leading to less labour mobility diminishes the potential of European workers for local enterprises. It undermines the best use of human capital across the EU. Consequently, this hinders businesses from expanding, which is essential to avoid any comparative disadvantage. The provision of certain labour rights in labour contracts is far from guaranteed around Europe, notwithstanding existing obligations in that respect. Uncertainties regarding the worker's labour rights facilitate social dumping and the erosion of employment conditions at the workplace, which can lead to the worker's exploitation (Barslund & Busse, 2016). This is also the case for third-country nationals who are not familiar with the European legal system at all. Workers cannot rely on social partners either, because these organizations often experience problems as well in applying the correct labour rights to mobile workers. The insufficient enforcement possibilities lead to discomfort among workers, which reduces their individual well-being and eventually their productivity.

Besides, the EU faced an unprecedented loss of 6,1 million jobs mainly due to the COVID-19 pandemic in 2020 (European Commission, 2020). To minimize the corresponding rise in unemployment (European Commission, 2020) and the above-mentioned perils, it has never been more important to provide the applicable labour rights in the labour contract and to actively stimulate labour mobility throughout the EU by the cross border matching of job seekers and vacancies (European Commission, 2014).

3. POLICY OPTIONS

3.1 European Labour Contract (ELAC)

The first policy option recommends creating an ELAC. Such an instrument establishes a standard contract stating the existing European labour standards that enterprises can use and complement

with national legislation. These standards are to be found in the European labour legislation, for example the Working Time Directive or the Transparent and Predictable Working Conditions Directive. With a European framework respecting the diversity of national law, the ELAC can avoid a duality on the European Labour Market. The ELAC thereby coordinates the 27 diverse labour markets on the European level, which is necessary to counter the aforementioned inconveniences impinging on each Member State. The ELAC informs the mobile workers and employers about their enforceable European labour rights. Hence, it intercepts the lack of provision of information about minimum labour standards by the employer to the employee. The employer's commitment to adhere to the existing fundamental European labour standards counters the fear of social dumping and therefore boosts labour mobility.

The newly established ELA[1] is the appropriate institution to administer a standard ELAC, for which the recent Directive on Transparent and Predictable Working Conditions can serve as guidance. The key task of the ELA is to ensure fair labour mobility, thus coordinating, promoting and facilitating cross border mobility. The creation of the ELAC falls within the competences of the ELA without raising specific legal issues and can be funded by its financial resources. For example, the ELA can implement it in EURES[2], by requiring the vacancies published therein to use the ELAC. Furthermore, a label shaped as the EU logo can characterize the ELAC and simultaneously serve as a unique authentication method, such as a QR code, to control its legitimacy and avoid misuse thereof. Moreover, the uniform European framework of the ELAC assists the effective enforcement by the ELA of the labour rights of mobile workers.

The ELAC is also politically feasible, because it serves as an extension of the European Social Pillar which embodies the commitment to ensure fair working conditions throughout the EU. The ELAC is furthermore a voluntary contract that does not require any adjustment of the national legal system, thus respecting national sovereignty. Besides, to minimize the (administrative) burden of the Member States, the National Liaison Offices can distribute and provide the ELAC

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[1]The European Labour Authority (ELA), established in 2019, is an EU body that aims to ensure fair labour mobility across the EU and ameliorates cooperation and the application and enforcement of EU rules in the European labour market. See: European Labour Authority, *Working Programme 2021* (https://www.ela.europa.eu/sites/default/files/2020-12/ELA_Work_programme_report_2021_final.pdf: 2020, accessed January 17, 2021), 6.

[2]The European Network of Employment Services (EURES) is an online portal established in 1994 that aims to match supply and demand on the European labour market while providing information and advice to workers and employers.

in the official national languages, with the financial support and coordination of the ELA. Finally, an appropriate system of subsidies, certifications or acknowledgements can stimulate enterprises' corporate social responsibility to use the ELAC.

3.2 European Labour Inspection

The second policy option contemplates establishing a European Labour Inspection and an elaborated role for the ELA. Such labour inspection enforces labour rights for mobile workers and operates autonomously, yet under the coordination of the ELA. Currently, private actors can move freely throughout the EU. Nevertheless, the national public authorities bump into the core national boundaries when trying to enforce the labour rights of their mobile workers across borders. The deficiencies of the current operation of the ELA, such as the voluntary participation of Member States and the absence of any sanction for uncooperative behaviours, lead to ineffective intra-EU enforcement. The rising labour mobility thus hinders effective enforcement by national authorities, allowing enterprises to expand the boundaries of the legal system (Bernsten & Lillie, 2015). However, effective enforcement is a precondition to curtail social and wage dumping. Hence, a newly created, yet costly, European Labour Inspection in combination with an expansion of the competences of the ELA are imperative for mobile workers to benefit from adequate labour rights thereby improving the functioning of the Single European Labour Market. Nevertheless, Member States are not in favour of another reduction of national sovereignty benefitting the EU. A prior assessment of the ELA's operation would first be required before altering its competences.

3.3 Foster social dialogue

The last policy option emphasizes the importance of utilizing the potential of social dialogue fully. The social partners serve as information and coordination organizations next to the ELA. Hence, this option suggests stimulating, financing and organizing the national trade unions and employers organizations to support and distribute comprehensible information to foreign mobile workers effectively. The trade unions' duty is to inform mobile workers to increase their labour rights awareness. Actively bringing trade unions to mobile workers' workplaces helps to eventually redress their low participation to trade unions (Grumbell-McCormick & Hyman, 2020). After all, mobile workers backed by trade unions are more inclined to stand up against exploitation by their employers. These trade unions are better placed than the individual foreign mobile worker to put

pressure on the enterprise involved to abide by the existing and applicable labour rights. The trade unions however have difficulties organizing and supporting temporary mobile workers, especially when aligning the, often contradictory, interests of native workers with those of foreign mobile workers. To conclude, fostering social dialogue means for social partners to have a more substantial role on European, national, local and enterprise-level as to establish fairer labour rights protecting both workers and employers (European Commission, 2020).

4. RECOMMENDATION: EUROPEAN LABOUR CONTRACT

Currently, the EU is converging towards a Single European Labour Market considering the recent strategies regarding the European Semester, the European Social Pillar and the European Employment Guidelines (European Commission, 2020). The next logical step is the establishment of the ELAC, which can combine these strategies. The ELAC is a flexible instrument that conveniently captures the transitions of digitalization, globalization and climate change. For example, the ELAC can prescribe an engagement for enterprises to limit their ecological footprint thereby contributing to the European Green Deal. It can adequately adapt to new labour market changes subverting contemporary labour protection. Moreover, this contract can implement potential upcoming novelties such as a European minimum wage or a European social security system. The pioneering ELAC is also the most feasible, durable and rational next stage towards a more integrated EU from the aforementioned policy options.

The EU is more than just a collection of regulations. The ELAC enhances the sentiment of European solidarity and invigorates the interconnectivity among citizens contributing to a more comprehensive European community (European Commission, 2016). The presence of the EU at the physical workplace of European citizens can positively influence the legitimacy of the European integration process. Nevertheless, resentment towards the operations of the EU can arise if employers exploit workers despite the use of ELAC. The mere use of ELAC does not fully guarantee the effective application of labour rights either. Therefore, the ELA must take up an adequate enforcement role. Furthermore, growing social nationalism across the EU with its anti-immigration sentiments might obstruct the ELAC and the goal of labour mobility (ESPAS, 2016). Consequently, ELAC does not provide a freeway to labour mobility and is not a perfect solution to tackle the economic downsides of COVID-19. It can nevertheless provide a head start towards

more prosperity of our common European future. Thus, the ELAC dares to realize the truth of effective and enforceable labour rights in a flexible and dynamic European Labour Market.

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The Future of the EU: Integration or Disintegration

By Sarah Lehmkühler

Sarah Lehmkühler is a Schuman Trainee in the Citizen's Enquiry Unit of the European Parliament in Luxembourg (Directorate-General for Parliamentary Research Services) who has recently graduated from Exeter University with an MA Conflict, Security and Development and also holds a BA International Politics and International History from Aberystwyth University. Her key research interests lie in the fields of international institutions, security and intelligence studies as well as human rights, which her most recent articles on countering transnational repression (Foreign Policy Centre, December 2020) and ethical conflict resolution (De Re Militari Journal, April 2021) address.

ABSTRACT

This article explores the potential for further political and territorial integration in the EU and the likelihood of it being fulfilled, as well as the likelihood of its opposite, disintegration, taking place. Utilising sources such as official EU publications, treaties, Eurobarometer surveys, academic publications and news articles, it provides a comprehensive view of 'what's left' to integrate and how likely this is to happen, before then considering if for example the ignorance of EU law by some countries means political disintegration is imminent, and whether or not Brexit is only the beginning of a string of exits. The article hypothesizes that while there is a potential for further integration, disintegration is also taking place. This is validated by the analysis, showing that integration and disintegration are not mutually exclusive. It relates this strongly to realist theories of liberal intergovernmentalism, centring arguments of national preference formation as well as collective bargaining as the underpinning of integration. Further, it finds crises to be a trigger for both integration and disintegration.

Keywords: Integration; Disintegration; Enlargement; Liberal intergovernmentalism

1. INTRODUCTION

Faced with a period of uncertainty, including the handling of a pandemic as well as increasing tensions beyond its territory, the EU is at a decisive moment for its future development. According to a range of media outlets, it is even nearing its end. Forbes magazine put this down to too much integration (Constable, 2017), unlike the Express, quoting French president Macron putting this down to too little integration (Barnes, 2018). While it is safe to conclude that neither of these articles are entirely correct, the topic of whether there should be more or less integration in the future of the EU has been hotly debated. Even the EU itself agrees that there is a need for change in their 'White Paper on the Future of Europe', encouraging an 'honest and wide-ranging debate with citizens on how Europe should evolve' (European Commission, 2017, p.26). In the current context of a pandemic that can only be tackled jointly, but which encourages countries to put their own citizens' needs first, as well as the upcoming Conference on the Future of Europe (European Commission, n.d. - a), European integration and integrated policies are highly relevant topics in European affairs. While some current developments point towards integration, others move the EU towards disintegration, highlighting the crossroads the EU is approaching.

The question that therefore must be asked is clear: Is there a potential for further integration in the EU, or has an era of disintegration begun? In search of an answer for this, this article will analyse current developments as well as relevant literature, based on a framework of liberal intergovernmentalist integration theory. It will examine integration in its forms of widening (territorial integration) and deepening (political integration), while also exploring the potential of disintegration. In order to do that, it will establish the hypothesis that while there is a potential for further integration that is being partly fulfilled, for example through the Coronavirus pandemic, there is disintegration taking place simultaneously.

To test this hypothesis, a mixed methodology will be used, considering both secondary sources including but not limited to those in the literature review, as well as primary sources such as EU treaties, publications, surveys and statistics. Newspaper articles and information published on EU websites will also be used to provide the most up-to-date information.

2.   KEY CONCEPTS AND LITERATURE REVIEW

As a foundation for the article, it is important to clarify key terms as well as the theoretical framework underpinning this article. For a brief overview of key literature, five publications frequently used throughout the article shall be addressed briefly.

Turning first to the theoretical framework, this article is based on liberal intergovernmentalism as a theory of European integration. Centring the role of the state and realist politics, as classical intergovernmentalism does, liberal intergovernmentalism portrays integration as a result of inter-state bargaining and negotiation (Cini, 2016, p.73). This is preceded by national preference formation, which takes place through domestic pressures exerted by national elites as well as citizens. At its core, the bargaining that takes place in order to achieve integration has supply and demand sides, with the demand being for cooperation, arising from a desire to better solve national policy problems, and the supply being integration, stemming from negotiations between states (Cini, 2016). States aim to gain a 'positive-sum outcome' from this process, thus wanting to gain as much as possible while making few concessions (Cini, 2016, p.73), translating in practice into countries wanting the benefits of the EU, while giving up as little sovereignty and control as possible. In this context, institutions are regulatory mechanisms, ensuring that each party upholds their negotiated responsibility, rather than symbols of unification (Cini, 2016, p.74).

This theory is crucial in explaining the behaviour of states with regards to integration and disintegration, especially in a political context. Highlighting it as a practical process with states being rational actors focused on their own gain and making the best 'deal' possible, shaped by domestic pressures, aids significantly in understanding current processes of integration and disintegration in the face of crises.

While other theories of European integration such as neo-functionalism with its spillover hypothesis certainly have a place in explaining integration processes, the more realist and state-focused approach of intergovernmentalism is suited better to the premise of this article. Considering its origins as a critique of neo-functionalism due to states blocking the 'spillover', intergovernmentalism shows a similar argument as that taken in the article. Further, liberal intergovernmentalism was preferred over classic intergovernmentalism due to its highlighting of domestic pressures in preference formation, which will be shown in the article too.

To prevent a misunderstanding of terminology, key terms must be defined.[3] Political integration shall be the deepening of cooperation through pooling and delegation of capabilities, leading to the creation of laws or policy. Territorial integration, known as enlargement, is seen as the process in which a state becomes a member of the EU, having fulfilled the Copenhagen Criteria and negotiated the acquis (European Commission, n.d. - c). Resulting from these definitions, disintegration is defined as the reversal of these processes, political disintegration being either the reversal or disregard of policies by a member state, and territorial disintegration being the act of a member state leaving the EU. Further, 'core state power' shall include the realms of military force and defence, public administration, and border control, as per Genschel and Jachtenfuchs (2017, p.179)

Having clarified these terms, a short review of some key literature shall be conducted.

The 'White Paper on the Future of Europe', published by the European Commission (2017), is crucial for a detailed analysis as a primary source, offering a clear insight into the EU. Based on findings such as a changing place in the world for the EU as well as rising concerns about borders, it predicts various options for the future of the EU. Especially its 'Five Scenarios for Europe by 2025' (European Commission, 2017, pp.15-25) are very informative, as they give a perspective on the potential for more integration or disintegration from the EU's point of view. While a drawback is that all of these scenarios are nothing more than speculation and the paper in general is very vague and not analytical, it is included in this list of key literature as its topics and example not only match those of this article but it is a rather open and honest portrayal of how the EU sees its future. The inside perspective on (dis)integration and the range of possibilities it presents make this a key piece of literature.

As a key secondary source, 'More integration, less federation: the European integration of core state powers' written by Genschel and Jachtenfuchs (2016) is presented. This is due to being highly relevant in examining the potential of further political integration. The authors outline a gradual increase in EU involvement in core state powers, which they define as coercive force, public finance, and public administration. They further characterise territorial differentiation as a result of the integration of core state powers, and differentiate between opposition to integration in terms

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[3] Definitions author's own, unless stated otherwise

of regulatory aspects and capacity building. Their concluding argument is that the EU is more complex and less united as a result of (attempted) integration of core state powers. This work is therefore very relevant to the article, mainly to the first part of it, as core state power integration is a key concession in the aforementioned inter-state bargaining that can heavily affect a member state's overall view of the process.

Further, 'Europe's New Identity: The Refugee Crisis and the Rise of Nationalism' written by Postelnicescu (2016), an article relevant to political disintegration is considered. She presents Europe as being at a crossroads, with the original integrated values on one side, and nationalist leaders trying for disintegration on the other side, relating this dilemma to the refugee crisis. She clearly presents a move towards disintegration, arguing that the refugee crisis brought underlying tensions within the EU leadership to a head. Particularly with regards to the national preference formation underpinning the integration process in a liberal intergovernmentalist understanding, her work is highly relevant in understanding how national pressures due to crises can affect integration and disintegration.

The final work, 'Brexit: differentiated disintegration in the European Union', written by Schimmelfennig (2018) argues that the process of disintegration was triggered by the Brexit referendum of 2016, defining it as the 'selective reduction of a member state's level and scope of integration' (Schimmelfennig, 2018, p.1154). While this work centres around Brexit, its observations are applicable more generally, especially the notion that theories of differentiated integration also explain the origins of calls for disintegration. It links well to Genschel and Jachtenfuchs' writing, as Schimmelfennig sees core state powers as a defining factor in the possibility of further integration and even the existence of disintegration.

While these works all contribute greatly to the topic, there are some gaps in the literature that will be addressed in this article. A key aspect in this is that the presented literature regards integration and disintegration as separate processes, while this article aims to connect them in the following paragraphs. Further, the article will also present crises as a trigger of further integration, and not only disintegration, as is shown in the literature. It will also aim to create a stronger and more explicit link to liberal intergovernmentalist theory than is seen in the literature, placing emphasis on both bargaining and domestic preference formation.

Political Integration

Territorial Integration

1950: The Schuman Declaration proposes to put German and French coal and steel under one authority

1955: launch of integration process including the customs union

1957: Treaties of Rome: EEC and EAEC established

1962: CAP established

1973: Denmark, Ireland and the UK join

1974: Paris summit establishes a European Council and accepts direct elections into the European Parliament

1981: Greece joins

1984: Draft treaty establishing the EU

1986: Single European Act signed establishing the Single Market (enters into force 1987)

1986: Portugal and Spain join

1991: Treaty on European Union signed in Maastricht, establishing e.g. the ECB and European citizenship

1995: Austria, Finland and Sweden join

1997: Treaty of Amsterdam creates the 'area of freedom security and justice

2001: Treaty of Nice paving the way for more enlargement

2002: introduction of the Euro notes and coins

2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia join

2004: Constitutional Treaty signed

2005: Constitutional Treaty rejected by France and the Netherlands

2007: Bulgaria and Romania join

2007-2009: Lisbon Treaty signed and implemented, amending the TEU and TEC (modernizing them)

2011: European Stability Mechanism implemented
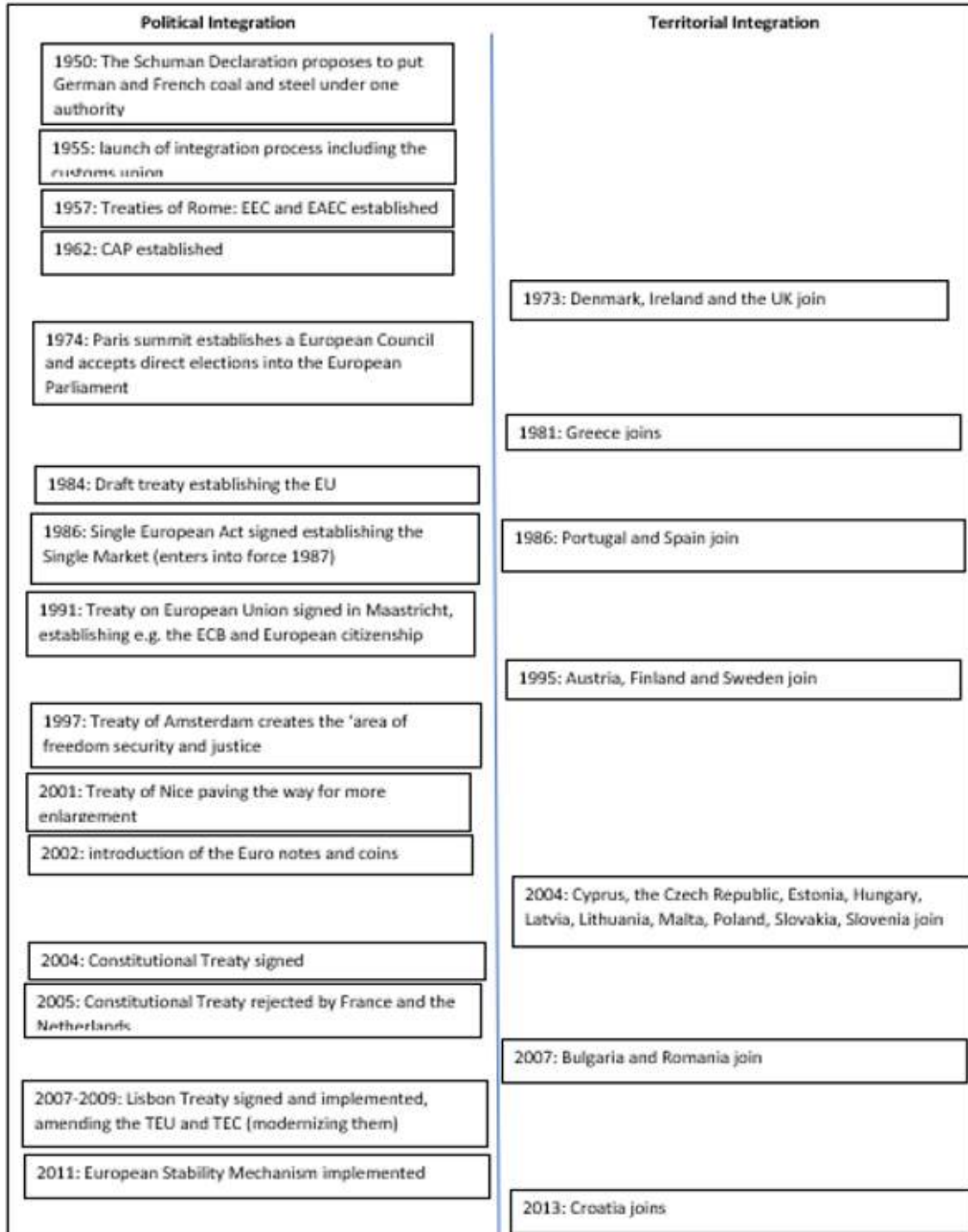
2013: Croatia joins

Figure 1 – Timeframe of European Integration (Source: Author's own)

Finally, as an end to the introductory part of this article, a short overview of key dates and events in European integration (Figure 1) shall be given in the form of a timeline, outlining trends and obstacles in integration. (dates from Phinnemore, 2016, pp.14-16; pp. 20-21; p.23; p. 26 as well as Church and Phinnemore, 2016, p.33; p. 38; p.46).

As can be seen in this timeline, integration has not been a smooth process. Periods of heightened integration in the late 1980s and early 1990s as well as the 2000s, contrast with setbacks, such as the 2005 rejection of the Constitutional Treaty. Having visualised the developments, the sheer number of aspects that have been integrated must be noted in order to assess whether or not there is a general potential for more integration. Finally, it has to be recognized that the speed of integration has severely reduced in recent years, potentially in an early phase of disintegration. These factors shall be examined in the following four parts of this article, exploring political and territorial (dis)integration.

3. FURTHER POLITICAL INTEGRATION

Generally, the EU can be considered as in favour of more political integration, with the Commission often being regarded as the driver of it (Nugent and Rhinhard, 2019, p.206), while the member states and their national parliaments take the role of 'gatekeepers' (Raunio, 2011, pp.304-305). Yet, they are instrumental in the process of integration, bargaining for deals, as they not only have to agree to them but also enforce new legislation and policies domestically (Raunio, p.307). Due to the vital role they play, it is not surprising that they often insist on compromises in integrating core powers as Genschel and Jachtenfuchs (2016) describe, explained by liberal intergovernmentalist theory's positive-sum outcome. Member states want to avoid giving too much, without enough returns, due to the domestic pressures that influence them. Thus, they create the 'system of differentiated integration' that Schimmelfennig et al. (2015, p.765) describe.

To analyse the potential for further integration, areas that are not fully or mostly integrated yet and therefore have the capacity for further integration, placing them on a lower level of vertical differentiation on the scale developed by Börzel (Börzel, 2005, p.221), will be identified. When doing this, it quickly becomes apparent that the areas that fulfil these criteria fall into the core state powers, while areas outside of them such as trade and free movements of goods are already highly integrated in the single market (European Union, n.d. - a). Another such highly integrated area is

the Common Agricultural Policy (CAP), which, as Schimmelfennig et al. (2015) highlight, is so strongly integrated because there is no horizontal differentiation in it, meaning there are no opt-outs of countries not taking part (Schimmelfennig et al., 2015, p.767). Opt-outs are helpful in visualising differences between non-core powers that are integrated and core states powers that aren't, as '[w]hile opt-outs are virtually absent in market-related policy areas, they are a normal feature of EU policies in core state power' (Genschel and Jachtenfuchs, 2016, p.48). It shows that states, as explained by the theoretical framework, are in control of integration to an extent where they can gain opt-outs from policies and much of integration comes down to bargaining between the EU and the member states, which will be explored in the following.

Considering the aforementioned bargaining between the EU and the member states that is an essential part in liberal intergovernmentalist theory, integration takes place when all parties reach an agreement in which it is beneficial for them. For the EU, this is easy, as they are on a 'relentless quest for ever closer integration' (Tassinari, 2016, p.72) due to this increasing their power on the international stage. Especially in terms of the core state power of defence, this increase of power in the international sphere would be significant, bringing the EU Commission to urge member states to become more invested in the integration of defence and arguing that the EU cannot stay a soft power any longer (European Commission, 2017, p.9). Juncker, the former Commission president, stressed this by saying the 'problem that [the EU] is not taken entirely seriously' (Sparrow, 2015, para.1) would be solved through this and only this, an idea which is backed by a range of literature. While member states and the European Parliament have conceded to some extent by adopting the European Defence Fund in April 2021, a tool simplifying defence procurement and research (Karaboytcheva, 2021), the argument by Genschel and Jachtenfuchs that in its current state the EU lacks the 'key action resources of the modern state' partly through not having an army (Genschel and Jachtenfuchs, 2016, p.43) remains. This cannot be mitigated through the looser provisions for defence in current treaties, as they are mainly regulatory, and not capacity building. Therefore, it can be said that from the side of the EU, there is a potential for further integration, even for core state powers, however this needs to be matched by the member states in order to develop further. This however is unlikely, as 'giving up' national defence capabilities in favour of a unified defence force would subject them to significant domestic pressures.

While this can seem implausible, due to guarantees and treaties of the EU being one of the main reasons Europe has not been at war for a long time (Tassinari, 2016, p.72), and the fact that there are areas nowadays such as nuclear policy and defence which cannot be tackled without cooperation (Menon, 1997, p.2), they are instead following the historical trend of reluctance in integrating areas of high importance to the state (Börzel, 2005, p.219). Circling back to the theoretical framework, this is due to the fact that member states often need to see a practical, instant advantage for them in order to agree to integration, which was the case with e.g. the single market creating economic benefits, but is less noticeable with defence. In cases where this does not apply, it becomes almost impossible to justify the related loss of sovereignty to national elites and pressure groups, who fear that their military capabilities might be taken from them and redistributed, thus leaving them vulnerable (Sparrow, 2015). Integrating one of the core state powers in this capacity building way is a challenge as especially member states with larger resources fear that they will end up giving more than they receive (Ojanen, 2006, p.49). Remaining with the example of defence, most member states also already gain sufficient benefits from other sources, in this case the North Atlantic Treaty Organisation (NATO) (Jasper and Portela, 2010, p.147). The EU can simply not offer them enough added benefits with regards to defence, so while the 'supply' is high, the 'demand' is not. However, this is not to say that there is no potential at all for further integration from the side of the member states. Considering the aspect of a European identity and genuine commitment to integration, member states might prioritise the advancement of a project they chose to be a part of over their national interest in some cases (Risse, 2010, p.181), especially when enough pressure from citizens with a European identity is exerted. Therefore, while much smaller and harder to achieve than in the case of the EU, there still is a general potential for further integration from the member states, creating an overall potential.

The recent issue of the Covid-19 pandemic is a good example of this. Contrasting with the reluctance of member states to integrate with regards to defence, significant integration of health policy (falling under the core power of public administration) has taken place, as Wolff and Ladi (2020) support. In this case, it became clear to member states that it was almost impossible to tackle the challenges of the pandemic individually. The 'demand' for cooperation increased, and the EU readily 'supplied' integrated policies, such as the vaccine strategy (European Commission, n.d. - j) and the currently debated Digital Green Certificate (European Commission, n.d. - b), dubbed the 'vaccine passport' in many countries. Nonetheless, this is not to say that perfect

integration has taken place. There have been strong debates in the EU within this process, with countries such as Austria arguing that they should receive more vaccines than they had (Deutsch et al., 2021), or Bulgaria purchasing the Russian Sputnik V vaccine (Connolly, 2021), as of now not approved by the European Medicines Agency (EMA). However, the pandemic is a highly specific scenario, and thus potentially ineligible to substantiate general claims.

Casting a broader view at the possibility of the potential for integration to be fulfilled, a key determinant of the national preference formation that underpins integration in liberal intergovernmentalism cannot be forgotten – citizens. Considering the pressure they can exert on their government, it appears that there is a chance of the potential being fulfilled. In the October 2020 Eurobarometer Public Opinion Survey, 59% of citizens want more decisions to be taken at EU level (European Commission Public Opinion - Eurobarometer, 2020, p.150), while in March 2021 an equal number of citizens said they trust the EU to make the right decisions with regard to the coronavirus pandemic (European Commission Public Opinion – Eurobarometer, 2021, p.29). Further, with the increasingly popular opt-outs, integration is more likely as not every country has to agree to it in order for the potential to be fulfilled. This is especially beneficial for the EU considering differing opinions among citizens, who often have different opinions on the EU depending on their country of origin. However, it does open a debate on whether or not one can truly speak of political integration if it does not involve all countries.

4. FURTHER TERRITORIAL INTEGRATION (ENLARGEMENT)

Focusing on territorial integration, commonly known as enlargement, this process has been characterised as reflecting 'a sense of what EU institutions and member states consider appropriate behaviour for the role that they collectively ascribe to themselves as members of the EU' (Sedelmeier, 2003, p.4), intersecting with the aspect of a value-based identity in which one of key functions of the EU is the spread of democracy throughout Europe (European Commission, n.d. - k, p.2). It has been a key aspect in the EU's growth both in size and importance since the end of the cold war (Schimmelfennig and Sedelmeier, 2002, pp.500-501), leading to this article examining if there is a further potential for it at the current time. It is important to not only consider the 'readiness' of countries to join the EU, but also the general willingness and capacity of the EU to integrate new members at this point (European Council, n.d. - a). As explained by liberal intergovernmentalism, there needs to be a positive outcome for member states in any 'deal' with

regards integration, meaning that the current member states as well as candidate countries need to see a clear benefit in the accession of another member. However, this benefit can also be the aforementioned spread of democracy and European values, if a country could reap domestic benefits from taking part in this. Recent decisions such as the enhancing of the accession process to strengthen it as well as make it more predictable (European Commission, 2020 - c), which was formally adopted in the March 2021 plenary session of the European Parliament (European Economic and Social Committee, n.d.), point towards a general willingness for further territorial integration.

In order to assess the potential for integration, the current candidate countries[4] and the chances of them joining the EU shall be presented individually. While in general a potential for further territorial integration exists, as these countries hold candidate status and some are in accession negotiations, it will be analysed how great the potential is in each case and if it is likely to be fulfilled.

First, Turkey will be examined. Turkey has been a candidate since 1999 and in October 2005 negotiations started (European Council, n.d. - g). However, in June 2018 the General Affairs Council decided that negotiations are effectively frozen due to worsening in areas of human rights and rule of law, despite joint work on migration and refugees (European Commission, n.d. - i). Tensions have further been increasing since the Turkish offensive against the Kurds in Syria, the threat of sanctions against which have prompted Erdogan to threaten to release refugees and IS sympathisers onto Europe. EU diplomats see this as proof of how unsuited Turkey is to becoming a member (DW News, 2019). However, even when Turkey was seen to be making progress towards accession, EU citizen's attitudes were against it by a clear majority due to concerns over a clash of cultures, often fuelled by heavy Turkish migration into western Europe in the past with ideas of integration failing in some cases (Gerhards and Hans, n.d., pp.745-747). Following the April 2021 'Sofagate' scandal, in which Commission president Ursula von der Leyen was placed on a sofa away from the conversation at an official visit from her and Council president Charles Michel to Turkey (de la Baume, 2021), as well as the similarly timed withdrawal of Turkey from the 'Istanbul convention' against violence against women (Martuscelli, 2021), EU-Turkey

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[4] For a detailed definition of the candidate status and an explanation of the accession procedure, please see: European Commission, n.d. - g or European Commission, n.d. - e

relations have further worsened. Therefore, it does not seem like there is a potential for Turkish integration into the EU at this moment in time, because neither the EU nor Turkey seem to want it and are moving away from each other, especially in terms of human rights and democracy, some of the core values of the EU. Neither party has anything to gain in this scenario, explaining the lack of integration.

Considering Albania, the country applied in April 2009, reached candidate status in 2012 and negotiations were supposed to be opened in June 2019, but got pushed to October (European Council, n.d. - b). However, France, Denmark and the Netherlands blocked the opening of accession talks, showing fundamental opposition to this process of integration. The European Parliament referred to this as 'a mistake', saying that Albania had 'made considerable efforts over the last few years' (European Parliament, 2019). They also noted that this veto gave other actors who may be opposed to the EU the chance to engage more with Albania, bringing in the aspect of overlapping zones of interest with Russia (European Parliament, 2019). The opposing countries however cite concerns about illegal migration via the Balkans as the reason for this (BBC News, 2019) with corruption and organised crime being further problems (European Commission, n.d. - d). Negotiations were finally opened in March 2020, in conjunction with the release of the aforementioned update of the accession strategy. A presentation of the draft negotiating framework to the member states took place in July 2020 (European Commission, n.d. - c). Despite the general preoccupation with the coronavirus pandemic in the EU, the opening of negotiations is an important step towards accession of Albania to the EU, showing a large potential for territorial integration. While Albania has much to gain in terms of economy and standing in the world, many other member states would gain domestically from taking a firmer stance against Russian involvement in the EU by 'taking away' Albania from them, explaining this potential for integration through it being a positive 'deal' for both parties.

Turning to North Macedonia, they applied in March 2004, gained candidate status in December 2005, and depending on progress made in their security services, were supposed to start negotiations simultaneously with Albania in June/October 2019 (European Council, n.d. - f). However, the negotiations were opposed by France, despite Germany arguing in favour of North Macedonia after their name change had taken place, resolving a conflict with Greece (BBC News, 2019). French president Macron did not give in to this though and insisted that a reform of the

system is needed (BBC News, 2019). Following the proposal for an updated system, North Macedonia, like Albania, has entered accession negotiations in March 2020, with the framework also being presented in July 2020 (European Commission, n.d. - c). While the preoccupation of the EU with handling the coronavirus pandemic applies in this case too, a potential for further territorial integration can once more be seen. However, in the context of liberal intergovernmentalism bargaining, the potential appears lower than that of Albania. While North Macedonia has much to gain from joining the EU, the situation is different for the member states. Ongoing tensions with Greece despite the name change, as well as a clash with Bulgaria over a summer 2020 election campaign (Telarico, 2021) mean that the EU would potentially invite conflict into their borders, explaining this slightly lower potential.

Considering Montenegro, who has already taken part in negotiations, the country applied in December 2008, gained candidate status in December 2010, and was in negotiations throughout 2020 (European Council, n.d. - d). All 33 chapters of accession negotiations have been opened, with 3 being provisionally closed (European Council, n.d. - d.) The aim of joining the EU in 2025 has been formulated by all parties, and Montenegrin Prime Minister Dusko Markovic has been hopeful that this will be achieved, seeing problems to be resolved mainly in establishing the rule of law and fighting organised crime, as well as Russian influences, which have reduced since they joined NATO in 2017 (Prager, 2019). He has further expressed hopes that the EU will be more open to accelerating accession negotiations after the Brexit negotiations are finished (Jachmann, 2019). However, this stands opposed to a commission report that voices dissatisfaction with the speed of reforms not only regarding the rule of law and organised crime, but also corruption and freedom of the press (Schiltz, 2018). While these issues as well as the pandemic are a roadblock, there is still a large potential for integration in this case, especially connected to Montenegro joining NATO and further turning their backs to Russia. Due to the fact that negotiations have already been taking place, and the agreement would be mutually beneficial for Montenegro and the EU, this article sees a potential for the 2025 target to be met.

Finally, the case of Serbia will be considered. They applied in October 2010, gained candidate status in March 2012, and negotiations that are still ongoing started in January 2014 (European Council, n.d. - e). While originally a target of 2025 was set, matching that of Montenegro, fundamental human rights problems and an ongoing issue with Kosovo are grave problems

standing in the way of achieving it, especially as the EU announced it will not include any new members with ongoing border disputes. Paired with the fact that Serbia has significant issues with their national parliament (Stojanovic, 2019) and refuses to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) this candidate country has significant issues yet to be resolved (European Commission, 2019), alongside their close relations with Russia. As the EU sees steps towards Russia in terms of trade and the refusal to impose EU-led sanctions on Russia as steps away from them, this is a substantial barrier, especially as Serbia disagrees and argues that their relationship with Russia does not stand in the way of EU membership (Stojanovic, 2019). Due to this fundamental conflict and the other aforementioned issues, the potential for integration in this case seems slimmer than in the others. Regarding the increasingly tense relations between the EU and Russia (Gray, 2021), the EU might conclude from the relationship between Russia and Serbia that this accession is unsuitable as it would not benefit them, therefore making the target of 2025 less possible.

Having explored the candidate countries, and determined that while the potential for integration varies between countries, a general potential exists, the focus shall now be on the potential for integration beyond them. Some countries that become apparent as 'targets' are Bosnia and Herzegovina and Kosovo. While Bosnia and Herzegovina applied for accession in February 2016 (European Council, n.d. - c), they have been experiencing issues with developing their parliament and implementing processes that will be needed for negotiations, and are therefore not being recognised as a candidate country yet (European Commission, n.d. - g). Kosovo has not yet applied, however is part of many EU initiatives to aid their development, such as a 'stabilisation and association agreement' (European Commission, n.d. - f) that is part of the process of eventually becoming a candidate for accession (European Commission, n.d. - f). Apart from those two countries, it is difficult to find a European country that is not an EU member but would like to be one. For example, Switzerland and Norway voted domestically against becoming members of the EU, showing how their national preference formation has prevented integration as there was no 'demand' for accession. Alongside others such as Liechtenstein and Iceland they are part of the EFTA instead (The Economist, 2019), a more beneficial 'deal' for them. Another possible country, Ukraine, is seen as being too heavily involved with Russia and Russia being too invested in it (Samorukov, 2019). Therefore, while Bosnia and Herzegovina has a limited potential for integration due to having applied for membership, beyond it the potential is severely limited or

non-existent. Kosovo is a generally unstable country with an ongoing border dispute with Serbia, attempts at integration of Ukraine would provoke too much conflict with Russia, and the rest of the 'available' countries have

5. POLITICAL DISINTEGRATION

Having considered the arguments both in favour and against further integration, disintegration must be considered, once more beginning with the political aspect. Despite the separation in this article, it has nonetheless to be noted that integration and disintegration in many ways mirror each other, with authors such as Schimmelfennig even claiming that when bringing in the aspect of differentiation, explanations for integration and disintegration are the same (Schimmelfennig, 2018, p.1155). Under the theoretical framework of liberal intergovernmentalism they also follow the same process, as national preferences and domestic pressures decide when a 'deal' with the EU is no longer beneficial for a country, causing them to disintegrate and exactly reverse the process of integration. However, while in this line of thinking 'practical' aspects for integration are at the forefront, this article finds that the literature on disintegration is less centred on this, rather highlighting aspects of values and (national) identity. This is explained, and turns into a more practical consideration when analysing recent Eurobarometer surveys, in which despite 71% of citizens agreeing that they are citizens of the EU (European Commission Public Opinion, 2020, p.23), this is qualified by the majority of them selecting the option 'to some extent', indicating the existence of a stronger, national identity (European Commission Public Opinion, 2020). These aspects of values and identity in a vital role shall be explored in the following, answering questions of whether or not there is disintegration, and why this is so.

Addressing first the question of whether or not political disintegration is currently occurring or can be projected to occur, data by Schimmelfennig et al. shows that in a formal and measurable way, there has never been a time of disintegration, merely a stagnation of integration (Schimmelfennig, et al., 2015, p.768). This means that up to the end of data collection, there had been no formal removal of integrated policies, and no return to individual governance in areas that had once been integrated. While this at first glance appears to prove that there is no disintegration, even the EU Commission in its White Paper, projects disintegration and the return to the EU as a merely economic project as one option (European Commission, 2017, pp.18-19), showing the validity of claims of disintegration. When examining the reasons for this in more detail, it is clearly linked to

opt-outs of policy, which have become increasingly common. Particularly in the much-discussed integration of core state powers (Genschel and Jachtenfuchs, 2016, p.42), the EU is increasingly granting exceptions to countries, presumably in a bid to prevent disintegration (Rosamond, 2016, p.866) and an inability to strike a 'deal' without them.

However, the appearance of disintegration is not exclusively created through opt-outs. Similarly, or even more prominently, the issue of countries passing domestic laws contradicting EU legislation and disregarding the key values of the EU make the European project seem weak, and only loosely connected, circling back to the liberal intergovernmentalist assumption that the dedication of countries to the EU is purely strategic and based on national preferences. As soon as these preferences and domestic pressures shift, so will the country's behaviour towards the EU. The example of Poland's 'small media law', essentially putting the media under state control (Chapman, 2017, p.10), is a good example of this. It is a direct contradiction to article 11 of the EU Charter of Fundamental Rights and ignores what the EU declares 'one of the pillars of modern democracy' (European Commission, n.d. - l). This issue of countries' ignorance of fundamental rights and EU legislation is exacerbated further in the example of Poland, concerning their effort of bringing the judiciary under control of the ruling parties despite warnings from the EU that this is unacceptable under EU law (Berendt, 2019). However, these warnings could not deter the Polish government from implementing a system to discipline judges in 2021 (von der Burchard, 2021), highlighting that if the 'opinion' of the EU opposes national preferences, the national preferences are likely to be chosen. Thus, Poland shows disintegration not by formally reversing EU law and policy, but by simply ignoring it.

Finally, following the logic of Tassinari, another way disintegration can be seen is in the handling of crises. He argues that political integration used to be seen as states working together and integrating further in times of crisis (Tassinari, 2016, p.72), whereas in the refugee crisis of 2015 onwards the opposite of this has taken place, thus showing disintegration (Tassinari, 2016, p.77). At odds with this however stands the current Coronavirus pandemic, as mentioned. It thus appears that there are certain characteristics that prompt either integration or disintegration, an interesting avenue for further research. Nonetheless, while Tassinari's argument appears to not be entirely correct in the current context, the disregard of some member states for fundamental EU law and values shows a clear political distancing of them from the EU, hence, disintegration.

Subsequently, having established that some political disintegration is taking place in the EU, the reasons for this must be considered in the light of the theoretical framework. Schimmelfennig blames it on what can be summarized as a strengthened feeling of not wanting more political integration, stating that 'demand for disintegration increases with (a) the spillover of integration into identity-relevant areas; (b) the rise of Eurosceptic parties; and (c) an increase in the availability or use of referendums on European integration' (Schimmelfennig, 2018, p.1159), raising again the importance of identity. Touching on both core aspects of liberal intergovernmentalism, national preference formation and bargaining with the focus on a positive-sum outcome, the author highlights this. The rise of Eurosceptic parties as well as the increased availability of referendums cause significant domestic pressures that reshape national preferences, while the spillover of integration into identity-relevant areas (core powers) shows that integrating would create too much domestic struggle for member states, not achieving the positive-sum outcome anymore.

Focusing on his argument of the rise of Eurosceptic parties, the underlying cause of this is often seen in crises (Algan et al., 2017, p.310), which make the public more receptive to the fear-mongering rhetoric often employed by them. While the example of the Coronavirus pandemic has previously been used to show crises as a driver for integration, the diverse impact they can have must not be underestimated. Despite furthering integration, Eurosceptic as well as 'fringe' parties have been enjoying some successes, just as they did during the refugee crisis (European Parliament, 2021) Having gained a platform and first electoral successes, these parties then openly campaign for not only political but also territorial disintegration,[5] changing the national governments from those that supported political integration to ones that include Eurosceptics (Mudde, 2016, p.30) in a reshaping of national preferences. Returning to the root cause, crises, the possibility of underlying tensions between countries becoming more pronounced due to large-scale crises is widening an already existing gap between members of the EU (Postelnicescu, 2016, pp.204-205), potentially leading to a refusal to cooperate and prompting disintegration. Thus, it appears that the era of disintegration has been no sudden event, but a longer-term process of political change in national governments, aided by crises such as the refugee crisis.

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[5] See as examples the AfD website, ('AfD Europawahlprogramm', n.d., pp.11-12) in which the party e.g. openly opposes key treaties; and the Front National website, ('144 Engagements Presedentiels, n.d., point 1) in which the party e.g. proposes the abolition of the European parliament

6. TERRITORIAL DISINTEGRATION

Nonetheless, and even more so than political disintegration, territorial disintegration is a hotly debated topic, mainly due to the voluntary disintegration of the UK, Brexit. As this has often been seen as the beginning of an era of territorial disintegration, this article will examine the validity of a claim of the approaching era of disintegration, not only exploring if Brexit was indeed a sign of things to come, but also presenting the relationship between territorial disintegration and the current era of political disintegration against the framework of liberal intergovernmentalism.

Knowing that political disintegration is currently taking place in the EU, the option of territorial disintegration as a simple continuation of it comes to mind. And indeed it is often seen as a continuation or escalation of political disintegration, with an even stronger relationship between both becoming apparent when considering again the aspect of differentiation. Schimmelfennig not only speaks of political and territorial disintegration but of internal and external differentiation, internal meaning the departure from certain policies, and external meaning the departure from the EU while still adhering to some policies (Brexit) (Schimmelfennig, 2018, p.1154). This highlights well that despite territorial disintegration being seen as an escalation of political disintegration, it does not mean complete disintegration. This can be seen in the example of Brexit, in which the UK government has left the EU, but has entered a comprehensive 'trade and cooperation agreement' (Eur-Lex, 2020), approved by the European Parliament during the April 2021 plenary (European Parliament, 2021), which shows a degree of political integration. Once more, while domestic pressures in the UK shaped the decision to territorially disintegrate from the EU (2016 referendum), it was nonetheless beneficial for both the UK and the EU to remain integrated to an extent, especially with regards to trade.

Having presented the relationship between political and territorial disintegration, Brexit as an example of territorial disintegration and as 'proof' for an era of political disintegration shall be analysed. Brexit, at least when following Schimmelfennig, is a perfect example of disintegration: it fulfils all his criteria and seems to be a typical case (ibid., p.1170). And yet, in the context of EU-British relations, Brexit cannot be this typical case, mainly due to a long-lasting special relationship between Britain and the EU. Despite being integrated in many areas, Britain never joined the Eurozone or the Schengen Area, and its citizens have never identified quite as strongly with the EU as those of other countries, highlighting different national preferences, as shown in

the following diagram (Figure 2, data from European Commission Public Opinion – Eurobarometer, 1998, pp.41-42; 2002, p.14; 2004, p.94,96; 2006, pp.112-113; 2012, p.24; 2016, p.31; 2014, pp.21-22; 2018, pp.29-30).
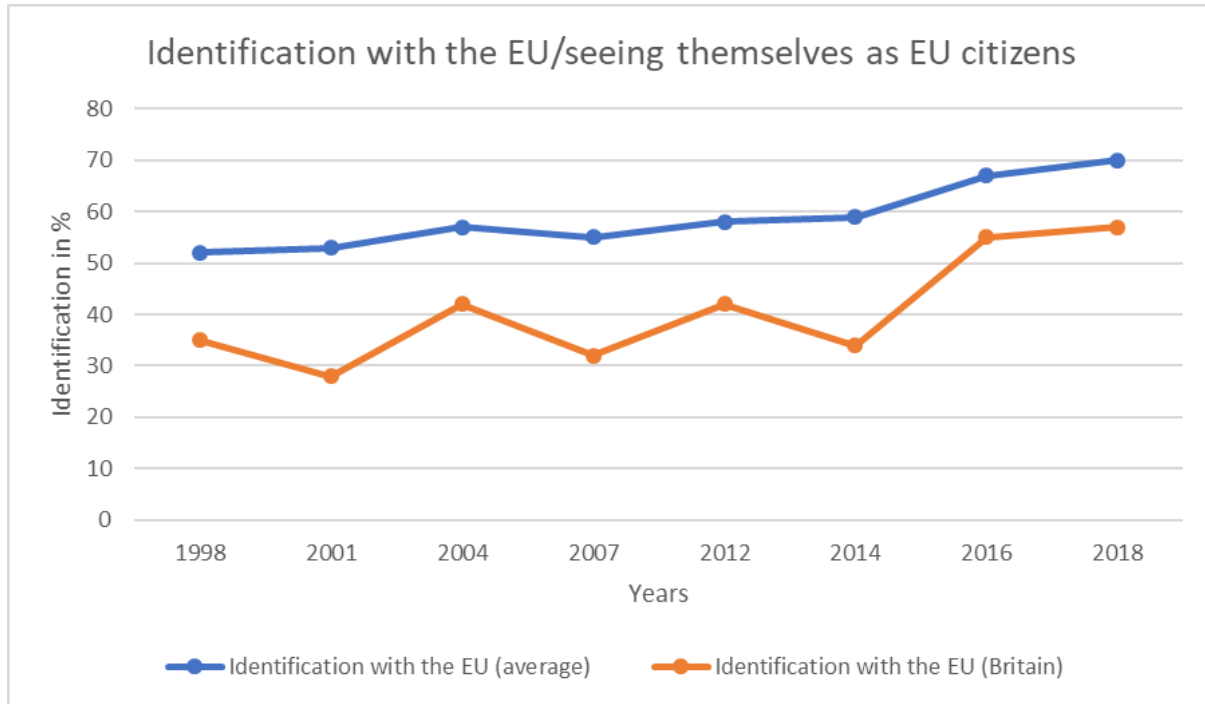
Figure 2: Identification with the EU (Source: Author's own)

Nonetheless, despite its different origin, Brexit is regarded as an event that could trigger a domino effect, as the grievances of the UK that led to Brexit are not exclusive to them (Hobolt, 2016, pp.1260-1261). However, some authors such as Vollaard disagree and argue that a domino effect is unlikely, simply due to the unavailability of an alternative to the EU for many countries and the immense struggle an isolated existence would bring (Vollaard, H., 2018, p.237). This is an especially vital concern for smaller and/or economically weaker member states. Seeing how much Britain, an economically strong nation struggles for example in the aspect of fishing/export (Lawless, 2021), territorial disintegration is not viable to them. While they might dislike the 'deal' of being in the EU, the situation of not being part of it would impact them more negatively. Instead, they might simply start ignoring aspects of legislation they disagree with, as in the example of Poland, thereby showing another way in which territorial and political disintegration are connected: The inaccessibility of territorial disintegration might lead to an increase in political disintegration.

7. CONCLUSION

This article debated the question of whether or not further integration is possible, or if an era of disintegration has begun, divided into four key sections addressing political integration, territorial integration, political disintegration as well as territorial disintegration. Based on a theoretical framework of liberal intergovernmentalism, the hypothesis that there is a potential for further integration which is being partly fulfilled, while some disintegration is simultaneously taking place was explored.

With regards to political integration, the key conclusion to be drawn is that while there are areas yet to be integrated, they fall into the realm of core state powers, with giving up sovereignty in them being too costly for member states in order to gain positive outcomes from any deal. The demand for integration thus is low. However, in times of crisis, such as the coronavirus pandemic, the demand can suddenly increase, prompting integration even in a core state power.

Concerning further territorial integration, the potential is limited, simply in the way of 'available' countries being a naturally finite pool. Despite this, there is a chance of the existing potential being fulfilled, especially since the revision of the EU accession strategy. The most likely potential to be fulfilled in this regard is the accession of Albania, which would benefit both the country as well as the EU, showing a likelihood that a deal can be made.

On the topic of disintegration, it was found that while there is no political disintegration taking place officially, in a practical way this presents in the way of member states simply ignoring EU policies, showing that an absence of formal disintegration does not equal an absence of informal disintegration. This highlights the strengths of domestic pressures, as countries appear to prioritise their national interests over prior 'deals' made with the EU. This rings true with regards to territorial disintegration too, as the 2016 UK referendum and the following 'Brexit' show. Nonetheless, Brexit is not seen as the beginning of an era of territorial disintegration, mainly due to the uniqueness of the British membership in the EU, as well as the fact that an exit from the EU is not feasible for many countries, due to the overall negative outcome it would have for them. This is strongly related to political disintegration, which is identified as an alternative due to the inaccessibility of territorial disintegration.

A key finding resulting from this analysis is that integration and disintegration are not mutually exclusive, validating the hypothesis. Due to the diverse nature of the EU, it is possible for disintegration to be taking place in some areas, while others progress towards further integration. Further, a common denominator in triggering integration or disintegration seems to be an occurrence of a crisis. While the coronavirus pandemic encouraged further integration, the refugee crisis had an opposite effect. Thus, the main finding to bear in mind is that, conclusive with liberal intergovernmentalist theory, further integration or disintegration depends on the 'deal' a country can have with the EU, including whether or not they can find better 'deals' elsewhere as is the case with defence policy. The original hypothesis is thus validated by the analysis.

Nonetheless, there is a significant potential for further research on the topics that have been covered. This could for example include a review of findings after the coronavirus pandemic, in order to observe whether or not the attitude towards integration changes again once the immediate crisis situation is over and the demand for cooperation might decrease. Further, it would also be interesting to explore if there is a way to predict if a crisis will lead to integration or disintegration, potentially by studying the differences between the coronavirus pandemic and the refugee crisis.

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Brussels and the Paks II project: How a Russo-Hungarian Nuclear Deal Reveals Internal Contestation about EU Energy Governance

By Tjadina Herbert

Tjadina Herbert holds a Master's degree in International Relations from Leiden University and is currently in the final stage of a MA Russian and Eurasian Studies at the same university. As part of her studies, she interned at the Clingendael Institute and at the Embassy of the Kingdom of the Netherlands in Ukraine. Her fields of interest centre around international security issues and energy geopolitics, with particular focus on Russia and Eastern Europe.

ABSTRACT

Energy has long been a contentious issue in European affairs, especially given the prominent role Russia plays in the European Union's (EU) energy supply and the deterioration of EU-Russia relations following 2014. Since then, much has been made about Russia's willingness to use energy resources as a political instrument against the EU and about the ways Europe can best achieve energy security. This paper contributes to both these debates by examining a largely unexplored form of energy cooperation: the Russo-Hungarian nuclear partnership. By examining the structural qualities of nuclear energy, it assesses the probability of Russia using its nuclear resources as a political tool against Hungary or the EU. Inspection of the Paks II deal reveals the existence of divergent ideas about energy security and governance in Budapest and Brussels, as well as within European policy thinking circles. The paper concludes that while European scepticism about the Russo-Hungarian nuclear partnership was fuelled by both geopolitical and ideational concerns, the Union's response signalled a general unwillingness to confront Hungary on its rapprochement with Russia and its rejection of European liberal market values. This proves to be a serious setback to Europe's energy ambitions.

Keywords: Russia-EU Energy Relations; Russia; Hungary; Nuclear Energy Cooperation; EU Energy Governance

1. INTRODUCTION

Energy has long been a contentious issue in European affairs. In light of a changing global energy system and deteriorated regional security landscape, the European Union's (EU) continued reliance on Russian energy resources is more relevant than ever, with some countries taking steps to further diminish their dependencies on Russian hydrocarbons, while others emphasise the need to maintain engagement with Moscow. A particular note in the European cacophony is Hungary, a country which has repeatedly opposed efforts to form a stronger EU stance against Russia. Under president Viktor Orbán, the Hungarian government has sought closer political and economic ties with the Kremlin, with the pinnacle moment being a nuclear deal closed in 2014. This atomic partnership envisions a €10 billion loan provided by Russia's national development bank Vnesheconombank to finance the expansion of Hungarian Paks Nuclear Power Plant (NPP) by Russian state corporation Rosatom.

The deal has sparked controversy across the European continent, with concerns varying from the political and security implications of the project to Hungary's lack of compliance with EU liberal market values. Tensions culminated when the European Commission (EC) launched an infringement procedure against Hungary for non-compliance with EU public procurement rules, but ultimately regulatory approval was given for the Paks II project to proceed. Construction of the facility started in 2019 with the first reactor unit planned to go online by 2025 (NS Energy, 2020). This paper examines the Russo-Hungarian nuclear deal within the broader context of EU-Russian energy relations and EU energy governance. It challenges concerns about Russia using its nuclear energy resources as a political pressure tool by redirecting attention to the key drivers for Hungary's nuclear rapprochement with Russia and the EU response to the deal. This reveals an ideational conflict within European energy policy thinking about how energy security is to be achieved.

This paper builds on a rich academic discourse on EU-Russian energy relations, but redirects the usual focus on natural gas to nuclear energy. It thus contributes to existing literature by focusing on an often-overlooked aspect of energy politics (Brutschin & Jewell, 2018). By examining the Paks II deal, the paper also reveals tensions between Hungarian statist and European liberal market conceptions of energy governance as well as the discord within the Union on how to best address the Russo-Hungarian rapprochement. Both underline the complexity of the EU as a multinational

entity that comprises actors with varying and at times conflicting interests (Kuzemko, 2014; Casier, 2016).

To set up the basis for this examination, the first section presents the fundamental theoretical assumptions regarding EU-Russian energy relations that underpin this paper. The second section considers the probability of Russia using its nuclear resources as a political tool – or indeed an 'energy weapon' - against Hungary or the EU. Section three describes Hungary's key drivers for closer energy ties with Russia and offers an explanation as to how these correspond with Hungary's shift to illiberalism and economic nationalism. The fourth section reviews Brussels' response to the Paks II deal and uncovers internal contestation about energy and how it should be governed. The final section concludes with a discussion of the practical implications of Russo-Hungarian nuclear rapprochement and what this means for the future of European energy security.

2. RESEARCH FRAMEWORK AND THEORETICAL ASSUMPTIONS

Energy security is high on the agenda for any nation, although it can mean different things depending on geographical location, domestic resources and economic disposition. In the most basic terms, a steady supply of energy grants citizens access to basic necessities such as clean water, cooking, lighting and heating, while in more complex understandings, energy security also relates to the reliability, sufficiency and affordability of supply. In any case, energy is a vital component of peoples' livelihoods. Beyond the social-developmental aspect, energy security is key for a country's economic development, responsible for the functioning of industries and infrastructure (Luft & Corin, 2009). The vitality of energy makes energy security, and the international politics that surround it, pressing issues, which are subject to much discourse. The academic debate surrounding EU-Russian energy politics hinges on two main theoretical approaches: the realist/geopolitical approach and the liberal approach. A third perspective, based on constructivist theory, emerged from more recent developments.

The realist-geopolitical perspective is premised on the idea of interstate competition in a hostile and anarchic international system. Given the importance of energy for a national economic performance, access to energy is considered a vital aspect in the power balance between states (Klare, 2008). Accordingly, energy is conceptualised as a strategic tool that can be used to assert influence over other actors (Siddi, 2017, p.368). Russia's external energy policy is often described

in geopolitical terms. The government's firm control over the energy sector and the prevalent role of energy in foreign policy are understood as proof of Moscow's desire to employ energy resources to forward its geopolitical interests (Baev, 2008). Events such as the infamous Russo-Ukrainian gas disputes of 2006 and 2009, which left South-eastern Europe without energy during winter, raised worries about Russia's willingness to use its energy power as a political tool against Europe and its allies (Smith Stegen, 2011, p.6505). The deterioration of EU-Russia relations following the annexation of Crimea and the Ukraine crisis further popularised the threat of Russia's energy weapon among European audiences. As a result, Europe's dependency on Russian energy supply and infrastructure became increasingly understood in security terms (Siddi, 2017, p.366).

Concurrently, some scholars have criticised the geopolitical understandings of EU-Russia energy relations (Casier, 2016; Proedrou, 2007; Siddi, 2017). They point to the maintained energy trade between Russia and the EU following 2014 and argue that geopolitical analyses oversimplify a complex environment by focusing only on power politics. Based on liberal International Relations theory, these voices call attention to the importance of economic, commercial and technical drivers in the energy sector and consider the agency of businesses as actors separate to the state (Casier, 2016, p.765; Siddi, 2017, p.369). Additionally, this perspective is premised on the idea that states acknowledge cooperation and mutual trust to be in their best interest, making energy politics a positive sum game for everyone involved. The energy interdependence is therefore thought to incentivise cooperative behaviour and prevent conflict between the EU and Russia (Proedrou, 2007).

Lastly, the constructivist perspective pays special attention to the role of perceptions and identities in energy policy. Premised on the principle that ideas can shape policy-making processes, this approach identifies conflicting notions about identity and energy governance as the focal point of tensions between Russia and the EU. In Putinite Russia, energy resources became understood as strategic assets that could play a key role in the nation's economic and political resurgence, provided they were managed by the government (Kuzemko, 2014, p.64). The significance of energy for Russia's geopolitical ambitions leads to a more statist and nationalised approach to energy governance, exemplified by the consolidation of state control over the energy sector and installation of restrictions for foreign involvement in Russian energy assets (Goldman, 2008). In contrast, EU energy policy has largely been influenced by market liberal ideas that interpret energy

resources as a tradeable commodity and call for the privatisation and liberalisation of national energy sectors. As a result, the EU is often characterised as a normative power that attempts to diffuse liberal norms externally (Youngs, 2011). However, scholars have since criticised this stereotyped image of the EU by pointing out the complex range of ideas that inform EU energy policy-making (Dannreuther, 2016; Hadfield, 2008; Kuzemko, 2014). The emergence of a more geopolitical understanding of energy within EU energy circles, provoked by the economic and security crisis of the last decade, has particularly challenged the dominance of liberal thought (Hadfield, 2008; Dannreuther, 2016). Such notions emphasise the EU's vulnerability as an energy importer and mark 'a reconceptualisation of energy security, in that it is no longer assumed that markets or market instruments will deliver it' (Kuzemko, 2014, p.65-66). It is these alternative sets of ideas about energy governance between Russia and the EU, as well as the existence of different ideas within the EU, that are essential to understand the controversy surrounding the Paks II deal.

It should be noted that the majority of academic research and public attention on EU-Russian energy relations is based on the natural gas interdependence between these two actors. Much less attention has been paid to nuclear energy projects, what kind of 'technological dependencies they create, or how they influence international politics' (Brutschin & Jewell, 2018, p. 333). To adapt existing ideas about EU-Russia energy relations to the case of Russo-Hungarian nuclear cooperation, this paper will first assess the potential geopolitical application of nuclear energy resources and how these might affect European security.

3. RUSSIA'S NUCLEAR ENERGY WEAPON DECONSTRUCTED

Hungary is not a nuclear newcomer. The Paks NPP, Hungary's first and only operating atomic power station, currently provides over 50% of domestic power generation and accounts for around one-third of the country's total electricity consumption (NS Energy, 2020). As the existing reactors are to be shut down in the 2030s, development of two additional reactors is considered necessary to generate sufficient energy while alleviating the need for increasing gas imports (Gosling, 2020). Recognising the strategic importance of nuclear energy in terms of energy supply, the Hungarian government has signalled the Paks II project as a 'high priority project for the national economy' (Nyéky, 2012). Nuclear energy, it is argued, allows Budapest to provide cheap electricity for Hungarian households and industries, while meeting Brussels' demands for fewer greenhouse gas emissions.

At the same time, Rosatom's involvement in the Paks II project has caused concerns about Hungary substituting its dependency on Russian gas with a new dependency on Russian nuclear energy. Such a dependency is generally considered undesirable, since it makes Hungary's energy mix unbalanced and susceptible to supply interruptions that would jeopardise the well-being of Hungarian households and industries. Sceptics of the deal have likened Rosatom to Russia's state-owned gas giant Gazprom and suggest it to be part of the Kremlin's strategy to buy influence and project power abroad (Herszenhorn, Stefanini, & Hirst, 2016; Nechepurenko & Higgins, 2020). Such concerns fit within a more general sentiment about the undesirability of Russia's involvement in international nuclear projects, which has become more widespread due to the increased global presence of Rosatom over the last decade (Minin & Vlček, 2017). The next section examines the validity of these fears by applying existing literature on the 'energy weapon' to nuclear energy.

The first essential component for any state to use energy as a political instrument relates to linkages between state and energy company, which occasionally oblige the company to abandon commercial rationale in favour of political pursuits (Smith Stegen, 2011, p.6506). Although Rosatom is a separate entity from the state, it remains closely connected with Russia's national budget and political elite. Both are largely responsible for its international success. Government subsidies, most of which come from Russia's National Wealth Fund, have allowed Rosatom to provide generous loans to countries tentatively interested in its services. The company can also count on ample diplomatic support in the form of overseas visits by President Putin and senior members of his government or invitations for foreign delegations to Russia (Schepers, 2019, p.4). These factors all signal the importance of Rosatom's performance abroad for the Russian government as well as Moscow's active commitment to facilitate its success.

The second component of the energy weapon relates to the means through which a state can practically use its energy resources to exert political pressure. In the case of Russia, this is primarily conceptualised in gas terms, given the gas sector's dependence on pipeline-based transit combined with Russia's control over existing infrastructure (Smith Stegen, 2011, p.6506). In the nuclear energy sector, the alleged threat is based on the longevity of nuclear projects and the control it might give the contractor over a critical element of the host country's economy. Depending on whether the contract includes construction, operation and decommissioning of the power plant, a nuclear deal can bind two countries together for at least 30-40 years and up to almost a century

(Schepers, 2019, p.8). The financial component of Rosatom's deals further establishes a longstanding bond with Russia. Altogether, the long-term commitment of a nuclear energy deal signals the intent of the two countries to cement their bilateral relations throughout that time, while most likely reinforcing the existing asymmetries in that relationship.

However, there are numerous factors that challenge the existence of Russia's nuclear energy weapon. These mainly relate to the nature of nuclear energy, which makes it less suited as a political instrument compared to other forms of energy. Unlike pipelines that can be used to cut off gas supplies instantly, nuclear power plants rely on uranium that is replaced every 18 to 24 months. The longevity of NPP's fuel usage thus makes it much harder to threaten supply disruptions as a way to influence political behaviour of the client state (Schepers, 2019, p.9). Additionally, the international nuclear energy market is highly competitive. This means that host countries of nuclear projects are not necessarily reliant on Rosatom as a nuclear technology provider or fuel supporter and could turn to one of its competitors if they fear becoming subject to political manipulation (Minin & Vlček, 2017).

In light of this, it is perhaps unsurprising that Rosatom is keen to stay out of politics, having 'a strong [commercial] incentive to avoid any perception that its nuclear energy relationships are being leveraged to seek foreign and security policy goals' (ibid., p.42). To improve its international image after Russia's annexation of Crimea, Rosatom has employed strictly apolitical rhetoric and has been eager to present itself as a transparent and reliable partner (Chestney, 2014). This also explains why Rosatom has been working to heighten foreign revenues over the last years in order to lessen its dependence on government subsidies (NEI, 2019). Increasing financial independence from the national budget allows Rosatom to act more independently from the state, which would logically translate into the company pursuing its own commercial interests (Minin & Vlček, 2017, p.42).

In summary, the export potential of Russia's nuclear energy resources is well recognised by Moscow, demonstrated by substantial financial and government support for Rosatom. However, fears of the Kremlin attempting to weaponise its nuclear energy resources seem largely unfounded, since the characteristics of nuclear energy as a commodity make it less suitable as a political pressure tool. Rosatom also has little commercial incentive to act on a political agenda, taking rhetorical steps to distance itself from the Kremlin. Still, long-term nuclear deals are not strictly

apolitical, as they *can* be used to cement bilateral relations between supplier and client. The importance of strengthening bilateral ties with Russia for Hungary is explored next.

4. ATOMIC BROTHERS: THE RUSSO-HUNGARIAN ENERGY RAPPROCHEMENT

In terms of energy security, Hungary represents a bit of an anomaly compared to its Central European neighbours. While Poland and the Czech Republic have made serious steps to diversify their energy supply, Hungary remains heavily reliant on Russian energy (Slobodian, 2016). Russia provides for about half of Hungary's energy mix, including nearly all of its annual gas consumption (Gosling, 2020). The vulnerability of this dependency has been demonstrated by past events, such as the 2006 and 2009 Russo-Ukrainian gas disputes which drove up domestic energy prices in Hungary. While such experiences pushed the Hungarian government to call for diversification of its energy supplies, most of these ambitions have not been realised (Isaacs & Molnar, 2017, p.113). The continued reliance on Russian energy resources thus reveals a discrepancy in Hungary's national energy strategy: although it aims to decrease its dependence on Russian gas imports on paper, the Orbán government has consistently sought closer ties with the Kremlin, including in the realm of energy.

Closer energy ties with Russia fit within a larger transition in Hungary's political positioning. Since Orbán's return to power in 2010, Hungary has witnessed significant political changes and constitutional reforms that have put it increasingly at odds with Brussels. A centralised, authoritarian political system emerged, which has often been likened to the Russian archetype established under Putin's presidency. This transformation coincides with a rise of Euro-sceptic rhetoric in Budapest and a reorientation of Hungarian foreign policy to the East. Hungary has presented its political rapprochement with Russia as based on a shared advocacy for conservative values and economic nationalism, using 'vague references to its ideological closeness to authoritarian regimes' (Buzogány, 2017, p.1319). In reality, pragmatism has been the main determinant in Hungary's foreign policy and Russo-Hungarian cooperation is driven primarily by mutual interests, not ideational proximity (Tarrósy & Vörös, 2020). For Hungary, these interests mainly pertain to energy relations and balancing EU pressures.

With the rapprochement with Russia, Hungary aims to address the current challenges in its energy sector and to establish a close and reliable partnership with its main energy provider. A positive relationship with Russia is high on the agenda of the Orbán government, given the large imprint of natural gas on the Hungarian economy and household energy prices (Sadecki, 2014, p.39). The promise of cheap energy has been a key selling point in Orbán's election campaigns and remains a major factor in his political popularity. While access to affordable energy is a basic necessity for Hungarian citizens, there exists a certain tension between the provision of cheap electricity as an appeasement strategy and the problems associated with artificially low energy prices, such as inefficient energy use and lack of incentive for innovation. For Orbán, whose position of power is essentially premised upon the promise of low energy prices, such problems seem subordinate to the provision of cheap energy to his supporter base. Hungarian household gas and power prices are currently the lowest in the EU and in order to keep them at this artificially low level, positive relations with main energy provider Russia are essential (Gosling, 2020). With long term bilateral energy projects like the Paks II deal, Budapest hopes to solidify its relations with Moscow for the next generation.

Closer cooperation with Russia coincided with a shift in Hungary towards a more statist and nationalised form of energy policy. Since 2010, the Hungarian government has enhanced state control in the energy sector by nationalising formerly privatised or foreign-owned companies and increasing its involvement in regulating prices (Isaacs & Molnar, 2016). Under Orbán, state-owned power company MVM became the dominant player in the Hungarian energy sector and was put in charge of negotiating energy deals with Gazprom and Rosatom (Sadecki, 2014, p.39). The decision to make a state-controlled company broker deals with its Russian counterparts signals that, for the Hungarian government, the best way to guarantee energy security is to be in control.

Additionally, this turn to statism shows a refusal to commit to European ideals of a liberalised and privatised energy sector. Hungary's approach of state interventionism and closer ties with Russia are increasingly at odds with the European standpoint that energy security can best be achieved through a policy of open competitive markets (Isaacs and Molnar, 2017). These tensions between Hungary and the EU have become more pronounced over time. For instance, Hungarian support

for the South Stream project[6] and attempts to amend legislation to bypass European obstructions to the pipeline were considered a direct challenge to EU energy policy (Nielsen, 2014). The project granted Gazprom both roles of gas supplier and owner of the pipeline, which ignores the EU's Third Energy Package that prescribes the separation of energy generation and transmission between companies (Stern, Pirami, & Yafimava, 2015). Similarly, Hungary's decision to contract Rosatom for the construction of Paks II without putting out a competitive market tender was heavily criticised, as this went against key EU principles of transparency, openness and fair competition in energy markets (Byrne & Oliver, 2015).

The discussion above shows that the Paks II nuclear deal is based on Orbán's agenda of establishing closer ties with Russia and balancing EU pressures. Here, Hungary's turn to illiberalism translates into a rejection of EU's liberal market ideas in favour of a more statist approach on energy security. How Brussels has responded to this challenge will be discussed next.

5. A UNION IN DISUNION: THE EU RESPONSE TO PAKS II

The expansion of Paks NPP technically fits within the EU agendas of decarbonisation and energy security since it aims to prevent the increase of natural gas consumption in Hungary. Since nuclear energy can be a contentious topic, Brussels presents a rather neutral position on the part nuclear energy can play in Europe's energy mix. The EU's Clean Energy Package, for example, does not refer to nuclear energy specifically and the EC maintains that 'each EU country decides alone whether to include nuclear power in its energy mix or not' (Vakarelska, 2018). Still, the Paks II deal has sparked much controversy in Brussels, mainly based on geopolitical and ideational factors.

As mentioned previously, the EU has traditionally been characterised as a normative power, whose energy policy builds on market liberal values. The Paks II deal reveals the influence of some more geopolitical understandings of energy in EU energy circles. EU officials have expressed concerns about the deal reinforcing Hungary's existing energy dependence on Russia, which would intensify its vulnerability to supply manipulations. The possibility of Moscow using its nuclear energy assistance to sow discord in Europe and undermine attempts to form a common position vis-à-vis

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[6] The South Stream project envisioned a pipeline to transport natural gas from Russia through the Black Sea to Bulgaria, Serbia, Hungary and onto the rest of the EU. The Russian government ultimately cancelled the project in 2014.

Russia is also flagged as a reason for worry (Byrne & Oliver, 2015). This line of thinking would logically translate into the EU embarking upon a more interventionist role to guarantee its energy security by preventing Russian involvement in Hungary.

In reality, however, geopolitical concerns within the EU have stayed below the surface. Though the project might run against the EU's energy goals, the EC has no legal basis to prevent the project since European legal treaties allow member states to determine their own energy mix and to decide whether to invest in nuclear technology (European Commission, 2017). While acknowledging that this could be seen as 'an imperfection' of an EU treaty, the EC emphasised the right for member states to 'choose between different energy sources and decide on the general structure of their energy supply' (Herszenhorn et al., 2016). Brussels has also avoided addressing Russia's involvement, stating that it assesses each public energy project 'by its own merits' and 'regardless of the nationality of the investor' (Herszenhorn et al., 2016). This refusal to take a political position on Paks II is especially remarkable given that EC President Juncker called for the EU to adopt a more political approach to address its current challenges (European Commission, 2015).

Instead, Brussels has voiced the lack of transparency and market competition as its main bone of contention regarding the Paks II project. Grievances about the opacity of the deal include the classification of the annual cost of the project for the national budget and the installation of legislation that moved oversight over Paks II from the country's nuclear regulatory authority to the Orbán government (Herszenhorn et al., 2016). The lack of market competition relates to Hungary's initial plan to import nuclear fuel exclusively from Russia and its decision to award the contract directly to Rosatom without putting it out to tender (Byrne & Oliver, 2015; Than, 2015). Multiple EU bodies responded. Euratom, the EU's nuclear watchdog, initially refused to approve the Russo-Hungarian deal since EU legislation stipulates nuclear projects to involve multiple fuel suppliers. Eventually, the project was allowed to go forward after Hungary promised to limit Rosatom's share of fuel supply (WNN, 2015; Byrne & Oliver, 2015). Meanwhile, the EC opened two investigations: an infringement case regarding the no-bid contract and a competition inquiry focussed on the possibility of illegal state aid. Ultimately, the EC did not object to the Paks II deal, accepting Budapest's argument that 'only Rosatom could meet the project's specific technical requirements' and finding that that state support for the project 'had been limited and would not distort the energy market' (Byrne & Buckley, 2017).

The evidence above signals the EU's unwillingness to confront Hungary on its rapprochement with Russia and rejection of liberal market values. The EC has been careful to avoid any geopolitical influences in its response to the Paks II deal and even its liberal objections ultimately did not result in any major obstruction. Considering a general decline in EU-Hungarian and EU-Russian relations over the last years, it seems Brussels made a political compromise to approve the deal to avoid further internal conflict with Budapest and external tensions with Moscow.

6. CONCLUSION

To summarise, this paper has found that there is no real evidence to support fears of Russia using its nuclear energy resources as a political pressure tool against Hungary or the EU. Instead, states can use nuclear energy projects to signal their long-term commitment to each other and reinforce bilateral relations over multiple decades. The Paks II deal is exemplary of Hungary's desire to build closer ties with Russia in order to offset EU pressures, and signals a shift to a more statist and geopolitical understanding of energy security in Budapest. As it is situated at the crossroads of different approaches of energy governance, the Paks II deal reveals an ideational clash between Hungary and the EU on how energy security should best be achieved. For Hungary, stronger state control over the energy sector and closer ties with Russia are the most effective way to ensure a steady and affordable supply of energy. For the EU, only a transparent and competitive energy market can guarantee energy security for the European continent.

While these conceptual differences suggest a clash of significant proportions, the EU response to the Paks II deal has been less outspoken. Geopolitical concerns about the deal have been kept away from public communications. The EC did voice its scepticism about the lack of adherence to European liberal energy rules, but ultimately decided against a strict reinforcement of these protocols. Brussels' decision to wave through the deal suggests some form of political calculation, in that it compromised in the hope of gaining a favour in Budapest and Moscow. Brussels may also have attempted to avoid internal dissension regarding its foundational liberal values as this would undermine the EC's efforts to present Europe as a united energy actor. In any case, Hungary's shift away from European liberalism is a troubling development, especially if it coincides with a rapprochement between Budapest and Moscow. The EU can only achieve its ambitions for a diversified and integrated energy market if all its member states buy into the liberal

values it considers to be essential. With the Paks II project binding Hungary and Russia together for multiple decades to come, the prospects for this are uncertain.

The strength of EU energy policy lies in its economic prowess and normative framework, but ultimately it is only as strong as its weakest – or rather, most reluctant – link. Although energy has long been and will continue to be a divisive topic within the Union, the Paks II deal denotes a new chapter of the schism between Budapest and Brussels. The implications of the Russo-Hungarian nuclear partnership for the future of European (energy) projects deserve to be explored more, after they have fully materialised. Another topic deserving of more academic attention is the energy politics of nuclear power, especially since the EU's climate agenda is expected to reduce the prevalence of fossil fuels. As countries attempt to decarbonise their energy supplies and nuclear energy resurfaces as an emission-free alternative, it seems Rosatom and other nuclear vendors will remain a permanent presence on the European energy scene.

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Revising EULEX and Conditionality in Kosovo: Challenges, Purpose, and Practice

By Alexandra Smith

Alexandra Smith is a recent graduate of Loyola University Maryland where she studied Political Science and Philosophy with specializations in international relations, regional studies, and international institutions. In previous research, Alexandra has focused on European Union state–building efforts, continental philosophy, and genocide studies. Ms. Smith is a member of the Pi Sigma Alpha National Political Science Honor Society and Phi Sigma Tau International Philosophy Honor Society and an incoming Belgian American Educational Foundation Fellow and Master's student at the KU Leuven in Belgium.

ABSTRACT

Since its self-declared independence in 2008, the Republic of Kosovo has struggled with issues pertaining to rule of law including corruption, policing, and equal enforcement. EULEX (European Union Rule of Law Mission in Kosovo), deployed by the European Union under the Common Defence and Security Policy, was tasked with addressing rule of law issues and providing a format for an independent justice system in Kosovo in accordance with European best practices. This work will address the evolving role of EULEX in the development of rule of law in Kosovo institutions and the tools and incentives for cooperation implemented by the European Union in its mission.

Keywords: EULEX, Republic of Kosovo, European Union, Conditionality

1. INTRODUCTION

In terms of state-building and foreign policy goals for the European Union (EU) in Kosovo, none can be reasonably obtained without a reliable justice system. State legitimacy is bolstered when citizens engage in a mutual understanding of correlating rights and duties between the government and citizenry. In the case of Kosovo, citizens must be able to reasonably expect that their rights will be protected, and laws will be enforced and upheld in a uniform and consistent manner. This

work will explore the European Union Rule of Law Mission in Kosovo, hereon referred to as EULEX, in relation to its challenges, status, and outcome.

2. BACKGROUND

Prior to the 1990s, Kosovo was a semi-sovereign republic within Serbia and exercised relative autonomy over issues of governance. Kosovo, a majority ethnic Albanian state, has long resisted political and military pressure from ethnic Serb and national forces in Serbia. Before Kosovo declared independence in 2008, the European Union worked alongside United Nations (UN) and North Atlantic Treaty Organization (NATO) forces in the Balkans to mediate peace and de-escalate tensions between Serbian and Kosovo forces. The EU, however, at the time lacking a cohesive and legally binding foreign policy, had insufficient political will to act with the vested authority that the UN had previously possessed in its own civil mission, UNMIK (United Nations Mission in Kosovo). It was only after the fighting had formally ceased that the EU established itself as a peace-building entity. The peace-building efforts put forth by the European Union shortly before Kosovo's declaration of independence was embodied in the EU's support for the 'Comprehensive Proposal for the Kosovo Status Settlement', informally referred to as the Ahtisaari Plan, which calls for international involvement in Kosovo's development (2007). The plan envisioned a multi-ethnic state with a well-established justice system, decentralization, and autonomy for minority communities.

In supporting Kosovo in its newly founded independence, the EU launched the European Union Mission for Rule of Law in Kosovo in 2008 to support and monitor the development of a police force, oversight task force and an independent judiciary (European External Action Service). This work will aim to discuss EULEX's goals and the Mission thus far.

3. FRAMEWORK

Before discussing the functions and goals of the EULEX mission it is necessary to provide context regarding the framework within which the mission operates (Keil & Arkan, 2016). EULEX is officially 'status neutral' and the mandate therefore mentions nothing regarding the status and statehood of Kosovo (Wolfgang, 2010). The mandate under which EULEX operates references 'Kosovo*', to indicate that the territorial standards are in line with the original UN Resolution 1244, which authorized civilian and internationally led missions in Kosovo (European External

Action Service). The EULEX mission, however, was not without precedent. EULEX took over from the UNMIK (United Nations Mission in Kosovo) which managed security and the rule of law matters in Kosovo during the conflicts of the early 2000s and in the immediate aftermath up until independence when the EU asserted itself as the central figure in Kosovo state-building (Petrov et al, 2019). UNMIK laid the foundation for the EULEX mission in emphasizing judicial and policing matters as areas in need of serious attention and, like the EULEX mission, would later focus on top-down accountability and incorporation as they worked mostly with elite political actors in Kosovo (Keil & Arkan, 2016). Today, many of the primary actors in the EULEX mission are former UNMIK officials who have transitioned to new roles to support the EU effort. At present, EULEX has a mandate that runs until July 14, 2021 (Council of the European Union, 2020).

EULEX is an expansion of the Common Foreign and Security Policy (CFSP) of the European Union and is overseen and supported by EU institutions and not directly by the member states themselves as not all nations have uniformly agreed upon a common status declaration regarding Kosovo (Mutluer & Tsarouhas, 2018). Presently, Romania, Greece, Spain, Slovakia, and Cyprus do not recognize Kosovo as an independent state which therefore challenges the common policy that EU sets forth (Mutluer & Tsarhouhas, 2018). Despite political disagreements in Kosovo regarding the presence of EULEX officials, the capacity to welcome and host international actors is mentioned in the Constitution of Kosovo (Constitution of Kosovo, 2008).

4. LOCAL OWNERSHIP PRINCIPLE AND THE LEGITIMACY DILEMMA

One concern in establishing the EULEX mission was the extent to which local actors would be involved. As mentioned, all EU judges have been replaced by local officials since 2018 and efforts have been made to further integrate local actors into the mission but, given the supremacy of EU officials in the mission, it is necessary to discuss the extent to which principles of local ownership were included in the arrangement of the mission. Given that corruption would be a key area of concern for the EULEX mission, it was difficult to immediately advocate for local ownership if accountability could not be guaranteed. From the start of the mission, the EU placed emphasis on the limited role it would exercise in comparison to local actors. In the mandate extension of 2018, the EU defines itself as having a monitoring role and with 'limited executive functions.' (Council of the European Union, 2018)

However, given the sheer size and impact of the EULEX mission, the EU must be viewed as having a more far–reaching impact than its mandate sets out. Almost all EULEX policemen, prosecutors, and monitoring officials are from EU member states or countries like the United States who offer technical support (Mutleur & Tsarouhas, 2018). The mission from the very beginning, despite pledges of local ownership, has been largely dominated by non-local officials.

EULEX, at its inception, supervised almost all aspects of governance that related to rule of law. In most modern understandings of state function, rule of law is emphasized as one of the most important areas for which a central government is responsible. In order to be considered legitimate, by most standards, governments must possess the sole authority on issues concerning enforcement, policing, and the administration of justice. Thus, the presence of the EULEX mission raised serious questions regarding the state-capacity of Kosovo and the difficulties presented by external state-building and rule of law missions. Additionally, as mentioned, not all of the EU member states recognize Kosovo as an independent country. As Andrea Capusella (2020) argues, the very existence of an entity that does not, in its entirety, fully recognize Kosovo as an independent state fundamentally undermines Kosovo's state sovereignty. In his 2020 work *State-building in Kosovo: Democracy, Corruption, and the EU in the Balkans*, Capusella summarizes this point stating,

> *The mission (EULEX) was asked to strengthen the institutions of a state that it did not recognize, and it faced the difficult question of what normative value should be accorded to the laws and to the Constitution adopted by Kosovo after its independence, which had no validity under Resolution 1244 but were applied in Kosovo and its courts every day. (pg. 113)*

Thus, EU officials are faced with a serious debate about the extent to which they can act as a state-builder without formally recognizing the state in which they act.

5. IMPORTANCE OF RULE OF LAW

States, if they are to meet the modern standards, must necessarily be based upon a legal framework that upholds the rule of law and rights and privileges for all citizens. Any threat to the enforcement mechanisms of the state in its execution of justice is an impediment to good governance and can challenge the legitimacy of the state itself. At present, in Kosovo, the legitimacy and strength of

the state in matters of the rule of law pose, perhaps, the most significant challenge to progress, especially as it relates to possible future EU accession. Countries hoping to join the European Union, as mentioned, must meet certain political standards laid out in the Copenhagen Criteria. These criteria include stipulations about rule of law, human rights, and functioning democratic institutions (Hoti & Gerguri, 2017). The EULEX Mission has attempted to address at least some of the issues in Kosovo.

Recognizing the need for assistance in this area, the European Union launched EULEX as the largest–ever civilian mission. As laid out by the European Union External Action Service, EULEX,

> ...supports relevant rule of law institutions in Kosovo on their path towards increased effectiveness, sustainability, multi-ethnicity and accountability, free from political interference and in full compliance with EU best practices. Within its current mandate, the Mission undertakes monitoring activities and has limited executive functions. (Council of the European Union, 2018)

Perhaps, the most significant initial task of the mission was to create an independent judiciary that would be, as the prior statement notes, 'free from political interference.' Of course, as in most state-building missions, the establishment of a central judiciary that could effectively enforce the established law and arbitrate in an independent manner was of supreme importance to the EU when embarking on its mission in Kosovo. In a 2019 EU report on the current state of rule of law in Kosovo, political corruption, organised crime, and judicial interference remained serious issues despite progress (European Commission, 2019). Each of these issues are significant obstacles to good governance in Kosovo and must be addressed as all affect not only the legitimacy of Kosovo but the stability of the European mainland more generally.

6. PURPOSES OF EULEX IN EU STATE-BUILDING & GOVERNANCE IN KOSOVO

The EULEX mission not only sought to build a stable justice system and rule of law in Kosovo but also, if successful, could be considered a foreign policy success for the EU. As logic follows, a successful rule of law mission could help prove the efficacy of external state-building and build further trust between the EU and Kosovo for future endeavors.

Furthermore, the EU had a vested interest in bolstering the rule of law in Kosovo. In Kosovo and the Balkans more generally, informal networks of black-market goods and services account for a significant percentage of the economy (Capussela, 2020). As a common market, the European Union allows for the free flow of goods, services, capital, and labour and has strict regulations that they expect member states to abide by. If pervasive black-market goods and services have access to EU member states it could damage local economies and present a serious challenge to the established standardized system. Therefore, if there is to be a future for Kosovo in the European Union, the justice system in Kosovo must crack down on black market activity and prosecute those who work within such networks. However, the involvement of political officials in the black markets in Kosovo has further complicated the EULEX mission's job in tackling the export of black-market goods and services (Capussela, 2020).

6.1. Areas of concern: Political Corruption

EULEX has attempted to tackle political corruption in numerous ways. Perhaps, the most serious issue to address for the EULEX mission was to supervise the formation of an independent judiciary that could prosecute abuses of power and political corruption without interference. Kosovo has, even before independence, struggled with issues of clientelism and corruption. In the absence of functioning institutions, citizens created informal networks with civil society actors and political officials in order to access goods and services (Jackson, 2018). Moreover, patronage networks are extremely influential in decision–making regarding government contracting and appointments for political posts. Party loyalty, especially within ethnic groups, confers special rights and privileges to those who support party activities. However, as the 2019 report states, the judiciary in Kosovo has made some progress in pursuing cases of corruption but corruption remains a widespread and serious issue (European Commission, 2019).

In Kosovo, the judiciary is dependent upon the legislature for funding, and appointments are made by the executive. The judiciary is, thus, subject to political interference and undue influence. At the beginning of the EULEX mission, EU judges worked alongside local judges and officials to carry out and decide cases but, since 2018, all cases have been put under the supervision of local actors (Capussela, 2020). Although laws have been put into place to further delineate the separation of powers between the branches of government, implementation has been notably weak. As an independent report concluded, 'Despite promises to fight corruption and an existing legal

basis, the enforcement of corresponding actions is still deficient. Corruption remains widespread that contributes to the public view that elected officeholders and civil servants operate with impunity' (Bertelsmann Stiftung, 2020, pg.12).

Political corruption has also been a significant issue due to its effects on perceptions of state legitimacy, especially amongst ethnic minorities and external actors. The executive offices, in Kosovo, since 2008, have been held exclusively by politicians from ethnic Albanian parties and the strongest political influences in the legislature and the judiciary comes from ethnic Albanian officials. Given the high levels of political corruption, ethnic minority parties have expressed concern that their needs are not being properly addressed nor rights upheld politically. EULEX has attempted to remedy this issue by pushing for accountability and independent investigations when corruption does occur. While the Constitution of Kosovo allows for the presence of international actors, officials in Kosovo are not required to cooperate with all aspects of EULEX. Particularly in the case of elites and political corruption, the EU, recognizing its role as an external actor, present by the consent of local officials, refrained from pursuing many cases of high-profile corruption (Osland & Mateja, 2019).

Moreover, EULEX has been plagued by its own accusations of corruption and malpractice. The perception of local actors regarding the EULEX mission has been seriously damaged by reports of corruption. As one scholar noted, 'serious allegations of incompetence, negligence, and malpractice directed against some of the EULEX personnel came as a huge blow to the reputation and standing of the mission in the country' (Kelkitli, 2018). In external state-building efforts, trust plays a significant role, and the erosion of such trust can seriously challenge the legitimacy of the external actor and invite criticism about the efficacy of external state-building in general. The EU has attempted to remedy this by conducting internal investigations and dismissing officials accused of corruption (Bertelsmann Stiftung, 2020).

6.2. Areas of concern: Policing

Notably, one of the goals of the EULEX mission was to craft a police force in Kosovo that could protect and serve the needs of all citizens and enforce the rule of law in a uniform manner. Policing in Kosovo, to date, is twofold as EULEX police work alongside the official Kosovo Police force (Kelkitli, 2019). EULEX police and officials provide training and resources and assist in recruiting

local citizens to join the Kosovo police force. Additionally, the Kosovo police force works alongside EULEX police in patrolling, conducting arrests, and maintaining public order (Bertelsmann Stiftung, 2020). The EULEX police mission largely focuses on policing and administrative matters in the Northern provinces of Kosovo and conflict prevention between Kosovo Serbs and Kosovo Albanians, while the Kosovo Police force carries out more day-to-day functions (Rashiti, 2019). In line with the local ownership principles that have guided the EU mission, the EULEX police have tried to incorporate local civil society actors and citizens to join the force. However, this has been controversial, particularly in recruitment efforts of Kosovo Serbs. Moreover, despite efforts, jurisdictional issues wherein EULEX police have come into conflict with Kosovo police have led to a lack of accountability and clear delineation of powers.

As mentioned, issues concerning pervasive corruption have had a negative effect on policing in Kosovo and on the level of trust placed on both the EULEX police and the Kosovo police force (Radin, 2014). The Constitution of Kosovo mandates that the police, '...reflect the ethnic diversity of the population of the Republic of Kosovo' (Constitution of Kosovo, 2008) and efforts have been made to ensure that this is put into practice. For example, the official languages of Kosovo, Albanian, and Serbian, are used by the Kosovo police force and English is utilized by EULEX to communicate with citizens and when working with Kosovo police (Bátora, et al., 2018). However, despite efforts, mistrust of the Kosovo police force, particularly amongst ethnic minorities remains high (Rashiti, 2019).

The importance of multi-ethnic policing has become increasingly important as an independent report noted,

> *Kosovan Serbs and other minorities complain about the bias of courts assessing crimes against their communities. The police force, though multiethnic in principle, is said not to behave properly when confronted with Roma, Gorani or Kosovan Serbs. Civil society in Kosovo is generally too weak to serve the watchdog function (Bertelsmann Stiftung, 2020, pg.13).*

The perception that the police force does not administer and enforce the law in a uniform manner is of central importance to the EU state-building effort as rule of law affects human rights,

governance, and internal legitimacy. Citizens of Kosovo, across ethnic lines, must believe that the police force will uphold their rights and carry out arrests when abuses and violations occur.

6.3. Areas of concern: Property rights

Moreover, since the EU seeks to promote foreign direct investment in Kosovo and economic development, the EULEX mission needed to focus on ensuring that property rights are respected. In Kosovo, the EU noted, 'On property rights, the legislative and institutional framework governing the resolution of conflict-related property claims is adequate overall, but further improvement is needed in certain critical areas to ensure that property rights are fully realised.' (European Parliament, 2019). In the case of property rights, as with most issues in Kosovo, implementation remains the central area of concern and particularly in minority communities, stopping the illegal confiscation of property has emerged as a priority. In Kosovo, property belonging to ethnic minorities, women and Serbs in the Northern provinces is particularly vulnerable to confiscation (Bertelsmann Stiftung, 2020). Disputes over property in the north have partially come about as war time displaced persons have returned to claim land they owned prior to the war. EULEX officials have attempted to settle such disputes through judicial proceedings but as noted in several reports, success has been hampered by bureaucratic disorganization and claim disputes (Zupančič et al., 2018).

6.4. Areas of concern: Minority and Freedoms

The EU, as a normative power, had a vested interest in bolstering the rights and privileges of minority groups in their EULEX mission. The EU, since its inception, has portrayed itself as a value-based institution in which liberal principles of respect for minority rights, gender equality, and justice were central considerations. Thus, the foreign policy of the EU and, as an extension, the state-building efforts of the EU in Kosovo had to reflect those values. If there is to be a future for Kosovo in the Union, the protection and rights of minorities must be improved. Respect for human rights and dignity is enshrined in the founding principles of the EU and EU developed the Copenhagen Criteria to stipulate standards regarding human rights for potential member states (Hoti,& Gërguri, 2017). While the principles of human rights and justice for all are mentioned in the Constitution of Kosovo the implementation and *de facto* protection has been notably lacking. In the Constitution of Kosovo, the rights of minorities are mentioned in *Article 7*,

The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy (Constitution of Kosovo, 2008).

For this discussion, the emphasis on non-discrimination and social justice are of particular importance. Today, in Kosovo, minorities, particularly ethnic Serbs face unique challenges and injustices. Given the tumultuous history between ethnic Serbs and Albanians, the EULEX mission was intended to provide a level of impartiality to the justice system in Kosovo and work for all citizens by overseeing judicial proceedings and advising procedures that would be in line with EU standards. Still, in 2020, an independent think tank concluded, "… cases of domestic violence or discrimination and hate crimes against ethnic minorities are common and rarely prosecuted." (Bertelsmann Stiftung, 2020, p.13).

The ongoing injustices against minorities in Kosovo has challenged the European Union, not only as a state-builder but as a peace-broker and normative power. As a function of peacebuilding, minorities had to believe that their interests as citizens of Kosovo would be equally upheld in government institutions and that justice was possible before the law. However, recent surveys suggest that faith in the European Union, especially amongst ethnic minorities in Kosovo, remains relatively low (Osland & Mateja, 2019).

7. CHALLENGES

As numerous scholars have pointed out, perhaps the most serious factor negatively affecting the effectiveness of EULEX is the EU itself. As scholar Dimitri Papadimitrious concluded,

The capabilities of the Union to act as a meaningful international actor depend on its internal capacity to formulate effective policies, employ adequate policy instruments and maintain a good level of coherence between institutions and a number of overlapping policy areas. In cases where the Union is involved in post-conflict reconstruction and development (as in the case of Kosovo), issues of consistency, coordination and coherence bear cardinal importance regarding the effectiveness of EU actions on the ground. (Papadimitrous et al, 2007).

Thus, the lack of internal cohesion and vision within the European Union has led not only to a lack of effectiveness in their mission but to a general level of mistrust amongst the local actors it has partnered with on the ground. The sense of ill will amongst local actors both Serb and Albanian in Kosovo can be credited, in part, to the lasting presence of international actors in rule of law missions in the country since the war (Bátora, J., et al., 2018). In combination with the instances of corruption and abuse of power committed by EULEX officials, the mission has been harshly criticized by both scholars and local Kosovar officials.

8. CONDITIONALITY

Perhaps the most important question to address in considering the EU's mission in Kosovo is to consider what exactly the benefits of cooperation are and the strength of these benefits in relation to the significant infringement upon sovereignty and independence that EU presence means for Kosovo. The EU has opted for a carrot and stick approach pairing a strategy of financial aid and European integration with a strict code of rules and laws that potential members must adhere to (Keil & Arkan, 2016). In the case of Kosovo, numerous scholars have argued that conditionality, the idea that adherence to EU instruction could confer membership or greater benefits, later on, is a driving force in the relationship.

In 2003, leaders of the EU met with the heads of five nations (Albania, Bosnia, and Herzegovina; Croatia; the former Yugoslav Republic of Macedonia; Serbia and Montenegro) to discuss the possibility of future EU expansion and to strengthen the relationship between the Union and Balkan nations (European Council, 2003). After acting for years as a peace-keeping entity, the EU was focused on advancing its relationship with the attending countries from one of dependency to one of equal partnership. As a press release from then EU Commissioner for External Relations Chris Patten noted, 'Thessaloniki will send two important messages to the Western Balkans: The prospect of membership of the EU is real, and we will not regard the map of the Union as complete until you have joined us. We in the European Commission will do all we can to help you succeed.' (Economides & Ker-Lindsay, 2015).

Although the five attending nations had notable incentives to seek EU membership, the EU, too, had strong rationale to seek expansion. For candidate EU member states, the potential for EU membership means access to the common market, visa liberalization, and a seat at the table, so to

speak (Jović, 2018). As members of the common market, the nations mentioned can freely participate in tariff-free trade, the free movement of capital and services, and heighten their stature on the global stage. Moreover, cooperation with EU officials and standards compliance would grant the states of the Balkans significant financial assistance and technical support in their development.

Similarly, the EU, as an emerging political force, has sought to expand its realm of influence across the entire continent and deepen economic relations with other nations in the hope of future peace and continental prosperity. Moreover, success in the Balkans *vis a vis* development could bolster the reputation of the EU as more than an economic entity. Since the signing of the Maastricht Treaty in 1993, the EU has attempted to establish itself as a foreign policy actor. On this matter, Aristotle Tziampiris categorized the significance of the Thessaloniki Conference in the following, writing, 'The EU has also exhibited an ambition to play a more important role in global affairs. However, such an ambition is ultimately not credible if the EU cannot contribute successfully towards the stabilization of the western Balkans and Kosovo in particular.' (Tziampiris, 2005). Therefore, the state-building efforts that the European Union undertook in Kosovo were not only crucial for stability in the Balkans but could serve as a testament to the efficacy of EU normative power.

Ultimately the enlargement policy of the EU is a matter of stability and security. The EU, comprising at present 27 nations, must be able to present a uniform front on matters of foreign, fiscal, and institutional policy. As mentioned, the Copenhagen Criterion attempts to address exactly these concerns (Hoti & Gërguri, 2017). All states being considered for EU membership must be able to meet the standards laid out in the criteria and the expansion of the Union must present positive prospects that all members view as beneficial. Moreover, the entry of new members must not jeopardize the economic stability and strength of the Union or of the Eurozone.

8.1. Conditionality for Kosovo

Although Kosovo had not yet declared independence at the time of the Thessaloniki Conference, the EU had already begun to forge a relationship with Kosovo with the future in mind. Following the Thessaloniki Conference, the EU agreed to begin talks on the Stabilisation and Association Process (SAP), the most formal step in terms of the enlargement process. Two years after the

conference the EU reiterated its commitment to Kosovo in a communication entitled, 'A European Future for Kosovo' in which, then EU Commissioner for Enlargement Olli Rehn said,

> *We are ready to continue helping Kosovo to make progress towards its European aspirations, provided political leaders demonstrate a clear commitment to democratic principles, human rights, protection of minorities, rule of law, market economic reform, and the values on which the European Union is based (European Commission, 2005).*

Although it's obvious that the EU commitment to Kosovo is a serious foreign policy priority, the incentive-based model of conditionality that has been implemented has not necessarily yielded the desired result.

8.2. Tools in Conditionality

From the very formation of Kosovo as an independent state it has relied heavily on external support and aid. At the most basic level, conditionality is the means by which the EU induces Kosovo to cooperate. The first step in this process was to form a mutual relationship of trust between the government in Prishtina and officials in the European Union. Although the failure to recognize Kosovo by five EU member states has posed concerns, the relationship between Kosovo and the EU has been generally positive as citizens in Kosovo recall the international aid and protection that the EU provided during the conflict with Serbia in the late 1990s and early 2000s. The 2005 declaration, 'A European Future for Kosovo' signified a postwar concrete commitment by the EU to Kosovo and the relationship has only grown since.

In 2012, the European Union drafted, 'A Feasibility Study for a Stabilisation and Association Agreement (SAA) between the European Union and Kosovo'* which outlined the features that would need to be addressed if there was to be a European future for Kosovo. As expected, many of the issues emphasized in the report were related to rule of law, corruption, weak institutional frameworks, and enforcement capacity. At the time of this study, the areas of rule of law, corruption, and judicial proceedings were being monitored by the EULEX mission and they continue to be so today. More will be said about the practicality of implementation later on but the focus, for now, is on how agreements like the Stabilisation and Association Agreement are used as tools in conditionality.

The Stabilisation and Association Agreement lays out precisely the conditionality that has driven the dynamics of the relationship between the EU and Kosovo. As the Agreement states,

> *Through Kosovo's on-going participation in the SAP with the aim to fulfill the relevant criteria and SAP conditionalities, subject to the successful implementation of this Agreement, notably regarding regional cooperation; this process will lead to progress in Kosovo's European perspective and rapprochement with the EU (European Union and the European Atomic Energy Community, 2016, p.1).*

The conditions laid out in the agreement mostly revolve around matters of democratic governance, international cooperation, increased conflict resolution with Serbia, and adherence to EU standards and practices. In exchange for Kosovo's cooperation in implementing these reforms, the EU promises to commit expertise, financial investments, and resources to Kosovo.

Since negotiations began in the SAP, an important 'carrot' offered by the EU to Kosovo in utilizing conditionality has been the promise of visa liberalization for citizens of Kosovo. Visa liberalization would allow citizens of Kosovo to work, travel and study freely in the European Union Schengen area. In 2012, the European Union entered into talks with officials in Prishtina the result of which was the Visa Liberalisation Roadmap (European Commission, 2013). This 'Roadmap' laid out required benchmarks that Kosovo would have to reach in order to be considered for the privilege of visa-free travel. The benchmarks mostly concerned necessary improvements to border demarcation with Montenegro and increased crackdowns on corruption, organized crime, and trafficking. Since the European Union is a common market and free movement zone, there needed to be safeguards in place that could ensure black market goods and services would not flood the market if freedom of movement was offered to Kosovo.

Once again, complications in the relationship status between the EU and Kosovo arose in these negotiations especially regarding the consent of the five-member nations who have rejected recognition of Kosovo (Bergmann, 2020). In negotiations, concerns arose about the recognition of passports especially in the EU states without border checks.

In September of 2019, significant steps were taken by the European Parliament to advance the process for Kosovo when a majority of the voting body approved of formal visa liberalisation talks (Schengen Visa Info News, 2020). However, since voting occurred, implementation has stalled.

Either for a lack of political attention or urgency, visa liberalisation for Kosovo has not been a priority for the EU as of late. Frustration amongst officials in Kosovo has been palpable. During negotiations in the Spring of 2020, then President Hashim Thaci of Kosovo expressed his disappointment with further EU delay on the issue of visa liberalisation, 'We have fulfilled the demarcation condition, by ratifying the deal with Montenegro in Parliament, and again we see the hesitation... the EU should be clear and honest why they keep delaying this decision on visas.' (Schengen Visa Info News, 2020) Conditionality is, and remains, a two-way street. If the EU hopes to use incentive-based models effectively, the offered incentives, like visa liberalisation, must become a priority, or the strength of conditionality as a tool of liberal state-craft is rendered ineffective.

9. CURRENT PROSPECTS

Since EU involvement in Kosovo began in the early 2000s, scholars have questioned the efficacy of conditionality as a tool in statecraft, especially as it relates to the EU's relationship with Kosovo. Perhaps one of the strongest critiques of conditionality is directly related to the failure of EULEX to produce substantial reforms and improvements. As Bilge Yabanci posits, '...from the viewpoint of the public and NGOs, Kosovo's failure to meet conditionality towards EU integration should be viewed within the context of the weak performance of EULEX in delivering its commitments' (Yabanci, 2016). Especially in the areas of corruption and judicial reform, little progress has been made leading to doubts by citizens in Kosovo that cooperation with EU standards is worth the far-off prospect of membership. Local narratives amongst citizens in Kosovo often focus on the gap between the treatment of citizens and the treatment of elites. Despite promises that EULEX would bring about significant changes, elites in the government accused of criminal activity have remained largely unaffected by the justice that EU presence was supposed to bring. Additionally, right-wing nationalist parties in Kosovo have begun to capitalize off the perceived failures of EULEX and the EU more generally in fulfilling their commitments to Kosovo.

10. CONCLUSION

The purpose of this work was to evaluate the EULEX and provide an overview of the challenges the EU faced when launching the mission and its goals. As mentioned, the engagement of EU actors in Kosovo has been a key step in the formation of the EU as a political actor and has served

as an important test case for the extension of EU values and systems. EULEX, while moderately successful in a supervisory capacity and in its monitoring as a neutral force in Kosovo, has been unsuccessful in fully realizing the goals it set out since it launched more than a decade ago. Although the overall rule of law has become more reliable in Kosovo, the future of the relationship between the European Union and Kosovo will remain strained so long as promises continue to be broken on both sides.

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Negotiating the Post-Cotonou Agreement: Why the European Union and the Organisation of African, Caribbean and Pacific States Could not Reach an Agreement on Time

By Ákos Baumgartner

Ákos Baumgartner is an MA student in International Relations at Central European University. Previously, he interned and worked at the Hungarian Ministry of Foreign Affairs and Trade in the field of energy diplomacy and international development cooperation (IDC). Beyond IDC, his research interests cover security studies with a particular interest in hybrid warfare.

ABSTRACT

The political deal on the post-Cotonou Agreement, reached in December 2020, represents a major milestone towards a new legal framework for cooperation between the European Union (EU) and the Organisation of African, Caribbean and Pacific States (ACP). Previously, this partnership framework was governed by the Cotonou Partnership Agreement since 2000 with the aim of reducing and eradicating poverty in the ACP countries. This study, from an liberal institutional approach to International Political Economy (IPE), scrutinises why the negotiating parties could not reach an agreement before the Cotonou Agreement's expiry in February 2020. I begin theorising the Cotonou Agreement by applying post-hegemonic cooperation theory, with a special focus on the actors and institutional build-ups of the EU and the ACP countries. I show that the agreement fulfilled its function in the last 20 years. Then I argue that changes in the global arena impacted the negotiations and the potential outcomes of the post-Cotonou Agreement: on the one hand China has emerged as an inexorable global actor in the last two decades, offering a non-Western alternative to ACP states. In addition, its 'COVID-19 diplomacy' and the Asian Infrastructure Investment Bank's (AIIB) new COVID-19 support facility further provided the ACP countries with more room to manoeuvre. Furthermore, the COVID-19 pandemic affected the outcomes as negotiations were suspended for months and they were mostly conducted virtually

from June 2020. On the other hand, uncertainties around Brexit-outcomes also contributed to delaying the agreement. Lastly, alternative explanations, in particular post-development theory, are discussed and evaluated.

Keywords: Post-development, non-hegemonic theory, liberal institutionalism, post-Cotonou, International Political Economy

1. INTRODUCTION

During the turbulent month of December 2020 in Brussels, overshadowed by the Brexit negotiations and threats to veto the European Union's (EU) budget, news about reaching a political deal on the post-Cotonou Agreement hardly gained attention (Financial Times' Editorial Board, 2020; Herszenhorn, 2020). This deal represented a major milestone towards a new legal framework for cooperation between the EU and the Organisation of African, Caribbean and Pacific States (hereinafter ACP).[7] This partnership framework was governed by the Cotonou Partnership Agreement since 2000 with the aim of reducing and eradicating poverty in the ACP countries by bringing them into the global economy in line with sustainable development principles (Cotonou Agreement, 2000).

The EU and its counterparts, in particular the ACP and the African Union (AU), have carefully designed institutional architectures which profoundly affect the regulations and the limits of decision-making. As this study will show, the Cotonou Agreement enjoyed a general consensus and successfully governed the relationship between the parties for more than two decades. The Cotonou Agreement enjoyed scholarly attention since its very beginning which reflects its importance. Elgström (2005), Faber (2005), Zimelis (2011), Holland and Doidge (2012), Carbone (2018, 2020), and Hurt (2012, 2020) conducted invaluable research on the Cotonou Agreement, providing support for or critiques of the cooperation framework. However, none of them sought to explain why the post-Cotonou negotiations could only be concluded on April 15, 2021, which, as of June 2021, has not yet been ratified (European Commission, 2021).

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[7] The African, Caribbean and Pacific Group of States (ACP) changed its name to the Organisation of African, Caribbean and Pacific States (OACPS) in April 2020. This study uses the acronym "ACP."

This study scrutinises from the perspective of International Political Economy (IPE) why the negotiating parties could not reach an agreement by the Cotonou Agreement's expiry in February 2020. This meant the Agreement had to be extended twice – to December 2020 and November 30, 2021 (European Commission, 2020d). As we shall see, the 2010s brought fundamental changes to actors of and around the Cotonou Agreement and 2020 also represented a state of turmoil for the EU. However, this paper argues that this institutional-cooperative framework and the delay that took place can be understood by applying Keohane's (1984) post-hegemonic, liberal institutional approach to International Political Economy. This study also incorporates agential changes and emerging new actors (in particular China), the significance of the United Kingdom's departure from the EU, and the impact of the COVID-19 pandemic into a comprehensive IPE study, thereby pointing out the reasons for the delay, thus contributing to our understanding of the agreement.

The study is divided into four sections. The first section theorises the Cotonou Agreement, one of the cornerstones of EU foreign and development policies and shows that it has fulfilled its function in the last 20 years. This generally accepted framework was instrumental in achieving meaningful partnership between the EU and the ACP countries, without which the current state of affairs could not be understood in context. The second section examines the actors and institutional build-ups of the EU and the ACP countries. I subsequently scrutinise changes in the global arena which impacted the negotiations and the potential outcomes of the post-Cotonou Agreement. In the last section, alternative explanations, in particular post-development theory, are discussed and evaluated.

2. THEORISING THE COTONOU AGREEMENT

To understand the current state of affairs in terms of the delayed post-Cotonou Agreement, the Cotonou Agreement has to be first theorised as the base from where the current negotiations departed. The Cotonou Agreement and its forerunners, the Yaoundé Conventions and Lomé Conventions, have constituted the framework for cooperation between the EU – or its respective predecessors[8] – and the ACP states since the 1960s (Carbone, 2020; Holland & Doidge, 2012; Zimelis, 2011). This governing framework of the EU with third world countries has the longest

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[8] Predecessors of the EU: European Coal and Steel Community (1952); European Economic Community, European Atomic Energy Community (1957); European Communities (1967); European Union (1992). This study refers to them collectively as "EU."

history in external EU relations. With the independence of the former colonies and overseas dependencies, new linkages were facilitated by France that led to the Yaoundé Conventions (1964, 1971). After the first enlargement of the EU in 1973, a new framework, the Lomé Convention (1975), followed by Lomé II, III, IV (1979, 1984, 1989) was signed.

On the one hand, the agreements reflected on the signatory parties. Before Lomé I, several outcomes were considered due to the Commonwealth countries' protest against any further notions of colonialism (Carbone, 2020, p. 527). On the other hand, the negotiated outcomes mirrored the prevailing trends in the development policies of their time (Holland & Doidge, 2012, p. 23). Having departed from non-intervention policies, by the 2000s, the EU 'made assistance conditional on the fulfilment of agreed political and economic criteria' (Smith, 2002, p. 184).

By the expiry of Lomé IV in 1999, a fundamentally different global arena shaped the Cotonou Agreement negotiations. The ACP states' relative importance had declined. Spain and Portugal had joined the EU, which altered the regional scope of EU external relations from the traditional ACP focus. In addition, the Soviet Union collapsed, thus the EU's focus – and aid – shifted to Central and Eastern Europe. Moreover, tariffs had been decreasing as a consequence of the General Agreement on Tariffs and Trade (GATT) negotiations (Elgström, 2005, p. 186; Holland & Doidge, 2012, pp. 64-65). Therefore, a new type of regime was needed.

Applying Keohane's theory on post-hegemonic cooperation is central to understanding why the Cotonou Agreement worked. Keohane argues that non-hegemonic cooperation, promoted by international regimes, can take place. Regimes are 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner, 1983, as cited in Keohane, 1984, p. 57). Cooperation among states happens when one state's policies are seen as beneficial for the other state's goals (Keohane, 1984, pp. 50-52).

The Cotonou Agreement, at least in theory, sought to raise living standards in the ACP countries following sustainable development principles, thus integrating them into the global economy (Cotonou Agreement, 2000). Neoliberal institutionalism points out that regimes and institutions promote cooperation, which could end poverty through international development cooperation because wealthy European countries, driven by a moral pledge, should help poor countries

(Keohane, 1984, p. 256). The non-reciprocal access of the ACP states to the EU's market was replaced by World Trade Organization (WTO) rules for liberalised trade, thus calling for an enhanced level of regional economic cooperation (Carbone 2020, p. 528).

New normative parts were incorporated into the agreement. These 'essential elements' included *inter alia* the 'respect for human rights, democratic principles and the rule of law' (Article 9, Cotonou Agreement, 2000). In the event of non-compliance, after consultation outlined in Articles 96 and 97, measures could be taken, including aid suspension as a last resort. Joint institutions were created: the ACP-EU Council of Ministers (the main decision-making body of the partnership), the Committee of Ambassadors (an assisting body), the Development Finance Cooperation Committee, the Ministerial Trade Committee (both examining and monitoring bodies), and the Parliamentary Assembly (a consultative body with the same number of members from the EU and ACP blocks), being responsible for monitoring, implementing, and consulting on the Cotonou Agreement (European Council, 2021).

The Cotonou Agreement was criticised during and after its negotiations. WTO-compatible Free Trade Agreements (FTAs) and enhanced political dialogue were leading aims of negotiations (Elgström, 2005, p. 191). However, the Economic Partnership Agreements (EPAs) negotiated on a regional basis were a major source of tensions (Del Biondo, 2020, p. 312). Both FTAs and EPAs aim at cutting or eliminating customs tariffs in trade between the EU and third countries. However, the participation of different actors in global trade is highly unequal (Strange, 2015, p. 188). Concerns had arisen about the EPAs' effective contribution to development among unequal actors and about the EPAs regional inconsistency. On the one hand, ACP states had blamed the EU for having incorporated the Singapore Issues – trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation – into the EPAs which were refused by ACP countries. On the other hand, in designing the EPAs, the EU did not take into consideration the already-established regional cooperation, thus creating intra-regional tensions instead of fostering regional cooperation in line with the objectives of the Cotonou Agreement (Holland & Doidge, 2012, pp. 83-87).

The EPAs' complicated nature is evident from the number of signed agreements and parties involved. As of June 2021, regional EPAs have been signed – or are currently in the signature

process – with the Caribbean Forum (CARIFORUM), West African states, Southern African Development Community, East African Community, and Eastern and Southern Africa region, whereas bilateral EPAs have been established with Cameroon, Fiji, Papua New Guinea, Samoa, and Solomon Islands (European Council, 2021). In parallel with facilitating FTAs, under the newly introduced 'Everything But Arms' (EBA) framework, the EU continues giving preferential access to EU markets for Least Developed Countries (LDCs) for all goods except arms and ammunition. This caused a division in the ACP block as a whole internally by separating the countries to be eligible for EPAs or EBA agreements (Holland & Doidge, 2012, p. 88). This internal division among the ACP, as we shall see later, made finding a common mandate more difficult and the process slower.

Conditionalities enjoyed intense attention and critique. The ACP states considered the aspect of political dialogue as 'conditionality under another name' (Elgström, 2005, p. 194). However, the normative conditionalities – with aid suspension as a last resort – had not brought the required results. The conditionalities' inflexibility, the EU's decision-making pace, differing understandings of the essential elements, and the emergence of new actors (in particular China) in the global arena contributed to the ineffectiveness of the conditionalities (Zimelis, 2011, pp. 402-404). Critics also argue that the Cotonou Agreement's main goals were not met. Flint (2008) states that the Cotonou Agreement 'emphasise[d] the David versus Goliath nature of the association. […] This disparity has resulted in a resurgence of the dependency-style language used to describe the relationship between the two and has brought the North-South debate sharply into focus' (p. 162).

On the other hand, despite the Cotonou Agreement's imperfections, positive results were also delivered. Holland and Doidge (2012) point out that the concluded Cotonou Agreement enjoyed a wide consensus (p. 73). Following Keohane's argument on cooperation, Faber (2005) argues that in theory 'EPAs could have important benefits for ACP economies by creating competitive market conditions that lead to dynamic welfare effects, and by reinforcing economic reforms' (p. 100). The EU conducted interim evaluations on the outcomes of the Cotonou Agreement every five years (2005, 2010, 2015). The last evaluation claimed that the objectives of eradicating poverty and fostering ACP countries' integration into the global economy were effective. Formal political dialogue, EPAs, and the eradication of poverty are therefore considered the strengths of the Cotonou Agreement.

However, the agreement's objectives related to the essential elements were less effective due to some ACP governments' approach to the partnership, as well as with security objectives including root causes of conflicts, and social infrastructure development due to population growth (European Commission, 2016). Even Flint (2008), a strong critic of the Cotonou Agreement, acknowledges that some smaller projects worked and were able to eradicate poverty (p. 164). However, big instruments, such as EPAs and the EBA, most prominently due to their internal contradictions with the general developmental goals of the Cotonou Agreement, had not brought the expected results (Holland & Doidge, 2012, p. 93).

Although the Cotonou Agreement was hard to negotiate and clearly imperfect, as this section argued, it had largely fulfilled its function and had contributed to achieving several of its commonly accepted and negotiated objectives. However, to understand the reasons for the delay in negotiating the new agreement, this study turns to the actors and institutions of the Cotonou Agreement.

3. ACTORS OF THE COTONOU AGREEMENT

The plurality of and complexity among the actors of the Cotonou Agreement contributed to impeding the negotiations of the post-Cotonou framework. As of June 2021, the Cotonou Agreement governs the relationship of the EU with 79 countries from three regions: with 16 Caribbean, 48 African, and 15 Pacific states (European Council, 2021). Intra- and inter-regional disagreements and the same actors' different approaches regarding competencies slowed down the negotiations. On the side of the EU, finding a common position among member states (MSs) is challenging. Concerns of an MS are negotiated before that of any ACP countries (Elgström, 2005, p. 187). Therefore, EU MSs agree upon a common position through long negotiations and bargains. For example, the initial EU Mandate was vetoed multiple times by Hungary at the meetings of the Committee of Permanent Representatives due to the drafts' position on migration (Carbone, 2020, p. 532; Keijzer & Schulting, 2019, p. 668). However, once the mandate is articulated, the EU enjoys a high level of power asymmetry over the ACP countries.

The European Union's responsibilities and competencies are multi-layered, which also slows down the negotiations. Article 218 (2-3) of the Treaty on the Functioning of the European Union (TFEU) prescribes that the Commission's negotiation mandate with third –non-EU– countries

must be authorised by the European Council; and the consent of the European Parliament is required in certain cases (TFEU, 2012). However, the primacy of MSs during the negotiations is still determinant due to the participation of national ministers in negotiations. As a result, the role of the rotating EU-presidency has shrunk in the post-Lisbon era (Keijzer & Schulting, 2019, p. 662). Hence, the negotiations take place at the supranational level *and* at the inter-governmental level at the same time on the EU's side. This significantly slows down the ability of the EU to reach an agreement.

The ACP countries display similar plurality and complexity to that of the EU. Some question the continued legitimacy of treating the ACP countries as one. Although the groups' symbolic power enhances the credibility as 'a negotiating partner that would be absent were the individual states to interact bilaterally or regionally with the EU,' EPAs have created tensions and rivalry among them (Holland & Doidge, 2012, pp. 77-78). The Caribbean region initially benefited from the special protocols regarding sugar, banana, and rum trade during the Lomé era, however, as the regional group gained new members, intra-regional competition hindered the cooperation in the 1990s, mostly with the accession of the Dominican Republic. The CARIFORUM-EU EPA, the establishment of the Community of Latin American and Caribbean States (CELAC) in 2010, and the EU's unilateral termination on sugar protocols in 2007, triggering the block's discontent with the EU's enhanced observer status in the United Nations, had slowed down the desired regional integration (Carbone, 2020, pp. 527-530).

Negotiations were also hindered because of internal changes amongst the African countries and in the African block of the ACP. 48 countries from the African continent are involved in the ACP grouping, whereas the EU-North African partnership was established through the European Neighbourhood Policy (European Council, 2021; European External Action Service, 2016). Relations are also governed through the Joint Africa-EU Strategy (JAES) since 2007, through which the EU has been "repositioning itself as the main partner of the African continent" (Del Biondo, 2020, p. 317).

Regional agreements were also used by the EU to establish inter-regional cooperation structures with African countries (Hengari, 2012, p. 10). By establishing the AU in 2002, the question had arisen at which level the post-Cotonou framework should deal with Africa. The JAES had made

the EU's focus shift towards a Union-Union level cooperation (Hurt, 2020, pp. 146-147). Notwithstanding the Cotonou Agreement's aim to foster regional integration, the AU became a recognised actor of cooperation only after 2010. Nevertheless, the AU had seen the forthcoming post-Cotonou talks 'as an opportunity to push forward the AU integration plans' (Carbone, 2018, p. 484). This agenda goal of the AU created a tense relationship between ACP and the AU, whereby speaking with one voice on behalf of Africa was undermined (Hurt, 2020, p. 142).

Fundamentally different views clashed on the nature of development. The ACP mandate was negotiated among the 48 African countries between 2012 and 2018 and their position emphasised the ACP as the EU's partner in the post-Cotonou framework, whereas the mandate including the pan-African vision of the AU was prepared at the same time and was finished by May 2018 (Carbone, 2018, pp. 484-487; Hurt, 2020, p. 147). The ACP aimed at preserving the existing framework and claimed it was the only legitimate actor for negotiating on behalf of the ACP, whereas the AU was advocating for a framework that would overcome the donor-recipient relationship, reflecting the enhanced agency of the AU (Carbone, 2018, pp. 488-489). As Carbone states: 'ministerial representatives of African governments meeting in the ACP context […] and ministerial representatives of the same governments meeting in the AU context […] also agreed upon two decisions that were difficult to reconcile' (2018, p. 492).

The ACP countries' intra-regional and institutional disagreements did slow the post-Cotonou Agreement's negotiations. Together with the EU's decision-making process and long intra-European talks and bargains, they significantly contributed to the delayed new partnership agreement. However, a third crucial aspect played an important role in not reaching a new agreement on time. Three changes took place in the 2010s in the International Political Economy that affected post-Cotonou to which this study now turns.

4. CHANGES TO THE INTERNATIONAL POLITICAL ECONOMY IN THE 2010s AND 2020

Three fundamental changes affected the success of the negotiations, namely the emergence of China as an inexorable global actor in the field of development, the United Kingdom's departure from the EU (Brexit), and the COVID-19 pandemic. China entered the field of international development in the 1960s, although at a much lower scale than the Western powers (Copper,

2016). However, the last two decades have brought a fundamental increase in China's and other emerging powers, in particular Brazil and India,[9] activity in Africa or the Caribbean region (Carbone, 2020, p. 529; Del Biondo, 2020, p. 311; Hengari, 2012, p. 2). Through the 'South-South' development strategies, and the Belt and Road Initiative (BRI), China has increased its role in African security policies (Pantea, 2019, pp. 176-177). The 2008 Global Financial Crisis also decreased the available Western resources. Furthermore, African countries were keener on accepting Chinese assistance promising economic prosperity than humanitarian aid provided by the West in the war on terror (Copper, 2016, p. 82). The Asian Infrastructure Investment Bank (AIIB), a China-dominated multilateral development bank founded in 2015, has been an alternative source of finance for its MSs since 2015 (Lahtinen, 2018, p. 24), many of whom are also members of the ACP (Asian Infrastructure Investment Bank [AIIB], 2020).

Development aid provided by China without conditionalities promoted and covered by the Cotonou Agreement is often considered an important reason for the shrinking importance of the EU (Copper, 2016, p. 82; Gokcekus & Suzuki, 2013, p. 628; Zimelis, 2011, p. 404). As Hurt (2020) argues, 'African countries now have ideational alternatives to the [Post-Washington Consensus] orthodoxy offered by the established powers' (p. 145). However, it is noteworthy that China's Africa Policy also sets political-ideological conditionalities for undersigning countries, which are the One-China policy, supporting the reunification of China, and having no official diplomatic relations with Taiwan (Lahtinen, 2018, p. 20). Nevertheless, the emergence of the country that became Africa's most important trading partner in 2010, East-Asia's largest trading partner and the second-biggest trading partner of Latin America and the Caribbean region altered the global arena, which affected the conditions of the negotiations of the post-Cotonou Agreement (Copper, 2016, p. 60; WITS, 2020a, 2020b). The emergence of China, as Hurt (2020) points out, allows "African states more room for manoeuvre" (p. 146).

The United Kingdom's departure from the EU represents another major change in the International Political Economy. As noted above, after the EU's first enlargement in 1973, with the accession of the UK, a new state of affairs emerged that led to the Lomé I Convention in 1975, now including the countries of the Commonwealth. Having allocated USD 19.4 billion (preliminary data) for

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[9] See Kurzydlowski (2020), who points out that India became the third largest trading partner of Africa in 2017.

international development in 2019, the United Kingdom is the world's third-largest Official Development Aid (ODA) provider; in 2018, 10% of its ODA was allocated for EU-development purposes (own calculations based on OECD, 2020). With the Multiannual Financial Framework (MFF) for 2021-2027, the EU aggregates its development instruments and is to create the Neighbourhood, Development and International Cooperation Instrument (NDICI), for which the EU allocates EUR 96 billion (European Commission, 2020b). Szynol (2019) states '[Brexit] may result in a gradual decrease in the Union's financial participation in global ODA, especially taking into account the fact that after Brexit [the EU's] development policy will be based not on three, but only on two pillars [i.e. Germany and France]' (p. 13). Szynol further claims that a no-deal 'will mean conducting completely independent development policies, despite the fact that they will implement globally set goals' (p. 21). Negotiating an agreement that governs the relationship of 27 plus 79 countries is a politically sensitive and time-consuming process that with the state of uncertainty must have been significantly hindered. It is also likely that beyond the financial loss that Brexit means for the EU's development ODA, Brexit could have weakened the EU's negotiating credibility with the ACP partner countries and thus contributed to not reaching an agreement on time.

Beyond Brexit, the COVID-19 pandemic has led to a state of turmoil in the EU. In February 2020, before the pandemic had paralysed the EU and just weeks before the original deadline, the expiry of the Cotonou Agreement was extended until December 2020 (European Commission, 2020a). However, ministerial-level meetings were cancelled, and resumed only in June and negotiations would continue virtually (European Commission, 2020c). This certainly slowed down the negotiations.

Even in a state of turmoil, power asymmetries are still present. The European Commission can unilaterally decide to change how it allocates money as happened when the EU launched its combined financial support package for fighting the COVID-19 pandemic, worth more than EUR 20 billion under the scheme of Team Europe (European External Action Service, 2020). The institutional delay on the EU's side due to the COVID-19 pandemic together with China's 'COVID-19 diplomacy' concerning *inter alia* medical assistance, vaccination, and the promise of debt relief (Bone & Cinotto, 2020) and with the AIIB's COVID-19 Crisis Recovery Facility with the aim of supporting the members of the multilateral development bank in their fight with the

pandemic, with the value of USD 13 billion (AIIB, 2021) could have contributed to further weakening the negotiation positions of the EU.

This section has shown that political and economic issues are globally intertwined and affect outcomes of negotiations. They might – at first sight – be perceived as independent phenomena, but they are not. This study examined the Cotonou Agreement from the perspective of Keohane's institutional liberalism. It has been argued that international regimes facilitate cooperation for the benefit of states (Keohane, 1984, p. 50). Instruments were also intended to promote welfare and cooperation (Faber, 2005, p. 100). Noting this leads to the final section in which an alternative approach, post-development theory, is applied to explain the context of the ACP negotiations.

5. CONTESTING COTONOU

In contesting Cotonou from a post-development point of view, Escobar (1995) argues for deconstructing development. He points out development is produced and maintained through discourse which represents a system of power 'through which people come to recognize themselves as developed or underdeveloped' (p. 10). Escobar follows Said (2003), who demonstrates that East-West relations are characterised by power, domination, and hegemony (p. 5). The EU domination within the Cotonou context locks the ACP group in neoliberalism (Hurt 2012). Hurt (2020) later points out that due to international changes in the global arena, African agency is more empowered than during the Cotonou-negotiations. From a moral economy perspective, Langan (2014) argues that 'discourse and outcomes and, […] development norms in fact perpetuate inequalities through the rationalisation of forms of economic and aid relations that inhibit the development potential of ACP countries' (p. 485).

However, it is debatable that post-development theory fits the Cotonou context. Although Escobar (1995) argues that 'statistics […] function to entrench the development discourse' (p. 213), interim evaluations showed both the strengths and shortcomings of the Agreement (European Commission, 2016). As pointed out above, the Cotonou Agreement was based on a wide consensus (Holland & Doidge, 2012, p. 73), and not a hegemonic compulsion. Post-development theory argues that development should be deconstructed 'coupled with the local ethnographies' (Escobar, 1995, p. 223). However, the question arises in this case, in light of the above-mentioned agential

changes, whether an agreement would have been achieved in time if development had been deconstructed.

Finally, the negotiations involved dozens of different interests and negotiating mandates which are also subject to change over a period of time. A further factor contributing to delaying the post-Cotonou Agreement was almost certainly the length of the negotiations. However, all negotiating actors' mandates were duly incorporated in the final outcome of the post-Cotonou Agreement.

6. CONCLUSION

This study examined why the EU and the ACP states negotiating the post-Cotonou Agreement could not reach a deal on time from an institutional liberal approach to IPE. First, it theorised and contextualised the Cotonou Agreement by applying Keohane's theory on post-hegemonic cooperation. Institutions and conditionalities shaped the final format of the Cotonou Agreement. Although FTAs, EPAs, EBA, and conditionalities created inter-and intra-regional tensions, the Cotonou Agreement fulfilled its function as it was an agreement based on broad consensus, concluded by numerous actors and this generally accepted framework was instrumental in achieving meaningful partnership between the EU and the ACP countries. The delayed results were examined through the lens of plurality and complexity among the actors of the Cotonou Agreement. Intra-European bargains, concerns of some MSs, and the complex, multi-layered responsibilities and competencies of EU institutions and changes in the Caribbean and African parties of the partnership agreement with overlapping and competing institutions hindered the process leading to an agreement.

Changes in the global political economy in the 2010s further delayed the post-Cotonou talks. China emerged as an inexorable global actor in the last two decades, offering a non-Western alternative to ACP states. Uncertainties around Brexit-outcomes also contributed to delaying the agreement. The COVID-19 pandemic's effect on the outcomes is two-fold. Negotiations were suspended for months and mostly conducted virtually since June 2020. Whereas China's COVID-19 diplomacy and the AIIB's new COVID-19 support facility further offered more room to manoeuvre. The final section contested Cotonou's theory from a post-development perspective. The paper questioned whether post-development theory fits for the Cotonou context but argued that the delay was also caused by the process along which all parties' mandates were duly incorporated in the final

outcome of the post-Cotonou Agreement. All these factors demonstrate why the post-Cotonou Agreement was not reached on time. Whether the delay has ultimately resulted in a more mutually beneficial agreement will be proved by the next twenty years' partnership.

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The Role of the Space Defence Industry in the International Relations of the European Union

By Aurélie Gillet

Aurélie Gillet is a first-year master's student of the dual degree between Sciences Po and King's College London in Science and International Security. She previously earned a first-class honours dual bachelor's degree from Sciences Po and the University of Hong Kong in political science and philosophy, with a regional expertise on international relations in Asia. Her research interests include new technologies, cybersecurity, space policy and security as well as the intersection between politics and international law in outer space.

ABSTRACT

'Space matters for Europe' (European Commission, 2016). Outer space is an increasingly strategic realm, both for state and non-state actors. Space assets rely on technologies that have an inherent dual use: they can indeed be used for military as well as civilian purposes. While such a characteristic offers a plethora of advantages, it also leads to rising tensions and suspicion with regard to states' activities in outer space. As our dependence on space assets is growing, securing space assets is now more than ever a matter of national security.

In the midst of a growing rivalry and competition between the United States and China in the space sector, the European Union must maintain its strategic autonomy. The present paper explores the role of the space defence industry in the international relations of the European Union, as well as the benefits and challenges of international cooperation in this sector. I will argue that the role of the space defence industry as a factor of integration of EU member states' defence industries is significant, yet rather limited. If international cooperation between EU and non-EU states brings mutual benefits, it also comes at the cost of interdependency – thereby threatening the EU's strategic autonomy. Lastly, I will provide a normative framework to enhance the EU leadership status in the space sector, as well as its strategic autonomy.

Keywords: Defence, Space, International Relations, Strategic Autonomy

1. INTRODUCTION

'Space matters for Europe' (European Commission, 2016). The present research paper investigates the role of the *space defence industry* in the *international relations* of the European Union.

The defence industry is a key sector of any state. An important element of the defence industry is the Defence Technological and Industrial Base (hereafter, DTIB), composed of a network of defence companies working either as prime contractors or subcontractors, in charge either of the design (e.g., R&D), the production, the assembly, the maintenance or the dismantlement of the defence equipment of a state. The defence sector has an inherent international dimension, since its primary purpose is to ensure the survival of a state in an anarchical international context. To ensure the successful completion of such a mission, the defence industry must be able to equip the armed forces of a country while seeking the highest return on investment, ensuring security of supply and autonomy of action, as well as keeping a long-term perspective.

The defence industry refers to companies working exclusively to develop defence equipment – e.g., weapons. Yet, 'the boundaries between civil and defence industry are [increasingly] blurring' (UK Ministry of Defence, 2017, 3); this is especially the case for the *space defence industry*. Indeed, '95 percent of space technologies are dual-use in nature' (Martel & Yoshihara, 2003, 26): they are 'technolog[ies] that [have] both military and commercial applications' (Alic et al., 1992). The distinction between civil and military applications of space technologies is hence almost undistinguishable.

EU member states are rather reluctant to cooperate in the defence sector (Tardy, 2018). Yet, 'developing and operating a Space Programme exceeds the financial and technical capacity of individual Member States and can only be achieved at EU level' (Proposal for a Regulation of the European Parliament and of the Council, 2018). It is only through putting EU states' resources in common that a budget of €14.88 billion can be devoted to the space sector between 2021 and 2027, as adopted by the EU co-legislators on April 27, 2021 (European Commission, 2021). We can hence wonder**: what role does the space defence industry play in the international relations of the European Union?** What are the benefits and challenges of international cooperation in the space defence industry?

2. METHODOLOGY AND STRUCTURE

My analysis is based on the qualitative analysis of a corpus constituted of official legal documents retrieved from the website EUR-lex, of press releases retrieved from the various websites of the institutions of the EU, of reports published by institutes such as the European Space Policy Institute, as well as of news and scholarly articles.

2.1. Definitions

In the context of the European Union, *international relations* refer both to inter-state relations among the EU member states, as well as to the relations between the EU and other states or international organisations. The status of the European Union is unique in the world; it has been referred to as an 'unidentified political object' by Jacques Delors ('object politique non identifié'). With its 27 member states, its functioning is between that of a union of sovereign European states and that of a federation.

The space defence industry refers to companies involved in the design (e.g., R&D), the production, the assembly, and the maintenance or the dismantlement of space assets. Given the dual use of space technologies, the space assets produced do not need to be used exclusively for defence purposes. The reader need not be surprised if I sometimes refer to the 'space industry' in general rather than the 'space defence industry' in particular: indeed they are, very often, equivalent expressions. Furthermore, companies contributing to the space industry do not necessarily need to focus exclusively on space assets: many companies manufacturing space assets also manufacture aerospace engines (e.g., Airbus, Thales Group).

2.2. Structure

In the first part, I will argue that the role of the space defence industry as a factor of integration of EU member states' defence industry is significant, yet rather limited. Then we will see that if international cooperation between EU and non-EU states brings mutual benefits, this comes at the cost of interdependency. Lastly, I will provide a normative framework to enhance the EU leadership status in the space sector, as well as its strategic autonomy.

3. THE EU'S LIMITED SPACE DEFENCE INTEGRATION

3.1 The European Union's awareness of the strategic dimension of the space defence industry is reflected in its policies

Outer space is a highly strategic realm. Space offers a plethora of opportunities – as much in the defence as in the civilian and commercial sectors (Al-Rodhan, 2012).

The importance of space assets in warfare has been revealed during the 1990-1991 First Gulf War – considered as the 'first space war' (Al-Rodhan, 2012, 47). The US military operations indeed had recourse to space technologies for navigation (GPS), for the detection and signalling of missile attacks, for telecommunications as well as for the collection of electronic information and weather data (Bataille & Messina, 2020). If space technologies did not *cause* victory *per se*, they nevertheless constituted a significant advantage – so much so that there has been a growing dependence on space technologies to conduct military operations ever since. It is important to note that space-based assets are, most of the time, not weapons that can be used directly to attack a target: they are 'force multipliers' that enhance the effectiveness of terrestrial weapons.

If space technologies can be used for defence purposes, there is an increasing need to defend space-based assets (Bataille & Messina, 2020, 3). The multiplication of space actors comes along with increasing threats against space assets such as satellites. Despite international efforts to preserve outer space as a peaceful realm, the weaponization of space is believed to have become unavoidable. Indeed, although no consensual definition of 'space weapon' exists (DeFrieze, 2014), there have been increased attempts to build capacities to disrupt or destroy assets in space. An example of such capacity is anti-satellite weapon systems (ASAT), recently successfully tested by China in 2007 and India in 2019 – the US and Russia had developed such technology during the Cold War. Given the increasing dependence on space applications in our daily lives, the protection of such assets is absolutely necessary.

The European Union is aware of the increasing interdependence between space and defence, as well as of the need to enhance cooperation between member states in order to take full advantage of space for defence and be better prepared to face the challenges ahead.

EU member states recognise that 'space matters for Europe'. The European space economy employs 230 000 professionals and the 'satellite manufacturing industry, (…) captures around 33 % of the open world markets' (European Commission, 2016). The will of member states to strengthen Europe's global position in the space sector, including the space defence industry, is visible at the political and policy levels. Instances of the latter include the creation of the function

of 'Directorate General for Defence Industry and Space' in September 2019, whose role is to '[uphold] the competitiveness and innovation of the European Defence industry by ensuring the evolution of an able European defence technological and industrial base' (European Commission, n.d.). The objective is to coordinate and enhance the coherence between the European strategy for defence and for space, to further develop the DTIB of the space and aerospace sectors, as well as to exploit the intertwinement between the space and the defence sectors. One month later, at the October 2019 roundtable about *the EU, space and defence* in Brussels, EU member states recognised that 'the space and aerospace sectors are vital for Europe's defence technological and industrial base' (European Union Institute for Security Studies, 2019).

Lastly, on April 27 2021, the EU co-legislators have adopted the political agreement reached in December 2020 on the transformation and enhancement of the European Space Programme (European Commission, 2021). Beyond a budget of €14.88 billion to be devoted to the space sector between 2021 and 2027, the programme also includes 'new security initiatives on governmental satellite communication (GOVSATCOM) and space situational awareness (SSA)' (Cemal, 2019), as well as the replacement of the European Agency for Global Navigation Satellite Systems (GSA) by a newly instituted EU Agency for the Space Programme (EUSPA). The latter is to be bestowed with expanded missions. Thus, there is a strong political will among European states to enhance the EU capabilities in the space defence sector, and such determination fosters deeper cooperation.

3.2 If EU member states' cooperation in the space defence sector fosters integration, such cooperation remains fundamentally intergovernmental

EU member states' political will to cooperate in matters of space defence manifests itself into concrete international cooperation programs among the EU member states. The European Space Agency (ESA), founded in 1975, is the core organisation in charge of coordinating EU space effort. Consisting of 22 member states, its strength lies in putting in common resources to achieve results that no EU state could achieve on its own. To do so, it seeks to integrate national programs of its members to the European program through joint R&D and through industrial policy recommendations (European Space Agency, n.d.). Other important institutions fostering cooperation among EU member states are the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT), the North Atlantic Treaty Organisation (NATO) as well as the newly instituted EU Agency for the Space Programme (EUSPA).

It is by cooperating through such institutions that European space defence assets have been built and that missions have been successfully led. Several key space assets are playing a crucial role both in the civil and defence sector, including 1) *Copernicus* (Copernicus, n.d.), the Earth Observation Programme of the EU, particularly useful for surveillance and intelligence, and mainly managed by the European Commission in cooperation with ESA, EUMETSAT and member states (among others); 2) *Galileo* (European Global Navigation Satellite Systems Agency, 2020), the European Global Navigation Satellite System (GNSS), contributing to Europe's independence in terms of navigation system; and 3) *EGNOS* (European Global Navigation Satellite Systems Agency, 2020), the European Geostationary Navigation Overlay Service, enhancing the capacities of Galileo. Both Galileo and EGNOS are managed by the European Global Navigation Satellite System Agency (GSA). The ESA launcher families Vega, Soyuz and Ariane are particularly relevant for the defence sector. Lastly, two projects are being developed under the framework of the Permanent Structured Cooperation (PESCO): namely the European Military Space Surveillance Awareness Network (EU-SSA-N) and the EU Radio Navigation Solution (EURAS) (European Union Institute for Security Studies, 2019). Born out of European partnerships, such space capacities enable Europe's autonomy and security, thereby constituting key defence assets. They also contribute to enhancing European cooperation in the defence sector through PESCO collaborations.

Despite the growing need and political will among EU member states to cooperate in matters of space defence and security, member states are still reluctant to the idea of a European, integrated and supranational defence policy. Involvement of EU member states in the space defence sector is *de facto* highly uneven. Indeed, although ESA is the main organisation when it comes to cooperation of EU member states in the space sector – including in the space defence industry –, it is not part of the EU institutions, since membership is merely optional. It is thus an intergovernmental organisation by nature, rather than a supranational one. Furthermore, members can choose their level of involvement: if all members of ESA have to participate in its 'mandatory activities', members can *choose* to participate in additional, optional programmes. The greatest contributors to ESA's 2020 budget are France (26,9%), Germany (20,1%), Italy (13,7%) and the UK (9,5%). Most of ESA's EU members do not contribute to more than 1% (it is the case for 13 out of 22 members) (European Space Agency, n.d.). ESA's top three contributors account for more than 60% of its budget.

Such a highly unequal level of involvement in the space industry echoes the general lack of political will among EU member states to cooperate in the defence sector at the supranational level. There are several reasons for that. First, sovereignty seems to remain paramount to EU member states – *a fortiori* in matters of defence and security. Secondly, EU member states do not share a unified, common vision when it comes to defence, and certainly not when it comes to space defence either. Without a shared vision, no comprehensive framework can be established. Thirdly, there is no consensus over the level of autonomy desired in the space defence sector. Lastly, another important issue is the great disparities between the technological and industrial capacities of EU states in the space sector – in both civilian and military sectors, since the technology required in almost undistinguishable –, which makes integration of European space defence industries even more difficult (European Union Institute for Security Studies, 2019).

Challenges remain for the EU countries that are most active in the space defence sector. Indeed, to ensure efficient cooperation, questions of interoperability and standardisation remain: technologies need to be transferable from one program to another and from one country to another. Furthermore, an optimal repartition of resources calls for avoiding redundancy in terms of capabilities – i.e., avoiding allocating resources to two distinct research projects attempting to solve the same problem. Such issues require a high level of communication and political will.

Illustrative case studies. If the space defence industry fosters cooperation between the EU countries, such cooperation is intergovernmental in nature and involves primarily the European states that are most active in space. I will analyse two models of cooperation to illustrate my argument.

First, the 'delegation model' (Bataille & Messina, 2020, 21) consists of cooperation between several European countries, where one country largely dominates the investment effort and thus manages key functions and services of the asset produced. Other investors have access to so-called 'tasking rights': they can use the asset, or one of its particular functions, in a way that is proportional to their financial contribution. Such a model has been used for Helios 2, a series of two satellites designed for military surveillance, built by Thales and Airbus Defence and Space (D&S). While the satellites were 90% funded by France, the rest was funded by Italy, Belgium, Greece and Spain (2,5% each). If France is in charge of the programme and is hence the primary user of the two satellites, the other investing countries can access some of its functions – e.g.,

receive a certain number of images per day. Such a project is the product of an intergovernmental cooperation between EU countries that are greatly involved in space defence activities – with the exception, perhaps, of Greece.

Another model is the 'partnership model' (Bataille & Messina, 2020, 23), in which the levels of investment are shared more equally. An instance of such partnership is the Sicral 2 project, co-funded by Italy (62%) and France (32%). Sicral 2 is a military communication satellite built by Telespazio, and Thales Alenia Space. Telespazio managed 'the design, implementation, integration and testing of the Satellite Control Centre' and the launching, while Thales Alenia Space 'was responsible for the design of the entire Sicral 2 system, along with development, integration and testing (AIT) of the satellite at its satellite integration centers in Rome, Turin and Cannes' (Thales, 2015). From those two case studies, we can see that the space defence sector fosters cooperation among countries with the most advanced space defence technologies and remains highly intergovernmental.

Hence, although cooperation in the space defence sector definitely has a positive impact on member states' cooperation, the nature of such cooperation is limited to the intergovernmental level; policies designed at the supranational level constitute more *general orientations* rather than *operational and concrete measures*. The overall impact of the space defence industry on European integration in defence matters is thus rather limited – at least for now. Yet, as the strategic dimension of space is growing in the context of increasing competition to exploit the Moon's natural resources – especially between the US and China –, the space defence industry is likely to become increasingly important as well and perhaps, in turn, lead to deeper integration of EU member states in the defence sector.

4. INTERNATIONAL COOPERATION IN THE SPACE DEFENCE SECTOR BETWEEN EU AND NON-EU STATES: BETWEEN MUTUAL BENEFITS AND DEPENDENCY

4.1 The space defence industry fosters international cooperation between EU and non-EU spacefaring nations

International cooperation between EU and non-EU countries is crucial to enhance the European Union's status as a global leader in the space industry.

As early as 2008, the European Union acknowledged the importance for 'European stakeholders involved in space to speak with one voice on the international scene' (Commission of the European Communities, 2008). 8 years later, in 2016, 'strengthening Europe's role as a global actor and promoting international cooperation' constituted one of the four pillars of the *Space Strategy for Europe* (European Commission, 2016). The challenge, within the European context, is to adopt unified policies – this is especially the case when it comes to the defence sector, including the space defence sector. Indeed, the European Space Agency is not an institutional body of the EU, but an intergovernmental organisation dominated by a few, active space-faring nations. Only by adopting a coherent discourse on the international scene on space affairs, including space defence matters, can the EU appear as a strong political actor. By releasing a 'Joint Statement between the EU and ESA on 'Shared Vision and Goals for the future of Europe in Space'', the EU seeks to communicate a symbol of unity despite the existing disparities in terms of members' economic capacity and political will to lead in the global space industry.

Maintaining a leadership role in space through engaging in international cooperation is crucial, for several reasons. First, it enables fostering innovation in a cost-effective manner. Indeed, 'the European market alone is (…) not sufficient to sustain the current level of excellence of the European space industry' (European Commission, 2013). To make innovation sustainable, marketing space technology and capabilities internally, among EU countries alone, does not generate enough profit: EU space industries need to market and sell their products and services to international actors. Beyond the EU market, the ESA is, for instance, providing European Service Modules as a contribution to NASA's Orion spacecraft 'that will send astronauts to the Moon and beyond' (European Service Module, n. d.). Such cooperation is crucial to ensure the financial sustainability of EU's R&D programmes in the space sector, including the space defence sector. Secondly, maintaining a status of global leader contributes to shaping international relations in space through upholding European values. The EU is convinced that the use of space should remain exclusively for 'peaceful purposes', as agreed upon in the 1967 Outer Space Treaty (1967). Involvement in international projects such as the Artemis programme gives the EU the capacity to influence the projects' development, to defend its own interests and contribute to shaping international relations in space. International cooperation between EU and non-EU countries is hence crucial to maintain EU diplomatic and economic leverage, as well as its strategic autonomy.

ESA and NATO constitute the two main platforms of cooperation between EU and non-EU states. In concrete terms, the European Union engages in international cooperation through the European Space Agency as well as through the North Atlantic Treaty Organisation. Although ESA shares ties with the EU, it is nevertheless an independent body. Cooperation Agreements have been made with states which do not belong to the EU – it is the case for Canada, which sits on ESA's Council, as well as for Norway. Although areas of cooperation between ESA and Canada do not mention the space defence sector (areas of cooperation include navigation, satellite communication, technologies, exploration and Earth observation (Canadian Space Agency, n.d.)), the dual-use nature of such space applications makes such cooperation relevant to the defence sector.

Some EU states also cooperate with non-EU allies in the framework of NATO – 'a political and military alliance of 29 member states' (European Space Policy Institute, 2018). NATO does not own any space-based asset but uses that of its member states: for instance, 'through the NSP2K programme, France, Italy and the United Kingdom have provided advanced communications capabilities to NATO between 2005 and 2019 by selling the overcapacity of their own national SATCOMs' (European Union Institute for Security Studies, 2019). The NATO Intelligence Fusion Centre is then in charge of the exploitation and analysis of the collected data. Hence, although NATO only manages a ground segment – i.e., the equipment and software used on Earth to operate, manage and control satellites (NATO, 2019) – while relying on national capacities, it is still a highly relevant forum of multilateral cooperation and collaboration among its members in the space defence sector.

Hence the space defence industry fosters international cooperation between EU and non-EU states. If cooperation enables a higher return on investment through leveraging on the capacities of all parties, thereby making the space defence industry more sustainable, it also suffers from several potential dangers that the European Union must be aware of and act upon.

4.2 International cooperation in the space defence industry generates dependencies which threaten the strategic autonomy of the European Union

The European Union's reliance on external sources for certain technologies and space-assets components reveals a weakness of the EU space defence industry and threatens the EU's defence capacities. The EU spacefaring nations suffer from dependency on the US for Space Situational

Awareness (SSA). Space Situational Awareness refers to 'current and predictive knowledge and understanding of the outer space environment including space weather and location of natural and manmade objects in orbit around the Earth' (European Space Policy Institute, 2018); it is crucial for the defence of any states' space assets. A series of bilateral agreements on SSA data sharing have been concluded between the US and ESA, the US and EUMETSAT, as well as between the US and individual EU states – such as France, Italy, the UK, Belgium, Germany, Spain, the Netherlands, Norway and Denmark (European Space Policy Institute, 2018, 42). The EU is aware of its lack of autonomy, and is currently developing a European Military Space Surveillance Awareness Network (EU-SSA-N) under the PESCO framework (as mentioned in Part 1). A new security initiative on Space Situational Awareness will also be implemented as part of the EU Space Programme, adopted on April 27, 2021.

Perhaps more threatening is the EU's reliance on the sourcing of external components that are not available in Europe for the building of its space assets. This is the case, for instance, of Electrical, Electronic and Electromechanical (EEE) components. Admittedly, such components are low-tech goods; yet, 'the lower the level of technology on which a country or region is dependent, the greater the weakness of the country or region' (Caito, 2015, 7): since EEEs are such basic goods, they are absolutely necessary in the production process. Such dependency thereby threatens *security of supply* – defined as 'unrestricted access to required technologies, products, services or information' (European Space Policy Institute, 2020, 8) – and *supply chain security* – defined as 'control of security throughout the programme lifecycle' (European Space Policy Institute, 2020, 8). Given that EEE components represent 40% to 70% of the cost of hardware procurement for space equipment (Nikulainen, 2013), it is crucial that European states decrease their level of dependency on external sources for them. In particular, the EU should diversify its sources, since it imports 60% of the necessary EEE components from the US (Caito, 2015, 14). As far as semiconductors and microelectronics are concerned, the EU relies on Asia – especially Japan. The dependency on China for rare metals is global, since China produced 97% of rare earth oxides in 2010 (Caito, 2015, 15). Diversification of sources is crucial whenever possible, to ensure security of supply, but also to maintain a strategic political autonomy.

Dependency on a certain actor for raw material or key space asset components can lead to a loss of political autonomy. Autonomy of action is a key pillar of the defence sector. 'Autonomy' does

not only refer to the *physical* capacity of action – e.g. the capacity to launch a satellite or to engage in space surveillance – it also implies *political* autonomy of action. If the EU is dependent on the US for key space technologies and components, such dependency will very probably have implications on the capacity of the EU to take its own decisions on the international scene and to act on its own terms. Indeed, 'dependence on the political will of external actors harms [the EU's] prestige and bargaining power on the international stage, making European diplomatic efforts, its potential to influence others, and the exercise of soft power, less effective' (European Space Policy Institute, 2020, 8). Such political autonomy is becoming increasingly important in the context of growing and intensifying rivalries in outer space between the US and China.

5. CONCLUSION AND POLICY RECOMMENDATIONS

We have seen that if the space defence sector does foster the integration of the space defence industries of EU member states, such cooperation is better defined as intergovernmental rather than supranational. Furthermore, the level of involvement of member states is highly unequal. At the global level, cooperation between EU and non-EU states is essential to ensure the sustainability of the EU space defence industry; yet the resulting dependency of the EU on external sources for key components and technologies – most particularly, on the US – threatens its capacity to remain an independent and autonomous political actor on the international scene. Given the increasingly strategic dimension of space defence, cooperation in this sector could constitute a new impetus for European cooperation in the defence realm.

The EU Space Programme, adopted on April 27 by the EU co-legislators, constitutes a step in the right direction. The aim of this programme is to 'secure EU leadership in space activities, foster innovative industries, safeguard autonomous access to space and simplify governance' (Cemal, 2019, 1). Yet as the Director General of the European Space Agency has claimed, 'we need to streamline, not [to] double administrative layers' (Cemal, 2019, 6). Although the role of each stakeholder cooperating with the new EUSPA has been clearly defined (*Outcome of proceedings*, 2020 (Title IV - Governance of the Programme)), the possibility of overlaps between the several space agencies and organisations still exist.

Merging the existing space agencies and organisations of the European Union, such as ESA, EUSPA or EUMETSAT, would enhance the cohesion of the implementation of the EU space

programme, contribute to avoid overlaps between agencies, and enable to significantly streamline administrative layers. A merger would be in line with the 2018 proposal of the European Commission to foster 'a fully integrated space programme [which] will bring together *all of the Union's activities* in this highly strategic field' (Proposal for a Regulation of the European Parliament and of the Council, 2018, 2 (emphasis added)). We can imagine the two following scenarios: either one existing agency absorbs the other ones, or a new agency encompassing all existing ones is created. Given that the EUSPA has just been established, the first scenario seems more likely. Such a merger should be achieved by 2024. Indeed, in 2024, the Artemis program will supposedly send a human mission to the Moon (NASA, n. d.), and in 2025, China plans to start building a base on the Moon (Chang, 2018). The European Union needs to be ready to face the challenges ahead in order to maintain its leadership status and strategic autonomy – especially in view of the US-China rivalry in space.

In the meantime, a defence consortium composed of actors of each space agency of the EU as well as of representatives of EU member states, should be constituted to ensure the cohesion of EU actions in the space defence sector. Such a structure would not constitute an additional administrative layer, but would facilitate coordination between space agencies and organisations. It would be tasked with taking key decisions with regard to the space defence industry, on issues related to supply chains, reliance on NATO, interoperability and standardisation of space technology among EU countries. Such a consortium could design concrete measures to enhance the level of involvement in the space sector of all EU member states, to boost the space industry of less involved states and create partnerships between EU space defence companies. Such measures would, in turn, boost cooperation and interoperability in the defence sector at large, and strengthen the status of the EU as a united and independent political actor at the global level.

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The EU Trust Fund for Africa: Is this Inclusive Development?

By Guido Lanfranchi

Guido Lanfranchi is a curious foreign affairs analyst, interested in the European Union's foreign policy in Africa and the Middle East. His research focuses on the interplay between economic, political, and security dynamics in these regions. He holds a BA in International Studies from Leiden University and a Master's in International Security from SciencesPo Paris. He has previously interned for the Council of the EU on EU-Africa relations, and he is currently a Junior Researcher on the Horn of Africa at Clingendael.

This piece has been elaborated by the author during his university career, with no involvement of any institutions to which the author is/has been affiliated.

ABSTRACT

This paper assesses the extent to which EU development cooperation projects adopted under the EU Trust Fund for Africa have been aligned with the concept of inclusive development. This is done by analysing the project budgets of a representative set of EUTF-funded projects. The paper argues that these projects can largely be deemed inclusive, given that they generally understand and attempt to address the specific needs not only of vulnerable and marginalized societal groups, but also those of their sub-groups. Further research, including extensive fieldwork, would be needed to assess the extent to which this project's inclusiveness is reflected in the implementation phase.

Keywords: Inclusion, EUTF, Post-development theory, SKYE, INTEGRA

1. INTRODUCTION

'To speak of the future, one must speak about Africa – Europe's twin continent.' Jean-Claude Juncker, then-President of the European Commission, 12 September 2018.

'When I came into office, I chose for the very first trip abroad […] to visit the African Union. It was a natural choice and it was a clear message, because we are natural partners.' Ursula von der Leyen, President of the European Commission, 27 February 2020.

While the interactions between Europe and Africa have deep historical roots, remarks by top European officials over the last years point at a clear trend: African issues are becoming increasingly important for the European Union (EU), and they will likely remain so in the future. The rising importance of Africa in the EU's policy agenda was partly triggered by the so-called 2015 migration crisis, when an increasing number of migrants attempted to cross the Mediterranean to reach Europe. The response devised by the EU to these events included a number of policies aimed at addressing the root causes of migration. Under the assumption that higher levels of development in African countries would reduce migration, EU policymakers set up a number of policy tools – most notably the EU Emergency Trust Fund (EUTF) for Africa – aimed at promoting development throughout Africa.[10]

The aim of this paper is to review to what extent EU development cooperation projects adopted under the EUTF for Africa have been aligned with the concept of inclusive development. This is done through an in-depth analysis of a set of projects funded under the EUTF between 2015 and early 2019.[11] The paper proceeds as follows. The first section introduces the main object of the analysis, that is, the EUTF for Africa. The second section then discusses the concept of inclusive development, which is the theoretical lens through which the EUTF's performance is later assessed. Such assessment is at the centre of the third section, which evaluates the inclusiveness of a representative set of EUTF-funded projects. The conclusion summarizes the findings and

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[10] Despite being part and parcel of the EU's political calculation in the last few years, the basic assumption underlying these policies has been long questioned by the literature. For some examples, see de Haas (2007); Clemens (2014); Lanati and Thiele (2018). This interesting debate, however, lies beyond the scope of this paper.

[11] The data refers to the period between the EUTF's foundation in 2015 and February 2019, when the dataset used for this paper was compiled by the author. Despite being old, the dataset is representative, given that it includes almost 90% of the sum pledged to the EUTF as of March 2021 (EUR 4.2 billion as of February 2019, out of the current sum EUR 4.7 billion).

points at avenues for further research. A list of references and an annex containing relevant information on the projects analysed is attached at the end of the paper.

2. EU EMERGENCY TRUST FUND FOR AFRICA

The 'European Union Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa' (EUTF for Africa) is an EU policy tool established in November 2015, as European policymakers sought to respond to the swelling inflow of migrants from Africa.[12] The Fund largely reflects the EU's willingness to stem migration flows by acting not merely at its own frontiers, but also throughout the African continent. In particular, the EUTF's aim is 'to foster stability and to contribute to better migration management, including [sic] by addressing the root causes of destabilization, forced displacement and irregular migration' (European Commission, 2019).[13]

The EUTF acts as a basket of funds, collecting contributions from different stakeholders and using such contributions to finance projects that are relevant for its aims. The EUTF receives funds from different entities, namely EU institutions, EU member states, as well as third countries. The funds gathered by the EUTF are then allocated to a number of projects across Africa. Between 2015 and early 2019, the EUTF gathered pledges for EUR 4.2 billion, coming mainly from EU financial instruments (88%), and partly from participating states (12%). In the same period, 188 projects were granted approval for EUTF funding, for a total amount of approximately EUR 3.6 billion.

The EUTF's action is organized along both geographical and thematic lines. From a geographic perspective, the EUTF operates with 26 partner countries across three geographical 'windows' identified by EU policymakers: the Sahel and Lake Chad region (SLCR) window (12 partner countries, absorbing EUR 1,648 million, i.e. 47% of the total allocated budget); the Horn of Africa (HoA) window (9 countries, EUR 1,212 million, i.e. 34% of the total); and the North Africa (NA) window (5 countries, EUR 533 million, i.e. 15% of the total). Moreover, a very limited number of

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[12] For an overview of the EU's policy response to the migratory flows of early 2015, see the following documents: (i) The 'Ten Point Action Plan on Migration' adopted by the Council of the EU in April 2015 (Council of the EU, 2015); (ii) The 'European Agenda on Migration' elaborated by the European Commission in May 2015 (European Commission, 2015); (iii) The Joint Valletta Action Plan (JVAP), a document jointly negotiated by European and African leaders during the Valletta Summit of November 2015 (Valletta Summit, 2015).

[13] All the data regarding the EUTF used in the following paragraphs come from the EUTF website hereby referenced.

projects (amounting to EUR 134 million) are implemented across different geographical windows.

EUTF for Africa
Budget Allocations on the Three Regional Windows

North Africa (15%)

Cross-window 4%

Sahel and Lake Chad (47%)

Horn of Africa
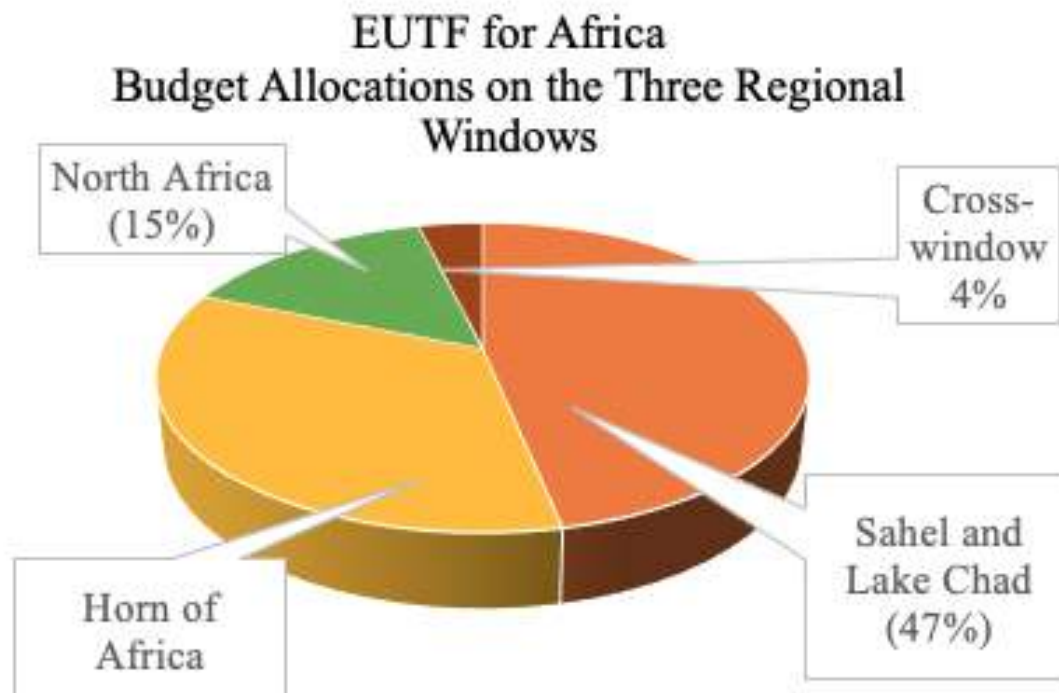
Figure 1: EUTF for Africa, Budget Allocations Across the Three Regional Windows (Source: European Commission 2019).

In addition to this regional classification, EU policymakers classify the Fund's activities under four thematic categories, which generally reflect the main aim of the projects involved. These thematic categories are:

1. 'Greater economic and employment opportunities', that is, establishing inclusive economic programs that create new jobs, especially for youth and women, with a focus on vocational training and the creation of micro/small enterprises (this theme absorbs EUR 1,195 million, 34% of the total);

2. 'Strengthening resilience', notably in terms of food security and of the wider economy, with a focus on the provision of basic services to local populations and especially the most vulnerable (EUR 642 million, 18% of the total);

3. 'Improved migration management' in all its aspects, including by supporting national capacity building, combating human trafficking and smuggling, supporting return and

readmission procedures, and supporting legal channels of migration (EUR 1,032 million, 29% of the total);

4. 'Improved governance and conflict prevention', with a focus on addressing human rights abuses and enforcing the rule of law, and strengthening national capacity in terms of security and justice (EUR 659 million, 19% of the total).
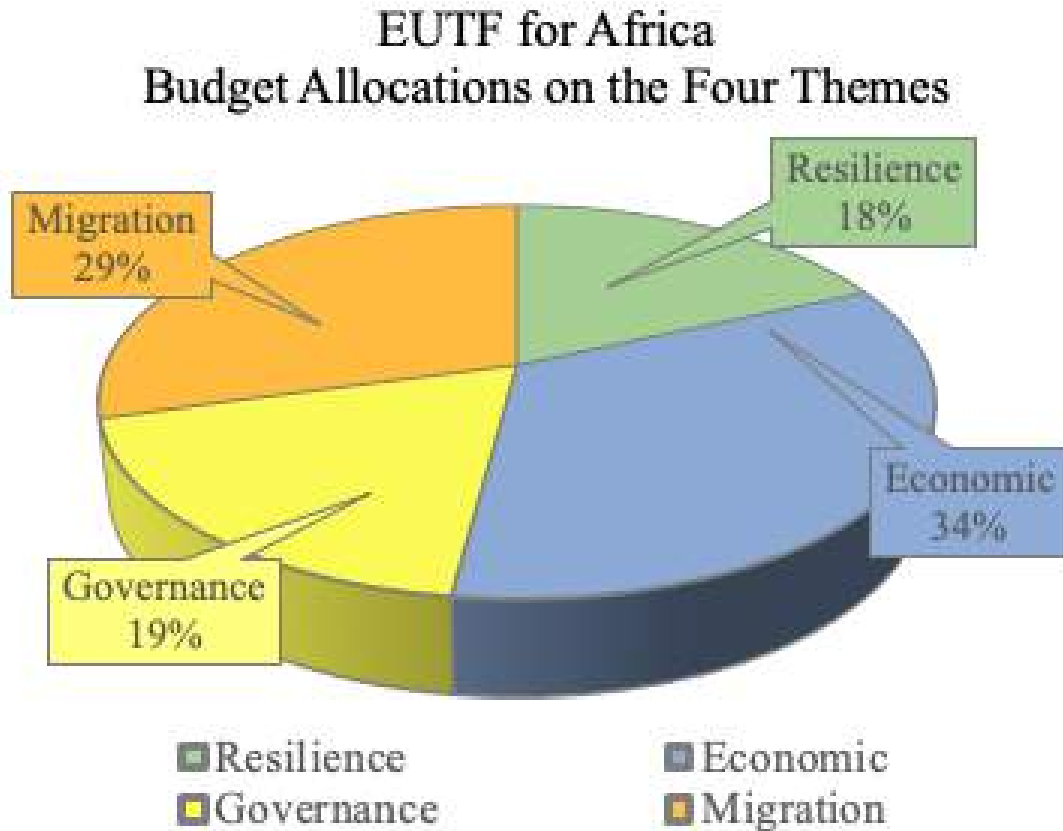
Figure 2: EUTF for Africa, Budget Allocations Across the Four Thematic Areas (Source: European Commission 2019)

As shown in the previous paragraphs, the EUTF acts as a funding instrument for a large number of projects that are essentially different in their nature and their aims. Given that the objective of this paper is to analyse the EUTF-funded *development* policies towards Africa, the focus here is on the projects falling under the EU-defined thematic label of 'economic opportunities', whose aim is to promote longer-term development through the creation of jobs and sustainable sources

of income.[14]

To enable a more in-depth analysis, the sample is also narrowed down in terms of geographical scope. As shown in Table 1, the North Africa window is host to projects in the domain of migration management only, which makes it less relevant for this analysis and its focus on development. Between the two remaining windows, the focus here is on the Sahel and Lake Chad region, mostly on account of its major political relevance for the EU and its member states, as well as its sheer size in terms of countries' number (12 out of 26) and especially budget allocations (47% of the total).

[Amounts in EUR]	Resilience	Economic	Governance	Migration
Sahel and Lake Chad	485,072,729.00	469,576,233.00	416,600,000.00	277,533,200.00
Horn of Africa	157,400,000.00	725,157,000.00	242,000,000.00	87,150,000.00
North Africa	0.00	0.00	0.00	533,453,927.00
Cross-window	0.00	0.00	0.00	133,613,500.00
Total	642,472,729.00	1,194,733,233.00	658,600,000.00	1,031,750,627.00

Table 1: EUTF for Africa, Budget Allocations per Window, per Theme (Source: European Commission 2019).

This selection thus results in a sample of 28 EUTF-funded development projects, for a total budget of EUR 470 million. This sample is used in the following sections to carry out the assessment of the EUTF in terms of its compliance to theories and practices of inclusive development.

3. INCLUSIVE DEVELOPMENT AND INCLUSIVENESS

Over the last couple of decades, inclusive development (ID) has established itself as a relevant concept in policy and academic debates regarding developmental policies. In spite of such widespread utilization, however, the term has traditionally been suffering for years from a lack of precise definition (INCLUDE, 2013), and this problem still persists nowadays.

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[14] The projects under the headings of 'resilience', 'migration management', and 'governance' are generally less focused on development issues, and hence they are left out of the scope of the analysis conducted below. It should be noted here that the line between 'economic' and 'resilience' projects is at times blurred, with a number of projects stranding between the two categories. The project 'Projet d'appui aux filières agricoles dans les régions de Tahoua et Agadez', for instance, features a mismatch between its classification in the website ('economic') and in the technical fiche ('resilience'). Yet, this confusion is not systematic, and it is not estimated to dramatically alter the findings of the paper.

Academics dealing with the concept of ID generally stress its role in moving the debate beyond traditional perspectives focused on growth (Kanbur and Rauniyar, 2010, p. 440). Firstly, these authors underline the importance of not only material benefits, but also social ones (Hickey et al., 2015, p. 5). They usually focus on both income and non-income dimensions of well-being (INCLUDE, 2013, p. 5), and they even give prominence to other issues, such as ecological and relational ones (Gupta et al., 2015; Gupta and Pouw, 2017; Pouw and Gupta, 2017b). This first shift is what makes a policy *developmental*, instead of merely growth centred.

Moreover, these authors also call for a shift of focus away from aggregate measurements of benefits (such as, for instance, GDP per capita), proposing instead to analyse the distribution of such benefits across different groups. For instance, they advocate for an increased focus on the marginalized people (Gupta et al., 2015, p. 546) and they stress the importance of 'the equitable distribution of social and material benefits across social groups and categories' (INCLUDE, 2013, p. 5). This second shift is what makes a (developmental) policy *inclusive*.[15]

Thus, for the purpose of this paper, it can be said that ID occurs when there is an overall improvement of income and non-income dimensions of well-being (*development*), while at the same time the distribution of such well-being across different groups becomes more equitable (*inclusive*). As Hickey et al. (2015, p. 5) put it, ID is a process that occurs 'when social and material benefits are equitably distributed across divides within societies.'

As the previous definition shows, the concept of ID policies entails a focus on the *equitable*, and not merely *equal*, distribution of developmental outcomes. To clarify this point, it is useful to draw upon the philosophical debate between equity and equality, two concepts that – despite their significant differences – are too often conflated. While an in-depth discussion of these two concepts lies beyond the scope of this paper,[16] It suffices here to say that while equality entails the distribution of a 'specific characteristic' in a perfectly even manner across different 'units', equity entails 'the appropriate treatment of unequals in view of the differences between them' (Bronfenbrenner 1973, 10). In other words, while equality entails treating everyone in the same

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[15] An important distinction is to be made between inclusiveness as outcome (which is concerned with the effects of a policy in terms of redistribution of resources) and inclusiveness as process (which refers instead to the inclusion of marginalized groups in policy-making procedures) (INCLUDE, 2013, p. 6). Given that the policies analyzed in this paper are devised by an external actor (the EU), the focus here will be on inclusiveness as an outcome.

[16] For a better overview of the debate, see, for instance, Bronfenbrenner (1973) and Raphael (1945).

way, equity means treating everyone according to their differences and needs. Subscribing to the equity approach, this paper considers as inclusive a policy that displays a specific focus on the more vulnerable and marginalized members of a society (Gupta et al., 2015, p. 546).

When identifying these vulnerable and marginalized societal segments, this paper focuses specifically on socio-economic considerations. This choice is consistent with the approach taken by the literature on ID, where the attention of most authors is usually dedicated to socio-economic considerations.[17] In this regard, access to income and employment is considered here as extremely relevant issues. Yet, in addition to these, other non-strictly economic considerations like access to education, health, sanitation, and social security are also at times taken into account, as they are mentioned in the literature as critical issues in determining the inclusiveness of development policies (Adesina, 2007; Giovannetti, 2010; Gumede, 2018).

Throughout the paper, groups such as youth, women, migrants and returnees, as well as rural inhabitants are considered key examples of vulnerable and/or marginalized societal segments. The youth, for instance, have often been seen as marginalized due to the lack of socio-economic opportunities available to them, especially in terms of jobs and income sources (Kayizzi-Mugerwa, 2019, p. 15). Similarly, women in Africa have often been seen as crucial but at the same time marginalized actors (Anunobi, 2002, p. 41), including on major issues such as the right to land (Ossome, 2014). In many instances, significant marginalization can also affect migrants, and particularly those who are denied basic socio-economic rights due to a lack of documentation (Mphambukeli and Nel, 2018), as well as returnees, who have to face the extra challenge of being shamed by their families for their perceived failure (Pujol-Mazzini, 2019). Finally, marginalization can also affect rural populations, who reportedly face significant levels of vulnerability throughout Sub-Saharan Africa (Ellis, 2006).

While all these groups are vulnerable or marginalized in their own specific ways, it is important to note that within these very same groups, different subsets of people can face different challenges and have different needs. Within the youth, for instance, it has been shown that young girls face

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[17] However, it should be noted that, while many accounts of ID focus largely on social and economic issues, some authors stress the need to move beyond this limited approach (Gupta et al., 2015, p. 544), proposing a much stronger focus on ecological and relational dimensions of inclusiveness (Gupta et al., 2015; Gupta and Pouw, 2017; Pouw and Gupta, 2017a; Pouw and Gupta, 2017b).

different challenges as compared to young boys, for instance in terms of health (Mombo-Ngoma et al. 2016) and education (Odaga and Heneveld 1995; Chigona and Chetty 2007). This intersectionality means that, in order to be truly inclusive, a policy or a project should not only aim at helping the most vulnerable societal segments, but should also recognize the needs of specific sub-groups and address them. The next section explores the extent to which EUTF-funded projects conform to such criteria.

4. THE EUTF FOR AFRICA AND INCLUSIVE DEVELOPMENT

By describing the structure of the EUTF for Africa and by outlining the conceptualization of inclusive development adopted by this paper, the previous two sections have set the ground for the analysis to be conducted in this section. The aim of this analysis is to assess the extent to which the EUTF-funded development projects identified above are consistent with practices of inclusive development. This is generally done by reviewing how much attention these projects devote to the more vulnerable segments of the countries where they operate. Projects with a large budget, owing to their increased relevance and higher potential impact, are analysed more in depth.

The first part of the analysis is a more superficial one, in which the focus is on defining whether the declared aims of the different projects respond to the basic criteria of inclusiveness, i.e. a specific mention to vulnerable and marginalized groups. The second part of the analysis then tries to dig deeper into these projects, notably by exploring the extent to which they are able to grasp the more specific needs of their target groups – not only mentioning them, but also understanding them correctly and taking them into account in their planning. Unfortunately, in both these cases, the analysis is limited to a consideration of the projects' aims, and not their implementation, as a focus on the latter would necessarily require extensive fieldwork that lies beyond the reach of this paper.

4.1. Inclusiveness: a Surface Analysis

As noted above, the theme 'economic opportunities and greater employment' encompasses 28 of the EUTF-funded projects in the Sahel and Lake Chad Region window, for a total amount of EUR 470 million allocated (defined in this section as 'the total'). In the broader sense of inclusiveness, i.e. being aware of the needs of vulnerable/marginalized populations and mentioning them, 23 out of these 28 projects are inclusive. These projects correspond to an allocated amount of EUR 394

million, that is, 84% of the whole amount for economic projects in the SLCR.

Among these projects, those focusing on inclusiveness merely in general terms are only 4, representing 13% of the whole amount (EUR 62 million in absolute terms). A larger number of projects focus instead on specific segments of the target societies. A majority of these economic projects are particularly interested in improving economic and employment opportunities for the youth (16 projects out of 28, for a total amount of EUR 282 million, that is, 60% of the total). Besides the youth, the most recurrent target groups are then migrants (4 projects for EUR 64 million, that is, 16% of the total), rural inhabitants (5 projects for EUR 61 million, 13%), and women (4 projects for EUR 38 million, 8%).

Among the 28 economic projects considered here, the largest in terms of budget (EUR 65 million) can be indeed classified as an inclusive project. This project, called INTEGRA, specifically targets the Guinean youth, and it is aimed at supporting their socio-economic integration in the country. The project is largely framed in terms of migration, as its stated aim is preventing outward migration and facilitating returnees' reintegration. However, INTEGRA's focus on providing long-term economic opportunities means that the project can be considered developmental in nature, and its specific focus on the youth, seen by the EU as a vulnerable group, makes the project inclusive.

Another relevant inclusive project is SKYE, 'Skills Development for Youth Employment' in Nigeria. As the previous project, SKYE too targets the youth, with a large budget of EUR 50 million. Its aim is to generate new employment opportunities by improving the Nigerian youth's skills, as well as fostering a better environment for employment creation in labour intensive sectors.[18] These very same aims are also shared, for instance, by the project 'Building a future – Make it in Gambia', albeit with a much lower budget (EUR 23 million).

Besides the youth, large-scale economic projects funded by the EUTF also focus on other groups. In Niger, for instance, much of the focus is on migrants. Under the EUTF, EUR 30 million have been allocated to the creation of employment and economic opportunities through a sustainable

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[18] It remains open to discussion whether labour intensive sectors are always the right sectors in which new jobs should be created from a qualitative viewpoint, as the creation of excessively low-paid, low-quality jobs might negatively affect the achievement of 'productive, gainful, decent employment' (on of the six key policy domain for ID mentioned in INCLUDE, 2013). Although extremely relevant, such analysis lies out of the scope of this paper.

environmental management in zones of transit and departure for migration, while further EUR 30 million have been earmarked for a project supporting the agricultural sector's development in the transit regions of Tahoua and Agadez.

In the light of this analysis, it can be argued that the EUTF-funded projects analysed here largely address issues of equity, thus being rather compliant to the idea of inclusive development as intended in this paper. More vulnerable groups of people, chiefly the youth, but also migrants, rural inhabitants, and women, are given a larger share of attention by the EUTF, which notably allocates 84% of its considered budget on ID-sensitive projects.

4.2. Inclusiveness: Beneath the Surface

While it is surely positive that a large share of the EUTF-funded projects analysed here show some basic awareness of vulnerable and marginalized groups, merely mentioning these groups and the need to target them can hardly be considered as a sufficient condition to evaluate a project's inclusiveness. The aim of the following paragraphs is thus to examine some of these projects more in-depth, in order to analyse the extent to which the specific needs of the target groups are adequately understood and addressed.

A good heuristic way to analyse the inclusiveness of the EUTF's economic/development pillar is to analyse the inclusiveness of the largest EUTF-funded projects. One of these projects is INTEGRA, which employs 65 MEUR to provide support to the socio-economic integration of the Guinean youth. In this project, some of the youth's needs and challenges, for instance in terms of higher-than-average unemployment and lower access to credit, seem to be adequately identified and understood, and they are taken into account in the project's recommendations.

Moreover, within the broad target group of the youth, the project seems to recognize differences among sub-groups, and it attempts to support each sub-group with tailored measures. Chiefly, gender considerations are given a considerable degree of attention. The project explicitly recognizes some of the challenges faced by young women, for instance highlighting their vulnerability when left alone by their male family members. Consequently, it proposes specific measures to ensure that women appropriately benefit from the project. These measures usually entail targets in terms of the percentage of women beneficiaries, for instance in terms of newly created jobs, or executed training sessions. In INTEGRA, for instance, these targets are often set

at 50%, although in a few instances the figure is lower (25%).

Beyond gender considerations, the project also devotes attention to the needs of other sub-groups. For instance, it focuses on youth without professional qualifications, notably those faced with the transition from schooling to their first job. These individuals are identified as particularly vulnerable, and hence are targeted by the project in a more specific way. Similarly, INTEGRA also pays special attention to returning migrants – albeit to a lesser extent than to women, as targets for migrants benefitting from the project are set at around 5-10%.

Much like INTEGRA, SKYE – a 50 MEUR project aimed at providing employment opportunities for young people in Nigeria – also features a specific focus on the youth. The project shows a thorough understanding of the particularly difficult situation faced by young people in Nigeria, notably in terms of unemployment. Moreover, like in the case of INTEGRA, SKYE too has a focus (albeit limited) on returning migrants, as well as on gender considerations.

In SKYE, the needs and challenges of young women are analysed in a particularly in-depth way, focusing on their higher rates of underemployment, informal employment, and illiteracy, as well as on the problems faced in accessing land and finance. The project explicitly attempts to address such challenges by means of specific actions in both the target sectors, that is, construction and agriculture. As for construction, SKYE attempts at providing the right skills to young women in order to allow them to enter a sector in which they are markedly underrepresented. Similarly, in the agriculture sector the project tries to address the imbalance between the huge role of women in agriculture and their scarce presence in agricultural education. In order to address such issues, specific targets of minimal percentage of women among the targeted individuals are set, albeit at less ambitious targets than in INTEGRA (e.g. 30-40%, rather than 50%). Moreover, other measures, such as the preparation of training for people with low levels of literacy, are explicitly aimed at addressing some challenges faced by young women (e.g. higher illiteracy rates).

Although these observations seem to paint a very rosy picture, SKYE is not devoid of features that might hamper its inclusiveness. For instance, no major distinction is proposed between urban and rural areas. Moreover, the areas in the north-east of Nigeria, which are among the most vulnerable due to the conflict with Boko Haram, are deliberately left outside of the project's scope. However, it should also be noted that the project shows a good degree of awareness of such issues, also trying

to address them when possible. For instance, the choice of not being engaged in the country's north-east is motivated by very understandable security concerns. Moreover, being aware of the problems implied by neglecting one of the most vulnerable areas of Nigeria, the project also proposes to implement ICT-based distance training in order to reach out to the youth of that region too.

Overall, therefore, the analysis seems to show that the EUTF-funded development projects considered here comply to a large extent with the criteria of inclusive development as set forth by this paper. In more superficial terms, a fairly large share of funds (84%) is allocated to projects that devote particular attention to vulnerable or marginalized groups – a trend that makes these projects, at least on the surface, inclusive. In addition, a more in-depth analysis of a few large projects shows that such inclusiveness is not merely a superficial one. Rather, many of these projects seem to appropriately understand the needs of their target groups as well as their sub-groups, and they seek to address them through the identification of specific implementation targets. While sometimes the project guidelines may not fully comply with the equity principle, the analysis shows that there is not only a degree of awareness about these problems, but also a willingness to correct the resulting imbalances. While the scope of this analysis does not allow for a generalization of the findings beyond the sample of projects analysed here, these conclusions suggest that the commitment of the EUTF-funded development projects should not be underestimated.

5. CONCLUSION

The aim of the present paper was to assess the extent to which EUTF-funded development policies towards Africa reflect considerations relative to inclusive development. The first section provided a brief sketch of the EUTF for Africa, the policy tool under review in this paper. The second section introduced the concept of inclusive development, suggesting that, according to the principle of equity, a specific focus on vulnerable and marginalized groups is a key determinant of a policy's inclusiveness.

These two sections served as a basis for the third one, which analysed the degree of compliance between the sample of EUTF-funded projects considered here and the theory and practice of inclusive development. The analysis showed that these projects are inclusive not only on the

surface, but also in more substantial terms, as they generally understand and attempt to address the specific needs not only of vulnerable and marginalized societal groups, but also those of their sub-groups.

Before concluding, it is important to recall once more that the analysis performed in this paper was restricted to only one of the three EUTF's geographic windows, and to only one of its four thematic categories. While this has allowed for a more in-depth analysis, it is clear that the findings of this paper cannot be generalized to the EUTF as a whole. Repeating an analogous analysis on other EUTF-funded projects, as well as on other EU policy instruments such as the External Investment Plan and the New Africa-Europe Alliance, could help in further clarifying the nature of EU development policies towards Africa at large.

Moreover, and perhaps more importantly, it should be recalled that this paper has only taken into account the declarations of intent expressed by the EUTF-funded projects, refraining from an evaluation of the implementation of such projects, which would require a considerable amount of fieldwork. Further research in this sense is much needed to clarify the extent to which the good intentions of European policymakers may yield (or not) their desired outcomes on the ground. At the end of the day, this is what really matters for the African people.

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ANNEXATION

Proj. #	Project name	Brief description	Area		Budget
			Country	Region	
	Burkina Faso				
1	Insertion et Stabilisation Socio - Economique des Jeunes et Femmes dans la Province du Séno	Youth and women in rural areas, improve societal reintegration (revenue generation, reinforce societal cohesion, role of women, better life conditions)	Burkina Faso	Sahel	5.200.000
2	Programme d'appui à l'Emploi dans les zones frontalières et périphériques	Support to socio-professional integration. Means = professional formation; help creation of micro and small enterprises. Target women and youth. Implemented via local civil society	Burkina Faso	Boucle du Mouhoun, Nord, Sahel	7.000.000
3	TUUMA - Appui à la compétence professionnelle, l'entreprenariat et l'emploi des jeunes et des femmes dans les régions rurales du Burkina Faso	Target youth. Improvement of technical competence, support enterpreneurship and creation of jobs in rural areas.	Burkina Faso	Cascades, Hauts-Bassins, Boucle du Mouhoun, Nord	8.000.000
	Cameroon				
4	Projet de Promotion de l'Emploi et Renforcement de la Résilience au Nord Cameroun	Improve living conditions of vulnerable groups, promote social cohesion	Cameroon	Adamaoua, Nord, Extreme Nord	7.000.000
5	Projet d'investissement en appui au développement économique local dans l'Extrême Nord, favorisant l'emploi et l'insertion des jeunes	Extending pilot of travaux à haute intensité de main d'oeuvre. Privileging creation of jobs for micro-projects for rural youth	Cameroon	Extreme Nord	10.000.000
	Mali				
7	Création d'emplois par l'amélioration de la filière de l'anacarde, afin d'atténuer les causes de l'émigration, dans les régions de Sikasso, Kayes et Koulikoro	Improvement of production, transformation and commercialization of cashew	Mali	Koulikoro, Kayes, Sikasso	13.576.233
8	Projet d'appui aux investissements de la diaspora malienne dans les régions d'origine	Support collective development initiatives, productive investments, etc. with involvement of Malian diaspora	Mali	Kayes, Sikasso	6.000.000
9	Youth Employment Creates Opportunities At Home in Mali	Create employment opportunities for youth, notably on horticulture, agri-food sector, craft. Means = formation and competences, technologies, enterpreneurship models. Target on unemployed youth and migrants under reintegration	Mali	Koulikoro, Kayes, Gao, Bamako	20.000.000
	Mauritania				
10	Projet PECOBAT : Amélioration de l'employabilité des jeunes et des capacités des PME par le développement du sous-secteur du BTP	Aims = (i) to improve youth employability in sector of bioclimatic construction with local materials; (ii) promote development of private sector, notably in earth masonry. Means = construction site/formation school	Mauritania	Brakna, Gorgol, Guidimaka	3.200.000
11	Création d'emplois décents et consolidation de l'emploi existant pour les jeunes et potentiels migrants dans le secteur de la pêche artisanale	Improve youth employability. Target youth and returninng migrants	Mauritania	Dakhlet Nouadhibou, Inchiri, Nouakchott	14.000.000
12	Promotion de l'emploi et amélioration des conditions de vie des pêcheurs artisanaux côtiers, jeunes et femmes aux alentours des espaces naturels protégés du secteur nord de Mauritanie	Aim = creation of direct employment and improve living conditions of vulnerable people (especially youth and women). Means = creation of employment in artisanal fishery, transformation of products, local agriculture development; at the same time, ensuring that current generation capacity of fishery locations is maintained	Mauritania	Dakhlet Nouadhibou	10.000.000

Proj. #	Project name	Brief description	Area		Budget
			Country	Region	
	Niger				
13	Projet d'appui aux filières agricoles dans les régions de Tahoua et Agadez	Support agricultural sector and create employment for transiting migrants. Means = reinforce infrastructure and services, economic valorization of agricultural products, creation of employment	Niger	Tahoua, Agadez	30.000.000
14	Appuyer la formation et l'insertion professionnelle des jeunes filles et garçons des régions d'Agadez et Zinder en vue de contribuer au développement socioéconomique de ces deux régions	Support formation and professional path of youth in areas where irregular migration is key. Means = improve technical formation, reinforce employability	Niger	Agadez, Zinder	6.900.000
15	Plan d'Actions à Impact Economique Rapide à Agadez (PAIERA)	Start dialogue with actors involved in irregular migration --> give employment opportunities to the actors who are dependent on irregular migration for their subsistence	Niger	Agadez	8.000.000
16	Création d'emplois et d'opportunités économiques à travers une gestion durable de l'environnement dans les zones de transit et départ au Niger	Improve economic opportunities, local development, equality of opportunity. Means = sustainable management of environment. Target vunerable people (e.g. youth, women, rural)	Niger	Agadez, Tahoua, Zinder	30.000.000
17	Stabilisation et renforcement socio-économique des populations affectées par la migration irrégulière dans les zones de transit au Niger	Global approach. Support economic alternatives to irregular migration. Means = support economic alternatives, support community cohesion by helping in migrants assistance	Niger		7.600.000
18	Skills Development for Youth Employment – SKYE	Generating employment opportunities for youth. Means = improving skills; foster environment for employment creation in labour intensive sectors (G: are we sure it's the right sectors?)	Nigeria		50.000.000
	Senegal				
19	Développer l'emploi au Sénégal: renforcement de la compétitivité des entreprises et de l'employabilité dans les zones de départ	Promotion of employment and professional insertion. Mean = renewal of enterprises in sectors with good potential; reinforcement of professionalization of workforce in these sectors	Senegal	Kédougou, Diourbel, Kolda, Sédhiou, Tambacounda, Ziguinchor, Saint-Louis, Louga, Matam)	40.000.000
20	Projet d'Appui à la réduction de la migration à travers la Création d'Emplois Ruraux au Sénégal, par la mise en place de fermes agricoles villageoises et individuelles	Focus on rural areas. Activities: land management, technical formation, etc.	Senegal	Kola, Sédhiou, Kédougou, Diourbel, Louga, Fatick, Kaffrine, Tambacounda	20.000.000
21	Projet d'Appui à la Réduction de l'Emigration rurale et à la Réintégration dans le Bassin Arachidier par le développement d'une économie rurale sur base des périmètres irrigués – PARERBA	Aim = develop a rural economy in the region. Means = support employablity (both agriculture and not), while alos supporting food security. Target: youth and rural	Senegal	Diourbel, Thiès, Kaolack, Kaffrine, Fatick	18.000.000
	Chad				
22	Projet de soutien à l'insertion socio-professionnelle des jeunes tchadiens en situation de vulnérabilité	Target: vulnerable youth. Aims = improve their socio-economic insertion. Means = support to formation and apprenticeship, in line with needs of national businesses	Chad	Mayo-Kebbi-Est, Lac, Logone-Occidental, Moyen-Chari, Ouaddai, Ville de Ndjamena	10.300.000

Proj. #	Project name	Brief description	Area		Budget
			Country	Region	
	Gambia				
23	Youth Empowerment Project	Aim = develop the economy. Means = increased training and employment opportunities, foster enterpreneurship. Some focus on youth	Gambia	Upper River, Banjul, North Bank	11.000.000
24	Building a future - Make it in The Gambia	Target = youth, including returnees. Promote employment and income opportunties. Among the measures, skill development programs, social reintegration of returnees, contribution of diaspora members	Gambia	Banjul	23.000.000
	Cross-border				
25	Job creation and development of micro enterprises through fair trade and selected value chains	Aim = poverty reduction. Means = develop economic opportunities and jobs (notably, artisanal sector for micro-enterpreneurs from informal sector; focus on women and youth; export-led focus); enable migrants' return providing training and qualification	Mali (Bamako, Koulikoro, Segou, Mopti, Kayes), Burkina Faso (Boucle du Mouhoun)		10.000.000
26	IPDEV2: Soutenir les entrepreneurs et les petites PME en Afrique de l'Ouest	Support long term financing for SME in West Africa to create stable jobs. Means = support development of SMEs, now often informal; support enterpreneurship by reinforcing compentences, especially youth and women; support private investment in SMEs	Burkina Faso, Cote d'Ivoire, Mali, Niger, Mauritania, Senegal, Cameroon, Ghana		15.800.000
27	ARCHIPELAGO: an African-European TVET initiative	Address youth and vulnerable groups by increasing skills (TVET) and providing employment opportunities locally (in adaptation to private sector needs)	Burkina Faso, Niger, Nigeria, Senegal, Cote d'Ivoire, Cameroon, Chad, Gambia, Ghana, Guinea, Mauritania, Mali		15.000.000
28	La voix des jeunes du Sahel - Dialogue entre jeunes et institutions au Sahel (phase II)	Aim = integration of youth organizations in devising and implementing development plans in their favor. Support to G5S.	Mauritania, Mali, Burkina Faso, Niger, Chad		5.000.000

The Construction of Identity and Crisis in the Visegrád-States since the Schengen Crisis

By Simon Eckert

Simon Eckert has studied Philosophy, Politics and Economics at the University of Witten/Herdecke and the University of Latvia, Riga and is about to graduate. During his studies, he took part in Summer Universities at Andrássy University Budapest (2018) and Central European University, Budapest (2019) focusing on politics in East-Central Europe. He is currently a Trainee at the European Representation of the German Federal Association of Non-statutory Welfare (BAGFW) in Brussels.

ABSTRACT

The article aims to explain the underlying causes of the formation of a common quasi-identity of the Visegrád-States Poland, Slovakia, the Czech Republic, and Hungary (V4) during the Schengen Crisis in 2015. The Article seeks to utilize Erik Ringmar's Theory of formative moments for this purpose. Since the theory aims at explaining actions in terms of identities rather than interests this is the angle from which this article approaches the actions of the V4 since the Schengen Crisis. The Article consists of two parts. The first part of the Article applies the theory of Erik Ringmar to demonstrate that the V4 are in a formative moment of the formation of a specific V4 identity which has begun in the Schengen Crisis of 2015. The second part of the article is concerned with the interplay between the construction of crisis and identity. To examine this connection official government discourse about migration in the V4 was analysed regarding the role of "othering" of both Muslim migrants and the European Union (EU), as well as the construction of related threats in these discourses since 2015. The method chosen is to reconstruct the relevant government discourses that have evolved around the Schengen Crisis, migration, and relation of the V4 towards the EU and one another since 2015.

Keywords: Visegrad States; Schengen Crisis; Identity Politics; Migration; Integration

1. INTRODUCTION

In the fall of 2015, the attention of close observers of European Affairs was suddenly drawn to a very strong common position of a regional cooperation format, that was formerly best known for the inability of its' members to find a common stand on the European stage and influence European policies. In contrast to its earlier struggle of gaining influence within the European Union (EU) (Törő et al., 2014) the Visegrád-Group became what was labelled as "Big bad Visegrad" in an article headline by the Economist through its refusal to the relocation of asylum seekers during the so-called Schengen Crisis in the fall of 2015 (Economist, 2016). The Schengen Crisis, sometimes also referred to as migration or refugee crisis, describes an unexpected rise in the numbers of human beings migrating to the EU for various reasons that occurred during the summer and fall of 2015 and thereby "triggering a crisis of the Schengen regime" (Schimmelfennig, 2018: 969). The Visegrád-Cooperation was "formed in 1991 to further the cooperation and aspirations for European integration of three former communist countries", Czechoslovakia, Poland, and Hungary, and became the Visegrád Four in 1993 when Czechoslovakia divided and has since endured as a framework of cooperation for the four Central European Countries (Törő et al., 2014: 366). The developments of 2015 raise an interesting question. Why did the Visegrád-States (V4) turn against European Integration in a policy field without high material stakes for them?

The article will aim to explain why the V4 have opposed binding relocation quotas for refugees since the fall of 2015 and have ended up in "a normative standoff" with the European Institutions (Kazharski, 2020: 251) which remains unresolved until now (Henrekson et al., 2020: 87, 103). For this purpose, the formation of a common identity in the V4 through common narratives about the migration crisis and how this might have enabled the V4 to overcome its difficulties in finding a common long-lasting position on the EU level shall be evaluated. It is especially noteworthy that the cooperation has struggled before to find a common stance at the EU-level before 2015 despite similar experiences during and after the accession process to the EU (Kazharski, 2018) and the long-established existence of the Visegrád-Cooperation (Schmidt, 2016).

The formation of the common identity shall be explored by applying Erik Ringmar's theory of Formative Moments. This theory seems to be well suited for such a task since it aims at explaining seemingly irrational actions in terms of a narrative theory of action. This means that whomever an actor wants to be is reconsidered to improve the explanations of what the actor wants. The theory

is especially well suited since it introduces a distinction between normal times and times of crisis (Ringmar, 1996). This aspect relates well to the topic of this article because to understand the formative moment for a V4 identity in 2015 the construction of the Schengen Crisis in the V4 should be considered.

Following a discussion of the existing relevant literature and the methodology used, a brief introduction to Ringmar's theory shall be given before the theory will be applied to the case of the V4 in the Schengen Crisis of 2015 and since in the first part of this article. In the second part, the interplay between the construction of the crisis and the construction of a common identity in the V4 shall be examined. It will conclude by establishing the political implications of the findings and restating the connection between the construction of identity and crisis in the case at hand. The article aims to contribute to the already existing literature on identity formation in the V4 after 2015 by applying Erik Ringmar's (1996) theory of the narrative construction of identity in combination with theories about the construction of crisis and threats. It will investigate the interplay between the narrative construction of identities, crises, and threats at the example of the V4 since 2015. Additionally, it attempts to undertake a first evaluation of the reasons why exactly the crisis of 2015 might have led to the construction of a specific regional identity in the V4 constructed in opposition to what can perhaps be termed the mainstream liberal European Identity.

2. LITERATURE REVIEW

The formation of new Identities is a topic on which a rich depth of literature already exists, mostly from anthropology and history concerning mainly the formation of the nation-states. Eric Hobsbawm (2012) emphasizes the meaning of an invented past while Benedict Anderson (1991) highlights the meaning of factors like a common language and administration and technological advances contributing to the formation of a common public sphere as a precondition for a feeling of belonging to a national community. Anthony D. Smith (1999) and Ernest Gellner (2008) argue that nationalism is a modern concept although Smith emphasizes the premodern origins of nations. While these theories can certainly contribute to the explanation of the factors benefiting the formation of national identities, it is much harder to explain with their help why these formations took place at a certain point in time. This might have to do with the fact that they tend to focus on the material preconditions for the formation of common identities. While material factors are certainly important, the perceptions of these realities are crucial for the formation of collective

identities as well. Therefore, it might be promising to supplement these theories with others focusing on perceptions rather than if the aim is to evaluate why certain processes of the formation of identities take place at some points in time rather than at others. One branch of the structural constructivist literature focusing on these aspects highlights the construction of threats as a mode of constructing identities (Campbell, 1992, 1998, Weldes,1996). Another emphasizes that the form the utility calculus takes depends on the perceptions of actors and their actions (Wendt 1992, 1994 and Ringmar, 1996, 2002). The utility calculus originally introduced by Jeremy Bentham (1996) is understood as an algorithm to calculate the feelings that specific actions will introduce for specific actors. Therefore, it is necessary to know the underlying preferences to be able to express the corresponding utility function. Constructivist theories are often depicted as arguing against theories interested in explaining the outcome of actions through interests which are assumed as given like, the most prominent example in the field of European Studies Liberal Intergovernmentalism (Moravcsik, 1993, 2013). However, in line with Erik Ringmar (1996) and Alexander Wendt (1992, 1994) for the purpose of this article those theories should rather be viewed as supplementing and not contrasting theories which are termed rationalist.

There is an increasing body of literature on the perception and consequences of the refugee crisis within the EU (e.g. Triandafyllidou, 2018 and Schimmelfenning, 2018) as well as regarding the V4 (e.g. Braun, 2020 and Freylak, 2017). Theories about the construction of crisis focus mainly on the perceived deviation from the normal in times of crisis (Roitman, 2011), the narrative aspect in the definition of crisis (Holton, 1987), and the usage of crisis as an epochal concept (Koselleck and Richter, 2006).

3. METHODOLOGY

The article aims to identify the causes for the establishment of a new form of a common identity in the V4 since the Schengen crisis of 2015. For this purpose, the relevant government discourses that have evolved around the Schengen Crisis, migration, and relation of the V4 towards the EU and one another since 2015 shall be reconstructed and analysed. The analysis will take place through the frameworks of Erik Ringmars' theory of formative moments (Ringmar, 1996) and by drawing on various aspects from theories about the discursive construction of crisis and threats. The combination of theories seems to be justified since this might contribute to the understanding of the connection of both these phenomena as sometimes interrelated narrative processes. Due to

the high focus of the article on perceptions and consequential narratives, the theoretical framework chosen is that of structural constructivism, a framework highlighting the importance of perceptions while acknowledging the crucial role of material factors as well.

4. THE SCHENGEN CRISIS AS A FORMATIVE MOMENT FOR THE V4

The factors which led to the uniform understanding of the crisis in 2015 and subsequently uniform action from the V4 shall be examined with the help of Erik Ringmar's theory of formative moments. Ringmar's theory describes the conditions under which identities might undergo reconfiguration and is supplemented by a case study arguing that Sweden's intervention in the thirty years war was about recognition rather than interests (Ringmar, 1996) He argues that there are moments when political action can be explained best in terms of whom actors want to be, rather than in terms of what actors want. It is often easier to make sense of the observations of the second fact when we can gain knowledge about the first. He proposes to call such times "formative moments" (Ringmar, 1996: 83). The question that arises is how an observer can identify such a formative moment. Ringmar gives four conditions, which are constitutive of a formative moment" according to him. First, it should be the case that explanations through simple notions of interests are leading to ambiguous, highly contested, or even perverse results. Second, the time of the action should be a time in which new stories about the actors are told by them and when new metaphors emerge in that context. Third, the actor whose actions shall be explained "must be engaged in a process of identity formation" (Ringmar, 1996:91), "someone who constructs an affective geography of friends and enemies" (Ringmar, 1996:91) and must pay careful attention to the social system that the actor wants to belong to. Fourth, occasions or a series of occasions "on which recognition was denied under humiliating circumstances" must be identified (Ringmar, 1996: 92). According to him, the narratives in discourse are the only possible way to observe such formative moments from the position of an observer. (Ringmar, 1996). Therefore, it is justified to look at the image that the Leaders of the V4 attempted to paint of themselves since 2015 when applying Ringmar's theory. The analysis will focus on the government discourse since this is the most relevant discourse to analyse the changes regarding the meaning of international cooperation formats like the Visegrád-Format. Of course, it would also be interesting to analyse civil society organisations' and citizens' discourses to find out whether the identity constructed since 2015 by

the V4 governments was well received by a majority of the citizens, but that would exceed the length of the article.

First, it shall be examined why it is difficult to explain the actions of the V4 in terms of a utility calculus and aim to provide an alternative explanation. This does not mean that their actions must be irrational, however, it means that something else than mostly assumed must be constituent of their utility calculus. In other words: it is about the formula of the calculus rather than about its results.

If demographic developments are considered, the strong opposition to immigration voiced by the V4 is curious since Slovakia and the Czech Republic had only moderate migration rates in the years before 2015, while Hungary and Poland have negative net migration rates (Eurostat, 2020). This seems to be quite ironic since the data hints, that the bigger issue for the V4 is the emigration of too many people since from Poland alone 2,5 million people have moved away since the end of communism (Krastev, 2019) But this is not the only reason why it is difficult to explain the opposition to an EU wide redistribution scheme for migrants of the V4 in terms of commonly assumed rational interests. It seems that with their outright opposition the V4 drew attention to their domestic politics. At least in Hungary where some scholars and analysts have warned since 2010 (Ágh, 2016), that democracy was under threat, this meant provoking a clash with the European Commission. The clash has subsequently resulted in an infringement procedure of the European Commission against Hungary and Poland for their violation of EU-Treaties, as well as suing them and the Czech Republic at the European Court of Justice for not complying with the relocation mechanism agreed upon in 2015 at the European Council of Ministers. The European Court of Justice has ruled that this was against EU-Law, however, the EU is still in search of a common migration policy up to date (Brzozowski, 2019, Rios, 2020). Even in terms of purely domestic interest such as re-election, the calculus cannot be sufficiently explained because the available evidence suggests that the attitudes of the citizens of the V4 towards both the EU and migration were significantly changed through government agency (Cichocki and Jabkowski, 2019). This effort would be hard to explain purely by the desire for re-election, especially since this is likely to have encouraged a divergence between the wants of the domestic population and the wants of the EU partners of the V4, a strategy that would be in direct opposition to what game theory assumes would make sense (Putnam, 1988).

Ringmar's second condition is that new stories should be told about the actors with new emergent metaphors. For the inquiry of this condition, common rhetoric and similar narratives across the V4 shall be examined as markers of a common reconfiguration of the self-perception of those states. The east-west divide within the EU in terms of the image of multiculturalism was manifested since the Schengen Crisis when some Central and Eastern European Countries (CEEC) and most outspokenly the V4 countries began to depict the older EU member states as the periphery of Africa or the middle east (Krastev and Holmes, 2019) and therefore openly challenged the notion of European Identity by the EU majority. This change is often exemplified by a speech of Victor Orbán 2017 at a summer student camp in Romania in July 2017. In this speech he called the strengthening of the Visegrád four "the most important Hungarian and European event of the past year" (Orbán, 2017, para. 2) went on to point out that "there is no cultural identity in a population without a stable ethnic composition" (Orbán 2017, para. 12), called "Brussels" an "alliance against the opinion of the people" and a "Soros Empire" (Orbán, 2017, para. 26), called immigration to Europe a "Soros Plan" (Orbán, 2017, para. 27) and concluded with the often-cited sentence: "Twenty-seven years ago here in Central Europe we believed that Europe was our future; today we feel that we are the future of Europe." (Orbán, 2017, para. 38). Interestingly, Orbán also linked the elections in Hungary to the fate of "Central Europe" represented by the V4 in that speech, which is a hint for a rising force of the regional identity (Orbán 2017, para. 34). It seems that this quote is often mentioned, precisely because it summarizes the reversal of the role of teacher and student in terms of European identity so well. In terms of recognition, this means that the V4 began to depict themselves as those able to decide around notions of Europeanness instead of being judged upon those notions by others. Krastev and Holmes (2019: 44) point out, that the Schengen Crisis can be viewed as a "branding opportunity" for CEECs. It seems that the V4 have indeed used it to develop a new brand, which differs in its definition of European Values and the European way of life from what could be called the EU mainstream. The two most important narratives that were voiced to support this understanding of events in all of the V4 are that the admission of Muslim refugees or immigrants would pose a threat to the national and the European identity (Kalmar, 2018) and a vastly overemphasized threat of terrorist attacks by those seeking shelter (Kazharski, 2018) as well as the depiction of the EU institutions as symbols of an international elite unwilling and incapable to defend the threatened European and national identities (Braun, 2020). This is nothing less than a complete reversal of the story that the V4 governments as former

frontrunners of liberalisation and Europeanisation offer about the motivations of their stands towards EU policy.

The common construction of others is underpinning the formation of a common regional and transnational identity in the V4. This othering of both the EU mainstream and refugees can be viewed as the construction of "an affective geography of friends and enemies" (Ringmar, 1996: 91). This othering as a mode of self-assurance might be particularly pronounced in the V4 since their transnational identity seems to be weaker than national or possibly European notions of a common identity. Generally, "anything may be inscribed with meaning as a politically relevant boundary marker" (Neumann, 1996: 143). In the case of the V4 these markers are the refusal of migration from predominantly Muslim regions and the refusal of a teleological liberal narrative about the direction and nature of the EU (Kalmar, 2018; Krastev and Holmes, 2018). The vast over-emphasizing of the number of migrants in the region, as well as the recourse to a "particularist interpretation of European nations", can be found to varying degrees in all of the V4 since 2015 (Kazharski, 2018: 755). This is likely to have fostered the pre-existent "quasi-identity" of the V4 further (Kořan, 2012: 201). The V4 are the most outstanding case of countries whose governments attempt to defend the "cultural identity" of "European Nations" because they are involved in the regional cooperation format taking the lead of the opposition to liberal immigration policies, both in their own, and the perception of others (Braun, 2020: 9-10). Therefore, Ringmar's third condition can be regarded as fulfilled as well. Of course, it should not be overlooked that the most outspoken proponents of very liberal migrant policies are arguing in terms of identity as well. For example, Sweden seemed to take a great amount of pride from its' self-description as a "moral superpower", while in Germany the rights of the asylum seekers cannot be discussed without reference to those who had to leave Germany during the Nazi-Regime (Winkler, 2017) and it is an integral part of the modern common German identity, as this is by large about the dealing with Germanys' historical guilt (Neiman, 2019).

This means that the fourth condition, the event, or the series of events under which recognition was denied, remains to be confirmed to classify the Schengen crisis as a formative moment for the V4. This closely relates to another very similar point that Ringmar (2002: 119) makes in a later article: "To desire recognition is not to desire an object that provides utility, pleasure or profit, but instead to desire to be a subject of a certain kind." Ringmar (2002: 120) points out that the relations

between actors often cannot be usefully thought of as prisoners' dilemmas as often done in IR but instead points out that "many games do not typically concern what we can win or lose, but instead who or what we can be. Perhaps we could call such games 'recognition games." What we shall be concerned with, therefore, is how the V4 could conclude that they were denied recognition, after they had been formally recognised with the accession to the EU. Ivan Krastev argues that this has happened when the refugee crisis "made it clear that eastern Europe views the very cosmopolitan values on which the European Union is based as a threat" while "precisely those cosmopolitan values… are at the core of the new European identity" for many western Europeans (Krastev, 2019: 47). This experience in combination with the return to a Europe that was predominantly imagined as being monoethnic in the V4 due to the collective historical pre-war memory in the region but had already significantly changed when they became members of the EU made the accession to the EU into a humiliating experience for the new member states (Krastev and Holmes, 2018). Two other factors adding to their humiliation are the fact, that the winners of the 89 revolutions were the persons mostly leaving the countries after the success of their movements, a consequence that would have been unthinkable for preceding European revolutions (Krastev and Holmes, 2019) and that it is likely to have felt somewhat insulting for people who imagined themselves as Europeans to undergo "Europeanization" for their states to join the EU (Krastev and Holmes, 2019: 47). Some possibly problematic features of the accession process, like the choice between accepting the "acquis Communautaire" and rejection, (Behr, 2007: 249) as well as parallels of the accession procedures to the treatment of non-European states under the colonial regime (Behr, 2007) and techniques of imitation instead of internalization of liberal values might have further added to humiliation by invoking a feeling of the loss of sovereignty (Krastev and Holmes, 2018). This is likely to have been an especially humiliating experience for the V4 since three out of the four states were regarded as frontrunners of the liberal transformation in the region (Sedelmeier, 2016). These political emotions could also be helpful to explain why liberal values were often only implemented on a superficial level in the region and only upheld when they seemed to fit the political interests of electoral majorities in many instances (Dawson and Hanley, 2016). This means that the causes of this identity formation are likely not to be fully conscious. However, it does not allow to draw any conclusion about whether government actors attempted to utilize these processes. To clarify that question would be very difficult because it could only be answered

by surveys of government actors for which honest answers in the case of an attempted utilization seem at best highly questionable.

When defining the exact time of the formative moment it should be borne in mind that "formative moments are periods when meanings are contested and fought over with the help of all sorts of rhetoric and propaganda" (Ringmar, 1996: 85). The contestation became visible after the Polish election on October 25, 2015, when the then newly elected Law and Justice government in Poland joined the other three V4 and Romania in boycotting the decision of the council of EU interior ministers from September 22, 2015, to implement a redistribution scheme for 160,000 migrants who had arrived in Europe on the base of country quotas (Winkler, 2019). Additionally, it is not only the interpretation of the migration crisis which was contested, but the meaning of the Visegrád-Format, as well since "recourse to the V4 framework has never appeared to warrant the adoption of a united stance and univocal representation of Central European positions and perceptions" before 2015 (Törő et al., 2014: 390). The refusal of the V4 to implement the decision of the European Council in 2015 led to a "normative standoff" of the four Central European states against "Western Europe" (Kazharski, 2020: 251). Although other Member States share many policy preferences regarding migration with the V4, nowhere else it was in such an open manner communicated, that what is at stake here are issues of identity (Winkler, 2017) and nowhere else it seems to have fostered regional identity and cooperation in a similarly strong way (Schmidt). This can be exemplified by the fact, that the V4 were the first states to openly reject the decision for relocation quotas by the European Council in the fall of 2015 and have since been the states most insistent to their point of view about this issue of those opposing a solution with quotas (Winkler, 2017). The stark increase in cooperation through the format of the Visegrád-Cooperation after 2015 supports this reading of events additionally (Koß and Séville, 2020). The cooperation has since become strong enough to prevent a reform of the Common European Asylum System to this day (Wolchik and Curry, 2018).

The formative moment has thus begun in the fall of 2015 with the rejection of the relocation of migrants and the redefinition of the meaning of the V4 cooperation. However, it should be thought of as unfolding ever since, because the narratives about the meanings of what it means to be a Central European and European are not yet redefined, but still heavily contested. Just two good examples are the division within the countries that often lead to talk of two Polands, two Hungarys,

etc. and the so-called pact of Free Cities (Deutsche Welle, 2019) established in late 2019 in which the capital cities of the V4 called for support from the EU and officially voiced their opposition to the policies of their governments regarding immigration, climate change and the rule of law (Hopkins and Shotter, 2019). The subsequent section of this article shall be concerned with how the various perceptions of the crisis in 2015 contributed to and enabled the construction of a specific regional identity in the V4.

5. THE INTERPLAY BETWEEN THE CONSTRUCTION OF CRISIS AND IDENTITIES

It is important to note that not only the construction of identities is something that can only be observed in discourse. The same is undoubtedly true for the construction of a crisis. As Holton (1987:505) notes, "crisis" always has a "narrative" aspect since it is seen as an abnormal feature and therefore must be defined as deviating from the normal state of affairs which can only be done through culturally defined perceptions. This is not possible without defining what is normal, which in turn can only be achieved narratively, as well (Holton, 1987). Furthermore, it is not decisive what happens for the configuration of a crisis, but rather how events are perceived differently, and which narratives are told about them by various actors. "[C]risis is constituted as an object of knowledge" (Roitman, 2011, para. 6). This interrelation in the construction of crisis and identity is what is of special interest in the following section. It shall be examined how the construction of both crisis and identities were interrelated in the official discourse of the V4 during the Schengen Crisis.

If we look at the case of the Schengen Crisis in 2015, one first striking observation is that at least three different terms indicate different narratives used to describe this crisis. There is the term Refugee Crisis (Goodman and Schimmelfennig, 2020), the term Schengen Crisis (Börzel and Risse, 2018), and the (much less used) term Crisis of the Common European Asylum System (Lavenex, 2018). Each of these terms points to a distinct interpretation of what was (and still is) at stake through the large increase in the number of asylum-seekers in Europe in 2015. The first label, Refugee Crisis seems to imply that the increase of people arriving in Europe is the main issue and the cause of the crisis, the underlying narrative being that the asylum-seekers caused the political tensions within the EU through the fact of their arrival and the burden, that this put on the EU member states in having to deal with this situation somehow (Frelak, 2017). The second label,

Schengen Crisis focuses on the conditions under which the free movement of people in the Schengen Area can be upheld, with a crucial condition being that the external borders of the area are protected so that no controls at internal borders become necessary. Only the third label points to the humanitarian issues at stake, since the narrative in this version seems not to focus on the receiving states but rather about the arriving, which was not handled in a way that can be characterized as living up to the EU's official rhetoric on the protection of human rights.

It is quite striking that in the V4 despite their status as only transit countries for refugees the first narrative played a considerable role in the public discourse. Only Hungary was considerably affected in terms of the capacity of its state institutions like shelters for arriving migrants, but mostly as a transit country (Frelak, 2017.: 84). Likely, the framing of the arrival of people from different cultures as the root of the crisis led to a different interpretation of solidarity in the official discourse in the V4 than in western Europe. It was not interpreted foremost in the direction of the asylum seekers and their humanitarian emergency, but rather towards the other V4 with their sceptical and more negative attitudes towards the necessity of giving shelter to those who arrived (Frelak, 2017). This is underlined by the fact, that the Law and Justice Party in Poland accused the then governing Civic Platform of a "betrayal" of its' V4-Partners during the election campaign when the Polish Government agreed to the relocation scheme on an EU level. This along with a commonly diagnosed disregard of facts in debates about migration in the V4 (Frelak, 2017: 92) helps to underline the argument that the perception of these events as a crisis were and are discursively constructed rather than a material fact that can be observed.

The threat that is often invoked in the construction of crisis through othering seems to be invoked in the V4 as well. Börzel and Risse (2018: 99) find that the main conflict line in the debate about refugees and migrants is not about national priorities and the like, but about visions of Europe" and a conflict between "ideas about a multicultural, open and cosmopolitan Europe, and a vision which we term 'nationalist Europe,' for lack of a better term." Triandafyllidou (2018: 212) agrees that a "threat frame" mobilizing "feelings of uncertainty and division within Europe" in contrast to a "moralization frame" referring to "shared Values" could be observed. In the threat frame, migrants and refugees were constructed in opposition to the natives at which cost any solidarity with them would come according to the threat frame. Since the political crisis in 2015 was driven by diverging perceptions of what constitutes a threat to Europeanness, the construction of the crisis

was dependent on the perceptions of threats. This threat to European identity seems to stem from the fact that nationhood in Central Europe is widely understood in the sense of the German Philosopher Herder as "Kulturnation", defined by "language, culture, and often religion" (Rupnik, 2016: 83) and that the Central European countries defined "Europeanness" in the same way, at the "very moment" when Germany and "Western Europe" have "gone universalist" (Rupnik, 2016.: 83-84). The threat thus becomes the threat of losing the capability to define what the own identity is through the universalist turn of the EU for the V4.

The concept of crisis does not only mark a deviation from normality, but it also calls for a "solution" of the situation through a return to either an old or a new form of what is perceived as normality (Holton, 1987: 511). It is interesting to note, that the reasons why formative moments are often happening in situations characterized by existential dangers like war (Tilly, 1992, Tilly, 1985) might be connected to this. Perhaps the feeling of danger and threat opens the possibility for new narratives that are reliant on new forms of otherness fitting better to the new narratives. In Francis Fukuyama's recent book on the politics of identities, he argues that it is somewhat characteristic for the modern conception of identity to incorporate concepts of the authenticity of the self and the struggle for the self to be authentic in a possibly alien world (Fukuyama, 2018). This falls in line with the argument that after 1989 "Imitation [of Western Europe] was justified as a 'return to Europe', and that meant a return to the region's authentic self" (Krastev and Holmes, 2019: 14). In opposition to the first years of the East-West relationship after 1989 when the countries of the east were longing to imitate the model of western European Countries as the way back to the authentic self, this has changed recently, when many CEEC governments begun to depict the western states as having lost their cultural identities and therefore stopped to depict the eastern states as being in a catch-up process (Krastev and Holmes, 2019). For the CEEC, under the lead from the V4 (and Hungary within the V4), it seemed clear that the humanitarian rhetoric of Western Europe and Brussels, led by the German Chancellor Angela Merkel was not credible at best. One of the instances, when this became perhaps most obvious, was when Merkel's humanitarian rhetoric was publicly labelled as "bullshit" by one of the top advisors of Hungary's government (Krastev and Holmes 2019: 35). This shows that the change of the perception of Western European Countries from role models to troublesome countries was justified exactly through the discursive construction of liberal Europe as a threat and the othering that goes hand in hand with it.

This was enabled by a discursive framing of the crisis that is mostly concerned with security issues and therefore perceives the possible consequences of bigger numbers of people arriving in Europe foremost from the perspective of a threat both to national security (since migrants are often depicted as a threat to the material well-being due to allegedly higher crime rates and especially for Muslim migrants a perceived threat of terrorist attacks) and to national identities which are understood as based mostly on common religion and ancestry. (Frelak, 2017) A possible explanation of why othering plays a crucial role in the creation of a feeling of belonging in the case of the V4 might be connected to the relative weakness of this community compared to others. Since the feeling of a common belonging is mostly focused on the issue of migration while there are no similarly strong common narratives regarding different topics in the V4, it could be an explanation that the very strong othering against both EU institutions and officials and migrants is a mode of self-assurance. It seems at least likely that this form of a transnational community might be in higher need of self-assurance than other political communities, precisely because it is weaker than most political identities and only focused on one single issue. Another factor that is likely to have contributed to a common identity in the V4 is the trend of increasing populism in the region with the basic narrative of right-wing populist politics being that (liberal) elites and other groups are in opposition to the people and are preventing majorities or alleged majorities from always getting their will (Müller, 2016). This seems to make immigration a topic that is very easy for populists to utilise for their purposes since otherness and foreignness are always connected with this topic. This relates well to the phenomenon that in populist discourses the scapegoating especially of migrants is a common and usual theme (Mounk, 2018: 165-169). The fact that the cooperation only gained full weight once it started with the politicization of identity issues (Koß and Séville, 2020) in combination with research highlighting that issues around migration have become increasingly politicized over time which regards matters of identity as the driving force of political conflict (Börzel and Risse, 2018) further support the assumption that there is a clear link between the mode of identity construction and populism on both a national and transnational level in the V4.

These developments are likely to have enabled the V4 to find a common theme and a common language for the construction of a regional identity exactly in the Schengen Crisis of 2015. In 2015 "the refugee crisis in the west" has turned into a "branding opportunity for the east" (Krastev and Holmes, 2019: 44) and especially for the V4. It appears likely that only the construction of the

refugee crisis in terms of a threat to the identity of the V4 made it possible to establish new narratives about national and regional identities in the region. Thus, the construction of the crisis as a threat made it possible to criticize the EU "mainstream" and to construct a regional identity in outright opposition to the image of liberal Western Europe. In other words: the liberal order of Western Europe had to be constructed as being in crisis, to voice a critique that could lead to the search for alternatives to this order. There is clear evidence for the case of the Schengen Crisis, that only the construction of the crisis as such contributed to the formative moment of a distinct, regional V4 identity, since there were many similarities but even more differences between the V4 and the format gained political weight after it had become mostly focused on the issue of migration so that the differences mostly could be overcome for increased political cooperation (Koß and Séville, 2020). However, this opportunity could only be taken due to pre-existing scepticism towards the narrative of a liberal, universalist EU. This means that the crisis in 2015 might be the factor that enabled the establishment of a distinct V4 identity, while the cause of this identity formation is likely to lie partially in the subconscious feelings of the citizens of the V4. While new narratives about the V4 were already in the making before 2015, they would have probably been less credible without a shift in the description of the western EU states as risking the preservation of the European Identity. The aspect, that "Brussels" was then often seen as deserving critique after 2015 is not alone sufficient to explain why there were only the V4 that refused to implement the decisions of the council of ministers. However, it seems that in other states like Bulgaria or Romania (two states in which the public opinion is also highly critical of EU-Asylum policies (Krastev, 2019)), there were not enough perceived similarities between those states to result in common action to defend their Vision of Europe. It is likely that the similar construction of the crisis in 2015 in the V4 states has additionally promoted similar notions of European Identity in the four Central European States.

6. CONCLUSION

As discussed in this article, 2015 can be termed as a formative moment for a distinct V4 identity since an account of explaining why the earlier poster children of successful transformation suddenly became "big" and "bad" contrasting their own long-term demographic and economic interest can successfully be given by introducing matters of identity and self-perception. It has to be highlighted that this formative moment is closely related to issues like integration and otherness

which have become salient through the politicisation of a crisis regarding refugees. It should of course be pointed out that this crisis has enabled the V4 to construct an identity of themselves as the defenders of European values against threats from both inside and outside. Interestingly many underlying narratives seemed to have gained traction in the V4 before the beginning of the crisis. This means that there are at least strong hints that the crisis has served as an opportunity for the V4 to voice their discontent with the liberal EU mainstream in a credible way. However, it remains to be seen if the mode of the interplay between the construction of threats, crises, and identities produces similar political feelings and policy actions in different contexts as well. This needs to be emphasized since it is not yet clear how sustainable the formation of the regional identity in the V4 is nor should this process be regarded as completed but rather as a process constantly underway.

There is one more important political implication that can be drawn from the examination of the roots of the discontent of the V4 with the EU. It seems that the accession process has invoked a feeling of inferiority and denied recognition in many of the CEEC. This is something to be considered when undertaking further enlargement rounds of the EU. One lesson to take away could be to communicate more clearly that Europeanisation is rather about Europeanising institutions than human beings. It does not of course mean that reforms in the candidate states are not often necessary but rather, that it should be avoided to impose a feeling of not fully belonging to Europe for the people and governments joining. It is mainly about a change in communication, which means to make clear that the common goal of Europeanisation is not to deny people recognition but to recognise them by delivering the institutions and modes of politics which they are longing for. This is of crucial importance to avoid further normative standoffs and the half-baked implementation of values constituent of the EU in new Member States in the future.

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The Trade-off Between Civil Rights and Technological Innovation – How to Reconcile the Right to Privacy and EU Business

By Thais Ayuso Deshmukh, Sean Cotter-Lem, Nils Dubois

Thais Ayuso Deshmukh is a student in the Honours Program PPLE (Politics, Psychology, Law and Economics), majoring in Economics at the University of Amsterdam. She is a member of European Horizons Chapter of Amsterdam, the first student-led policy incubator, served as the Board Treasurer in 2020/21 and will serve as President of the Chapter in the year 2021/22.

Sean Cotter-Lem is a Dutch-American studying Political Science at the University of Amsterdam, Sean is very interested in understanding policy-making on the transnational level. He is active within the External Committee of the Amsterdam Chapter of European Horizons, through which he builds stronger transatlantic relationships.

Nils Dubois is a second-year student of Political Science at the University of Amsterdam, with a high interest in technopolitics. He has worked notably on research about education in Artificial Intelligence in other European Universities and is a member of European Horizons Amsterdam.

ABSTRACT

With Big Tech companies becoming ever more powerful and influential, the privacy concerns during the data collection of users are becoming more important and controversial. In this policy proposal we argue that currently the EU is facing a dilemma concerning data collection of its citizens: data collection is needed to develop new technologies and feed algorithms (thus necessary for economic growth), yet the EU has a responsibility to ensure the privacy of its citizens is protected. We present three policy recommendations that help tackle this dilemma. Firstly, we suggest a thorough revision of the current European data protection laws (GDPR), to patch up legal ambiguities and loopholes currently still present. Secondly, we suggest developing a *Data Shareholder Model*, centralizing user's data, and making the use and movement of the data easily accessible and understandable. This would provide users with more control over their data.

Thirdly, we recommend stimulating EU tech business with economic incentives such as subsidies and grants to EU tech start-ups. Furthermore, we also suggest centralizing and prioritizing European technological innovation and intellectual property by setting up a 'European DARPA'. We believe that these three suggestions will substantially bring EU citizens the privacy protection they deserve, while stimulating EU tech growth to be able to compete with the United States Big Tech companies.

Keywords: Civil Rights, Technology, European Union

1. INTRODUCTION

To many of us known as "cookies", packets of data sent by a web server to a browser/website are used to identify the user or track their movement through the internet. The 2016 General Data Protection Regulation (GDPR) still has a lot of loopholes and ambiguous terminology that Big Data collectors exploit. These include the term "legitimate interest" and the "forced contract problem" of the non-existent option of visiting a website *without* giving up your data. Furthermore, data collection is also necessary for economic growth, particularly to develop and train algorithms. Due to more lenient privacy laws in the US, companies based there have more data to feed and improve their algorithms, achieving technological growth faster than Europe. Many European tech companies have expressed frustration with the GDPR limiting the tech industries growth in Europe (BBC, 2018). Therefore, Big Data collection presents a seemingly unsolvable dilemma between protecting privacy of the public and stimulating the European tech industry.

We present three policy recommendations as possible solutions to this dilemma: first, an extension of the GDPR to clear up the above-mentioned ambiguities. Secondly, the development of a *Data Shareholder Model*. This shareholder model will (1) centralise and simplify all relevant information into on User Profile, making it easily accessible to the user (2) allow data subjects to negotiate their share of their data bulk, (3) to act as partial owners of the entities profiting of their "data investment" and (4) outline how the *Data Shareholder Model* tackles the limitations of the traditional business model of data collectors (e.g. decreasing noise).

Thirdly, to stimulate the EU tech business, we propose a series of economic incentives such as subsidies and government grants for development. We exemplify this with IPFS, a decentralised web protocol providing more privacy and efficiency on the internet. Furthermore, we also suggest

setting up a 'European DARPA', centralising and funding European technological information and unionising intellectual property. The key objectives of these economic incentives are to: (1) support more European start-ups that promote decentralised web protocols, (2) stimulate EU technology innovation, and (3) alleviate the financial strain of adjusting to the GDPR standards. This combination of approaches will, based on our research, most likely ensure the coexistence of civil rights of privacy as well as stimulating tech business in Europe.

2. POLICY CONTEXT

2.1. Evolution of Big Data

There is a long history of accumulating and analysing data to inform decision-making, but it is only in the last two decades that the volume and the pace in which it is collected has increased dramatically, made possible by technological advances. This new trend, termed "Big Data", did not enter the common lexicon until around 2010, but represented a major shift from the way information was collected and analysed in years prior – from business analytics largely based on limited internal data collection to one based on a mass of externally sourced data (Varian, 2014). Google was one of the companies to see the value of data both for improving its own services and for the services (Cukier, 2010). According to Zuboff (2019, p.93) data about online behaviour (i.e internet searches, browsing history, social media likes), is extracted by platforms for their potential to predict the user's preferences, traits and wills algorithmically and then ultimately to advertisers based. Zuboff (2019, p.14) explains that data collection has become a surveillance issue as personal data has become an asset companies collect, store and trade on new forms of marketplaces. The data supply chain between the user and the advertiser includes a lot of loosely defined intermediaries such as data brokers and Saas companies which we will later touch upon.

2.2. EU role in data privacy

2.2.1 Europe's economic and normative power.

In this section we will outline two of the EU's biggest assets: the size of its market and the heft of its normative power. The EU possesses economic power derived from its single market composed of customers with high purchasing power and ideational power derived from the prestige of its political history and the advance of Human Rights, leading to denominations like "Normative

Power Europe" (Manners, 2002; European Commission, 2019). One of the mechanisms by which the EU exercises normative power is the "Brussels effect" which is a spill-over effect in upholding higher regulatory standards (Bradford, 2012). Finding it too legally and financially costly to maintain their operations with both strict EU and less strict non-EU standards, firms will tend to generalise EU standards to their entire supply chains (Bradford, 2012). Examples are antitrust and competition law cases, environmental protection laws and data protection and privacy regulations (Bradford, 2020). The GDPR is a good example of Europe's normative power to uphold privacy rights. The EU's General Data Protection Regulation (GDPR) was adopted in early 2016 and had an immediate impact for EU citizens but also for internet users globally. In the following year while negotiating a deal with the EU, Japan set up an independent agency to handle privacy concerns in data collection to satisfy the EU and comply with their regulation (Scott & Cerulus, 2018). Furthermore, in 2018, Facebook and Sonos announced that they would be implementing parts, if not the entirety, of the GDPR globally to all their users. Later that year, Microsoft also announced that the GDPR standards would be applied to all users globally (Microsoft, 2018). The EU's regulatory power has reached as far as the US, home to the GAFAMs (Google, Apple, Facebook, Amazon, Microsoft), but while the EU has the potential to inspire emulation regarding privacy regulation it has struggled with seeing its own tech giants emerge. Our paper will focus on how we can reconcile Europe being a normative power for privacy while stimulating the technology business of Europe. The regulatory body of the GDPR will be further dissected in the following section, giving a more in depth understanding of the data privacy rights of European citizens.

2.2.2. EU data protection laws

In the following we will outline the main data protection laws of the General Data Protection Regulation (GDPR). The GDPR's main aim was to address the transfer of personal data outside EU and EEA areas, by giving individuals control over their personal data and simplifying the regulatory environment for international businesses. The GDPR applies if the data collector or data subject is based in the EU and personal data, i.e. information that relates to an identifiable individual, even if this individual is not directly identifiable, is collected (Information Commissioner's Office, 2020). Furthermore, in Article 7 of the GDPR, *consent* is defined as a specific, freely given, simply worded and unambiguous affirmation given by the data subject. An

online form structured as a default opt-out, where the consent is not unambiguously affirmed by the user, is a *violation* of the GDPR (GDPR, 2016).

Among the rights held by the data subjects are transparency and modalities with regards to communicating information about data, ensuring easy access and clear language as stated in Article 12 (GDPR, 2016). Furthermore, Article 15 specifies that the data subject reserves the right to access his personal data and the right to know how your information is being processed (GDPR, 2016). This poses a few issues since this right does not apply if one's data has been sufficiently anonymised, yet technology such as voice recognition and fingerprint scanners pose a challenge to the task of anonymizing users (Veale, Binns & Ausloos, 2018). Moreover, the right to object is outlined in Article 21, meaning one has the right to object to the processing of personal information for marketing, sales, or non-service-related purposes (GDPR, 2016). Nonetheless, this last right is overridden by "legitimate interest" as stated in Article 6 Section 1b, which allows for the processing under certain conditions including to fulfil a contractual relationship between the user and the collector (GDPR, 2016). We will later see how this poses a problem with regards to Software as a Service (SaaS) companies' business model. With regards to the data collectors, they are now required to build in principles of data collection "by design and by default" (Wolford, 2020). As Recital 28 states, these measures can range from pseudonymization to informing users of a breach into the data collection by foreigners (GDPR, 2016). These are developments that involve a large sum of money, time, and effort, something that large companies like Google and Facebook have the liberty of doing, yet small start-ups most likely do not have the luxury of conforming to the GDPR.

2.2.3. Existing strengths and weaknesses of the GDPR.

Some have claimed that the GDPR may drive down innovation by restricting companies' access to user data (BBC, 2018). The reasoning is that the GDPR risks disincentivizing the emergence of tech companies that could compete with the US (BBC, 2018). Afflicted by fines for non-compliance, small EU tech businesses have come to the realisation that they cannot continue doing business as usual without taking the GDPR into account (Silber, 2019). However, the EU has much smaller sized businesses than the US, for which complying with stricter privacy regulation is potentially more costly and risks driving down innovation (Solon, 2018).

While the EU leverages regulatory change thanks to the purchasing power of its customers, it has fallen behind the US who now dominate global tech markets (Kahn, 2018). Leaving a vacuum of EU companies on EU markets, US firms have successfully exported hardware and software to EU customers (Martin, Matt, Niebel & Blind, 2019). Contingently, the EU has adopted a regulatory approach especially regarding customer privacy (Martin et al., 2019). The GDPR is a good regulatory example, especially regarding customer privacy. Despite vigorous objections and numerous amendments, a study found that about 92% of technological companies stated that they will be able to change their policy to comply with the new GDPR (Gooch, 2018). Nonetheless, the cost of compliance differs greatly between European and US companies, largely the opportunity costs EU companies endure that US companies do not face. As Nicolas Rieul notes in 2019, many European companies were tied up for months in regulatory scrutiny, forcing some to close their doors (Silber, 2019). Moreover, the GDPR makes it impossible for a European company to create a business model like Facebook or Google, since the EU paradigm forbids mass processing of users' data without their consent (Silber, 2019). This illustrates how the biggest tech companies have capitalised off unrestricted user data collection, something now denied to EU companies. If this sort of data collection continues to underpin income streams, the EU will have to keep this in mind when stimulating its technological business sector.

Nonetheless, the GDPR has established itself as a reputable legal framework to which one can hold companies accountable, so far can be seen in the fines that have been issued by the EU and EU states to Google. For example, in 2019 the French National Commission for Information and Liberties (CNIL), fined Google $50 million for not complying with their transparency rules (Porter, 2019). Yet, it is unclear how effective fines are as some minimise them as "cost of doing business" when applied to the GAFAMs (Kurtzleben, 2015).

However, some claim that the GDPR does not go far enough to protect the data privacy of European users (Thornhill, 2018). The solutions that have been offered to give the user a minimal amount of claim over his data are still limited today. One solution brought to the table is to ensure that the data collected is sufficiently anonymised, i.e. the process of irreversibly altering the Personally Identifiable Information (PII) so that it cannot be identified directly or indirectly either by the data collector or a third party (Sharp Cookie Advisors, 2020). Anonymisation has often been hailed by industry leaders as a secure safeguard against the violation of privacy rights.

Therefore, when designing the GDPR, European policymakers incorporated the criteria into the legislation in Recital 26. An EU working group lists three methods of anonymisation of online data (Data Protection Working Party, 2014). First is *randomisation technique*s which refer to altering the data so as to cut the link between the user and the values (e.g. noise addition and differential privacy) and are often useful to study aggregate data but not to study specific individuals. Secondly, *generalisation* is used to make your personal data less specific, e.g., using age-scaled rather than the user's specific age. Third is *masking*, which includes simply erasing obvious PII in a dataset. The GDPR considers that methods of pseudo-anonymisation allows Data Collectors not to fall under the scope of the legal violation (Woods & Dougan, 2019). However, as Woods & Dougan (2019) state that a person does not need to be named to be identified, suggesting that platforms use a variety of resources such as fingerprinting to identify users without needing PIIs as exemplified on the website amiunique.com. Even as platforms such as Google Chrome have been working on ways to regulate access to PPIs by third parties by implementing privacy sandboxes which unlock just enough PIIs for third parties to function, some fear this may not be enough to prevent the identification of users through fingerprinting (Bohn, 2021).

2.2.4. Efforts to harmonise EU and US legislations.

Seeing as the Big Tech giants are based in the US, yet have a large number of EU consumers, there have been various efforts to harmonise US and EU legislations to create a clearer legal framework for tech businesses to operate within. In the following we will outline these efforts to harmonise legislation on data privacy between the two jurisdictions.

On the one hand, the US has no comprehensive statutory approach to data protection. In fact, Tom Kulik (2018) points out that in the US "digital information can be collected without the specific consent of the individual" in which the individual has to take measures to opt-out of data collection under the California Consumer Privacy Act (CCPA). However, the EU's Data Protection Directive 95/46/EC makes clear that digital data is owned by the user, which means that his explicit consent is required. The most recent effort to harmonise data transfers was the 2016 US/EU Privacy Shield approved by the European Commission in an attempt to make US companies sign up to higher privacy standards before transferring data (Kulik, 2020). The agreement makes it easier for US companies to comply with EU privacy laws when receiving data from EU citizens (Kulik, 2020).

However, the Privacy Shield contained major legal loopholes and contradictions with the GDPR. For example, if a user's data had been collected in the past and was no longer useful to the collector then the framework had no legal ability to force the collector to delete it, thus contradicting the principle that data should be used only for the intended and announced purpose as stated in Art. 6 (Data Protection Directive, 1995). That is, at no point in the Privacy Shield is there a mention of a right to be forgotten as stipulated in Article 17 of the GDPR. If the Privacy Shield and the GDPR are contradictory, then it is unclear which framework applies when and whether it is complied with in the first place.

Secondly, the Privacy Shield is difficult to enforce as data collectors are struggling to distinguish between necessary and unnecessary data collections (Ikeda, 2020). Sometimes, there is a conflation between a necessary cookie and a cookie that identifies a user. Here the details of legal terminology become the crucial difference between actual and illusory user protection. Data collectors themselves recognise that implementing the Privacy Shield has been challenging (Ikeda, 2020). Besides, the Privacy Shield still does not address the crucial issue of collection by US intelligence agencies, such as the NSA (Ikeda, 2020). This implies that only private entities can be held accountable for breaching privacy regulations, but if the state were to invade user's privacy without reason or consent, they could not be held accountable. Policy makers have only just now come to terms with how intricate the network of actors surrounding data collection is.

2.3. US predominance in technological advancements

2.3.1. The SaaS business model

Since the advent of the Internet and Big Data the number of companies whose business model is based on selling online data has grown bigger. This Software as Service (SaaS) industry is predominantly based in the US and designates the $82 billion sized industry. The SaaS business model is based on the provision of a service to a user, or data subject, through the internet in return for the consent to collect the internet user's data which is used to target the user with ads (Gartner, 2021). This challenges the conventional conception we have of a business model involving a business offering a product for sale to a customer, since in this case, the user is provided with the free service. The *SaasS* industry utilises user data, useful to predict interests and consumer preferences, by monetizing it to third parties who have come to be known as "data brokers"

(Gartner, 2021). In practice SaaS companies use Generated User Content (GUC) and aggregate it into structured and useful information and generate user profiles primarily sold for target marketing and for advertising purposes, but also to law enforcement agencies in the context of an investigation (Gartner, 2021). The data broker industry is estimated to have reached $200 billion in 2018 with an ecosystem of nearly 4000 companies globally (Gartner, 2021).

2.3.2. US tech dominance and EU competitiveness

Hereby we expand on what data brokers are and why they are both a threat and an opportunity to the EU.

The biggest customer data brokers in the industry are located in the US (Marr, 2017). To illustrate, the US industry leader Acxiom claims to hold information about 190 million customers in the US alone (Anderson, 2013). Furthermore, Experian and Equifax, the former being Acxiom's biggest competitor and the latter being involved in a breach affecting more than 147 million North American customers compromising personal data such as social security numbers (Reuters, 2019), are the second two largest firms. This goes to show the sheer bulk of information that data brokers hold about users, often without their conscious awareness. Furthermore, the *SaaS* business model creates an information asymmetry between the user and the web service provider. According to a 2019 privacy research study conducted by the Pew Centre only 4 to 6% of Americans know what the government and companies do with their data (Auxier & Rainie, 2019). Data collection activities are a black box for web users who have little to no control over what data is collected and what is done with it. While data collection is a threat to privacy rights, data collection is also a matter of EU competitiveness.

First, information is the starting point of every business: finding customers, designing suitable products, tailoring offers. Secondly, in a world in which algorithms and deep learning is the next strategic and economic frontier, feeding relevant data to European machine learning algorithms to retain a competitive edge over the relative economic power of US tech giants will be crucial for the EU to uphold its economic power (Walch, 2020). A 2009 study on Big Data and Machine Learning emphasises how important massive data collection is to train algorithms, since algorithms have tended to perform significantly better the more data they are fed (Shanahan, 2015, p.67). Restricting and regulating data access of researchers can be self-defeating when it comes to AI

governance. Although the EU has proven to be a powerful normative actor, exporting its standards for data privacy, it lacks the economic power to strengthen this normative stronghold (Kahn, 2018). We believe that the EU also needs to catch up to the US and China in terms of EU tech business to be able to strengthen their legitimacy as a normative actor. Our paper seeks to address both the asymmetry of information between the user and data collectors while recognising that businesses rely heavily on data collection.

The considerations above present tech regulators with the dilemma of protecting the online privacy and security of European citizens and uphold EU's Normative Power, while still allowing European companies to compete and catch up with US algorithms and Big Data industries. It is also about keeping businesses in touch with the large audience of potential customers that data brokers and social media platforms provide without hurting the privacy rights of the customer. This is beyond simply giving the choice to opt out of data collection, but about giving the user the right to ownership over the content that they generate on the internet.

3. POLICY OPTIONS AND RECOMMENDATIONS

3.1. Key Objectives

In the following section we will be outlining our key objectives of our policy recommendations, as well as delving into our suggested legislative regulation and our exact idea for the stimulus plan for EU tech businesses. The middle ground we have worked towards in the previous sections illustrated that the best solution should entail a balance between transparency in data collection and use and protection of EU citizens. We have isolated two main approaches we believe will be best suited to ensure long-term solutions: *legally binding regulation* to ensure the right to privacy and *economic incentives* to stimulate EU technology business. In the following we will give an account on why we chose these policy options.

3.1.1. Legal Regulation

Policy makers are faced with a legal dilemma: regulating tech giants at the risk of hurting EU companies or not regulating at the risk of exacerbating public mistrust. This paper considers different alternatives, examining how the EU can regulate, spend, or innovate in order to solve the dilemma between protecting privacy and stimulating tech growth. We aim at better improving

citizens' privacy by extending the GDPR to include a more detailed description of "legitimate interest" and a solution to the problem of the "forced contact" (The forced contract problem entails the non-existent option of visiting a website *without* giving up your data).

3.1.2. Economic incentives

Instituting favourable economic incentives, such as tax breaks and direct subsidies, can allow EU business interests to catch up. Currently, however, the EU lacks the incentives to innovate due to comparatively lower wages, revenues, and funding than in the US, as is illustrated in the receding market share of existing European tech companies. A bolder stance is necessary, with the creation of a centralised innovation centre that places EU interests at centre stage. In order to provide data subjects with a wider range of control over their data we propose setting up a *Data Shareholder Model* within this new legislation, which will:

- Give a clear and simple overview of the way personal information is processed, enabled by a User Profile;

- Allow the data subject to negotiate their share of their data bulk (i.e. reap the fruits of your data collection);

- Outline how the *Data Shareholder Model* tackles the limitations of the traditional business model of data collectors (e.g. decreasing noise, eliminating fake and underage accounts).

Our objectives regarding the stimulus of EU tech business through economic incentives, is aiming to

- encourage and support more European blockchain start-ups

- alleviate the financial strain of adjusting to the GDPR standards

- create a 'European DARPA' centralising European research and funding towards technological innovation & intellectual property.

3.2. Key Proposals

Based on the previous explanation stated in our policy choices above, we will continue to move on to the key objectives our policy wishes to achieve. Our two key objectives have been reiterated

throughout this paper: providing better protection of people's data privacy and stimulating the growth of the EU tech business. In the following two subsections we will be going more into depth, outlining exactly how our policy options will help materialise these key objectives.

3.2.1. GDPR: Regulation to ensure privacy

Our first policy recommendation consists of a review of the GDPR to incorporate and clarify certain legal terminology. The aims and benefits of regulation are usually analysed through two central aims: improving citizen welfare or improving market efficiency (Renda et al., 2013, p. 32). Efficiency is broken down in three pillars: allocative, productive, and dynamic. Allocative efficiency refers to how equally benefits are redistributed in society, productive refers to how well resources are used in production and dynamic refers to the incentives to innovate and invest notably in R&D. There is a crucial trade-off between allocative and dynamic efficiency. In the case of complying with the GDPR companies face compliance costs involving hiring legal expertise to implement compliance, other costs involve reduced market access and substitution costs (Renda et al., 2013, p. 42). For example, the GDPR might cause denial of website access to users who untick certain necessary cookies which drives down traffic. This restriction of website content is caused by the GDPR's article 21 notions of "informed consent" and "legitimate interest" central to its implementation (GDPR, 2016). "Informed consent" should not entail the user entering numerous implicit contracts with every website we visit, leaving us no third choice between visiting the website or not handing over our cookies. As the GDPR, Recital 28 merely engages in "pseudo-anonymisation" (GDPR, 2016), we believe a more comprehensive and effective privacy protection is needed.

3.2.2. The Data Shareholder Model

As we have seen, the GDPR might be difficult to enforce, costly to implement and limited in its effectiveness and therefore in need of reconsideration. GDPR loopholes are insignificant as US-based companies have a dominant market position in internet search, ecommerce, social media, computer, and smartphone industry for which compliance with the GDPR may be even more difficult than for EU companies. The sheer size of Google, Facebook and Amazon make it difficult for the user to avoid being tracked by at least one of the GAFAMs. Secondly, the GAFAMs have an oligopoly in the consumer internet service industry, which means that their competitive

advantage is so immense that users have little to no choice but to use one of their services even if they would otherwise prefer not to (Smyrnaios, 2018). In reaction to numerous infringements on user's privacy (e.g. Cambridge Analytica scandal in 2018), a decentralised approach has been encouraged by the "Open Source Movement " which claims that software should be open and modifiable (Levine & Prietula, 2013). Browsers like Firefox, Omega, or DuckDuckGo have advertised themselves as privacy oriented. However, as tech companies acquire more market share while the user loses touch with their activities, it becomes unrealistic to propose that users carry the full responsibility for ensuring their privacy. A more holistic approach putting the responsibility on the industry is needed when it comes to internet governance. The *Data Shareholder Model* is a theoretical model which encourages internet governance actors to redesign the internet to give power to the user over influx and output of data from their devices. The shareholder model is based on two key principles.

The first is transparency which refers to making visible and understandable to the average user the output that a given device generates and the output that the devices share with the outside, solving the information asymmetry about what data is collected, where it is stored and to whom it is transferred. The Transparency element works according to four principles: first, to *centralise* and make available and understandable the information that is being held into a User Profile. Second, to *inform* the user about what User Generated Content (UGC) is being collected, by whom and for how long. Third, among the UGC, to inform the user about *what* Personally Identifiable Information (PII) is collected and *derived* about him. And last inform the user about *where* (i.e whose server) the PII is stored.

The second key principle is control: giving the user the ability to control the use of the data generated. It aims to allow the user to supervise the steps of the data processing:

- Conversion - converting data to another form or language.

- Validation – ensuring that supplied data is clean, correct, and useful.

- Sorting – arranging items in some sequence and/or in different sets.

- Summarization – reducing detail data to its main points.

- Aggregation – combining multiple pieces of data.

- Analysis – the "collection, organisation, analysis, interpretation and presentation of data.".

- Reporting – list detail or summary data or computed information.

Conceptually, the operationalisation of the *Data Shareholder Model* policy will be implemented by creating a User Profile. The User Profile would be a User Interface working as an API (Application, or Plug-in) mandatorily incorporated into the architecture of each browser which allows the user to supervise the bulk of data transfers that are being made and track where a specific datapoint goes, and by whom it is processed. Crucially, this informs the user clearly and simply about the data that is sent out, without users required to have technical knowledge beyond common-sense knowledge. This User Profile combines analytics about the data brokers that process the user's data and inform them about who is holding their data. The user can see what the actors in the data supply chain hold about him and map the journey of his data from himself, the platform, and the data purchaser. Furthermore, the user can veto bulk transfers from one jurisdiction to another (i.e from EU to US) and blacklist certain data brokers for known data breaches. This User Profile should be legally enforced and implemented at a European level. Its aim is to solve both the information asymmetry between user and web service providers and the user's lack of oversight, claim and influence over UGC. The assumption behind the *Data Shareholder model* is that the increasing centralisation of Internet traffic and governance does not stem from a lack of technology, but from a lack of political will or awareness (Malan, 2018).

The *Data Shareholder model* can be a conceptual step towards solving the dilemma between protecting the economic interests of European companies and that of European web users. Its aim is to foster trust and oversight between the user and the platform. Privacy issues have gained momentum in recent years especially since the cyber-scandal involving Facebook and Cambridge Analytica 2018 and earlier the uncovering of the NSA's mass surveillance program PRISM by whistle-blower Edward Snowden in 2013 (Newton, 2020). From this, it can be argued that breaches of privacy are a reputation risk for companies looking to advertise their products on platforms that are increasingly criticised in the media. From a marketing perspective, personalised advertisement, Big Data-generated ads and predictive analytics are a quick fix to the long and tedious process of customer nurturing and loyalty. The business community that pays for ad

placements and the tech giants that provide these services need to recognise that it is in their interest to foster a web environment based on trust rather than on privacy breaches and mistrust.

3.2.3. *Stimulating the EU technology industry, ethically*

This third recommendation presents the IPFS and the European DARPA as solutions to the shortcomings posed by traditional subsidies and the GDPR. While privacy breaches hurt business, European policy makers have a responsibility in incentivizing these companies to foster trust and transparency online. One way is to use subsidies which change the economic incentives that motivate user tracking and foster trust (Klemm, 2010). However, subsidies cause revenue loss, economic distortion, administration, and social costs (Klemm, 2010). Yet we believe the possible long-term gains of economic growth and technological innovation, outweigh the short-term economic and legal costs. These economic subsidies could for example be implemented to enable decentralised web protocols such as IPFS. InterPlanetary File System (IPFS), is a protocol and peer-to-peer network for storing and sharing data in a distributed file system (IPFS, 2021). The IPFS is a protocol which, rather than treating user requests based on *location*, strips out the location and fetches the information based solely on content (IPFS, 2021). This allows users to access a decentralised network without one of them individually able to access other's information (Finley & Barber, 2019). When cookies are transferred from traditional browsers, copies are saved in the cache and sent to third parties, with the IPFS this is not needed, thereby solving the problem posed by cookies (Nfq, 2021).

While the EU is home to forty-one unicorns (i.e tech companies valued at \$1B or more), the US and China are clearly leading with 288 and 133 respectively (Rudden, 2021). We argue that the need to generate EU-based Tech unicorns is both a matter of technological sovereignty, data privacy and competitiveness (Zenger News, 2021). This paper argues that the GDPR's fines widens the gap between high revenue GAFAMs and smaller tech companies for which it is harder, as shown by Johnson (2021) and Satariano (2019). Therefore, the EU should take a more voluntaristic approach towards technological innovation beyond its traditional prerogatives. We suggest drawing inspiration from the US research development agency DARPA which has been at the forefront of technical innovations since the 1980s. Former DARPA's director Victor Reis realised that applications for military innovation in Information Technology existed outside of the military (DARPA, 2018). Since then, the organ has been at the forefront of technological

innovations, developing technology for military use which, once obsolete in defence, was up for auction to the grand public and then picked up by now famous GAFAMs (DARPA, 2018). Drawing inspiration from the R&D model of DARPA, the EU has a role to play in coordinating the synergies in human and intellectual capital (Grigolo, Lietaert & Marimon, 2010). While Executive Vice President of the European Commission Margereth Vestagher recently confirmed the importance of technological sovereignty, the initiatives in strategic R&D have only generated discussion rather than a clear commitment of the EU to help its firms compete with Chinese and US in the technology race (Heikkila, 2020). It was not until December 2020 that the EU announced an ambitious plan for technological innovation in AI and digitalisation called "Horizon Europe", aimed at unlocking $54 billion and the creation of the Enhanced European Innovation Council (Zabala Innovation, 2020). This readjustment of focus on AI can also be seen in the European Research Council (ERC Scientific Council, 2020). It is a demonstration that priorities have been straightened out within the EU when it comes to tech growth and innovation.

4. CONCLUSION

In this policy paper we have made the case for a further expansion of the legal and economic framework of Big Data collection. We have outlined the US predominance in the tech industry and derived from this why the EU does not have a similar tech business presence. It all lies with prioritization: the trade-off between ensuring civil rights to privacy and stimulating tech businesses. After reviewing various policies, we chose to recommend a two-fold plan, consisting of a legal regulation to secure the right to privacy, as well as pushing for economic incentives to stimulate the EU tech industry.

In the last section, we went into more depth on how to realise our recommendations. Firstly, we addressed the complexity there is to obtain consent for data collection under "legitimate interest" clauses as it still warrants collection for marketing purposes and to fulfil contractual obligations often included in websites' Privacy Policies of which users may not necessarily be aware of. Furthermore, we also propose a Data Shareholder Model. We have illustrated that this shareholder model will enable the data subject to (1) to centralise and simplify all relevant information into on User Profile, making it easily accessible to the user (2) negotiate their share of their data bulk, (3) to act as partial owners of the entities profiting of their "data investment" and (4) outline how the "data shareholder model" tackles the limitations of the traditional business model of data

collectors. While this paper considered the classical policy tools of subsidies, fiscal incentives, the paper takes a bold stance towards a more voluntaristic approach. Consistently, we suggest the creation of a 'European DARPA'. The key objectives of these economic incentives are to: (1) encourage and support more European start-ups promoting decentralised web protocols and stimulate EU technology innovation, and (2) alleviate the financial strain of adjusting to the GDPR standards. We have illustrated that the dilemma between preserving citizens' privacy and stimulating EU tech business can be solved and both privacy and tech innovation can coexist if addressed correctly. The solutions that we have given will allow EU tech business to grow and develop while simultaneously giving the user access and control over their data in a very simple format that any user can understand. It is a way to give privacy back to the people without taking form the European technological business sector.

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EU AS THE GLOBAL GUARDIAN OF HUMAN RIGHTS: MYTH OR REALITY EU

By Gagantika Sidhu, Iliriana Gjoni, Julia Vázquez

Gagantika Sidhu studied International Relations and International Organisation (MA) and Liberal Arts and Sciences(BA) in The Netherlands, with a specialisation in global governance, human rights and transnational advocacy. She was recently active as a European Commission trainee (Clean Sky), and previously worked in the areas of EU-international juvenile justice, children's rights, development, and global social enterprise. With experience in leading large-scale humanitarian and editorial projects, she currently serves as creative director and content editor in a multidisciplinary event, publication, documentary and business curation conglomerate.

Iliriana Gjoni holds two master's degrees (Piano solo and Chamber music) from the University of Music Karlsruhe (Germany), as well as an MA in European studies by KU Leuven (Belgium). She is a US Department of State alumna, representing Montenegro at the SouthEast European Youth Leadership Institute held in Washington D.C., and recently, Music diplomacy Fellow for the OneBeat program. Operating at the nexus of political science and classical music, Iliriana has worked as News anchor and moderator, interpreter, NGO consultant, piano teacher, assistant director and PR in Podgorica, Tirana, Karlsruhe, Munich and Brussels. Her research interests span from the area of human rights and multiculturalism, to ethics, ideologies and political parties.

Julia Vázquez holds a MSc in European Affairs by Lund University (Sweden) and she previously studied a double Bachelor's Degree in International Relations and Translation Studies in Universidad Pontificia de Comillas (Spain). After finishing her undergraduate studies she did an internship at Spanish Consulate in London. She is currently working as a trainee in the European Committee of the Regions and she has experience in public affairs and consultancy, with her areas of expertise being sustainability, diplomacy and migration.

ABSTRACT

This paper springs from the question of how the European Union is using its foreign policy to advance human rights globally. In light of the United States' fluctuating pledge to international cooperation pacts, there has been an increased appraisal of the EU as a potential leader of international human rights standards. The paper seeks to evaluate this sought-for 'shift' from three angles.

Firstly, the role played by the EU's soft power in diffusing its human rights norms on the global stage is taken into consideration. There are consistent legal and regulatory mechanisms in its trade agreements and international pacts to which it is signatory. Considering the normative power driving these policies, key elements which could harness greater potential for the Union going forward are sought. Secondly: despite its emphatic human rights rhetoric, the EU finds itself at a crossroads between its values and its desires. With China becoming its biggest trading partner as of 2021, gaping holes are poked in the bloc's projected intolerance of human rights abuses. Beyond normative clout and soft power, the introduction of hard power through the global human rights sanctions regime adopted by the EU at the end of 2020, provides another angle in the search for human rights leadership qualities. The third angle looks at how the EU has thus far relatively little power on Member States' foreign policy, showing how difficult it is to develop a common policy at the EU level, and how sanctions within the EU itself have not had a smooth trajectory.

The conclusion presents a stopgap balance between the ideal notions and expectations of the EU as global human rights champion, and their decision-making based on political, economic power. This shows an uneven road towards the realisation of the aimed core EU identity ahead. An EU which will identify more fully with its human rights priorities is envisioned. For a new global precedent to be established, the time to think critically and act decisively, is now.

INTRODUCTION

"In 'its relations with the wider world', the EU contributes to the 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter" (Article 3 of the Treaty of the European Union[TEU], 1992).

The European Union (EU) is known as a soft power in the international arena (Goldthau & Sitter, 2015), meaning that it uses diplomacy, culture, values or social models to influence other actors' actions, contrary to hard power, which would use military force or coercions (such as economic blackmail) to exert pressure on other nations. The process of European integration occurred to prevent the continent to suffer again from another devastating conflict, with a concept of security based on cooperation and solidarity, instead of a scenario based on realism in which Western European countries would increase their military capabilities to counter a potential attack (Lehne, 2020).

Bearing this in mind and considering that the EU has enjoyed long-lasting peace since the end of World War II, it is no surprise that the EU treaties place respect for human rights as a core value of the Union. However, it is important to consider as well that international relations are complex, they involve numerous interests, and international actors more often do have conflicting interests. This brings negotiations in which policy areas such as stability, energy supply and trade – seen as having more direct economic impacts – are given priority.

In light of the above, a burning question remains– how and when will human rights hold enough momentum to be prioritised consistently? To envision the *possibility* of such a shift, this paper seeks to analyse how the EU is using its foreign policy to protect human rights globally. To do so, it will firstly focus on the normative power of the EU's human rights' rhetoric, and the role played by the EU's soft power in diffusing these norms on the global stage. Secondly, it will examine the scope of hard power methods, by assessing the global human rights sanction regime adopted by the EU at the end of 2020. This ultimately leads to the third vista; the lack of a solid and unique foreign policy by the EU and why the Union has limited power on Member States' foreign policy. Tracing human rights in EU foreign policy with this approach, weighing both its normative origins and pragmatic development, can afford us a thought-provoking grasp of how the EU thus far has transposed its human rights norms - an integral core of the EU identity - into its external role on the world stage. A number of limitations and difficulties stand in the way of this emerging role, including the absence of total cohesion among Member State's foreign policy, as well as adherence to the internal EU human rights standards themselves. Recognizing the 'delivery gap' between its aims and its actions to human rights in its foreign policy actions, can outline the much greater potential which the EU has to be a world leader of ensuring human rights standards are met.

2. COMPLIANCE MEASURES TAKEN BY THE EU

"Respect for human rights is a fundamental part of all EU relations with non-EU countries and international institutions." (Council of the European Union, 2021)

With this above-stated commitment of the European Union being at the core of its behaviour on the world stage, the first question we must consider is, *how* is the EU acting to establish this key component of its identity?

The directive framework is carried out through a multifaceted yet salient process, broadly split into two tracks. Firstly, as per the Union's statements, all treaties and agreements signed by the EU must be compliant with the Union's human rights norms, set out and defined in the EU Charter of Fundamental Rights (European Commission, 2021). Thus, all Council of EU bodies allocated to foreign affairs matters are required to incorporate human rights policies into their functioning. Secondly, the promotion of human rights is in itself a priority action.

To lay out the priorities and goals underscoring these two aims, the Council regularly updates and approves an EU Action Plan on Human Rights and Democracy. Functioning as an EU policy of strategic interest, it allows the Council to act by qualified majority voting on issues under the Plan's purview. This justifies the strategic importance of the Action Plan, which aims to "step towards a more strategic and assertive EU" (EEAS, 2020). The chief critique levelled against the EU's response to global human rights issues, is concern about its impact and ability to assert; this Plan thus specifically aims at "fostering faster and more efficient decision-making on human rights and democracy" by the EU in its external relations. The current and improved Action Plan was adopted in November 2020, in place for the term 2020-2024.

Within the Council, a specialised body has been created to focus on all international affairs directly related to human rights, the Working Party on Human Rights (COHOM). As mapped out in Figure 1 below, all lines of action are coordinated through this Working Party.
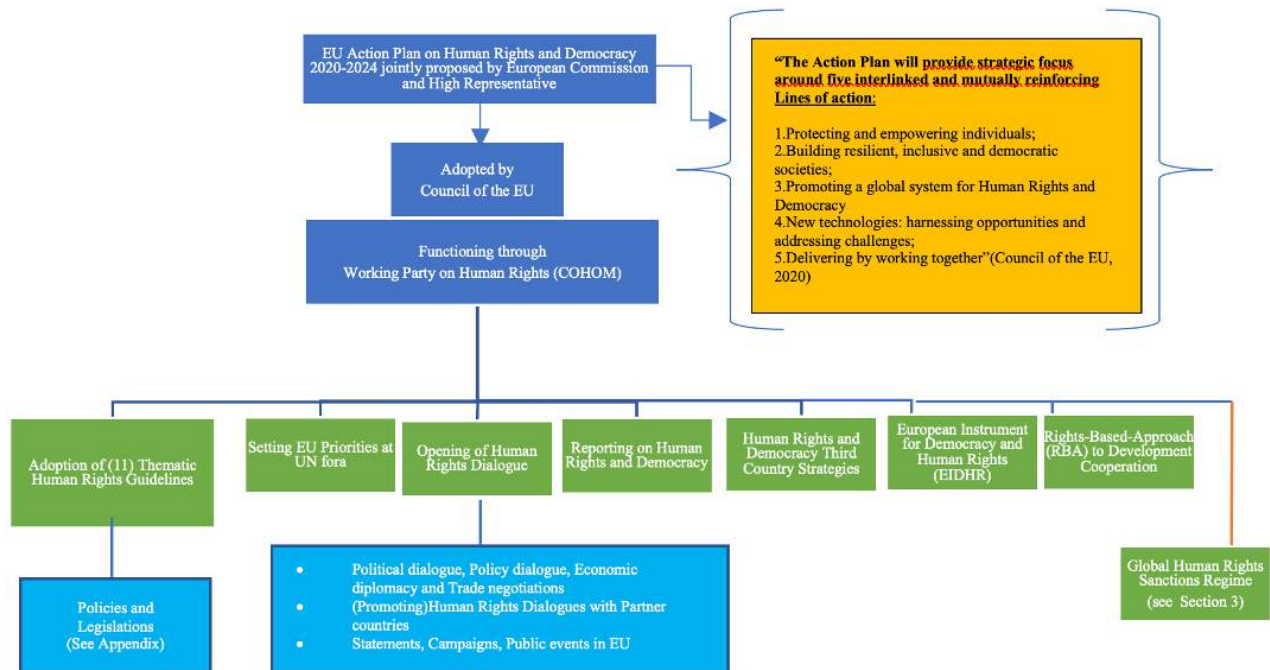
Figure 1: EU Strategy for External Human Rights Action

The integral channel to EU Human Rights Policy within this overall strategy (depicted in Figure 1) is in the form of a series of thematic Guidelines covering all human rights issues important to the EU. The Guidelines are espoused at a ministerial level, demonstrating a distinctive political signal of these priorities for the EU and its Member States. The Guidelines (listed in Appendix) serve as the pragmatic EU human rights policy instrument, providing practical tools for EU missions and projects to implement the policy (EEAS, 2021).

Broadly categorised, the grid depicted below (Figure 2) distinguishes between three frameworks of 'soft power' compliance methods, which are almost entirely built around the core motivator that is the EU values-based identity. These soft power methods are shaped by how the Union seeks to both exist and be perceived globally, upon this identity. We will seek to understand the connection between the soft power compliance strategy and EU identity in the next section. Understanding this connection, which is in effect a mutual dependency, can offer areas of normative leverage, whose route ultimately leads to political capital and power. This is one possible direction towards improvements for the EU's realisation of its human rights norms. For there are many limitations and conflicts of interest on this path, which end up casting the emerging 'hard power' compliance

method of the Global Sanctions Regime (Figure 3) into a more promising light, which we will discuss in Section 3.

Global Perception of EU culture, political values, solidarity, and foreign policy:
-'Norms diffusion' of human rights standards through Human rights awareness campaigns, civic demonstrations
-Social media influencing
-Civil society nexus incl.
lobbying, research, forging global conclaves
-Transnational advocacy networks
-Role of media and investigative journalism

International cooperations:
-Partnership with UN: EU Agenda setting in UN fora
-UNICEF-EEAS
- Development Policy and Aid
-Multi-lateral collaborations

Global Sanctions Regime (2020)

'Compliance' through EU Foreign Policy:
- EU legislation for Human Rights
-Guidelines at every level of negotiations
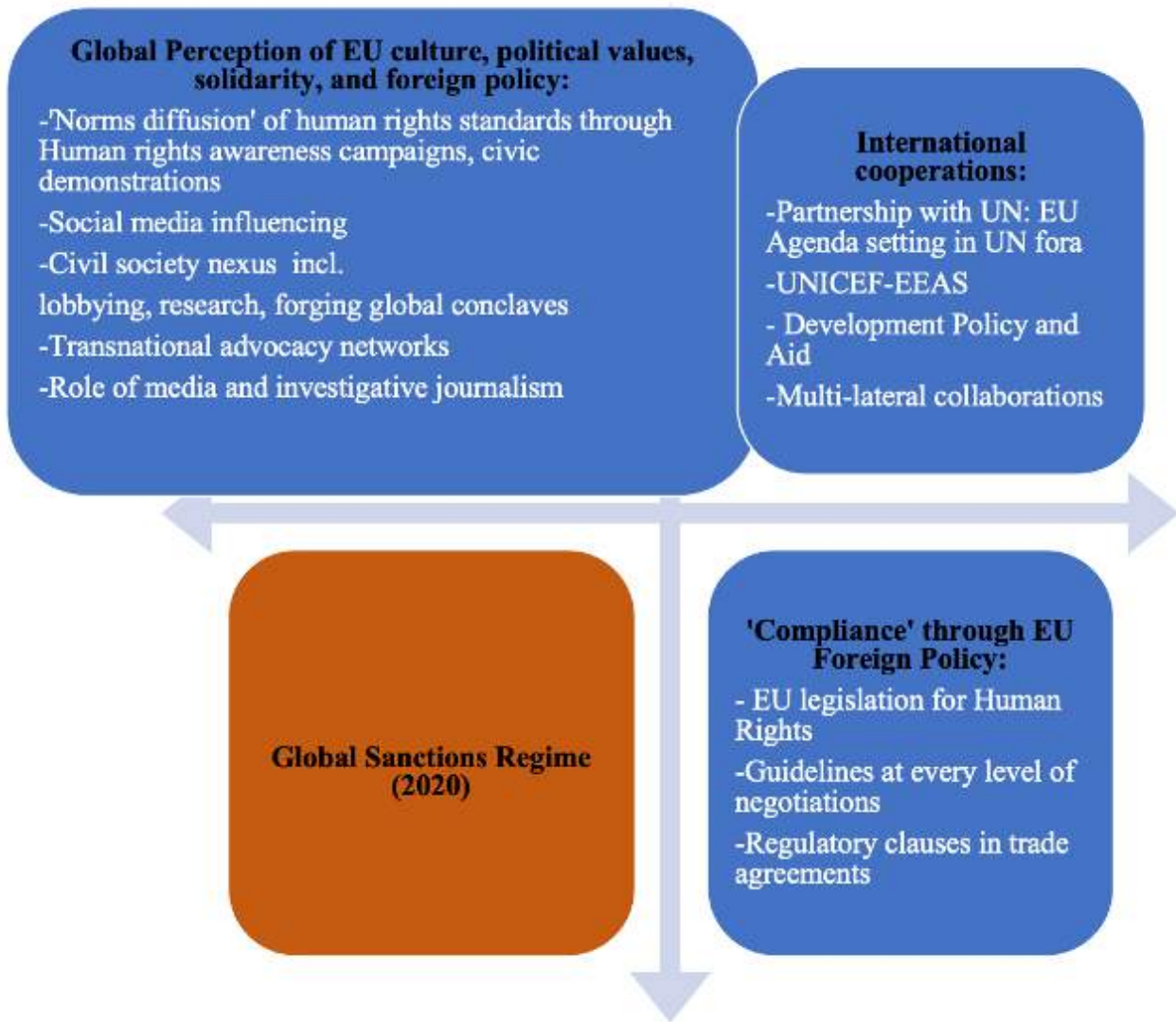-Regulatory clauses in trade agreements

Figure 2: How the EU uses its foreign actions and policy to advance human rights (non-exhaustive) Brown depicts hard power, Blue depicts soft power

Understanding *why* the EU identity is connected to the diffusion of the aforementioned human rights norms is a valuable exercise to assess how the lines of action (non-exhaustively mapped above) can be improved in reality. There are certain expectations of how the EU will respond, act and lead in cases of human rights violations – expectations both by EU citizens and the world at large.

3. THE EU AS A HUMAN RIGHTS CHAMPION? - A CONTEXTUALISATION OF NORMATIVE POWER AT THE HEART OF THE EUROPEAN IDENTITY

"The Union is founded on a community of values set down in the treaties: the respect of human dignity, freedom, democracy, equality, the rule of law and the respect of Human Rights." (Article 2, TEU, 1992)

3.1. The Importance of EU Identity

There are a myriad ways to define 'identity', the most basic of human existential questions. This innate place it holds in our collective hearts gives 'identity politics' a unique vantage point. A definition of 'identity' apt for this essay is in relation to the way it is used in politics – "as a tool to frame political claims, promote political ideologies, or stimulate and orientate social and political action, usually in a larger context of inequality or injustice…" (Vasiliki, 2013). The EU's identity-cohering governance draws up its legitimacy and self-justification by building itself atop universally appealing normative values and the promise of fair, equal and accessible human rights for all within its bloc (Sjursen,2007). To really distinguish itself through this identity, it also projects these norms outwardly in all its external action moves including development aid, democracy-building, and foreign relations (Manners, 2006), as described in the previous section. Leadership is further asserted with the Action Plan being "the only instrument of its kind aimed at promoting a values-based agenda on the world stage" (Council of the European Union, 2020).

3.2. Identity in a soft power setting – Constructivism and the EU Cosmopolitan nature

It is imperative here, to understand how the implications of normative power fit into the framework of Social Constructivism, a framework which in itself challenges the typical emphasis of 'power' being solely institutional and state driven. It demonstrates that rather than being exclusively linked with facets of hard power such as military strength and coercive compliance measures, it is rather more the case that norms and values reshape the majority of states' interests, subverting their typical unscrupulous sovereign self-interests (Chandler, 2004). Often incited by global civil society, it is international normative structures, generated by multiple, multi-lateral interactions between state and non-state actors, which affect the behaviour of most nations, according to the constructivist framework (Chandler, 2004). This belief of 'reality' being socially constructed brings a much greater emphasis among constructivists on the role of norm development, identity,

and ideational power. The compliance policies depicted in Section 1 demonstrate this constructivist claim; they are all driven by the unifying motivation of creating the 'European identity', maintaining the highly regarded norms it set for itself. The 'invisible' global soft power influence (Qing, 2021) of the EU, in turn re-enforced by the positive global reception of its normative identity, shows how norm-building can look like a 'self-fulfilling prophecy.' In this way, the constructivist take on normative power affords great potency to the human rights discourse, because it provides an empirical-based argumentation from where human rights ideology and rhetoric can derive its persuasiveness.

Synthesizing this theoretical grounding with the verve of a 'Cosmopolitan' approach to global governance makes a compelling case for a symbiotic relationship between a value-based EU identity and its value-driven foreign policy (depicted in Figure 3 below). Cosmopolitanism assumes great potential for action through changing agents of power, ultimately inciting dialogue about the agency of the citizen, and capacity of civic participation, to push forward the desired prioritisation of human rights (Sinclair, 2013). As seen in Figure 2, this soft power method of norms diffusion is gaining significant traction in light of an increasingly tech-driven global society (Sinclair, 2013). Social media's 'Big 4'[19] companies' biggest market is the EU; this gives the EU power to, through the Single Market, mobilise its citizens firmly onto their human rights' agenda.

Human Rights
Necessary for EU to place human rights at core of foreign policy, to assert its value-based dentity

Foreign Policy
Foreign policy used to demand human rights standards from third countries through its trade dealings & external actions
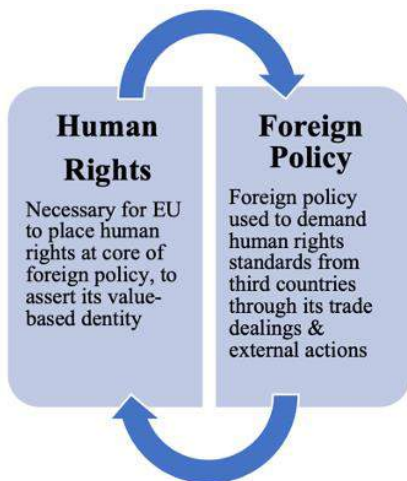
Figure 3 (left): Symbiotic relationship between EU's human rights-based identity and its foreign policy

Part of maintaining an (accessible) EU identity is precisely this type of engagement of the citizens, providing them a feeling of ownership, dialogue and thereby identification. The human rights policies underscoring the Action Plan are developed often by involving civic contribution. An example is the new EU Strategy on the Rights of the Child and the European Child guarantee, through the arm of the European External Action

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[19] Twitter, Facebook, LinkedIn, Instagram

Services (EEAS). Put forth by the European Commission and presented in February 2021, they are significant policy initiatives, both of which were "informed by extensive consultations with citizens, stakeholders and, most importantly, more than 10,000 children." Thematic area 6 of the Strategy is 'The Global dimension', which commits the Commission to a number of actions and goals to "support, protect and empower children globally, including during crisis and conflict" (European Commission, 2021). Such partnerships, along with third-country dialogues for children's rights, is an example of where EU foreign policy shows tangible achievements (see Figure 5 further down) in its human rights agenda.

3.3. Practical approaches for diffusion of EU norms through foreign policy

A key medium for human rights goals to reach the citizen and vice-versa, is the messaging used. Since 'norms diffusion' is directly and indirectly both an underlying motive, as well as product, of all human rights based programming (HRBA) (UNSDG, 2021), the rhetoric and discourse of human rights is an integral tool for both the United Nations (UN) and the EU. However, in order to drive forward universal understanding and acceptance of human rights standards as the norm, both the UN and the EU must contend with tangible threats to human rights (for example the dangers of digital technologies outweighing its benefits) (European Parliament, 2020) along with threats to its assumption of 'universalism.' The countering claim of 'cultural relativism', which argues that enforced 'universalism' of rights is harmful to the local and regional cultures, provides a dangerous means of rights abuses, such as child labour in pastoral regions where tradition and necessity make it part of 'culture'(Pupavac, 2011).

As a response to this, there is emerging interest in the hypothesis of 'vernacularisation': the conversion of human rights language and its universal norms, into specific and localised contexts, so that the dialogue can actually connect with its intended audience and benefactors in culturally diverse settings (Kaime, 2010). The EU has high potential in this regard, through its close cooperation and dialogue with civil society (European Parliament, 2020) as well as global civil society and transnational advocacy actors, who are arguably best poised to facilitate the vernacularisation of human rights. The Human Rights Action Plan (Figure 1) maintains that all operational measures are to be implemented at "country, regional and multilateral level, taking account of local circumstances and specificities" (European Commission, 2020). While country-specific strategies and democracy observation missions are also part of the COHOM's work

(Figure 1) (EEAS, 2020), making human rights norms relatable in all parts of the globe remains a challenge for the EU. 'Vernacularisation' may offer the EU's development assistance and human rights efforts much promise, however remains a topic needing further study and engagement, for example through development aid projects.

3.4. Perception and soft power

It is helpful to our current discussion on messaging, to reinterpret the mutually-serving relationship between political identity and (human rights) norms, within the context of 'heresthetics', a coined term to denote the 'art and science of political manipulation'. While rhetoric is involved with the persuasion-value of sentences, a heresthetic's concern lies in the strategy-value of sentences (Evangelista, 2001). Though norm rhetoric is inherently designed to be persuasive, its end-goal is indeed often to achieve a desired political outcome. The EU is continuously tying their identity to their value-driven foreign human rights actions. All statements, depictions and messaging via media, digital (all EU institutional websites) and public platforms, project this. This is a case of rhetoric and heresthetics acting as semantic companions to indispensably use language to both serve the purpose of norms diffusion, and achieve the desired perception of the EU as human rights champion. One of many examples is the Human Rights Action Plan, e.g. that "it will contribute to achieving a stronger Europe in the world" (Council of the European Union, 2021).

Integral to politicised semantics used for unification, is this invitation of *emotion,* as well as *empathy* in its intended audience; motives which are more or less overlooked in building hard power strategies, yet can be said to be the very sustenance of soft power (Crawford, 2014).

Perception is critical to successful soft power outcomes, and for the EU to normalise a common human rights standard, perception both inside and outside its borders is arguably, key. Socio-scientific studies show emotion to be is as important (if not more) as cognition when it comes to shaping perceptions (Cromby,2014), and empathy's role in modern societal discourse includes its "centrality in political-civic discourse" (Barnes, 2014), integrating into democratic, social and political decision-making processes.

Thus, the use of emotive language is an effective way to apply a 'rhetoric-heresthetic' dynamic, lending it a persuasive quality highly conducive to strategic governance (in the above quote, the Human Rights Action plan was connected to "a stronger Europe"). Perception of sincerity to shared values sustains the continuing identification of citizens with their government, and consequent support of its democratic governance. This necessarily affects both the continued legitimacy, and justification, of the need for the EU by those Member-states comprising it, and their claim to asserting the Union's human rights values as global norms. Consequently, this promises the threat to the 'reputation' of nations who do not abide by these desirable global (human rights) norms.

And *this* is the decisive rationale of the role of soft power; not only is it significant for diffusing norms, but for creating a nexus of cultural, social and ideological power on the world stage. The desire of nations to remain included in this socio-political 'in-crowd', determined by the most hegemonic states (mostly Western), oftentimes makes this threat to their outwardly perception more effective than compliance and policy measures, which are still not legally enforced. To be taken seriously by the public and private power-players of economically advanced nations, means there is still the possibility for influence and autonomy of (less powerful) states on decisions which impact them. *This* is what ultimately compels many states to change their behaviour, and is therefore a vital tool for the EU as it grapples with its inconsistent role as human rights enforcer, both within its bloc and globally.

For while the most ubiquitous of the power-clubs remains the supra-national UN, there is deepening interest in the economic might, market value, and political prominence of the EU. The emerging argument here is that because the EU's power is not symbolic nor jointly supported by global states, like the UN's power, it has more economic autonomy, resources and capital. Thus while the EU currently holds close partnership with the UN for shared human rights goals (Figure 2), a closer bond going forward – both institutional and transnational in nature – has the potential to jointly put greater pressure on states who do not align with human rights standards, thereby optimising compliance as a stronger option in the future.

In comparison, the push for the actual and sustainable supra-national international law, which would have legal and punitive power against states violating human rights norms, as yet does not exist. What talk there is of international law (ICC, ICJ), falters in its limited and inconsistent

capacity. It remains that reputational concerns matter (e.g. 'naming and shaming'), more so than threat of punishment, a curious case born out of the incumbent status quo of anarchy in international relations (Staton & Moore, 2011).

3.5. Does it count for the EU?

Yet unfortunately, the EU is far from the envisioned level of global human rights leadership. Despite the continuous, saliently communicated commitment to human rights permeating every aspect of the EU's foreign policies, there are severe and valid concerns about the execution from words to actions. Questions are rife regarding the EU's capacity to have a substantial impact on both the democratisation processes and the human rights capacity building happening in various global regions. "The EU suffers from a delivery gap, an enormous distance between the rhetoric proclamations in Brussels and the impact on the ground of its policies and programmes" (Gómez Isa et al., 2016). There are clear breaks between what the EU claims it prioritises, and what it does (which we delve into in the next section). One major reason is that the EU's human rights policies in foreign relations are instructions for EU representatives around the world and are not legally binding (European Parliament, 2020).

All arguments eventually point to the need for more consideration of a constructivist, Cosmopolitan approach to viewing human rights quandaries. Continuing investment into empowering the citizen and civil society, may provide more capacity for change than currently stands. The effect of negative public opinion of China-EU relations in the current Beijing-Brussels political rift (Euronews, 2021), could be opined as irrefutable evidence to this claim. This brand-new juncture in the EU's foreign relations with China, born out of a conflict of interests in trade advancements versus integrity to human rights norms, makes it a prime case to follow for this paper's analysis.

Figure 4 below traces how soft power considerations have not pushed China enough in complying, yet public dissonance in tandem with its norms-based identity, pushed the EU to reignite the hard power method of sanctioning. Yet the soft vs. hard power ends of the EU's foreign policy spectrum are not mutually exclusive; the reputational concerns and power of global perception hitherto discussed, is very real in this case as well, as seen by China's strong reaction to "being scolded", spurring discussion within the country on how to reduce or reverse this effect on how they are

perceived globally (Hongxiang, 2021). On the other hand, the extreme rise in China's power means it is not as easily affected by the desire to be included in 'the nexus', because democratic states are still dependent on their need for China's trade(Qing, 2021).

Is it time for the EU to turn to hard power methods to enforce compliance? Let us take a closer look at the reality of the EU's human rights assertive capacity.
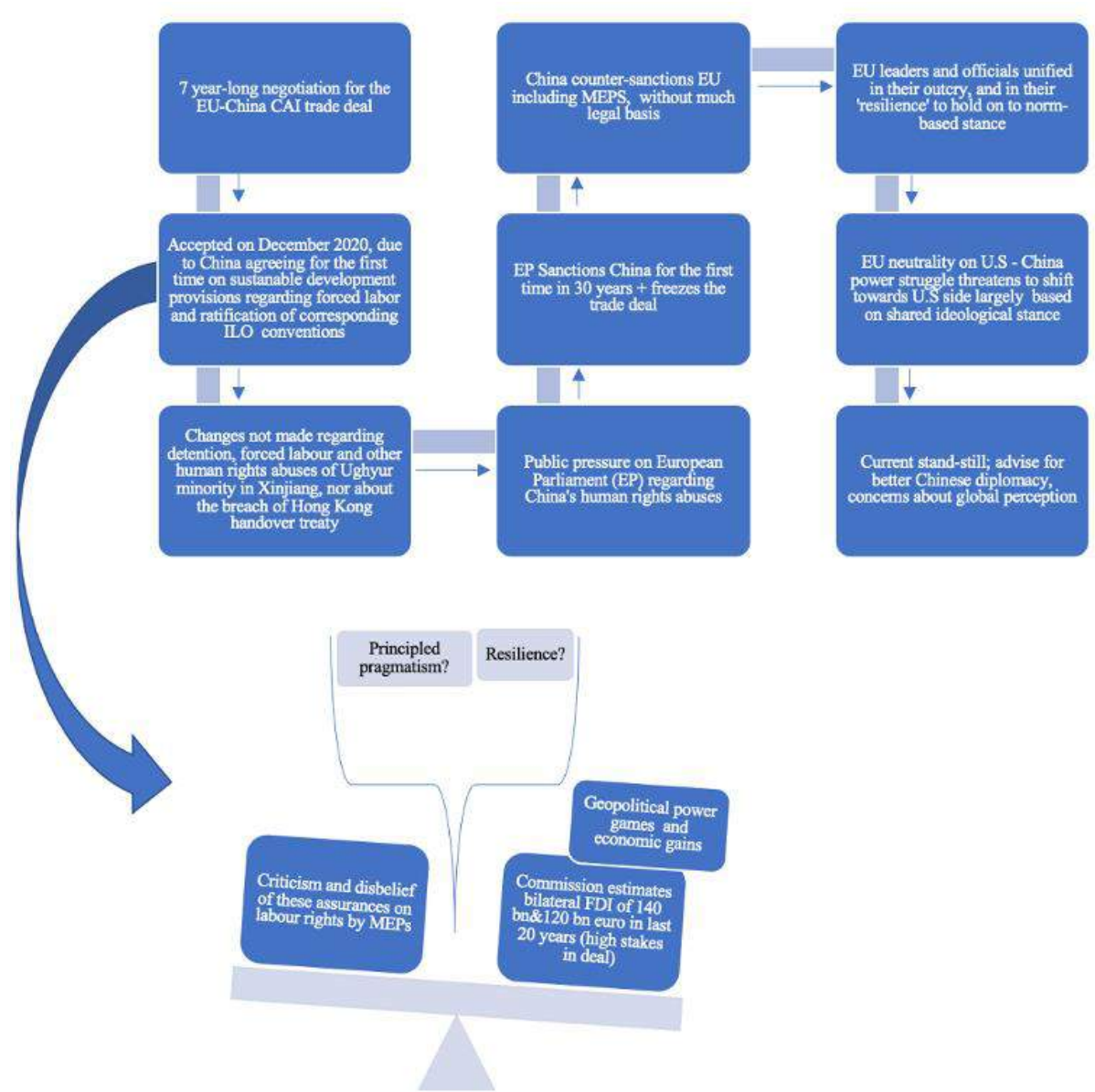

Figure 4: Process map - New EU-China trade deal frozen due to Human Rights abuses

4. MAKING A DIFFERENCE: FROM SANCTIONS TO HUMAN-RIGHTS MAINSTREAMING

January 2021 represented an especially important moment for the global human rights regime. With the adieu to the Trump administration, the US regained its chance to show up as EU's ally in stabilising the democratic liberal order. In terms of human rights, however, this has yet to materialise. The US has so far only issued a promise of reengagement with the Human Rights Council, leaving it up for question what its approach this time will be. The skepticism comes justified as Biden very quickly rejoined the World Health Organisation and Paris Climate Agreement but left the US foreign policy on human rights still to be determined.

Over the past four years, therefore, the role of global human rights protector fell on the shoulders of the EU. In the absence of the US, the Human Rights Council, where countries such as Russia and China often threaten to dilute the human rights impact of those organs (Cleveland, 2021), presented a chance for the EU to rise to the occasion and overtake leadership in this regard. Matters, however, are not that simple. In a world where the deepening interdependence is often being utilised to jeopardise (instead of promote) human rights at large (Stelzenmüller, 2019, p.20), the EU is left at a conundrum. Between von der Leyen's aspirations of leading a geopolitical European Commission (Bassot, 2020), and the EU's wish to maintain face while the US went missing from multilateral fora, the EU's impact lacked assertiveness in its human rights defence strategy. In fact, the latest developments show that the EU human rights reach, instead of standing by its identity and value-driven action when engaging outside, has been put at jeopardy by the achievement of the EU-China Comprehensive Agreement on Investment, and reinforcement of collaborations with Russia through the Partnership and Cooperation Agreement. Among others, Russia accounts for 26% of the oil and 43% of the gas supply of the EU. Luckily, the story does not stop there.

4.1. Hard power as hard stop to human rights violations

In the present-day "race to the bottom", where suffering has been normalised, and life-threatening inequalities and extreme poverty routinised (Regilme Jr, 2019, p. 14), the EU has not entirely been able to escape the predicament. Governments often throw their money to save corporates rather than human lives (Ibid.), as seen also by the public-private dissonance regarding the proposed new

EU-China trade deal. Political bodies therefore need to take this into account before proposing actions. Such is also the fate of the EU, when pushing for a "principled pragmatism" approach in its external action (Publications of the EU, 2017). Nevertheless, at the face of dire human rights violations, the world stops, giving us both evidence for normative power and hope for its increasing agency in the future. Such a moment came when in the last decade it became unequivocally clear that Russia would not transition to a liberal state, instead opting for establishing itself as an autocracy with a wide sphere of influence (Lehne, 2020). A blow to its confident onset to the global scene and a turning point for the human rights regime certainly was the adoption of the Magnitsky Act in 2012, when violations inflicted by the Russian federation in 2009 and uncovered by Russian citizen, lawyer Sergei Magnitsky, led to him being found dead in his cell after 300 days in prison. The world could no longer stand still. Accused of tax evasion and fraud, Magnitsky had brought to light large-scale corruption involving high-end Russian officials. His death brought upon the US adoption of the Magnitsky act, turned Global Magnitsky act (2016), a step towards the protection of individuals by sanctioning the inflictors of numerous human rights abuses worldwide.

This act was an inspiration for the European Union. By explicitly referring to it in her State of the Union speech, von der Leyen noted the salience of human rights protection by hard power in the new European Commission's agenda (European Commission, 2020). The EU Human Rights Sanctions regime was finally adopted in December 2020, promising to explicitly stand against individuals, entities and bodies responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred. Crimes such as genocide, crimes against humanity, other serious human rights violations or abuses (e.g. torture, slavery, extrajudicial killings, arbitrary arrests or detentions), as well as widespread and systematic human rights violations that are of serious concern in regard to the objectives of the common foreign and security policy set out in the Treaty (Article 21 TEU) will be facing travel bans applying to individuals, the freezing of funds applying to both individuals and entities, and persons and entities in the EU will be forbidden from making funds available to those listed, either directly or indirectly (Council of the EU, 2020). While this is a positive development and certainly a braver way to put an end to individuals' and entities' malversations, it does not cover the actions of bigger fish, such as countries with a conflicted human rights track-record.

4.2. Trade as a chance to amend through mainstreaming

In this neoliberal an era where tough political decisions have to be made quickly, the European Union, a body consisting of 27 countries with very diverse socioeconomic realities and slow-moving action, should therefore more powerfully rely on other instruments when trying to protect and promote human rights world-wide. In this sense, the mainstreaming of the human rights agenda, especially through trade agreements, is an objective that should take priority by far. The EU's strongest asset for promoting values, conditionality, has been failing to meet the benchmarks in terms of human rights promotion. Instead of ensuring the coherence in all its activities necessary by rule of the EU treaties, it remained stuck in the tension between values and the EU's commercial interests (McKenzie & Meissner, 2017). Things, however, seem to be looking up for the better, as a brake on the EU-China deal has been put after MEPs voted to freeze the adoption of the EU-China Comprehensive Agreement on Investment (CAI), agreed upon only five months ago. Seeing the condemnation of the "crimes against humanity" against the Uyghur Muslim minority and the "crackdown on the democratic opposition in Hong Kong" (Euronews, 2021), the EU hereby also puts an end to promoting incoherent interests and not sufficiently pursuing the human rights discourse.

The European Union has recognised that the great power competition is here to stay (Stelzenmüller, 2019). In light of rising powers with a conflicted human rights track-record, such as China, an actor who at present has become EU's biggest trading partner, the EU has to cautiously decide its way ahead. By introducing the concept of principled pragmatism, an approach where the EU is to try and be more pragmatic in its foreign policy, while aiming to keep close to its principles (Mogherini in Publication Office of the EU, 2017), the European Global Strategy recognised this challenge already in 2016. In a time of great international instabilities, with right-wing ambitions on the rise and the true effects of a pandemic truly to be determined in the times to come, one is to hope that the EU will be able to make use of its capacity to bounce back from shocks and crises, coined resilience, (Tocci, 2020) also when engaging in human rights protection and promotion. Overcoming the trappings of vested political interests and finding a greater balance between trade benefits and normative integrity would help the EU to assert its unwavering position as the one and only committed human rights protector through time, which, at hand, could lead a

"Brussels effect"[20] to encompass not only the world of trade (Bradford, 2020), but also that of human rights.
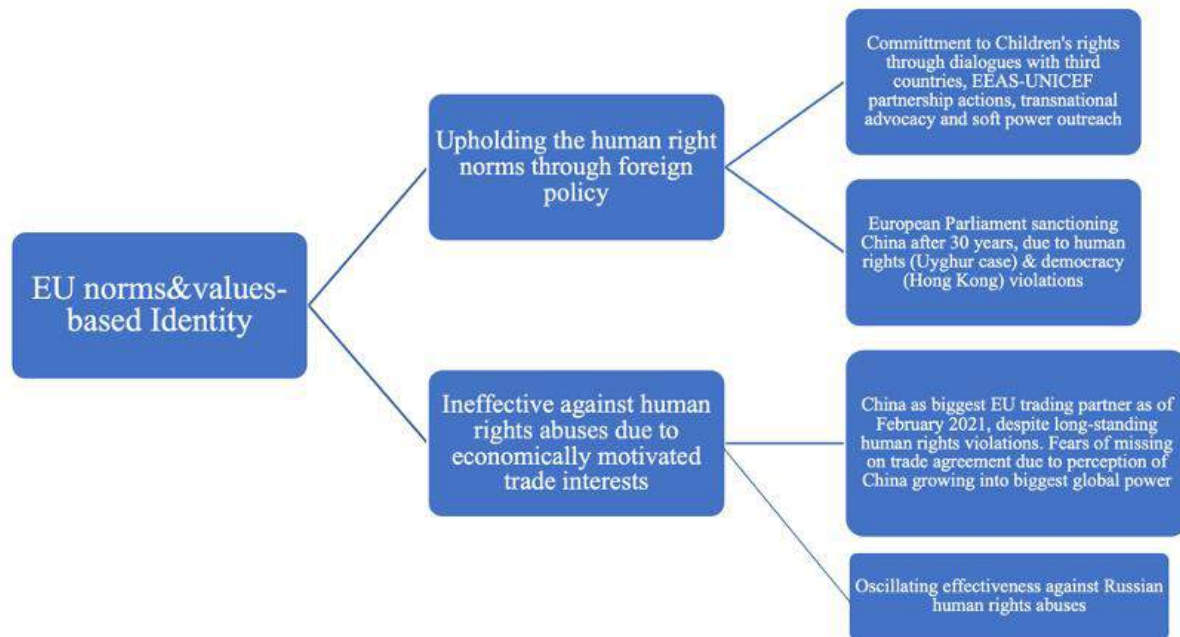

Figure 5: EU's fluctuating commitment to human rights through its foreign policy - Recent examples

5. A COMMON EU FOREIGN POLICY THAT PROTECTS HUMAN RIGHTS WORLDWIDE: UTOPIA OR FUTURE REALITY

Coming back to China, the European Parliament has stated their hope for Member States following its position regarding China´s Uyghur Muslim minority, that of a "clear signal of solidarity" with the Parliament, amidst differences in opinion and reluctances of some (Bütikofer, Euronews, 2021). Already here, we can point out factors that hinder the protection of human rights by the EU at a global level.

Foreign policy, and therefore global human rights, is an area that still depends to a great extent on Member States. If so, how is it possible for the EU to position itself as a global human rights defender with so many different divergences in Member States foreign policies? Why does the EU

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[20] The Brussels effect encompasses the EU's "unilateral regulatory globalisation power. This occurs when a single state is able to externalise its laws and regulations outside its borders through market mechanisms, resulting in the globalisation of standards." (Bradford, 2020)

lack a comprehensive, concise, solid foreign policy that among other things protects human rights worldwide?

5.1. The EU's origins framing its foreign policy

After World War II, the founding fathers of the European Union aimed to create a secure space based on a new concept of security in Europe, based on a transfer of sovereignty to common institutions (Lehne, 2020). For decades, the international image of Western Europe as a 'civilian power' and a model of peaceful diplomacy has revealed the absence of solid security or foreign policies. The European Steel and Coal community (ESCC) founding countries had already intended in the early 1950s to create a parallel European security organisation, the European Defence Community, but this attempt failed after France's failure to ratify it. Nevertheless, Western Europe was not unprotected, since most European countries were already part of another collective defence treaty led by the United States, the NATO (North Atlantic Treaty Organisation). This organisation was aimed at guaranteeing Western Europe and North America's safeness in a bipolar international security context in which classic realism shaped superpowers' policies and actions (Giegerich, 2009, p. 442).

The utility of the EU, similar to its further integration, has been put into doubt and discussed by scholars (Mearshimer, 1990; Rosato, 2011), especially after the collapse of the Soviet Union, as Western European countries no longer had a common enemy as aforementioned. In the new millennium, we have seen the emergence of new strong powers, such as China, Russia, India or Brazil, becoming major pieces of the international chessboard. Moreover, other conflicts, such as the Arab Spring, the Syrian War, the creation of ISIS, have been arising in different regions, with some of them being neighbours to the EU. This appearance of new international actors with a growing bargaining power has redefined the global order and has caused the EU to rethink its external policy to be able to play on equal terms with other global actors in today's multilateral global order. As discussed in the previous sections, this is what pressurises the EU to stray from its human rights commitments; norms can seem less urgent when other power players are interacting on the economic and market spheres.

Shortly after former US President Trump took office, German Chancellor Angela Merkel stated that "the times in which we could completely depend on others are on the way out" and "we

Europeans have to take our destiny into our own hands" (BBC, 2017). With the turn that EU-US relations took after former President Trump came into power, there was no question about the need for the EU to develop and implement its own common, strong and solid foreign policy. Similarly, Macron has expressed serious concerns about European security and the lack of reliance on US protection, proposing the creation of a joint intervention force for crisis missions (BBC, 2018).

5.2. Present challenges and future aspirations

Yet, even though one of the most important commitments of the EU is the protection of human rights both internally and externally, it still lacks a common solid and unique external policy defending its interests and making of the EU an active player in the international sphere, and therefore the scope of its actions in promoting human rights globally is limited. However, this does not necessarily mean that the EU's foreign policy is totally inexistent. In fact, the Lisbon Treaty introduced in 2009 major changes regarding security and foreign policy, like the introduction of an EU High Representative for Foreign Affairs and Security Policy and the EEAS, the creation of the Solidarity Clause or the permanent structured cooperation (PESCO). Likewise, both the Maastricht and the Amsterdam Treaties also provided some advances in the security policy field, such as the adoption of the Common Foreign and Security Policy (CFSP). Furthermore, the EU's action in international cooperation and humanitarian aid is far-reaching.

As seen, global human rights and foreign policy fall under the competence of Member States. Nevertheless, with 27 different Member States being responsible for any decision taken in this area, divergence of positions is not uncommon. In this sphere, the EU still operates from an intergovernmentalism approach ((Milward and Lynch 1993, p: 16), which has already been the dominant trend in certain periods during the European integration process, especially in the 1970s with the "empty chair" crisis, where nevertheless the European building process remained on track and continued to move forwards.

In this way, the EU's external policy, and especially any decision related to a further integration in this area, is completely dependent upon Member States willingness to reach a consensus and cede a part of their power and national sovereignty to a greater regional institution. On this basis and considering how challenging it has been within the last decades to reach consensus on internal matters (migratory crisis, EU budget, post-COVID recovery aids) and how further integration

attempts have failed (e.g the attempt to adopt a European Constitution in 2004), the prospect of a near future common and homogeneous EU foreign policy is pessimistic. At the same time, Member States also have recently had divergent visions on certain international conflicts (recognizing the state of Kosovo or Juan Guaidó as Venezuela's interim president, for example) and the way they relate to third countries may differ widely from one Member State to another one.

On the other hand, there are challenges that the EU is facing internally in relation to the protection of human rights, as agencies such as the FRA (Fundamental Rights Agency) and other international human rights organisations have reported serious human rights violations, including hate crimes on the basis of race, gender or sexual orientation, gender violence, discrimination and infringements of the rule of law by certain Member States (Human Rights Watch 2021). Therefore, the fact that the EU is not able to guarantee respect for human rights inside of its borders may make the EU's international perception and image of a human rights guardian less credible.

Furthermore, the EU is highly dependent on other third countries on key issues, such as goods and services supply (referring back to our point regarding China) or stability in the EU's neighbourhood regions, and considering the economic, and even military, power that these other international actors may have, the EU may not always have enough bargaining power to enforce respect for human rights in their agreements or treaties with third countries. This is evidence of the high dependence that the EU has on third countries on certain imports, which might instigate serious discussion about the possibility of the EU being potentially more autonomous in terms of production and providing. It also reinforces the idea of the need for a common and strong foreign security policy, so the EU could be less dependent on others for peace and stability.

However, other actions of significant importance, such as the adoption by the Council (Member States) of the global human rights sanctions' regime, mentioned before, gives cause for some optimism in the EU's global role in the protection of human rights.

6. CONCLUSION

The European Union project is one stemming from a vision of values. Risen from the ashes of World War II, it was supposed to provide for a deep integration between its members, so that war in the future would become an impossibility. Having kept its promise over the past seven decades,

the EU has become robust and capable of projecting these values to the world. But, where does this power of value-projection come from? The first section has guided us through the labyrinth that connects the two main points of this paper: identity and values as tools to enhance human rights promotion at large, with the focus on how the EU uses its foreign policy to do this. Identity and values stand at the base of the EU's legitimacy and self-justification. Through them, the EU can influence the world, but also help define and shape individual member state's interests, opting first for a soft-power diffusion instead of the channels of hard power.

Matters become more complicated once the EU goes abroad. The universality of human rights has often been contested and cultural relativism has been presented as a reason to justify the negligence to hold actors accountable to their afflictions. In this regard, the vernacularisation of the language to suit the local communities is proving to be an effective measure. In way of a future solution, converting the human rights language into localised contexts, so that the dialogue can actually adapt to culturally diverse settings, may give the EU control of its narrative and thus a legitimate ground for normative authority. Such an assessment speaks of a true hope that influencing the global dialogue, can translate into a status quo that is ever shifting towards global prioritisation of human rights. Imperative to all these prospects, is a closer partnering of the EU and United Nations to put combined weightage behind action plans and programs to not only diffuse human rights norms but ensure their implementation.

In the following section we saw that the retreat of the United States from the main international bodies dealing with human rights violations opened space for the EU to fill the shoes of the leader-protector of the democratic liberal system. Individual human rights – one of its cornerstones and a defining trait of EU identity inside and abroad – became extensively challenged in this period. China and Russia, who are also members of the Council, pose a threat to the upholding of human rights worldwide. With the newly established Biden administration, hopes are that the US will soon join the Human Rights Council. The EU has in the meantime asserted its role as human rights promoter and protector with the adoption of the EU Global Human Rights sanctions regime in December 2020. The mechanism joins the US Magnitsky Act, which became global in 2016. Through it, individuals and entities worldwide have already started, and will continue to be, at the receiving end of a wide range of limitations, such as travel bans and freezing of funds in the case of abuse and violation which is widespread, systematic and extreme.

The paper has also pointed out the importance of trade in a neoliberal world, where more than hard power, it is the market which can set the tone of collaborations, by mainstreaming human rights clauses into trade agreements between the EU and its partners. If we take into consideration that China – a conflicted global actor in terms of its long-standing human rights violations – has become the EU's biggest trading partner, such action could have broad positive repercussions. It could bring the "Brussels effect" to mean human rights rule-setting power, next to its trade regulating momentum.

Finally, foreign policy is a department where the EU's grip can only have that many teeth. While the transfer of (part of the) sovereignty to supranational institutions has been at the root of the European project, the situation remains a balancing act. Since the collapse of the Soviet Union, the EU no longer has a common enemy between the member states, thus a common foreign policy and deeper European integration are coming to be seen as obsolete. However, what developed instead is a strong alliance between the EU and the US, as protectors of the democratic liberal order. This came confirmed with a tight collaboration through the security bodies, such as NATO. The Trump administration, however, became a clear sign that the EU should not entirely give the reins up. His aforementioned withdrawal from the main multilateral organisations dealing with human rights left the EU in a spot to realise that the development and implementation of their own foreign policy can no longer be postponed.

This endeavour does not come without its own problems; the member states, for now, hold absolute sovereignty in matters of foreign policy. We discussed how Member States are not all in agreement regarding the EU-China trade deal frozen due to unchanging human rights violations, by the European Parliament; this naturally makes it more difficult to reach a consensus regarding this external diplomatic confrontation. Adding to this, reaching consensus on internal matters has been extremely challenging, if we consider issues such as the corona or migration crisis. The EU struggles as well with issues concerning human rights internally, which puts its credibility as a human rights guardian in the world at significant jeopardy. Nevertheless, with the adoption of the Human Rights sanctions regime, things seem to be progressing. Examples of strong leadership united behind the EU human rights identity, such as the Parliament President Sassoli's (among others) hard-line public remarks openly condemning the recent skirmish with China

("…unacceptable… Human rights are inalienable rights …")[21] offer a promise. It is therefore imperative that the EU use this momentum to set the path for a foreign policy that is committed to the promotion and protection of human rights worldwide.

Furthermore, as considered in the last section, the work within the EU of treaties, regulatory mechanisms, human rights institutional-level bodies, joint co-operations, and far-reaching humanitarian aid, cannot be underestimated. Though they are non-binding in its foreign relations, the EU could leverage its soft power influence and economic wealth to become more autonomous and therefore less swayed to comply with powerful nations who diverge ideologically (such as China). Such a search for greater autonomy may assist in establishing more cohesion in foreign policy among Member States.

Overall, the basis for a potential future solution can draw itself from what was introduced in the beginning of this essay – the EU's multifaceted strategies embedded in external actions, including aid, democracy observation missions, dialogues, development cooperation, and foreign policy. The many difficulties and challenges we discussed, make it vital that the commitment be strived for with greater cohesion. The Action Plan for 2020-2024 is the EU's proposed solution to this commitment, with the promise for a re-energised vigour and political will for implementation, to counter the current stagnation it recognises itself to be in. All policies are delegated under these 5 main action lines, as outlined in Figure 1.

If the EU's instruments and action lines, hitherto evaluated, continue to reiterate that their very identity as the European Union is vitally dependent on supporting their human rights ideals, being mutually legitimising – then hopefully this can keep these priorities on the forefront of awareness and agenda. We have seen through a constructivist lens, that the EU's framing of foreign policy in terms of human rights is a symbiotic relationship made possible through the largely soft power setting it has become known for globally (as simplified in Figure 3). We have found that the Cosmopolitan nature of the EU, where citizen engagement, digital human rights campaigns and freedom of media and investigative journalism can levy real consequences in political decision-making, makes it a direction that deserves attention and investment for a greater strength supporting normative human rights power going forward. This would also help sustain a clear and

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[21] (From President David Sassoli's Twitter Account, March 22, 2021)

open channel to the messaging of human rights rhetoric, which is critical in the realm of perception of the EU globally. As we have assessed (with specific attention to recent reactions of China), countries care greatly about how they are perceived globally in order to remain included in the nexus of powerful allies. This fear of reputational threats must be taken more seriously as a vital tool for the EU in the road ahead.

While the nature of the neoliberal market makes the application of 'principled pragmatism' to its foreign policy, still a vision of the future, in current reality, we have seen the possibility of a 'stop-gap balance' between the bid for normative and economic capital. The EU has shown its ability to remain *resilient,* and steadfast to its human rights identity, not least in the recent high-stakes friction with China. Thus while speculation on the impact of the new Action Plan is only possible at this stage, we have reason to hold good faith that this will mark a significant increase in efficiency and assertion of the EU's human rights actions, over the next 5 years. And if there are pitfalls on this trajectory, we can hope for strong action through joint efforts with the new Global Human Rights Sanctions mechanism.

While a significant part of our world cannot access human rights, the EU has the possibility of exponentially diffusing standards which respect the rights of every person in any country. If we are to believe that global suffering is a shared responsibility, and human rights is the birth right of every person, then the need for further consideration, research, and action on this topic, is indispensable.

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APPENDIX

Appendix 1: EU Human Rights Policy through thematic Guidelines (European Parliament, 2021)

"While not legally binding, the EU guidelines on human rights adopted by the Council of the EU provide practical instructions for EU representations around the world on:

- Action against the death penalty

- Dialogues on human rights

- The rights of the child

- Action against torture and other cruel treatment

- Protecting children in armed conflicts

- Protecting human rights defenders

- Complying with international humanitarian law

- Combating violence against women and girls

- Promoting freedom of religion and belief

- Protecting the rights of lesbian, gay , bisexual, transgender and intersex (LGBTI) people

- Promoting freedom of expression both online and offline

- Non-discrimination in external action

- Safe drinking water and sanitation"

The EU Enlargement to the Western Balkans: Accession Negotiations with North Macedonia and Albania

By Irakli Gabidzashvili

Irakli Gabidzashvili is a graduate student of Social Sciences at the University of Glasgow. Currently, he is enrolled in the program of Erasmus Mundus International Master in South European Studies. Irakli has a bachelor degree in International Relations from Ivane Javakhishvili Tbilisi State University. As a Leadership Lab fellow at the German Marshall Fund of the United States, Irakli is diligently involved in promoting youth leadership and community engagement in his home country Georgia.

ABSTRACT

The Western Balkan countries have been on the EU enlargement agenda for more than a decade. Together with Montenegro and Serbia, Albania and North Macedonia are EU membership candidates. The EU integration path of both countries has gathered momentum during the recent years as a result of implemented reforms and EU's enhanced engagement. Although countries made significant progress on their quest to open accession negotiations with the EU, issues remain which impede the formal launch of the negotiations.

The research article explores the progress of EU accession negotiations with North Macedonia and Albania. The focus of the article is to identify major challenges and impending issues in the accession process whilst describing Albania's and North Macedonia's EU integration from the initial stage. The paper also analyses prospects of the accession process and suggests several ideas of resolving ongoing disagreements.

The COVID-19 pandemic has further demonstrated that the Western Balkan countries need European solidarity more than ever. The rollout of the vaccine and 'COVID diplomacy' in general, combined with increased investments have turned the region into the place of geopolitical competition between the EU, China and Russian Federation. The lack of EU assistance during the

start of the COVID-19 outbreak, arose frustrations among citizens in the Western Balkan countries. The EU now has the moment to prove the privileged relationship it has with this region.

Key words: Accession, Albania, North Macedonia, Democracy

1. INTRODUCTION

The European Union (EU) enlargement process is at a crossroad in the Western Balkan countries. In the midst of the multiple crisis, the EU tries to renew its commitment to the enlargement by making advancements in opening EU accession talks with North Macedonia and Albania, whilst Montenegro has received a green light to open the last chapter of its accession negotiations to join the EU. The COVID-19 pandemic has further illustrated that the EU's engagement in the Western Balkans is in need of revitalisation as non-EU actors, primarily China, are at the verge of acquiring leverage over policy choices in some parts of the region. The EU membership prospect has been a major driver for reforms in the Western Balkan countries and alternatively, the reduced EU engagement can diminish the implementation of reforms and overall progress in the region.

Albania and North Macedonia have been in the accession process for more than a decade. There are different perceptions on both countries in the EU, combined with bilateral issues among member states and candidate countries influencing the accession process. For example, Greece, a member of the EU, had been blocking the beginning of accession talks with North Macedonia until the name dispute was resolved. Although it was just less than three years ago that Greece signed the Prespa agreement with the Republic of Macedonia resolving the longstanding dispute over the latter's name, there are still issues which derail the start of the accession talks.

The purpose of this paper is to evaluate the progress in the EU accession talks with North Macedonia and Albania. It aims at understanding the complexities of the EU accession talks with both countries. The paper explores different aspects of the accession talks, including the outset, main obstacles and prospects. In particular, it intends to identify what the key challenges to EU accession talks with Albania and North Macedonia are. Methodically, the paper employs a qualitative analysis based on desk research using a variety of sources from academia, international organisations and think tanks and concludes that, while there is obscurity surrounding the lack of direction around negotiations, the Balkan region presents itself an opportunity where the Union can display European solidarity in light of contemporary existential threats to the EU.

2. LITERATURE REVIEW

In recent years, the academic community and experts have increasingly paid attention to the EU enlargement prospects of the Western Balkan countries, driven by the EU's re-engagement with the region, especially after Brexit in order to reinforce the most successful experiment in international cooperation in modern history, known as the 'European Integration Project'. In 2017, future membership of the Western Balkans was emphasised by the former President of the European Commission Jean-Claude Juncker (Belloni and Brunazzo, 2017). Having the Commission's idea of enlarging the EU to the Western Balkans endorsed by member states, the EU integration of the Western Balkans was revitalised and put on the EU policy agenda (Anghel, 2018). Besides various administrative and institutional requirements, the EU gives particular importance to issues related to the rule of law, judiciary system and human rights in the accession negotiations, which remain major impediments of the full integration of the Western Balkans into the EU.

The EU's conditionality is one of the challenges to the accession process as it is more contested on issues related to national sovereignty and identity. In East and Central European candidate countries, the EU had to comply on issues related to borders and minority rights, while in the Western Balkans, the issues are harder to manage (Džankić et al, 2019). For example, Bulgaria has been blocking the start of accession talks with North Macedonia over history and language issues. Scholars point out that changing domestic political environments, primarily fragile democracies in the Western Balkans, which have been backsliding for nearly a decade, make EU member states more concerned on issues such as democracy and rule of law (Bieber & Kmezic, 2016). There has been a tendency to shift from illiberal democracies to authoritarian style of governance. France mounted fierce criticism over the lack of reforms in North Macedonia, while Denmark and Netherlands voiced concerns on domestic instability and organised crime in Albania. So called 'Southern Route' overtook the 'Central' and 'Northern' routes in domains of human trafficking, drug trade and weapons smuggling into the heart of Europe (Kulenovic, 2019; Tarantini, 2016).

The considerable upheaval in the EU is another significant challenge to accession negotiations, driven by the fact that some member states are far too concerned with challenges within the EU. Their priority is to maintain the integrity and future of the Union and therefore, enlargement is of

negligible importance on the EU agenda (Economides, 2020). For example, France has been at odds with the opening of accession talks with North Macedonia and Albania, bolstering its argument that before adding new members the EU needs to improve its existing policies and lacks a guarantee that a candidate country will adhere to liberal democratic values after joining the EU (Smith, 2019). Another aspect of the EU's internal dynamic challenging the enlargement is a rise in anti-establishment rhetoric and protests which accuse the EU and domestic pro-European leadership in member states of distant, disconnected, and even unrepresentative rule (The Economist, 2018). A further explanation over the delayed accession talks suggested by some researchers is that potential migration flows from newly integrated countries pose threats for some sceptical member states. The demand of the Dutch government to the European Commission to suspend visa-free travel for Albanian citizens was a consequence of such perceptions (Toglhofer, 2019).

Debates on the accession talks with Albania and North Macedonia, as in the case of every Western Balkan country span from domestic political and bilateral issues with EU member states to ongoing crisis and disintegration within the EU. The following article will contribute to this debate with an additional dimension on potential solutions for disputed issues and existing challenges.

3. A HISTORY OF EU ACCESSION NEGOTIATIONS

The Western Balkan region has managed to be a stable and safe place during the last 20 years. Both Albania and North Macedonia have been progressing on their quest to open accession negotiations with the EU. In 1999 the EU adopted the Stability Pact for South East Europe which aimed at promoting peace and prosperity for the Balkan countries. Such steps demonstrate the strategic importance of the Western Balkan countries for the EU.

North Macedonia began its EU journey by signing the Stabilisation and Association Agreement with the EU in 2001 and three years later, Macedonia submitted the membership application in 2004. North Macedonia was indeed a regional front-runner among former Yugoslav states and was granted a candidate status in 2005 and thus, appeared on the future enlargement agenda (Karanfilova-Panovska, 2019). Since 2009, the European Commission has repeatedly recommended opening accession negotiations with North Macedonia. The country has undergone significant reforms which enhanced its credibility among EU member states. Two achievements

are of particular importance. Firstly, the 2015 Pržino agreement, which ended a deep political and institutional crisis and secondly, the 2018 Prespa agreement with Greece. It was undoubtedly a diplomatic breakthrough as North Macedonia managed to settle a near 30-year-long name dispute with Greece (Kulenovic, 2019). From 2008 to 2019 Greece vetoed the accession talks with North Macedonia. Having resolved the dispute, the EU formally approved the accession negotiations in March 2020. However, another obstacle emerged when Bulgaria vetoed the official launch of the negotiations over the issue related to language and history. Although the two countries signed an accord in August 2017 to settle disputes, Bulgaria considers that the implementation of the Friendship Treaty has been stagnant (Barigazzi, 2020). Thus, the unconditional decision to start accession negotiations with North Macedonia became conditional.

Albania was identified as a potential candidate for EU membership in 2003. Three years later, Albania signed the Stabilisation and Association Agreement in 2006 and extensively engaged with EU institutions. It has been an official candidate for accession since 2014, but the actual membership talks were recommended by the Commission in 2018. In recent years, Albania has embarked on a reform agenda aimed at approximating the country with the EU. Numerous sectoral reforms were implemented in key areas such as the judiciary, corruption and organised crime. Despite the progress, the fundamental problems remain unresolved, including the political polarisation and the transparency of the government (Fourmi, 2020). These factors prompt EU member states such as France, Denmark and the Netherlands to reject the opening of accession negotiations. In March 2020, the members of the European Council endorsed the General Affairs Council's decision to open accession negotiations with Albania, and in July 2020, the draft negotiating framework was presented to the Member States (European Commission, 2020). Today European leadership is uncertain and divided on when to launch the first intergovernmental conference with Albania. The COVID-19 pandemic further complicates Albania's EU accession negotiations as member states have their internal challenges to tackle and foreign policy priorities.

Both countries managed to make progress in fundamental reforms set out by the EU in 2018. The March 2020 decision indicated that member states were satisfied with the implemented reforms, albeit major reforms still need to be enacted, especially in the case of Albania, before the first intergovernmental conference starts. The need for more reforms was stressed by the EU High Representative for Foreign Affairs and Security Policy, Josep Borrell in his online conversation

with Atlantic Council, stating that the Western Balkans have a place in the EU (European Westerns Balkans, 2021). A majority of the EU member states are in favor of opening membership negotiations and have recognised the strategic significance of this process, but the accession conditionality and partially-met criteria in some areas remain as common challenges for both countries.

4. NORTH MACEDONIA AND RESISTANT EU MEMBERS

The settlement of an almost 30 year-long name dispute with Greece produced high expectations that the accession talks would finally start. Achievement of a milestone in North Macedonia's EU integration path is hampered by multiple factors, although the general assessment of the country is positive in the reports of the European Commission. It remains faithful to the reform-oriented agenda, but a number of member states either intend to have their own bilateral issues resolved with Skopje or demand more commitment in democratic reforms from candidate countries.

France has been a vocal opponent of the opening of accession talks with North Macedonia. The rejection is driven by France's insistence on considerable restructuring of the enlargement process. In his official statement, President Emmanuel Macron said that the dispute was about vision, as the EU in its current shape lacks ability to face modern challenges and handle crises within the Union (Cvetanoska, 2019). France has been pointing to democratic backsliding in EU member states across Central and Eastern Europe and therefore, Paris justifies its rejection by demanding a more rigorous approach to the enlargement process. This position was affirmed by the ambassador of France to North Macedonia in December 2019, saying that reforms in the accession countries must be substantial, not formal (European Western Balkans, 2019). Although France has been under fire for this 'historic mistake', it will be a strenuous task to pressure Paris to give up this approach unless there is some *quid pro quo* (Nielsen, 2019). Significantly toughened accession methodology may reassure France about the EU enlargement to the Western Balkans (Bechev, 2019).

Jeopardising relations with Bulgaria**,** have created hurdles on North Macedonia's EU path. The latest veto on the launch of the accession talks in December 2020 was based on a cultural dispute over Macedonian language. In fact, the problem stretches far beyond the language issue and has become a battle of historical narratives. Although North Macedonia signed the Treaty on Good

Neighborly relations with Bulgaria in 2017, the issue produces disparities over common history. A platform for discussions of such controversial issues was created in 2018, but a joint commission on historical and educational issues failed to make significant progress (Gotev, 2019). In public interviews, various Bulgarian officials claim that Macedonians are Bulgarians, adding the language spoken by the Slav Macedonian majority in the North Macedonia is Bulgarian or version of Bulgarian dialect at least (Kolozova, 2020). A few days before vetoing accession talks, the Council of Ministries of the Republic of Bulgaria promulgated a framework position on the EU membership of Albania and North Macedonia. Sofia declared that the accession talks were dependent on the proposed conditions. For example, Bulgarian government demanded the use of the phrase 'the official language of the Republic of North Macedonia', instead of 'Macedonian Language' (Council of Ministers of Bulgaria, 2020). In the same framework, Bulgaria demanded the Joint Multidisciplinary Expert Commission for Historical and Education Issues (under the Treaty on Good Neighbourly Relations 2017) to 'reach an agreement' regarding key events and figures 'from the period of our common history until 1944.' Hence, Sofia pressured North Macedonia to accept the Bulgarian historical narrative (Kolov, 2020).

Prior to the stumbling block of accession talks, Bulgaria sent the 'explanatory memorandum' to 26 EU capitals in August 2020, in which Sofia laid out its official position on a number of historical issues. The salient part of the document was the statement that 'the enlargement process must not legitimise the ethnic and linguistic engineering that has taken place in North Macedonia since WWII' (Bulgaria's Explanatory Memorandum, 2020; Georgievski, 2020). It is an explicit example of Bulgaria's attempts to include the bilateral issues in the EU negotiation framework. The doldrum between both countries is driven by domestic political reasons as well. Bulgarian government aimed at increasing electoral support among nationalist voters for the general elections in April 2021, while cabinet members in North Macedonia discerned that pro-Bulgarian positions would cause a wave of anger and protest in parts of the society, as it happened to Prime Minister Zoran Zaev last year in November, following his interview with Bulgarian media.

Despite it being five years ago when the European Commission issued a warning about the state capture in North Macedonia, it has noted progress in the judiciary and the fight against corruption in 2020 (European Commission, 2020). Indeed, conditions of democracy and rule of law in North Macedonia have not been the official causes of the recently blocked accession negotiations, but

concerns remain about the efficacy and independence of the judiciary. Judicial reform is a key priority for the EU and therefore, Skopje will have to implement all of the judicial reforms in order to retain the EU's support and not to induce anti-enlargement member states to further hesitate the accession process.

5. ALBANIA: CONTENTIONS OVER REFORMS

For Albania, unlike North Macedonia, the conditions of accession talks are not based on cultural dispute and historical narratives. The EU has expressed its willingness to approve the launch of negotiations as soon as Albania meets conditions set out by the Council of the EU in 2020. Although the country received the EU's official support last year in March, it was accompanied by additional homework. Before the first intergovernmental conference starts, it is mandatory for Albania to satisfy a series of conditions.

The adoption of electoral reforms in compliance with OSCE/ODHIR recommendations is one of the preconditions. It will ensure the conduct of overall elections with the full respect of European standards. For example, the long-disputed issue of financial transparency of political parties and campaigns needs to be resolved (Ivkovic, 2020). Electoral reform is a major condition as Albania's credibility of ensuring democratic electoral process has been under a cloud since 2019. In June 2019, street violence erupted during the protests in Tirana while opposition parties boycotted local elections and parliamentary activities, leaving the country in political polarisation (European Commission, 2019).

The fight against corruption and economic crime represents the field where Albania will have to demonstrate a track record. A Paris-based intergovernmental organisation, the Financial Action Task Force (FATF), established under G7 initiative, placed Albania on 'the grey list' in 2020. Alongside with Barbados, Botswana, Cambodia, Ghana, Mongolia and Mauritius, Albania is considered as a country which requires increased monitoring on financial transactions (European Parliament, 2020). The inclusion in 'the grey list' has had an adverse impact on Albania's reputation, as the credibility of its banks and financial institutions are being debased. The concern over this issue was raised by the EU Ambassador to Albania, Luigi Soreca. In his recent interview with News24, Ambassador Soreca has enunciated that the EU wants Albania to get out of that list as soon as possible and will continue to monitor the progress prior to the first intergovernmental

conference (Delegation of the European Union to Albania, 2021). It is not just the EU demanding tangible reforms in the financial sector, as the United States has also put pressure on Albania. There were three people in the party candidate lists who were designated by the US Department of State as being involved in corruption and were banned from entering US soil, including Tom Doshi, the chairman of the Social Democratic Party. Ilir Ndraxhi was allegedly involved in a drug trafficking case and placed 5th in the 2021 list of the Socialist Party. The US has repeated its position to Albanian parties to vet their lists of candidates and remove those involved in crime (Sinoruka, 2021).

The freedom of expression and media has been under the risk of state censorship since December 2019. The Parliament of Albania adopted a new law on media, the so-called 'anti-defamation package', followed by president Ilir Meta's refusal to sign the bill and harsh criticism from local journalists and the Council of Europe. Members of the European People's Party admonished Tirana about negative consequences it would pose, since the law contradicted the recommendations of the European community (Ivkovic, 2020). It was perceived as an attempt to muzzle the media as the law enabled the government to penalize critical media, especially digital outlets with an intention to 'regulate misinformation and hate' (Koleka, 2019). Even though the Venice Commission slammed this controversial law and urged Tirana to revise it, Prime Minister Edi Rama's cabinet still aims at enacting the law (Venice Commission, 2020).

Judicial Reform is among the six pre-conditions that Albania needs to fulfill before the first intergovernmental conference takes place. The latest conclusion of the Council of the EU reiterates that Albania needs to continue its implementation of judicial reform and functioning of the Constitutional Court and the Supreme Court. One of the major problems remains a shortage of judges. Due to dismissals and resignations of most judges in 2019, the Constitutional Court cannot hold plenary sessions, as the minimum number of judges required is six while there are only four judges assigned.

The ongoing political turmoil between the Albanian government, the President and the opposition further hinders the launch of accession negotiations. The recent Parliamentary election has further deteriorated the condition of democracy according to the latest Freedom House report, as Albania's democracy score has plummeted to an eight-year low and is ranked only 46% democratic (Freedom

House, 2021). Thus, Albania has been placed just above the threshold for a semi-consolidated authoritarian regime.

6. A WAY FORWARD

North Macedonia must resolve the tussle with Bulgaria if accession talks are to progress. Skopje should intensify diplomatic channels with pro-enlargement member states, primarily with the Tallin Group countries, and demand more pressure on Bulgaria to exclude bilateral problems from the enlargement framework. From the EU side, the Commission should enhance the dialogue on the establishment of an agreement over specific historical dates for joint commemorations and key figures, such as Goce Delchev, which is one of the provisions of the agreement on friendship, good neighborliness and cooperation between North Macedonia and the Republic of Bulgaria (Friendship Treaty, 2017). The EU can use its structural power for supporting dialogue through scientific exchange and inclusion of impartial experts and historians, not representing either side in the negotiation process. This bilateral dispute is a consequence of nationalistic sentiments in North Macedonia and Bulgaria, while both nations remain disconnected. For example, there is neither a direct railway connection, nor a highway between them, even though Sofia and Skopje are two of the closest capitals in Europe. Therefore, the EU should put more efforts in bridging Bulgaria and North Macedonia and thus, contribute to the establishment of good, neighbourly relations. Additionally, much more emphasis is required for the formation of a proper narrative on bilateral issues within the EU, meaning that it is not just the problem of North Macedonia. In the long-term it will create insurmountable obstacles, the threat of so-called "cultural vetoes" to the EU enlargement to the Western Balkans, as the region is replete with competing views and perceptions on history and culture. Member states must unequivocally affirm that bilateral issues should be resolved bilaterally and have zero connection with the Copenhagen criteria.

Albania will need more effort in strengthening democratic and judicial institutions and fighting against corruption. One of the traditional forms of corruption is police corruption in Albania. The causes of corruption include inadequate recruitment system and human resource management, outdated criteria of selection and lack of institutional control mechanisms (Dyrmishi et al, 2014). By transforming the promotion system, institutional environment and developing professional qualifications, corruption can be prevented in the police. In particular, an efficient anti-corruption

measure will be the establishment of a complaint system, which will encourage citizens to report cases of police corruption and ensure citizen engagement in fighting against corruption. Moreover, the independent institutions such as the Parliament and the Ombudsman office should intensify the external control of the law enforcement agencies by conducting regular public hearings and using their institutional power for promoting transparency.

Albania's justice system remains both highly corrupted and influenced by political actors. A key policy tool for increasing accountability and judicial independence and fighting against political corruption among judges is the judicial vetting system, suggested by the Venice Commission (The Venice Commission, 2016). The partial implementation of this reform brought dismissals and terminations of a large number of judges and as a result, the recruitment of the new magistrates has become problematic. The completion of the vetting reform requires a schedule of vetting process and hastened approach from the Independent Qualification Commission (IQC) which is responsible for leading the vetting in the first instance. The IQC should set timelines for cases and develop common decision-making on similar issues.

2021 Parliamentary elections on April 15th illustrated the main challenges of the electoral system in Albania. Although the parliamentary elections were generally well organised and the campaign was lively and inclusive, the high officials in the EU raised concerns related to the misuse of state resources or functions by the ruling party and other public figures (EU External Action Service, 2021). The recent electoral reform has been more of a technical improvement, rather than a fundamental change, which does not prevent informal financing during elections from both private and state sources. Establishing a competent and independent authority for auditing the finances of political parties will contribute to the transparency of political parties, while the public must be given access to the information on their financial activities. Last but not least, Albanian political forces should reach a compromise over the amendment of the anti-defamation law and safeguard freedom of the media, in line with the recommendations and opinion of the Venice Commission, which will diminish ambiguity in Brussels over the opening of accession talks.

The EU treats the accession negotiations with both countries as a package deal. Therefore, delayed reforms related to democracy and judicial institutions in Albania affect North Macedonian membership, while the Bulgarian veto on North Macedonia also impedes the overall process. For

achieving a final breakthrough in accession negotiations, countries have to take initiative and not let their challenges play in the hands of sceptical member states.

7. CONCLUSION

The EU accession negotiations of Albania and North Macedonia are bundled together. The EU leaders are now puzzled over Bulgaria's veto and the state of democracy and rule of law in Albania. It is argued that the membership process is a hostage to bilateral issues and domestic challenges, primarily elections within anti-enlargement member states such as France. The road to the EU is bumpy for both countries due to deep-rooted cultural disagreements and the EU's insistence on substantial reforms. In light of this uncertainty, the EU will have to come up with new incentives to prevent waning of the European project in the Western Balkans.

In the accession process, the EU will have to end 'arm twisting' and understand that ongoing cultural and historical disagreements require as much effort as it takes to resolve territorial and political disputes. Both sides should be debarred from bringing cultural issues to the discussion table. Where such pettiness persists, the launch of accession negotiations will face constant hurdles. The enlargement to the Western Balkans will reverberate across the EU in the coming period, as it is not just about adopting new members.

To sum up, a milestone in the path to EU membership is still obscure. It should be underlined that decoupling North Macedonia and Albania in the EU integration process will not overcome the current blockade. Unexpected contestations may occur in various forms on the EU level and in candidate states. What the EU can do at this moment is to acknowledge that the Balkan region is a place where the Union can display European solidarity and ability to respond to common challenges.

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