

# **THE FUTURE OF THE EUROPEAN UNION**

**DEMISTING THE DEBATE**

First published in 2020

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ISBN: 978-9918-21-032-9

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Suggested citation:

Harwood, M., Moncada, S., Pace, R., (eds), 2020. *The Future of the European Union - Demisting the Debate*. Institute for European Studies: Malta

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**Mark Harwood | Stefano Moncada | Roderick Pace (Eds.)**



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# Acknowledgements

We would like to thank all the authors who contributed to the book as well as those who provided a blind review of the chapters, namely Joe Burton, Marcello Carammia, Andre' P. DeBattista, Daniel Fiott, Kostas Ifantis, Daniella Irrera, Derek Lutterbeck, Susanna Thede, Michael J. Tsinisizeli, and Mario Thomas Vassallo. We would also like to thank Stefan Bezzina, and all the academic and administrative staff at the Institute for European Studies for their continuous support, and the University of Malta for having provided us with the working environment and the resources to finalise this publication.

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# Foreword

## European Integration's Extended Gestation: Forever half-pregnant

### Giles Merritt

Does Europe have a collective future, or will the coming years be marked by increasingly incoherent developments within the heterogeneous EU? There is no denying that the second decade of this century has seen a strong mood shift away from the inter-dependence and concerted actions that guided Europe's national governments since the end of World War II, and then since the fall of the Berlin Wall.

What connections, if any, are there between the paroxysms of Brexit in the UK and the varying shades of populism in continental Europe? The common denominator may simply be the painful economic pressures resulting from waning global competitiveness.

It is clear that the high ideals of the European project no longer exert the same political pull. The EU's dreams of progressing almost seamlessly from a trading zone to a shared political economy are not being realised. Where are the convergence policies that would exert centripetal rather than centrifugal forces? Where is the appetite for reforms leading to political union, and whatever happened to the idea of Europeans speaking with one voice?

If the EU continues along its present path, the verdict of history may well be that it achieved little more than the welter of regulations needed to ensure trade flows. In geopolitical terms, Europe as a major player on the world stage may have been an illusion largely created by aggregating national statistics.

\* \* \*

It is not inappropriate to start a disquisition on the problems clouding Europe's future by putting Malta under the microscope, even though it accounts for only 0.1 per cent of the European Union's population. The Maltese microcosm tells us at a glance much of what awaits the whole of Europe in the 21st century's increasingly difficult global environment.

We Europeans were some 15 per cent of the world's people forty years ago, and now only around seven per cent. We may speak dismissively of emerging economic giants like China, India and Brazil, suggesting they are copy-cats who use underhand

methods to invade our markets, but the reality is that as well as being younger they are more vibrant.

Alerting Europe's electorates to the consequences of demographic change has been frustratingly hard. Voters do not want to hear about it, least of all about the implications of ageing, so few politicians have had the courage to tell them.

Malta's demographic roller-coaster is a useful example of the way that ageing and a low birth rate can radically reshape a society over a comparatively short space of time. Its population profile looks like an alpine peak; having risen steeply, it will also fall precipitously.

In 1950 there were fewer than 320,000 Maltese, and since then the population has increased at about fifteen times the overall rate of the EU. But it is peaking, so by 2025 it is due to have shrunk from its present high point of 475,000 back down to 425,000. By the end of this century, Malta's population will – at 340,000 – be almost back to the level of 150 years before.

Naturally, demographers' projections do not always work out with total accuracy, but usually they beat those of economists into a cocked hat. So through the lens of tiny Malta we can discern the much larger picture of a radically changing European society and its workforce. Maltese may complain of being too crowded, yet mostly they accept the Government of Malta's pronouncement that to fuel economic growth they need more migrant workers.

This is the situation of the European Union in a nutshell. Observers of the EU scene may highlight the intricacies of its institutional developments, its successive enlargements and its regulatory outreach, but these are of far less consequence than the societal shifts within the member states. The focus of the EU – the 'Eurocrats' of the commission and the MEPs – is correctly on detail, but it is nevertheless time to readjust that focus and bring the big picture into sharper definition.

Europe is shrinking in absolute terms as well as proportionately in a world headed for 10 billion people by mid-century. A head count of all Europeans, not just the EU's citizens, reveals a total population of 740 million that is due to fall dramatically to 707 million by 2050.

More than half a century of plummeting birth rates has taken its toll, leading to downward spirals of manpower in most parts of Europe. The next 30 years will see the EU's working age population drop from the present 240 million to 207 million. That figure assumes that the current rate of economic migrants will be maintained; if not, the EU's workforce will number only 169 million by mid-century.

The average fertility rate in Europe is now 1.6 children per couple – slightly above Malta's 1.53 but far too low to reverse both the shrinkage and ageing trends now exerting an iron grip on the European political economy. The growth in the numbers of older people is not only a seemingly insoluble fiscal problem but also one that will challenge our basic concepts of democracy.

How EU governments will fund the steep increases in pensioners is an open question. In some countries, Italy for example, the proportion of retired over-65s to the total population will rise from 2.7 per cent today to 18.8 per cent in 2050. For Europe as a whole, the 'dependency ratio' of working age people to pensioners will, over the 40 years to mid-century, have halved from 4:1 to 2:1.

State-funded pension systems are already creaking, and it is hard to see how they can survive in their present form. The OECD foresees crippling burdens on national economies, reckoning that by 2060 the gap between pension costs and contributions will average some 10 per cent of an OECD member country's GDP.

That looks unsustainable, and yet it is only half of the equation. The other half is the political implications of the coming 'generations war'. How willing will today's 'millennials' be to pay for Europe's ageing when they are themselves under-privileged? And what will be the response of the under-50s to finding themselves electoral minorities in most EU countries?

The temptation is to use EU-wide statistics when discussing Europe's demographic difficulties, but these cloak a greater problem. The nations of Europe are being divided by population shifts, with the winners and losers from the free movement of people widening the wealth gaps the EU had set out to narrow.

Southern Europe's outlook is far from sunny. Portugal may, by 2060, see its population dwindle by 40 per cent, reducing from 10.5 million in 2010 to 6.3 million. Spain's present 47 million will by mid-century drop 11 per cent, or 5.3 million fewer people; while Italy's population of 62 million will decline to 55 million.

These future decreases are comparatively modest when set against the hemorrhaging of people from the EU's newcomer states. The eleven formerly communist countries have seen their combined populations drop to 103 million from 111 million, while the Baltic states have suffered an overall 25 per cent reduction. Romania's outlook is even worse: it faces a population cut of one third by 2060.

European public opinion has so far reacted to such projections with massive indifference, but that may be about to change. What will certainly stir protest and demands for new policies and more effective actions is the looming healthcare crisis threatening most parts of Europe. By the end of 2019, approaching a quarter of a million medical doctors will have stopped practising, reducing their numbers from 1.8 million to 1.57 million.

A combination of early retirements, inadequate medical training arrangements, and an increasingly ailing population of older people is creating a perfect storm. In Austria, 40 per cent of doctors will have taken retirement by 2025, and the pattern is similar across Europe. Ageing is hitting the healthcare sector too, with almost four doctors in ten now over 55 years old.

The writing has been on the wall for some time. The WHO's analysts rang their alarm bells almost 15 years ago, and the European Commission followed up with

a Green Paper and an 'Action Plan'. These were generally ignored, most probably because the health services of the richer western European countries were able to tap the new resource of healthcare workers from the new member states.

In its way, the coming healthcare crisis illustrates the impotence and even irrelevance of the EU and its institutions. Critics accuse Brussels of wanting to create a European super-state, but in truth its powers have been steadily sapped by its member governments. EU leaders meet more frequently than ever to confer as the European Council, but they do so because they have to wrestle with problems stemming from reduced rather than greater intra-EU cohesion.

What, then, does the future hold for the great political experiment of European integration? Is the basis of sixty years of peace and enlargement strong enough to relaunch the project? Will external pressures ranging from security dangers to failing technological supremacy awaken national politicians to the merits of EU cooperation?

The auguries are discouraging. Just as the Great War of 1914–18 is widely seen as the point at which the 20th century began, the worldwide financial crisis of 2008 seems to have characterised this century of rising Asia. Yet rather than respond to the new international conditions that redefine even the largest and most influential EU states as small countries, Europe's governments have reduced their collaboration, preferring to go their separate ways.

When Jean-Claude Juncker took over as President of the European Commission in autumn 2014, he labelled his five-year mandate a "last chance" for Europe, and promised bold new policies to stimulate investment and light red tape bonfires. The consensus amongst commentators, however, is that the EU has failed to kick-start investment and faster growth and has not delivered on goals that ranged from banking reforms to ambitious energy and digital market initiatives.

The EU's member states must bear much of the blame, with unforeseeable factors like the 2015–16 'migrant crisis' also playing a part. Now, the talk in national chancelleries is of a fresh start, with four areas to have top priority up to 2024.

The thinking is that Europe must, above all, recover its global leadership on environmental disciplines to combat climate change. On top of that it must tackle eurozone reform, the twin problems of ageing and migration and, not least, the many challenges of the Digital Age.

These are the preoccupations of policymakers and business leaders, but what of Europeans who increasingly are voting for populist and often anti-EU parties? What do citizens want, and how much support are they prepared to give to a mechanism many see as distant, unelected and unresponsive?

Complex cross-currents were revealed in a survey conducted for my own Brussels-based think-tank 'Friends of Europe'. When the pollsters questioned 11,000 people across all EU member states, they received some surprising answers. Four-fifths



oppose “less Europe” and moves to hand some of the EU’s powers back to national governments, while an overwhelming nine-tenths would not want to see any return to a mere trade zone.

At the same time, almost half questioned the EU’s relevance to their own lives, and two-thirds thought that they would not be much worse off if the EU were to somehow disappear overnight. Yet 40 per cent would like an internet-enabled vote on EU-level issues, 25 per cent would like to directly elect EU commission presidents, and 20 per cent would welcome a voice in how EU money is spent.

These are not ideas that get much play in the EU’s attempts to gauge public opinion, notably its Eurobarometer polling. But they reflect the way Europeans’ attitudes and expectations are becoming more complicated and fragmented.

A further complication, making discussion of Europe’s future akin to a game of three-dimensional chess, is the growing debate among member states over whether there should be a two-speed EU. Advocates of an inner core of ‘progressive’ countries and an outer ring of ‘conservative’ argue that it is the only realistic solution.

Set against concerns that a two-speed Europe entailing first-class and second-class citizens would spell the end of the EU, there is the reminder that this is already the case. Thirty years ago, the discussions leading up to the Maastricht Treaty of 1992 clearly set out the fact that creating the euro as a common currency would mean that countries with a derogation from eurozone membership would be in an outer ring.

It was also an integral element of the EU enlargement negotiations that the mostly ex-communist countries could not, or should not, adopt the euro. That is more or less where we still are, with roughly three-fifths of EU countries in the inner core of the eurozone. What was not understood at that time, though, was that the single currency would create economic divergences between countries rather than the convergence promised by its creators.

The upshot is that Europe is now riven by deep divisions, some of them inherent in the problems created by one-size-fits-all policies, others aggravated by the decade of austerity measures introduced in the wake of the 2008 financial crisis.

The north-south split between the ‘Club Med’ countries and the richer northern and Scandinavian countries has been further widened by the sharp differences that now exist between Paris and Berlin on reforming the eurozone. Germany, backed by the Netherlands, staunchly opposes new collective debt ideas. As the euro’s chief beneficiary, it may be signing its eventual death warrant.

There is also the east-west schism. The six founding member states together with those other richer countries that made up western Europe’s EU-15 treated the newcomers of the 2004 ‘Big Bang’ enlargement in a somewhat cavalier and condescending manner. They are now reaping the whirlwind of the seeds sown then, with the Visegrad states not alone in warning they will use the veto powers of membership to avoid the EU’s “interference” in matters they consider “sovereign”.

There seem two possible outcomes: either the EU's inertia and inability to grasp political nettles leads to an unsatisfactory business-as-usual approach, or there is disruptive reform. The former means the present frictions will persist and will probably be accentuated by widely projected stagnant economic growth.

The latter course of reform might lance many boils of discontent, but would open up bitter re-negotiations over what it means to be European. The outer ring of countries no longer to be bound by the most unyielding of EU disciplines would be relegated to a different legal framework and all that this implies.

These possibilities have not so far impinged greatly on public opinion. If and when they do so they will certainly stoke doubts over the value of the European 'project'. The background for many Europeans is security, and a sense that the EU is not delivering the stability and sense of foreign policy coherence they had been led to expect.

The migration issue has been throwing into stark relief the volatilities of the Middle East, the Gulf region and northern Africa. It has shown how far from reality are Europe's foreign affairs ambitions. The EU's Common Foreign and Security Policy, in spite of its creation of a 'foreign ministry' in the shape of its EEAS action service, clearly remains much more a trade and economic arm than a diplomatic one.

Successive opinion polls have shown that there is much support for a more muscular EU, with respondents apparently yearning for "a European army". As with so much of the Great Debate over Europe's future, such simple solutions would raise hugely complicated new questions over the political mechanisms that would be needed.

In other words, Europe remains in the place its policymakers have always feared and denied: it is half-pregnant.

# Introduction

## Europe's Lifelong Companion? The Debate on the Future of Europe

### Roderick Pace, Mark Harwood, and Stefano Moncada

The discussion of the “future of Europe” has become the European Union’s lifelong companion. It has evolved in successive phases. The current one has been shaped by the 2008 financial crisis and the “great recession” which it had provoked, as well as a number of more recent developments such as those created by USA policies. The great recession caused havoc everywhere, and brought to the surface several issues which had been simmering for many years. No member state was immune to its effects, but some suffered more than others. The southern EU countries, particularly Greece, saw their financial systems shaken to the foundations: economies contracting; public debt soaring; unemployment, especially among the young, rising to historic proportions; poverty and hardships becoming the new norm for sections of their societies. The fundamental financial support provided by the European Union during the financial crises came with strings, which some saw as being too stringent, not fairly applied to all countries, and restraining the room for manoeuvring to support the most vulnerable. This led to public anger, governments were dethroned and newer, often fringe parties, came to the fore. Populism grew rapidly and Euroscepticism increased.

In 2015, as the European economy began to grow slowly and better times appeared on the horizon, a crisis erupted among the EU member states on who should take responsibility for under a million Syrian refugees who moved westwards through Turkey in search of safety and a better life. Just when it seemed that spring was finally about to displace the long winter of economic gloom that hung over the EU since 2008 and which had almost capsized the monetary union, a major political crisis erupted once more in Europe. Internal disagreement on the management of migration predate 2015, but the events of that year gave it a fresh impetus. The situation has changed very little since then and the reform of Dublin 3 has not been completed. The legacy of the agreement struck with Turkey was questioned by many, as the EU conveniently sidestepped its duty to uphold fundamental human rights so as not to address internal discord on migration. The handling of migration is one of the most enduring problems which the EU has had to face.

Political upheavals are part of the tissue of any polity, not least the EU. Crises have a way of shaping and moulding institutions, though not always in a positive way. In the midst of the changes just summarised, the EU experienced a few positives as

well. BREXIT did not provoke the predicted rush to the exit; Eurosceptic parties did not make substantive gains in the 2019 European Parliamentary elections, and voter turnout increased. Several new initiatives such as the launching of a Permanent Structured Cooperation (PESCO) and the proposal to establish a European Defence Fund (EDF) signalled a new vitality in the development of European defence. They are the first steps toward the emergence of a European defence identity, which for the time being remains vague. Furthermore, the process of EU enlargement continues, with some expected delays and perhaps politically naïve postponements, however there are little doubts that the trajectory converges toward new member states joining the EU; it is rather a question of whether it happens in the middle or long run.

However, a new global recession has appeared on Europe's radar which could herald a period in which public sentiment will turn against the EU making reform more difficult. The new Commission led by Ursula von der Leyen wants to make Europe the first green continent by 2050 and fit for the digital age. The new Commission leader has reasserted Europe's unwavering faith in multilateralism. The EU does not seem to be discouraged by the negative turns in trans-Atlantic relations, the slow pace of negotiations in Trans-Atlantic Trade and Investment Partnership (TTIP) nor by the Trump Administration's behaviour in the Middle East, the Gulf and his (and only his) tariff wars which are mostly responsible for the bad turn in the global economy. It offers responsible leadership in world politics in coalition with other states. Ambition is the kind of enhancer which the EU needs in this hour though we should be wary not to fall victims to our own rhetoric.

Public support for the EU is buoyant, and this has both positive and negative aspects. Public support is needed to carry out reforms; but the level of support also shows the strength of public expectations. If Europe disappoints its citizens, the backlash is likely to be swift and severe. We need to understand what Europeans fear most in order to know what they want most. The survey results of a Special Eurobarometer (2018) show that 61% of Europeans are optimistic about the future of the EU but more than a third (34%) remain pessimistic. Seven EU member states show levels of optimism below the EU average. These are Britain (which is leaving), the Czech Republic and Hungary, as well as four southern EU member states namely Italy, Cyprus, France and Greece. Without doubt these states constitute the front-line where the battle for the future of Europe has to be fought and won. However, it is myopic to think that the future of Europe concerns only them. EU reforms need to lead to substantive improvements for all European citizens because that is what Europeans expect. The EU cannot wriggle out of this without risking a lethal backlash. Hence the next five years are critical, during which the EU needs to achieve a fundamental change in the lives of people or risk the return of its opponents with greater vigour and purpose.

The 2018 Special Eurobarometer indicates what kind of changes Europeans want. They are not preoccupied with institutional reform, important as these are, but with the key problems of daily life, the way they live, their existence. The survey asked

respondents to name three preferences from a list of policies that would best describe their ideal future for the EU. Equal wages for the same job across the EU came first cited by 38 percent of respondents, followed by a high level of security and a minimum guaranteed healthcare which came joint second with 32 percent. Next came fair and equal access to education, a guaranteed minimum pension, gender equality, renewable energy and reduction in food waste. “A real government for the whole union” came last with just 16 percent. It appears as if the key areas where Europeans would like Europe to focus its attention on, are domains where the member states still have retained the power to legislate, and where the process of Europeanisation has been slower. Furthermore, these are all issues on which, as experience has more than once shown, a determined political opposition can make noticeable gains in public support. It does not require a lot of effort to convince citizens particularly in hard times, that wage inequality, insecurity, inadequate healthcare systems, low pensions, gender inequality and food wastage are all the fault of the EU. They have been programmed to believe this because “blaming it on the EU” has been a favoured tactic used by many governments to cover up their policy failures. Knowledge of this predisposition lends urgency to reform.

The reform of the EU institutions remains crucial but should not be pursued at the expense of those policies whose improvement will make more Europeans feel comfortable in the EU. The EU faces a future in which demographically it will be among the oldest and the smallest of the world’s big players. Its relative importance in the field of technology is declining as new players such as China and India have entered the arena. Notwithstanding, it remains a community of democratic states where innovation and learning still provide it with the factors which it needs most to remain ahead of the game. This is not a time for individual member states to abandon the flock in search of unilateral advantages – which will probably remain as elusive as the search for Nessie. It is a time for European collective action.

This book does not cover all the issues on the future of Europe, but it focuses on some of the more important ones. The Institute for European Studies adopted this theme for this year’s annual publication because the subject is topical and relevant both for the EU and Malta. The authors come from different disciplines, and their task was not confined to writing what some would consider to be “dry” academic pieces, but chapters which are accessible to all. Hence, they were asked not to shy away from treading into the domain of normative perspectives that lie at the basis of this discussion or to paint their images of future European scenarios. These chapters can be grouped under four broad headings:

1. Remodelling the European Union
2. Europe in the World
3. Security Challenges
4. Europe and migration.

When the Institute issued the call for expressions of interest for contributions to this volume, the gamble that was being taken – which is normal in such projects – was clear: the call could pass unnoticed or attract proposals which would be difficult to sew together into a coherent piece. In the end not only did the worst-case scenario fail to materialise, but we received various contributions of very good quality from which we selected thirteen.

In the foreword, Giles Merritt makes a strong plea that what Europeans should be worrying about most are the societal shifts that are taking place in our societies: “Observers of the EU scene may highlight the intricacies of its institutional developments, its successive enlargements and its regulatory outreach, but these are of far less consequence than the societal shifts within the member states. The focus of the EU – the ‘Eurocrats’ of the commission and the MEPs – is correctly on detail, but it is nevertheless time to readjust that focus and bring the big picture into sharper definition”.

## **Remodelling the European Union**

Sergio Fabbrini refers to the ‘holy’ alliance between populism and nationalism which has led to the re-affirmation of the principle of national sovereignty or sovereignism in the EU. National governments have gradually assumed more power in EU policy-making, but this has not led to appreciable improvements. Notwithstanding this, “the opinion persists that the divisions between states can be managed through ordinary negotiation within the intergovernmental governance regime”. For Fabbrini, the solution lies in decoupling or carving out the political union from the current institutional framework to create a pluralistic Europe based on a political pact – a federation – between the core countries of the Eurozone, which would become the fulcrum for managing other crucial core state policies, and an economic pact between the latter and the other countries which are part of, or want only to be in, the single market.

The chapter by Dimitris N. Chrysochoou then approaches the argument from a unique angle. His main aim is to find out whether a conceptual image of the whole can be drawn – a portrait of ‘European “politeia”’, which also sketches out some potential end states. He discusses the notion of the EU as a ‘Republic of Europeans’ as expressed by Kostas A. Lavdas and Chrysochoou himself in 2011; namely a civic-oriented union of diverse but fellow-Europeans who can be taken as ‘symbiotes’ in Althusius’ sense, meaning: ‘participants or partners in a common life’. In sum, can there be a union in and through which established liberal polities transform themselves into an embracing ‘politeia’?

Jean Claude Cachia analyses the outgoing President Jean-Claude Juncker’s vision of the future of Europe by reference to his state of the union speeches between 2015–18. Juncker’s vision of the future of Europe was underscored by the need to secure the European project by bringing it closer to its people, which required the EU to tackle

further reforms including establishing one President for both the Council and the Commission and transforming the EU into a 'quasi' federal state.

Mark Harwood assesses the reaction of the European Parliament (EP) and its political groups to the debate on the Future of Europe. The political groups within the parliament changed as did the political balance between them, impacting the Future of Europe debate in the chamber. Ultimately, the Future of Europe debate was propelled by the distinct impression that the EU citizens had lost faith in the European Union, and no institution was better placed to discuss this than the EP since it is the only directly elected institution and the only EU institution where a wide range of European political beliefs are represented. Harwood's analysis focuses upon the EP groups in the 2014–19 legislature.

Harwood shows that the majority of MEPs favoured the concept of 'more Europe', with greater powers for the European Parliament, a diminished role for the member states via restrictions of their veto and the recognition of the Commission as the Union's government with the Council and the EP as the Union's legislative branches. It was clear, he concluded, that in discussing the Future of the Union, the mainstream groups were largely in favour of 'more Europe' while the peripheral groups were heavily opposed; both those on the left and on the right.

## **EUROPE IN THE WORLD**

The first chapter in this section was written by Richard Pomfret and focuses on the evolution of EU trade policy, especially since the adoption of the 2015 "Trade for All" strategy. This strategy confirmed the abandonment by the EU of using trade policy as foreign policy. It also meant that the main objective was to open the EU to trade in support of participation in global value chains. Pomfret analyses the hierarchy of the EU's trading arrangements, the 'pyramid of preferences' which it gives rise to, as well as the evolving trade policy.

As to the future, given that the USA withdrew from its leadership position in promoting the liberal multilateral trading system, the EU has acknowledged that it has to become more proactive. This may encounter some internal tensions, as several member countries have strong illiberal political parties that are explicitly critical of globalization. However, there are strong countervailing forces, especially in Eastern Europe, in countries such as Poland and Hungary, where concerns over political constraints emanating from Brussels coexist with recognition that a positive economic development since the end of central planning has been due to their ability to participate in global value chains.

Bichara Khader looks at the EU's relations with the Arab world especially after the Arab Spring. His candid assessment is that European policies, towards the Arab and Mediterranean countries, since 1957, pursued the same objectives: energy, market, security. Other objectives such as conflict resolution, human rights, and democracy promotion have often been mentioned in the official EU documents but the

discrepancy between rhetoric and deeds has been marked. The European role in the resolution of the Arab-Israeli conflict has been marginal, declaratory, often hesitant, and incoherent. Although all agreements between the EU and Mediterranean and Arab countries include a Human Rights clause based on the respect of democratic principles, the EU has always pursued good relations with authoritarian Arab regimes, which often paid lip service to reform and never engaged in real democratisation.

Khader observes that although the Arab Spring prompted the EU to launch new policy initiatives, there is no clear reference in the policy documents to the Arab World, Arab Youth or Arab Identity which is not a trivial omission. Instead, reference is made to “Southern neighbourhood” or “Southern Mediterranean”, but Yemen and Bahrain do not form part of these. He describes the 2016 EU Global Strategy’s objectives as a “remarkable exercise in fantasy”. He welcomes the renewal of the dialogue between the EU and the League of Arab States.

## **SECURITY CHALLENGES**

Four chapters cover some of the security challenges facing the Union: two focus on cyber security and two on defence. The chapter by Valentina Cassar refers to the changes that have taken place in the USA since the start of the Trump Administration, and its insistence that Europe should take its fair share of the defence burden. The recent efforts at strengthening the EU’s “security and defence” dimension are by no means new, but Europe has still to define its strategic outlook. She argues that the future of European security and defence remains embedded within the framework of NATO. The EU knows that it will never achieve complete strategic autonomy and so its main objective is to keep the USA committed to the defence of Europe.

The chapter by Roderick Pace looks at the Parliamentary dimension of the EU’s evolving defence policy. The writer argues that since the EU is a union of democratic states, parliamentary scrutiny of the EU’s Common Foreign and Security and Policy and the Common Security and Defence Policy (CFSP-CSDP) is necessary. The European Parliament cannot achieve scrutiny on its own but needs to cooperate strongly with national parliaments (inter-parliamentary cooperation) who are the only ones capable of scrutinizing what their national governments are doing and agreeing to in Council. Yet not all the national parliaments have shown a similar readiness to do this, and some lack the necessary resources.

Pace argues that military power can strengthen the EU’s traditional ‘civilian power’ characteristics and its ability to promote democracy, the rule of law and human rights. The Union cannot participate in peace-keeping and peace-making missions, conflict prevention and conflict management, without its own military assets and strategic autonomy. Military force can be used for civilian ends. At the same time, the meaning of strategic autonomy and ‘principled pragmatism’ touted in the EU Global Strategy are scantily defined and it is not clear how they will be interpreted. A lot is happening and is likely to happen in the CFSP-CSDP, and the role of parliaments



becomes crucial not only in exercising oversight but also in developing policy while ensuring that the Union's traditional approaches in foreign policy are adapted to our times and preserved as guiding stars of the EU in world politics.

The other two chapters in this section, written by Agnes Kasper and Vlad Alex Vernygora, focus on cybersecurity; a topic that has reached the top of European security agenda in the last decade. In the first chapter dealing with cybersecurity governance, Agnes Kasper argues that while the 2013 Cybersecurity Strategy focused almost exclusively on the importance of cybersecurity for the proper functioning of the single market, the 2017 version extended its purview to the analysis of malicious cyber activities that threaten the political integrity of member states and the EU as a whole. This shift in coverage of the two strategies bears testimony to the changes that have taken place in recent years following increasing signs of external cyber meddling in the internal affairs of states. Cybersecurity is indicative of the many different threats to which the individual citizen is exposed. The EU's cybersecurity strategy has to protect the same core rights and values as in the physical world.

The last article by Agnes Kasper and Vlad Alex Vernygora calls for the establishment of a 'Cyber Maastricht', a model of which could be constructed on three pillars: Resilience, Deterrence, and Defence and International Relations/IR. The most important thing is the nature of the elements and interrelations between the proposed pillars as foundations for identifying new governance mechanisms and institutions.

Cyber-defence is part of the EU's broader cybersecurity policy, but it is still unclear how it fits into the concept of strategic autonomy and security union, whether strategic autonomy includes EU level operational capabilities, and if in the affirmative, what kind. Currently, there are initiatives to boost operational capabilities of member states and foster cyber-defence innovation in the EU (for example in the framework of PESCO and the European Defence Fund).

## **EUROPE AND MIGRATION**

Amelia Martha Matera traces developments from the Dublin III to the stalled Dublin IV Regulation whose most important provisions stipulate that the country where refugees enter the EU to seek international protection is responsible for their asylum application. This implies that EU member states, which consistently receive large numbers of refugees, are forced to process them and are at a disadvantage compared to those which receive none or few. The solution is to find a burden sharing formula to which some member states are holding up. Hence the passage to the approval of Dublin IV has been blocked. Expert opinion on the effects of Dublin IV is mixed: some doubt whether the proposed changes can fix the problem.

The last chapter written, by Nadia Petroni, assesses EU policy on irregular migration and its incoherence. One of the major obstacles in formulating a coherent policy is the variety of policy preferences across the EU and fragmentation. One of

the reasons for this fragmentation is that at the national-level policy approaches are deeply rooted in historical legacies as well as political, economic and social factors, including issues of religion and cultural identity. Moreover, the asymmetrical impact of irregular migration on the EU member states, mainly due to geographic location, has significantly influenced their approaches. Following the influx of irregular migrants in 2015, the Commission and European Parliament's stance changed from promoting the rights of asylum seekers to satisfying political interest in the Council.

This book represents the second volume in the Institute's annual publication series; a series which began in 2018 with our assessment of the Maltese Presidency of the Council of the EU. As a teaching and research Institute within the University of Malta, these publications are a means of contributing to our research aims and the body of knowledge on Europe, Malta, and the Mediterranean. This volume aims to provide an engaging and informed discussion of a topic which has always and continues to dominate European studies. We would like to express our thanks to all those who contributed to this volume, especially the anonymous reviewers and the type editor.

# **Part 1: Remodelling the European Union**

## Chapter One

# Decoupling and Federalizing: Europe after the Multiple Crises

**Sergio Fabbrini**

### **Abstract**

The 2010s multiple crises brought to the surface of European politics a division on the very rationale of the integration project. The latter has been challenged by nationalistic parties and governments under the banner of sovereignism. In fact, the dramatic consequences of secession (from the EU) even for a country such as the United Kingdom have led to an interpretation of nationalism as sovereignism within the EU rather than secession from the EU. To weaken the sovereignist challenge, it is necessary to free the EU from the tyranny of 'one size fits all', acknowledging the difference between the countries that need or want to move towards an 'evercloser union' and those which wish to participate only in a single market. This acknowledgement should lead to negotiations, between national and community leaders, for institutionalizing, within the single market, a distinct federal union (around the Eurozone member states), governing traditional core state power policies through a separation of power system. This would amount to a necessary differentiation for undermining the sovereignist challenge. The single market and the federal union should have different legal settings, although the member states of the latter would participate in the functioning of the former, according to rules that would prevent them acting en bloc. Decoupling is a condition for bringing federalism back again to the European integration project, although the federal model which should serve this purpose needs to be based on the experience of federations formed by aggregation and not disaggregation.

### **Introduction**

Since the 1992 Maastricht Treaty, the EU has come to be structured on a dual constitutional or governance regime: supranational in the policies of the single market and intergovernmental in the policies concerning traditional core state powers. The 2009 Lisbon Treaty abolished the pillar structure introduced in Maastricht, but it kept the basic distinction between governance regimes. The supranational governance is organized around a triangulation between the European Commission (which has the monopoly of legislative initiative), the Council of Ministers or Council (representing

the functional ministers of national governments) and the European Parliament (elected directly by the European citizens since 1979), both having the legislative power of approving Commission proposals, with the European Court of Justice playing the role of supervising the constitutionality of directives and regulations approved by the two legislative chambers. Intergovernmental governance circumscribes the decision-making power to the institutions representing national governments, the Council, and particularly the European Council of national government leaders), thus delimiting the role of supranational institutions (such as the Commission, the European Parliament, and the European Court of Justice) (Fabbrini, 2015). This differentiation in governance has to do with the nature of the policies at stake. When the policies concern core state powers (such as security, foreign relations, home affairs and asylum policy, migration or the economic policy of the single currency area – here defined as Eurozone), then national governments claim to keep control in their hands, while this is not the case for the single market policies which are of low political salience (Genschel and Jachtenfuchs, 2014).

The multiple crises of the 2010s have affected the intergovernmental regime. They have shown the institutional inadequacy of the latter in facing existential threats. This, however, does not mean that we should assume that the supranational regime would have guaranteed a better outcome. Nevertheless, the intergovernmental governance of the multiple crises brought to the surface of European politics new divisions among EU member states and within each of them. Particularly, it led (for the first time) to divisions on the very rationale of the integration project. The latter has been challenged by nationalist and populist parties and movements that created a 'holy alliance' under the banner of sovereigntism in order to claim more decision-making autonomy for the 'nation states' within the EU framework. In fact, the dramatic consequences of secession (from the EU), even for a country such as the United Kingdom, have led to an interpretation of nationalism as sovereigntism within the EU rather than secession from the EU. Post-Brexit sovereigntists want to remain within the EU, although they aim to hollow it out (i.e. bring it back to the status of an economic community, forgetting the aim of building an 'ever closer union'). Sovereigntist forces not only have a hard time with the interdependencies of the EU system, but also with the checks and balances rooted or introduced in the national systems. Indeed, when they get full control of national governmental power, as in Hungary or Poland (Kelemen, 2015), they have not hesitated from weakening the rule of law foundations of their nation state. Sovereigntist political forces have gained control of several national governments in east and central Europe, and are becoming increasingly influential in the political processes of several countries in western Europe (as in Italy after the parliamentary elections of March 4, 2018, see Jones, 2018).

The 'holy' alliance between populism and nationalism has led to the re-affirmation of the principle of national sovereignty (sovereigntism) because of the institutional weakness of the integration process. Certainly, nationalist populism in western

Europe has been fed by social inequalities which the governance of the Eurozone has been unable to prevent, but it has also been strengthened (Matthijs, 2017) by badly managed migration and security policies. On the other hand, the populist nationalism of east Europe has been fed mainly by the challenges to identity produced by mass immigration of third country nationals which the EU has had difficulty in governing through a comprehensive approach. The multiple crises have been due to objective factors, such as speculation on financial markets, irresponsible policies in managing national budgets, and mass movements of populations to escape hardship or wars; but their effects have been amplified by the inadequacy of the intergovernmental system designed to govern those factors. This inadequacy is the result of interstate compromises which have proven insufficient compared to the challenges to be faced (Fabbrini, 2019a); compromises that reflected different state views on the project of integration. Those compromises have prevented the EU from acting effectively and legitimately, thus feeding the ill-ease which is manipulated by populists and nationalists. In addition, those compromises have differentiated the EU internally, but without weakening the orthodoxy which has continued to defend the principle that the integration process must continue to be unitary and inclusive. However, there cannot be one solution for different situations. The idea of one size fits all (well criticized by Schmidt, 2016) has produced uncertain policies, which for some are too limited and for others too invasive. This is all to the benefit of sovereignists. Here, I will proceed as follows. First of all, I will discuss the intergovernmental implications on the EU as a unitary organization. Secondly, I will conceptualize the strategies for going beyond the crises, arguing on the need to decouple the EU into a political union within an economic community. Thirdly, I will elaborate the model of the federal union as the institutional form for the political union. Decoupling the EU is thus the condition for recovering the federal project in Europe. I will then conclude by bringing home my main argument.

### **The implications of intergovernmentalism**

The EU's uncertainty in dealing with the euro crisis, the arrival in Europe of a massive number of political refugees and economic migrants, and terrorist attacks on the civilian population in European cities can be considered as being co-responsible for the rise of anti-Europeanism across all the EU member states. That uncertainty has been due not only to the magnitude of the challenges, but also to the lack of effectiveness and legitimacy of the intergovernmental governance regime (through which those crises were handled), particularly when it operates under crises conditions. The mismatch between intergovernmental decisions and democratic politics could not fail to generate a popular reaction, specifically in those member states (in southern Europe) which encountered more structural and cultural difficulties in adjusting to the political economy's model consistent with the operation of the Stability and

Growth Pact or SGP (Matthijs and Blyth, 2015). It is not simply a matter of justifying who has governed badly in the past. Far from it.

However, the model of convergence, if not of uniformity, between national policies implicit in the Stability and Growth Pact (SGP) and protected by the series of intergovernmental treaties and rules approved in the past decade, ended up favouring some countries and penalising others. Hence the popular reaction against policies which were perceived as the outcome of decisions taken by supranational technocracies (from the Commission to the other independent agencies, such as the European Central Bank), but which were in fact taken by national governments who entrusted those technocrats to implement them. During the euro crisis, decisions were taken through mediation among the national governments belonging to the Eurozone, in a political climate of reciprocal distrust. A distrust that asked for more integrative rules to keep it under control (Jones, Kelemen, and Meunier, 2016). Of course, a system of economic governance based exclusively on administrative rules cannot give political answers to the continuously changing conditions of the economic context. Necessarily, such a system is politically irresponsible. Indeed, the citizens dissatisfied with the Eurozone's decisions ended up voting down domestic incumbent governments, notwithstanding that none of them was singularly responsible for the decisions collegially taken.

This is true not only for economic policies, but also for other intergovernmental policies considered sensitive by national governments, such as immigration. The immigration of millions of people into Europe (a fact of historical nature) was addressed, by the various national governments, on the basis of specific electoral calculations (a fact of contingent importance). The EU's inability to manage this massive flow of people into European countries (and particularly into some of them) has continued to justify populist mobilisation with its clear (but ineffective) request to shut down national borders. Nationalist sentiments have found fertile ground in fears of threats to the identity of citizens. It has been the inadequacy of a migration policy based on agreement among the national governments which has exasperated the problem; admittedly of a significant and sometimes dramatic scale (Krastev, 2017). After all, how could it have been possible to conceive the building of an area for the free circulation of people among member states of the EU (the so-called Schengen area), without simultaneously planning a common protection of the borders of that area? It is the same logic which is institutionalized in the Eurozone: a single currency without a single budget managed by a single authority. National governments have strenuously defended the principle that it is their duty to control their own territory, even if this principle is empirically contradicted by their inability to ensure such control. And yet, despite the repeated waves of immigrant arrivals which have occurred since the start of the 2010s (and particularly in the period 2015–16), the EU has not managed to come up with a single policy to manage immigration. The Dublin Agreements are still in force (albeit revised several times) and according to them it is the responsibility of the country of first arrival to handle the registration

and management of immigrants, with penalising (economic and organisational) effects for some countries but not for others. Only at the end of 2016 was a small step taken with the strengthening of FRONTEX, the European border and coastal control agency – small, since its duty remains that of supplementing national border agencies where necessary, but not of guaranteeing (independently from the national agencies) protection from outside the area of free internal circulation.

Migration policy has confirmed the paradox of intergovernmental integration. There is no European policy on immigration owing to the resistance of member states which want to preserve sovereignty over their national territory. However, those countries are not capable of guaranteeing that sovereignty given the size of the migratory phenomena. Thus, the absence of a European immigration policy increases citizens' feeling of dissatisfaction towards the EU, which is in turn criticised of being insensitive to the fears and insecurity that immigration produces in national societies. All in all, a real disaster. The wish to preserve national sovereignty over migration policy (territorial sovereignty) as well as over economic policy (fiscal sovereignty), and the conflicts between those sovereignties, has engendered reciprocal mistrust between these sovereignties and has led either to policy stalemate or to delegation of power to the Commission. A lack of responsibility has fostered in the Eurozone, the dissatisfaction of citizens in the debtor countries owing to the excessive rigidity of the rules, and the dissatisfaction of citizens in the creditor countries who think that the rules are not rigid enough. Again, it is against the Commission that the anger of the governments of Eastern Europe has been directed for having proposed a system of allocating national quotas of political refugees. Similarly, the anger of the governments of southern Europe has also been directed against the Commission for not having done enough to lighten the burden of handling the refugees that have landed on their coasts. The result has been that, while the Commission has sought to do its best to make a virtue out of a vice by preserving a European interest in a context where national visions and ambitions have held sway, citizens have directed their ill-ease towards the EU due to the decision-making system which their governments have built in Brussels.

In the context of crises which have distributive effects and identity implications, the intergovernmental model has brought to the surface the deep differences of interests and views between the EU member states. Because those effects and implications have been politicized by the new sovereignist forces, the intergovernmental governance could not easily accommodate the differences between national governments. Moreover, facing decisions with enormous domestic impacts, the asymmetry between national governments which are coordinated in the European Council or in the functional Council of Ministers, has created real hierarchies of power. Politics as the struggle for the power to decide has crept back in through the window of the European Council, contributing to the stalemate of the latter's decision-making process (think, for example, of the stalemate in the third pillar of the banking union). This condition might even worsen with the leaders of sovereignist parties taking



control of crucial member state governments (such as France and Italy) which opens the door for them to participate in intergovernmental governance. Since the European Council is considered an institution which is self-centred, in other words an institution which does not require checks and balances at the EU level from the European Parliament, because it is presumed to be controlled by the distinct national parliaments (a fact empirically implausible), the sovereigntist leaders could undermine the integration process from within. Nevertheless, the opinion persists that the divisions between states can be managed through ordinary negotiation within the intergovernmental governance regime. It would not be the first time in Europe that sleepwalking governments have headed blissfully towards the abyss (Clark, 2014).

### **Strategies beyond the crises**

It may be argued that the multiple crises, Brexit, the control of government by sovereigntist parties in eastern Europe, the growing influence of sovereigntist movements in western and southern Europe, the divisive pressure generated by both Donald Trump and Vladimir Putin on the EU, will not produce radical alterations in the European geo-political situation. The economic recovery of the Eurozone will reduce the sovereigntist pressure, Brexit should not be overstated given that it is the expression of the idiosyncrasy of an island, the U.S. neo-nationalism cannot structurally last for too long and Russia is after all an economic dwarf. If this is the case, then, within the unitary legal order of the EU, a strategy may be pursued for preserving the current double governance framework. However, the neutralization of sovereigntist challenges requires much more than business as usual (as well argued by Tsoukalis, 2016). In fact, this strategy would contribute to increasing dissatisfaction on the part of those who support the EU (because of the ineffectiveness of the policies pursued), without winning over the consensus of those who are against the EU (because they do not recognize its legitimacy). The diffusion and politicization of sovereigntist sentiments cannot be addressed by proposing the old combination of policies or hiding integration's aims. Certainly, the force of administrative inertia, the resistance of bureaucratic interests and the short-sightedness of politics must not be underestimated. The pressure to go on as before is not only substantial, but institutionalised. Sovereignism, however, can be defeated by a bold vision of Europe's future, not only by the defence of existing procedures or by a 'To Do' List (as argued by Merritt, 2016, p. 229).

If one instead accepts the argument that the EU policy differentiation is making its functioning inefficient and its legitimacy opaque, and that this has contributed to the politicization (by the new political actors) of popular dissatisfaction against the European integration project, then a simple strategy of continuity cannot be easily justified. If the consequences of the multiple crises are recognised, including their politicization by sovereigntist movements and parties (Hooghe and Marks,

2019), and the emergence of diverse interests and values among the member states, then it is necessary to think of a strategy of discontinuity, for the very reason that being radically discontinuous (compared to the past) is the condition in which the EU already finds itself. This strategy is based on the acknowledgement of the basic differences, generated by the identity clash, which has emerged between member states on the finalité of the integration project. This acknowledgement justifies the decoupling of the current EU into two organizations, an economic community and a political union. This strategy requires a double preliminary act to be agreed by national and European leaders, a first act for distinguishing the political and the economic projects of integration and a second act for defining the nature of the political project. In the latter case, a statement of political intent (a political compact) should plausibly be signed by the leaders of the core members of the Eurozone, a commitment to move towards a political union operating within the single market. The organization of the single market would remain open to all European states, including the old non-member states such as Norway and the new non-member states such as the United Kingdom. The political compact should then lead to a redefinition of the institutional bases of an 'ever closer union'. It is not wise to return to the experience of the Constitutional Convention of Brussels of 2002–03, with the vetoes and influence-mongering which characterised it. It is a question rather of agreeing, between the leaders of both national governments and the EU institutions, on the possibility of starting a process of constitutional differentiation for creating two organisations based on distinct legal orders, despite living within the same economic community. This would be ushered in by a negotiated agreement that would benefit both those who want or need to set up the political union, and those who desire or need to participate only in the project of an economic community. Without that preliminary political act, it is unlikely that this strategy might one day lead to a constitutionally defined political union.

Of course, in the current EU, it would be difficult, but not impossible, to distinguish the economic and political spheres of the integration process. Moreover, this strategy would also face numerous problems, of both a procedural and institutional nature. The procedural problem concerns the question of how to separate a core composed of Eurozone member states from those interested only in the functioning of the single market. If the rhetoric of a united Europe within a single framework is abandoned and there is an agreement on the fact that it is possible to answer differently to different needs and perspectives, while maintaining a common economic and security basis, then these problems can be pragmatically discussed and resolved through negotiations between national and community leaders (for example, in the context of the Conference on the Future of Europe that the Commission chaired by Ursula von der Leyen has committed to promote). The institutional problem concerns how to engineer the carving out of the institutional framework of the political union from the current institutional framework of the EU. It is not advisable to create new institutions because that would unnecessarily increase complexity. It is rather

plausible to organize differently the relations between the existing institutions for the different purposes that they should pursue. The solution of both problems requires the mutual recognition of the legitimate needs of the two groups of member states.

The decoupling of the Lisbon Treaty depends on negotiations that should generate a positive-sum outcome because it would allow the creation of different institutional spaces for different integration aims. A pluralistic Europe should be based on a political pact between the core countries of the Eurozone, which would become the fulcrum for managing other crucial core state policies, and an economic pact between the latter and the other countries which are part of, or only want to be in, the single market. The two pacts must be capable of differentiation at the legal level, since they aim to meet distinct needs. The countries which sign both pacts must maintain a solid link within the supranational framework of the single market. At the same time, the political pact should lead to redefinition of the institutional framework, moving towards the model of a federal union (not of a federal state). A federal union consists of an aggregation of previously independent states (such as the United States and Switzerland), whereas a federal state emerges from the disaggregation of previously unitary states (as is the case of Germany, Austria, Belgium, in Europe, or Australia and to a certain extent Canada, outside Europe). If the political union takes the form of a 'federation of nation states' (to use Jacques Delors' words), then the latter's differences and rivalries can be reconciled only by a system of multiple separation of powers which is a characteristic of federal unions (Fabbrini, 2019b). Indeed, the fusion of power of the central governing institutions (as in parliamentary governance) is a characteristic of federal states (on the different federal models, see Stepan, 1999; Sbragia, 1992). The federal union requires a preliminary constitutional pact or political compact between its constituent members, a pact/compact that should be the depositary of the federal union's sovereignty for the policies allocated to the federal centre (while member state sovereignties should be enshrined in their national constitutions). The multiple separation of powers would prevent the formation of institutionalized hierarchies between constituent members (Fabbrini, 2010), thus making it possible to keep in the same organisation large and small states, states with strong and weak institutional configurations, states with diverse national identities.

The European federal union should not come into being by replacing national democracies with a supranational democracy, nation states with a supranational state, and national peoples with a supranational people. As with other federal unions, the European federal union should be a compound polity (Fabbrini, 2010) since it accommodates national democracies with the supranational democracy, distinguishing the policies which are subject to the control of the former and those subject to the governance of the latter. It should be the contrary of what has been created in the intergovernmental Eurozone, where it is increasingly difficult to distinguish national and European competences, national and European

responsibilities, in accordance with a logic which, by fusing the levels of government, prevents the distinction of responsibilities proper to each level. A federal union should also be different from a parliamentary federation (such as Germany) with its fusion of horizontal powers which would increase the influence of the larger states on the smaller ones, because of their more numerous representation in the European Parliament. Through the separation of policies which would be governed nationally and those which would be governed supra-nationally, it would be possible to allow voters to have their say at the level that those policies were decided, thus making the decision-makers accountable to voters – which is a necessary condition for reducing anti-Europeanism. Sovereignism has been in fact fed by the citizens' frustration with an integration process which prevents them from influencing choices taken at the European level, choices that nevertheless affect their national situation.

If the European federal union wants to be a union between equals, then it is necessary to move towards an institutional system that prevents the formation of hierarchies between its member states and encourages decision-making based on checks and balances between institutions. These are aims which only the separation of powers, mitigated by appropriate mechanisms, can pursue. However, even the most effective of those mechanisms can do little, if they are not handled by political elites who are aware of the fragilities of a political union and who are thus willing to reach compromises between the member states and between the institutions grounded in the separation of powers. Democratic unions of states are condemned to live the daily miracle of functioning without a people, a government and a state (Fabbrini, 2017).

### **The logic of the federal union**

It is true that the EU has become a highly differentiated organization (Leuffen, Rittberger and Schimmelfennig (2013), but it is also true that such differentiation has led the EU into a constitutional conundrum (Fabbrini, 2016). Moving from policy differentiation to constitutional decoupling can free the EU from opacity, hierarchy and stalemate. Two organisations can be formed, each engaged in the pursuit of different ends, on the bases of differing agreements, while still being linked by what unites them, the single market as well as the security alliance (NATO). While the economic community can be organised around an interstate treaty which must not call into question national sovereignty as regard core state powers (although it should equip itself with a basic supranational framework to regulate the single market and resolve disputes between different states and competing economic actors), the federal union must instead define the reasons for the supranational project because it concerns the sharing of traditional core state powers. A single market can function without the existence of a single currency, just as participation in such a market does not require the merging of control on foreign, military, intelligence policy, asylum or the management of home affairs (which should instead become the central powers

of the federal union). Of course, the single market also requires the sharing of basic values and institutions of the rule of law by its participants. It would be necessary to define the role of the federal union within the economic community, by introducing institutional expedients that can prevent the formation of a blocking majority by the union within the latter.

A federal union is not a federal state, because of its anti-centralizing logic. Federal unions are based on the principle of divided sovereignty between the federal centre and the federated states. Each of the two levels has sovereignty over the management of policies for which it is responsible and distinct democratic institutions are needed to implement the divided sovereignty. In a federal union, the levels of national and supranational authorities should be clearly separated. A federal union implies the definition of the limited competences of the federal centre, leaving all the rest to the federated states. A federal union is the opposite of what the EU has become; an organization functionally expanding its competences, in an institutional context of unclear lines of accountability. A federal union should be based on a preliminary definition of competences allocated to the federal centre and those which are left to the member states, although social and historical processes will inevitably challenge the boundary set in the preliminary definition. Any federal organization is intrinsically dynamic. If the policy competences are limited, it would be possible at the same time to exclude from the federal union's competences the possibility of opt-outs by one or more member states. The federal union's jurisdiction, in its policy domains, should have a general scope.

A federal union does not imply the existence of a single identity, as it is implied historically in unitary nation states but also in federations formed through the disaggregation of a previously unitary state (which is the case of federal states, with the exception of Canada where there are two distinct cultural identities). The existence of an exclusive identity is the pre-requisite of unitary organisations such as the nation state, but that identity is existent also in federal states with a homogeneous political culture (as in Germany). This has not been the case in federal unions (such as the United States and Switzerland). Contrary to neo-functional assumptions (Haas, 1958; Schmitter, 2002), in federations by aggregation, the transferring of the identity or the loyalty of the citizens from the state/canton level to the supra-state level would be unrealistic (although the political development of the federal union has increased the strength of the supra-state identity at detriment of the state/canton identity, more in the United States than Switzerland because of the international role of the former and the lack of it in the latter). In our case, a federal union would not aim to create a European identity for replacing the national ones, but it would aim to compound national and European identities (Fabbrini, 2019b). The single vision of identity, which continues to influence the most ardent supporters of European integration, is both the effect and cause of the predominance of the statist paradigm in European political culture. This paradigm requires the existence of a single and homogenous demos for legitimizing political authority. Between nationalism and

Europeanism there is instead a broad area of multiple and diverse identities. In a federal union, citizens can cultivate their national identities and, at the same time, dialogue with the national identities of the other member state citizens. Only in this way they might together construct a new identity at the European level, added to (but not substituting) their national identities. One cannot exclude that the process of federalization would end in creating a more powerful European identity than national ones, but that would be an outcome and not a pre-requisite. The federal union, indeed, should function also with many distinct national or regional demoi (Nicolaidis, 2013), i.e. with plural citizenships having different national or subnational identities, although accepting to share basic European values and norms. Separate identities would be congenial to separate institutions of governance.

What unites national and subnational citizens of a federal union must be a political pact, the adherence to political values, the respect for the procedures and institutions substantiating that pact. Only politics, and its democratic underpinning, can unite those diverse national identities. The historic error of Europeanism was that of wanting to build a European cultural identity to replace national cultural identities, as well as construct a European federal state to replace the various nation states. It is no coincidence that every attempt to unite Europeans culturally has produced exactly the opposite; it has divided them, since European pluralism can never be enclosed in a single cultural identity. The European identity must be political, while national identities will continue to be cultural. Then it is only time and history which will show us the outcome of the interaction between the two. Every attempt to centralize authority in Europe historically led to an increase in conflicts between states or groups of them. For this reason, the federal union needs a constitution which not only legitimizes it, but also sets the limits to its powers. A federal union is necessary for limiting (federal) power, not for expanding it. This would help to contain the nationalist urges within its member states and facilitate the taking of legitimate decisions on issues of common interest, without at the same time undermining national democracies as happens when supranational institutions invade policies that pertain to the nation state. Moreover, a federal union, with its constitutional culture, is also a bulwark against the diffusion of illiberal sentiments that are spreading in Europe.

## **Conclusion**

To weaken the 'holy' alliance between populism and nationalism, it is necessary to free the EU from the tyranny of 'one size fits all', distinguishing legally between the countries that need or want to move towards political integration, and those which wish to participate only in a single market. Recognising the legitimate right of the latter to preserve their national sovereignty, but involving them in the single market, would help to keep their nationalism in check. At the same time, institutionalising a distinct federal union (around the Eurozone member states), governing traditional

core state policies through a separation of power system, would certainly help undermine the populism fomented by inefficient and illegitimate intergovernmental governance. The single market and the federal union should have different legal settings, although the member states of the latter would participate in the functioning of the former, according to rules that would prevent them acting en bloc. Decoupling is thus a condition (also) for bringing federalism back again to the European integration project, although the federal model which should serve this purpose needs to be based on the experience of federations formed by aggregation and not disaggregation. Certainly, this means that the federal union will be smaller than the current EU. It will be smaller, but not small, especially if it corresponds to the core of the Eurozone. However, it will also be more united, because it would be held together by a political pact of constitutional significance that might also contain centrifugal pressures. Such a federal union would be a bulwark against politicized sovereignty, showing that it is possible to be part of a federal project without depleting national democratic institutions, without losing national cultural identities or without giving up legitimate national interests. Its existence would therefore be a factor of stabilisation for the whole continent. Theoretically, the model of the federal union could accommodate, within the same organization, the perspectives and claims of both sovereignist and Europeanist EU member states. That model is in fact based on the (negotiated) separation between the policies assigned to national sovereignties and those to European sovereignty. A federal union can be defined as a sovereign union of sovereign states, since the member states are sovereign on specific policies (self-rule) and the centre is sovereign on other policies (shared rule). Of course, the boundary between self-rule and shared rule is continuously moving, thus requiring a constant renegotiation of the boundary (i.e., of the policies to allocate to one or the other sovereignty). However, the adoption of this model in the EU would require the sharing of a common fate by the leaders of both sovereignist and Europeanist member states, a possibility undermined by the climate of politicization generated by the multiple crises of the current decade.

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## Chapter Two

# Portrait of a Union: Redrawing a Sketch of the Whole

**Dimitris N. Chrysochoou**

### **Abstract**

This chapter looks into the current polity shape of the European Union (EU), and how it accommodates the concurrent demands for unity of the whole and diversity of the parts. In raising the question of what kind of theorizing can best capture a general image of the whole, it revisits the concept of ‘organized synarchy’ and makes the case that, despite integration’s currently unfolding crises and uncertainties, the EU ‘polity’ has managed to bring about an advanced system of collective ordered symbiosis among highly codetermined polities. It also argues that, at this stage of EU polity evolution, such a condition is not about the subordination of the parts to a superior, let alone federal, or even federalising, political centre, but rather about their preservation as distinctive, and at the same time constituent units; as partners in a late-modern ‘syspondia’ which retains its essential character as an ordered plurality of co-evolving polities.

### **Prelude**

Writing in the late 2010s, Europe’s aspirations for a reformed architectural design seem to be in retreat both symbolically and strategically to the extent that current divergences in states’ views question whether the European Union (EU) can still be regarded and, crucially, sustained as a ‘polity’ which can inspire. In addition comes the consolidation of a statecentric rationale in its workings and, at the theory front, a variety of ‘intergovernmentalisms’ (Puetter, 2012; Bellamy, 2013), albeit of a more refined logic compared to (neo)realist takes or Hoffmann’s (1966) ‘logic of diversity’ thesis which, at a period marked by the effects of the ‘Luxemburg Compromise’ (Nicoll, 1984; Teasdale, 1993) and for the next twenty or so years, confirmed the state-controlled nature of integration. Today, with the rise of the far-right, the uncertainties caused by the Brexit vote and the roadblocks to a solidary and humanistic response to the refugee crisis, the issue raised is not about the union’s prospective constitutional evolution, let alone polity transformation, as was the case back in the mid-2000s when Europeans debated the fate of the Constitutional Treaty; but whether, and if so, how, it can recover from a much troubled decade.

At this critical state of play – an instance of emergent systemic deficiencies –, theorists may ask whether a conceptual image of the whole – a portrait of ‘European “politeia”’, to quote Tombeur (2013, p. 117) – can be (re)drawn, also sketching out some potential end states. In light of unfolding, but less connected to Europeans as one might have hoped, debates on their future, the question raised is whether the union can still aspire to a self-identifiable demos; not in the compelling sense of a compact, fully integrated or self-standing ‘European public’, but as a ‘Republic of Europeans’ (Lavdas and Chrysochoou, 2011): a civic-oriented union of diverse but fellow-Europeans who can be taken as ‘symbiotes’ in Althusius’ (1995 [1603/1614]:19) sense: ‘participants or partners in a common life’. Carney (1995, p. xv) explains: ‘Symbiotic association involves something more than mere existence together. It indicates a quality of group life characterized by piety and justice without which, Althusius believes, neither individual persons nor society can endure [...] Wherever there is symbiosis there is also communication, or the sharing of things, services, and right’. Keeping in mind Grimm’s (1995, p. 296) point that ‘(t)he European level of politics lacks a matching public’, a plural European civic body may still be said to exist along the lines of ‘many peoples, one demos’, whose members can direct their democratic claims and concerns to, and via, the central institutions and share in the collective rewards of their pluralist union. But can it sustain itself? Can Europeans preserve and even develop further a sense of ‘demos-hood’ of and out of many? As put by Nicolaidis (2004, p. 77): ‘What should a Europe for all, an EU that most of us can like, if not love, look like?’ Also: how to navigate the present union, wherever situated in the ‘federal/confederal’ (Forsyth, 1981; Burgess, 2005) or ‘polity/organization’ (Pollack, 2005) axis towards a dynamic but viable equilibrium?

## **Premises**

These preliminary notes provoke the question: can there be a union in and through which established liberal polities transform themselves into an embracing ‘politeia’? The latter enshrines into our vocabulary a certain normative content, raising some ‘constitutional’ – in the wider, Roman sense portrayed by Cicero (Atkins, 2018, pp. 11–13, 24–34) – expectations. More than that, it can be paralleled to a ‘state of mind’, to recall Schattschneider (1969, p. 42, quoted in Adamany, 1975, p. xii), impacting on citizens’ daily parlance and praxis. Arguably, Plato’s and Aristotle’s ‘theasis’ of ‘politeia’ has marked for over two millennia its distinctive intellectual imprint upon our understanding of what it means (and takes) to be part of a commonly shared life within a ‘polis’; on how citizens share among themselves some common concerns, how they form a consciousness of their collective existence as ‘members’, ‘fellows’ or ‘partners’ under conditions of ordered symbiosis which, for all its human and thus institutional imperfections, allows them to develop a sense of the ‘common good’. Thus ‘politeia’ as the architecture of organized public symbiosis; the very ‘soul’ of

a union made up of nested political lives. At the same time, it signifies a legally constituted order that reflects the demos' concerns: its sense of union and unity.

But how can one grasp Europe's polycemous and challenging polity qualities? A plausible way would be to speak of a civic-minded political association of interactive publics which is capable of disentangling, as Lavdas (2001, p. 4) argues, 'the issue of participation in an emerging polity from the cultural and emotional dimensions of citizenship as pre-existing affinity and a confirmation of belonging'. As he also notes, 'some elements of the real and symbolic *res publica*, may sustain a degree of political motivation vis-à-vis the EU and its relevance for peoples' lives while also allowing for other and more intense forms of motivation and involvement at other levels of participation' (Lavdas, 2001:5). The idea is for an extended but vibrant civic space among entwined democratic publics; a structured plurality composed of multiple co-evolving affinities and affiliations drawn from an impressive variety of historical, cultural, constitutional and soci(et)al sources. The challenge is to institutionalize respect for diversity as well as to sustain, in Bellamy's (1999, p. 190) words, 'a shared sense of the public good'. Such a condition may well emerge through Pettit's (1997) notion of freedom as 'non-domination', as it combines, in Lavda's words (2001, p. 6), 'the recognition of the significance of the pluralism of cultural possibilities for meaningful choice and a framework based on a minimal set of shared political values' or, as Bowman (2006, p. 113) put it, 'multiple forms of political membership and overlapping sites of pooled sovereignty'. This is more than a projective polity sketch for the union as it can assign meaning to a vision of 'politics' –which, as Heywood (2004, p. 53) reminds us, 'literary means "what concerns the polis"' – and still be part of a great European tradition of political thought. Tsatsos (2009, pp. 48–49) notes: 'The demos never constituted a totally homogenous unit of its members. Demos as a source of power in democratic regimes rarely nowadays appears as a true political unit, but mainly as a complex aggregate with geographical, linguistic, national and institutional subgroups, which, however, belong to the same power structure'.

Given current debates on EU 'polity-hood', or lack of it, and the kind of balance the union should aim at in view of its ascending heterogeneity and, much to the detriment of its constitutive values, decreasing solidarity, one is tempted to speak of a 'community of strangers', as Castiglione (2009) does, or of a 'community of projects', as in Nicolaidis' (2004, pp. 76, 84) 'demoicracy', 'founded', as she argues, on the persistent plurality of its component peoples but not reducible to a set of complex bargains among sovereign states' and 'predicated on the mutual recognition, confrontation and ever more demanding sharing of our respective and separate identities, not on their merger'; or, as in Taylor's (1993, p. 114) refined statecentrism, a 'symbiotic consociation'. He explains: 'Consociationalism fundamentally alters the teleology of integration theory by indicating an end situation which has built into it pressures for the maintenance of segmental autonomy within a cooperative system, i.e., a symbiotic arrangement', and: 'The term which captures most accurately the dominant character of the relationship between the states and the region is, therefore,

symbiosis. Each of the two levels, the separate states and the common system depended upon the other' (Taylor, 1993, pp. 84, 108). Arguably, enhancing the civic bonds among the member publics is crucial for the systemic viability and vitality of the union, but this does not invite, let alone necessitate, an abrupt restructuring of pre-existing, historically constituted, public structures and cultures or a compromise of the states' democratic autonomy. Rather, it requires what might be termed from a pluralist-republican prism a politically structured plurality of 'distinctive' but 'constituent' democratic polities; distinctive, in retaining their governing qualities as discrete constitutional orders and demoi; and constituent, in reaching higher levels of collective symbiosis by sharing in the mutual benefits of living together in a larger but identifiable political whole.

Almost seven decades of integration have brought about, in Taylor's (2008, p. 7) words, 'a unique way of managing a system of sovereign states, the like of which had not been seen before', based on an advanced system of codetermination among highly interactive (sub)national units; a condition, however, which is not about states' subordination to a superior federal(ising) political 'centre' as compared to established federal polities (as those composing the union), but rather about their preservation as states within a political association which retains its character as a plurality of diverse but increasingly co-evolving polities. The aim, as noted above, is for a 'Republic of Europeans' along the lines of 'civic unity in polycultural diversity' (Lavdas and Chryssochoou, 2007). Capturing the dialectics of a polity constituted by co-evolutionary practices of authority-sharing is not about a federally inspired, state-like order; it is about an integrative scheme that exceeds, even transcends, previous notions of international authority; a pluralist imaging of a union taken at the same time as 'polity' and as 'polities' driven by highly codetermined sovereignties. A sense of 'demos-hood' may still be needed, but one which accords with Tsatsos' notion of 'sympolity' (2009), Dobson's (2000, p. 15) account of 'multipolity' or MacCormick's (1997) construct of 'mixed commonwealth'; at best, given Europe's celebrated and reviving republican tradition, a 'res publica composita' as in Elazar's (1998, p. 25) reflection on Hoenonius' classical distinction of the term from 'res publica simplex'; at least, a legally and politically structured plurality as in a polity made out of many.

Although EU-level systemic growth may release and even increase pressures towards (further) centralization, they do not in themselves make for a conventional 'federal republic' or any other superior 'centre' aspiring to 'statehood'. Rather, they are an indication of polities adjusting themselves to the collective terms of their symbiosis, without negating their domestic governing orders. Both Bellamy and Castiglione's (2000, p. 190) projective assertion that 'a future multinational European polity could be a "Republic, if you can keep it"' and Honohan's (2002, p. 280) view that, 'interdependence of fate and future can come to be seen as the basis of political community', accord with the promise of diverse but interactive demoi shaping together their collective association. As Preuß (2015, p. 218) wrote on the novelty of it all: 'This is the first time in human history that sovereign states form a political

community which not only established legal channels for their cooperation and the peaceful dealing of conflicts – this is, at least on paper, meanwhile the standard on the global level as well – but which has created an institutional realm in which different peoples form a political “We” without giving up their or pressed to give up their differentness as peoples with their respective national histories, cultural traditions and particular mentalities [...] they share a conjoint law which regulates important spheres of their everyday life and thus creates a quite peculiar “We”.

In support of the above comes the assertion that the decade-old Lisbon reforms have not, as yet, affected the essential character of the union as a ‘synarchy of co-sovereigns’ (Chrysochoou, 2009, p. 139) combining different forms and visions of shared rule. This pluralist imaging has considerable implications on how sovereignty can be re-conceptualized given the intensity and depth of what binds together, both legally and politically, a cluster of co-evolving polities and what being part of a larger whole entails for their collective future. It may be seen as part of the union’s polity evolution which confirms that states are a constitutive part of a general system, while, at the same time, the latter can be taken as a polity, rather than merely as an instance of exclusively state-controlled interactions. The view taken is that states still determine, albeit collectively, the pace and range of the common arrangements, but the latter exemplify a co-evolutionary view of the parts. This is key to acknowledging that, for all the profound changes in sovereignty, we have not reached the point of its complete transmutation into a kind of post-statist order: for all its late-modern connotations, and there have been many and insightful (Walker, 2003), sovereignty cannot be convincingly detached from the component state parts, nor can it be subsumed or submerged into a superior federal authority. Rather, the whole is about strengthening the parts through, not despite, a polity-building exercise that enhances their collective capacity to combine authority; transcend classical self-rule; and bring about a qualitative, even transformative, stage in their political and constitutional evolution. Taylor (1996, p. 97) made the point well: ‘The states became stronger through strengthening the collectivity’. Or, as he also put it, ‘it came to seem persuasive that the survival of the state as completely compatible with the strengthening of the common arrangements’ (Taylor, 2008, p. 103).

A general note from the above might then be, that for all their efforts to meet the changing realities of institutionalized shared rule, the parts have not lost sight of their own and, many a time, hard-won, autonomy (and claims to it). This is premised on the idea that their collective capacity to accommodate diversity and subsystem autonomy has invited respect for their individual integrities – to which the Lisbon Treaty contributes explicitly in Article 4(2) with reference to ‘national identities, inherent in their fundamental structures, political and constitutional’ and to ‘essential State functions’ – confirming that states may well continue to codetermine issues of mutual interest in ways which make sovereignty still valid but not equated to or even reminiscent of older, largely exacerbated or idealized, Westphalian notions of territorial self-rule (Krasner, 1999). As to the union’s confederal attributes or, from

an evolutionary, polity-prone prism, ‘neo-confederal’ (Burgess, 2005:263) ones, states still retain (ultimate) political control over the extension of authority –more accurately, of ‘public powers’ (Grimm, 2015, pp. 43–46)– to the European ‘centre’ –the institutions of common governance– in light of the oft-raised constitutional principle of ‘Kompetenz-Kompetenz’: in Lock’s (2009, p. 409) words, ‘a state’s competence to determine its own competences’. As Grimm (2015, p. 50) asserts: ‘The EU does not have a portion of the sovereignty. The EU has but a portion of the public powers’.

Hence the German Constitutional Court’s view of the EU as a ‘Staatenverbund’ in its Maastricht and Lisbon rulings (BVerfG, 2BvR 2134/92; BVerfG, 2 BvE 2/08). As it stated in the latter, ‘Verbund covers a close long-term association of states which remain sovereign, an association which exercises public authority on the basis of a treaty, whose fundamental order, however, is subject to the disposal of the Member States alone and in which the peoples of their Member States, i.e. the citizens of the states, remain the subjects of democratic legitimisation’ (BVerfG, 2 BvE 2/08, 30.6.2009, par. 229C, quoted in Mayer and Wendel, 2012, p. 143). Or, as Neframi (2015, pp. 69–70) put it: ‘The principle of conferral, together with the amendment procedure, mark the lack of sovereignty at the EU level and designate the Member States as masters of the Treaties. Recourse in this regard to the qualification of Staatenverbund, in contrast with Staatenverband, illustrates the preservation of national sovereignty embodied in the principle of conferral, notwithstanding the principles of primacy, direct effect and effectiveness of EU law’. Grimm (2015, pp. 45–46) summarizes the Court’s rationale: ‘Sovereignty in the EU lies with the Member States since they are the “Masters of the Treaties” and hold the Kompetenz-Kompetenz. This is indeed the difference between a federal state and other types of federations. The EU does not have the right to self-determination about its existence, its legal basis, and its competences. The decision about these matters is in the hands of the Member States’. He goes on to confirm: ‘With regard to its legal foundation it is hetero-determined and consequently not sovereign’ (Grimm, 2015, p. 46).

The condition of codetermination, a reflection of intersected, co-evolving, yet self-standing, constitutional polities, challenges the assumption that the union, for all its ‘state-like’ qualities, has gained a locus of sovereignty, whilst confirming that the member units can still claim to shape their own political future. The ‘centre’ may well retain, in certain domains, a key role in collective management, and there are good reasons for states to enhance the centripetal dynamics of the general system when they so decide and that consensually: a treaty-based construct, the union still rests upon state-controlled rules. As a result, claims to ‘ever closer union’ also, but not exclusively, rest upon states’ collective, rather than merely individual, capacity to invest in the cumulative rewards, functional or structural, of shared rule. Thus, in its current state – political, architectural and, crucially, cultural – integration is not driven, let alone determined, by those envisaging a federal end state of the process.

## Projections

Given these conceptual expositions, it is possible to define the union through the lens of ‘organized synarchy’ and project a general view of integration or, to use the essay’s subtitle, to redraw a sketch of a whole beneficial to its parts. The concept depicts a union called upon to organize the collective symbiosis of diverse parts within a larger plurality which allows them to preserve themselves as polities in their own right and, at the same time, act as co-evolving partners. Although this condition does not pose a post-statist threat to constituent sovereignties, it is not in itself void of a post-statecentric quality, for it rests beyond the exclusive control of the parts. All in all, integration is about the constitution of a plural but collective order; a novel form of politically constituted symbiosis among diverse but highly codetermined democracies, whose sovereignty can be taken as still being alive, but whose essential qualities are attuned to the demands of their common association. It offers the possibility to think about a form of ‘politeia’ through the synergies integration theory allows in a post-statecentric direction, where states share in the authority of a larger system built by them and subject to reform through their expressed consent.

This condition was reflected in an earlier conception of the union as a ‘confederal consociation’ (Chrysochoou, 1994; 1998) of constitutional polities which are bound together in a consensual form of union, without either losing their sense of forming collective national identities or resigning their individual sovereignty to a higher central authority. As a post-statecentric quality, ‘organized synarchy’ performs collective functions which, far from invalidating the constituent sovereignties by creating a single locus of authority, it recomposes them by moving the level of collective symbiosis away from classical interstate accounts of joint rule or from types of ‘stato’ beyond or to the detriment of the parts and their historic reality or pride. Rather, it rests on a cooperative culture which, far from sweeping away the member state *demoi* in the trajectory of (super) imposed homogeneity, embraces mutually reinforcing perceptions of organizing their collective life. It allows the member collectivities to embrace a culture which is not merely the expression of an advanced institutional partnership, but also an enduring legal and political bond among co-sovereigns. Thus ‘organized synarchy’, as more than an instrumental view of reconceptualizing the nature of governance in cooperative general systems, indicates a polity frame aiming at a dynamic equilibrium between whole and parts.

However, in view of various(ly) connected crises in the daily management of the union, not to mention the strains caused by Brexit and the all-alarming rise of the far-right in domestic and transnational arenas, its polity expectations seem rather limited. But its current predicament – its ‘unhappy state’, to recall Tsoukalis (2014) – may not be all there is to it. This provokes the question: is ‘organized synarchy’ – the ordered symbiosis of codetermined polities – a more permanent condition, if not a mirroring of what the end state might look like or is it merely a passing reflection of a temporal state of play? An answer confirming the former, and thus the union’s co-evolutionary qualities, is that the transition ‘from sovereignty to synarchy’ is in



line with states' disposition to transcending some of their traditional attributes of sovereignty; most notably, and crucially, the right to be involved in their partners' domestic affairs. This may well be regarded as integration's greatest cultural, rather than merely legal or institutional, achievement; as yet another instance of 'organized synarchy' expanding the horizons and thus boundaries of authority-sharing towards new forms of unit(y) with a transcendental quality: sovereignty's emancipation from classical self-rule. It is also one out of many possible end states, signalling no less of a normative departure from a set of coordinated polities towards an ordered but not fully unified polity retaining its pluralism and allowing the parts to sustain their own polity 'soul' into a viable whole. Taylor (1996, p. 78) asserts: 'Each [level] had become essential to the survival of the other. Put differently: there were arrangements at the European level which had become semi-detached from the state, representing a distinctive level of political activity, interacting with national affairs, but containing its own values and imperatives, including that of survival. In this arrangement states retained sovereignty within the transnational system'.

As a union of co-evolving polities, Europe is now an integral part of citizens' everyday life and parlance; it is part of a culture in dealing with common concerns, although these may at times shake the level of trust as in the different accounts of solidarity, or the limitations to it in view of the 'flexible solidarity' scheme proposed by the 'V4 group' in 2016. This is no less of a collective accomplishment; not as ambitious as federalists may have hoped for, but still an indication, even conviction, that for all their differences in incentives or aspirations, the parts are increasingly conscious of the reality that more is to be achieved by joining forces, rather than by acting alone or by resorting to more conventional forms of collective action, and that finding collective ways of managing diversity through commonly shared values adds to their unity. Preuß (2015, p. 219) captures the larger picture: 'The vision is, rather, the idea of solidarity grounded on the mutual recognition of otherness and the development of modes of cooperation and, yes, also of collectively binding decisions taken by "others" whose bindingness is rooted in institutional devices which encourage civic solidarity and the tolerance for otherness'.

## **Prescriptions**

Those favouring the transcendence of the nation-state criticise the union for a failed federal transformation; others, who oppose any federalist direction, criticise it for having gone too far, arguing the case for policy repatriation; still others, who favour a more cohesive and solidary union, whether or not of a constitutional orientation, direct their criticism against any projective scenarios of 'variable geometry' schemes on the grounds that they produce (intra)systemic fragmentation, rather than serve the purpose of 'ever closer union'; and others, who position themselves in the far-right, fiercely anti-European currents – which, not without consequential delay, are no longer treated merely as a crisis-related passing stage, but as a persisting threat

to Europe's own fundamental values – condemn it for simply existing. So: can Europe still inspire? Investing, as Castiglione (2009, p. 51) put it, in 'citizens' growing perception that the Union contributes to a fundamental (though multilayered) institutional and legal order within which they can exercise their liberty' may serve the purpose, provided those at the receiving end navigate their collective life into higher levels.

Despite its evident, if not ascending, statecentrism, the union has, by and large, been worthy of the term 'polity'; if by that we mean an architecture of ordered public symbiosis constituted through commonly shared values and forms of rule. This architectural quality, essential for any political association's public constitution, has invited not only integration theorists, but social and political thinkers from various normative strands, to recapture a sense of civic purpose with the view to revisiting and, where appropriate, recasting, the union's uneasy path to 'polity-hood' and, more demandingly, but crucially for what appears to be the most promising example of 'organised synarchy', 'demos-hood'. As to sovereignty itself, in a union of advanced authority-sharing, where established and novel perceptions of shared rule shape the fate of co-evolving political units, it has become essentially codetermined.

Finally, as to fellow-Europeans themselves, Preuß's point (2015, p. 220) is in order: 'The EU may become the paradigm of a polity without a demos, based on the solidarity of citizens who are able and willing to reflect their otherness. It is a polity in a world where people have become neighbours and still remain strangers with respect to each other and accept mutual responsibilities (...) And the Europeans should proudly tell each other and their fellow men from other parts of the world that the Europeans have learnt from their dark history and can offer innovative ideas for the bettering of human conditions in a world torn by serious injustices and conflicts'.

And so is Tsatsos' (2009, p. 47) evolutionary account of 'demos': 'The claim that there is no such thing as a "European demos" presupposes the acceptance of an absurd conceptual positivism, which denied the historicity of concepts and assigns to the terms "demos" or "public opinion" a definite and perpetual, that is to say, a-historical, content, which is not affected by the evolution of the historical spaces of their application or by their adaptation to discrete historical terms'. After all, to re-quote Tsatsos (2009, p. 91): 'Concepts do not create history. History either creates concepts, or assigns new meaning to existing ones'. As stated by Dobson (2000, p. 20), 'the social cement required for the moral solidarity to stabilise itself and its product(s) over time and generate self-sustaining mechanisms to underpin a liberal/social democratic order (...) can only be built and then reproduced as a kind of demos constituted by the convergence of demoi on a framework of common institutions designed to permit them their chosen enterprise of addressing collective action problems, collectively, constrained by the circumstances of politics and within a social order cognitively apprehended as structurally mutualist in its relations of recognition and respect between rights-holding agents'. Or, as Castiglione (2009, p. 51) put it, 'the solution may lie more in imagining how an interlocking political space

may need interlocking systems of trust, solidarity, and allegiances –none of which may need to be absolute– than in the assumption that we can reproduce the absolute demands of national citizenship at a European level’.

It is then possible to develop novel conceptions of engaging in deliberative and decisional ways a plurality of citizenries in their larger association. All the more so, given the rise of what Eatwell and Goodwin (2018) call ‘national populism’ and the need for open democratic dialogues about the future evolution, even finality, of the union, bringing transnational social and political action closer to the member publics and reactivating civic aspirations for large-scale demos-formation. As debates raise fundamental concerns about the political viability of the union, out of many possible, perhaps equally plausible, prescriptions, an appropriate path to European unity may well lie in diverse publics shaping their political future in common, without equating demos-formation with the transfer of loyalties to a higher authority unit. As a shared vision, this may ascribe the polity aspirations of a late-modern union with a sense of plural ‘demos-hood’ within an identifiable whole, whose publics see the purpose of their collective symbiosis; for as Cohen (1971, p. 47) put it, ‘there can be no larger part unless the larger part and the smaller parts are indeed parts of one whole’; otherwise, fragmentation may prevail in the sense of ‘polycracy’ as meant by Sartori (1987, p. 22): ‘a separable multiplicity made up of the unit “each one”’.

The triptych ‘symbiosis–synergy–osmosis’ corresponds to the three stages in the making of an EU demos: the first describes the current state of the relationship between whole and parts; the second aims at strengthening horizontal links among the latter; and the third, a culmination of the two, invests in the civic potential of fellow-Europeans. But today’s democratic challenges bring into fore, on the one hand, a view claiming that democratic shortcomings are still tied, by and large, to a series of (inter)institutional imbalances within a state-controlled union: thus, an appropriate reformist path would be to strengthen the institutions of common governance, even at the expense of state authorities; and, on the other, an argument suggesting that focusing primarily on the institutional front fails to address the question of ‘demos’: thus the reformist need to bestow the member publics with a sense of ‘demos-hood’ to embrace the concerns shared by Europeans about the union and/as their future.

## **Finale**

Arguably, theorizing integration has impelled many promising departures – portraits of projective wholes. But the sketches remain incomplete and thus only drafts; yet, they defy both international and statist categories, favouring a dialectic composition of intersecting units: taking this as an ensemble of shapes drawn from various angles points to a portrait of a union characterized by an incipient but fragmented demos.

The challenge is thus set: to re-invest in what binds Europeans together as fellow-participants in a purposeful integrative journey. True, they live their lives in multiple polities; they may not eventually amount to a federal demos; they may also fail to

acquire – or, as van der Walt (2015) has it, ‘give themselves’ – their own constitution; but they can and should lead their lives as fellow-citizens. As Lavdas (2012, pp. 13–14) put it, ‘discovering republican virtues in a post-national edifice and internalizing those in a way that strengthen Ulysses’ constraints is no easy task. Yet it is not far-fetched to suggest that the current juncture calls for nothing less: the EU will either emerge as a locus of a minimal but shared set of republican commitments or disintegrate to states or groups of states. Ulysses’ constraints weaken without a degree of republican commitment to the European project: they are in doubt at the domestic level and they also appear increasingly untenable as viewed from abroad’. In this sense, a libation – ‘spondē’ – on ‘Ulysses’ constraints’ may well serve as a libation for a commonly shared life even in a late-modern ‘syspondia’. After all, as Strabo tellingly noted in his *Geography* (9, 3.5, 1927, p. 355; quoted in Hudgens, 2013, p. 73), ‘the greater the number of the sojourners and the greater the number of the places whence they came, the greater was thought to be the use of their coming together’.

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## Chapter Three

# The Future of the EU in Jean-Claude Juncker's State of the Union Speeches

Jean Claude Cachia

### Abstract

The 2014–19 European Parliament legislature faced a number of crises which threatened the future of the European project. The discontent within the European Union was evident in the 2014 European Parliament Elections, which saw the rise in popularity of various Eurosceptic parties across Europe. The aftermath of the 2008 financial crisis and the migration crisis challenged the dynamics within the European Union, while politicians across the region struggled to propose long-term solutions. In 2016, the European Union faced another threat following the Brexit referendum, which saw the majority of the British citizens voting to leave the European Union. All these challenges were reflected in the discourse used by the President of the EU Commission, Jean-Claude Juncker. As President of the European Commission, he had to give the State of the Union speeches between 2015 and 2018 where he sought to provide a vision for the future of the EU.

The State of the Union addresses, delivered by the Presidents of the European Commission, have been used as tools to bring the European Union (EU) closer to its citizens and to strengthen the collaboration between the European Parliament (EP) and Commission. Whilst not as popular as their U.S. counterparts, these speeches are still met with high expectations and criticism due to the fact that they project the potential future trajectory of the European Union. This is the reason why this article evaluates the State of the Union speeches given by Commission President Jean-Claude Juncker. It attempts to understand how the Commission's plans on the future of the EU evolved between 2015 and 2018.

### Introduction

*“On 25 May the voters of Europe spoke to us. They sent us powerful, if sometimes contradictory, messages. Today, and in the years to come, we have to respond” (Juncker, 2014, p. 16).*



Juncker's first statement as a candidate for the Presidency of the European Commission reflected the turmoil which the EU was experiencing. On the 25 of May 2014, European voters sent a dire warning to the EU. With a historical low turnout of 42.61% and far-right and eurosceptic parties across Europe dominating the elections, there was a need to reform the ailing European project. This address highlights an awareness of this wave of discontent. For the first time, the President of the European Commission had to reflect the popular vote of the 2014 EP Elections, with Jean-Claude Juncker being proposed as the compromise Spitzenkandidat of the European People's Party (EPP), the largest group within the European Parliament.

The relatively short speech dealt with a variety of issues including the EP elections, the detachment which existed between the EU and its citizens, the financial crisis, and European Security. There was one element which linked these topics together, that is, the need to move forward with the European Project. Juncker called for the institutions and citizens to embrace a 'new start for Europe'. However, this new start would eventually be halted by a series of setbacks including the Syrian Civil War, the ensuing migration crisis, and the Brexit referendum.

The scope of this chapter is to use critical discourse analysis (CDA) to evaluate the State of the Union speeches made by Juncker as President of the European Commission from 2015 to 2018. This study will outline the way Juncker's vision on the future of Europe developed from one address to another, and the impact which political developments had on this vision. This chapter is thus divided into four main sections. The first provides a brief evaluation of the history of the State of the Union speeches. The second focuses on the theoretical framework based on Fairclough & Fairclough's (2013) analysis of critical discourse, while the third provides a brief overview of Juncker's State of the Union addresses. The final section consists of a detailed analysis of how Juncker's vision on the future of the EU developed throughout his term as President of the European Commission, and the impact of political developments on this vision.

### **The European Commission and the State of the Union Address**

The State of the Union address by the President of the Commission was formally established by the Treaty of Lisbon and became part of the 2010 framework agreement which shapes the relationship between the EP and European Commission (Pansardi & Battagazzorre, 2018). This address is traditionally held in September with the President of the Commission reflecting on the past and present while highlighting future priorities. The main elements of the Commission's programme and, therefore, its priorities, are sent to the EP in advance. The purpose of the State of the Union speech was to provide more clarity of the Commission's agenda, to bring it closer to the citizens, and to enhance the cooperation between the EP and the Commission. However, it never reached the status that European technocrats expected. Ryan Heath (2017) branded this address as "the U.S. President's speech without the vision. It's the

Queen's speech without the Queen". There are a number of reasons for this including the fact that the President of the Commission is not the President of the EU and must share power with the heads of the European Council, Parliament and Central Bank (Heath 2017). Yet, the State of the Union still has a function. Whilst there are only few studies on the State of the Union addresses, they are still scrutinised by national governments and the media.

## **Critical Discourse Analysis**

The study of political discourse received widespread attention in the last few decades since political scientists are increasingly using language to evaluate political behaviour. Fairclough & Fairclough (2013) define discourse as the "use of language in a social context" (p. 81), which represents various aspects that characterise the socio-politico fields (Trimithiotis, 2018). Discourse analysis relies on the premise that assumptions, ideas and judgements can provide researchers with the basic terms for discussions on a particular concept or event (Glynos, Howarth, Norval, Speed, 2009). From a political science angle, politicians use language to communicate with their audience through interviews, reports, debates and speeches (Fairclough, 2013). The language used not only reflect their values, strategies and goals but also the choices they are required to make as part of the decision-making process (Fairclough, 2008; Fairclough & Fairclough, 2013).

In the 1980s, Norman Fairclough provided a new analytical framework to evaluate discourse. This analytical tool was chosen due to its characteristics:

"CDA brings the critical tradition in social analysis into language studies, and contributes to critical social analysis a particular focus on discourse, and on relations between discourse and other social elements (power, ideologies, institutions, social identities etc.). Critical social analysis is normative and explanatory critique. It is normative critique: it does not simply describe existing realities but also evaluates them, assesses the extent to which they match up to values that are taken (contentiously) to be fundamental for just or decent societies (e.g., certain requisites for human well-being). It is explanatory critique: it does not simply describe and evaluate existing realities but seeks to explain them" (Fairclough, 2013, p. 178).

The focus of this definition relies on three main elements which are: social contexts (situations), knowledge (institutions), and social identities (social structures) (Howarth, & Griggs, 2016). Critical discourse analysts focus on the interpretation of the language used, context (Blommaert & Bulcaen, 2000) and the way power and ideologies shape this discourse (Wodak, 1999). Isabela and Norman Fairclough's (2013) theory is grounded in the idea that politics is based on decisions taken by individuals. These decisions are not only based on ideologies but are also influenced

by the institutions and social structures. Discourse is the tool which such politicians use to legitimise arguments and decisions while seeking to persuade others to take a similar stance (Howarth, & Griggs, 2016).

Isabela and Norman Fairclough (2013) hold that the power of speech is extremely important for political communication. Politicians and agents use the power of speech to influence their audience on the benefits and harms of particular policies and to defend their decisions. Within such a framework, politicians use three genres of rhetoric developed by Aristotle which are; deliberative, forensic, and epideictic depending on their objectives and audience. Deliberative rhetoric is discourse based on the future with politicians trying to influence their audience to take a particular course of action; forensic rhetoric is often used to defend or condemn the action of others whilst epideictic rhetoric is used in political campaigns to attack others (Lawson-Tancred, 1991).

Whilst rhetoric is important, it may not be sufficient to influence audiences since several questions linked with speech delivery arise. These include the kind of speech that politicians opt for and the way that politicians try to convince their audience that their approach is the most suitable one. In order to be successful, politicians are required to use arguments to validate their claims (Hambermas, 1984; Johnson, 1991). These arguments have been summarised in Table 1 adapted from Fairclough & Fairclough (2013) outlining a theoretical framework based on critical discourse analysis, which is subsequently used in the third and fourth sections to assess Juncker’s speeches.

<b>TABLE 1: ELEMENTS WHICH SHAPE DISCOURSE</b>	
Claim	Politicians provide a course of action and the rationale behind it
Circumstantial premises	Politicians are required to explain their agenda and what is influencing it.
Goal premises	Politicians have to outline their main goals.
Value premises	Politicians have to explain how their goals are based on particular values or the values of their parties.
Means-goal premises	Politicians are required to outline what might be achieved if a particular course of action is followed
Addressing alternative options	Politicians discuss alternative options and explain why their choices are the best ones for their audience.
Adapted from Fairclough & Fairclough, 2013	

The decision to choose this framework was taken because public discourse is based on six elements (cf. Table 1) outlined by Fairclough & Fairclough (2013), involving politicians using evidence to justify their claims. This justification is required for

them to explain why they are proposing particular objectives, to link these goals with their values and principles, explain the way they will reach their goals, highlight the negative consequences of not achieving these goals, and persuade voters that the alternative goals provided by others are not suitable for them. In fact, the only element which was not used in the fourth section is the alternative options element – as in his speeches, Juncker often failed to tackle any other ideas which could have been adopted to strengthen the EU.

Political discourse is often dependant on practical reasoning, which is used by politicians to defend particular choices and highlight the rationale behind them. At every step of the way, politicians are required to deliberate and provide information on proposed choices. (Fairclough & Fairclough, 2013). This may contribute towards building an effective argument.

However, political scientists are aware of the limitations of deliberation. Whilst deliberation is desired, elections are not always decided on information provided to voters. Politicians or agents can resort to manipulation to achieve their objectives. They have the ability to provide alternative facts and to distort their competitors' message to achieve their goals. Phenomena such as populism, together with other extraneous forces, also have the ability to shape and distort the information sent to voters. All these elements have contributed to the rise of post-truth politics or alternative facts systems which politicians, agents, the media and institutions like the European Union are struggling to contain. This is leading to further destabilisation of political systems across the globe and might produce unexpected electoral results (Ball, 2017). Last but not least, voters simply vote according to their allegiance and not on the policies or discourse they are being presented with (Caplan, 2011).

While the influence of discourse has its limitations, it remains a powerful tool in the hands of politicians, agents and others, which can be used to promote their worldview, goals and ideas. Fairclough & Fairclough (2013) outlined how “discourses as a way of representing the world do not describe what social reality is but also what it should be” (p. 103). This can be seen in the state of the union speeches of the Presidents of the Commission. As this chapter argues, Juncker had to address the challenges being faced by the EU and its member states, whilst at the same time provide a series of objectives developed by his Commission on how to safeguard the future of the European Union.

### **Critical Discourse Analysis through NVIVO**

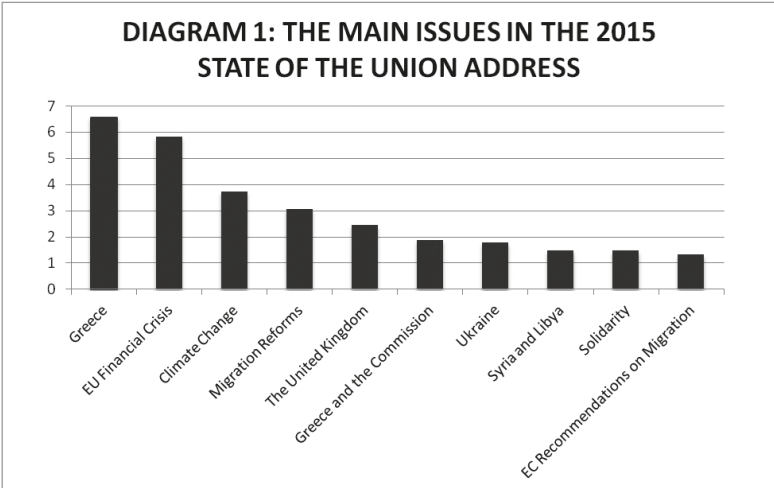
In order to evaluate the State of the Union address through Fairclough & Fairclough's (2013) theoretical framework, this study uses NVIVO to codify these speeches. The speeches were uploaded on NVIVO and a number of nodes based on the discourse used were established to categorise the various subjects dealt with. Over 23 Nodes were established with one of the main nodes being the future of Europe. As these speeches were being analysed and coded, the decision was taken to use a number

of aggregate nodes. More than 28 aggregate nodes were created under the future of the Europe node to highlight the various issues which were being discussed on the future of the EU. The State of the Union speeches were also coded according to the issues tackled. When the coding was completed and all four speeches were evaluated, a hierarchy chart was generated through NVIVO for every speech. In the case of the first speech, since the future of the EU was not the main theme, two hierarchy charts were developed: one which looks at the top issues discussed in the speeches, and the other which looks at the future of the EU (parent node) and its aggregate nodes to evaluate how it was tackled and the language used by Juncker.

**State of the Union 2015: The Time for Honesty, Unity and Solidarity: 9 September 2015**

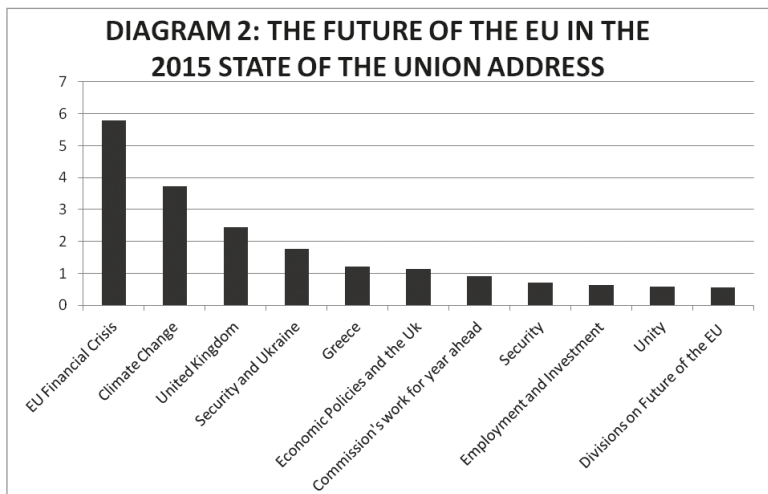
*“It is time to speak frankly about the big issues facing the European Union. Because our European Union is not in a good state” (Juncker, 2015, p. 2).*

Juncker’s first speech as President called for “honesty, unity and solidarity.” The themes explored in his speech reflect the challenges the EU faced during that year. The Greek financial crisis was still ongoing, and finding a long-term solution proved challenging. The Syrian migration crisis was threatening to tear down an already-weakened Union. A referendum on whether the UK should remain within the EU loomed on the horizon. Prime Minister David Cameron had pledged a referendum during an electoral campaign, and talks were underway to renegotiate Britain’s position within the EU. The possibility to leave the EU rose following the ratification of the Lisbon Treaty and the inclusion of Article 50 which allows states to formally withdraw from the Union.



The issues (cf. Diagram 1) tackled by Juncker include the financial crisis (Greece, the EU Financial Crisis, and Greece and the European Commission), Climate Change, Migration (Migration Reforms, Syria and Libya, Solidarity and the EC Recommendations on Migration), the United Kingdom and the Conflict in Ukraine. The first speech is more oriented toward the present challenges rather than the future of the EU.

Diagram 2 reveals how this speech was used to tackle the immediate problems being faced by the EU. The main claim in this speech is that further reforms are required to strengthen the EU. Juncker's vision for a modern EU required a series of reforms. These reforms were meant to help the EU overcome its challenges and transform it in fields such as security where it lacked the required consensus to develop further.



To safeguard the EU and strengthen its foundations, Juncker outlined how the European supranational institutions needed to tackle issues such as Climate Change, the status of the United Kingdom, and security in Europe. In each of these areas, there is an evident frustration regarding the constant failure of the EU and its member states to reach consensus since national interests superseded the European ones.

This speech is especially important since Juncker (2015) provides the goal and circumstantial premises of his Commission especially with regards to the financial crisis. One of the first priorities and the main goal premise was to try and solve the financial crisis which plagued Europe. On this matter, the circumstantial premise is based on five domains which the Commission said it was going to focus on to tackle the effects of the financial crisis. These included: (1) a Common Deposit System Guarantee to protect the savings of the European citizens for up to €100,000, (2) a stronger role for the Euro, (3) more efficient economic and fiscal surveillance, (4) the establishment of a Common Consolidated Corporate Tax Base to fight tax avoidance,

and (5) the creation of a Euro-Treasury area which would take responsibility during periods of economic shock.

In this speech, the future of the European Union is also linked with the development of a Digital Single Market. Juncker highlights a series of goals to secure this future. He argues that the European project could move forward with further investment, stronger copyright rules and the finalisation of the Transatlantic Trade agreement with the United States. Reference is also made to the removal of roaming charges in 2017 and its ensuing benefits for European citizens. The President of the European Commission acknowledged the difficulty and lack of consensus which the EU institutions faced in finding long-term solutions to the financial crisis. Much of the reforms required the consent of both the EP and EU Council, and there was enough discontent and disagreement especially on the Common Deposit System Guarantee:

“I am of course fully aware there is no consensus on this yet. But I also know that many of you are as convinced as I am of the need to move ahead. I say to those who are more sceptical: the Commission is fully aware that there are differences in the starting positions of Member States” (Juncker, 2015, p. 9).

Disagreement amongst the member states was not limited to the Greek financial crisis. On this matter, Juncker’s speeches provide an insight on the intergovernmental tensions within the EU. In fact, Juncker highlights the disappointment for the failure in finding a long-term solution for the Greek crisis. He argues that “our collective inability to provide a swift and clear answer to the Greek crisis over the last months weakened us all” (Juncker, 2015, p. 8). Juncker is especially critical of the EP and its failure to give timely approval for the €35 billion package that the Commission (and the Council) proposed to promote economic growth in Greece. However, here “the means goal premise” is not clear as the EU Commission President fails to explain how this package could help Greece at a time when the EU was imposing further austerity measures.

Whilst only 1% of the speech concerns the UK, Juncker takes the opportunity to defend its role within the EU; a role which would only be guaranteed if a trade agreement is reached and the British citizens vote to remain in the Union. The discourse is positive and augurs for a future agreement. However, Juncker fails to take into account the circumstantial premises which pushed David Cameron to call for a referendum in the first place. He acknowledges that this new challenge was not simply a problem within the UK but a consequence of the failure of the EU to adapt to the modern world:

“We all agree that the EU must adapt and change in view of the major challenges and crisis we are facing at the moment” (Juncker, 2015, p. 10).

This statement is particularly interesting because Juncker uses the third-person “we”. A question arises: was he referring collectively to EU institutions? Taking into account the complex decision-making process in the EU, one may deduce that he is arguing for collective responsibility amongst EU institutions and member-states. To appeal to every institution and member state and strengthen his Commission’s course of action, Juncker explains the value premise behind his proposals. In this case, the values consisted of the EU four freedoms which had to be safeguarded and strengthened as they would help the EU in the challenges it was facing. In addition, further economic and political reforms were required to bolster the role of the EU within the international system. Whilst for a number of decades the EU has tried to adopt a larger security role, the various disagreements amongst the member-states and the role of NATO in Europe, hindered these plans. With a new President of the Commission, security reforms were again going to be a priority.

Yet, European officials struggled to persuade member-states on the need to transform the EU into a security player. Juncker’s claim was that the world was not at peace, and that the EU had the responsibility to act to restore peace by taking an active role in stabilising Ukraine. He thus links the future of the EU with the need to secure Ukraine and protect its citizens. His rationale was that Russia was not only a threat to the Ukraine, but also to Europe. This required a united front on economic sanctions despite their unpopularity among member-states.

The subject concerning ‘unity’ within the EU was also used in the discourse to promote climate change initiatives gaining 4% of coverage. Juncker warned that climate change had the potential to be a security issue due to the depletion of natural resources which is why more action was required from the EU. He highlighted the importance of the Paris Agreement together with the other reforms implemented by the EU, including the reduction of emissions by at least 40% by 2030. These reforms were certainly aimed towards developing the EU as a leader in Sustainable Development through the promotion of renewable energy initiatives to increase employment in Europe.

Juncker’s first speech received mixed reviews from the press. Whilst the media praised Juncker’s commitments in addressing the EU’s challenges and the initiatives promoting sustainable development and renewable energy, the perception was that he was not aware of the realities being faced by EU citizens.

Juncker failed to propose concrete solutions or alternatives to the Syrian migration crisis. The speech was delivered a few months after the body of Aylan Kurdi, a three-year-old boy, was found on a Turkish beach. Pictures of his corpse spread globally generating widespread indignation and criticism against the EU and border states for not doing enough to save lives. Concrete recommendations were also expected for the Greek financial crisis which was still creating pressures in Greece due to high rates of unemployment (Morgan, 2018). In addition, as Juncker declared, ‘unity’ was required to move on with the European project. However, finding ‘Unity’ on issues of which member-states had divergent views was no easy task.



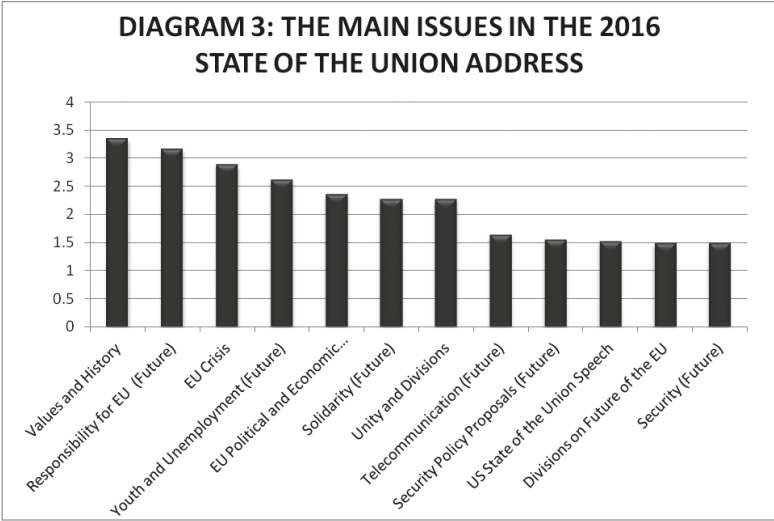
**State of the Union 2016: Towards a better Europe – a Europe that protects, empowers and defends: 14 September 2016**

*The next twelve months are the crucial time to deliver a better Europe: a Europe that protects; a Europe that preserves the European way of life (Juncker, 2016, p. 2).*

A year after Juncker was chosen to head the European Commission, the EU still faced challenges arising from the financial crisis, high unemployment and migration from the war-torn Near East. Yet, 2016 was also the year when the BREXIT referendum took place and 51.89% of the British electorate voted to leave the EU. While this news dominated the European political scene, there is little reference to it in this address. Article 50 was due to be triggered in March 2017, and the European institutions were still digesting this result and its implications.

In this speech Juncker defends the policies implemented by the Commission with an agenda based on the future (cf. Diagram 3) rather than the present. At the same time, as the title suggests, Juncker made a second attempt to prioritise security. With regards to promoting security reforms, and using critical discourse analysis, Juncker employed the value premise by linking these reforms to “EU values and principles” declaring that, as a security player, the EU would strengthen and safeguard its values.

EU values take centre-stage and Juncker reminds his audience that Europeans fought hard for such values and, therefore, they are worth preserving. He said that he had the impression: “that many seem to have forgotten what being European means.” (Juncker, 2016, p. 3). Whilst a number of European officials warned that the EU was being taken for granted, the EU failed to convince its citizens of the importance of its values and principles. Juncker therefore, proceeded to highlight how the EU led to tangible improvements.



In a similar vein to his first union address, he highlights the number of conflicts unfolding across the globe (over 40) and argued that, over the last century, ‘Europe’ (the Institutions, member states, and European citizens) managed to resolve conflicts through diplomatic means. Yet this was highly questionable given the EU’s failure in preventing the conflicts in Yugoslavia and Kosovo. Throughout the speech, there is the constant use of the term “we Europeans”. This can be seen as an example of the idea that these were not speeches coming from a European technocrat, but rather, from a European citizen. In all his speeches, there is an underlying argument calling for a collective sense of direction to secure the EU’s future.

The concept of collective responsibility is one of the main issues which Juncker dealt with in this address. Collective responsibility is linked with the various challenges the EU was facing, and its failure to provide long-term solutions. The President of the European Commission declared that the EU needed to do more to protect its citizens, even though the European Border and Coast Guard and FRONTEX in Turkey and Greece were already providing results. However, he argued that this was not enough. Juncker’s solution was to create a European Defence Fund and reinforce Europol. Interestingly enough, no reference was made to the need to safeguard the Ukraine and its citizens, which was one of the main priorities in the first speech.

Collective responsibility was also required to solve the “existential crisis” engulfing the EU. In part this was due to the disagreements which existed on the way forward. Juncker argues that only through collective responsibility could the EU solve the financial crisis, youth unemployment, and social inequality. Youth unemployment was a very critical issue in this address. Juncker declared that “I cannot and will not accept that the millennials, Generation Y, might be the first generation in 70 years to be poorer than their parents.” (Juncker, 2016, p. 6) Juncker uses the first-person singular to underline his disappointment at such a situation. He follows this by stating that the course of action required to help these EU citizens required more youth programmes and training, and the establishment of the European Solidarity Corps with the aim of encouraging youths to volunteer to help those in need. He also argues in favour of a reform of the European telecommunications markets coupled with investment in 5G technology to be completed by 2025. Juncker believed that, through such investment, the EU could provide every city and village in the EU with wireless internet creating approximately 1.3 million jobs in a decade.

Juncker argued that solidarity was the overarching priority needed to tackle the challenges facing the EU. However, solidarity was difficult to achieve due to the various conflicts between European and national interests. These issues were tackled in his speech the following year, following the triggering of Article 50 by the United Kingdom.

## State of the Union 2017: Towards a positive Europe: 13 September 2017<sup>1</sup>

*“In the last year, we saw all 27 leaders walk up the Capitoline Hill in Rome, one by one, to renew their vows to each other and to our Union. All of this leads me to believe: that the wind is back in Europe’s sails. We now have a window of opportunity but it will not stay open forever. Let us make the most of the momentum, catch the wind in our sails” (Juncker, 2017, p. 1).*

This 2017 State of the Union address was made after the British Prime Minister, Theresa May, triggered Article 50 thereby initiating the process by which the UK would leave the EU by 29 March 2019. This coincided with the celebrations marking the 60th anniversary of the Treaty of Rome. In this speech, there is hardly a reference to Brexit. Instead, Juncker uses this speech to promote an EU narrative based on hope, cultural heritage, freedom, rule of law and equality.

The future of Europe, rather than Brexit, is the central theme of this speech. Reference is made to the White Paper on the Future of Europe (cf. Table 2) which the Commission published in March 2017. This is one of the only speeches addressing alternative options of how the EU could evolve.<sup>2</sup>

At a time of great uncertainty for the EU, Juncker’s address is based on the history of Europe and its values. From a critical discourse analysis, the value premise takes centre stage. The third person plural “we” is again used to encourage EU institutions, member-states and citizens to work together to build a united and democratic Europe by 2025. As in the previous two speeches, Juncker attributes peace and freedom in Europe to the EU.

The future of Europe, rather than Brexit, is the central theme of this speech. Reference is made to the White Paper on the Future of Europe (cf. Table 2) which the Commission published in March 2017. This White Paper and the different scenarios presented by the European Commission were meant to initiate a debate on the future of Europe. Within this paper, the European Union presented five scenarios, on how the future of the EU would evolve after the UK leaves the European Union. The Commission was proposing five different developments succinctly summed up in five categories; “Carrying on”; “Nothing but the Single Market”; “Those who want more do more”; “Doing less more efficiently”; and “Doing much more together.” These scenarios, therefore, also included the much-dreaded concept of a “two-tier” Europe, and a scaling back of the European integration project. Nonetheless, while the language used by the European Union is considered to be neutral, the Commission did very little to hide its preference for further integration in areas concerning the Single Market and security. Indeed, this is one of the only speeches which directly addresses alternative options of how the EU could evolve.

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1 The 2017 State of the Union Address was the first one without a main theme

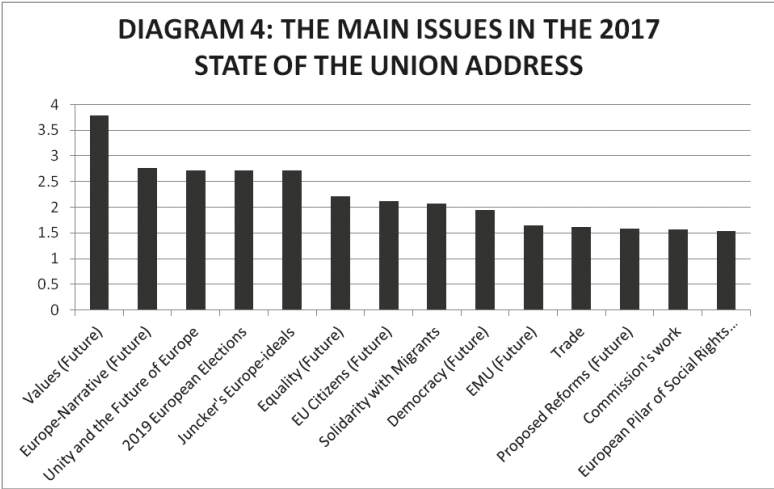
2 This White Paper is extremely important as it proposes five scenarios of how the EU could evolve by 2025.

**TABLE 2: THE FIVE SCENARIOS ON THE FUTURE OF EUROPE**

<b>Scenarios</b>	<b>Possibility</b>	<b>Meaning</b>
<b>Scenario One</b>	Carrying On	Based on the ‘ <b>New start for Europe</b> ’ and <b>Bratislava</b> documents. This scenario outlines how by 2025, the EU would collaborate for <b>more investment in technology</b> which would include automated cars. On the other hand, the member states should place more <b>security measures</b> at the borders which would have an impact on EU citizens.
<b>Scenario Two</b>	Nothing but the Single Market	Collaboration within the EU would be restricted to some areas due to constant disagreement. By 2025, the <b>Single Market</b> will be strengthened but other areas will fall outside the responsibility of the EU.
<b>Scenario Three</b>	Those who want more do more	Cooperation amongst a number of member states on particular policies. By 2025, some states will agree to <b>harmonise</b> their policies by working together on issues such as <b>security</b> and <b>telecommunications</b> . This <b>harmonisation</b> will not be enforced on the rest of the member states.
<b>Scenario Four</b>	Doing less more efficiently	The EU would develop in areas such as <b>security</b> and <b>telecommunications</b> whilst others would be left within the <b>responsibility</b> of the member states.
<b>Scenario Five</b>	Doing much more together	More powers are shared with the EU which means that by 2025 the role of <b>EU agencies</b> will be <b>strengthened</b> .
European Commission (2017)		

This speech provides a sixth scenario for the future of the EU based on further integration and upon the values of freedom, equality and the rule of law. The concept of unity amongst the EU institutions and member-states is also given considerable importance. One of the central claims is that unity is required for the EU to survive. Juncker declared that the 27-member Council of the European Union, the European Parliament and the European Commission were working together to renew the European project by putting Europe at the heart of it. In reality though, it was apparent that there were serious disagreements between the EU institutions on how to move forward. In this speech, he makes reference to the question of legitimacy which plagues the EU. Juncker claims that Europe needs to be more democratic; he

does so notwithstanding the constant criticism levelled against the Commission over its democratic credentials. The need for serious reforms is again stressed in this address. Juncker proposes that the future of Europe should be discussed during Romania’s 2019 Presidency, in a summit due to take place in Sibiu.



Unity is also linked with the future of Europe. Juncker points out that Europe consists of only 8% of the world population, and this was going to decrease to 5% by 2050. Most of the world powers were shifting their investments towards new and emerging markets in the Pacific or Africa. For this reason, the goal premise here is that the EU member states had to work together to be able to compete with these regions.

In this speech, and as outlined by Diagram 4, Juncker looks ahead to the 2019 EP elections. EU officials were already worried of the consequences of an increased share of the vote for Eurosceptic parties in the 2019 Elections. The dynamics were similar to the 2014 elections: the financial crisis, the migration crisis and Brexit fuelled discontent. Some of the recommendations proposed by Juncker to fight apathy and low turnout were to finance political parties and limit the funds to anti-EU parties since they were being used against the EU itself. Yet, this would not solve the main issues of apathy and low turnout<sup>3</sup>. Juncker acknowledges that the EU is often criticised for having a democratic deficit. At the same time, he fails to realise that the proposal to block funding for anti-EU parties could be used as an indictment by anti-EU parties who question the democratic legitimacy of the EU. During the speech, Juncker also announced the introduction of a new Code of Conduct for the Commission and praised the Spitzenkandidaten system as a vehicle to provide further legitimacy to the EU. In addition, the creation of a European Pillar of Social Rights was proposed on the premise that it was required to reach citizens who were not able

<sup>3</sup> Turnout barely reached 43% in 2014

to reach the standard of living expected in the EU. Despite all these proposals and the establishment of the Citizens' Dialogue, he failed to show how these initiatives could improve election turnout.

The European Monetary Union was also given priority in this address with the circumstantial premise being that of promoting more efficiency within the Single Market. In addition, Juncker declared that the EU had to decrease bureaucracy to allow more states to adopt the Euro. To achieve this, the premise was for the EU to appoint a Finance Minister – undoubtedly a federalist measure – during a time when there were serious objections against further strengthening the EU institutions. In addition, for the sake of efficiency, Juncker argues that the appropriate course of action would be to embrace the Qualified Majority Voting (QMV) system. This speech uncovers the paradox at the heart of the EU decision-making process. On one hand, Juncker was encouraging states to strengthen the EU while, on the other, he indirectly highlights that not everyone will agree on the reforms required which is why QMV is required.

The sixth scenario proposed by Juncker in this address would only be achieved with further reforms. Even though Juncker still campaigned for a European Defence Fund, this element did not feature in this speech. Juncker, instead, projected his vision for a Federal Europe, with a common Finance Minister, one single president for the Council of the EU and Commission which would be able to shape and provide faster solutions to the ongoing problems which the organisation faced.

## **State of the Union 2018: The Hour of European Sovereignty – 12 September 2018**

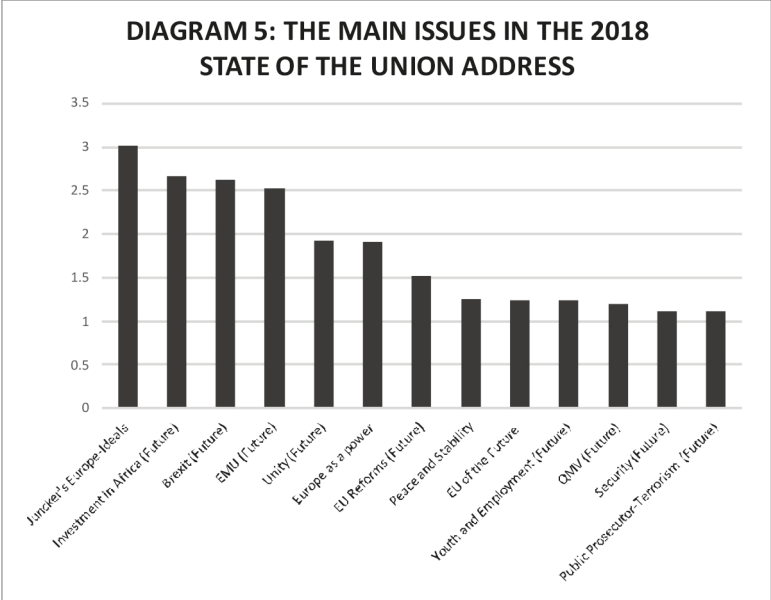
*“Living up to Europe’s rallying cry – never again war – is our eternal duty, our perpetual responsibility. We must all remain vigilant” (Juncker, 2018, p. 1).*

In his last State of the Union speech, Juncker had to defend the work of his Commission. Under his watch, Britain voted to leave the EU, the financial crisis was still putting pressure on the EMU and, while refugees from Syria declined, this crisis left a long-lasting impact on European states and their citizens.

In this speech, Juncker spoke about his vision of a modern EU. This vision is linked with a stronger economic union, a stronger currency, and the rejection of nationalism which was fuelling the rise of far-right parties. Unlike previous speeches, Juncker adopts a more personal tone and uses the first-person singular

*“A few years ago, standing in this very same spot, I told you that Europe was the love of my life. I love Europe still and shall do so forever more” (Juncker, 2018, p. 12).*

Juncker’s vision of the EU envisages a proactive role in Africa with a need for further investment in this continent. When making this point, he uses the first-person singular suggesting that this is his own position, rather than that of the Commission. He stresses that over €44 billion is being invested in Africa, and 36% of Africa’s trade is with Europe. Therefore, he argues, the EU should do more to secure a trade agreement which could create further employment in both continents.



Another sector which influenced this speech was youth unemployment. The circumstantial premise here is that youth unemployment in Europe needs to be reduced. He rhetorically asked whether the EU could have a future if its youth were not taken care of. Juncker answers this question by switching to the third person to highlight the need for the EU institutions to spend more on this generation. This is especially important because, indirectly, he is putting the burden on all EU institutions to act and reverse this trend.

Juncker also argues that a stronger EU requires a stronger single currency. He expresses frustration that 80% of the energy bills are paid in Dollars rather than Euros. He explains that the Commission wanted to transform the Euro into one of the most powerful currencies in the world, and the first step towards achieving this was by strengthening the EMU.

The pressing question revolved around how to achieve this when serious disagreements on the way forward persisted. Juncker had been consistent in his speeches by arguing that QMV was the only method by which decisions could be taken in a more efficient manner which is why it had to be used in the EU’s external relations and certain tax matters. He acknowledges that in order to achieve this,

unanimity was required. However, unanimity was difficult to achieve especially when small states feared that QMV would minimise their influence within the EU. In addition, Juncker fails to provide a rationale on why QMV is the most suitable voting system in the institutions.

Another important element from a critical discourse analysis concerns the value premise element, and whether EU values were truly at the centre of reforms. In this instance, Juncker questions whether the EU could move forward if its main values were constantly being ignored by the member-states. The tensions between the media and national governments could not be ignored. The numerous attacks on journalists across the EU had an impact on his views. With three journalists killed in Europe between 2016 and 2018, Juncker appealed for the upholding press freedom.

Due to the marked divisions between Western and Eastern Europe on the future of Europe, the concept of unity featured in this address. He claimed that the West-East divisions enable other powers to shape events in the region. This statement can be regarded as an indirect reference to Russia.

Unity was also problematic within EU institutions. Juncker points out that while 50% of the Commission's recommendations were approved and another 20% implemented, there were still disagreements on the remaining 30%. Through his discourse, he indirectly challenges other institutions to act on the required reforms. He called for unity to strengthen the European Asylum Agency and for security reforms in view of the fact that the Commission wanted to extend the powers of the Public Prosecutor's Office and turn the EU into a security player. Although Permanent Structured Cooperation (PESCO) was introduced in 2017, there were still vast disagreements on whether the EU should become a security player.

In this address, Brexit is also linked to the concept of unity. Juncker declared that the ongoing talks between the EU and the UK, should ensure that there is no hard border between the Republic of Ireland and Northern Ireland to safeguard the Good Friday Agreement. From another perspective, Juncker declared that the EU should seek a partnership based on trade as outlined by Prime Minister Theresa May:

*“This is why I welcome Prime Minister May’s proposal to develop an ambitious new partnership for the future, after Brexit” (Juncker, 2018, p. 9).*

In this statement, one can notice the use of the first person singular to highlight Juncker's personal opinion rather than that of his Commission or the EU. Since this was his last speech as President, Juncker wanted to defend the legacy of his Commission, while at the same time, provide a vision of a European Union as a competitive security and economic player which could be pursued further by the next EU Commission.

He defended his legacy at the helm of the Commission, although he failed to meet the expectations of those who wanted a greater sense of leadership. Herszenhorn



(2018) called considered the speech to be “disjointed” and “disorganized”. He argued that Juncker should have defended his legacy and provided a broader vision for the EU which does not necessarily equate to federalism. However, from the Commission’s perspective, one could not have expected anything different when there were such diverging arguments over the European project.

### **The Future of Europe in Juncker’s State of the Union Addresses**

The discourse used by Juncker in the State of the Union and the themes tackled, represent the realities and the challenges that the EU faced during his tenure as President of the European Commission. These speeches, while not as popular as the U.S. or UK counterparts, provide an insight of how the Commission works and the relationship which it has with other EU institutions as well as the member-states.

From a critical discourse analysis, Juncker’s speeches are based on both deliberative rhetoric and policy recommendations. Rhetoric (cf. table 3) is used to remind citizens of the purpose of the European Union, its history, values and principles including the four freedoms, democracy and the rule of law. These were required to push through reforms to strengthen and safeguard the EU for future generations. This was the main goal which Juncker had as President of the European Commission; one which was ultimately jeopardized by Brexit

While these speeches were addressed to the European Parliament, Juncker attempted to expand his audience by targeting other EU institutions, member-states and citizens. Since the objective of strengthening the EU went beyond institutions, this action was both timely and commendable. In fact, the call for ‘Unity’ was apparent in all the above-mentioned speeches. However, ‘Unity’ is more of a political rhetorical flourish than a possible policy outcome.

Juncker also tried to portray the Commission as being humane and understanding of the hardships that citizens were facing due to austerity and unemployment.

Table 3 highlights how Juncker’s goals to strengthen the European Union developed from one speech to another. The majority of these speeches tackled the main issues in the EU including the financial crisis, the Syrian migration crisis, and Brexit with Juncker proposing various courses of action to resolve them. This is the reason, why throughout his term as President of the Commission, the main goals remained the same: to guarantee a future for the EU by strengthening the economic sector, reduce unemployment, and invest in the security and the digital single markets. Nonetheless, with the financial crisis, Brexit and migration still on the agenda and with rising nationalism, he proposed further reforms.

**TABLE 3: ELEMENTS CONCERNING THE FUTURE OF EUROPE WHICH JUNCKER’S SPEECHES**

<b>Elements</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Claim</b>	The European Union needs economic and political reforms to survive.	EU should invest in its youth and protect its borders.	EU requires more reforms to reduce unemployment and poverty. QMV should be used for the single market.	The EU needs Unity to move forward and QMV to pass required legislation.
<b>Circumstantial premises</b>	Agenda influenced by the challenges being faced by the EU and its member-states	Agenda influenced by high unemployment and the ongoing financial crisis.	Agenda influenced by the financial crisis, rising unemployment and the international system.	Agenda influenced by the work done by the Commission between 2014 and 2018.
<b>Goal premises</b>	To stabilise Greece, and to promote further economic investment, promote climate change and transform the EU into a security player.	Provide youth with more opportunities to secure their future, and transform the EU into a security player.	To establish a Defence Union, strengthen the European Monetary Union, and solve the migration problem.	To provide a future for European youths, and strengthen EU institutions to ensure that they can withstand challenges.
<b>Value premises</b>	Reforms have to be enacted to strengthen EU values and principles which include the four freedoms, democracy, and respect for human rights.	Freedom, Democracy and rule of law should be the foundation of EU reforms.	The EU values should cover all EU citizens. The EU cannot have second-class citizens.	EU values should be at the foundation of these reforms. EU values should be embraced by individual states with respect to all citizens and other institutions such as the press.

<b>TABLE 3: ELEMENTS CONCERNING THE FUTURE OF EUROPE WHICH JUNCKER'S SPEECHES</b>				
<b>Elements</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Means goal premises</b>	If reforms are enacted, EU will be safeguarded for future generations.	Reforms are needed to reduce youth unemployment.	Reforms are needed to strengthen the economic institutions of the EU.	Reforms should be enacted to turn the EU into a global power.

The main vision was underscored by the need to secure the European project by bringing it closer to its people. This can be considered as the sixth scenario for the future of Europe, which requires the EU to tackle further reforms including the appointment of one President for both the Council and the Commission and transforming the EU into a ‘quasi’ federal state. While federalism was never discussed in the speech, the proposed reforms point to that line of thinking.

Whilst the speeches might not have convinced audiences, they did provide the EP and member-states with an agenda which they could work upon. However, as Juncker rightly pointed out, the biggest weakness within the EU lies in its failure to portray a unified approach. The organisation struggles to find short-and long-term solutions in the face of the rising challenges which are threatening its future stability.

### **Future of the EU: The way ahead**

At the start of his presidency, Mr Juncker had announced that he would only be a one-term President of the Commission, and indeed a new President of the Commission was elected in 2019. However, this president was not one of the spitzenkandidaten proposed by the main political blocs. The 2019 EP Election results weakened the main political blocks and led to the rise of the Renew Europe group (RE), the European/Greens Free Alliance and Identity and Democracy (ID). The European Council ignored the spitzenkandidaten process, and proposed Ursula von der Leyen as candidate for the Commission presidency. Whilst she was ultimately approved by the EP, the whole process has certainly increased the tensions between the EU institutions.

As President-elect of the EU Commission, Ursula von der Leyen (2019) used her first speech to call for a stronger Europe based on the need to safeguard the future of the EU by proposing various reforms, including the strengthening of the EP. It remains to be seen how far she will succeed, given the current divisions on how to move forward with the project.

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## Chapter Four

# The Future of Europe: The View from Strasbourg during the 'Future of Europe' Debate

**Mark Harwood**

### **Abstract**

The chapter analyses the views expressed by the EP political groups on the future of Europe, taken specifically in the context of the Juncker Commission's White Paper, as well as in the wider sense of their ideological views on the type of 'Europe' they envisage. The chapter focuses on the EP groups to be found in the 2014–19 legislature due to the fact that the principal debate on the future of Europe happened during this period. The chapter focuses on three resolutions adopted in 2017 as well as the EP's reaction to the white paper, and outlines the support for and against 'more' Europe. The chapter concludes by affirming that the largest EP groups remain largely in favour of 'more' Europe but that the EP elections of 2019 may result in a parliament less united on the call for greater integration.

### **Introduction**

The aim of this chapter is to discuss the reaction of the European Parliament (EP) and its political groups to the debate on the Future of Europe. The article analyses the political groups in the EP since they reflect the various political orientations which shaped the debate following a tumultuous decade which saw a crisis with the Euro currency, widespread unemployment, an influx of irregular migrants, a surge in Euroscepticism, growing support for populist parties, and the UK voting to leave the EU; with the latter being both an indication and an addition to that ongoing turmoil.

Against the backdrop of this troubled decade, the political groups within the parliament changed as did the political balance between them, impacting the Future of Europe debate in the EP. Ultimately, the Future of Europe debate was propelled by the distinct impression that the EU citizen had lost faith in the European Union and no institution was better placed to discuss this than the EP since it is the only directly elected institution and the only EU institution where a wide range of European political beliefs are represented. Since much of Parliament's feedback on this issue

took place during the period 2016–18, this article focuses upon the EP groups to be found in the 2014–19 legislature.

## **EP Political Groups**

Prior to discussing the EP's reaction to the Future of Europe debate, this chapter will first outline the nature of the political groups within the EP. Political parties are ubiquitous actors within a functioning democracy. They emerge due to divisions in society and contest elections as a means to represent the interests of the electorate. While considered simplistic, it is common to view the parties on a left/right spectrum; with Communists on the extreme left, Greens extreme to moderate left, Socialists towards the centre-left with Liberals in the middle. On the right we then find the Christian Democrats and further along, the Conservatives with Nationalists considered extreme right. Alternative typologies exist to differentiate parties, as with the Nolan chart, and European political parties can be differentiated further in terms of their position on a pro/anti-integration axis (Hix and Hoyland, 2011). It is not the scope of this article to discuss in detail the political orientation of groups, but to analyse their position on the Future of Europe debate. In order to do so, we will adopt the left/right typology which will be complemented, at times, by the pro/anti-integration spectrum, as this chapter debates the groups' position on future European integration. It should be stressed that national parties normally emerge in a defined context, rooted in a clear ideology with a cohesive group identity. These parties are the constituent units of the EP political groups, but the latter are very distinct from the former.

EP Political Groups are the consequence of the creation of the European Coal and Steel Community which included a Common Assembly composed of delegates from national parliaments. When the Assembly convened in 1952, it was decided that the members (78 in total) would not sit in national groups but as party families, and in 1953 a resolution was passed which recognised these groups with three party groups occupying the first Assembly; namely the Socialists, the Liberals and the Christian Democrats. The EP groups are therefore structured groupings of like-minded parties which comply with the criteria of the EP to be recognised as a group; in the 2014–19 legislature these rules stipulated that a party group must have 25 MEPs from seven member states. Recognised party groups are then eligible for certain privileges including funds, access to committees and speaking time within the plenary (Salm 2019). This has meant that some groups are formed which unite two distinct party families, but which then enables them to benefit from official status as a party group, as with the alliance between the Greens and the Regionalists. Parties must negotiate to join groups and can be asked to leave, as has happened throughout the EP's history, while groups also differ on their level of internal coherence and organisational structure. The main parties, especially the Social Democrats, Liberals and Christian Democrats, are relatively cohesive groups with a strong organisational structure and

a relatively tight ideological coherency amongst members (Cicchi 2017). The other party groups within the EP are less ideologically cohesive and less structured with a tendency for members to disagree on issues. Therefore, on the Future of Europe, not all groups provided the same coherency or depth of feedback, as will be seen in this chapter (Cicchi, 2017).

During the 2014–19 legislature, there were eight groups recognised within the European Parliament. These groups had themselves changed over the last 15 years, and were a reflection of an enlarged Union as well as the turmoil seen in Europe over the last 10 years. With this in mind, it is interesting to analyse how the groups have evolved since the 2004 EU enlargement which also saw a major shift in the distribution of seats within the EP. In 2004 the EP seat number increased from 626 MEPs to 732 with nearly all the ‘old’ member states (15) seeing a reduction in their seats to accommodate the new member states which joined from central and eastern Europe, as well as Malta and Cyprus. In the 2004–09 parliament there were seven groups, namely (ordered in terms of size, from the largest to the smallest):

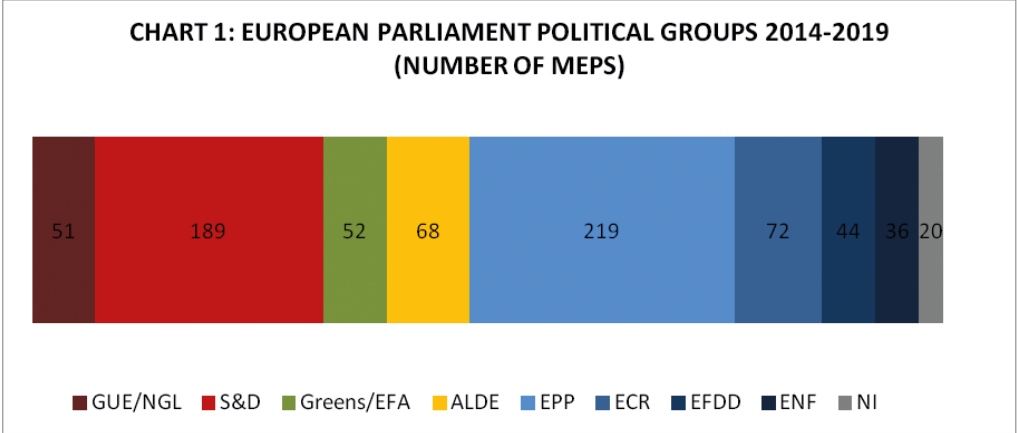
1. The European People’s Party – European Democrats (EPP-ED)
2. Party of European Socialists (PES)
3. Alliance of Liberals and Democrats for Europe (ALDE)
4. The Greens/European Free Alliance (G-EFA)
5. European United Left/Nordic Green Left (EUL-NGL)
6. Group for Independence and Democracy (IND/DEM)
7. Union for a Europe of Nations (UEN)
8. Unattached members (non inscripts – NI)

In 2007 the Union expanded to include Bulgaria and Romania, and a key development from this enlargement was the creation of a new political group – the Identity, Tradition and Sovereignty group (ITS) – which enabled several far-right parties such as the French National Front to join with the intake of Bulgarian and Romanian far-right MEPs and meet the criteria to be recognised as a group (Salm, 2019). However, when one of its members, the Italian MEP Alessandra Mussolini (granddaughter of the Italian dictator) made disparaging remarks about Romanians, the Romanian members resigned, and the group no longer met the criteria to be recognized as a group and was dissolved. The ITS group symbolised the uneasy balance that EP groups often represent, namely the need to gather into groups so as to be recognised by the EP but then needing to maintain consensus amongst political parties which may differ significantly in ideology and goals.

The 2009–14 legislature saw some changes to the EP groups with the EPP-ED becoming the EPP after many of the European Democrats left while the PES was renamed the Socialist and Democrats (S&D) to accommodate an influx of Italian Democrats who did not identify as socialists. 2009 saw the creation of a new group, the European Conservative and Reformists, which were primarily formed after the British Conservatives decided to leave the EPP-ED while the EUL-NGL became the



Europe of Freedom and Democracy (EFD) and the UEN was disbanded. In the 2014–19 legislature the balance of seats shifted again, but the groups remained largely consistent with the EPP, S&D, ECR, ALDE, GUE-NGL, G-EFA and the Europe of Freedom and Direct Democracy (a continuation of the EFD but having lost several members to the ECR and after admitting the Five Star Movement). Chart 1 shows the party groups within the EP during the 2009–14 legislature, including their relative size and position on the left/right political spectrum.



(Source: Author’s own, compiled from data available at <https://europarl.europa.eu/meps/en/full-list>)

Therefore, the 2014–19 legislature comprised eight groups and it was these groups which engaged with the debate on the Future of Europe. By far the largest was the EPP, the European Peoples’ Party which comprised Christian Democrats and Conservatives from 27 member states (all MSs except for the UK). The constituent members represented Christian democracy, conservative and liberal-conservative politics, placing them on the right of the political spectrum (Corbett et al., 2016). In recent years, the group’s coherency was challenged on the pro/anti-integration spectrum and the group retains member parties which can be classified as Eurosceptic, such as Viktor Orban’s FIDESZ. The EPP is a highly organised party group with strong structures for managing party cohesion and provides strong leadership within the EP, often occupying the role of President. In the future of Europe debate, the EPP was one of the most coherent actors in contributing to the debate.

The S&D, the Progressive Alliance of Socialists and Democrats, was the second largest group during the 2014–19 legislature and the only group to have members from all 28 MSs. Centre-left in orientation, the group is constituted of social democrats and, unlike the EPP, the group is relatively cohesive on the pro/anti-integration debate (Cicchi, 2017). As with the EPP, the S&D has a strong and cohesive structure which

ensures party group coherency and the group was one of the principle contributors to the debate on the Future of Europe.

The European Conservatives and Reformists (ECR) emerged in 2009 after the British Conservatives left the EPP-ED. It represented parties from 18 EU countries in the 2014–19 legislature, and was primarily a northern European group with some isolated members from the Balkans (Corbett et al., 2016). Primarily on the centre-right, the group is considered anti-integration based on the concept of eurorealism and the need to reform the EU. Its largest members were the British conservatives and the Polish Law and Justice Party.

The Alliance of Liberals and Democrats for Europe (ALDE) is one of the oldest groups and had membership from 20 EU countries in the 2014–19 legislature. This liberal-centrist group is consistently pro-integration with strong support for the single market (Corbett et al., 2016). As with the EPP and S&D, the group has a strong infrastructure for ensuring group cohesion, and is often a key player in EP politics as its votes can swing left or right which enables it to cooperate with both the EPP and S&D on determining voting outcomes in the Parliament (Cicchi, 2017).

The European United Left-Nordic Green Left (GUE/NGL) represents the amalgamation of former communists with Nordic Green parties. Fourteen countries were represented in this group from 2014–19. Primarily socialist and communist in orientation, with a strong opposition to the political structure of the Union, it is not considered primarily anti-integration but more opposed to the Union's political system (Corbett et al., 2016). For this reason and the fact that the group is confederal, the constituent members are guided by their national parties and this can lead to members voting differently on issues though the group meets regularly to prepare for parliamentary business (Cicchi, 2017).

The G-EFA (Greens-European Free Alliance) had members from 18 MSs in the 2014–19 legislature and comprised three distinct parties, namely the European Green party, the European Free Alliance and the European Pirate Party (Corbett et al., 2016). Primarily constituted of parties representing stateless nations, regionalists and minority political interests, the group is situated on the left of the spectrum. Due to the diversity of its members, party cohesion is more challenging, and members are not expected to vote consistently as a group but tend to vote in the context of their party families.

Europe of Freedom and Direct Democracy (EFDD) had parties from seven countries with its largest constituent members being UKIP. The group was a loose alliance of hard Eurosceptics and there was little group coherence in the 2014–19 legislature. From 2014 the group was beset with defections, in particular a failed attempt by the Five Star Movement to join ALDE. As with most right-wing, Eurosceptic parties in the EP, there is little that unites the constituent members other than their dislike of the EU as seen by the Five Star Movement which is anti-EU but which is difficult

to place on the political spectrum having right-wing policies (such as being anti-migrant) coupled with left wing, green policies.

The final group in the EP during the 2014–19 legislature, the Europe of Nations and Freedom (ENF) had parties from eight countries and was the smallest EP group in the 2014–19 legislature with its largest constituent member being the French National Rally (formerly known as the National Front) but the group also included the Austrian Freedom Party and Italy's Northern League. Right-wing, anti-EU and largely anti-migrant, the group was a loose party group with little coherency amongst members (Corbett et al., 2016).

Finally, the EP has always included members who do not wish to be affiliated with a group or who are not welcome in the established groups. These members are non-attached or non-inscripts (NI) and represent a range of political beliefs, though the 2014–19 legislature batch of NIs were largely far-right politicians. They have always had limited ability to influence the EP and play an insignificant role in EU politics.

As can be seen from this discussion, the groups range from left to right on the political spectrum, in addition to differing in terms of their strength, organisational structures and group cohesion. In this way, the willingness and ability of groups to engage with the Future of Europe debate was not uniform as we will see in the next section. It should also be stated that the debate took place in a specific context with the Parliament providing leadership but many looking to the Commission to structure the way forward with specific proposals. The Commission and the Parliament do not always have a smooth relationship (Ross, 2011). The former is beholden to the latter as it is the EP's job to ensure accountability while the Commission can at times balk at the Parliament's interference. That said, the two institutions share a common, political bond; the Commission is composed of politicians from the mainstream parties and the political groups that dominate the Parliament (S&D, ALDE and EPP) are still the same parties that dominate the College of Commissioners. In fact, during its 60-year history, the presidency of the Commission has switched between the socialists, liberals and Christian Democrats; reflective of their dominance of the political landscape of most EU Member States. In this way, the dynamics between the College of Commissioners and the main party groups within the EP, especially the link between the then President of the Commission (Jean-Claude Juncker) and the EPP group within the EP, also implied that there would be a greater willingness for the S&D, ALDE and EPP to engage with the Commission's debate on the Future of Europe. Therefore, it was to be expected that the mainstream parties within the EP would play the principle role in the debate on the Future of Europe, and that it would be these parties, in conjunction with their fellow politicians within the College of Commissioners, who would establish the way forward.

## **The Future of Europe debate in Bratislava, Brussels and Strasbourg**

The Union has periodically discussed the future of Europe in the last three decades as it reacted to unfavourable developments including declining turnout for EP elections right up to 2014, the rise of Eurosceptic politics in the 1990s, and the rejection of various EU treaties by the electorate in Denmark, Ireland and France, as well as in reaction to more favourable developments such as the Union's impending enlargement in 2004. However, much of these discussions remained open-ended, and where substantive action was taken, as with the Adonnino Committee in 1985 or the Convention on the Future of Europe from 2001–03, the guiding principle seemed to be the precept of 'more Europe'. It was the decision of the British people to vote against EU membership in June 2016 that brought the urgency for a discussion to a head with the EU-27 issuing the Bratislava Declaration and Roadmap in September 2016. Focused on a commitment to the Union and a wish to ensure that the EU works for all its citizens, the declaration clearly stated that 'although one country has decided to leave, the EU remains indispensable for the rest of us... We are determined to make a success of the EU with 27 member states' (European Council 2016). While the declaration was an opportunity to show a united front, some noted that the EP was conspicuous in its omission from the declaration; the Visegrad Four issued their own statement wanting greater involvement for national parliaments in EU affairs while the then Italian PM, Matteo Renzi, declared that the summit was a waste of time (Zalan, 2016). Subsequently, the 27 re-affirmed their commitment to the Union on the 60th anniversary of the Rome Treaties, and laid out a union integrating at different speeds while still moving in the same direction. Then, in March 2017, the European Commission issued its White Paper on the future of Europe and outlined five scenarios which have been summarised as:

1. Continuing on the same path
2. Focusing on the Single Market
3. Variable integration with some moving forward quicker than others
4. Doing less but working more effectively in those areas
5. More Europe

The White Paper has been complemented by a series of Citizens' Dialogues across the Union as well as periodic updates through the Commission President's State of the Union addresses to Parliament.

In terms of the European Parliament, in the aftermath of the Brexit vote the EP had approved a resolution in June 2016, which re-affirmed the MEPs' commitment to the Union but calling for the need to relaunch the European project and to reflect on the future of Europe. At the core of that resolution was the need to make the Union more democratic while recognising that MSs would need to integrate at different speeds and that this would need the revision of the treaties. Ultimately, the EP called for a road map for a better union, based on exploiting the Lisbon Treaty to the full. The EP's contribution to the debate can be differentiated into three principal initiatives,

the first being a series of resolutions issued in February 2017 in reaction to the debate instigated by the Brexit vote, the second being the plenary discussion following the publication of the Commission's White Paper with the third being a series of debates on the Future of Europe held in the Parliament's plenary where Heads of State or Government were invited to give their vision of the future, stretching from January 2018 to the EP elections of 2019 and involving 18 leaders.

## **Resolutions on the Future of Europe**

In the context of the Brexit vote as well as the 60th anniversary of the Treaty of Rome, the EP adopted three resolutions in February 2017 outlining how they thought the EU could be reformed to increase people's trust, thus representing the most substantive contribution by the EP to the debate. The first report, compiled by Mercedes Bresso (S&D, Italy) and Elmar Brok (EPP, German), outlined what improvements could be made to the existing system (European Parliament, 2017a). The recommendations (some of which were to be repeated in the other resolutions) included:

1. Ending Europe a la carte: in particular by reaffirming the use of the Union method (formerly referred to as the Community method) over intergovernmental decision making in the Council; making enhanced cooperation less restrictive; and reducing the practice of opt-outs.
2. New economic governance for economic growth, social cohesion and financial stability: including the adoption of a convergence code (in addition to the Stability and Growth Pact) which would set converging targets for taxation, labour market, investment, productivity, social cohesion, public administration and good governance capacities; equal ranking for social rights and economic freedom for a comprehensive EMU; incorporation of the fiscal compact into the EU legal framework; a fiscal capacity for the euro area based on genuine own resources and a European treasury equipped with the ability to borrow; the creation of an EU Finance Minister (responsible for the operation of the EMS); the enabling of the EMS to act as first lender of last resort for financial institutions under the ECB's supervision; ensuring the European Central Bank enjoys the full powers of a federal reserve; completion of the banking union and the capital markets union; as well as the lifting of the requirement of unanimity for decision-making on certain tax practices.
3. New Challenges: recognising the need for a genuine European energy union; an EU migration system synergised with foreign aid and the EU's foreign policy; the upgrade of the EU's capacity to fight terrorism and international organised crime; as well as action to ensure that security become a shared competence and not an exclusive competence of the member states.
4. Strengthening EU foreign policy: the High Representative to be named EU Foreign Minister and to become the main external representative of the Union

in international fora, as well as being able to appoint deputies; creating a European Intelligence Office to support the CFSP.

5. Safeguarding fundamental rights: in particular by giving the Commission the power to take 'systematic infringement action' against member states that violate fundamental values; converting the Charter of Fundamental Rights into a Bill of Rights of the Union, and extending the right of legal persons to bring cases before the ECJ for alleged violations of the Charter; the introduction of provisions for referenda at the EU level on matters relevant to the Union's actions and policies.
6. More democracy, transparency and accountability: including the transformation of the Commission into the principle executive authority or government of the Union; reducing the size of the College and having only two vice-presidents (namely the Finance Minister and the Foreign Minister); allowing citizens to be able to vote in all elections of the country where they are living; establishing a single seat for the EP; transforming the Council configurations and the European Council into a Council of States; removing the rotating six-month presidencies in the Council of the EU and replacing them with permanent chairs; having a single legislative council and turning specialised councils into just preparatory bodies; creating an additional council for the eurogroup with legislative and control functions; removing the consultation procedure and applying the OLP to all matters (where feasible) while also removing unanimity from voting in the Council in areas such as defence and social policy; introducing a green card procedure in the national parliaments' early warning mechanism whereby national parliaments could submit legislative proposals to the Council; giving Council and the EP the right of legislative initiative; reinforcing the EP's right of inquiry powers and; introducing QMV in terms of the budget and own resources as well as in the decision-making procedure of the Multiannual Financial Framework. Finally, the resolution called for the extension of the EP's scrutiny powers to the whole EU budget as well as making treaty ratification less rigid by allowing amendments to enter into force if approved by an EU referendum or by 4/5 of the member states. (European Parliament, 2017a)

The resolution was approved by 329 votes to 223 with 83 MEPs abstaining (European Parliament 2017b). An analysis of the roll call shows that a significant number of MEPs from EPP, S&D, ALDE and G/EFA voted in favour. A small number of EPP, S&D, ALDE and G/EFA voted against with a significant number of ECR, GUE/NGL, ENF and NI opposing as well as a number of EFDD members. There were a number of EPP, S&D, ALDE and G/EFA who abstained, as did isolated members of the ECR, GUE/NGL and EFDD (European Parliament 2017b).

In terms of the second resolution by Guy Verhofstadt (ALDE, Belgium) the remit was more ambitious and geared toward treaty reforms (European Parliament, 2017c).

Many of the recommendations were identical to those listed in the first resolution but others necessitated treaty change and included

1. The consolidation of parliamentary scrutiny of national governments and the exchange of best practice; the reduction of the Council configurations with a single legislative council meeting in public; equality between the EP and Council on the appointment of members of the Court of Auditors; greater parliamentary involvement in the management of EU agencies; the reduction in the duration of the MFF so as to be in alignment with the EP and Commission's term; completion of the banking union based on a single supervision mechanism as well as a single resolution mechanism and a European deposit insurance scheme; establishment of a true capital markets union; the establishment of a social Europe and a new social pact; establishment of an EU white book on security and defence on the basis of the EU global strategy; the creation of a permanent civilian and military headquarters; as well as the appointment of a European Public Prosecutor. (European Parliament 2017c).

The resolution was approved by 283 votes in favour, 269 votes against and 83 abstentions (European Parliament 2017b). An analysis of the roll call shows that a large majority of S&D, ALDE and G/EFA voted in favour as well as a majority of the EPP. Votes against included the majority of the ECR, GUE/NGL, EFDD and ENF with some ALDE members also voting against, a large number of NI, some S&D, some G/EFA and a large minority of the EPP members. Abstaining we had a large number of EPP and S&D members and isolated members of ECR, ALDE, GUE/NGL and G/FRA (European Parliament, 2017b).

The final resolution was compiled by Reimer Boge (EPP, Germany) and Pervenche Beres (S&D) and focused on the lack of convergence in the Euro area and called for further integration (European Parliament, 2017d). The resolution reiterated many of the recommendations made in the first resolution in terms of the Euro, and called for a fiscal capacity consisting of the EMS and additional and specific budgetary capacity for the Eurozone which would be funded by its members as part of the EU budget. The resolution also called for the development of the EMS to become a European Monetary Fund with a mandate to absorb economic shocks, a convergence code which would include taxation, as well as a greater role for the EP and national parliaments in governance of the Eurozone (European Parliament, 2017d). The report was approved by 304 votes in favour, 255 votes against and 68 abstentions (European Parliament, 2017b). Of the votes in favour, a significant number of S&D, ALDE and G/EFA MEPs voted in favour as well as a large number of EPP MEPs. While there were some isolated members of S&D, ALDE and G/EFA voting against, a large number of the EPP rejected the resolution while a significant number of the ECR, GUE/NGL, EFDD, ENF and the NI voted against. Of those abstaining, a large number were from the EPP with some members of S&D, ECR and ALDE (European Parliament, 2017b).

It is clear from the three resolutions that the majority of MEPs were in favour of the concept of ‘more Europe’; more in terms of designating new areas for EU competence, such as defence and taxation, more power for those areas where the EU already had competence, as with the single currency, a simplified institutional structure with a distinct federal slant which saw greater powers for the European Parliament, a diminished role for the MSs by restricting their veto power (as well as the creation of the concept of European referendums) while also pushing for the Commission’s recognition as the Union’s government with the Council and the EP as the Union’s legislative branch. Not surprisingly, this distinct federal orientation gained the principal support from the left-wing groups within parliament, in particular the S&D and G/EFA while ALDE and the EPP showed marked support. Not surprisingly, nearly all the other groups heavily opposed the resolutions which called for more Europe but also a large number of EPP members were unhappy with them and voted against, in particular the second resolution which was drafted by one of the EP’s most ardent federalists, ALDE’s Guy Verhofstadt. Ultimately the EPP is less cohesive on the pro/anti-integration question, and several constituent parties, such as FIDESZ, are against further integration and opposed all three resolutions as did the all Maltese MEPs who all voted against, irrespective of political orientation. It was clear therefore that, in discussing the Future of the Union, that the mainstream groups were largely in favour of ‘more Europe’ while the peripheral groups were heavily opposed, both left and right.

### **Plenary Debate on the Commission’s White Paper**

The Commission published its White Paper on the Future of Europe on 1 March 2017, with Commission President Jean-Claude Juncker addressing the EP plenary on the same day. From the initial reaction within the EP, a clear division was seen with some welcoming the five scenarios outlined by the Commission while others preferred one clear plan and bemoaned the lack of concrete examples: ‘you are playing into the hands of all those who want to weaken the European Union or even get rid of it’ (S&D Leader Gianni Pittella) (European Parliament, 2017e). Further afield there were calls for the Union to do less but do things more efficiently (Ulrike Trebesius of the ECR) while Patrick Le Hyaric (GUE) advocated a new scenario, a bottom-up political system where the people could be represented better (European Parliament, 2017e). More negatively, Vicky Maeijie (ENF) noted ‘we in the Netherlands said no to the European constitution, no to the trade agreement with Ukraine, and it is time we said no to Europe’ (European Parliament, 2017e).

In statements issued during and after the plenary, the EPP was the most positive: ‘President Juncker’s White Paper on the Future of Europe also comes at the right moment for the European centre-right. The EPP stands committed to participate in this reflection process, ready with its own initiatives to make Europe better for its people... Separating banks from states to ensure that never again taxpayers’ money



be used to rescue banks, as we proposed in our paper on the future of the Economic and Monetary Union; or creating a true European defence force to maintain peace, not to make war' (European People's Party, 2017a). The S&D reiterated the need for a strong social pillar, a European fiscal capacity, a completed monetary union and a sustainable Europe which would be able to fight climate change and create jobs and growth. They also highlighted the need for efforts to combat tax fraud and the need for a European army, a clear call for 'more Europe' (Socialists and Democrats, 2017). A similar message came from ALDE with the group leader, Guy Verhofstadt, calling for EU MSs not to use unanimity voting to block vital efforts to move the Union forward.

From the other groups the tone was less welcoming. The ECR spoke about the need for the Union to focus on fewer policies and to become more efficient in those areas with greater focus on fighting terrorism and ensuring border security (European Parliament, 2017e). Further afield, the EFDD MEP Gerard Batten placed the blame of the EU's problems on the EU. As with the resolutions issued in February 2017, the core group of the EPP, S&D and ALDE were in favour of the need for more Europe while the other parties were against or, at most, in favour of a Europe doing less (ECR) or a reconfigured Europe with more decentralised decision-making (GUE/NGL) (European Parliament, 2017e).

In September the Commission President delivered his annual State of the Union address to Parliament where the five scenarios were to be solidified into a single proposal. The speech culminated in Juncker's sixth proposal, a Union of Values (European Commission, 2017). At the core of this proposal was the concept of three fundamentals: namely freedom (of expression), equality (of countries, of workers, of consumers) and rule of law (and upholding the decisions of European and national courts). Based on this, Juncker called for a more united, stronger and democratic Union, for all members to join Schengen and adopt the Euro, to enter the banking union and for all members to agree on the European pillar of social rights. Juncker also called for more use of QMV in the Council, for unanimity to be stripped for several sensitive areas like taxation and the creation of a European Minister of Economy and Finance. Ultimately, Juncker's final proposal argued for more Europe, more integration with more centralised power. As had always been the case, the EU reacted to declining support for the Union amongst its population by calling for more power, not less, with the ultimate recommendation being the amalgamation of Commission and European Council presidencies; 'Europe would be easier to understand if one captain was steering the ship' (European Commission, 2017). Many of these proposals had already been part of the EP's initial response to the debate and, if anything, the Commission's proposal was a less ambitious version of the EP groups' own recommendations as laid down in February 2017.

As with the initial response to the original White Paper, feedback to the State of the Union address could be differentiated into the feedback provided by the mainstream party groups which largely backed the concept of more Europe and the peripheral party groups which opposed. The EPP applauded Juncker for placing

European citizens at the heart of Europe's future, called for a European defence and security union as well as a Common European Asylum System, the strengthening of the social dimension of the Union, and reaffirmed its support for the EP's role in the selection of the Commission President (European People's Party, 2017b). Gianni Pittella (S&D) dismissed the scenarios, called for Juncker to be courageous but also attacked the European Council which 'undermines the decisions taken by the European Commission and Parliament' (Socialists and Democrats, 2017). Further afield, ECR co-chair, Ryszard Legutko, stated that his group 'rejected the federalist ambitions contained throughout the speech' and that 'Mr Juncker has suggested there has been a debate on the Future of Europe... but we already know it. It will be the same old, 'more Europe, more Europe'' (European Conservatives and Reformists, 2017). These sentiments were echoed by Nigel Farage of the EFDD who went on to state 'the way you're treating Hungary and Poland already must remind them of living under the Soviet communists when you attempt to tell them how they should run their own countries. All I can say is thank god we're leaving' (Europe of Freedom and Direct Democracy, 2017). Later that year the ENF, in reaction to the Commission's plans for the Eurozone, stated that it 'rejects this plan which is a way to increase the Commission's influence... whereas citizens of many EU countries have increasingly been voting for parties calling for a modest EU and a greater subsidiarity, M Juncker follows the opposite path and initiates a new step towards a federal European government' (Europe of Nations and Freedom, 2017).

### **Heads of State or Government Debates**

Finally, within the context of the debate on the Future of Europe, the EP took the decision to host a series of high-profile debates on the Future of Europe running through 2018 until the 2019 European elections. On the invitation of the EP President, European Heads of State or Government addressed the EP's plenary on the future of Europe. In sequence, the leaders of Ireland, Croatia, Portugal, France, Belgium, Luxembourg, The Netherlands and Poland addressed the EP in 2018 followed by Greece, Estonia, Romania, Germany, Denmark, Cyprus, Spain, Finland, Italy and Slovakia in 2019. It is not the aim of this article to go into detail on this initiative, the stated positions not being of direct correlation with the position of the political groups within the EP. However, in terms of the reaction of the plenary to the speeches given, it was not surprising to see a general division based on the mainstream parties and those on the periphery, as highlighted in the previous section. Throughout the session, speeches made by the EPP, S&D and ALDE were consistently pro-integration, often lauding the success achieved by countries such as Ireland, calling for greater leadership from countries like The Netherlands, and effectively calling for more Europe. Outside these groups the message was less supportive from the ECR, while the EFDD and ENF on the right and the GUE/NGL on the left were overwhelmingly critical of the EU and the pro-EU stance taken by many leaders.

Against the backdrop of the speeches by the Heads of State or Government and a year after the publication of the original resolutions, the EP adopted a resolution on the state of the debate (European Parliament, 2019). The resolution reiterated differentiated integration as a way forward, bemoaned the imbalance between the main institutions which had benefited the European Council, and called for the right of legislative initiative to be given to the Parliament. In terms of policy, the principal concern was for more to be done on migration, defence and respect for the Union's values (European Parliament, 2019). The resolution was passed by 407 votes to 196 with 41 abstentions.

### **Conclusion: The View from Strasbourg on the Future of Europe**

After three years of debate, it is clear that the groups in parliament during the 2014–19 legislature could be differentiated on the future of Europe between those groups advocating for more Europe, primarily the mainstream parties (EPP, S&D, ALDE and the G/EFA) and those groups calling for less Europe (ECR) or a new political system for Europe (GUE/NGL) or wanting to halt the integration process completely (EFDD and ENF as well as a large number of NI). On the left side of the political spectrum, the call for more Europe included a call for more bottom-up decision making, more inclusive policy making, and a more social and environmentally friendly Europe (G/EFA). On the centre-left, centre and centre-right, the call was stronger for a Europe doing more on defence, asylum and to guarantee the single currency while creating a stronger social pillar to the Union. Unsurprisingly, the mainstream parties called for a more federal Europe, and one where the parliament was placed on equal footing with the member states in Council. Many of the recommendations made in 2017 were incorporated into the Commission's vision for the Future of the Union. Unsurprisingly, considering that the College of Commissioners is constituted of EPP, S&D and ALDE politicians, both the Commission and the EP were often singing from the same hymn sheet. From Strasbourg to Brussels, the message was clear, at least amongst the mainstream parties, namely more Europe and a more federal Europe. Beyond these mainstream parties, the message was less supportive with the left wing GUE/NGL questioning the logic behind the idea of 'more Europe' with Altiero Spinelli's daughter, MEP Barbara Spinelli, saying 'the proposals lack any critical analysis of the responsibilities of the EU and of the inadequate policies that have been adopted so far. Hence, the proposed solutions follow the same line: a mere institutional reshaping of the status quo' (European United Left – Nordic Green Left, 2017).

Therefore, the view from Strasbourg during the 2014–19 legislature was largely of an institution calling for more Europe and a more federal Europe. In May 2019, EU citizens went to the polls to elect a new European Parliament. The election was of note for reversing years of decline in turnout with over 50% of the eligible voters participating. The outcome will have important consequences for legislative politics

within the EP but may have less of an impact on the future of Europe debate. Both the EPP and S&D saw a decline in their seats with a significant increase for ALDE (renamed 'Renew Europe') and the Greens/EFA. Identity and Democracy (ID) (the successor party group to the Europe of Nations and Freedom group) jumped the ECR to become the fifth biggest group while GUE/NGL became the smallest group. Many of the former members of Europe of Freedom and Direct Democracy are now listed as NIs, including the Five Star Movement and the Brexit party, the largest party in the EP. Much has been said about the legislative balance between the EPP, S&D, Renew Europe and the G/EFA; the shift in balance between these parties will impact the chamber's voting on key issues as the left/right balance has become more nuanced. However, the overall balance between the pro-and anti-integration parties within the EP remains relatively unaltered. While there has been an increase in MEPs on the right/far-right (ECR, ID, NI) and a decline on the far-left (the GUE/NGL), that increase has been marginal, it does not threaten the ability of the mainstream parties to control the chamber and many of the anti-integrationists now sit as NIs, and are therefore denied many of the advantages of being recognised as a party group. If anything can be predicted in terms of the EP's support for the future of Europe debate as it enters its ninth legislature is that it was often G/EFA, S&D and ALDE supporting more Europe with the EPP showing a majority of its members in favour. With an increase in ALDE (Renew Europe) and G/EFA and a decline in the EPP, it does not seem that the balance in favour of 'more Europe' has been dented and we can expect much of the same rhetoric heard during 2014-19 to be repeated in Strasbourg during the ninth legislature.

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## **Part 2: Europe in the World**

## Chapter Five

# The EU's Role in the World Trading System

**Richard W.T. Pomfret**

### **Abstract**

This chapter focuses on the evolution of the EU's external trade policy, especially since the adoption of the Trade for All strategy in 2015, and in the context of long-term trends (GVCs, new technologies in trade) and significant internal (Brexit) and external (Trump) shocks.

### **Introduction**

The founding documents of the European Union, the 1957 Rome Treaties, envisaged a simple customs union with internal free trade and a common commercial policy towards non-members. The external trade policy was soon adjusted to favour preferred trading partners as Association Agreements (AA) were signed with Greece in 1961 and with Turkey in 1963, and preferential treatment was granted to former colonies in Africa, the Caribbean and the Pacific (ACP). By the 1970s, the Community had a complex pyramid of trade preferences that left only seven countries facing the most-favoured nation tariff that was supposed to apply equally to all partners who had signed the General Agreement on Tariffs and Trade (GATT).

Before 1990 EU trade policy was used for foreign policy purposes (to favour preferred partners) and in response to domestic policy pressures (to support farmers and other producers facing import competition).<sup>4</sup> A crucial turning point was the 1990 meeting of trade ministers in Montréal, where the Uruguay Round of GATT multilateral trade negotiations was in danger of collapse. The grand rescue bargain between the major trading nations included agreement by the Europeans to drastically reform the Common Agricultural Policy (CAP) and to phase out one-way preferential treatment of trade partners. Successful conclusion of the Uruguay Round was followed by establishment of the World Trade Organization (WTO) in 1995, strengthening the liberal international trading system.

In the twenty-first century, the EU has been in search of a new approach to trade policy. The Trade for All strategy published in 2015 confirmed abandonment of using

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<sup>4</sup> Although the name European Union was only formally adopted in the 1993 Maastricht Treaty, I will use EU for predecessor organizations.



trade policy as foreign policy and that the goal is to open the EU to trade in support of participation in global value chains. Given the difficulty of progressing reform of world trade law through the WTO to address new issues, the EU has embarked on a series of deep trade agreements with like-minded countries – South Korea, Canada, Japan, Australia and New Zealand. The list could have included the USA, but after the 2016 election President Trump terminated negotiations.

As the USA withdrew from its leadership position in promoting the liberal multilateral trading system, the EU acknowledged that it has to become more proactive. This may be not without internal tensions, as several member countries have strong illiberal political parties. However, especially in Eastern Europe, there is recognition that a positive economic development since the end of central planning has been the ability to participate in global value chains; this is especially true of Poland, the Czech Republic, Hungary and Slovakia, and most obviously in the car industry.

### **The Pyramid of Preferences**

The 1957 Treaty of Rome established a customs union among the six signatories. The project was supported by the USA, primarily on political grounds in the Cold War context of constructing a stronger western European economy bolstered by economic cooperation. Potential U.S. opposition to a protected European market was pre-empted by EU participation in the Kennedy Round of multilateral trade negotiations leading to substantial cuts to the common external tariff as the customs union was being implemented. Major exclusions from the external tariff reductions were agriculture and textiles and clothing, both of which were outside the multilateral trade liberalization during the GATT era.<sup>5</sup> A second problem for the global system was the treatment of former colonies; pre-existing imperial preferences were grandfathered in the GATT as an exception to the general requirement for non-discriminatory treatment of trade partners (Pomfret, 2001).

Two years after the Rome Treaty, seven countries (Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK) formed the European Free Trade Association (EFTA) with an alternative vision of a free trade area without supranational institutions or a common external trade policy. In this setting of bloc competition, the Six customs union countries signed association agreements with Greece (1961) and Turkey (1963), while Finland became an associate member of EFTA in 1961. The bloc competition ended quickly in favour of the customs union as the UK applied for membership in the EU, unsuccessfully in 1961 and 1967 and successfully in 1972.

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5 The GATT was signed in 1947 and subsumed by the WTO in 1995. Steel and cars were also frequent exceptions from GATT rules, e.g. Italy signed an agreement with Japan to limit each country's annual automobile imports from the other to a few thousand units (Pomfret, 2001, 119n).

When the UK, Denmark and Ireland joined the EU in 1973, the remaining EFTA members became part of a free trade area in manufactures with the EU.

The EU of the 1960s and 1970s had no instruments for a common foreign policy and used trade policy to strengthen external ties. Apart from free trade in manufactures with the EFTA countries, and the Yaoundé (and later Lomé) Convention providing special treatment to ex-colonies in ACP countries, preferential relations were extended to all Mediterranean countries, not just Greece and Turkey, and these were consolidated into a Global Mediterranean Policy in 1972 (Pomfret, 1986). After 1971 developing countries benefitted from preferential tariff rates under the Generalized System of Preferences (GSP) scheme, although these were not as generous as the Yaoundé terms. The consequence was that the most-favoured nation (MFN) tariff, which supposedly applied to imports from all GATT signatories, only applied to seven trading partners in the 1970s (Australia, Canada, Japan, New Zealand, South Korea, Taiwan and the USA). The Communist non-market economies had worse than MFN treatment.

The operation of preferential treatment caused problems as partners worried more about being treated worse than their competitors than being grateful for receiving better than MFN treatment (Pomfret, 2001, 129–35). Moreover, the value of preferential tariffs was eroded by reductions in the common external tariff agreed by the European Communities in successive rounds of multilateral trade negotiations; when the preference margin became small, it might not be worth the bureaucratic hassle of claiming preferential treatment.

A second source of tension with non-member countries was the Common Agricultural Policy (CAP) which was created in the 1960s and early 1970s, with the aim of maintaining both farmers' incomes and the principle of free trade within the common market. The CAP took longer to complete than the customs union in manufactures, which had been established by 1968, and the CAP required annual bargaining over the common price for every farm product. The mechanism of price support varied from product to product (e.g. because of different degrees of perishability) but the general procedure was for EC Ministers to agree on an intervention price at which the product would be purchased from farmers; imports were subject to a variable levy to cover the gap between the world price and the intervention price, so that domestic farmers could never be undersold by imports. Due to the political influence of farmers and ministries of agriculture, the intervention price tended to favour farmers' interests over consumers' interests and became associated with excess supply leading to increasing stocks (popularly given names such as the butter mountain or the wine lake). In order to dispose of the surplus, the EU offered export subsidies to be paid from the Community budget.

When world prices of agricultural goods were high (as in early and mid-1970s), the CAP was relatively inexpensive. When world prices fell but CAP intervention prices did not, the cost of price support and stock maintenance increased. The end of the

Bretton Woods fixed exchange rate system in 1973 caused added complications as relative national prices changed daily. To smooth out fluctuations in consumer prices and farm incomes, CAP prices were modified by a system of green exchange rates; differences between green and market exchange rates were funded by monetary compensation amounts paid from the Community budget. By the late 1970s, the CAP was eating up three quarters of the Community budget, but farmers' opposition stymied effective reform.

The period from the mid-1970s to the early 1980s were difficult for the EU amidst global recession and stagflation, and the failure of a first attempt at monetary union. The EU faced budget crises, largely due to the domination of expenditure by the CAP; in the early 1980s, the UK demanded a rebate because it was paying in less than it was receiving, a situation that reflected the UK's relatively small agricultural sector. In the face of competition from Japan and newly industrializing Asian economies, EU members introduced national protection measures (e.g. sales of Japanese cars were limited to 3% of the market in France) which required border controls within the customs union to prevent trade deflection via less restricted markets (e.g. importing Japanese cars into Denmark for sale to French customers).

After the end of military dictatorships in 1974–5, Greece, Portugal and Spain applied for membership. Greece joined in 1981 – more or less on schedule twenty years after the Association Agreement – and Spain and Portugal joined in 1986. The countries remaining in the “Global” Mediterranean Policy now faced restrictions on their farm exports as competing countries were inside the CAP. For Turkey, the demotion in the hierarchy was clearest as Greece moved from Associate status roughly similar to that of Turkey to full membership, and five years later Spain and Portugal moved from lower in the Pyramid of Preferences to unrestricted participation in the internal market.

The EU's response to the challenges of the early 1980s was influenced by an important case in 1979, when the European Court ruled that a German ban on sales of a French liqueur (Cassis de Dijon) was illegal. In Germany the liqueur was too strong to qualify as a wine and too weak to be sold as a spirit, but the Court ruled that such regulations were invalid; if a good could be legally sold in one part of the common market, then it could be legally sold throughout the market. This case highlighted that removal of tariffs was only an initial step in creating a single market; either the mutual recognition principle had to be accepted or regulations had to be harmonized.

The European Commission embarked on a program to complete the single market by 1992. This was to be achieved by reducing non-tariff barriers to trade through mutual recognition and harmonization, by promoting free movement of goods, people, capital and services, and by institutional reform (qualified majority voting in most areas). Although a separate initiative by a subset of members, the 1985 Schengen Agreement further facilitated trade by creating a border-free area; in the 1990s it

would become part of the *acquis communautaire* required of new members.<sup>6</sup> The 1992 program would be codified in the 1993 Maastricht Treaty, when the European Communities would be renamed the European Union.

## 1990

Before 1990 trade policy was used for foreign policy purposes and in response to domestic policy pressures. The EU participated in GATT negotiations to reduce tariffs, that incidentally led to erosion of preferential treatment, and individual EU members introduced new trade barriers, especially against Japan and newly industrializing Asian exporters. The 1986 Uruguay Round of multilateral trade negotiations aimed to further global trade liberalization in the face of these and other challenges. By 1990, however, the negotiations were in danger of collapse as no major trading nation was willing to move first in dismantling protectionist or discriminatory trade barriers.

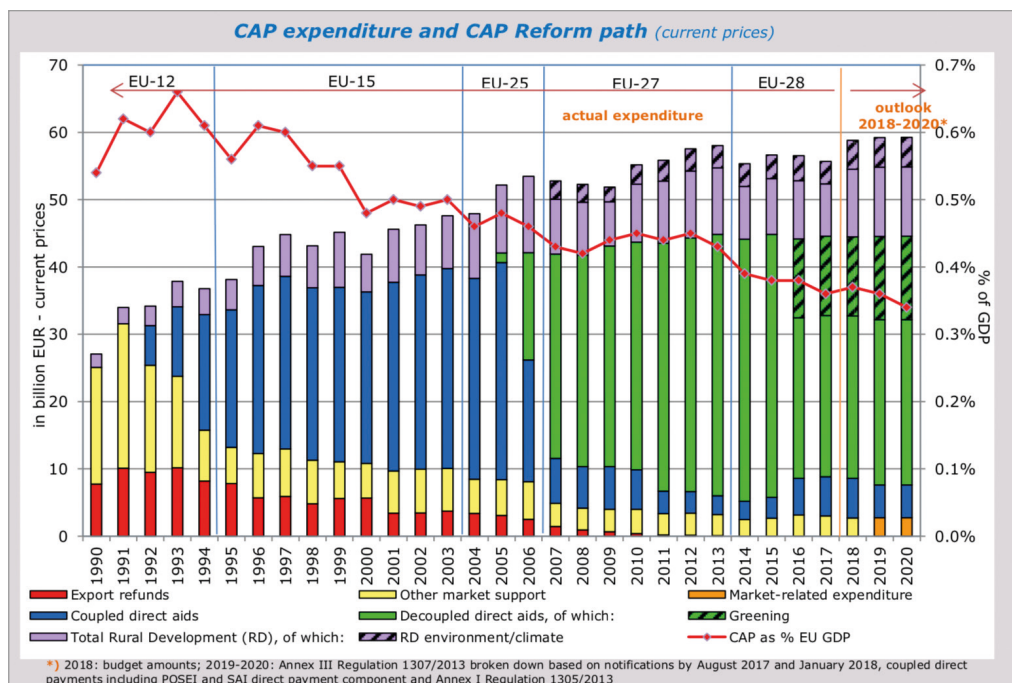
A crucial turning point was the 1990 GATT ministerial meeting in Montréal where the “Quad” of major trading nations (the USA, the European Communities, Japan and Canada) agreed on a deal to complete the Uruguay Round of negotiations and create the WTO. The bargain included commitments by the EU to drastically reform the common agricultural policy and to phase out one-way preferential treatment of trade partners. Both commitments have been met, although it took several years into the 2000s before they were essentially fulfilled.

Since 1995, the EU has aimed at pre-emptive reforms to make the common agricultural policy WTO-compatible. Twenty-first century European agricultural policy aims for a competitive agricultural sector, that is “greener, more trade-friendly, and more consumer-oriented”. CAP spending in euros continued to increase until 2013, but CAP spending as a share of EU GDP has fallen since 1993 (Figure 1). The CAP link with production has been largely broken since 2006; spending on export subsidies, other market support and subsidies coupled to output levels has fallen to 0.1% of EU GDP, and export subsidies have been abolished since 2010. Since 2010 CAP spending has been overwhelmingly for rural development or as income support to farmers that is decoupled from output levels.

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6 The original Schengen Agreement was separate from the EU due to lack of consensus over whether the EU had the jurisdiction to abolish border controls. In 1990, the Agreement was supplemented by the Schengen Convention which proposed the abolition of internal border controls and common rules on visas, and police and judicial cooperation. In the 1997 Amsterdam Treaty the Schengen arrangements were incorporated into EU law, with opt outs only for Ireland and the UK.

FIGURE 1: CAP Spending 1990 to 2020



Source: European Commission (2016)

The 1990s were a decade of deeper European integration amidst economic challenges. The EC92 program was successful, with completion of the integrated internal market and an end to national trade policies. The commitment to shift the CAP from price support to non-trade-distortionary direct payments was begun with the 1992 MacSharry Reforms and essentially completed by 2005. Restrictions on capital and labour mobility were eliminated, although mutual recognition of professional qualifications was incomplete. German reunification led to incorporation of the former German Democratic Republic into the EU, and financing of reunification triggered an exchange rate crisis in 1992 that cleared the way for monetary union as most members agreed to adopt the euro.<sup>7</sup> The collapse of the USSR in December 1991 opened up the prospect of “neutral” Austria, Sweden and Finland joining the EU in 1995, and of further eastern expansion.

7 The UK, Denmark and Sweden opted out from the euro when it was introduced between 1998 and 2002. All future EU members would be required to adopt the euro, although the transition period is turning out to be long for Hungary, Poland, Romania and Bulgaria.

## The EU Global Strategy

In the twenty-first century the EU has been in search of a new approach to trade policy. The Trade for All strategy published in 2015 confirmed abandonment of using trade policy as foreign policy and affirmed the goal of opening the EU to trade in support of participation in global value chains (Box 2.1). Given the difficulty of progressing reform of world trade law through the WTO to address new issues, the EU has embarked on a series of deep trade agreements with like-minded countries – South Korea, Canada, Japan, Australia and New Zealand. The list could have included the USA, but after the 2016 U.S. election President Trump terminated negotiation of the Transatlantic Trade and Investment Partnership (TTIP).

### Box 2.1 Objectives of the updated trade and investment policy strategy

The EU will focus attention on, *inter alia*, achieving the following:

(i) A more effective policy that tackles new economic realities and lives up to its promises by:

- Updating trade policy to take account of the new economic realities such as global value chains, the digital economy and the importance of services.
- Supporting mobility of technicians, experts and service providers.
- Setting up an enhanced partnership with the member States, the European Parliament and stakeholders to better implement trade and investment agreements.
- Including effective SME provisions in future trade agreements.

(ii) A more transparent trade and investment policy by extending the TTIP transparency initiative to all the EU's trade negotiations.

(iii) A trade and investment policy based on values by:

- Responding to the public's expectations on regulations and investment: a clear pledge on safeguarding EU regulatory protection and a strategy to lead the reform of investment policy globally.
- Expanding measures to support sustainable development, fair and ethical trade, and human rights, including by ensuring effective implementation of related FTA provisions and the Generalised Scheme of Preferences.
- Including anti-corruption rules in future trade agreements.

(iv) Progress in negotiations to shape globalization by:

- Re-energizing multilateral negotiations and designing an open approach to bilateral and regional agreements.
- Strengthening EU presence in Asia and setting ambitious objectives with China.
- Requesting a mandate for FTA negotiations with Australia and New Zealand.
- Exploring launching new investment negotiations with Hong Kong, China; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei); and the Republic of Korea.
- Starting new ASEAN FTA negotiations with the Philippines and Indonesia, as and when appropriate.

Source: European Commission (2015).

Global value chains (GVCs) have become a major feature of the global economy as specialization is broken down into tasks (Baldwin, 2017). The process started by offshoring labour-intensive activities such as sewing (e.g. Wrangler jeans in Malta in the 1970s and 1980s) and in the 1970s the Ford Fiesta was assembled in Spain. By the late 1990s, GVCs became recognized as a global phenomenon, especially in electronics, cars and apparel. In practice, most GVCs were regional, centred on East Asia, Europe and North America. European GVCs were boosted by deep integration that reduced the costs of trading across borders within the EU and by enlargement in 2000s to include countries with lower wages and a different range of skills.

The EU car industry is a prime example of GVCs. The most rapid growth since the 1990s has been in Poland, the Czech Republic, Hungary and Slovakia, to the extent that in the 2010s Slovakia has the highest per capita car output in the world. All major producers in the EU have integrated GVCs within Europe and increasingly across Eurasia; the Duisburg-Chongqing rail service developed since 2011 was initially driven by German carmakers supplying components to factories in China and today the trains run daily (Pomfret, forthcoming). Similar stories exist in many other industries: to compete globally requires combining global-best inputs effectively, which requires low trade costs in terms of money, time and certainty.<sup>8</sup>

Since 1995 the WTO has been important in establishing trade law and settling disputes but poor at updating world trade law to take account of new developments, including the fragmentation of production along GVCs and the rise of the internet. At the first WTO ministerial meeting in Singapore in 1996, trade ministers identified four areas in which trade law needed to be advanced: trade facilitation, trade-related investment measures, transparency in government procurement and competition policy. However, the Doha Round of multilateral negotiations that started in 2001 has made little progress due to the principle of consensus; the only Doha achievement, the 2017 Trade Facilitation Agreement, is a statement of principles rather than a body of law on trade facilitation. Lack of consensus among the 165 WTO members has stymied attempts to revise the WTO Charter to adapt to new institutional relations such as GVCs, or to technological change such as the influence of the Internet on production and on international trade.<sup>9</sup>

The response of the EU, and other major trading nations involved in GVCs, has been to conclude WTO+ agreements with like-minded trade partners. The new generation agreements cover goods, services, intellectual property rights, investment, government procurement, access to energy, trade facilitation, competition and regulatory cooperation. The highest profile agreement has been the TransPacific Partnership (TPP) whose origins lay in a 2000 agreement among Singapore, Chile and New Zealand and whose importance grew after the USA joined in 2008. Twelve countries agreed to a TPP text in 2016, but the USA declined to ratify the agreement in January 2017. Strikingly, after minor revisions, the remaining eleven countries ratified the agreement which came into effect in December 2018 as the Comprehensive

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8 Although the emphasis in GVCs is often on identifying the least-cost input source, financial cost needs to be balanced against quality requirements, reliability of supply and other input-specific considerations.

9 Ironically, the economic impact of the Internet dates precisely from the years immediately after establishment of the WTO. Freund and Weinhold (2004) show that use of the Internet had no statistically significant impact on a country's level of trade until 1995, and a strongly significant impact starting from 1997.

and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>10</sup> A second mega-regional trade agreement under negotiation is the Regional Comprehensive Economic Partnership (RCEP) between the ten members of the Association of Southeast Asian Nations (ASEAN) and six partners (Australia, China, India, Japan, New Zealand and South Korea).

For its part, the EU has negotiated bilateral agreements. It can be difficult to keep track of these agreements, because of differences between the dates when negotiations are completed, ratified, and implemented. The agreement with Korea was signed in 2010 and came into force in 2015. The EU-Canada agreement was signed 2014; ratification was delayed, but it has been applied since September 2017. Negotiations for the EU-Japan agreement were concluded in December 2017 and the agreement was signed in July 2018. With Mexico, an agreement in principle was reached in April 2018. As for Singapore negotiations have been completed but the agreement is “awaiting signature” due to within-EU jurisdictional disputes over investment rules. Negotiations with the USA began in July 2013 but were paused in January 2017, while negotiations with Australia and New Zealand were both launched in June 2018.

Why does negotiation of these trade agreements take so long? They cover many things (e.g. the EU-Australia framework has 64 Articles), although not all partners are willing to include all issues; whaling was controversial in the EU-Japan agreement, and Australia refuses to link human rights to its trade negotiations. Domestic interests can be obstructive. Agreement on sanitary and phytosanitary (SPS) issues and on technical barriers to trade is difficult because of different ideas of food safety, desirable product specifications or environmental requirements, etc. Nevertheless, the EU is keen to show that it is committed to a global economy open to trade in goods and services (a desire shared by Japan and Canada as major partners, i.e. six of the G7 countries).

Trade agreements signed in the twenty-first century mostly focus on trade facilitation and other WTO+ issues. The CPTPP and RCEP have similar coverage to the EU-Canada and EU-Japan agreements, reflecting recognition of “like-mindedness” since 2015, and especially in response to U.S. positions since 2017.

The similarity is especially striking when it concerns standards. This is due to the network effect: the more countries that accept a standard the more useful it is, while competing standards are an obstacle to international trade. WTO+ agreements could be standard-setters if they include major trading nations but global standards are hard to agree at the WTO due to the principle of consensus. Until recently, the USA

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<sup>10</sup> The eleven CPTPP countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The CPTPP is an open agreement in the sense that any country agreeing to its content can join. Interested countries include South Korea, Thailand and Indonesia, as well as the UK post-Brexit (<https://consultations.trade.gov.uk/policy/consultation-on-uk-accession-to-the-cptpp/>).



usually set standards, but it has stepped aside since the 2016 election.<sup>11</sup> Open access mega-regional agreements such as CPTPP are important because they allow other countries to accept the standards. It is unclear whether CPTPP or RCEP or EU+ will be the main standard-setter, but it may not matter if they retain consistency, which would be the opposite to a noodle bowl.

The clearest example of a new issue in the early twenty-first century has been the growth of e-commerce and digitalization, combined with issues related to big data and data transfer. None of these was important when the WTO was established.<sup>12</sup> The TPP included a chapter on e-commerce that remains in the CPTPP, and is reportedly very similar in RCEP and in recent EU agreements. There has been pressure from the countries included in these agreements to bring e-commerce into WTO law, but this has been resisted by large countries such as India or Indonesia and by many low-income countries distrustful of loss of control over cybersecurity or over the potential to tax e-commerce.<sup>13</sup> Hence, the pressure to proceed with agreements among like-minded countries.

## Conclusions

The EU's role in the global trading system has passed through a major transformation from the introduction of the first common external tariff in the 1960s, and its use for foreign policy goals or in response to domestic pressures for protection from competing imports. The pyramid of preferences and a “fortress Europe” approach to uncompetitive sectors such as agriculture, cars, clothing and steel were unsustainable. Apart from facing external opposition, these strategies were increasingly incompatible with the needs of Europe's most dynamic companies which were operating on a global scale and wanted both market access for their sales and the ability to source

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11 It is unacceptable that global standards are set by rich countries only (as in the OECD's ill-fated multilateral agreement on investment). Bilateral trade agreements in Asia since 2000 have contributed to Noodle Bowl problems as different FTAs set different standards, practices, rules of origin and so forth, adding to the complexity of international trade (Pomfret, 2011, 90).

12 The artificiality of the WTO distinction between trade in goods (GATT) and the General Agreement on Trade in Services (GATS) can be illustrated by a book which is available in hard copy or e-copy; the former trades under GATT rules and the latter under GATS. Cross-border transfer of data is not even mentioned in WTO rules.

13 The sceptics are generally countries that do not participate in GVCs and hence see less value in common standards and liberalization of rules about e-commerce and cross-border data flows. One way around the consensus rule is to form a plurilateral agreement among a subset of WTO members, but this is resisted by the sceptics as creating precedents for a two-tier WTO. At the December 2018 WTO ministerial meeting in Buenos Aires, seventy-one members circulated a Joint Statement on E-commerce which could be turned into a proposal for a plurilateral agreement at the June 2020 WTO ministerial in Astana.

inputs as widely and as easily as possible. The transformation was codified in the 2015 Trade for All strategy and in the Shared Vision, Common Action strategy enunciated by the European External Action Service (2016).

What is the role of the EU in the global economy of the 2020s? As the USA withdrew from its leadership position in promoting the liberal multilateral trading system, the EU has acknowledged that it has to become more proactive. This may be not without internal tensions, as several member countries have strong illiberal political parties that are explicitly critical of globalization. However, there are strong countervailing forces, especially in Eastern Europe countries such as Poland and Hungary, where concerns over political constraints emanating from Brussels coexist with recognition that a positive economic development since the end of central planning has been their ability to participate in global value chains.<sup>14</sup>

The leadership role is reflected in the EU position on WTO+ issues. Deep agreements with Canada and Japan bring together six of the G7 largest developed market economies. By maintaining compatibility with mega-regional agreements (CPTPP and RCEP) involving other major trading nations (notably China) the EU is playing a responsible role in progressing global trade rules in the face of WTO inaction. The need for rules and compatibility will grow stronger as the trend for regional value chains to become global value chains becomes more pronounced.

Meanwhile, the situation is less clear on non-trade issues. Globalization appears to be associated with the rise of populist parties in several EU countries, in large part because sectors of the population feel that they are being passed by. The classic response is to arrange a mix of adjustment and compensation measures, e.g. greater investment in education and training, and spending on unemployment insurance or assistance for economically depressed regions. This needs to draw on the principle of subsidiarity, insofar as local governments may be best placed to design such programs and assistance. Such devolution may be politically controversial because it will reduce the role for national governments (but not their elimination), and perhaps fuel demands for autonomy of regions (e.g. Catalonia, Scotland) to address the costs of globalization.

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<sup>14</sup> Italy is also an interestingly paradoxical case, as the anti-globalization coalition government of the Five Star Movement and the Northern League sought in 2019 to become more closely involved with China's Belt and Road Initiative, in the hope that Italian firms might have an added competitive edge within Eurasian value chains.

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## Chapter Six

# The Arab Spring and the Post-Arab Spring (2011–19): An Assessment of the European Response

**Bichara Khader**

### **Abstract**

European Union policies, towards the Arab and Mediterranean countries, since 1957, pursued the same objectives: energy, markets, and security. Other objectives such as conflict resolution, human rights and democracy promotion have often been mentioned in the official EU documents, but the discrepancy between rhetoric and deeds has been marked. The European role in the resolution of the Arab-Israeli conflict has been marginal, declaratory, often hesitant and incoherent. Although all agreements between the EU and Mediterranean and Arab countries include a Human Rights clause based on the respect of democratic principles, the EU has always pursued good relations with authoritarian Arab regimes, which often paid lip service to reform and never engaged in real democratisation. The Arab Spring prompted the EU to launch new policy initiatives but there is no clear reference in published documents to the Arab World, Arab Youth or Arab Identity – and this is not a trivial omission. Instead, reference is made to “Southern neighbourhood” or “Southern Mediterranean”, but Yemen and Bahrain do not form part of these. The 2016 EU Global Strategy’s objectives are perhaps too ambitious, a “remarkable exercise in fantasy”. Despite the objectives set out in the strategy, the EU has backtracked on Syria, the Iran Nuclear Deal and kept aloof from the troubled Gulf Cooperation Council, President Trump’s decision to move the Israeli embassy to Jerusalem and the withdrawal of American funding of UNRWA as well as Israel’s annexation of the Golan Heights. The only hope for the future of the EU’s relations with the Arab world lies in continuing the recently revived dialogue between the Arab League and the Union. As the European Parliament has noted, “insufficient EU leadership and initiative in working towards the solution of protracted conflicts have weakened the EU’s capacity to make a diplomatic impact in the region.”

## Introduction

European policies, towards the Arab and Mediterranean countries, since 1957, pursued the same objectives: energy, markets, and security. Other objectives such as conflict resolution, human rights and democracy promotion have often been mentioned in the official EU documents (Communications of the Commission, Declarations of the European Councils, and European Parliament Resolutions). But the discrepancy between rhetoric and deeds has been appalling. The European role in the resolution of the Arab-Israeli conflict has been marginal, declaratory, often hesitant and incoherent. Although all agreements between the EU and Mediterranean and Arab countries include a Human Rights clause based on the respect of democratic principles, the EU has always pursued good relations with authoritarian Arab regimes, which often paid lip service to reform but never engaged in real democratisation.

By side-lining civil society, and with the gradual prioritization of security over reform, the EU, as one author puts it: “did not live up to its image of a normative power” (Pfeil, 2011), thus indirectly contributing to the political “status-quo”. By doing so the EU embarrassed itself and undermined its image in Arab eyes.

This chapter looks at the evolution of EU-Arab States relations to identify the underlying patterns of EU policies in order to show where corrective action needs to be taken, and how the EU is likely to pursue policies towards the Arab World and the Mediterranean in the future.

The “Arab Spring”, starting in 2011, caught the EU off guard and demonstrated the vibrancy of Arab civil society. This paper tries to critically assess the European response to the changing Arab environment. My hypotheses are threefold:

1. Since 1957, European policies towards the Arab World have been characterized by fragmentation, overlap and inconsistency.
2. Since 1957, the Arab population has more than tripled reaching some 400 million in 2018, but it remains remarkably young with 50 % of the population under the age of 25 (against a European average of 30 %). At the same time, European policies have contributed little to shoring up Arab youth’s quest for freedom and a better life and to shaping the evolving regional order.
3. The new European response (2011–19) to the “Arab Spring” and to the “Post-Arab Spring” lacks strategic depth and vision, and carries little hope for significant impact on the future dynamics of Euro-Arab relations.

## The Arab Spring

The Arab popular revolt, which started in Tunisia and spread to the other Arab countries, caught the EU and the vast majority of the academic specialists by surprise: the revolt was unexpected and its demonstration effect unforeseen. In less than a year, four Arab Presidents, who had survived for decades while democratic waves rolled onward throughout the entire world, had been toppled. The Tunisian regime, considered as a bulwark of stability, crumbled and President Ben Ali fled

his country. Mubarak of Egypt was forced to step down, and later, sentenced and jailed. In Yemen, Ali Saleh, had to agree on a transition plan concocted by the Gulf Cooperation Council (GCC) and was later assassinated. Colonel Qaddafi of Libya was lynched by his own people and killed.

It is not this paper's scope to identify the main drivers of these popular revolts, their different outcomes and the particularities of the transition processes, but few quick remarks are necessary:

- a. All Arab countries, to varying degrees, share similar challenges: alarming hikes in educated youth unemployment, increasing external debt, generalized corruption, a dysfunctional economy, authoritarian and closed political systems. But the starting points, paths and outcomes of the protest movement are different.
- b. Undoubtedly, Tunisia represents what I called "the paradigm of the happy revolution" (Khader 2012). It combined a wide array of factors and drivers of historical significance: small geography; homogenous society; a past of militancy; vibrant advocacy by civil society; educated, urbanized and connected youth; an emerging (but constrained) middle class; significant women activism; spontaneous supra-partisan, supra-class and leaderless mass movement; the breaking up of the wall of fear; the fraternisation of a small army with the public; the absence of geopolitical and economic stakes; and interests of regional and international actors which could act as game-spoilers.
- c. Not all Arab countries fit this model. Although grievances may be similar, the outcomes of the protests are different (Kienle, 2011). Egyptian society is much polarized along religious/secular lines, army/civilian divide, and rural/urban cleavages. In Bahrain, regional rivalries (Saudi-Arabia versus Iran, Sunnis versus Shi'ites) and Western interests (American Naval base) almost killed the protest movement in the bud. In Libya, the violent nature of the regime prompted NATO-led military operations. In Jordan, the King succeeded in defusing discontent by vague promises to fight bad governance and corruption. The King of Morocco did the same by promising reform. In Algeria, the social fabric is not homogenous, the army is firmly in control, oil revenues shielded the regime from massive protest, but declining oil revenues, harsh living conditions and an ailing and aging President Bouteflika seeking a fifth mandate as president (in April 2019) triggered fresh protests. Street protests against the Sudanese President, Omar al Basheer, have also made the media headlines in 2019.
- d. Syria is the counter-paradigm of a happy revolution: the country is a regional pivot; the society is heterogeneous and fragmented along social, religious, and ethnic lines; the regime is run by the Alawite minority with the complicity of some segments of co-opted Christian and Sunni civil servants, officers and businessmen; and the Shi'ite-led army remains the backbone of the regime. Regional and International actors joined the conflict and acted as spoilers of change.

- e. In all Arab countries where presidents have been ousted, the process of transition from authoritarianism to democracy proved to be complex, bumpy, non-linear and unpredictable. But again, Tunisia offered a model of transition through elite negotiation reflecting vibrant civil society pressure and the absence of regional or international spoilers. Meanwhile, Syria still sits on the opposite side with regional and international competitors waging proxy wars that brought the destruction of villages and entire towns, and triggered the exodus of almost half of its population.

In other countries, the transition has been blocked, derailed or hijacked. In Egypt, the first Moslem Brotherhood-elected President, Mursi, was ousted from power by Al Sissi, in July 2013. Since then, the new Egyptian Regime has reproduced the old authoritarian system, demonized the Moslem Brotherhood, and silenced protestors by mass imprisonment and capital punishment. Secular parties and NGOs are not spared. In Libya armed militias are thwarting stabilization efforts. In Yemen, centrifugal forces are splintering the country and threatening its unity. Since 2015, it has become the theatre of proxy wars and direct intervention by Saudi Arabia and the Emirates with catastrophic consequences for the civil population.

Overall, transition from authoritarianism is an uphill endeavour and even a reversible one with real risks of youth impatience, military takeover or the return of the remnants of the old regime or undemocratic and illiberal forces.

Whether peaceful or violent, the protest wave in the Arab World has already shaken many of the myths circulating in the West, especially in Europe. Among these, there is the one of the so-called “Arab exception” positing that the Arabs are unprepared for democracy. By their peaceful protests, Arab Youth showed the world that they are tired of an Arab state-system entrenched in neo-patrimonialism, illiberal practices, corruption and predation.

The EU was surprised by the magnitude of the events in the Southern rim of the Mediterranean. It had to respond to what an author dubbed “the Arab tsunami” (Basbous, 2011). Below I analyse the European response to the Arab Spring, and see whether it rises up to the challenges ahead.

## **European response**

After a short period of hesitation, the EU realized that what was happening in the Arab world was not just a “bread riot”, but something more significant. The response was enshrined in two European Commission communications: the first, published in March 2011 and entitled “Partnership for Democracy and Shared Prosperity” (2011a), and the second, published in May entitled “New Response to a Changing Neighbourhood” (2011b). A new Civil Society Facility was created together with an aid package labelled “Strengthening Partnership and Inclusive Growth (SPRING)” and a “European Endowment for Democracy”.

## **Partnership for democracy and shared prosperity**

The Commission's Communication (2011a) described events taking place in "our Southern neighbourhood", as "of historical proportions" with lasting consequences and urged the EU not to be "a passive spectator", but "to support the wish of the people in our neighbourhood" through a "qualitative step forward", in "a joint commitment" toward "common values: democracy, human rights, social justice, good governance and the rule of the law".

The new approach was to be based on differentiation, conditionality and mutual accountability built around three elements: democratic transformation and institution-building, stronger partnership with the people and sustainable and inclusive growth.

In the immediate term, the EU proposed to increase humanitarian aid, to offer food and shelter for refugees pouring out of Libya, to facilitate the evacuation of EU citizens through the EU Civil Protection Mechanism (MIC) and to deal with "possible new inflows of refugees and migrants into European countries" (FRONTEX, 2011).

More generally, the Communication proposed a new incentive-based approach based on more differentiation which was called "more for more", promising rewards for faster reform in terms of aid, trade and advanced status. The EU pledged more support for civil society, the establishment of a Civil Society Neighbourhood Facility, and the conclusion of "mobility partnerships" by improving its visa policy.

Special attention was paid to the promotion of small and medium enterprises (SMEs) and job creation, more European Investment Bank (EIB) loans, the extension of European Bank of Reconstruction and Development (EBRD) facilities to the countries of the Southern Mediterranean region, and the negotiation of "deep and comprehensive free trade areas" (DCFTA). Sectorial cooperation in energy, rural support programmes, development of education and communication technologies were highlighted. The Communication insisted on "regional cooperation". It identified the Union for the Mediterranean (UfM) as a good step in the right direction, but cautioned that it "did not deliver the result we expected" and that it "needs to reform", in order to be "a catalyst" bringing countries and institutions together around "concrete projects", according to the principle of "variable geometry". The EU promised to increase direct financial assistance to the Southern Mediterranean countries (€5.700 billion under the European Neighbourhood Partnership instruments for 2011–13) and to leverage loans from the EIB through the "Neighbourhood Facility" (NIF).

## **A review of European Neighbourhood Policy (ENP)**

The review of ENP began before the Arab Spring, but subsequent events lent more urgency to it. The May 2011 joint Communication (European Commission, 2011b) reasserts that "partnership with our neighbours is mutually beneficial", but needs an overhaul. The new approach stressed mutual accountability and a shared commitment



to the universal values, a higher degree of differentiation, comprehensive institution-building and a deeper democracy. At the same time the Communication adds that “the EU does not seek to impose a model or a ready-made recipe for political reform”. To achieve these objectives, the EU proposed the establishment of a “European Endowment for Democracy” and a “Civil Society Facility” (CSF).

On the political front, the Communication emphasized the Union’s intention to “enhance its involvement in solving protracted conflicts”.

Economic partnership is the cornerstone of the Communication which reiterates the importance of industrial cooperation, rural development, inclusive growth, direct investments, trade ties and job creation. The most salient proposal is the creation of a Deep and Comprehensive Free Trade Area (DCFTA) involving the gradual dismantling of trade barriers and progressive economic integration. Complementary to this it proposed the development of a “common knowledge and innovation space”.

On the thorny issue of human mobility, the Communication insisted that the EU shall “pursue the process of visa facilitation, develop existing mobility partnerships and encourage people-to-people contacts” – with no details on the operationalization of this objective.

### **Critical comments on the Communications**

Curiously, although it was the Arab Spring which prompted the EU’s response there is a gaping absence in the two communications of any clear reference to the Arab World, Arab Youth or Arab Identity. This is not a trivial omission. Both communications refer to “Southern neighbourhood” or “Southern Mediterranean”: but Yemen and Bahrain do not form part of these. Only some countries are mentioned, namely Egypt and Tunisia. Aside from this, the three main policy goals of these Communications are: money, market, mobility (3Ms). A shared feeling among analysts suggests that the communication did not constitute a new approach.

The “new approach” has taken the form of “piecemeal initiatives” falling short of a comprehensive strategy that is required to constitute a significant and effective response to the Arab Region’s huge challenges. Constrained by deep economic crisis and a general mood of pessimism about the future of the Arab Spring, the EU did not have much to offer. In comparison, the Gulf States have made impressive financial pledges totalling billions of dollars to Egypt, Tunisia and Yemen. And while Jordan and Lebanon, with scarce resources, hosted more than two million Syrian refugees, and while Tunisia, a country in transition, bore the brunt of hundreds of thousands of refugees pouring out of Libya, European states made a great fuss about 1 million Syrian migrants and asylum seekers. It is for all these reasons that the EU missed the opportunity to play a significant role during the democracy upheavals in the Arab countries.

Money was the easiest to deliver: an extra €1.2 billion on top of the budgeted €5.7 billion for 2011–13. The European Investment Bank (EIB) had promised to increase lending. The European Bank for Reconstruction and Development (EBRD) promised to change its mandate in order to lend to the Mediterranean neighbours a planned €2.5 billion.

As for Market access, lifting all the European barriers on Mediterranean agricultural products was met with resistance by some Member States and increased imports of agricultural products remain constrained by the Common Agricultural Policy (CAP). In December 2011, the Foreign Affairs Council (FAC) mandated the Commission to open trade negotiations to achieve DCFTAs with Egypt, Jordan, Tunisia and Morocco by upgrading existing ENP association agreements to include more preferential market access and eventually the liberalisation of services.

On mobility partnerships, the EU committed itself to open regular channels for migration and mobility, but it soon found itself stuck in a dilemma: the market requires new flows of migrants, but European leaders are “incapable of selling this truth to their public opinion” (Kodmani, 2011). The EU promised visa facilitation for students, researchers and businessmen, but subjected them to the conditionality of “partner countries’ commitments to tackle illegal cross-Mediterranean migration” (Stroetges, 2011).

The “more for more” principle is meant to be a “carrot” or “incentive”, better than the “stick policy” associated with negative conditionality. Any country which engaged in “deep and sustainable democracy” was to be rewarded with an “advanced status”, increased aid and enhanced political dialogue. Implicit in this principle are the elements of compliance, differentiation, reward and positive conditionality. But it remains an ambiguous notion. Several questions persist: who sets the benchmarks of “deep reform”? Who assesses the performance? Are the Southern neighbours ready or willing to accept and fully implement external prescriptions in exchange for rewards?

Doubts also arise on the implications of “mutual accountability”. Can the Southern neighbours hold the EU accountable for its shortcomings on, say, mobility, the rise of Islamophobia, lack of consensus on foreign policy, such as the membership of Palestine in the United Nations? Serious doubts exist as to whether the Mediterranean partners can confront the EU on double standards in its dealings with Hamas and Israel, or why the European Council bypasses the European Parliament’s (EP) resolutions on the Arab-Israeli conflict.

The “more for more” and “mutual accountability” have become the new icons in the European lexicon, but they have not been discussed with the stake-holders themselves. A paradigmatic European Response to the challenges of the new environment was thus adopted without an intellectual input of those concerned. Arab social networks thus labelled it a “non-consensus response”. The European policy prescriptions thus

suffer from a lack of local ownership: i.e. the absence of Arab intellectual input. As an Oxfam Report (2011) stated: “the shift to carrots from sticks is... not altogether new”.

Similarly, the DCFTA encounters several problems. Without a shred of doubt, free trade has many merits: but in authoritarian states, it often leads to the concentration of economic power in the hands of a minority which stops the benefits of growth from trickling down to the vast majority of the population. This has happened in the Arab countries since the imposition by the International Monetary Fund (IMF) of the structural adjustment programmes. Privatization hastily imposed has simply transformed planned economies into clan economies.

The line endorsed by the Arab NGO’s network is that “support for economic growth should be rooted in support of peoples’ choices of a revised economic model” (Oxfam, 2011). In short, the people should decide what economic model they want, and what kind of liberalization is the most suitable, its speed and in which sectors. Liberalization is not a panacea per se, particularly in countries where the private sector is still in limbo<sup>15</sup>. Moreover, many Arab countries are facing huge economic challenges. Their first priority is to create jobs, alleviate poverty and tackle the budgetary imbalances. DCFTA is for them a remote objective and not an immediate goal.

The EU should not rush and apply the “same tool box” in the Mediterranean and Arab regions as it did in Eastern Europe. Michael Leigh (2011) argued: “The transition process in Central and Eastern Europe took place at the end of the Cold War among people seeking to “return to Europe”. This is not the case of the Arab World which has no membership incentive. The emphasis should instead be on poverty alleviation, women empowerment, gender equality, youth participation, job creation, sustainable development, liberalization of agricultural trade, and easing conditions for mobility. The search for more equitable economic relations seems to be more urgent than mere liberalization. The EU’s multi-year assistance programmes should be directed toward bolstering competitiveness, innovation and knowledge technology.

The EU should encourage Arab countries to engage in comprehensive and deep integration among themselves; otherwise they will remain “captive markets” for external players. The Arab countries’ priority should be precisely to create a level economic playing field by promoting regional integration which could potentially increase the volume of trade between the EU and the Arab states.

### **The instruments of the New European approach**

In its attempt to engage with peoples and not only with governments, the EU proposed two major instruments: Civil Society Facility (CSF) and the European Endowment for Democracy (EED).

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15 Letter of Arab NGOs (ANND) to the EU: ‘More for more as the EU’s response to the Arab Spring’, October 18, 2011. Quote fn.10 in Oxfam, Briefing Note, “Power to the People: Reactions to the EU’s Response to the Arab Spring”, 15 November 2011.

## **Civil Society Facility (CSF)**

The CSF aims to “support civil society organisations, to develop their advocacy capacity, their ability to monitor reform and their implementing and evaluating EU programmes” (Oxfam, 2011). This support is essential to enable civil society to contribute to policy-making, by voicing their concerns and holding governments accountable to ensure that economic growth is geared towards poverty alleviation and inclusiveness.

Although praiseworthy, this proposal is met with scepticism by Arab civil society. Similar proposals in the past had little impact: allocated financial support was insufficient, there were several bureaucratic hurdles and slow disbursement. The selection of civil society organisations for funding was often inadequate and sometimes arbitrary: the EU engaged more with organisations perceived to be “palatable” and shunned others with a real social base. In many cases, European aid was diverted to paying staff salaries, and many organisations would simply disappear without European assistance.

In the Arab countries, the EU should avoid taking the driving seat and thereby delegitimizing a transition led by the people. It should be clever enough not to antagonize countries which have regained pride, and which ask for more transparency in the relations between external donors and local actors. But at the same time, it ought to show no leniency toward countries reverting to authoritarianism.

## **The European Endowment for Democracy (EED)**

The EED differs from the CSF because it seeks to promote the creation of Civil Society organisations, to provide assistance to trade Unions and other social actors, such as non-registered NGOs.

The EED offers new opportunities to support democracy through its relative independence: it is established as a private foundation under Belgian law “to keep it at arms’ length from EU bureaucracy and grant some leeway in its behaviour towards authoritarian governments” (Richter and Leininger, 2012). Potentially, the EED provides an opportunity to restore some of the lost credibility of the EU as a democracy-promoter. Some analysts question its added-value when compared to the “European Instrument for Democracy and Human Rights” (EIDHR) set up in 2007.

## **The EU as peace-promoter**

It is a vital interest for the EU to have a neighbourhood living in peace. That is why the Joint Communication of May 25, 2011 insists on the necessity for the EU to intensify political and security cooperation with neighbours. With many unresolved conflicts at its doorsteps in the East and in the South (Cyprus and the Arab–Israeli conflict), the situation in Syria, and endemic instability in Libya, the EU faces serious security issues which require decisive leadership. The Joint Communication

had affirmed that “business as usual is, no longer an option if we want to make our neighbourhood a safer place and protect our interests”, adding that “the EU is already active in seeking to resolve several of the conflicts”. But if we take the Middle East, as litmus test of European involvement, there is little reason to rejoice. The European role has often been incoherent, inconsistent and ambiguous. Without trying to be exhaustive, let us pick some examples.

The EU has been the single largest donor to the Palestinian Authority, and the Palestinians are grateful for such financial aid. But in a certain way, as Rosemary Hollis (2010, p. 32) puts it bluntly, this aid “shouldered the cost of continued occupation and containment of violence in the absence of conflict resolution”. In other words, the EU is helping the Palestinians to remain quiet, thus ensuring the security of the occupying force and the Jewish settlements, and which shores up a spineless Palestinian Authority. This view is not shared by European officials, but it is widely held by Arab opinion.

Real political clout is not gauged by the amount of money spent, but by the quality of results achieved. Leadership requires a sense of purpose, economic and military resources, an attractive image, a long-term vision, a strong decision-making process, qualified diplomatic personnel, and above all a unified actor. Although the EU does not lack qualified people, resources and image, it is not a unified actor. When the 28 member states agree, most of the time it is at the “lowest common denominator”. Germany, for example, remains constrained by past memories and does not openly criticize Israeli policies in the Occupied Arab land. Britain usually sides with the United States whose alliance with Israel remains unshakable. France has been diplomatically active, but with scarce concrete results. Overall, the EU prides itself of being a staunch advocate of the two-state solution, “without a strategy for making it happen” (Hollis, 2010, p. 39).

Israel is an important EU trading partner with trade totalling €36 billion in 2017.<sup>16</sup> Already at the 1994 Essen European Council, EU leaders agreed that “Israel should enjoy... a special status in relations with the EU on the basis of reciprocity and common interests”<sup>17</sup> when Israel had been occupying Arab territories for 27 years. In Arab eyes, this looked like rewarding occupation with “special status”.

In 2012, with the peace process on the wane and the settlement policy being pursued without respite, the EU decided on 2 June, to deepen and reinforce its relations with Israel in more than 60 concrete fields. Since then, practical steps have been taken in spite of a tough resolution adopted by the European Parliament (5 July 2012) in which it severely condemned Israeli policy in the Occupied Territories.

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16 European Commission web-page at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/israel/>

17 Presidency Conclusions: available <https://www.consilium.europa.eu/media/21198/essen-european-council.pdf>

If we add to these incoherent initiatives, the non-recognition of Hamas' victory in the Palestinian elections in 2006, the failure of the Quartet to achieve anything, we can better grasp the depth of Arab mistrust in the capacity of Europe to chart a new course in its Middle East Foreign Policy.

### **The bitter harvest of the Arab Spring**

In the light of the Arab Spring, the EU spelled out its “new partnership” in 2011 on the basis of guiding principles such as “more for more”, “mutual accountability” and “deep and comprehensive free trade area”. It also announced the creation of a “Civil Society facility” and a “European endowment for democracy”. But our careful reading of the two communications (2011a & 2011b), does not suggest that the old paradigms have changed: the “more and more” is very similar to the previous rhetoric of “tailor-made approaches” (Soller and Viillup) and the EU continues to over-rely on neo-liberal capitalist market-economy recipes based on an “almost sacred belief in liberalization and privatisation” (Schumacher, 2011).

The EU as peace-promoter has not been at all successful. On the “mother of conflicts”, the Arab-Israeli conflict, the EU on various occasions condemned Israeli policies in the occupied territories, without matching such declarations with concrete actions, beyond the financial assistance given to the Palestinians and which, in reality, covers part of the cost of occupation.

Recent EU initiatives do not testify to an EU policy change: it reinforces its ties with Israel while this is tightening its grip on the occupied territories through the confiscation of land, a rampant settlement policy, and collective punishment. The EU does not speak with one voice, and remains constrained by the difficulty of forging a common foreign policy. In spite of constantly repeating, at nauseam, that its Mediterranean policies have the merit of putting Arabs and Israelis around the same table, it prefers to put Arabs and Israelis on the same footing and to treat them equally.

The Arab Spring offered the EU a rare opportunity to show leadership, to “strategically reassess its policy” (Calleya, 2012) and to assert itself as a coherent, consistent and credible actor. Unfortunately, as the Arab Spring approaches its tenth anniversary, the harvest is bitter. I agree with Christian-P. Hanelt when he writes: “There is more freedom today but less security. There are more opportunities but fewer jobs. And there is a patchwork of conflicts” (Hanelt, 2014). The protracted tragedy in Syria, the situation in Egypt, the instability in Libya and Yemen, and the internal strife in Iraq constitute the darkest side of the picture. The brighter side is constituted by the consensus achieved in Tunisia, the limited reforms in Jordan and Morocco. Even Algeria and Sudan, that remained, for a while, shielded from massive protests, have witnessed, in 2019, mass protests, that may usher in a new Arab Spring.

In countries that are going through a transitional reform process, the economy is at a standstill if not on a downward spiral with declining economic activity and tax

revenues, rising unemployment as the tourist sector declines, and widening social and regional disparities. This disheartening development will take its toll unless stability is restored, and the democratisation process is pursued without further setbacks. Against this backdrop, phobia has replaced the euphoria of the initial stages of the revolutionary movements with certain segments of the societies beginning to yearn for a “strong leader” capable of restoring security and order. Egypt is a good example.

The frustration of Arab societies with the “transitional elites” is matched by a similar frustration with the European Union. Arab Civil Societies are not convinced that EU measures can match the seismic developments in the Arab World. The resources made available are modest. EU member states’ foreign policies remain unclear and lack consensus. For example, there is no European consensus on whether the ousting of President Mursi, on 3 July 2013, by the Egyptian Army, should be treated as a military coup d’état or simply the continuation of the revolutionary process. On Libya, Germany abstained from any participation in the 2011 NATO-led military operations while France and UK adopted a higher profile. France now follows a different course on the stabilization of Libya than the rest of the key EU member states. As for Syria, French Presidents appeared more offensive than their European peers.

Civil society remains dubious on whether the EU programmes can succeed in jump-starting the Arab economies. On top of this, should the EU impose strict conditionality, it runs the risk of alienating incumbent regimes; but if it does nothing, it triggers fierce opposition from civil society both at home and abroad. In the Arab World, the EU has not forged one policy but various policies and frameworks. This segmentation is understandable from a European perspective since the challenges and stakes in each country differ. From an Arab perspective, a general framework is more desirable since all states share similar challenges.

### **The EU response to the Post-Arab Spring (2015–19)**

Since the 2008 financial crisis, the EU has been engulfed in existential anxiety. The flows of irregular refugees and asylum seekers from Syria and elsewhere (particularly in 2015) have raised questions on its ability to adequately respond to the humanitarian tragedy of millions of displaced families. The Brexit referendum has increased uncertainties. Populist and anti-EU sceptics threaten the European project.

Developments have worsened in its immediate neighbourhood. Three weeks before the 23 June 2016 Brexit referendum, the EEAS (European External Action Service) released the Global Strategy (EUGS) (European External Action Service, 2016). The document projects what the EU should undertake to play a major role as a global security provider, including in its neighbourhood, the Arab and Mediterranean regions.

In the EUGS, the EU recognizes that its neighbourhood is in turmoil, facing huge challenges such as terrorism, climate change, demography, and protracted conflicts.

It pledges that it “will foster dialogue and negotiation over regional conflicts such as those of Syria and Libya”, and “will work closely with key stakeholders to preserve the prospect of a viable two state solution” in Israel and Palestine. The EUGS affirms that the EU encourages “functional cooperation formats” in Africa and the Middle East, to help “bridge divides” and “existing cleavages”. More specifically, the EU intends to “pursue balanced engagement in the Gulf”, and deepen “dialogue with Iran and the Gulf on regional conflicts, human rights and counter-terrorism”.

In the light of events following the publication of the EUGS, it appears that the “Global Strategy” is a remarkable exercise in fantasy. Indeed, the EU backtracked on Syria leaving the USA and Russia in the driver’s seat. On the Iranian issue, the EU distanced itself from Trump’s decision to withdraw its support to the 2015 nuclear deal, but bowed to American pressure on sanctions which negatively impact European economic interests. On the rift wrecking the Gulf Cooperation Council (GCC), the EU did not take sides, but it did nothing to bridge the differences. On the Palestinian issue, the EU opposed Trump’s decision to transfer the American Embassy from Tel-Aviv to Jerusalem, criticised the cessation of the American financial contribution to UNRWA and the American recognition of Israeli sovereignty of the Golan Heights (Council of the EU, 2019). But European policy remained largely rhetorical as Israel turned a deaf ear to European reactions and pursued its policies undeterred and emboldened by unshakable American support.

While Libya is descending into more chaos with fresh fighting (2019) between Haftar’s forces and those of the UN-recognized government of Tripoli, EU countries again exhibited their incoherence with France refraining from criticising Haftar, while Germany, Italy and Great Britain side with the government of Tripoli, thus exacerbating the Libyan divide.

In the pursuit of regional integration, the expectation-performance gap remains appalling. Regional integration in the Maghreb is deadlocked by Moroccan-Algerian rivalry, the GCC is collapsing. Only the Agadir Agreement subsists, but its member states share no common borders. Obviously, these failures are not all imputable to European inability: local players failed to deliver. But the EU did almost nothing to act flexibly, to “bridge regional divides” as the EUGS states.

This critical assessment is largely shared by a new report, released in 2019, by the European Parliament “On the Post-Arab Spring: Way forward for the MENA Region” (European Parliament, 2019). The Report depicts a gloomy assessment of the situation in the MENA region, and is broadly critical of the EU’s performance. It “considers that insufficient EU leadership and initiative in working towards the solution of protracted conflicts have weakened the EU’s capacity to make a diplomatic impact in the region”, adding that “the EU has not been able to gain substantive political and economic leverage”, and therefore it “is not perceived as a game changer”. The Report calls on the EU to become a “central player” by fostering “real change in the areas of democracy, the rule of law, human rights and fundamental freedoms”.



It refers to EU member states' divisions on various issues from migration, border security to regional conflicts, and calls for "a unified European stance towards the region". The Report welcomes the concept of co-ownership re-proposed in the 2015 revised European Neighbourhood Policy, but warns that authoritarian regimes seek to "cherry-pick priorities according to their national agenda, instead of advancing along the path towards democratisation..." (European Parliament, 2019).

On economic issues, the report regrets that the EU did not really deliver on its promise of the DCFTA by granting insufficient access to trade and investment. On migration it urged that "more assistance should be provided to the MENA countries (help them tackle) the influx of immigrants from Sub-Saharan Africa" but warned of the risk that some countries may use the externalisation of migration management to "advance their own objectives, to blackmail the EU or even to mistreat immigrants" (European Parliament, 2019).

The last part of the Report consists of a catalogue of recommendations ranging from arms sales, human rights, civil society involvement, women empowerment, strengthening of local authorities, transparency of EU assistance, the fight against religious radicalisation, climate change, desertification and water shortages, the promotion of the private sector and parliamentary diplomacy. The report is the most comprehensive critical assessment of EU's response to the post-Arab Spring. The recommendations may remain unheeded as the EU struggles with new internal and external challenges which deflect its attention from its neighbourhood. In that case, the return to "realpolitik" may remain the only game in town with a European Foreign Policy markedly "securitized", and therefore, void of the often-proclaimed normative imperatives.

### **EU-League of Arab States (LAS) renewed relations**

The EU-LAS relationship is a positive initiative in the midst of this gloomy picture. Since the collapse of the first Euro-Arab Dialogue (1974-90), the LAS has been sidelined by the EU. The Euro-Arab format was replaced by the Euro-Mediterranean format. The Arab Spring has prompted the EU to return to a dialogue with LAS. Indeed, the Arab Spring served as a wake-up call: not only did it reveal the aspirations of Arab Youth to freedom, democracy and justice, but also illustrated that the notion of "Arab world" is not fantasy, but a "cultural reality." The LAS, in spite of its shortcomings, embodies that reality.

### **Comparative advantage of an EU-LAS format**

Although the UfM, the ENP, the 5+5 format, and the EU-GCC dialogue should be continued and eventually reinforced, the EU-LAS dialogue has many advantages: it includes countries which are not involved in smaller formats; it serves as an umbrella for smaller formats, but it is a supplement not a substitute for them; it enhances

the Arab identity versus geographically-constructed identities; it encourages Arab States to define their common objectives, and eventually it may help reduce tensions among them and even trigger better cooperation; it spurs the EU to organise EU-LAS Summits on similar lines as the EU-Africa or EU-Latin America summits, and indeed a first EU-LAS summit met in Sharm el Sheikh, Egypt, at the end of February 2019; together, the EU and LAS constitute a significant critical demographic mass of 900 million people (2019) that potentially can compete with other global economic actors, such as China, India, the USA; EU-LAS format excludes Israel as its presence in MED initiatives has been often a bone of contention in the absence of an Arab-Israeli peace, without however, stopping the EU-Israel dialogue.

### **Priorities converging and diverging**

The EU-LAS partnership confronts priorities that both sides consider to be urgent and important.

The two sides want to work together to solve the protracted Arab-Israeli conflict. The continuation of the occupation of Arab Lands since 1967 “would have far-reaching negative consequences”, as a group of 37 former EU foreign ministers wrote in a letter to Frederica Mogherini, the High Representative on the 14 April 2019. It makes peace in the region impossible, feeds feelings of humiliation and revenge, strains relations between the Arab World and the West, and tests the credibility and coherence of European policies. Joint EU-LAS pressure on Israel, the USA and the international community may help to resolve the conflict.

The EU-LAS accept that countering radicalization and populism cannot be done by security measures alone. The root causes need to be addressed. These are linked to economic regression, narrower horizons, the lack of freedom and fractured identities. The EU is being treated as a scapegoat by the new populist parties. The LAS’s image suffers in the Arab world because it often mirrors Arab divisions. By working together, the EU and the LAS can enhance each other’s status.

A common EU-LAS Diplomacy can pursue diplomatic solutions to internal and intra-regional conflicts. The two can encourage Algeria and Morocco to normalise relations. Joint diplomacy can help end the Yemen conflict, stabilize Libya, and solve the Egyptian-Sudanese dispute. It is more efficient than solitary manoeuvres.

The cultural dialogue needs to be intensified by the twinning of Universities, cities, research centres, and by encouraging youth contacts. It could also include the creation of EU study centres in Arab Universities and Arab Research centres in European Universities, the involvement of artists and musicians. There is no shortage of good practices.

There are divergent outlooks on human rights, women empowerment, the involvement of civil societies and the definition of terrorism – which are not insurmountable. Such issues can be discussed openly while avoiding patronizing attitudes or conditionality.

## **Obstacles**

The EU-LAS dialogue can learn from past mistakes of the Euro-Arab Dialogue. Among these we find the lack of EU autonomy in making decisions, and USA opposition to an independent EU Arab diplomacy as epitomised by Henry Kissinger (Al-Dajani, 1980; Miller, 2014). Israel fears that an EU-LAS rapprochement happens at its expense. Such mistrust was evident in its severe criticism of the EC when it approved the Venice Declaration in 1980. The dislocation of the Arab League also played a part (Egypt's forced exit of the Arab League, Lebanese Civil War, Iraq-Iran War) in weakening the Arab side.

Similar difficulties persist. The USA and Israel can thwart an EU-LAS partnership. Some EU Member States may be less enthusiastic about it. Some Arab countries may prefer smaller formats. Obstruction by external actors, internal divisions within EU and LAS, and the expectations-performance gap may scuttle the dialogue. Some Arab countries may even prefer shifting their interest to China or India or Korea because they have lost confidence in the EU's capacity as a geopolitical actor.

The lack of a common Euro-Arab language raises problems: "resistance" in Palestine as perceived by many Arabs is "terrorism" for Europeans. The EU considers Lebanon's Hizbollah and Palestine's Hamas as terrorist organisations; human rights violations are pinpointed when they happen in the Arab World, but ignored when committed in Israel. Only a frank dialogue can contribute to forging a common language.

## **Outstanding Issues**

There are four main issues that should be prioritized in the EU-LAS dialogue: migration management, regional security, the cultural dialogue, and conflict resolution.

The Management of Migration and Refugees is a priority, and Arabs and Europeans should seek ways to lessen the toll of this tragedy. But the Arabs should not serve merely as "police at a distance". The root causes of migration need to be addressed. The Maghreb countries are transit countries, for now, but eventually they can become countries of final destination. In the meantime, the 'youth bulge' will force people to move in the absence of economic diversification, technological progress and regional integration.

Regional Security is threatened by the proliferation of radical groups, internal inequalities and protracted conflicts. EU-LAS Security cooperation is necessary, but not at the expense of human rights. Countries must not be allowed, under the pretext of fighting terrorism, to curb civil liberties or silence all opposition.

The Cultural Dialogue should be more systematic and should not only focus on the religious dialogue. It should involve civil society, but also towns, regions, local parliaments, universities and the mass media. More severe action is needed against hate speech.

Conflict resolution is important and co-operation with other actors such as the USA is also useful in many cases. But where this is not possible, the EU-LAS should be able to pursue an independent course of action.

## **Concluding Remarks**

Regional trends are changing. For several decades, the EU was the main economic partner of the Arab World and the main investor. The situation began to change rapidly since 2000. Several Asian countries and members of MERCOSUR like Brazil, have entered Arab markets. In 2017, the LAS absorbed 10.3 % of all goods (excluding services) exported from the EU and was the origin of 6.5% of all EU imports from the rest of the world. The EU had a trade surplus of €72 Billion (Eurostat, 2019). It is possible that the EU would be overtaken as the main trading partner by other countries in the region.

Regional developments that can put the EU-LAS cooperation in danger include: resurgent Arab fundamentalism which is not sympathetic to an Arab-European rapprochement; European temptations to privilege security over democracy promotion; EU turbulence in the light of Brexit; and the rise of populist movements and increasing hate speech.

The first EU-LAS Summit held in Sharm el Sheikh, Egypt, in February 2019, showed that the EU and the Arab World are “bound to cooperate” (Behrendt and Hanelt, 2000; Hanelt and Moller, 2008). It could have been the ideal occasion to kick-start a new strategic partnership (Khader, 2019). Unfortunately, the summit’s timing, the absence of many Arab leaders, and the distraction of both European and Arab leaders with issues such as Brexit and the European elections, the war in Yemen, the Iran-Saudi rivalry and the Arab Gulf rift, seem to have cast their long shadow over the event. This should not be allowed to obscure the merits of the dialogue.

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## **Part 3: Security Challenges**

## Chapter Seven

# The Future of European Security and Defence: Keeping the Americans in?

**Valentina Cassar**

### **Abstract**

Through his remarks deriding the contribution of European states towards their individual and collective defence, President Donald Trump has sown seeds of doubt into the prospects for the transatlantic relationship. Yet a wider review of this relationship, and security and defence efforts within the EU, shows less cause for alarm. The EU's development of its own security and defence identity and strategic autonomy independent of the United States is being pursued. It may be argued that developing and strengthening its political and strategic identity within a European and world order in flux may allow it to maintain a more cohesive political union, and strengthen its value as a strategic partner within the transatlantic alliance. Security has always been at the heart of European Integration. Identifying and formulating a common European strategy has been a challenge, yet considerable progress has been made in cultivating a common European strategic outlook. Moreover, the current international milieu provides the EU, and its member states, with the opportunity to focus on building its strategic autonomy and common outlook, and in the process seek to cultivate a common strategic culture that may generate greater cohesion. Furthermore, cooperation with the United States and NATO will remain at the heart of Europe's strategic activity, and ultimately, EU strategic culture for the foreseeable future. Moreover, the ability to rely on NATO's (and the U.S.) hard power will allow the EU to focus more effectively on civilian security capabilities and its soft power as a global actor.

### **Introduction**

Both during his campaign and since his election, U.S. President Donald Trump has repeatedly bemoaned the discrepancies that exist in defence spending within the Transatlantic Alliance and called for European States to share a greater part of the burden. Whilst such sentiments within U.S. policy are by no means new, the tone of President Trump's remarks within the broader context of his domestic and foreign policy have triggered debate on the future course of U.S. foreign policy and the implications for the transatlantic alliance and European Security and Defence.



There have been many efforts – and difficulties – in defining a common European Strategic Culture, but at the core of a common European strategic outlook is the partnership with the United States. Thus, a common reality, if not so far as a culture, is the reliance on the transatlantic relationship and its extended deterrence. On the other hand, its extended deterrent role and commitment to the transatlantic partnership is inherent within U.S. Strategic Culture.

This is not to say that reluctance within different subcultures does not exist on either side of the Atlantic. The Jacksonian tradition in the United States retains a central role in offering the possibility of an inward-looking foreign policy that prioritises domestic considerations over international needs. Likewise, European States such as France often favour the aspiration towards a more independent foreign policy that is less reliant on the United States.

The policies of the current U.S. president and the challenges faced within the present international order provide an opportunity for Europe to build both a strategic culture and outlook and common strategic identity that will strengthen Europe's role on the world stage, and prove itself a continuing worthy partner to the United States within the transatlantic relationship.

The real benefit in these initiatives will be in strengthening the capability of European States within the alliances they form part of, and in maintaining on the agenda the efforts to move closer towards a common European outlook, if not a European strategic culture.

This chapter explores the impact of current U.S. posturing on the prospects for security and defence developments in the European Union. I will begin by presenting an overview of the international context within which European security developments must be considered, together with the historical developments and policy trends that have shaped the trajectory of European security and defence integration thus far. Within this context, policy implications and options may be measured.

Thus, the main question is, will the EU develop its own security and defence identity and strategic autonomy independent of the United States? It could, but should not necessarily want to. Yet developing and strengthening its political and strategic identity within a European and world order in flux may allow it to maintain a more cohesive political union, and strengthen its value as a strategic partner within the transatlantic alliance.

## **The world Europe lives in**

To begin any discussion of European Security and Transatlantic relations by citing Lord Ismay's conceptualisation of intending to keep the Americans in, the Soviets out and the German's down has become cliché. To also talk of Europe as an economic giant yet a military dwarf is also overly reiterated.

Yet such tropes persist despite the radical changes and shifts that have taken place within the international system and across the European continent.

Lord Ismay's sentiments capture concerns that prevailed for many of the key players and participants. Would the Soviet Union pursue expansionist tendencies into the West of the European Continent, or would the Atlantic Alliance succeed in containing its influence? Would Germany be contained in its ability to rebuild itself and expand its influence across the continent, or would it be successfully integrated with its European neighbours and allies?

And would the United States maintain its international focus and sustain its conviction to engage within the international community and extend its deterrent role and capabilities?

Seventy years after the foundation of NATO, and over sixty years since the Treaties of Rome, current debates are dominated by concerns that have evolved according to the changing international milieu, but are not too far removed from those that troubled the founders. European security remains overshadowed by the possibility of a Russian revival, questions over the extent of American commitment, and whether European partners are able to commit sufficiently to collective security.

Moreover, the debate over the current status quo in European Security has largely been overshadowed by events that have disrupted, so to speak, the peaceful progression of European political and security developments and integration, including the election of Donald Trump, and Brexit. Furthermore, the EU remains surrounded by unstable regions, including the Mediterranean and the Middle East, by challenges posed by migration, a more confident Russia, and the lingering threat of terrorism.

Meanwhile, the international liberal order that the Europeans and Americans spent the past decades designing and constructing appears to be gradually unravelling. Niblett has described a situation of "Liberalism in Retreat", citing stumbling blocks in the progress and expansion of liberalist principles at an international level, but perhaps more importantly challenges posed by internal threats to the liberal order stemming from "domestic political and economic uncertainty" (Niblett, 2017). The 2018 IISS Strategic Survey also warned that "statecraft is back", arguing that "States that are unhappy with the international order, or wish to create their own, are finding weaker resistance to their efforts to change things in their favour" (International Institute for Strategic Studies, 2018). Kagan has famously warned that the international liberal order designed and carefully preserved by the United States and its allies is under threat, resulting in the proverbial geopolitical "jungle" growing back (Kagan, 2018). Yet, Mead has long argued that "westerners should never have expected old-fashioned geopolitics to go away" (Mead, 2014). In assessing the viability of the international liberal order, Nye has reinforced this argument by stating that "Governments will continue to possess power and resources, but the stage on which they play will become ever more crowded, and they will have less ability to direct the action" (Nye, 2017). Ikenberry has maintained that "The future of this liberal order

hinges on the ability of the United States and Europe – and increasingly a wider array of liberal democracies – to lead and support it” (Ikenberry, 2018).

Thus, the world in which Europe is living is currently in flux, both internally and externally.

Within this context, President Donald Trump has repeatedly derided his European counterparts for their apparent woeful contributions to defence spending and burden sharing within NATO, resulting in questions over the certainty of the United States’ commitment to European Security (Howorth, 2018). Whilst progress within security and defence integration in the European Union has increased over the past two decades, European Security has largely remained the domain of the Transatlantic Alliance. Yet in the current context it appears that the stars may be aligning to provide an impetus for a more entrenched European Security Identity (see Riddervold & Newsome, 2018; Leonard & Shapiro, 2019; Witney, 2019).

Whilst the process of European integration was one that was always intended to be ongoing, both in terms of geographic breadth and political scope, the current international milieu has provided the EU with the opportunity to demonstrate its benefit in providing a steady global political hand.

## **Security & Defence – Present at Europe’s Creation**

The recent efforts at strengthening the EU’s “security and defence” dimension are by no means new. The very essence of European integration is in itself security, in that it sought to banish the possibility of conflict between European states.

France’s then Foreign Minister, Robert Schuman, famously declared on 9th May 1950 that Europe would not be built “all at once, or according to a single plan.” He called for institutionalising cooperation that would make “any war between France and Germany... not merely unthinkable, but materially impossible” (Schuman, 1950). The founders also acknowledged the security objectives of integration within the Preamble to the 1951 Treaty of Paris establishing the European Coal and Steel Community, expressing their resolve to “substitute for age-old rivalries the merging of their essential interests” (Treaty Establishing the European Coal and Steel Community, 1951).

Simultaneous proposals for a European Defence Community (EDC) were also championed. In recounting the foundation of the North Atlantic Treaty Organisation, Sloan details the concurrent talks over the establishment of the EDC (Sloan, 2016). During the discussions on the establishment of a European Defence framework, Sloan highlights the key concerns that prevailed, including U.S. worries regarding “European shortfalls” in contributions, as well as the duplication of efforts, French fears about German rearmament, and the possibility that the United States and Britain would retreat, leaving France to ‘balance’ or contain Germany alone. Eisenhower summed up French perceptions when he said that “the French have an

almost hysterical fear that we and the British will one day pull out of Western Europe and leave them to face a superior German armed force” (Sloan, 2016, p. 39).

Despite the failure of the European Defence Community, the European States went on to pursue alternative paths of integration, by signing the Rome Treaty establishing the European Economic Community in 1957, and pledging to “lay the foundations of an ever-closer union” (Treaty Establishing the European Economic Community, 1957).

Thus, European security and defence integration progressed under the banner of NATO. Even during the Cold War, when the United States’ extended deterrent role was at its height, concerns were also raised about the disparity in burden sharing. NATO’s 1967 Harmel Report explored the “Future Tasks of the Alliance”. The report approved on 18 December 1967 states that “the exercise has shown that the Alliance is a dynamic and vigorous organisation which is constantly adapting itself to changing conditions.” It pointed out that “Although the disparity between the power of the United States and that of the European states remains, Europe has recovered and is on its way towards unity” (North Atlantic Treaty Organisation, 1967).

Since the end of the Cold War, the collapse of the bipolar divide allowed the European Community to step up the pace of its quest for ever closer union, transforming itself into the European Union, and widening the scope of its collaboration as well as its membership. Thus began its endeavours in building a Common Foreign and Security Policy through the Maastricht Treaty, and eventually establishing a European External Action Service (EEAS) and Common Security and Defence Policy (CSDP) through the Lisbon Treaty.

## **American multilateralism and extended deterrence**

Inextricably linked to the development of European security has been the role of the United States as an integral player through the provision of its security umbrella to the continent, which has been a consistent feature of the U.S.’ strategic outlook and defence policy over the decades.

Yet the past years have seen developments that rattled the assumptions regarding European Security and the frameworks within which it may rest.

In his analysis of “the transatlantic bargain” and its “defence of the west”, Sloan recalls George Washington’s advice during his farewell address in 1796 regarding the avoidance of permanent alliance – advice heeded to until the signing of the NATO treaty (Sloan, 2016). Yet the temptation to look towards a future disentangled from such permanent alliances remains one that is at times considered within U.S. Political and Strategic establishments. The Jacksonian tradition, if you will, has never been altogether ruled out (Mead, 2002).

Under the current Trump administration, the desire to “Make America great again” has also been accompanied by unfiltered and undiplomatic complaints about the

imbalance in contributions towards European security. Yet such statements are not new. Successive Presidents and Administrations have long maintained that defence budget concerns needed to be addressed, culminating in the 2014 defence budget agreement reached at the NATO summit in Wales (Kaufman, 2017). Since 2014, NATO allies have reportedly made progress in increasing their defence spending, and have reported national plans to reach the goal of 2% of their respective GDP by 2024 (see North Atlantic Treaty Organisation, 2019). In spite of this, American former diplomats and analysts such as Lute and Burns continue to argue that “President Trump has been right to push allies to spend more on defense. He has the support of the U.S. Congress and many Americans in doing so” (Lute & Burns, 2019, p. 3). They maintain that it is unfair that only five NATO allies currently spend at least 2% of their GDP, whilst the United States spends 3.5%.

The importance of multilateralism and in particular, transatlantic multilateralism is embedded within the very fabric of the United States’ strategic culture and outlook. Indeed, European political and security developments began and remained a reference point in the geopolitical outlook of the United States; initially due to the American rejection of European politics; out of a sense of exceptionalism with which the United States viewed itself and its role in the world (Mahnken, 2009).

With the end of the Second World War, the U.S. acknowledged that its exceptionalism and primacy within the international community needed to be translated into an engaged leadership role, both in the wake of the war and the construction of a liberal world order, but also within the context of the Cold War that emerged. Thus, whilst the U.S. pushed for the emergence of the United Nations, it also pursued multilateral frameworks and a system of alliances that would uphold the international order that U.S. primacy both favoured and required. However, reservations over the indefinite role that the U.S. would be expected to provide as guarantor of the international security order have always persisted.

The concerns surrounding multilateralism and international engagement often espoused today were indeed present within early Cold War strategy documents, such as the 1953 NSC162/2. Such documents underlined the necessity of a strong military posture, which should be complemented by multilateralism and alliances. It was also acknowledged that the U.S. did not want to indefinitely serve as the West’s sole security guarantor (U.S. National Security Council, 1953).

The end of the Cold War and the collapse of the Soviet Union led to the emergence of the U.S. as the sole remaining superpower, within a “new world order” within which it sought to replace the bipolar divide with liberal multilateralism (Bush, 1990). Yet concerns regarding over-stretched engagements and guarantees continued to resonate.

Successive post-Cold War strategy documents affirmed that “the American commitment to an alliance strategy” was not only based on shared interests and common threats, but on shared values (The White House, 1990). They also

acknowledge that “while the United States cannot become the world’s policeman and assume responsibility for solving every international security problem, neither can we allow our critical interests to depend solely on international mechanisms that can be blocked by countries whose interests may be very different from our own” (U.S. Department of Defense, 1993).

Multilateralism and engagement remained central to U.S. Strategy under the Clinton administration, and the indivisibility of Transatlantic security continued to be emphasised (The White House, 1995; U.S. Department of Defense, 2000). Yet the Clinton administration also encouraged Europeans to assume greater responsibility in Europe. However, with the fragmentation of the former Yugoslavia and the conflict that ensued, European inaction showed that American intervention became inevitable and remained necessary.

The George W. Bush Administration was often criticised for adopting a unilateral approach and appearing to disregard multilateral efforts. However, multilateral concerns continued to play a key role. Even within a changing security context, the quest for a collaborative security strategy remained a starting point (U.S. Department of Defense, 2001). In this respect, the Administration valued both established multilateral frameworks, as well as ad hoc security arrangements designed to suit specific needs (U.S. Department of Defense, 2001; and The White House, 2002).

The Obama Administration sought to restore the role and perception of U.S. multilateralism, yet expressed concern over the demands being placed on the United States (U.S. Department of Defense, 2010). The 2010 NSS states that “the burdens of a young century cannot fall on American shoulders alone – indeed, our adversaries would like to see America sap our strength by overextending our power” (The White House, 2010). There continues to be an emphasis placed on a wider distribution of effort and burden sharing: “This modernization of institutions, strengthening of international norms, and enforcement of international law is not a task for the United States alone—but together with like-minded nations, it is a task we can lead” (The White House, 2010). Whilst multilateralism and engagement were prioritised, the Obama administration, like previous ones, reserved the right to ‘go it alone’ (The White House, 2010; The White House, 2015; U.S. Joint Chiefs of Staff (2015).

The December 2017 National Security Strategy published by the Trump Administration acknowledges the post-war international liberal order that was built in collaboration with other European and Asian counterparts, and the institutions that have formed the backbone of that international order (The White House, 2017). In asserting the priority of the strategy as protecting American citizens, values and way of life, the strategy states “Engaging with the world, however, does not mean the United States should abandon its rights and duties as a sovereign state or compromise its security” (The White House, 2017, p. 7). The document acknowledges the need for cooperation with partners and alliances in order to counter prevailing threats.

The 2017 Strategy also attaches the exceptionalism of the United States to its historical track record in assisting “fragile and developing countries become successful societies”, citing as its foremost example the recovery of Western Europe through the Marshall Plan (The White House, 2017, p. 38). Moreover, the NSS reaffirms the importance of a “strong and free Europe” (The White House, 2017, p. 47). It underscores the interdependence of U.S. and European shared values; prosperity, stability and security; and affirms the U.S. commitment to European allies, stating “the NATO alliance of free and sovereign states is one of our greatest advantages over our competitors, and the United States remains committed to Article V of the Washington Treaty.” The strategy goes on to maintain that “The NATO alliance will become stronger when all members assume greater responsibility for and pay their fair share to protect our mutual interests, sovereignty, and values” (The White House, 2017, p. 48).

Thus when placed in context, it becomes clear that whilst the tone of President Trump’s remarks (and tweets) on the subject are in stark contrast with those of his predecessors or what is expected of a head of state, the substance of his administration’s policy statements are reflective of the historical evolution and in keeping with the variations generally expected out of a change in administration or the change in political party in office. They are a continuation of past policies.

### **Defining a European Strategic Outlook**

Since its foundation, a primary challenge in developing a coordinated foreign and security policy under the umbrella of the European Union has been agreement over a common European strategic outlook and culture (Schmidt & Zyla, 2011). Such challenges have been inherent in all areas of political and economic integration, yet external policy has proved to be more sensitive due to the issue of sovereignty.

Leading European States such as France, the United Kingdom, Germany and Italy have also retained the desire to maintain a leadership role within the international community, and have recognized the benefits of utilizing the European Union to do so.

A challenge in identifying a coherent European strategic culture has been the fact that 28 Member States bring with them 28 different perspectives and sets of interests (Biehl, Giegerich & Jonas, 2013). Yet there appears to be a common agreement on the role of the EU’s economic and value-based political leadership within the international community.

Significant progress has been made in the EU’s integration in security and defence over the past two decades, particularly in identifying a common outlook towards the strategic challenges that the Union faces. In this regard, the EU Global Strategy (EUGS) in 2016 has sought to bridge existing gaps, and focus on commonalities between member states, most evidently in developing the role of the EU as a civilian security actor. In fact, in discussing the “construction of ‘European security’”, Selchow

reviews the discourse and language used in the EUGS, and considers them a space for the negotiation and contestation of concepts and identities that make up the notion of European security (Selchow, 2016).

There are indeed several strong narratives and themes that emerge from the EUGS that are reflective of the broad EU-wide consultative process before the strategy was drawn up. The document also acknowledges the importance of collective security. The EU's member states may have varying strategic outlooks and priorities, but as High Representative Federica Mogherini acknowledges, "none of our countries has the strength nor the resources to address these threats and seize the opportunities of our time alone" (European Union, 2016, p. 3). She emphasizes the importance of "shared interests, principles and priorities". She notes that "Grounded in the values enshrined in the Treaties and building on our many strengths and historic achievements, we will stand united in building a stronger Union, playing its collective role in the world" (European Union, 2016, p. 7).

In highlighting the priorities of the EU's external action service, an emphasis is placed on enhancing the EU's strategic autonomy. Yet it is also maintained that the future of European security and defence remains embedded within the framework of NATO. It is acknowledged that "NATO, for its members, has been the bedrock of Euro-Atlantic security for almost 70 years. It remains the strongest and most effective military alliance in the world" (European Union, 2016, p. 36). Enhancing the EU's capabilities would firmly complement those of the transatlantic alliance.

The EUGS states that "a more credible European defence is essential also for the sake of a healthy transatlantic partnership with the United States" (European Union, 2016, p. 20). It also highlights that "On the broader security agenda, the U.S. will continue to be our core partner" (European Union, 2016, p. 36).

The 2018 review of the strategy's implementation emphasizes the relationship with the United States, despite the uncertain rhetoric and statements being made. The review asserts that "A strong and well-functioning transatlantic partnership remains a crucial element for Europe's security and prosperity. The EU remains committed to the strategic partnership with the United States, based on shared values, interests, and a willingness to play a responsible role in world affairs to our mutual benefit." Whilst the successes in collaboration are underscored, it is noted that the EU has also "stood up for our values, principles and interests when we felt that they were challenged and we will continue to do so. This is particularly true when it comes to defending and promoting the rules-based international order that has been built together with the U.S. in recent decades" (European Union, 2018, p. 11).

Whilst the EUGS maps out the vision that the Member States seek to achieve through their coordinated role, the annual reports published on the implementation of the strategy provide detailed insight into the practical progress that has been made. In her forward to the 2017 report, Mogherini notes, "more has been achieved in the last ten months than in the last ten years" (European Union, 2017, p. 5). Achievements



over the past years include a new command centre for EU training and advisory missions, and progress towards developing greater ‘military mobility’, a political agreement to establish a ‘European Defence Industrial Development Programme’, and more ambitious proposals to set up a ‘European Defence Fund’ and a ‘European Peace Facility’ (see European Union, 2017; European Union, 2018). Enhanced cooperation has also seen the development of a Coordinated Annual Review on Defence (CARD) and a Civilian CSDP Compact (see European Union, 2019). The EU also deepened its partnerships with NATO. In fact, the third annual review highlights the “unprecedented cooperation between the EU and NATO, with no less than 74 common actions to date in the framework of the two Joint Declarations of 2016 and 2018” (European Union, 2019, p. 11. See also European Union, 2017, p.23; European Union, 2018, p.8).

Perhaps the most visible achievement has been the launching of Permanent Structured Cooperation (PESCO) in December 2017 (see Fiott, Missiroli & Tardy, 2017), which aims to fulfil the need for “enhanced coordination, increased investment and more cooperation in developing defence capabilities”. The fact that such cooperation is taking place within a treaty-based framework is a revolutionary aspect, in light of the historical political hesitancy that has always existed in this regard (see EEAS, 2019).

In reviewing the progress made and assessing prospects for the future of the European Union in this regard, two points must be raised.

Firstly, the real test to PESCO and the EU and the leaps and bounds that have been made in coordination in this field will come in the face of crisis that requires intervention, particularly one in which other “like-minded” military actors (such as the United States) will be reluctant to act. If one thinks back to the reaction of the international community to the Arab Spring, and more specifically to the civil war that broke out in Libya, political and public opinion within the United States recognized the need for intervention, but felt that it was not a priority for the United States but should have been for other regional allies. Thus, the U.S. agreed to lead from behind, and facilitate a greater political role while the military intervention was spearheaded by the UK and France. At the time, Germany was a non-permanent member of the Security Council, but it abstained when the vote was taken. The question is whether the technical cooperation facilitated by PESCO will trickle into the political deliberations when the EU faces similar scenarios.

Secondly, it may be argued that the benefit of PESCO is the existence of PESCO itself. The coordination and enhanced investments in military and defence will expand the military profile of the EU as a collaborative power within the international community. Furthermore, the ability to boast such capabilities, even if not put to use, is in itself a demonstration of power and influence within the international system. Therefore the benefit of PESCO may be in the collaboration itself, even if it is not put to the test.

## Envisioning Europe's world role

The end of the Second World War provided an opportunity for integration. Whilst attempts were made at pursuing integration at a political and defence level, it was evident that the climate was not yet ripe. The end of the Cold War provided a natural next step for furthering European integration, whereby the international milieu facilitated, if not expected, the European Union to begin to rely on its own capabilities without necessarily requiring the United States to extend its reach across the Atlantic.

We witnessed efforts to develop both the political and logistical requirements, embodied in treaty reforms from the Maastricht Treaty, to St Malo and finally the Lisbon Treaty. Concurrently, we also saw NATO evolve and redefine the way it perceived its own role within the evolving international system through the publication of updated strategic concepts to better reflect the times.

The course of events has also tested the political will and strategic commitments of both the Europeans and their American allies. The fragmentation of the former Yugoslavia, Kosovo, the Iraq War, Libya and Syria, have all tested the resolve of the transatlantic allies and raised debate as to which side of the Atlantic leadership and responsibility should lie (Anderson, 2018).

Moreover, the delicate balance between pursuing European security and stability via NATO and/or the European Union is a continuous debate that seeks to ensure effectiveness and a smart distribution of capabilities (see Smith, 2018; Howorth, 2018).

The EU has weathered crises and rifts before. Challenges, particularly those related to failures in security and defence policy, have always been followed by renewed efforts over integration and continuity. After all, the process of European integration is one that at its roots was defined as an “ever closer union” that would be brought about gradually and over time. Thus, the EU – and its member states – may seize the opportunity at hand to further the course of European integration when it comes.

It is within these contexts in mind that the recent statements by President Donald Trump must be measured, and the implications for the wider transatlantic relationship and prospects for European security considered.

The current milieu is unique in that we are not witnessing a drastic turn of events that is transforming international order, but gradual shifts that are indicating a slow retreat by the United States. Whether this shift will be temporary or not is impossible to predict. In the meantime, it is certain that an erosion of the liberal international order has been set in motion – which will be difficult to reverse.

This context has set the stage for the possibility of further progress in strengthening the technical and political collaboration between the EU member states within the sphere of security and defence.

Success has been achieved in the institutionalization of commitment and cooperation through the work of the European External Action Service, the

publication and implementation of the EUGS, and the commitment to develop its own strategic autonomy through PESCO. In parallel, the past five years have seen greater efforts to move towards increased defence spending under the umbrella of NATO.

We have seen greater efforts to strengthen European initiatives from within the institutions and also from leading member states.

France and Germany have traditionally been at the helm of the European integration process, and have sought to tap into the current climate in order to strengthen the international political profile of the EU, and their respective roles at the forefront.

In June 2016, the French and German Foreign Ministers at the time – Jean Marc Ayrault and Frank Walter Steinmeier – published a joint “vision” on the future of Europe on the heels of Britain’s Brexit vote. They described the result of the referendum as a regrettable decision that would result in consequences for both the UK and the rest of the EU. They asserted that the EU is a source of stability in the world, and would work to champion cohesion within the Union and strengthen its role on the world stage (Ayrault & Steinmeier, 2016).

In September 2017, France’s President Macron spoke about his vision for the future of Europe, and pegged the challenges being faced in consolidating European security and defence on the lack of a common strategic culture. He therefore proposed the creation of a European Intervention Initiative which would seek to foster collaboration and bridge the varying European strategic cultures that exist (Macron, 2017).<sup>18</sup> This initiative has been described as separate, but complementary to the work of the UN, NATO and the EU, in that it would facilitate cooperation within the context of such multilateral frameworks (Letter of Intent, 2018).

President Macron also sought to lead the European debate on the future of European security and defence taking due account of President Trump’s remarks regarding the share of defence spending within the transatlantic alliance. In a widely reported interview on French radio in November 2018, in the midst of centennial commemorations for the World War One Armistice, President Macron spoke of the need to create a “true European army” (BBC News, 2018). Macron spoke of the need to “have a Europe that can defend itself alone – and without only relying on the United States – in a more sovereign manner” (Noack & McAuley, 2018). This was met with mixed reactions – namely positive – from the likes of German Chancellor Angela Merkel and European Commission officials (see BBC NEWS, 2018; Reuters, 2018). Trump misleadingly tweeted that France’s suggestion “that Europe build its own military in order to protect itself from the U.S., China and Russia” was “very insulting” (Noack & McAuley, 2018).

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18 The initiative was later launched in June 2018, with the Defence Ministers of Belgium, Denmark, Estonia, France, Germany, the Netherlands, Portugal, Spain and the UK as signatories to the Letter of Intent.

Germany's Foreign Minister Heiko Maas has also actively remarked on the role that Germany as well as Europe should pursue in the light of President Trump's repeated statements on European Defence spending. In a speech delivered in August 2018 he referred to Kagan's proverbial "jungle growing back" which would replace the rule-based liberal international order that the western allies had cultivated. He expressed the opinion that the rhetoric emerging from Washington could result in fundamental shifts within the strategic realities that Germany and Europe function, and therefore necessitates policies that would maintain collaboration and balance within Europe and across the Atlantic. He maintained that "By strengthening the European pillar of the transatlantic alliance, we are creating the conditions for ensuring that Americans and Europeans can rely on each other also in the future" (Maas, 2018a).

Maas has also spoken of the need to cultivate an "alliance of multilateralists", turning to partners such as France, Canada, and also appealing to Japan and other European partners to join a network of countries committed to a rules-based world order. He has described this not as an "anti-Trump alliance" but as an effort to counteract "those who have declared war on the multilateral world order." (Hoffmann, & Schult, 2019). He has argued that the security challenges being faced can only be addressed collectively, and that it is in Europe's interest to lead such an initiative (see Hoffmann, & Schult, 2019; & Maas, 2018b).

Whilst applauding the progress that has been made within the EU through PESCO, he also maintained that the EU has an important role to play as a civilian actor and in crisis prevention, highlighting that "Security is not exclusively a military question" (Hoffmann, & Schult, 2019). During the 2019 Munich Security Conference, Maas argued that security must be conceptualised holistically without focusing on defence budgets alone (Maas, 2019).

These sentiments have also been echoed by High Representative Federica Mogherini, who referred to the evolution of the European Union into a "security provider 'at large'". She describes the success achieved over the past years as the fruition of "A dream that our founding fathers and mothers always dreamt of, but never managed to accomplish". She asserts that European soft power is now finally complemented by "a credible hard power component" (Mogherini, 2019).

In fact, Mogherini has also acknowledged that cooperation with NATO remains a fundamental aspect of EU's security and defence outlook, noting that "NATO is the pillar of Europe's collective defence; it is even mentioned in the European Union treaties". She maintains "For us Europeans, strategic autonomy and cooperation with our partners are two sides of the same coin" (Mogherini, 2019).

This reality is epitomized by the fact that other EU member states do still prioritise the relationship with the United States and will go to great lengths to anchor its security umbrella within the continent. This was exemplified by the Trump Administration's commitment to boost U.S. troop presence in Poland, and the

efforts that have been made on the part of the Polish Government to secure a more permanent U.S. military presence in that country (Baker, 2019).

Despite the remarks coming from the White House, the relationship between the United States and its European counterparts continues to function across a broad range of issues. Testament to this is the visit to Germany by U.S. Secretary of State Michael Pompeo in May 2019. Here Heiko Maas asserted that “The very close contacts between Europe and the United States of America is not only in our mutual interest, I think it is also the expression of a deep-rooted friendship, which is based on shared values above all”. Both Maas and Pompeo spoke of the broad range of foreign and security issues over which strong collaboration remains important (U.S. Department of State, 2019).

### **Concluding Remarks**

Through his frequent remarks deriding the contribution of European states towards their individual and collective defence, President Donald Trump has sown seeds of doubt into the prospects for the transatlantic relationship. Yet a wider review of this relationship and security and defence efforts within the EU shows less cause for alarm.

It may be argued that the message of Trump’s foreign policy remarks is not necessarily new. Concerns over burden sharing have always persisted and will remain, but so too will Atlanticist sentiments and commitments, both within the current administration and the opposition. U.S. strategic culture is in fact defined by both its commitment to extended deterrence, but also the tendency to “look inwards”.

Security has always been at the heart of European Integration. Identifying and formulating a common European strategy has been a challenge, yet considerable progress has been made in cultivating a common European strategic outlook, if not culture. Moreover, the current international milieu provides the EU, and its member states, with the opportunity to focus on building its strategic autonomy and common strategic outlook, and in the process seeks to cultivate a common strategic culture that may generate greater cohesion. In fact, the third annual review of the European Global Strategy recommends that “Europeans can work towards a common strategic culture, entailing convergence in threat assessment, commitment to common responses, and, as a prerequisite of this, acting on the principle of solidarity enshrined in our Treaty” (see European Union, 2019, p. 12).

Recent developments beg the question as to whether the EU is trying to move towards creating capabilities that would make it completely autonomous from the United States, and even hypothetically eventually allow it to detach from NATO, should the circumstances arise. Perhaps this is the case, but we are certainly not there yet, be it in terms of capabilities and autonomy, or even in terms of political will. Thus, bilateral and multilateral cooperation with the United States, and the role of NATO will remain at the heart of Europe’s strategic activity, and ultimately, EU

strategic culture for the foreseeable future. Moreover, the ability to rely on NATO's (and U.S.) hard power will allow the EU to focus more effectively on civilian security capabilities and its soft power as a global actor.

As with all foreign and security policy, a major source of influence comes from domestic sources. Recent political developments and elections have shown that traditional politics and political establishments are increasingly being challenged, and the EU will likely spend the coming years distracted by having to deal with domestic instability in an attempt to overcome the challenge posed by fringe and anti-establishment political parties.

Whilst this has the potential to "distract" the EU from external policies, the current political fragmentation may alternatively be remedied by the efforts championed by the institutions, as well as by leading member states such as France and Germany, to create internal cohesion through effective external action. This is the great hope of the EUGS.

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## Chapter Eight

# The Future of EU Defence and inter-Parliamentary Co-operation

**Roderick Pace**

### **Abstract**

The EU has embarked on new initiatives to achieve closer union in defence policy. This was signalled by the establishment of a Permanent Structure Cooperation (PESCO) in 2018. At the same time the EU institutions are on the cusp of approving the new European Defence Fund (EDF). In the context of the 2016 EU Global Strategy (EUGS), this chapter looks at some aspects of future developments in this field and argues in favour of more parliamentary involvement and oversight by the European Parliament and the national parliaments mindful that – with the exception of a few of them – the latter have not shown a lot of activism. In the context of the EU's norms, the chapter looks at the traditional EU approaches in external relations such as 'civilian power' and 'democracy promotion', and how the parliamentary oversight could ensure that they are preserved in the EU's foreign policy repertoire. Parliaments can also contribute to the clarification of strategic autonomy and the still vague "principled pragmatism" cited in the EUGS.

### **Introduction**

The discussion on the future of the EU's Common Security and Defence Policy (CSDP) is part of the broader issue of European Security and the wider subject of the future of the European Union. The EU's main justification for embarking on further integration in defence is the need of achieving a modicum of strategic autonomy. Strategic autonomy has various possible connotations. Both the European Parliament (EP) and national parliaments (NPs) (collectively referred to as EU Parliaments) have a role to play in scrutinizing the EU's defence policy individually and by engaging in inter-parliamentary cooperation. Decisions in the CFSP-CSDP are taken by EU governments and are meant to be scrutinized by their own national parliaments, but this does not always happen. The level of scrutiny varies across all parliaments for different reasons such as the parliaments' constitutional position, formal and informal power on defence and foreign policy, parliamentary traditions, composition, resources and the readiness of members of parliament (MPs) to involve themselves. In the meantime, the EP has a consultative role in the Common Foreign and Security

Policy (CFSP) and an even more limited role in the CSDP. However, it has a bigger role as co-legislator in several policies of relevance in the broader field of the EU's external relations.

A 2017 European Commission white paper on the Future of European Defence outlines three scenarios. The first proposes enhanced cooperation; the second projects increased shared security and defence; while the third suggests a common defence and security union (European Commission, 2017). The three scenarios imply different levels of pooling of sovereignty and resources. The third is probably the most effective, but requires the deepest political integration.

Public support for a common European defence is high. According to Eurobarometer, “more than three-quarters of Europeans (76%, +1 percentage point since spring 2018 survey) say they are in favour of a common European defence and security policy, while 18% are opposed and 6% (-1% over the previous survey) express no opinion” (Eurobarometer 90: 2019). The same survey shows that among the citizens' main concerns, the “EU's influence in the world” is only seventh at a low 11%; when asked to identify the main positive results of the EU, they rank “political and diplomatic influence in the rest of the world” in sixth place. EU citizens support a common defence but are not so enthusiastic about the EU's influence in the world.

What is unclear is the kind of defence union that European citizens support. This is because the strengthening of the CSDP is still a work-in-progress, and the meaning of “strategic autonomy” is vague. It is not the aim of this chapter to engage in a lengthy discussion of strategic autonomy,<sup>19</sup> but whatever level of autonomy is eventually achieved it will require EU citizens to take on a bigger share of the burden of their own defence. NATO is likely to remain indispensable for Europe's defence for the foreseeable future. The 2016 EU Global Strategy (EUGS) says that “The EU will deepen its partnership with NATO through coordinated defence capability development, parallel and synchronised exercises, and mutually reinforcing actions to build the capacities of our partners...” (p. 37).

There are no prospects that the EU could emerge, or plans to become, a global power like the USA, Russia or China. The treaties do not permit it to acquire nuclear weapons nor to develop autonomously from NATO. The Treaty on European Union (TEU) specifies that the CSDP “shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO)...” (Treaty on European Union, Article 42(2)). The same treaty article says that a common defence policy will be adopted when the European Council, acting unanimously, so decides. In this case, the Member States

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19 Some very pertinent points about strategic autonomy are raised in the paper by Barbara Lippert, Nicolai von Ondarza and Volker Perthes (eds.) (2019).

have to ratify such a decision in accordance with their respective constitutional requirements (Treaty on European Union, Article 42(2)).

In the debate on the future of EU defence, little to no attention has been given to the enhancement of the parliamentary dimension. Can the current structure of inter-parliamentary cooperation and scrutiny of the CFSP/CSDP be improved, and is it necessary to improve it?

Inter-parliamentary scrutiny of defence harks back to the Parliamentary Assembly of the Western European Union (PA-WEU) which was founded in 1954 on the basis of the Modified 1948 Brussels Treaty. In 2008, the PA-WEU became the European Security and Defence Assembly (ESDA), but by 2011 the WEU was wound down and a new inter-parliamentary initiative began under the terms of the Lisbon Treaty (LT). The Conference of Speakers of the European Union (EU) Parliaments, meeting in Brussels on 4–5 April 2011 and in Warsaw on 20–21 April 2012, established an Inter-Parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) (IPC-CFSP/CSDP). The first meeting of the IPC-CFSP/CSDP took place in Cyprus in 2012 during its presidency of the Council of the EU. Since then, the parliament of the member state holding the presidency of the Council of the EU has led the event. Fifteen IPCs have been held so far; the last one took place in Helsinki in September 2019.

This chapter focuses on three main issues:

1. The scrutiny role of parliaments in the CFSP-CSDP and how this can be improved.
2. New avenues that parliaments can explore in strengthening the legitimacy of EU actions in the CFSP-CSDP.
3. To give new meaning to the traditional concept of ‘civilian power’ in a context of a more defence-minded EU.

## **Turbulent Times**

Turbulence is an eternal condition of world politics, and in this sense our times may not really be different from other times. International developments since the start of the Ukraine crisis have been cited as reasons triggering further integration in defence. This is true but only to a limited extent. EU defence integration has been on the agenda for several decades. The most significant event was doubtlessly the adoption of the EU Global Strategy (EUGS) to replace the 2003 European Security Strategy (ESS). That was followed by the EU-NATO Joint Declaration (NATO, 2016) adopted in Warsaw a few days later in which the two sides pledged to strengthen cooperation. These developments lessened some of the pessimism that had descended on the EU after the UK referendum of 23 June 2016 in which a majority voted for BREXIT.

The leaders of the EU-27 meeting in Bratislava in September to take stock of the situation created by BREXIT, agreed that at the December European Council, they would decide on a concrete implementation plan on security and defence; how to

make better use of the options in the Treaties, especially as regards capabilities; and start implementing the joint declaration with NATO immediately (European Council 2016).

Hot on the heels of the EUGS, in November 2016 the High Representative/Vice President Federica Mogherini launched the Implementation Plan on Security and Defence (IPSD) with three main objectives: to enable the EU to respond to crises, strengthen the capacities of the member states and protect the EU from external threats and actions. A year later, in December 2017, a Permanent Structured Cooperation on Defence (PESCO) was launched by 25 EU member states. This was followed by the adoption of a European Capability Plan, Coordinated Annual Review of Defence (CARD) and the European Defence Fund (EDF), which is still in the process of approval, and the European Defence Industrial Development Programme (EDIDP).

Since the start of the USA presidency of Donald Trump in January 2017, the trans-Atlantic Partnership has gone through trying times. However, this is not the reason why the EU started the process of further enhancing its defence policy, though doubtlessly Trump's tactics gave it impetus.<sup>20</sup> The aim of a common European defence had featured in the Union's foundational treaties since 1993 (26 years before) following the ratification of the Maastricht Treaty.

## **A Historic Glimpse**

The magnitude of the challenge of a common European defence is better appraised by recalling that it has been discussed intermittently for more than 300 years. In 1710, the English Quaker John Bellers had proposed the reorganization of Europe into 100 cantons of equal size with a common European law, and each contributing a thousand men, money or ships of equal value to defend Europe's borders. Three years later, the Abbé de Saint-Pierre proposed a European "Grand Alliance" (1713) which would command a European force to make Europe's borders impervious to external challenges while exercising a hegemonic stability internally to stop any member state of the Alliance from growing at the expense of another by the use of force. In both proposals, intra-European conflicts were to be resolved by diplomacy pursued within a permanent European assembly, while the borders of Europe were to be guarded by a European army.

The contemporary efforts to strengthen European defence are traceable to several developments since the end of the Second World War (WWII). The 1948 Brussels

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<sup>20</sup> President Donald Trump halted negotiations on the Trans-Atlantic Trade and Investment Partnership (TTIP) with the EU, criticised the EU on several occasions, threatened to leave NATO and quarrelled with his European allies by withdrawing from the Iran Nuclear Agreement.

Treaty, the Washington Treaty (1949) and the founding of the Trans-Atlantic Alliance, the launching and failure of the Pleven Plan (1950–54), the establishment of the Western European Union (WEU, 1954) and the Fouchet Plans (1959–62) debacle are the most familiar landmarks. The start of European Political Cooperation (EPC, 1970), later incorporated in the founding treaties by the Single European Act (1987), improved inter-governmental harmonisation in foreign policy among the European Community's (EC) member states, but had a negligible impact on defence cooperation. The Treaty of Maastricht (1993) established the Common Foreign and Security Policy (CFSP) and its component, the European Security and Defence Policy (ESDP), which since the Lisbon Treaty (2009) has become the Common Security and Defence Policy (CSDP).

The emergence of ESDP-CSDP was helped by NATO's 1996 decision to allow the WEU to develop the European Security and Defence Identity (ESDI) permitting the deployment of NATO military assets in EU-led peace-keeping/peace-building missions in line with the Petersberg Tasks<sup>21</sup>, which were originally codified in 1992. The Lisbon Treaty expanded these tasks further.

Several difficulties lie in the way of a common European defence: member states prioritize their own national security, 22 of them are members of NATO while the rest are not. The larger member states have more resources than smaller states and larger states have wider global interests than smaller ones (Thorhallsson and Steinsson, 2017; Handel, 1990; East, 1973). Member states have to invest more, the European arms industry needs restructuring and rationalization, and more synergies are required between national research organizations. Public support is key to the achievement of a more effective defence union. Parliaments and political parties have a role to play in maintaining this support by engaging the public, civil society and the media.

## **The Parliamentary Dimension**

The parliamentary dimension of the CSDP is justifiable because the EU is a community of democratic states with elected parliaments, which since the end of WWII, and to varying degrees, have gradually acquired more power in scrutinizing their respective national executives. Democratic parliaments (as opposed to rubber-

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21 In the original WEU Declaration of 1992, the tasks consisted of humanitarian and rescue tasks; peacekeeping; the tasks of combat forces in crisis management, including peace making. The Lisbon Treaty expanded them to: "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories" (Treaty on European Union, Article 43).

stamp ones) legitimize decisions. The literature on parliamentary scrutiny is extensive and reference to it is made in this section.

The LT has increased the powers of national parliaments particularly through Protocol 1 on the role of National Parliaments in the European Union, and Protocol 2 on the application of the principles of subsidiarity and proportionality. The IPC-CFSP/CSDP justifies its legality by reference to Protocol 1. National parliaments started meeting in 1989, when the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) was set up. COSAC received a strong impetus from the Amsterdam Treaty and then from the LT's provisions on national parliaments (COSAC Secretariat, 2012).

The Early Warning Mechanism (EWM) introduced by the LT led to speculation that national parliaments could constitute the third chamber (after Council and the EP) in the EU's legislative process (Cooper, 2011). However, the effectiveness with which the national parliaments exercise these new powers varies considerably across the member states. The CFSP-CSDP proved to be the most difficult to secure inter-parliamentary cooperation and involvement, mostly because of its inter-governmental nature and conflicts between the EP and NPs (Heffler et al., 2015, p. 21). In 2018, the number of national Parliaments not issuing any opinions under Protocol 2 had risen to eight (ten chambers) (European Commission, 2019) showing a degree of laxity in scrutinizing EU affairs.

The party structure and political tradition of parliaments affects the type of scrutiny and control that they exercise on the executive. Holzacker (2008) identifies several modes of parliamentary activism each of which determines the depth and manner of scrutiny or control of the executive: non-party mode where a parliament tries to increase its power vis-à-vis the government, i.e. it defends what it sees as its constitutional powers within a democratic system; cross-party mode where members from various political parties unite to press a government to consider their geographic or sectoral interests usually pursued through informal channels; inter-parliamentary mode in which government and opposition diverge along party lines. Ariella Huff (2015) argues that the "CFSP in general is of relatively low salience across the board, particularly since the advent of the financial and Eurozone crises which have captured so much public and political attention since 2008".

The latest Eurobarometer (2019) data shows that the EU's influence in the world has low saliency among European citizens, though this varies across the member states. This could be a reason why MPs seem so lukewarm, and parliaments so reluctant, to scrutinizing the CFSP. Huff (2015) (see also Fiott, 2019) observes that "unlike scrutiny of EU legislation, oversight of the EU's foreign policy generally remains ad hoc, non-automatic and non-systematic, even in archetypically 'strong' parliaments like the Folketing. In this context, parliamentarians must first choose to make use of their authority and ability; if they remain uninterested in doing so, then scrutiny either does not happen at all (as is typical in the Polish case) or is largely a matter of going



through the motions and rubber-stamping government actions (as in Italy). Thus, the elements of both authority and ability that best indicate strength are those that serve to make scrutiny a systematic, normatively accepted part of everyday parliamentary work.” In short, formal authority matters, but it is useless if the parliamentarians are not able or willing to exercise it. Raising national parliaments’ interest in the CFSP-CSDP is one of the challenges that needs attention to avoid serious cleavages between voters and governments on the CSDP.

## **The European Parliament’s Powers**

Since the 1993 Maastricht Treaty, the EP gradually increased some of its powers and contribution to the CFSP-CSDP and external relations; ranging from parliamentary diplomacy, to trade and climate change (see Stavridis and Irrera, 2015). The founding treaties (TEU and TFEU), as established by the LT, are the source of the EP’s powers. Article 36 (TEU) obliges the High Representative of the Union for Foreign Affairs and Security Policy (HR) to regularly consult the EP on the main aspects and the basic choices of the CFSP/CSDP, and to inform it on how those policies evolve. The HR must ensure that the views of the EP are taken into account. The Parliament can also make recommendations to the HR, and twice a year it holds a debate on progress in implementing the CFSP/CSDP. In addition, as a result of inter-institutional agreements, the parliament participates in Joint Consultation Meetings (JCMs) to exchange information with the Council, the European External Action Service (EEAS) and the Commission. Outside the EU it participates in the NATO Parliamentary Assembly. Its consent is required in enlargement or when a country decides to leave the Union, as well as in the ratification of international agreements and the right to be consulted on CFSP/CSDP agreements (TEU, Publications Office of the EU, 2016; Turunen, 2019).

The European Parliament has about 44 delegations for relations with non-member countries’ parliaments. It sends delegations to five regional parliamentary assemblies (e.g. NATO-PA, Union for the Mediterranean Parliamentary Assembly, etc.) and has several joint parliamentary committees involving third states and regions. This constitutes the main thrust of the Parliament’s diplomacy. The most important EP committee is the powerful Foreign Affairs Committee (AFET) and its sub-committees covering Human Rights (DROI) and Security and Defence (SEDE). Then there are the committees which respectively cover International Trade (INTA) and Development (DEVE). Further integration in defence policy has involved, and is likely to involve several other committees, such as the one covering Industry, Research and Energy (ITRE) which in 2018 together with AFET and SEDE, reviewed the proposed Commission Regulation for the establishment of the European Defence Industrial Development Programme (EDIDP).

In theory and within certain limitations, the EP can wield its budgetary powers to have a bigger say in other aspects of defence policy as it did in the case of the

setting up of the EEAS in 2010 but this tactic has several limitations and cannot be used frequently. Moreover, considering several policy areas hitherto considered to lie outside the purview of external relations overlap with, the parliament's influence is most likely to increase particularly since the EUGS advocates a broad comprehensive and integrated approach to crises management that involves several EU policies. In its December 2018 report and resolution on the CFSP, the EP supported the main thrusts of the EUGS and the developments which have occurred so far in the defence sector. However, the parliament also stressed that further integration in defence must be accompanied by increased parliamentary control. The meaning of "control" also raises several arguments and needs further clarification.

### **National Parliaments**

At the first IPC-CFSP/CSDP in Cyprus, Elmar Brok (2012), Chairman of AFET proposed the following objectives for EP-national parliaments' cooperation: (a) to deepen cooperation and make the parliaments' voice count on key foreign policy challenges; (b) to scrutinize better the decisions made by executives, and thereby provide parliamentary legitimacy in the area of CFSP and CSDP; (c) to promote a more strategic approach to foreign policy priorities; (d) to monitor and ensure that these policies include specific support to countries in democratic transition, and in particular in the southern neighbourhood; (e) and, finally, to address the problems which result from declining defence capabilities and promote the development of new civilian capacities for the CSDP. In the final statement the IPC-CFSP/CSDP resolved "to enhance the democratic engagement in the Union's CFSP and CSDP by promoting a more systematic, regular and timely exchange of information on the different aspects and implications of the CFSP and CSDP, at national and European level and to (use the parliamentary dialogue) to address the decision-making, capacity-building and operational weaknesses of the CFSP and CSDP, so as to make it more effective and efficient in addressing our common challenges and pursuing our common goals" (Paphos, 2012). This approach can be implemented, but successful implementation depends on the resources and willingness to engage in each of the national parliaments. There is no question that the EP is already engaged up to the powers granted to it by the LT. There is also little to disagree with the point which is often stressed (see for example Fiott, 2019) that effective parliamentary scrutiny of the CSDP requires EP-national parliamentary cooperation.

Some national parliaments have the means to be effective scrutinizers others do not. For example, in the setting up of the European Defence Fund (EDF), a work which is still in progress, the deadline for the submission of reasoned opinions on grounds of subsidiarity was 24 September 2018, but none were submitted (EPRS, 2019). Seven-member state parliaments have completed the scrutiny, nine are in the

process of doing so, and 12 have provided no information<sup>22</sup>. In a resolution on the implementation of a Union Common Position on arms exports, the EP laments that, “that not all EU national parliaments scrutinise governmental licensing decisions by, inter alia, producing annual arms exports reports, and, in this regard, calls for a general increase in parliamentary and public oversight...”. The resolution urges national parliaments to do more (European Parliament, 2018).

### **Taking Parliamentary Oversight Further**

In a report on the scrutiny of the EDF by the EP and national parliaments, Daniel Fiott (2019) made several observations: (a) that the EP and national parliaments should seek clarification about their role in the evaluation of the EDF; (b) that there are limits to present inter-parliamentary cooperation to enable parliaments to scrutinize the EDF properly; (c) that without a concentration of parliamentary expertise, the EP could find it challenging to continuously and effectively monitor and scrutinise developments under the Fund; (d) the EP and national parliaments need to move from a focus on levelling information asymmetries to thinking more strategically about what defence capabilities the EU will need in the future. An in-depth study or debate on the future of defence technologies and EU security and defence should initiate a longer reflection process on the EDF in the European Parliament. There is little point to argue with these points because they are reasonable and reflect realities on the ground.

Fiott (2019) makes a number of recommendations on the parliamentary scrutiny of the EDF. The first is that the “Structured scrutiny of the EDF by the EP and national parliaments’ involvement in the EDF evaluation phase could allow the Parliament to make suggestions for future work programmes as well as ensure that the Fund is meeting its stated objectives”. Secondly, “the EP and national parliaments should engage in a more strategic understanding of the EDF, especially with regard to how the Fund relates to other initiatives such as PESCO and national defence priorities....”, adding that “COSAC and CFSP-IPC formats, while useful for formal exchanges between parliamentarians, have not been optimised for specifically scrutinising the Fund or building an inter-parliamentary consensus on EU defence research and defence capability prioritisation”. He also recommends that the EP should strengthen its skills’ base to be in a position to properly scrutinize the technicalities of EDF.

Parallel arguments could be applied to the whole of EU defence policy. Inter-parliamentary co-operation, both among national parliaments and between national parliaments and the EP, has increased progressively in the last decade. The EP and national Parliaments exchange information, best practice and national

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22 Visit also the IPEX web-page available at: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20180476.do> (Accessed: 21 July 2019).

parliamentarians visit the EP often to attend EP parliamentary committee meetings. But as is argued in this chapter, parliaments need to develop their own internal structures to scrutinize better the EU defence policy and the level of analysis needs to be deepened. Parliaments have achieved different levels of oversight capabilities and small parliaments tend to struggle in commanding sufficient resources, information and expertise, but in cooperation with the EP and other national parliaments (through COSAC and the IPEX network, as well as bilateral contacts) they can address some of the more serious gaps. The EP has more expertise and resources than the national parliaments to oversee the CSDP, but national parliaments can supply useful knowledge from their respective domestic political contexts.

National parliaments have increasingly become more involved in external relations and defence. The effects of globalisation have almost obliterated the thicker lines that once divided domestic from international policies. Immigration, the environment, human rights, climate change, trade, terrorism, pandemics, and energy are not easy to assign to the traditional spheres “internal” or “external”. Conflict in faraway regions attract less domestic interest than the ones closer to Europe which have a spill-over potential. But trade and environment agreements can lead to winners and losers at the national level, a re-distributional effect that directly impacts voters – leading to public responses. External policies have a direct bearing on the lives of citizens and national MPs frequently become immersed in external policy issues for this reason. Sub-national parliaments can at times also play a significant role in the ratification of international agreements: the EU-Canada Agreement (CETA) almost collapsed under the weight of opposition from Belgian regional parliaments which precluded Belgium from ratifying it. However, more tellingly, for more than a decade, around 76% of EU citizens have supported the development of the CSDP. This provides the strongest reason why national parliaments need to strengthen their contribution to the discussion that is taking place at EU level.

### **Civilian Power Europe**

As the EU busies itself with the task of strengthening the CSDP, there is a tendency to dwell too narrowly on the technicalities and to leave aside some important characteristics of the EU external relations such as ‘civilian power’, the promotion of democracy, human rights and the rule of law. As has been discussed earlier, the aim of developing the CSDP and to strengthen its strategic autonomy is to achieve the Union’s interests and norms as enshrined in the treaties, the Charter of Fundamental Rights, and the myriad of resolutions and stands taken by the EU institutions. The fact that the LT and the EUGS refer to interests and norms, entails that the EU needs to find a balance between the two in its external policy. The use of military force has never been a prime instrument in the Union’s foreign policy and will not be the only asset at the EU’s disposal in the event that it achieves a stronger common defence union. After all, the EUGS refers to a comprehensive and integrated approach,

including civilian means, in confronting international crises. One of the tasks of national parliaments and the EP's inter-parliamentary cooperation could be that of ensuring that the EU maintains its civilian power characteristic, redefined in response to the exigencies of our times.

'Civilian power' was developed by François Duchêne who implied that the European Community, being short on military power, could nevertheless influence international relations by 'civilian means' such as trade and non-military policies due to the growing interdependencies among states and the near improbability of war because of the nuclear stalemate. Subsequently, as the EU developed into a world trading power (but remained a 'political pygmy'), and particularly after the collapse of the Soviet Union in the early 1990s, the 'civilian power' approach gained more saliency.

In 2001, when reacting to the arguments by Karen E. Smith (2000) that a militarily stronger EU undermines the concept of civilian power, Stelios Stavridis drew attention to the dual characteristics of Duchêne's definition of 'civilian power', namely "a civilian group long on economic power and relatively short on armed forces" and "a force for the international diffusion of civilian and democratic standards" (2001, p. 44). Stavridis argues that civilian power means nothing if it refers only to non-military means. It is the way in which military power is used that determines whether the EU is a 'civilian power'. For Stavridis, "The second dimension or normative side of Duchêne's definition, that is, the promotion of civilian values, is as, if not more, important than the first" (2001, p. 48). He cautions that civilian power should not be equated with pacifism. A 'civilian power' by choice or design considers military means to be at one end of a long spectrum of possible actions which include trade and the use of economic sanctions at the opposite end. "Sanctions should be seen not only as an alternative to military action, but also as a first step towards the extreme – but still available and possible – case of using force. In other words, the possession of military capabilities is necessary because it allows for the possibility of using them, thereby adding to the credibility of an international actor" (Stavridis, 2001, p. 50).

The EUGS parts company with a narrow definition of 'civilian power', claiming that "In this fragile world, soft power is not enough: (the EU) must enhance (its) credibility in security and defence" (p. 44). The EUGS then goes on to propose civilian and military measures, applied separately or in tandem, to confront international crises, safeguard EU interests and promote its norms. Since it is mostly governments who decide in the CSDP, inter-parliamentary cooperation has a difficult task to perform in scrutinizing decisions and to monitor that a balance between norms and interests is being reached, following the concept of "principled pragmatism" proposed by the EUGS.

## **Democracy Promotion**

The EU has been influenced by democratic peace theory, signifying that generally democracies are less likely to go to war. The EUGS does not turn this objective on its head, but draws attention to the fact that not all the states of the world believe in democratic peace. President Putin's statement to the Financial Times of London that liberalism is obsolete (June 2019) surprised no one, but his world view is contrary to the EU's. Democracy promotion is not always possible to achieve and is often seen as intrusive by many countries. It is not a panacea, and in some regions military deployments are needed to disarm armed groups, separate warring factions, defend civilians from aggression or simply maintain the balance of power. Military power is needed to defend Europe's borders, and though this is still NATO domain, Europeans are under growing pressure to shoulder more of the costs of their own defence.

Democratic peace theory harks back to Immanuel Kant's famous essay "Perpetual Peace", which for centuries laid dormant in the debate on international relations until it was resurrected by Michael Doyle in the 1980s (2006; 2012, pp.68 ff.). It was strengthened by what turned out to be overoptimistic conclusions in the 1990s, such as those of Francis Fukuyama and his "end of history". The sentinelling role of parliaments is central to this theory as they are the institutions by which citizens can exercise restraints on government. Parliaments are the conduit through which citizens' opposition to the use of force in particular situations and contexts is conveyed to national governments who then are supposed to adapt their actions accordingly. The spread of democracy globally is no guarantee of long-term stability and is not the sole aim of the CFSP-CSDP; it is another restraining force in an anarchical world because only in democracies do citizens stand a better chance of stopping and reversing failing policies or decisions which are detrimental to their well-being.

EU parliaments and the EP can use their international links and parliamentary diplomacy to help the EU pursue its policies on strengthening democracy globally. According to the EUGS "Peace and security, prosperity, democracy and a rule-based global order are the vital interests underpinning our external action" (p. 13). Further on, the Strategy adds that "It is in the interests of our citizens to invest in the resilience of states and societies to the east stretching into Central Asia, and south down to Central Africa. A resilient society featuring democracy, trust in institutions, and sustainable development lies at the heart of a resilient state" (p. 23). Parliaments have a role in defining resilience and the policy tools to implement it.

## **Promotion of EU 'values' or Norms**

The EUGS respects the values inscribed in the EU founding treaties (Article 2, TEU, Publications Office of the EU, 2016) and the Charter of Fundamental Rights. 'European values' or 'our values' are often mentioned in public pronouncements (European Council, 2017). Charles Grant, the first Director of the Centre for European Reform (CER), prefers 'European' to 'universal' values for three distinguishing factors: they

are more social, more secular and more liberal (2007). In Article 3 (5) TEU we find that “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, 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” (Publications Office of the EU, 2016, p. 17).

Since 1995, the EU has inserted essential element clauses in association and cooperation agreements concluded with third countries (the first such clause was actually inserted in Lomé IV in 1989). These clauses make the respect for human rights and democratic principles the cornerstone of the agreements. The essential clause provides a legal basis for positive EU engagement and dialogue with its partners. The clause also empowers each side to impose restrictive measures or limit trade, suspend the whole or part of the agreement, in the case of extreme human rights violations. The EU can adopt sanctions autonomously or in response to UN decisions. In addition, guidelines for the adoption of sanctions first launched in 2004 were revised in 2018 (Council of the EU, 2018). The EU also publishes a list of sanctions being implemented at any given time.<sup>23</sup>

The essential clauses give the EU the possibility of engaging its partners in a constructive dialogue on human rights and the rule of law, but it has been extremely reluctant to impose trade restrictions on countries which have not made real progress towards achieving these goals. This reluctance has been noted by all its trading partners thus diminishing the clauses’ effectiveness.

The U.S. and Canada have started including human rights clauses in their trade agreements with third countries, but unlike the EU, they have tended to restrict them to a narrower range of rights of direct relevance to the operation of the agreements such as labour rights, transparency, due process and anti-corruption (Zamfir, 2019). While the UN and its agencies have linked each of the 17 Sustainable Development Goals (SDGs) with the achievement of several human and civil rights found in a plethora of international charters (UN, 2019), many countries consider the EU’s policy as politically intrusive or a protectionist trade measure. The EU encounters difficulties when trying to employ trade as a foreign policy tool. It increases dissonance among the member states (e.g. Russian sanctions in the Ukraine crisis have divided the member states) and the EU’s interests are hurt. The EU has been reluctant to punish states which cooperate with it in the security field, such as the war on terrorism.

The EUGS takes a more realistic view by stressing long-term engagement in strengthening human rights protection. This has been the Council’s constant refrain when EP members (MEPs) criticise the EU for concluding trade and fishing

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23 Sanctions map available at: <https://www.sanctionsmap.eu/#/main> (Accessed: 9 July 2019).

agreements with certain countries. According to the EUGS, trade is still relevant to underpin “sustainable development, human rights protection and rules-based governance” (pp. 26–27) and “trade and development – working in synergy – can underpin long-term peacebuilding” (pp. 31–32). But it also stresses other aspects of soft power and civilian means apart from human rights promotion, which in the long-term could also help strengthen fragile states, hopefully paving the way toward improving human rights protection and the rule of law in those countries.

The European Parliament has been scrutinizing the EU’s Human Rights policies in third countries while most national parliaments are scrutinizing their own governments’ performance on human rights. Inter-parliamentary co-operation on this aspect of external relations is crucial.

### **Principled Pragmatism**

Clearly, the EUGS does not favour a ‘civilian power’ approach that rejects the use of military force and instead proposes the use of an array of civilian and military tools, applied separately or in tandem to confront international crises, an integrated approach, according to the situation. Currently there are 16 CSDP military and civilian missions in three continents.<sup>24</sup> The EUGS stresses that action must be guided, by a still undefined “principled pragmatism” (pp. 8, 16). This can mean that when it lies in its interests, the EU may waive aside the primacy of values, though only reluctantly, to achieve a higher pragmatic goal. It is meant to stop criticism of double standards but it may still fail to achieve this purpose.

“Principled pragmatism” appears to free the EU from the contradictions, constrictions and embarrassment, of putting human rights at the top of its objectives, only to backtrack from them for economic or strategic gains. Such ambivalence exposes the Union to international criticism. However, situations arise in which advancing the cause of human rights cannot be pursued further because it imposes disproportionate costs on the EU and prevents it from influencing change in the longer term. Political decisions have often had to settle for the second best. This leads to the conclusion that it is not always possible to reconcile idealism and pragmatism, particularly in a world of competing powers which are unconstrained by normative frameworks. The problem for the EU is where to draw the fine line between the two extremes.

The concept of “principled pragmatism” signals that for the first time the EU is not claiming to be a “disinterested” or “altruistic” power on a mission to change the world, and that apart from values it also has interests and needs to find a balance between the two. Nathalie Tocci (2016, p. 6) gave this meaning to “principled pragmatism”:

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<sup>24</sup> See list available at: [https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations\\_en](https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations_en) (Accessed: 20 July 2019)



“(it) seeks to move the debate away from false dichotomies and well-known hypocrisies: be it the sterile debate on ‘interests versus values’, or on interventionism versus retrenchment’. The point it tries to make is that we should observe the world (and ourselves) as it is, not as we would like to see it. We must be more modest at times in what we believe we can achieve and what we cannot. But modesty should not translate into closure or passivity. We must engage the world and do so responsibly, but without the illusion that we can unilaterally bring peace, security, democracy or prosperity to the world. Not only is this an illusion, it is also a dangerous one.”

The clarification and application of “principled pragmatism”, is an area in which both the EP and national parliaments need to engage to clarify its meaning and policy implications, and ensure transparency (as opposed to opaqueness) which a majority of EU citizens expect.

## **Conclusion**

The parliamentary dimension of the EU defence policy has advanced since Maastricht but there is still a lot of work to be done. As we look toward the future of the EU and of the EU’s defence, we notice a number of issues that have to be attended to. National parliaments and the EP have an important role to play in all this and they have already made the first important step by establishing an IPC-CFSP-CSDP, the successor of the PA-WEU. Parliaments still need to strengthen their inter-parliamentary cooperation to scrutinize the EU institutions and member state governments, exchange information, build up resources and expertise and exchange best practices. Since the establishment of the IPC-CFSP/CSDP in 2012 they have accumulated knowledge, experience and increased their activism. It is clear that the task of creating a European defence union, at whatever level it is pitched and eventually realized, requires closer cooperation between the EP and national parliaments. They need to strengthen their capacity to deal with the legislative changes, the implications of EU policy and technical details that are necessary to ensure proper scrutiny.

Parliaments can play a significant role by pursuing parliamentary diplomacy, particularly in the EU’s immediate neighbourhood, to strengthen mutual confidence between the EU and its neighbours. This has not been treated at length in this chapter, but both the EP and national parliaments are already engaged in this form of diplomacy, some more than others, and can thus strengthen their role in the EU’s external policies and in developing its defence structures.

The EP and national parliaments need to better articulate the role they wish to play in future defence integration, and where they actually fit in the integrated approach or whole-of-government approach (WGA) to international crises proposed in the

EUGS: the EP in relation to EU policies, and national parliaments with respect to national policies. Both can play an important role.

The project of a European Defence union is not a technocratic project, though in many aspects it is highly technical. National parliaments are the link between the inter-governmental Council where the decisions are taken and the people, particularly those who disagree or have a different outlook on developments. Opposition parties out of government and unrepresented in Council, convey their views through national parliaments. Furthermore, parliaments legitimize decisions and mobilise public opinion, but they need to strengthen their power and use it.

The EUGS recognises that in the future, the EU will need to compete with stronger rivals in the global arena while its own relative importance is declining. It will have to use soft and hard power to safeguard its interests and secure itself. The Strategy favours multilateralism, regional cooperative regimes, dialogue and interdependencies. A stronger defence policy, or union, need not force the EU to renounce its 'civilian power' approach, its values or 'democratic peace'. It needs to look at them from a different perspective, that takes account of several facts: that a 'civilian power' is ineffective without military assets to deploy; that the promotion of values cannot be abandoned just because other powers disagree with them; that it is not true that democratic peace is worthless because what really counts is military power. Parliaments and inter-parliamentary cooperation can clarify these issues and open new policy horizons.

There are undefined concepts in this debate: "strategic autonomy" and "principled pragmatism"; the separation of trade and norms; relations with NATO and the trans-Atlantic relations; the future of the global institutions and the liberal order. Parliaments can lead the search for meaning. National parliaments can act as bridges between the several demoi and the EU institutions. The EUGS is to be updated and revised from time to time, and the EP is one of the institutions which will be consulted. There is also a need for national parliaments to make their views heard.

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## Chapter Nine

# EU Cybersecurity Governance – Stakeholders and Normative Intentions towards Integration

**Agnes Kasper**

### **Abstract**

In the last decade, the EU's policy on cybersecurity has changed significantly, both as to its referent objects and priority level. While the 2013 Cybersecurity Strategy focused almost exclusively on the importance of cybersecurity for the proper functioning of the single market, its 2017 version also contained an analysis of malicious cyber activities that threaten the political integrity of Member States and the EU as a whole. As the field's level of complexity grows and forward-looking initiatives are constantly being proposed in order to promote cyber resilience across the EU, it is increasingly challenging the Union in the process of coordinating and implementing the planned actions.

Cybersecurity has also become a national security issue entangling private and public, external and internal, civilian, and military issues making it necessary, but very challenging to widen and deepen ties among stakeholders in the EU. Yet cybersecurity governance is fragmented at the EU level, and there is an evident lack of trust that prevents effective cooperation among stakeholders on crucial aspects of the process. This contribution argues that as a result, cybersecurity policy in the EU remains unsystematic and predominantly reactive in nature, addressing the issue-specific incidents that have already occurred, although in our technology-dependent societies more emphasis should be placed on prevention. Therefore, in a natural scholarly quest for explanations, this chapter focuses on the development and main elements of the EU's cybersecurity policy, followed by mapping the attitudes of cybersecurity stakeholders and their normative objectives in the context of EU integration in this domain.

### **Introduction**

The EU, a technological powerhouse, is of colossal significance for the world's economy, although it is still debating its relevance as such in terms of cybersecurity and struggles with its dependence on external technology providers. The recent

debate and controversies concerning Huawei's influential presence for the supply of 5G technology for next generation wireless networks has brought about the issue of cyber-geopolitics, and the entanglement of civilian and military domains has started to feature more prominently on the political horizon (Kaska, Beckvard and Minarik, 2019). Choices concerning fundamental digital infrastructure that the European information society is dependent on have critical implications and are strategic questions at both national and European level. However, the EU has been rather the subject and recipient of global powers' national policies of technological superiority.

Certainly, when the issues of geo-strategy are left aside for others to deal with, the EU's positive competence (in all possible senses of the word) in operationalizing both trade and technology is undisputed in terms of volume. Therefore, it was not surprising when the EU's 2013 Cybersecurity Strategy (European Commission, 2013), adopted at an unpredictable time of recondite change, was emphasizing the special significance of cybersecurity for what the EU became globally respected for – the single market and its proper functioning. Four years later, the Strategy's revision (European Commission, 2017) effectively made a step further to clearly outline the EU's understanding that a range of malicious activities in cyberspace represents a threat to its political integrity. At the same time, the EU, while leading the world in a high number of economic indicators, has not come closer to establishing a common-for-all-Member-States method of governance on cybersecurity. In this EU-wide debate, cybersecurity is still loosely defined (for a lawyer, it is still undefined), and is the EU not able to establish a governance mechanism that would shield the domain from the underlying factors to the highest levels of responses, and to cyberattacks.

This underlines the argument that the EU's cybersecurity policy remains predominantly reactive (be it normatively or operationally), having no particular system-driven approach and generating plenty of post-factum activities, while selectively providing for prevention. It does so by dividing cybersecurity into three conventional areas – not very consistently – and still separates cybersecurity, cyber resilience and cyber defence issues, leaving significant gaps where the preventive mindset does not apply. Christou (2019, p. 281) notes that the EU cybersecurity policy is “fragmented and differentiated temporally across three areas – cybercrime, network and information security, and cyber-defence”. Dunn Cavelti (2012) describes three interlocking cybersecurity discourses namely the technical, cybercrime/cyberespionage, and military/civil defence, all with different main actors and referent objects. All of these are touched upon in the EU's cybersecurity strategies, however the proper linkages between these domains still have to be mapped in detail. While entanglement of private and public, external and internal, civilian and military issues in the cyber domain makes a good case for further integration in many relevant policy areas, the same entanglements pose significant challenges to widen and deepen ties among stakeholders in the EU. In the EU's case, as already noted, though technology is an issue, and there is a gap with the major powers, here we question the willingness and readiness to address key issues of cybersecurity at

policy level and from the perspectives of stakeholders – which according to different integration theories may be considered as key actors driving the process.

In view of the above, the idea behind our observations is firstly, to outline the main building blocks of the EU's cybersecurity policy, focusing on its roots, as they likely define the EU's attitude and approach to cybersecurity. The next step is to understand who is involved in the process, the stakeholders. This approach lays the groundwork for further systematic enquiries on integration theories and EU cybersecurity policies. This chapter thus contributes to existing knowledge by outlining the emergence of an EU wide cyber security architecture and policy, and provides a useful analysis of the main institutional arrangements and structures.

## **Cybersecurity Policy of the EU: Basic Notions and Current Understandings**

### **Defining the notion of cybersecurity**

When discussing cybersecurity policy, one should be conscious of the terminology that is used by various actors and at many levels. A range of technical notions that are established by the industry have infiltrated policy and legal discourses related to technological advances, however it appears to be a challenge to establish a consistent vocabulary specifically related to cybersecurity. Data or information security, network security and cybersecurity are related concepts, yet they appear to differ in their scope. The ISO/IEC 27000:2017 standard defines information security as the 'preservation of confidentiality, integrity and availability of information'. ISO/IEC 27032:2018 refers to network security as being "concerned with the design, implementation and operation of networks for achieving the purposes of information security on networks within organisations, between organisations, and between organisations and users". However, when addressing national, EU-level or international policy issues at large, one may encounter inconsistencies giving rise to confusion about the scope and purposes of a policy in question. The issue of 'information security' has been on the UN agenda since 1998<sup>25</sup>, but the EU would refer to this discussion as related to 'cybersecurity'. Naturally, 'cybersecurity' may not be used by other major international actors, such as Russia or China, in the same way as in the EU, and hence the terminological content of this notion depends on the context.

The EU has been struggling to find a commonly agreed working definition of cybersecurity, one that "enables identifying the common goals across the EU" (ENISA, 2012). While in the 1951 Treaty of Paris, European states were clearly able to identify the potential harms to be prevented (bloody conflicts), in the current context

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25 See more in 'The Role of Science and Technology in the context of International Security and Disarmament'. *The United Nations Office for Disarmament Affairs*. Available at: <https://www.un.org/disarmament/topics/informationsecurity/>



of interdependent cyber societies, cybersecurity remains a field where differing levels of dependencies on information and communication technologies determine different perceptions and priorities for actors. To exemplify the different approaches, the 2013 Austrian Cybersecurity Strategy describes cybersecurity as a process; the 2011 German strategy refers to it as “the desired objective of IT security situation”; the 2013 Spanish strategy states that “cybersecurity is a necessity of our society and our economic model”; the 2017 Swedish strategy refers to a “set of security measures to preserve the confidentiality, authenticity and availability of information”; while the recent Estonian cybersecurity strategy uses three Estonian language-specific definitions that all translate to English as ‘cybersecurity’. This leaves us with contextual definitions; contributing little to the clarity on what harms the EU, and what policies aim at preventing this from happening. At the same time, the working definition used in the 2013 EU Cybersecurity Strategy notes that:

“cyber-security commonly refers to the safeguards and actions that can be used to protect the Cyber domain, both in the civilian and military fields, from those threats that are associated with or that may harm its interdependent networks and information infrastructure. Cyber-security strives to preserve the availability and integrity of the networks and infrastructure and the confidentiality of the information contained therein.”

However, the recently adopted Cybersecurity Act (Regulation (EU) 2019/881) defines cybersecurity for the purposes of the act as “all activities necessary to protect network and information systems, their users, and affected persons from cyber threats” (Article 2), which signifies a departure from the previous working definition in the EU strategy, because it includes in its scope the protection of persons, and not only cyberspace in itself.

### **Emergence of EU cybersecurity policy**

Since data and information security certainly form part of cybersecurity, one can trace back the EU’s policy on cybersecurity to the Bangemann Report addressing the topic of Europe and the global information society (High Level Group on Information Society, 1994), and the EU’s precarious personal data protection policy from the mid-1990s. The Bangemann Report predicted the game-changing nature of digital technologies, argued for the liberalization of the telecommunication sector, and mentioned the repercussions of misuses. Article 17 of the Personal Data Protection Directive (Directive 95/46/EC) imposed an obligation – through national implementing measures – on regulators to implement appropriate technical and organisational measures to protect personal data. In searching for justification of the measure, one encounters in the preamble of the Directive the need for the establishment and functioning of the internal market.

Entering the new millennium, the EU's legislative activity intensified addressing security issues in the telecommunications field, the Telecom market was liberalized by the regulatory framework adopted in 2002, and following the developments in the Council of Europe (2001) the Budapest Convention on Cybercrime was adopted. The early EU policies in the field, which we can now treat as cybersecurity, had three main considerations: protection of privacy, cybercrime and harmonisation in specific, electronic data-related fields (Commission Communication, 2001). The latter included telecom market policies, exemption from liabilities of service providers (e-commerce directive), and e-signatures.

Parallel to these EU processes, the concern for national security implications of information and communication technologies arose, prompting the U.S. to include cybersecurity aspects in its national security strategy in the aftermaths of the 9/11 attacks and, in Europe, the adoption of the Data Retention Directive (2006/24/EC) as a response to the 2004 Atocha bombing in Madrid. Yet, it still took a few years for the EU to take the issue of cybersecurity to the highest level of its agenda. The 2007 cyberattacks against Estonia captured the attention of most of the EU Member States (Haataja, 2017), and cybersecurity as such was for the first time expressly addressed in the High Representative for the CFSP, Javier Solana's 2008 report (Council, 2008). A process was ignited in the EU that resulted in the adoption of the first comprehensive EU Cybersecurity Strategy in 2013, and, with the intensifying diffusion of information and communication technologies, it further culminated in the second, revised cybersecurity strategy in 2017 aiming at integrating various cybersecurity considerations into all relevant EU policies.

As of today, more than 70 nations have formally raised issues of cybersecurity to the level of national policy and national security, adopting national cybersecurity strategies. A list of countries, which are active in this field, includes those from both the developed and developing worlds, regardless of the regional economic integration they belong to. Therefore, issues of cybersecurity at the national level raise questions about the correlations between economic development and the need for regional cooperation and integration. Placing cybersecurity issues at the forefront also raises the question of whether we should consider ourselves to be in a crisis; or rather, we accept that cybersecurity is a continuous quest for stability in cyberspace.

## **Cybersecurity Strategies of the EU**

Prior to 2013, the EU's approach to different aspects of cybersecurity had been widely criticised for its fragmentation, lack of clear direction and overlapping competences between institutions (Bigo et al., 2012). As a response to a changing security environment, the 2013 EU Cybersecurity Strategy thus consolidated the relevant policy areas into one framework and indicated factors that are operating regardless of state borders, as well as arising from complex economic interdependencies. It needs to be stressed that the main elements of the strategy could already be found in a

2009 Communication on Critical Information Infrastructure Protection (European Commission, 2009).

Cybersecurity has become a buzzword in the last decade, and despite the alarm bells on militarization of cyberspace<sup>26</sup>, and discussions on the use of information and communication technologies in the context of international security (UN GA A/RES/53/70 of 4 January 1999; UN GA A/RES/58/32 of 8 December 2003; UN GA A/RES/60/45 of 6 January 2006; UN GA A/RES/66/24 of 13 December 2011), the EU's first cybersecurity strategy in 2013 remained focused primarily on economic implications of cyber threats. Interdependencies in operating, maintaining the reliability and interoperability of cyberspace, and complexities between smooth functioning of information systems and key economic sectors were highlighted. Although the strategy noted that cybersecurity is an increasingly important international issue, it significantly played down the points on how global power struggles were moving online, and how they were affecting the EU as such.

The 2013 document emphasized two main aspects of cyberspace: its role for political and social inclusion, and its importance as a critical resource and backbone of economic growth. In these respects, the strategy identified four categories of potential harm associated with cybersecurity incidents: the loss of a user's trust and confidence in participating in the Digital Single Market; disruption of essential services that rely on information and communication technologies, such as water, healthcare, electricity, mobile services; negative effects of cybercrime on the EU economy manifested in stealing data and economic damages; and the curtailment of fundamental rights online by foreign governments outside the EU. On a more concrete note, it stipulated that "[t]hreats can have different origins — including criminal, politically motivated, terrorist or state-sponsored attacks as well as natural disasters and unintentional mistakes" (EU Cybersecurity Strategy, 2013, p. 3). Hence, cyber threats are construed in the EU's 2013 policy framework as existential threats emanating mainly from the economic fields, although it can be argued that misuses of cyberspace for surveillance and control of a country's citizens is presented as an existential threat in terms of the constitutional principles of the EU; hence an existential threat emanating from the political sphere. Additionally, some concerns were raised about essential services, which could be targeted by terrorists and state-sponsored groups, suggesting that some threats could be perceived as being crucial to national security.

Measures proposed by the European Commission in the 2013 Strategy build on the principles outlined in 1.2. of the document: the EU core values apply as much

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26 Quoting *the US-Russia Joint Statement on Common Security Challenges at the Threshold of the Twenty-First Century*, 2 September 1998: "We recognize the importance of promoting the positive aspects and mitigating the negative aspects of the information technology revolution now taking place, which is a serious challenge to ensuring the future strategic security interests of our two countries".

in the digital as in the physical world; protecting fundamental rights, freedom of expression, personal data and privacy; access for all; democratic and efficient multi-stakeholder governance; a shared responsibility to ensure security. It is centered around five strategic priorities, however leaving cybersecurity predominantly for the Member States to deal with, and identifying the EU's role as merely supportive and complementary in: a) achieving cyber resilience; b) drastically reducing cybercrime; c) developing cyber defence policy and capabilities related to the Common Security and Defence Policy (CSDP); d) developing the industrial and technological resources for cybersecurity; and e) establishing a coherent international cyberspace policy for the European Union and promoting core EU values.

The 2017 EU Cybersecurity Strategy (European Commission, 2017), however, represents a significant policy shift from a comprehensive to an integrated approach, clearly referring to threats in the economic, political and military spheres in nearly equal proportions. The priorities remain similar in their essence to previous strategies, but the Strategy also states that “[w]hile Member States remain responsible for national security, the scale and cross-border nature of the threat make a powerful case for EU action providing incentives and support for Member States to develop and maintain more and better national cybersecurity capabilities, while at the same time building EU-level capacity”. The document proposed a set of concrete measures, which, for example, included the strengthening of the European Network and Information Security Agency; the introduction of EU-level standards and the setting up of an EU cybersecurity certification framework; limiting foreign acquisitions on critical technologies; integrating cybersecurity into EU crisis management mechanisms; the establishment of the Cybersecurity Emergency Response Fund; the adoption of technological and normative measures to combat cybercrime; the implementation of the framework for a joint EU diplomatic response to malicious cyber activities; engagement in international cybersecurity processes on the part of the EU, and similar objectives. Evidently, the strategy signified a deepening of EU integration in a matter of few years, moving from the uncoordinated isolated policies (where cybersecurity aspects were often incidental) to a horizontal policy with significant political implications at Member State as well as EU levels.

Although the new strategy may strengthen resilience as a whole, it certainly makes only baby-steps to integrate defence issues into the whole picture. The division between cybersecurity and defence is paramount in the 2017 strategy, and is even more palpable in its implementation. The need for a truly integrated policy is demonstrated by recent cyberattacks; it is not the first and probably not the last time that a malware such as Wannacry or NotPetya was rampaging across Europe, heavily affecting the private sector. This malware was publicly attributed to North Korea and the Russian military respectively by some European states and the U.S., demonstrating interconnections and entangled relationships between private and public sectors (as well as digital single market policy and defence), although the EU as such has not attributed these attacks (Ivan, 2019, p. 5). The EU's response as a whole

was tested in these cases – and some might say that the technical level cooperation was good. However, the Council of the EU admitted that it was not enough, and more needed to be done (Council of the European Union, 2018).

Although the 2017 strategy gives the impression of a well-integrated policy, the role of the EU as an advisory body is unclear therein, let alone any strategic or operational mandates in the area of cyber defence. In the absence of a clear function assigned to the EU in cyber defence – an issue which lies at the heart of sovereignty – the forward-looking initiatives, such as the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, which can be viewed as one of the most important preventive measures in cybersecurity, the cybersecurity policy remains incomplete unless it is further developed to cover all levels from the bottom to the highest national security. While the GDPR and the NIS Directive commonly impose some significant obligations to secure personal data and networks in the majority of the EU's – and related private sector – entities, the Police Directive (Directive (EU) 2016/680) takes a rather moderate view on data protection in the public sector (focused on criminal investigations and proceedings). However, these come with notable exceptions in, for example, national security issues and there is no guidance on how these levels are interrelated, or what is the competence, if any, of the private sector in this regard<sup>27</sup>. Having a policy that does not fully appreciate the private sector's role across the board, and remains reactive to major breaches mainly in the form of fines, cannot be categorized as a forward-looking EU cybersecurity policy, given the private sector's importance not only in the digital single market, but also beyond that. This EU posture may change with the newly adopted Cybersecurity Act (EU 2019/881), which promises efforts in standardization, although they remain mostly within the boundaries of the EU's market-oriented competences. It is not clear whether the 2017 cybersecurity strategy is aimed at moderating the adversary's behaviour or takes a more ambitious (and likely impossible) posture to eliminate adversarial behaviour. Yet the recent EU policy-making and legislative activity in cybersecurity represents a consolidation as well as a path-finding effort, not short of a significant leap in European integration.

It could be suggested that the contributing factors for this leap in EU integration exist (at least, partially), firstly, outside the usual framework of economic interdependence, and, secondly, the Member States' associated preferences and bargaining habits. While integrating national economies in the EU has certainly not been exhausted in the field of cybersecurity, the integration of relevant policies is accelerating. Thus, having detected the EU's normative objectives on the issue, this contribution is now ready to start addressing the 'relationships-framework' question – in other words,

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27 Although the detailed analysis of the particular cybersecurity legislation of the EU is omitted here, we emphasise the importance of the GDPR and other relevant acts. For a more detailed review on the EU's cybersecurity legislation, see, for example, Kasper and Antonov, 2019.

who are the interrelated actors on the issue and in what framework can the policy application productively take place? Keeping in mind the obvious need to be selective in covering relevant issues, this analysis focuses on the overall picture, bringing some examples and arguments for the sake of provoking a discussion rather than providing elaborated accounts on all elements of cybersecurity.

In order to cover the former part of the question, an observation on stakeholders is required. As for the latter part, a search for a theory-bound framework will be performed in Chapter Seven of this book titled “Towards a ‘Cyber Maastricht’”. Should a ‘Cyber Maastricht’ become a goal that the EU begins to aim for, the process will need a robust model, consisting of meaningful elements (‘building blocks’, factors, or pillars). As argued, theories of regional cooperation and integration generally point to contributing factors, such as security interdependence, political instability, need for legitimacy, institutional lock-in of reforms and involvement of informal institutions (Börzel and Risse, 2018). In this context, there is a likelihood that technological interconnectedness and diminishing importance of geographical proximity can become risk multipliers as well.

### **Stakeholders or ‘Who You Are With’**

Evidently, EU cybersecurity policy spans through and overlaps with several sectors and policy areas, both on the economic as well as political levels. This implies that relevant stakeholders and institutions are diverse and numerous, often representing sharply opposing interests, hence the multitude of participants in decision-making processes will certainly be a significant factor that may affect outcomes.

### **Multiplicity of Supranational Institutions in EU Cybersecurity**

To illustrate the breadth of the policy, the following departments of the Commission are involved in cybersecurity: Directorate-General for Communications Networks, Content and Technology (DG CONNECT), Directorate-General for Migration and Home Affairs (DG HOME), Directorate-General for Energy (DG ENER), Joint Research Centre (JRC), Directorate-General for Mobility and Transport (DG MOVE), Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), Directorate-General for the Internal Market, Industry, Entrepreneurship and SMEs (DG GROW). Furthermore, the main actors also include the European Network and Information Security Agency (ENISA), CERT-EU, European Defence Agency, and EC3 at Europol.

A range of new actors which are gaining experience in cybersecurity include the European Agency for the Cooperation of Energy Regulators (ACER); the European Aviation Safety Agency (EASA); the European Union Agency for Railways (ERA); the European Securities and Markets Authority (ESMA); the European Insurance and Occupational Pensions Authority (EIOPA). Additionally, cybersecurity is being

integrated into research and training frameworks for example at the European Centre of Excellence for Countering Hybrid Threats, the European Union Institute for Security Studies, the European Union Agency for Law Enforcement Training, the European Security and Defence College, the European Cybercrime Training and Education Group, the European Cybersecurity Research and Competence Center, et cetera.

Given the number of responsible departments, agencies and actors for different aspects of cybersecurity in the EU, some of which may rather be recipients than shapers of the EU's cybersecurity policy, this research would venture with a dose of confidence to raise doubts about the neo-functionalism premise of political spillover, where particular significance is attributed to socialisation processes, and esprit de corps among officials. Although the visible efficiency of Commission policy formulation, decision-making processes, and enforcement authority should not be doubted purely on the basis of the number of parties involved, and we certainly do not intend to dwell upon a comparison with actual states, it is observed that the EU lacks a single centre of government and its governance system has been compared to no less than a "garbage can" by some influential scholars like Jan Zielonka (2012, p. 510).

However, the list of supranational institutions that actually influence the integration processes is longer still. Judicial or quasi-judicial authorities in the EU have significant influence on cyber-related policies; e.g. the European Court of Justice and the European Data Protection Board. In both cases, when it comes to cybersecurity policies, one may find not only contradictions – which would be natural in the course of the discussion within the EU – but also hesitance or outright disobedience by some of the Member States to comply with EU rules. In particular, while the EU Court with its 8 April 2014, Digital Rights Ireland judgement invalidated the Data Retention Directive (CJEU, Joined Cases C-293/12 and C-594/12), Member States still kept and keep on retaining the exact same categories of data, which led to further clarifications in the Tele2 Sverige case (CJEU, C-203/15). This shows the relative reluctance or incapability of the Member States to follow community rules and testifies to the limitations of influence of the supranational institutions.

### **Member States' attitudes to cybersecurity**

The EU Cybersecurity Strategies push the main responsibility down to the national level. Currently all Member States have a national strategy as a key policy feature, where the central focus is on cybercrime, critical information infrastructure protection, digital literacy and cyber hygiene, capacity building and cooperation, both private-public and international. All states emphasize in their respective strategies that digitization has fundamentally changed the state, the economy and society, and that they need to ensure the smooth functioning of the information society. As a result of the fundamental changes driven by technology, internal and

external security cyberspace can no longer be clearly distinguished, and both state actors and criminal groups pose a threat. The 2016 Belgian document ‘The Strategic Vision for Defence’ points out for example that “[c]yber environment has not only become a part of everyday life, closely linked to the physical and social well-being of the Belgian and European population, it has also become the backbone of the Belgian and European economy [...] and has more and more security consequences” (Vandeput, 2016, p. 31). “In the future, the European countries will be less able to call in the strategic support capabilities of the U.S. such as... offensive cyber capabilities and intelligence gathering... which means that the European countries will have to invest more in these capability gaps in order to obtain the necessary autonomy” (Vandeput, 2016, p. 44).

In most national strategic documents cyber defence is complementary to other cyber-related policies, and the use of cyberspace is presented as a prerequisite for the operational capability of the armed forces.

Cybersecurity in Germany is defined as the desired state of IT, where the risks the country is facing from cyberspace are reduced to an acceptable and manageable level. “This objective can be achieved by means of cyber protection (measures against criminal cyber activities), cyber defence (measures taken against cyber-attacks mainly from abroad), cyber security policy, and cyber foreign policy”. In the 2016 White paper on German Security Policy and the Future of the Bundeswehr, Germany pledged to prepare and enhance the Bundeswehr for the cyber and information domain, including high-value defensive and offensive capabilities (The Federal Government of Germany, 2016, p. 93).

Spain, in the 2019 National Cybersecurity Strategy, aims to strengthen capabilities to deal with threats from cyberspace and to implement measures, such as strengthening cyber defence and cyber intelligence capabilities, implanting active cyber defence measures in the public sector to improve response capabilities, as well as boosting the development of notification platforms, exchange of information and coordination to improve sector-based cybersecurity, and guarantee coordination, cooperation and exchange of information between the public sector, private sector and competent international organizations (Gobierno de España, 2019, p. 44). The Italian strategy also focuses on cyberspace defense operational capacities, including the need to establish Command and Control structures capable of effective cyberspace military operations planning and implementation (Presidency of the Council of Ministers, Italy, The Italian Cybersecurity Action Plan, 2017, p. 14).

France’s 2015 National Digital Security Strategy also emphasized autonomous strategic thinking, security of critical networks, privacy, awareness raising, and the importance of cyberspace for the economy. In 2017, France established a Cyber Command, Commandement de la cyberdéfense – COMCYBER, and adopted a Cyber Defence Policy in 2019 based on six pillars: prevent, anticipate, protect, detect, react, and attribute (Ministère des Armées, Politique ministérielle de lutte informatique



défensive, 2019, pp. 4–5). Cyber defence capabilities have been created in the Finnish Defence Forces, including cyber-attack capabilities (The Security Committee, Finland, Implementation Programme for Finland’s Cyber Security Strategy for 2017–20, p.13) and the National Cyber Security Strategy of the Czech Republic for the Period 2015 to 2020 is clear: the “state defence forces must have the capability to effectively respond to threats coming from cyberspace and proactively participate in the elimination thereof (National Security Authority, National Cyber Security Centre, 2015, p. 14). Hence one of the aims is to increase national capacities for active cyber defence and cyber-attack countermeasures (p. 18), as well as to train experts specialized in questions of active counter-measures in cyber security and cyber defence, and in offensive approaches to cyber security in general. The Lithuanian National Cyber Security Strategy also sets as an objective the development of cyber defence capabilities, stating that, “in case of failure to ensure effective deterrence, the Lithuanian Armed Forces would defend the Republic of Lithuania by using military cyber security measures acting autonomously and in cooperation with allies” (Ministry of National Defence, Republic of Lithuania, 2018, p. 8).

Cyber commands were also established in Estonia in 2018 and in Hungary in 2019, yet the Estonian Cybersecurity Strategy 2019–22, unlike others, expressly points to Europe’s limited technological autonomy (computer and network hardware is produced largely in Asia, and operating systems, software and services come mainly from the U.S.), which forces the EU into a passive position, limited to responding to security flaws and focusing on risk prevention (Ministry of Economic Affairs and Communications, Republic of Estonia, 2018, pp. 21–22).

Member states’ Cybersecurity policies address both military and civilian dimensions of protecting the information society, however these areas are highly interdependent. While in general states are actively militarizing cyberspace, the civilian population is impacted significantly, because attacks like WannaCry and NotPetya were/are indiscriminate in nature and not confined to military, intelligence or other governmental targets (Griffith, 2018, p. 11). The defence posture of all EU Member States relies on increasing security and resilience-building, dissuasion of adversaries by establishing norms, some also emphasize denial-based deterrence and security (for example by adopting the ‘no-legacy’ principle and advocating strengthening strategic autonomy, in particular the European cyber industry). However, many EU Member States also deploy classical deterrence strategies aiming to establish credible threats.

### **Transnational Actors in the Private Sector**

In the private sector the number of players is enormous, however we can try to make a distinction between two groups of enterprises: the ones that operate in one of the priority areas, which already fall under EU regulatory frameworks (telecom, financial services, essential service providers and digital services operators in the

meaning of NIS Directive, etc.); and the ones that fall under generic policy areas (personal data protection, information society services, IT product manufacturers, as well as cybersecurity companies and specialized associations, etc.). Transnational forums often bring together private actors, and allow for governmental and non-governmental experts to exchange information and experiences, and building mutual trust, which is known as the multi-stakeholder approach. Such forums include the Forum of Incident Response and Security Teams (FIRST), the Internet Engineering Task Force (IETF), the Institute of Electrical and Electronics Engineers (IEEE), the Internet Corporation for Assigned Names and Numbers (ICANN), the International Cyber Security Protection Alliance (ICSPA) and the Financial Services – Information Sharing and Analysis Centre (FS-ISAC). However, these forums mainly focus on narrow and technical issues, and only few (such as the Global Commission on the Stability of Cyberspace) aim to connect the various cyberspace communities and engage with broader policy questions. One should not lose sight of the user-consumer and citizen level, which may be represented by specific lobby and rights protection organizations (for example, BEUC, the European Consumer Organisation, has been vocal about cybersecurity, but privacy advocacy groups also take influential action, such as the one which culminated in the Schrems judgement (CJEU, C-362/14) which declared the ‘Safe Harbo(u)r’ agreement between the EU and U.S. to be invalid). In the preparations for the EU’s first cybersecurity law, the NIS Directive, the private sector stakeholders participating in the consultations included individual electronic communications service and network providers; Internet service providers, and industry associations; suppliers of hardware and software components for electronic communications networks and services, and industry associations; providers of products of services for network and information security; and representatives from the banking and financial sectors, as well as from the energy sector.

Despite the existence of the consumer and privacy lobby, it should be clear that digital manufacturers and producers are constrained by their context and profit-oriented shareholders, and as long as security is considered by the markets as a luxury side-service, there are few incentives to consider implementing costly principles, such as security by design, notwithstanding that the private sector is in charge of over 80% of cyberspace. Indeed, the common industry practice is to give preference to product functionality and user-friendly design, while security considerations are secondary and fixes are issued (if at all) when flaws are discovered during use. In principle the market seems to accept the release of insecure products.<sup>28</sup> For the boardroom, security appears to work well when nothing happens, hence

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28 Software updates and patches are issued by producers for fixing different ‘bugs’ or flaws, which are discovered from time to time. Such security flaws can be misused for malicious purposes. ‘Security by design’ approach advocates that producers should focus more on security (e.g. security testing, fixing the found flaws) prior to release, which would likely eliminate significant part of the security issues.

additional resources are hard to get for departments responsible if nothing happens. However, apart from security diligence, the imposition of security levels in sectoral and generic contexts is being generated by the EU, and by at least some awareness on all sides, including supply-chain participants.<sup>29</sup> Yet, the EU legislation still focuses only on some of the most significant market players, which are likely to have the resources to invest in their security or have already been doing so. The EU plans to address concerns and challenges faced by SMEs, as well as best practice in the public sectors and e-governance services, although these still remain a long-term challenge. Stakeholders showed support for the EU's plans of ensuring a high level of network and information security, and indeed the overwhelming majority looked up to the governments and the EU to take steps in this regard, pointing out that users were unaware of cyber threats (European Commission NIS Directive proposal, COM/2013/048 final). The EU is facing a puzzling double-headed question on how to present 'cybersecurity' as a marketable product, and how to create more demand for high-level security by users on an organizational and national level. While the benefits of privatization of governance and integration of private actors into the political process can be shown (e.g. increased transparency and accountability), it is also a source of several problems, in particular when it comes to issues of national security and defence. Nevertheless, the intellectual capital of the industry has been exploited by ENISA, where the proposed regulatory standards and norms often originate from the private sector (Dunn Cavelty, 2018, p. 314).

### **Salience and attitudes to cybersecurity in national political debates**

When it comes to the Member States' and effects of the governments' constituencies on the cybersecurity policies of the EU, one can also take as a point of departure the emphasis on digitization by national political parties which can help explain aspects of the current EU cybersecurity policy. According to König and Wenzelburger (2018), the salience of digitization in party manifestos have reached the highest level in Germany, Austria and Italy, and recently increased yet remains relatively modest in the UK and France. Digitization generally does not appear to be a priority issue in Ireland, Spain and Portugal. Once the priority of digitization as a policy at the national level is determined, one may reasonably expect that cybersecurity issues (where digitization is a core precondition) could also gain salience within this broader context. Therefore, there is a likelihood that those Member States' governments would be under stronger national pressure to act, particularly in countries where digitization is more politicized, although there are also a number of other policy issues that may act as catalysts for cybersecurity-salient national policies (for instance,

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29 NIS Directive.

personal data protection debates related to data retention regulations, surveillance scandals, and election ‘hackings’).

A brief examination of political party manifestos *prima facie* confirms the saliency of cybersecurity in the countries which prioritize digitization; however, the link is not straightforward between the saliency of digitization and cybersecurity. In Germany, the CDU/CSU and SPD 2017 programmes featured clear and expansive points on cybersecurity, while the Austrian ÖVP 2015 Policy Programme briefly mentions only cybercrime, and in 2018 SPÖ refers to the ‘dark side of digitization’. Among the Italian parties, M5S dedicated some attention to cybersecurity within its Programme on Security, Lega just mentioned cyber bullying, but Forza Italia and Fratelli d’Italia did not raise the issue at all. In the UK, the Conservative Party’s 2017 manifesto elaborates on cybersecurity in detail, while the Labour Party’s manifesto does the same but to a lesser extent. In 2017 in France, En Marche! confirmed cyber defence and cybersecurity as priorities, and the Irish Fine Gael also expressed ambitions towards innovative responses to new and emerging criminal threats. In 2019, the Spanish PP and PSOE extensively elaborated on cybersecurity issues in their electoral programmes. In 2017, the Czech ANO manifesto raised several issues on cybersecurity, while a complete silence about cybersecurity was encountered in the Hungarian Jobbik’s 2018 programme, and the FIDESZ programme has not been traced.

Characteristically, those states, where the level of digitization is already high, may not have this item on their political agendas as such. For instance, in Estonia, the Estonian Center Party, instead, focuses on the depth and the quality of existing databases and services, the use of Artificial Intelligence technologies for making existing systems more user-centered, as well as how to raise the quality and security of e-governance systems. The Reform Party’s programme concentrates on expanding digital services; however, it specifically raises the issue of cybersecurity in the context of hybrid threats, and also addresses cybercrime and the security of the e-state. Yet, Estonia has been a vociferous policy entrepreneur when it comes to the EU and cybersecurity. Therefore, the low salience of digitization and/or cybersecurity-related issues at national level may not always indicate low priority, but could result from the deep integration of digital policies, including cybersecurity, into other policy areas.

Countries that stress digitization usually address cybersecurity as well, but in some cases (particularly, in the case of Ireland and Spain) it appears that cybersecurity has disproportionately stronger emphasis. It may suggest that beyond the economic factors related to digitization, other factors come into play when engaging in mass politics. The most cybersecurity-conscious states who raised the issue in the public debate with a holistic approach (addressing economic, social, political, defence, international cooperation questions) are Germany, the UK, France, Spain, and, to an extent, Estonia. A second round of the Treaty of Paris (the 2018 Paris Call for Trust and Security in Cyberspace) will probably happen at some point soon (with more

legitimization this time), because distinct security concerns are prompting further integration.

A report on the costs of cybercrime suggested that a good predictor of cybercrime is the income level of a country, since wealthier companies are more likely to be targeted, while countries tolerate malicious activity as long as its cost remains at an acceptable level. However, were the cost to rise above 2% of GDP, it would prompt a strong call for action from companies and society (McAfee & Center for Strategic and International Studies, 2014). Germany, which loses 1.6% of its GDP to cybercrime, is the most severely affected country globally, which explains the saliency of cybersecurity in German politics. However, in countries like Estonia and the Czech Republic, it is more likely that a trigger event occurred which ignited awareness about cybersecurity and turned it into a political issue.<sup>30</sup>

## Conclusions

Cybersecurity became a strategic and national security issue in the past two decades. Although it is a fluid concept, it has been raised to the highest-level agendas and the European Union cybersecurity policy developed from a single market-oriented one to a comprehensive one, tackling issues horizontally. Integration in some core problem areas; such as addressing cybercrime, critical information infrastructure protection, network and information security, and personal data protection are benchmarked by instruments like the NIS Directive, GDPR and the Cybersecurity Act. However, in the light of the entanglement between private and public, external and internal, civilian and military issues in cybersecurity, significant gaps remain in the EU's supposed-to-be-integrated policy. Incidents reported daily affect both private and public sectors. Nation states and cybercriminal groups use digital attacks hiding behind anonymizing features of cyberspace, while cybersecurity in the civilian context and cyber defence in the military context address the same threats, follow the same basic principles, and require similar measures and procedures (Powell, 2018, p. 36).

Although EU institutions involved with cybersecurity are numerous and many exert significant influence on the integration process in the cyber domain, constraints inherent in the EU's lack of competences, the lack of clarity about its exact role, and resistance by Member States lessen the perspectives for integrated and EU-wide preventive policy. While both the EU and Member States focus on the reduction of vulnerabilities, both technological and human, with their other hands

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30 In 2007, large-scale cyberattack mainly originating from Russia against critical Estonian targets demonstrated the potential to bring to its knees a country dependent on information and communication technologies. Heightened concern about cybersecurity in the Czech Republic is preceded by the discovery of years of Russian and Chinese presence throughout the Ministry of Foreign Affairs' information systems.

many Member States establish offensive cyber capabilities fitted to exploit the same vulnerabilities. Granted that defence issues mainly fall outside the competences of the EU, but such an approach makes cybersecurity governance in the EU even more fragmented and unsystematic. In addition, despite the dependence of the EU on external technology providers, the need for autonomy in cyber industrial terms, as well as the need for stronger public sector commitments (e.g. information sharing, high security standards for public sector information systems) cybersecurity is still under discussion in the EU when in fact it should have passed to action. Transnational private actors use their comparative technological advantage to exert influence on the EU's cybersecurity policy, they typically do not address cybersecurity comprehensively. Constituencies of the Member States' governments remain unengaged with cybersecurity policies, since the issue, as such, rarely enters the arena of mass politics.

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## Chapter Ten

# Towards a 'Cyber Maastricht': Two Steps Forward, One Step Back

**Agnes Kasper & Vlad Alex Vernygora**

### **Abstract**

This chapter evaluates the EU's cybersecurity policy from four perspectives – neofunctionalism, liberal intergovernmentalism, post-functionalism, and the imperial paradigm. A search for a theory-based framework is performed to ensure that the analysis in this chapter is completed within a set of boundaries, and does not stray into speculation about the EU's prospective strategic steps. Using this contribution's findings and elaborations, a proposal on the policy-associated model is made. Having observed the empirical data, while analytically reflecting on actuality, it can be argued that a 'Cyber Maastricht' is long overdue.

### **Introduction**

Cybersecurity is an invisible, collective and ubiquitous challenge in our modern life, as we have computerised most of the main human functions suited to contemporary lifestyles. Computers are used to distribute natural resources, feelings, and state functions, and, within our communities, we have begun to set some rules for these processes. The current EU cybersecurity policy is a result of several developments, and considering this chapter's title, there is a certain degree of positivity associated with this process. However, it is still unclear how this development is being strategised and where it might lead the EU to. Regardless of any ideological or historical connotations, one can assess the step-by-step developments when the process takes place within a framework. In the context of cybersecurity, it appears that different forces are pulling and pushing the actual development and the complexity of the domain can lead us to contradictory logics, while we are searching for explanations. Arguably, a framework can be 'crafted' for the EU by political science, and this contribution will be relying on several multi-disciplinary approaches to clarify the issues.

Retrospectively, if we focus too much on the revolutionary prediction that "Cyberwar is coming!" (Arquilla and Ronfeldt, 1993) and the no less revolutionary "Cyber war will not take place" (Rid, 2012), it is likely that a number of important events, which occurred between these Cassandrical statements, will ensure that those statements will not be forgotten. For example, in 2007, the Republic of Estonia

became a “subject of a new form of ‘cyber violence’”, when it experienced a large-scale denial of service (Haataja, 2017, p. 160). Those cyber events were a side-story for many, who found themselves living through an unexpected ‘explosion’ of political tensions, which demonstrated how an entire country can easily be brought to the brink of collapse if it is dependent on information and communication technologies for its vital functions.

In 2010, a cyber ‘worm’ called ‘Stuxnet’ affected over 60,000 computers in several countries (from Iran to the United States, from Germany to Australia), interlinking a simple USB stick with centrifuges containing uranium-235 (Farwell and Rohozinski, 2011, pp. 23–24). Indeed, theoretically, in order to make a destructive difference, no tanks and artillery are needed. Although this scenario remains popular for science fiction movies, rather than the history books – right now technological developments may have brought us close to these scenarios and for a geo-strategically ‘herbivorous’ entity as the EU, such a situation should be of special concern. In scholarly terms, it has arguably become one of the main catalysts for the grand-debate on what the EU is and in what framework the EU acts.

The roots of the EU lie in the historic rivalry between France and Germany, and the recognition that peace can be maintained through intense collaboration in the field of political economy. In the early 1950s, coal and steel were the basis of a country’s power, given the industries’ role in war-waging, and hence the 1951 Treaty of Paris concentrated on the prevention of future security threats by pooling resources, establishing common oversight mechanisms, and a common market for products and resources in these areas. The mid-twentieth century economic collaboration was seen as a means to prevent war – a paramount security threat. Today, the EU has turned into an entity that is unmatched elsewhere in scope and depth of integration, and this process took place in the context of lasting peace. This provides a platform for theories of positive integration, which acknowledges that security threats led to economic interdependencies. However, most of these integration theories seem to ignore the changed and modern security interdependencies. As Börzel and Risse (2018) argue, economic interdependencies are not always able to explain the reasons for (or lack of) regional integration: in economically interdependent North America or Northeast Asia, supranational institutions are scarce, and the Economic Community of West African States (ECOWAS), is empowered to intervene militarily in its member states without their consent, although trade levels between ECOWAS members remain low.

Historically, the EU’s legal and policy measures in the field of cybersecurity have been motivated by the need to create and complete the European Single Market, whose dynamics have been mostly explicable by the spillover effect (Kasper and Antonov, 2019). The EU’s new Cybersecurity Strategy sets out a plan to improve cyber resilience, deterrence and defence, and creates a horizontal policy overlapping and intertwined with several other EU policy areas. Such a complex issue as this is naturally ‘plagued’ by conflicting interests and controversies; in particular, that the implications go way

beyond economic aspects and the Single Market associated needs. A distinct problem has been the difficulty in collecting, sharing, and operationalizing cybersecurity information among actors (sometimes, it is referred to as cyber threat intelligence or CTI, be it in the private or public sectors). Nothing illustrates this point better than the legislative history of the Directive on security of network and information systems (Directive (EU) 2016/1148, NIS Directive), where the Commission's original proposal was changed to exclude the public sector, while calls for more actionable information sharing with the private sector were ignored at the EU legislative level. Cooperation and integration in this field deserve special attention, since at the core of resource pooling, oversight and regulation of the market, we are dealing with data and information – which, probably, are also the main resources for waging cyber and hybrid wars, because, arguably, they are the twenty-first century equivalent of coal and steel.

It is likely that the EU may be losing its way in the process of reflective, unsystematic, and inertial application of its very own and predominantly spillover-based integrative elements of cooperation and entering into a set of objectively new relationships, which necessarily require a different framework, an issue-specific system, a revision of all major theories of positive integration, and an explicitly determined range of policy clusters to confront it. In other words, cybersecurity is more complex than it is currently represented by existing EU processes, and more express links should be drawn between the market-oriented, security and defence fields. Cybersecurity, whether it is considered as a process or a point of arrival, makes it nonpareil for 'shining' at the EU's highest echelons of discussion, because "(a) stable system defines the behaviour of the collective as a whole" (Lotman, 2013, p. 62).

Hence, an enquiry on a strengthened theoretical framework should be performed, investigating the fit between EU cybersecurity policy and integration theories, to detect where the borderlines of the relationship should be, so that a proper policy framework can be provided within its boundaries. To achieve this end, a proposal based on a schematic three pillar-based model is made here. We do not adopt any particular theory to explain the EU's policy on cybersecurity, but we do engage in a path-finding mission to find correlations. Indeed, we leave it for future research to dwell on the details.

Methodologically, this material extensively employs a pluralistic range of classic and cross-boundary qualitative techniques, elicited from discourse analysis, process tracing and normative content analysis. As Neumann (2008, p. 62) argues, discourse analysis not only "seeks to capture the inevitable cultural changes in representations of reality", but a particular discourse in itself "maintains a degree of regularity in social relations (...), produc(ing) preconditions for action". It is not worrying that the reason for an action cannot be fully determined by analysing a discourse that is corresponding to it – instead, process tracing is required in such cases. Characteristically for this classic qualitative tool, it can assist in providing a number of theoretical alternatives, because the in-depth checking procedure

(on what factor is linked to which) can encourage research to consider different theoretical frameworks. Indeed, the further the EU drifts away from the theoretical paradigms of the 1950s, the more stagnating its integrative framework is becoming. In the highly complicated case of cybersecurity, this contribution suggests that, by necessity, EU policy requires a solid theoretical fit (or, at least, the EU is in askance of a useful theory) built on a neo-functional, intergovernmental, and post-functional analytical instrumentarium, whilst keeping in mind an imperial paradigm as a means to explain the EU's organisational nature more precisely.

Finally, on a further methodological note, the EU has an inbuilt normative characteristic. Norms are thus very important in this empirical investigation to observe the relevant processes and find interlinkages between them. By determining the right set of normative material and contextualising the data, it is possible to analytically “account for the nuances and complexities that are part of any political phenomenon” (Hermann, 2008, p. 160). For the context and stakeholders' attitudes, we will also refer back to the previous chapter in this book – ‘EU Cybersecurity Governance – Stakeholders and Normative Intentions towards Integration’ – which outlined the rise and current features, as well as the institutional background of the EU's cybersecurity policy.

### **Searching for a proper framework**

There is nothing extraordinary in searching for a framework, because an academic wishes to “place rigid boundaries around the domain of philosophical inquiry” (McCormick, 2003, p. 255). Apart from being attributed by positivists to Immanuel Kant, it has a longer history and a life within post-positivism. It is advantageous to achieve a “greater accuracy of description” (Lotman, 2013, pp. 48–49), and it goes well with this contribution since it is aiming at detecting the exclusive range of constituent clusters for EU policymaking on cybersecurity.

What is also relevant for the context is that the EU, meticulously treasuring its ‘theoretical’ organisational background, has consistently been a theory-driven entity in its policymaking. Through its existence, the EU has literally encouraged international scholarship to analyse its development, and in the process, this ‘created’ some of the major integration theories as well. There was a relatively sceptical vision of Robert Keohane (1984, p. 49) that “the Europeans” do not have the functional capacity to grow into a hegemon “in the foreseeable future”, but this is questioned by actuality. A hegemon has different qualities, and the EU's distinct hegemonic stance in international trade is not a matter for serious academic disputes.

Practically and usually, a particular EU policy could receive backing from a single theoretical concept (for example, intergovernmentalism for the Common Foreign and Security Policy (CFSP)). However, there are many situations when the EU aims at combining a few theories in order to establish a decent framework for a policy (e.g. regionalism, neo-regionalism, functionalism and neo-functionalism for the

European Neighbourhood Policy/ENP). The level of effectiveness in each case has been different: the EU's 'exam marks' in political economy are rather high, but when it comes to the entity's 'tests' on geo-strategy, there is still plenty of 'homework' that needs to be completed by Brussels and, to an extent, Strasbourg. On cybersecurity, as it was argued in the introductory notes of this chapter, there is a likelihood that, in order to positively benefit from the policy-focused theoretical support, the EU has to seek some assistance from among the analytical postulates of the following four concepts: neo-functionalism, intergovernmental theory, post-functionalism, and a scholarly 'treatment' of the EU as a contemporary political empire.

### **Neo-functionalism: a 'puzzle' of transnational interdependence and supranational capacity**

Within a decade from the start of the European integration process, Ernst Haas (1958), reflecting on the project's development, offered a holistic observational concept exemplified by it. His neo-functionalism, was only semantically linked to David Mitrany's seminal contributions (1975), but it helped the EU's founders in interpreting what they were functionally doing to 'run away' faster from the past. At the end of the day, as the theory was elucidated by its competing 'cousin' (post-functionalism) much later in time, the neo-functional framework postulated "a series of mutually reinforcing processes that [would] lead to further integration" (Hooghe and Marks, 2019, p. 2). Arguably, the so-called neo-functional spillover became the EU's major, as well as almost unquestionable, methodological tool in a number of important framework-building exercises (for example, in the case of working out the euro convergence criteria). It is also true that the EU missed few opportunities to perform some kind of "distilling" (McGowan, 2007) of neo-functionalism. Further down the track, the 'spillover effect', as noted, became "almost completely detached from its puzzling fathering theory" and, like in the peculiar case of the European Neighbourhood Policy (ENP), was even applied to a geographic area, which Brussels could not operationally control (Vernygora et al., 2016, p. 14). Should neo-functionalism be employed in the context of the EU's policy on cybersecurity?

The basic underlying rationale for cybersecurity cooperation can be viewed in terms of securitised functional logics: the dependence of the EU's economy and citizens' every-day life on information and communication technologies create exposures that endanger the Digital Single Market, European democracies, freedoms and values. Bergmann and Niemann (2018) point out that sectors and issues can be interdependent to the extent that differentiation may prove extremely difficult. This is even truer in the context of cybersecurity, where the underlying technologies operate without respect for state borders and are decentralised in nature.

Functional discrepancies and links can certainly be identified in the EU's cybersecurity policy, for instance between the free movement of digital products and the need for safe and secure Internet that fosters consumer trust. In this case,

criminal law enforcement plays a significant deterrent role against cybercrimes, but it compromises consumer trust. In order to investigate offences, law enforcement agencies, more often than not, need to collect evidence from information systems outside their national borders, and they need it fast, whereas the current mechanisms for cross-border cooperation to collect evidence can be burdensome. Hence, the EU proposed the E-evidence Regulation that creates the European Preservation and Production Orders, mechanisms associated with procedures that are, presumably, easier to implement vis-a-vis private sector stakeholders. However, this has also opened a window outside the EU, since the largest actors in the EU are U.S.-based companies. The USA had also decided to address digital evidence collection, which resulted in conflicting legislations with the EU (additionally there are some legal issues and conflicts in the GDPR), while the Council of Europe (CoE) is also busy with negotiations on an additional protocol to the Cybercrime Convention, addressing questions of digital evidence.

On 5 February 2019, the European Commission proposed to start a round of international negotiations on cross-border access to electronic evidence, which is necessary to track down dangerous criminals and terrorists, and two sets of negotiating directives were issued: one for negotiations with the USA, and the other for the Second Additional Protocol to the CoE-originated Budapest Convention on Cybercrime (Joint Statement on the Launch of EU-U.S. Negotiations to Facilitate Access to Electronic Evidence, 2019). The logic that a single market issue needs to create higher levels of consumer trust for digital products, leads to functional pressures in the security and foreign relations domain, in this case the e-evidence negotiations with the USA and the CoE, which Bergmann and Niemann (2018) described as “external spillover”.

Another functional discrepancy can briefly be indicated between the high-level network and information security requirements, as in the NIS Directive (European Parliament and the Council, 2016) and the need for standardisation and certification schemes. Evaluation of the security levels of networks and information systems, as well as digital services and products, to ensure conformity with EU-wide or at least harmonised cybersecurity standards, hence the Cybersecurity Act (European Parliament and the Council, 2019), confer new competences, tasks and resources on the European Network and Information Security Agency (ENISA) (which has been transformed into the EU’s Cybersecurity Agency).

Functional pressures stemming from the Single Market also seem to appear in the field of security and defence, notwithstanding that some scholars deny this (Bergmann and Niemann, 2018). On the basis of the 2013 Single Market-focused Cybersecurity Strategy, the EU Cyber Defence Policy Framework was adopted in 2014 (Council of the EU, 2014) and updated in 2018 (Council of the EU, 2018a). These strategies envisage EU and NATO cooperation on cybersecurity and defence. In 2018, the EU cyber defence staff also took part in the NATO’s Cyber Coalition exercise, in

Estonia (NATO News, 2018).<sup>31</sup> Functional pressures, linkages and interdependencies may seem to point to the neo-functional theory of integration; however, it is not able to account for a significant part of the EU's cybersecurity policy, since transnational actors remain 'toothless' when it comes to issues beyond purely private business and the Single Market.

The role of supranational institutions enjoys distinct attention of neo-functional theories of integration. Niemann (2016) explains that supranational institutions foster integration processes when they behave as policy entrepreneurs or when leveraging their central positions or authority to influence various actors. Hooghe and Marks add that this is a continuous process reinforced by learning, changing preferences and tactics, until the supranational actors become stronger and more autonomous (2019, pp. 2–3). After learning the lessons from international cyber incidents, and because of direct attacks, cybersecurity became one of the most salient issues in the EU's agenda (Christou, 2016, p. 1), and the European Commission has played a very significant role in promoting integrated policy development in cybersecurity.

However, the cross-jurisdictional nature of problem areas put supranational institutions in a position where their impetus for greater cooperation and integration encounters significant resistance based on Westphalian principles. One of the most intricate issues involves cybersecurity information collection and sharing, which cuts across policy levels. During the 2012 stakeholder consultations in preparation of the NIS Directive, 87.5% of respondents indicated that public administrations should be subject to security requirements. In particular, 93.5% considered that public administrations should report security breaches (besides banking and financial sector, transport, health, energy and internet services). While this signified a call for Member States' accountability and was backed by the EU institutions such as the European Data Protection Supervisor, the European Parliament, and the European Economic and Social Committee, the Council of the EU was not ready for a new grand design that impinges upon the heart of the Member States' sovereignty. The Economic and Social Committee (2014) had stated that the NIS Directive should take the form of a regulation, which would leave little discretion in Member States' hands. The proposal's provisions would have led to the setting up of a cooperation network and secure information-exchange system between the Member States, the Commission and ENISA, and provide for coordinated response according to the EU's NIS Cooperation Plan. It would have imposed security requirements of public administrations, but these were toned down to the minimum by the Council which meant that only some core private actors in cyberspace (essential services operators, cloud services, e-marketplaces and search engines) were affected and breach notification frameworks were set up. The focus remained one-sided, imposing

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<sup>31</sup> See more in NATO (2018) *NATO and the European Union work together to tackle growing cyber threats*. Available at: [https://www.nato.int/cps/en/natohq/news\\_161570.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_161570.htm?selectedLocale=en)



mandatory controls on information flows between the private and public sectors and leaving cooperation between Member States at the voluntary level. The Council's formal message was (Council of the EU, 2013):

Many Member states have been in favour of more flexibility, limiting the adoption of binding rules at EU level to critical and basic requirements, to be supplemented by optional measures. Other delegations on the contrary, considered that only legally binding measures could guarantee the network security throughout the EU.

Additionally, competences and resources are still lacking at the supranational level, since implementation of the cybersecurity policy and operational capacity lies with the Member States, as the "Member States remain responsible for national security, the scale and cross-border nature of the threat make a powerful case for EU action providing incentives and support for Member States to develop and maintain more and better national cybersecurity capabilities, while at the same time building EU-level capacity" (European Commission, 2017).

The EU's capacities are being strengthened, and the establishment of the EU's Cybersecurity Agency endowed with financial, human and some operational resources testifies to this ongoing process, but in politically more sensitive areas the competence of supranational institutions is called into question by the Member States while they are engaging in a "common reflection process" with DAPIX experts (Working Party on Information Exchange and Data Protection (DAPIX)) on data retention (Council of the EU, 2018b). This behavior amounts to ignoring the highest courts' repeated rulings against blanket data retention legislation. This is not to say that neo-functionalism 'episodes' do not take place in the EU and cyberspace. A number of EU institutions have been active and accumulating significant expertise in cybersecurity, including the Commission, ENISA, European Defence Agency, etc, which on their own or by leveraging functional inefficiencies, budgetary powers or institutional gaps, can lead to a strengthening of their role, which could eventually lead to deeper integration of the EU (Kasper and Mölder, 2019, forthcoming).

With reference to the explanation by Hooghe and Marks (2019, p. 3) of the neo-functionalism views that "integration is the outcome of cooperation and competition among societal actors", one can find little evidence to support a claim that stakeholders other than the Member States steer the deepening European integration in the cybersecurity domain. Since 2016, the EU has positioned itself on a trajectory towards strategic autonomy, including that in cyberspace. The 2017-revised EU cybersecurity strategy, and, in particular, the 2018 update of the EU Cyber Defence Policy Framework, emphasise the growing linkages between cybersecurity and cyber defence, yet the Member States' hesitation about the EU as a (cyber) security community is still manifested in the volunteer nature of information sharing mechanisms (apart from the breach notifications obligations imposed on private sector players), signifying

their readiness to work to create a ‘cyber steel and coal community’, which is still a long way from a ‘Cyber Maastricht’.

### **(Still) Liberal Intergovernmentalism: Member States, their preferences and bargaining power**

In a way, Liberal Intergovernmentalism could hardly be outlined using a more straightforward route than the one chosen by Andrew Moravcsik. Being presumably driven by a justified desire to reshuffle the postulates of intergovernmentalism and to see how much out of the Westphalian paradigm would be considered practically applicable in the present situation, Moravcsik (1998, p. 4) linked the positive effectiveness of European integration with “economic interests, relative power, (and) credible commitments” of the Member States as long as they continue to subscribe to a liberal outlook. In other words, as Schimmelfennig (2015, p. 178) extensively explained much later, the process of integration “results from three steps that translate the incentives created by international interdependence into collective institutional outcomes: the domestic formation of national preferences, intergovernmental bargaining to substantive agreements and the creation of institutions to secure these agreements”. Another summary of this iconic concept is supplied by its ‘competitors’ – Hooghe and Marks (2019, p. 4) – who noted that “[l]iberal intergovernmentalism conceives institutional outcomes as functional responses to cooperation problems (...), anticipat(ing) that states will delegate or pool just enough authority to ensure that national governments will find it in their interest to comply with the deal”. Once again, the obvious assumption here is that the EU Member States remain effectively liberal in general, and positively liberal towards the EU’s ‘togetherness’ when such an exercise needs to be performed. Arguing, bargaining, and being not fully satisfied are distinguishing features of the liberal intergovernmentalism-based framework. Undermining, humiliating, and questioning the EU as an objectively reliable provider of multi-dimensional opportunities cannot be considered natural for liberal intergovernmentalism in the process of seeking solutions. The latter statement is still in full agreement with Schimmelfennig’s argument that this theory of integration “offers no specific propositions to account for the crisis as such” (2015, p. 178).

Since 2007, when Estonia realised that its dependence on information and communication technologies leads to new vulnerabilities and exposes its society to existential threats operating through cyberspace, it has become a global heavyweight in cybersecurity with several innovations implemented in the technological, legal and political domains, and deservedly can be referred to as an avant-garde experimental bunny after introducing innovations like e-residency (Särav, Kerikmäe, and Kasper, 2017). Inspired by Estonia’s success and after examining other top scorers in cybersecurity indexes, several observations can be made, and which will provide an overall discussion in this chapter.

According to the ITU's Global Cybersecurity Index, Estonia achieved peak scores in legal and technical commitments, occupying the fifth position after the UK, the USA, France and Lithuania (ITU, 2018, p. 18). Although cooperation commitments generally remain low, Lithuania, Estonia, the UK, Spain and France take the lead in the EU, while the EU as a whole is far more committed to cooperation than other regions of the world (ITU, 2018, p. 49). According to the National Cyber Security Index administered by the Estonian E-Governance Academy, which measures the preparedness of states to prevent cyber threats and manage incidents, the Czech Republic, Estonia, Spain, Lithuania and France are the global leaders, with Germany and the UK following them. However, the digital development levels of these countries do not seem to provide a simple plausible explanation for scoring high in cybersecurity. The curious cases of Estonia, Lithuania, and the Czech Republic – where the digital development scores are modest – imply that factors other than economic ones may have significant impacts on governments' plans.

Since the end of 1990s, the EU has been engaged in fighting 'classical' cybercrimes and it has adopted positions on the negotiations on the CoE Convention on Cybercrime. As one of the early attempts to raise the complex issue of cybersecurity to the EU level, the Spanish Presidency proposed in 2001 the establishment of an EU Research and Technological Alert Center (Council of the EU, 2001). Although the proposal referred to 'cybercrime', its reasoning was based on concerns raised from national security threats following the 9/11 terrorist attacks. The Spanish proposal was somewhat misinformed about the lack of initiatives. The Stockholm European Council of 23–24 March 2001 concluded that "the Council together with the Commission will develop a comprehensive strategy on security of electronic networks including practical implementing action" (European Council, 2001). A few months earlier, the Commission had also referred to the growing national security concerns and difficulties in providing security due to liberalization, convergence and globalization (Commission of the European Communities, 2001). Indeed, in the aftermath of the 9/11 attacks, the Council was quick to turn its attention to address terrorist threats and critical infrastructure protection, which included information and communication technology and the internet (Commission of the European Communities, 2004).

While the Commission has examined the available electronic communication infrastructures and their robustness in 2007 in high detail, cybersecurity remained an 'exotic' topic for the Member States. Three overlapping sets of EU policies were pursued in parallel. One was on cybercrime, which could be traced back to the need to deal with organised and high-tech crime – predominantly motivated by economic gain. The other concerned critical information infrastructure protection, which can be linked to the recognition of terrorist threats – assumed to be motivated by ideology. The third was on strengthening the information society to complete the Single Market, hence economic considerations.

After the large-scale cyberattacks against Estonia in 2007, the terminological construct of critical information infrastructure protection started featuring in the Council's agenda with increasing frequency, and, between 27 and 28 April 2009, Tallinn hosted a ministerial conference, stressing the importance of cybersecurity based on its own painful experience. The Member States' ostrich-like policies were about to change, following security threats close to home, and after realising the possibilities that cyberspace could be used for political purposes, following the 2008 cyberattacks against Lithuania and Georgia.

Preferences shifted towards establishing common policies, common mechanisms and coordination. The interdependencies between policy areas, the evolving and growing threat landscape, and the complexity of cybersecurity left Member States with no real alternatives but to merge the separate policies into a single comprehensive one at EU level. While 12 Member States decided to ratify the CoE Convention on Cybercrime after 2007<sup>32</sup>, the 18-month trio-presidency programme of the Council led by the Polish, Danish and Cypriot Presidencies, in 2011 already raised cybersecurity issues going beyond cybercrime (Council of the EU, 2011).

In 2012, the Friends of the Presidency Group on Cyber Issues was established as a cross-cutting forum for coordination and cooperation and exchange of information encompassing various fields of expertise. In a December 2012 meeting of the group on Cyber Issues, the Netherlands reported yet another real cyberattack<sup>33</sup>, and emphasised the need for cross-border cooperation. In the meantime, Estonia announced its next Cyber Security Conference, which was organised in Brussels.

In the context of the 18-month trio-residency programme of the Council for the period 1 January 2013 to 30 June 2014, the Irish, Lithuanian and Greek Presidencies, clearly referred to cybersecurity as one of the global challenges faced by the EU (Council of the EU, 2012). The first EU Cybersecurity Strategy was adopted in 2013, but the Member States resisted significant deepening of integration in several politically sensitive areas. The Member States' approach to comprehensive cybersecurity was tailored to the needs of sovereign states and was followed by the adoption of an outline for European Cyber Diplomacy Engagement. The Member States regularly discussed cyber defence questions, and the Council adopted the EU Cyber Defence Policy Framework at the end of 2014 (Council of the EU, 2014a). While the Member States' approach to information sharing and their readiness to express their positions publicly on cybersecurity is still cautious, the high interest in clarifying the normative frameworks became evident in The Hague Process, when over 50 countries participated in the Tallinn Manual 2.0 consultations on how international

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32 Those were Austria, Belgium, the Czech Republic, Germany, Greece, Italy, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain, and the UK.

33 The Netherlands have previously experienced the Diginotar incident, although there are no indications that this particular case was discussed at the meeting.

law could apply to cyber operations – although, state input in the Manual remains confidential (Asser Institute, 2016).

The subsequent Italian, Latvian, and Luxembourgish trio Presidencies also strongly emphasised comprehensive cybersecurity, and laid out an ambitious agenda prioritising internal and external actions (Council of the EU, 2014b). For the period between 1 January 2016 and 30 June 2017, the Dutch, Slovak and Maltese Presidencies aimed to have a comprehensive and integrated approach to cybersecurity, and kept the focus thereon, although their programme was more pragmatic, and increased secrecy in the Council's work on cyber issues became evident (Council of the EU, 2015). The Friends of the Presidency Group on Cyber Issues, drawing on the “claimed to be state-sponsored hack of the Ukrainian power grid” prepared a non-paper suggesting a joint response to coercive cyber operations, namely the development of the cyber diplomacy toolbox under the Common Foreign and Security Policy and the Common Security and Defence Policy (Council of the EU, 2016). The strategic environment also led to a new impetus in EU-NATO partnership, and the Joint Declaration in Warsaw on 8 July 2016 included cybersecurity and defence as an area where cooperation should be enhanced. In 2016, the Horizontal Working Party on Cyber Issues was established, replacing the Friends of Presidency Group, while the world learned about the DNC hack and Russian interference in U.S. elections (arguably, both cases sent clear signs about the vulnerabilities of national elections).

The Estonian, Bulgarian and Austrian Presidencies prioritized cybersecurity policy as an integral part of a genuine Security Union (Council of the EU, 2017), and Estonia laid out a very strong digital agenda building on its 2007 experience of large-scale cyberattacks and the EU's cybersecurity package was rolled out on 13 September 2017. This updated the EU's cybersecurity strategy, and included proposals for institutional changes in terms of establishing the EU Cybersecurity Agency, integrating cybersecurity into existing EU-level crisis management frameworks, and adopting the Cybersecurity Diplomacy Toolbox. In 2017, the Czech Republic also discovered that for many years Russia and China had penetrated its Foreign Ministry's information systems (Czech security service says Russia behind cyber attacks on ministry, Reuters, 2018).

Current focus in the Council appears to centre on the implementation of the Cyber Diplomacy Toolbox, the detailed discussion of questions related to attribution, cyber restrictive measures, preparation for the upcoming discussions in the United Nations (UN) on cyber issues in the context of international security, as well as cybersecurity capabilities and capacity building.

Having pointed out some key turning points, the authors note that despite the Commission's thorough analyses and reasoning about interdependencies and security threats, the impetus to develop policies came from the Member States governments, prompted by their realisation of the political threats posed by cyberattacks. Since the EU is not a federal state, the arguments for sovereign autonomy of the Member

States overwhelmed the functional arguments for deepening integration, which is an underlying need for small states in an interconnected world. Ambitious Commission proposals were toned down and reformulated, under the Council's leadership, in a manner that better corresponds to the Member States' readiness to cooperate and share in potentially sensitive areas of cybersecurity.

### **Post-functionalism: channeling a political conflict towards a common good**

A post-functionalist theory of European integration, has an empirically stable base as a point of departure: a) it has the possibility to detect how “domestic patterns of conflict across the [EU] constrain the course of European integration”; b) “no one has succeeded in reducing the debate to rational economic interest”; and c) since national communities are demanding more self-rule, “the preference for self-rule is almost always inconsistent with the functional demand for regional authority” (Hooghe and Marks, 2008, p. 2). However, where does the initial push for action come from? The theory refers to the prime role that a political conflict “makes all the difference, and (...) engages communal identities” (Hooghe and Marks, 2008, p. 2).

In the context of classical functionalism and apart from “common material needs” (Mitrany, 1975, p. 145), in principle an integrative task, “can be narrow or comprehensive in scope” (Smith, 2004, p. 22). In addition, “an action to stop the process or to go backwards is a function-performing exercise” as well (Vernygora et al., 2016, p. 15). At the same time, this post-functionalist view on where a desirably effective functionality can ‘reside’ within the framework of European integration claims that there could be a need to “probe beyond the economic preferences of interest groups” (Hooghe and Marks, 2008, p. 5). Is it not what cybersecurity needs to ‘hear’?

While post-functionalist literature on EU cybersecurity is almost non-existent, it could be possible that functionality resides with interest groups – since cyberspace is predominantly owned and operated by the private sector. However, one should consider those factors that characterise cyberspace – particularly, the compression of time and space in this context, which challenges not only the worldviews, but the core elements of the current international order based on territoriality. In addition, technical challenges and the lack of a common vocabulary in the technical and non-technical fields do not favour political institutions in identifying common domestic constraints to integration, which could be formulated into a joint agenda by the relevant actors. Scholars who write on cyber power refer to the passive role of non-state actors who recognize the need of their ‘intellectual capital’, while stressing that the “state is the political entity that needs to learn how to optimize its cyber power” (Dunn Cavelty, 2019, p. 307).

The fragmentation and diverse interests in cybersecurity make it almost impossible to create a community (besides the ones headed by national governments or another

central institution) on cybersecurity. Cybersecurity does not (yet?) typically feature on national political parties' agendas, while interests intertwined with cybersecurity cannot be reduced purely to economic or political ones given their complexities. Policies on cybersecurity feature military, diplomatic, intelligence, economic, legal, ethical and social considerations. Cyberattacks are not immediately apparent to communities, and tend to be discovered months after their commencement. Unless they lead to consequences, which affect the physical world in a palpable manner, it cannot be confidently assumed that societal processes on their own will lead to comprehensive cybersecurity policies. People are unlikely to perceive a 'common material need' to have such policies.

Cyberspace is not a homogenous community, but a conglomerate resembling a loose open source community without a central point, sharing overlapping principles and agreements at the technological level. While some participants can be mature enough to ride on established frameworks, the rest move with the flow; trusting a central coordinating authority to show what is to be done next. Those who behave in this way often find their ideas suppressed by overriding political considerations, and naturally in such an environment only the strongest and most persistent, usually large private actors can pursue impactful initiatives. Joint private initiatives to engage with policy-makers have been reported in the USA (see, for example, Breland, 2018), and significant similar efforts by think tanks have become evident, such as the Global Commission on the Stability of Cyberspace, but the situation in the EU remains considerably more fragmented given the different levels of development of the Member States' cybersecurity policies. Controversially, Dunn Cavelti (2018) claims that the ENISA's (EU Agency for Cybersecurity) main reason for proposing standards and norms to the industry, was to ensure as little influence from governments as possible. However, do we expect (trans)national actors and industry to consider various potential national security implications to the full, and then choose the policy option that may be the best solution for European society, even at the expense of losses to shareholders?

In the meantime, while the responsibility for cybersecurity is pushed down to the national levels, little politicisation at the domestic levels can be detected (see Chapter six by Kasper in this book). Decision-making rarely takes place in the arena of mass politics and steps towards integration have not been linked to identity issues or to cultural divides that polarise societies. Hence, it appears that in its current form, the post-functional theory of European integration cannot provide a definitive explanation of all the realities of cybersecurity policy in the EU.

### **A contemporary empire on a mission to engage its periphery?**

These days, as Zielonka noted, "[i]n the field of diplomacy it is virtually impossible to conclude any global negotiations without the consent of [the United States, the EU, Russia, and China]" (2012, p. 509), while also arguing that these important actors

“look, talk and walk’ like empires” (2012, p. 502). Arguably, this imperial paradigm is academically useful, has no negative connotation, and can be employed in different analytical exercises. The point is that the EU tends to claim its “technocratic or institutional superiority”, making the essence of the entity’s civilising mission to be bound around exporting ‘good’ governance (Zielonka, 2012, pp. 515 and 511). Remarkably, it goes very well with one of the major priorities of the 2013 EU Cybersecurity Strategy, which proposed focusing on establishing “a coherent international cyberspace policy for the EU and promote EU values” (European Commission, 2013). It can be noted that one of the operational objectives of this priority may be based around an idea to engage the EU’s periphery into the process.

The race for domination in cyberspace has long begun and recently it has found concrete form in the UN-framed discussion on cybersecurity. While U.S. dominance of cyberspace, in technological terms, remains unquestioned (not unchallenged though), in other ‘soft’ areas a clear competition has become manifest. When, in 1998 the Russian Federation proposed a draft UN resolution on cybersecurity, it was not taken seriously. However, it ignited a process in which the developments in this field were noted by the so-called UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UN GGE). The work of the UN GGE went mostly unnoticed and was fruitless until 2013, when the experts finally made a breakthrough: international law applies to states’ cyber operations (Kaljurand, 2016, p. 112). While this conclusion may now seem like a no-brainer, the UN GGE never managed to answer the question as to how international law applies (Henriksen, 2019).

A competition for the ‘legal’ dominance of cyberspace officially commenced in late 2018, when both a new open-ended working group and a new GGE was approved by the UN. The proposal to set up an open-ended working group was sponsored by Russia, while the proposal for the GGE was backed by the U.S. and like-minded states, including the EU Member States. Many states in the UN are still undecided about their approach to cybersecurity, participating in both or none of these groups, hence these recent developments clearly signify a major contest between two fundamentally different ideologies on how cyberspace should be governed/ruled. It is no surprise that the Council and the EU Member States are preparing for these meetings, nevertheless it also straightens out illusions that the EU is limited to economic cooperation, since the EU seems to be embarking on a global ‘civilizing mission’, at least in as far as online human rights are concerned, while at the same time prioritizing capacity building in cybersecurity.

The EU has been engaging in bilateral cyber-partnerships with key countries, such as the U.S. (perhaps the most comprehensive relationship), Canada, Japan, Brazil (on cybercrime and research) and some other ‘strategic partners’, amongst them India and the Republic of Korea, are seen as the most promising. Bilateral cooperation with Russia and China is less straightforward, since these countries are perceived as the main source of major cyberattacks and cyberespionage in the EU – although



confidence-building initiatives have been reported mainly in the fight against cybercrime and cyberterrorism (Renard, 2018, pp. 328–330).

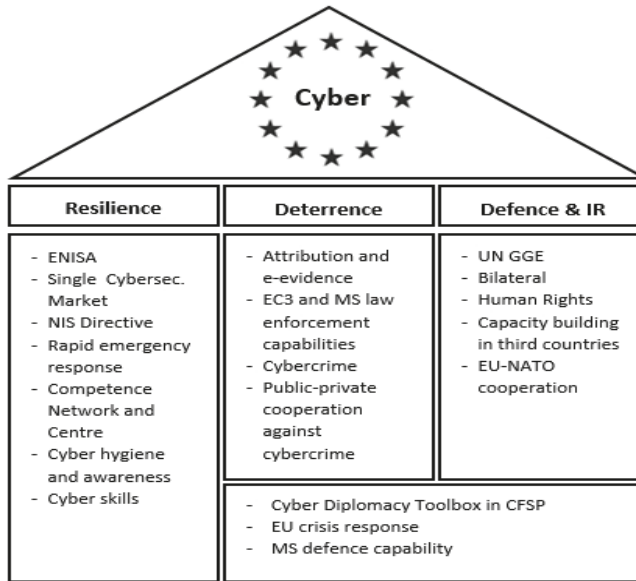
### **The three ‘Cyber Pillars’ of the EU**

In the past five years, the ENISA reported that each year cybercriminals remained the most active threat agent group in cyberspace. In 2018 they were responsible for over 80% of incidents, affecting approximately 0.8% of GDP (ENISA, 2019, p. 119). Over 60% of email traffic contained malicious content, and email was involved in 90% of the cyber-attacks. In second place came the ‘insiders’ threat agent group with 25% of breaches, attributed to insiders in corporate environments. That same year, states as threat agent group came in third place. ENISA observed attempts to increase the impact of cyberattacks (particularly, in critical infrastructures). ENISA (2019, 117–118) also pointed out that “[i]t is assumed that traditional state sponsored threat agents are currently repositioning themselves in the changing geopolitical space”. The discovery of vulnerabilities continues to increase and advanced threat actors “are making progress in using the supply chain to achieve their objectives”. The EU is facing numerous challenges at different levels, but the most significant is clearly cybercrime, impacting the economy. However, threats originating from states, and the use of the internet by terrorists, as well as the manipulation of social media cannot be underestimated either. Links between cybersecurity and hybrid threats are also highlighted by the Joint Communication on Countering Hybrid Threats (European Commission, 2016b) and media reports using terms such as ‘social media warfare’ (The Telegraph, 2019). These trends call for national resilience-building and cooperation in law enforcement, as well as deeper trust and cooperation between allies such as that between the U.S., the EU and NATO.

Hostile or malicious activity passes through several jurisdictions and leverages assets in private hands: for example, botnets use networks and compromised computers, servers and IoT devices (i.e. a smart watch, smartphone, smart lightbulb, or any internet-connected device) to attack a target system. Similar techniques can be used by cybercriminals, terrorist groups, as well as states. Such hostile actors easily hide behind anonymity-enabling and/or plausible deniability features of cyberspace. In countering such ambiguous attackers, measures need to be applied in several areas including underlying technologies, business practices, and market dynamics. There is also a need to develop security standards covering critical infrastructure or consumer devices, rules for responsible disclosure of vulnerabilities, patching and updating of software, regulatory frameworks to address liability issues and the elaboration of the ‘duty of care’ principle. It also requires building cyber threat intelligence capabilities, or controlling the foreign acquisition of critical cyber technologies. In short, it calls for a broader view where the lines between the internal and external policies, between market-oriented, criminal and defence policies are blurred.

A nouvelle model of cooperation has to be created by/for the EU to realise its objectives in cybersecurity. Historically, the EU has been shaped by schematic grand-scale structural pillars. This approach can once again be used to clarify the EU’s vision and strengthen its actions on cybersecurity. A ‘Cyber Maastricht’ model could be constructed, based on the following three pillars: Resilience, Deterrence, and Defence & International Relations/IR (see Figure 1 for details). The model’s structural elements are not new, and what is more important is the place, the nature of the elements, and the interrelations between the proposed pillars as foundations for new governance institutions.

FIGURE 1: A ‘CYBER MAASTRICHT’ MODEL



Source: Authors

A gargantuan element of the world’s political economy, the EU needs to be capable of recovering as fast as possible after a prospective cyberattack. Moreover, given the tightness of intra-entity cooperation, a resilient EU means a great deal more than a resilient Member State taken separately from the EU, immaterial as to whether such a state is big or small. However, such a pillar structure finds plenty of operational space within a post-functional framework.

While cyber resilience-building in the EU is often justified by the need to complete the single market, one needs to look beyond economic considerations and realise the informational interdependence of actors, which is very visible, as for example in the vulnerability of disclosure mechanisms (or the lack of them). Security information,

just like cyber-tools, tends to have a dual use. Interdependence is multi-dimensional, and leads to the necessity of appropriate institutions and mechanisms for sharing information among private players, between private and public sector, and between states. However, current solutions include one-way or voluntary information flows, in which bridges to other pillars are difficult to build. Resilience is also linked to technological factors, such as the presence or absence of a high number of errors/bugs/flaws in products, which leads to fewer public concerns and also calls for interaction with other pillars to decrease vulnerabilities. This also fits the concept of deterrence by denial as opposed to deterrence by punishment (Burton, 2018, p. 9). Thus, the resilience pillar's aim is to increase both private and public sectors' accountability for technologies to absorb malicious cyber activities and incidents, as well as transparency among actors to the maximum possible level.

If a 'Cyber Maastricht' can establish a normative re-conceptualisation of the EU as a deterrence provider, it can lead to a significant change with regards to the EU's geo-strategic role. The dominant legislative side of this pillar can, in principle, be supported by the theoretical platform of liberal intergovernmentalism. A range of serious 'credible commitments' can be worked out, for example, on 'attribution and e-evidence', which are also relevant in the context of the third pillar where they are guided by the strict constraints of criminal legal frameworks rather than political ones. Whereas national governments as gatekeepers to protect the interest of societies are privileged actors in the second and the third pillars, their losses in authority by means of surrendering competences to EU is compensated by gains in legitimacy and problem-solving capabilities. As reluctant or incapable as Member States have been to resolve conflicts between law enforcement needs and fundamental human rights regarding the data retention regime, functional pressures – arising from the trans-border nature of data flows and cyberattacks, and the fact that cyberspace is over 80% in the hands of the private sector – provide strong and credible commitments to cooperation because it has become an existential need.

On cyber deterrence, some commentators do not accept the relevance of this concept due to the credibility of the threat of punishment (Arquilla and Ronfeldt, 1996, p. 94) and attribution problems (Clark and Landau, 2010). On the other hand, Rid and Buchanan (2015, p. 7) argue that attribution is “what states make of it”, and not a binary relationship. Just as criminal law theory accepts that absolute obedience to the law cannot be guaranteed, the 2017 EU strategy accepts that no ICT product, system or service can be guaranteed to be '100 %' secure and not all cyberattacks can be prevented. Therefore, the goal should not be that of achieving absolute deterrence and unrealistically seeking to prevent all cyberattacks from occurring, but to maintain an effective deterrence posture by strong messages and responses aimed against offenders and thus force aggressors to recalculate their intentions. In short, focus on prevention (Tor, 2017, pp. 94–95). The measures taken in this area by the EU range from technical to legal and political ones; from encouraging the uptake of IPv6 (Internet Protocol version 6 (IPv6) is the communications protocol (IP)

that provides an identification and location system for computers on networks and routes traffic across the internet.)

to stepping up the law enforcement and political response, to cooperation with the financial sector and building the cyber defence capabilities of the EU Member States.

A 'Cyber Maastricht', with its Defence & IR pillar, can lead the EU to a breakthrough by becoming more relevant geo-strategically. Cybersecurity is not an isolated policy, but in the context of today's security challenges, a shift to new platforms enabled by current technologies. In the light of setbacks in integration due to Brexit and the mixed messages received from the U.S. on its defence outlook for Europe, a militarized cyberspace is certainly a good reason to aim for as part of the EU's strategic autonomy and security union. An integral part of this militarised cyberspace relies on the EU's cybersecurity efforts. However, as cyber defence is part of the EU's broader cybersecurity policy, it remains unclear how it fits into the concept of "strategic autonomy" (European Commission, 2016a) and defence union – whether or not strategic autonomy includes EU level operational capabilities, and if yes, what kind, and whether or not strategic autonomy means 'independence' for the underlying industry. Although currently there are initiatives to boost operational capabilities of the member states and foster cyber defence innovation in the EU (for example in the framework of PESCO and the European Defence Fund), these actions are more aimed at coordination leaving the EU with the role of an advisory, or at best a coordinator in some areas related to budget and high-level crisis response. While BREXIT may open some doors for deeper integration in cyber defence, some might be perceiving a potentially growing strategic autonomy of the EU and a defence union as undesirable, and damaging to U.S. defence/industrial interests (Fiott, 2018, p. 7). Others advocate executive powers to the EU institutions in cyber defence and the establishment of a Cyber Defence Agency (Griffith, 2018).

Indirectly tilting toward the imperial paradigm, the EU will enhance its cooperation on cybersecurity with the like-minded NATO, and it will have more chances to cooperate with the UN, particularly with the UN GGE, while solidifying 'Capacity Building' mechanisms in the neighbourhood. It will do the same, wherever its 'civilising mission' (e.g. promoting 'Human Rights') leads it to. Defence is not Resilience, but, together with Deterrence, it has a durable common basis, constructed out of the 'Member States Defence Capabilities', the 'EU Crisis Response', and 'Cyber Diplomacy Toolkit in the CFSP'. Once again, in order to build this 'pedestal' for the two pillars, some 'raw material' will need to be supplied by liberal intergovernmentalism, but this is a routine issue, which should start by finding a common definition of EU cybersecurity, clarifying the content for clusters for its overall policy, identifying exogenous and endogenous influencing factors and taking stock of available resources in a systematic manner. In short, should the EU consider converting the model of a 'Cyber Maastricht' into reality, it just needs to make an effort. Time is, unfortunately, running out.

## Conclusion

This paper engaged in a comprehensive search for a relevant theoretical concept (or a right mixture of several theories) that best explain integration processes in the EU's cybersecurity governance. We examined both internal and external domains – since the line between these is blurred in cyberspace – with the application of toolboxes provided by neofunctionalism, intergovernmentalism, post-functionalism and the imperial paradigm. The discussion led this research towards creating a schematic model that essentially represents a scholarly call on the necessity for the EU to formulate a 'Cyber Maastricht'. Characteristically for the proposed pillar-based model, it requires almost no 'assistance' from the neo-functional spillover, which has previously helped the EU to realise achievements in the field of political economy, but has not been so effective in the sphere of geo-strategy. Instead, a far more sophisticated combination of integration-driven theories will be needed, and this fact in itself depicts a positive sign for the EU to remain relevant, creative and flexible in its policymaking. This is especially important when it comes to addressing the issue of cybercrime and cyber defence – the alternative, a cumbersome policy on cybersecurity, can quickly push the EU into mediocrity.

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## **Part 4: Common European Asylum System (CEAS)**

## Chapter Eleven

# The Steps from Dublin III to Dublin IV

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### **Abstract**

In 1992, the EU established the Common European Asylum System, which is based on five central directives one of which is the Dublin regulation. The debate about a possible Dublin IV regulation started a long time ago, but the discrepancies among the member states' interests are huge and it is hard to find a compromise. In fact, since the third and last update in 2013, there have not been any further changes. However, all parties agree that there is a need of reform and that the current system is unfair and inefficient. This paper wants to highlight future possible scenarios. The Commission presented a proposal in 2016 to reform the whole CEAS, which included a proposal for Dublin IV. The European Parliament had already adopted a position on the proposal of 2016, while the Council did not. The first part of the paper is dedicated to the current situation and to the reasons why the Regulation needs reform. The second section analyses the Proposal submitted by the Commission in 2016, and the related problems and reasons why this Proposal has not been agreed upon. Before reaching the conclusion, the third section explores possible alternatives of the Regulation's future. It is difficult to say what will happen; these are all hypothetical scenarios. However, it is fundamental to deeply analyse the suggestions proposed so far with regard to an eventual reform of the current regulation.

### **Introduction**

In 1992, the European Union (EU) established the Common European Asylum System (CEAS), which is based on five central EU rules; one of these is the Dublin Regulation (the Regulation). Nowadays, the Regulation is often cited by the media and it is general knowledge that this Regulation clarifies which Member State (MS) is responsible for the asylum procedure of third-country nationals who entered the EU and applied for international protection. As the first country of entry with responsibility for assessing the asylum applications, the MS at the borders of the EU have been strongly opposed to the Regulation. Technically the criteria establishing the responsible MS, in hierarchical order, are the following: family consideration for minors, family members who are beneficiaries of international protection, family members who are applicants for international protection, visa and residence permit.

However, the consequence of the “first entry” criteria is that countries like Greece or Italy find they are under more pressure because they are the usual port of entry for Europe and therefore face a high number of migrants. There are numerous critics of the operation of the regulation and their objections reach to the core principles enshrined in the rules.

The first critics go back to 1997; the year in which the first Dublin Convention entered into force. It was criticised for its lack of substantive and procedural harmonisation, and because it excluded the jurisdiction of the Court of Justice to ensure uniform interpretation (Marinho and Heinonen, 1998). The criticisms continued with Dublin II, with MS arguing that it was inefficient and unfair towards the southern and eastern MS (Nicol, 2007). The debate about what would become known as the Dublin IV Regulation started a long time ago; however, the discrepancies among the MS interests are broad, and finding a compromise has been fraught with difficulty. In fact, since the third and last update in 2013 (Dublin III), no further changes have been made.

Nevertheless, EU institutions, NGOs and various actors agree that there is a need for further reform and that the current system is unfair and inefficient. The aim of this paper is to highlight future possible scenarios. The European Commission (the Commission) (2016) presented a proposal (the Proposal) that year to reform the whole CEAS, which includes a proposal for Dublin IV as well. The European Parliament (EP) adopted a position on the Proposal, while the European Council (from now on Council) has not yet done so.

The recent refugee crisis 2015–16 and the continued criticisms and perceived failures of the system demonstrate the importance of analysing in depth any suggestions proposed so far for a Dublin IV Regulation. The first part of the paper is dedicated to the current situation and to the reasons why the Regulation needs reform. The second section analyses the Proposal submitted by the Commission in 2016, and the related problems and reasons why this Proposal has not been agreed upon. Before reaching the conclusion, the third section explores possible alternatives of the Regulation’s future.

## **Why does Europe need Dublin IV?**

The Dublin Convention entered into force in 1997 together with the Schengen Agreement. Once the borders were shared, the MS realized that there was the need to establish Regulations, which would clarify which MS has the responsibility to assess asylum applications. The current Dublin III Regulation was adopted in 2013.

The CEAS’s aim is to reach a certain level of standardization with regards to asylum procedure and policy. To this day, there is no complete harmonisation in the system and there is no mutual recognition of asylum decisions, which may lead an MS to process applications more than once. According to the Italian jurist and migration

expert Schiavone, the key for a successful and harmonised CEAS is a reform of the Regulation. (Bruni, 2018).

The current approach is to apply individual national responsibility; Art. 3. of Regulation (EU) No 604/2013 determines which MS is responsible for assessing asylum claims. However, there are “discretionary clauses” in Art. 17, which set out criteria for exemptions, to allow movement of asylum seekers between MS to address humanitarian issues such as family reunification. (Mouzourakis, 2014). Art. 2. Of the Regulation outlines the aim of the Regulation “A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union’s objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.” (EU, 2013). The political aim of the Dublin system is to prevent and reduce secondary movement and ‘asylum shopping’. However, these aims have not been achieved successfully.

The EP (2019, p. 2) declared the following:

“The current migration and refugee crisis has revealed significant structural weaknesses in the design and implementation of the CEAS and of the Dublin regime. This has been confirmed by recent external studies on the Dublin system and acknowledged by the Commission [...].”

Schiavone argues that due to the lack of harmonisation, MS have completely different procedures and take also different decisions (Bruni, 2018). In Italy, for example, there is a higher number of Iraqi and Afghani applicants because the Italian authorities usually decide positively in these cases. Therefore, those country nationals will choose to seek asylum in Italy – a clear case of asylum shopping (Bruni, 2018). This demonstrates the impact when directives are implemented differently among the European countries.

Theoretically, all countries of first arrival should push for uniformity in reforms, but Schiavone (2018) explains that internal political elements could easily change this logic. For example, Italy holds an ambivalent position towards the Regulation. Although Italy is one of the countries mostly affected by the 2015–16 refugee crisis, it has not proposed or advocated seriously for further reform of the Regulation (Schiavone, 2018). However, the role of Italy needs further analysis.

It is possible to summarize the major criticisms of the current Regulation as follows:

1. There is no sharing of responsibilities and solidarity mechanisms among the MS;
2. Countries at the border are under more pressure compared to internal MS;
3. The bureaucratic processes are slow and very often inefficient. This causes extreme delays or even the failure of transfer of the asylum seekers who in turn fall into a bureaucratic limbo (UNHCR, 2019);

4. The mechanisms result in burden shifting rather than responsibility sharing;
5. The system operates contrary to the principle of solidarity;
6. The fact that MS are obligated to take asylum seekers creates an incentive for keeping the asylum standards low in countries of first arrival which are under pressure (Greens, 2016);
7. The system results in differing implementation scenarios.

Mouzourakis (2014) explains that there is a strong link between irregular entry and asylum application, and the Regulation practically pushes MS to protect their borders even more in order to avoid burden of any possible and eventual asylum application.

Another argument which openly shows the inefficiency of the Regulation is the fact that the courts have often enough decided to suspend the transfer to a MS of an asylum seeker according to the Regulation due to reasons such as “the risk of inhuman or degrading treatment” (Edal, 2018). However, judicial reforms can only intervene in a reactive manner to remedy some practical deficiencies; courts cannot change the principles of the Regulation and also, they are not willing to challenge the Dublin’s state centric logic (Mouzourakis, 2014).

A clear example of the Regulation’s inefficiency is as follows. Mouzourakis (2014, p. 25) reports that Germany sent 306 transfer requests to Switzerland, but also received 350 people from Switzerland. This means that at the end of the day, the administrative efforts and the expenses are not equal; the country has to deal with the same amount of applications.

Mouzourakis (2014) also mentions some perverse and highly criticised effects of the Regulations. Ireland, for example, requests DNA tests for family reunification under the Regulation. Moreover, it is very common that requests to take back an applicant for international protection find no government response for three months or more. This situation leaves asylum seekers languishing in a bureaucratic limbo.

Many scholars hold the view that the burden sharing should include several criteria in order to establish the responsible country, such as language affinities, reception capacity, etc. Yet, all these criteria are currently omitted (Schneider et al., 2013) (ECRE (a), 2008). In order to reform the Regulation, MS agree that they need a clear and new mechanism to share responsibilities (European Council, 2018). In order to achieve this, Mouzourakis (2014) suggests shifting all decision-making power to Brussels, so it would decide about the sharing mechanisms to ease the current deadlock.

### **Commission Proposal of 2016**

As mentioned in the previous paragraph, there is no doubt; all parties agree on the said problems. The major challenge for the EU is to find a common solution to these perceived problems.

The EP (2019, p. 11) states that, despite repeated meetings and talks about the issues, there has been no agreement on a solution:

“The main elements for the balance between responsibility and solidarity were presented in May 2018 as a compromise proposal. (...)At the European Council of June 2018, and at each subsequent meeting, in October 2018 and December 2018, however, EU leaders failed to achieve a breakthrough on internal aspects of migration and the EU’s asylum policy, showing remaining differences among Member States as regards, in particular, the reform of the Dublin Regulation.”

The Commission proposed a reform of the CEAS in 2016, which includes a revamped Regulation. So far, the negotiations are blocked at the trilogues<sup>34</sup> stage. In 2017, the EP adopted its position about the Proposal. However, the Council has not expressed its opinion on it.

There have, however, been two possible compromises identified by AIDA (2017). The first focuses on the general principles upon which all MS should agree: the scope of relocation, the procedures in the country of first entry, and the principle of stable responsibility, which states that a MS is responsible for an asylum application for a period of 10 years (AIDA, 2017). The second possible compromise is about the three phases for the Regulation. The Proposal (Commission, 2016) presented during the Estonian presidency distinguishes between the following three phases: normal, challenging, and severe crisis. The normal circumstance is when the status quo remains intact and the responsibility criteria do not change. The challenging circumstance is the scenario in which a country reaches 90 percent of its share so that the MS would mobilise and support the MS in need. The third circumstance is the scenario in which a MS faces an extreme pressure despite the efforts of all other MS. In this case, as soon as the relocation cap is reached, the Council would intervene and try to determine whether it should include additional relocation or take other measures (AIDA, 2017).

The principle behind relocation affirms that the process of relocation of asylum seekers, whose application is considered likely to be unfounded or inadmissible, shall not be applied (AIDA, 2017). However, it is not clear which criteria have to be used to identify whether an application is likely to be considered unfounded or inadmissible before the end of the assessment in the proper asylum procedure.

The last innovative general principle is the stable responsibility, which affirms that a MS would be responsible for an asylum seeker for a period of 10 years (AIDA, 2017).

The main changes introduced by the Proposal are: the introduction of quotas and a three-phase Dublin system. The Proposal also introduces the mandatory procedure

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34 Tripartite meetings between Parliament, the Council and the Commission.



of making a pre-Dublin check. However, ECRE ((c), 2018) holds the view that making these procedures mandatory brings several new concerns and does not improve the mechanisms of the Regulation. The concerns ECRE ((c), 2018) are referring to are as follows:

1. The risk of serious human rights violations;
2. The disregard of protection obligations relating to asylum seekers' right to family life;
3. The risk of creating complex procedural layers before applying responsibility-allocation criteria, the pre-Dublin procedure would seriously undermine the Regulation's objective of efficient procedures ensuring rapid access to asylum procedures; and it will also make the system more unequal because MS of first entry are more likely to be affected by "challenging circumstances" and are therefore obliged to carry out the mandatory checks.
4. The risk that more applicants in MS of first entry will encourage the use of coercive measures to contain the high number of people (although this is already a reality, these measures could be further increased: detention and risks of substandard reception conditions).

The Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee adopted the position in autumn 2017 on the Proposal of 04 May 2016 (EP, 2019). The European Committee of the Regions considers the approach presented by the Commission inadequate; it suggests that the number of arrivals has to be taken into consideration in the reference key, and the threshold for triggering the mechanism for the allocation of applicants for international protection is too high (EP, 2019). The EP (2019) highlights that six national parliaments submitted their opinion as well: the Visegrád Group<sup>35</sup>, Romania, and Italy, stating that "The Commission Proposal does not comply with the principle of subsidiarity".

In the first round of discussion within the Council, MS agreed that they need: "faster and more efficient determination of the Member State responsible for examination of asylum claims, and prevention of secondary movements" (EP, 2019). However, after this they could not reach any further relevant agreements.

The MS started the discussions within the Council, without success. Since the beginning there have been MS blocking the unanimity required to give a mandate to the Presidency to enter into interinstitutional negotiations with the EP, while other MS have submitted a position paper in favour of a reduced fair share, and alleviation of procedural burdens for the frontline MS (EP, 2019).

Despite discussions with MS the Council continues to have no formal position on the Proposal.

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35 The Visegrád Group, Visegrád Four, or V4 is a cultural and political alliance of four Central European states: the Czech Republic, Hungary, Poland and Slovakia, which are members of the European Union (EU) and NATO. (Visegrad Group, 2019)

## Main challenges

There have been several critics towards the Proposal. ECRE ((e), 2018, p. 14) summarizes the main challenges as follows:

“Key points of disagreement among the Member States are: the role and scope of (mandatory) relocation of asylum seekers as part of the responsibility allocation mechanism; the duration of responsibility; the scope and nature of pre-Dublin checks; and the inclusion of beneficiaries of international protection in the scope of the Regulation.”

The Proposal seems, at first, to be a solution to many of the criticisms of Dublin III, because it finally introduces a system of quotas and sharing responsibility. However, as Schiavone (2018) explains, it is only in case of emergency that another MS would intervene to assist. Otherwise the Proposal does not reform the principle that allocates the first country of arrival as responsible for assessing claims. Furthermore, experts like ECRE, explain that the importance of a link between the asylum seeker and the country of eventual relocation is of foremost importance. Nonetheless, the interest of current national and European political parties in this topic is very low (Schiavone, 2018). ECRE’s ((c), 2018) main concern is also that the Proposal represents a deterioration of the rights of refugees and asylum-seekers, and fails to address the fundamental dysfunctions of the Regulation.

In February 2016, the Greens published “The Green Alternative to the Dublin System”, calling for a fair allocation of asylum seekers across the MS based on objective criteria: to empower EASO, that included mutual recognition of asylum decisions, and a system built around the existing ties and preferences of asylum seekers towards MS. The Greens (2016) also advocated for specific procedural guarantees for unaccompanied minors.

The Greens (2016) warned the Proposal risked repeating the core failures of the current Regulation, such as the use of coercion, which has two deleterious costs: one for the MS and a second humanitarian cost for the asylum seekers. The Greens (2016) placed importance on acknowledging the preferences of asylum seekers; claiming this would enhance a positive prospect for integration, and arguing that the consent of a person to move voluntary to a MS would prevent him or her from secondary movement (or migration).

Tubakovic, argued that the Proposal adopts a timid approach when tackling the issues of secondary movement and the lack of solidarity among MS:

“Firstly, the added provision allowing member states to sanction asylum seekers reveals a more coercive trend in EU asylum policy and does not necessarily address the reasons why asylum seekers choose to move. Secondly, this rule is only effective if the asylum seeker has been registered. It does not

resolve the main contributing factor of secondary movement, the avoidance of registration in first entry countries.” (Tubakovic, 2017, p. 4)

According to Hruschka (2016), the Proposal does not offer a solution, lacks innovation, and keeps intact a system of national asylum systems, without common standards. Italy and Bulgaria hold a position against the Proposal (Magnani, 2018); nevertheless, there is no clear plan of another option proposed by the Italian government.

The main challenge is to find agreement on the Regulation reform. The Bulgarian presidency (January – June 2018) aimed to achieve progress in finding political consensus on the CEAS reform and the Regulation specifically. However, during the same six-month duration of his presidency, the Hungarian government announced that it would propose alternative amendments to the Regulation, based on security, a strict expulsion policy, and rejection of any kind of mandatory admittance quota (Atanassov, 2019). Despite all the presidencies, which have been alternating since the Proposal in 2016, have promised to work on finding political consensus, their work has been unsuccessful (Atanassov, 2019).

The current Romanian presidency states that the issue of migration and reforms of the Regulation remains in focus. But, given the difficulties in making any major progress on the Regulation reform in the short term, the current Romanian presidency has decided to concentrate on pushing for the other asylum reform files before the EP elections of 2019 (Atanassov, 2019).

ECRE ((b), 2018) reminds us that although the Council agreed to continue the work on the Proposal, there is no agreed-upon deadline. These comments highlight the need to factor in which MS is leading the presidency.

## **Future options**

The current situation does not seem favourable to a fast solution and an easy approval of the Proposal. This section of the article aims to present realistic future possibilities. These can be summarized in two options for the short-term scenario: maintaining the status quo or accepting, eventually with changes, the Proposal of 2016.

## **Maintain status quo**

It seems realistic that the Regulation in its current form, will continue to be overlooked. Currently a number of MS, often in Eastern Europe, refuse to apply it (AIDA, 2019). Other MS like Germany decided to put the Regulation on hold and to allow asylum seekers to enter Germany and be processed there, without considering the country of first arrival. Some administrative arrangements have been also developed, which will be addressed in full later.

It is also necessary to mention that in the absence of reforms the MS, a system of ad hoc burden (or responsibility) sharing among (some) EU countries has emerged. 14 member states, at this stage, have expressed their agreement with the Franco-German document, which establishes the “solidarity mechanism” for allocating asylum-seekers across the EU (Zalan, 2019).

Currently, countries such as Italy or Malta will (usually) only carry out rescue operations, or let boats carrying migrants enter their ports, after an agreement on their redistribution has been reached (which now regularly seems to be the case).

Furthermore, several MS have chosen not to relocate asylum seekers who had their fingerprints taken in Greece; as a measure of support for the Hellenic country, which has experienced an influx of asylum seekers and has not been able to cope administratively with the situation.

However, these interpretations and implementations of the Regulations and adaptations towards dealing with large numbers of asylum seekers by individual MS remain the exception. It seems realistic to maintain the status quo even though the Regulation is not always implemented.

## **Brexit and Dublin Regulation**

When considering the option of maintaining the status quo, it is important to examine the UK’s situation. Brexit has overlooked the debate about the CEAS and more in particular about the Dublin System. With Brexit, the UK has lost its position in the rule-making process. The UK had already opted out from several common directives in this field. However, the British have always supported the Dublin system. If the UK leaves without a deal, it will lose its right to transfer asylum seekers who have been fingerprinted in other MS and will also lose access to Eurodac.<sup>36</sup> According to Bilgic (2019), this could lead to an increase in irregular arrivals and only a deal could maintain the status quo or a less drastic transition. The UK has limited options on this issue. In case of a no deal, the UK could negotiate bilateral agreements with separate MS, and non-EU MS (Bilgic, 2019). However, negotiations will take time and will not necessarily prevent irregular arrivals. The UK could either increase its naval presence in the Channel or consider an arrangement similar to the one between EU and Norway, Switzerland, Iceland and Lichtenstein, which implies the States are members of the Dublin system and automatically also of the Schengen area.

## **Accept Commission Proposal**

The second option is for the Council and the EP to vote in favour of the Proposal. So far, the negotiations have been very slow, and only the EP was able to make its

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<sup>36</sup> It is an informatics system, which collects compares and transmits the fingerprints of asylum seekers (EMN, 2014).

opinion public. The reform as proposed affects not only the Regulation, but also the whole CEAS, which consists of another three directives and one Regulation. However, this is not the only reason making an eventual approval of this proposal unlikely. The main challenge is to satisfy all MS whose interests are so diverse that reaching a compromise seems quite difficult. As Schiavone (2018) affirms, the Italian and the Hungarian political scenes do not incentivize the adoption of this proposal; his opinion is that several important points of the Proposal, such as the criterion of genuine link with a particular MS, will be excluded.

MS could accept the Proposal with the EP modifications, published in the report of the LIBE Commission in 2017, in the so-called Wikström report. The EP has made deep changes to the hierarchy of responsibility criteria establishing the responsible MS by: (1) introducing academic and professional qualifications as relevant criteria; (2) deleting irregular entry, visa waived entry and applications at airports and transit zones; and (3) introducing an allocation mechanism between MS as the fall-back criterion in the Regulation (Aida, 2017). The main amendments proposed by the EP (2017) are the following:

1. Abandonment of the criterion of first entry and the adoption of a quota system assigned to each State based on GDP and population (% of the total number of applications submitted). The main difference with the original Proposal is that this criterion will be adopted without any need of phases. The application must be presented in the country of first entry. This State verifies the existence of a wide range of “effective links” between the applicant and a MS, like family members and relatives, prior stays, possession of educational or professional qualifications, presence of a sponsor. Therefore, MS will receive applicants who have links with their community, and all this, within the limits of their quotas. If an applicant lacks connections, then he can choose between the four countries most distant from the fulfilment of his quota. If the declared bonds prove to be non-existent, the person will be allocated by the system to the State which is less “virtuous” with respect to its quota.
2. Legal access to EU from third countries – for example, through the UNHCR’s intervention – should be facilitated.
3. The Dublin transfers, which are against human rights, have to be stopped.
4. Particular attention to minors, especially if unaccompanied. The EP proposes to strengthen the rules in the best interest of the child: the major guarantees for the appointment of a legal guardian, no forced transfers, the country where it is located must take charge of the child’s vulnerable condition, and lastly for each transfer, there is the need for an evaluation by a multidisciplinary team and prior appointment of a guardian in the destination country.
5. The State of first entry will have to carry out a security check through national and European databases. The costs of reception in the identification phase of the competent State and the transfer will be covered by the EU budget Transfers and will be carried out by the European Asylum Agency. Moreover, it proposes

a three-year transition period for MS with less experience, and strong penalties for non-cooperative states: reduction of European funds.

Progin-Theuerkauf (2017) states that there is no real added value of the Dublin IV Proposal: “On the contrary: It would rather add to the existing problems, as it will not be able to encourage Member States to commit to more solidarity among each other and to a better treatment of asylum seekers. It is hard to imagine that such an instrument will find consensus in the Council and the Parliament. But: Some elements of the proposal might survive the ongoing negotiations. And these could still cause enough harm to the already weak position of migrants in Europe.”

Although the EP presented these changes, the Council’s position is still ambiguous. The latter is the most complicated to achieve due to the competing national interests.

### **Other alternatives**

In case no agreement can be achieved, a third option to consider would be a new Dublin proposal. This would mean a restart of negotiations from zero. This option is realistic because there have been major critics of the Dublin system and the Proposal (as the Proposal does not really change the basic principles of the Regulation). There is a general agreement that the principle, which needs to be achieved, is: to share responsibilities among the EU because migration cannot be the problem only of the countries on the front line.

The negotiations of the Proposal of 2016 are ongoing. The Proposal has not yet been discussed within the Council, for this reason, the probability to restart negotiations from zero is quite low. However, the option of new negotiations does not have to be excluded.

What would a new proposal look like? There have been interesting ideas coming from different actors. The following sections introduce some of those ideas that could completely abolish the Regulation.

### **Free Choice**

SVR suggests implementing the option of free choice. This is also advocated by several NGOs like the German ProAsyl (2015), which asks for the abolishment of Art. 13 of the (EU) Nr. 604/2013 (Dublin III-Regulation).

ProAsyl (2015) highlights several reasons why asylum seekers choose to apply in one particular MS. They increasingly seek protection where refugees have already been accepted based on their cultural and national origins. This results in a network structure and it facilitates integration. Moreover, immigration societies are perceived as welcoming and therefore attractive to those seeking protection.

The necessary social and political conditions cannot be assumed to be the same in all MS. Until 1989, the Eastern European MS had no organized tradition of migration

and refugee reception. Even a quarter-century later, these MS are still not capable of handling or answering the refugee question, particularly compared to the level of development with the Central European Member States. This is particularly evident in the treatment of refugees and violation of human rights in Bulgaria, Romania and Hungary. The southern European Member States such as Greece, Italy and Spain, initially understood themselves to be classic transit states and did not have to establish refugee reception structures until 1997 (years in which the Dublin system was introduced for the first time). ProAsyl (2015) argues that a distribution of refugees among the MS, without incorporating the necessary transformation processes in the southern and eastern European member states, is at the expense of the refugees and runs counter to the integration goal of the European Union.

Finally, ProAsyl (2015) has concluded that free choice is a valid alternative to the current system, and proposes a system of quotas similar to what the Commission has proposed. It has also been proposed that refugees and beneficiaries of subsidiary protection should be granted free movement immediately after granting status, and mutual recognition of MS status decisions in the area of refugee law and subsidiary protection should be granted.

### **Administrative arrangements between MS**

The inefficiency of Dublin III and the unsuccessfully negotiations of Dublin IV have led some MS to sign bilateral agreements in the attempt of solving the problem of responsibility. As of 2019, Germany is the leader of these “administrative arrangements”. The establishment of these agreements with other MS was caused by the conflict with the interior minister and the German Chancellor. (ECRE (d), 2018) The Commission has not given any official statement about these arrangements. Germany signed such agreements with Spain, Greece and Portugal. Some of these agreements bypass the Dublin system, in order to implement fast transfers.

The agreement signed with Portugal foresees shorter time limits for replying to incoming Dublin requests: one month instead of three to “take charge” of requests, and “as soon as possible” to “take back” requests. ECRE ((d), 2018) considers the agreement signed with Greece more problematic, allegedly due to legal and political concerns. The reasons are the following: Germany is undermining the rule of law in general; the more MS try to find bilateral solutions, the less the EU will be likely to achieve a European reform. The first legal concern is that people who entered Greece and have been fingerprinted there and have expressed the will to apply for international protection in Germany, will be denied entry. ECRE ((d), 2018) reminds that the refusal of entry to people who applied for asylum in other MS goes against the Regulation and the Schengen Borders Code. The second concern is that there are procedural safeguards prior to the transfer, which have to be guaranteed, but these are nullified with the German-Greek arrangement.

Third, the German-Greek arrangement sees asylum seekers who have been transferred as subsequent applicants in the country they were transferred to. This can be a problem since the Regulation Art. 18(2) clearly allows such applicants to re-access the asylum procedure without considering their claim as a subsequent application. The problem is that subsequent applications often imply less rights (ECRE, ((d), 2018). Moreover, ECRE ((d), 2018) is concerned about the constraints of human rights, which have to be safeguarded, and it reminds that the case law of the ECtHR and CJEU prohibits the transfer of asylum seekers in MS where the person would face a risk of inhuman or degrading treatment.

The introduction of such arrangements can be interpreted as a threat to a common solution, but also as an attempt from the MS to find efficient instruments to overcome the inadequacies of the Dublin system.

These arrangements are implemented in the scenario of maintaining the status quo. However, should these types of arrangements increase, this could eventually lead to a complete replacement of the Regulation.

### **Enlarge the Dublin system to countries outside the EU**

The International Organisation of Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR) suggest there is the need for the establishment of an arrangement like the Dublin Regulation between coastal States on both sides of the Mediterranean. This option would involve actors of the EU and of third countries. The IOM-UNHCR Proposal to the European Union for a Regional Cooperative Arrangement Ensuring Predictable Disembarkation and Subsequent Processing of Persons Rescued at Sea (IOM, 2018) presents a broad framework covering all steps in the procedure from disembarkation to the return of failed asylum seekers (ECRE (e), 2018).

The key problem with this proposal is the instability and the precarious state of human rights in the neighbouring countries to the EU. ECRE ((e), 2018) realistically states that this is not really an option, considering the lack of an asylum system in North Africa. However, this should not be completely excluded in a future long-term scenario. As the EU has already shown, it has big interests in trying to solve the problems related to migration in third countries.

The Expert Council of German Foundations on Integration and Migration<sup>37</sup> (SVR, 2018) is in favour of changes and more solidarity among the MS. The only options SVR sees for Europe, in order to avoid renationalisation and a legislative stalemate are:

1. Dublin Plus, which corresponds to the Commission proposal. It maintains the Dublin principle and it adds corrective solidarity mechanisms;

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37 Der Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR)



2. fair quotas; when an applicant lacks links to none of the MS, the person will be allocated to a MS according to fair quotas. This option corresponds to the EP proposal;
3. free choice: as the name suggests the asylum seeker has the free choice to select the MS in which he or she is willing to apply for asylum. This responsibility would be shared through financial compensation; this option is strongly promoted by NGOs.

## Conclusion

This paper extends our knowledge of Dublin and its future possible development. It has differentiated between short- and long-term scenarios. The first option is the maintenance of the status quo, with a special eye on the UK; the second option is the acceptance of the Proposal. It is likely that the Proposal will be modified according to the position paper of the EP and the position of the Council.

The long-term projections mean there could be a completely new proposal, which according to experts, would revamp the principle of Dublin. These options are summarised in three scenarios, however other developments are not excluded. The first option is the implementation of free choice; the second is the increase of bilateral agreements between MS; and the third, proposed by IOM (2018) and UNHCR, is to enlarge the Dublin system to non-EU countries.

Finally, a myriad of other important factors needs to be considered. MS continue to see asylum seekers only as “objects of state acts”, and not as persons holding rights (Mouzourakis, 2014). National interests lead the negotiations and do not allow to achieve an efficient solution to manage CEAS and to make it function.

The future of the Regulation remains unknown and full of questions. It is likely that the future scenario is the adoption of the Proposal after an extended period of negotiation. The main concern is whether the changes proposed by the EP will be accepted. However, as highlighted in this paper, the Proposal still maintains several weaknesses, and does not revamp the Regulation as is required in reality.

Therefore, a key policy priority should be to plan a long-term agreement on the Dublin mechanism and more in general on CEAS.

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## Chapter Twelve

# EU Integration and Policy (In)coherence towards Irregular Migration

**Nadia Petroni**

### **Abstract**

Irregular migration in the European Union (EU) dominates the current EU political agenda. It is also the top concern of European citizens, according to the latest Standard Eurobarometer (Spring 2019).<sup>38</sup> EU member states, however, are not affected to the same degree, resulting in political friction with regard to how to deal with the challenges of this phenomenon. Furthermore, the EU's failure to provide an adequate and unitary response to the unprecedented influx of irregular migrants in 2015 exposed the strength of state sovereignty within member states and led to divisions within the EU so far as to threaten the overall functioning of the Schengen Area. As a result, the EU approach to irregular migration shows clear signs of following an intergovernmental logic of cooperation, where the supranational institutions have a lesser role leaving member states in the Justice and Home Affairs (JHA) Council in the driving seat. Nonetheless, there is an apparent paradox: EU institutions and member states are more divided than ever over a common approach to irregular migration, yet at the same time they are increasingly converging towards more restrictive migration policies.

### **Introduction: Contextualisation of the problem**

The issue of irregular migration currently dominates the European political agenda. It has been at the heart of recent election campaigns across the continent and has spilled into broader debates concerning the future of Europe. According to the Standard Eurobarometer of Spring 2019 (European Commission, 2019a), the phenomenon is perceived as the most crucial issue facing the EU. It is the top concern in twenty-one EU member states, reaching its highest scores in Malta (63 per cent), the Czech Republic, Estonia and Slovenia (all 53 per cent). Irregular migration, however, has played out differently in the regions of Northwestern, Southern, and Central-Eastern Europe, resulting in different approaches across the EU member states.

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<sup>38</sup> European Commission (2019a) Standard Eurobarometer 91: Public opinion in the European Union, p. 19.

Following the unprecedented influx of migrants in 2015, when over 1.8 million irregular migrants arrived in Europe (Frontex 2018, p. 8), the prevention of irregular migration has become one of the top EU policy priorities. Consequently, Europe experienced a ‘race to the bottom’, with most member states introducing a series of restrictive migration policy measures to deter irregular migration. At the same time, the question of how to deal with the phenomenon has become the most divisive issue within the EU, at both national and EU level.

The diverse policy approaches to the unparalleled influx of irregular migrants indeed created a divide among EU member states and institutions, drastically altering the landscape of European politics. In essence, the migration debate brought to the forefront questions concerning the resilience of the European integration project. Given the current situation, therefore, it is uncertain whether the EU will manage to rise to the challenge of irregular migration or risk fragmentation of the European project.

This chapter proceeds as follows. First, it discusses the difficulty in developing coherent migration policies, to deal with the challenge of irregular migration, due to the heterogeneous policy preferences of the EU member states and institutions. Then it examines the impact of the absence of solidarity and fair sharing of responsibility among member states on the EU approach to irregular migration. The final section summarises the chapter, and questions whether the EU will succeed in achieving policy coherence in this domain in the future.

### **Incoherence in the EU approach to irregular migration**

Since 1999, the EU has been working to develop a common EU migration policy (Peers et al., 2015). European cooperation in the area of irregular migration, however, has been neither unproblematic nor has it automatically translated into EU integration. This stems primarily from the fact that member states have jealously guarded their sole right to admit or exclude third country nationals from their respective territories.

EU member states’ reluctance to delegate decision-making in this sovereignty-sensitive policy domain beyond the national level has resulted in an ongoing tension over what should be handled at the supranational level, and what should remain in the domain of national governments (Givens, 2010). In consequence, member states have not yet succeeded in agreeing on clear political objectives for a common migration policy. Migration policy in the EU, therefore, remains a largely national endeavour, where member states continue to develop their own migration policies (Calleja Ragonesi, 2014).

In addition to member states’ unwillingness to transfer competences in the field of migration to the supranational level, the EU’s failure to articulate a coherent approach to irregular migration can be attributed to heterogeneous national policy preferences over how to deal with the phenomenon. In practice, varying political cultures and migration traditions, together with the asymmetrical distribution of irregular

migrants across EU member states, have shaped differing national preferences in the context of irregular migration (Ruhs, 2017). Hence, they explain the challenge in achieving policy coherence in this domain.

Initially a six-member bloc, by the mid-1990s the Union comprised fifteen member states, which, with the exception of the southern states, were prosperous and of a Northwestern European cultural trope. The accessions from 2004 onwards brought the number of member states to twenty-eight with most of the new members from Central and Eastern Europe with a post-communist past. This has made the Union much more heterogeneous, bringing new preferences and challenges, raising the question of whether it is possible to have a 'one size fits all' EU law (Chalmers et al., 2014). The date of EU accession is an important factor shaping member states' approaches to irregular migration. In essence, while most of the 'older' members have had years of experience with irregular migration, those member states that joined from 2004 onwards were faced with a relatively recent phenomenon to which they have had to adapt very rapidly.

Some of these states also became entry points for irregular migration and consequently more dependent on EU support for border control, while concurrently facing the social and political complications that arise from the phenomenon, such as informal employment (Carmel, 2013). EU member states' approaches to irregular migration also vary in the context of their geographical proximity to zones of instability and conflict. Indeed, one of the principal determinants influencing a member state's approach to irregular migration concerns geographic location.

Since the different regions of the EU experience different migratory pressures, this has a significant impact on the approaches of individual member states. For instance, the focus of destination states, such as Germany and Sweden, has been on secondary movements of irregular migrants. In contrast, frontline states, such as Italy and Greece, have long called for the abolishment of Dublin's 'first country of entry' rule, which places a burden on such states.<sup>39</sup> This has resulted in a situation where some member states, particularly those staggering under the weight of irregular migration, strive for a common policy governed by solidarity, while others far removed from the issue have little incentive to standardise policy and thus are less interested in pursuing long-term durable solutions.

Another major challenge in achieving policy coherence in this domain concerns the issue of variable geometry, which formally limits the ability of the EU to establish a common policy. More specifically, this relates to those member states that joined in the first enlargement of 1973: Denmark, Ireland and the UK. With the aim of safeguarding national sovereignty, these states have obtained 'opt-outs' from the area of freedom, security and justice (AFSJ) to avoid cooperation in the

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39 Another frontline state, Malta, faced migratory pressure following EU accession in 2004. See for example, Pace (2013) and Harwood (2014).



adoption of measures relating to Justice and Home Affairs (JHA) (Adler-Nissen, 2008). The unequal application of the processes of supranationalisation in the field of JHA, therefore, reveals the difficulty in developing a coherent policy to deal with irregular migration.

An additional obstacle, in the above context, concerns the costs attached to the granting of asylum. The possibility that irregular migrants may claim asylum appears to constitute the main barrier to cooperation in this field. According to the Organisation for Economic Co-operation and Development (OECD, 2017) estimates, the average cost for processing and accommodating asylum seekers within the EU is around 10,000 euro per asylum seeker for the first year. Accordingly, the major challenge stems from the fact that most member states perceive no benefits in cooperating in matters of irregular migration, hence the tendency to 'free-ride' at the expense of the frontline states.

In the absence of a coherent policy to deal with irregular migration, member states are increasingly pursuing unilateral measures, such as concluding bilateral agreements with third states, and building walls and fences along their borders to prevent irregular migration. There has also been a visible shift towards the tightening up of national asylum and migration policies in most member states, in an attempt to decrease the attractiveness of the respective member state for irregular migrants (Zanker, 2019). Such measures, however, do not reflect the Union's fundamental values, namely the principle of solidarity and fair sharing of responsibility.

Apart from the diverse policy approaches of the EU member states, the objectives of the three main institutions involved in EU legislation also differ, which explains the differences in their respective approaches to irregular migration. Nonetheless, following the unprecedented influx of irregular migrants in 2015, the Commission's stance changed significantly, from promoting the rights of asylum seekers to satisfying political interest in the Council. Likewise, the European Parliament (EP) appears to be 'going backwards' in terms of migrants' rights (Lopatin, 2013). As co-legislator, Parliament has often emphasised the need for a solidary approach to irregular migration; however, the rise of right-wing populist parties in the EP is influencing EU policy choices as support for mainstream political parties is on the wane (Lutz, 2019).

In recent years, the issue of irregular migration emerged at the centre of the debate in national elections across the EU, particularly since 2015, with right-wing populist parties gaining support in several member states. More importantly, the rise of right-wing populism is transforming member states' approaches to irregular migration. The case of Germany illustrates such a transformation. Known for its 'open-door' policy, enacted in August 2015, which allowed in over a million irregular migrants, it shifted course only the following month with Chancellor Merkel's U-turn leading to the reinstatement of border controls at the German-Austrian border. Merkel's change

in tone can be seen as a response to increasing public pressure against her ‘open-door’ policy (Dimitriadi et al., 2018).

Right-wing populist parties have made significant electoral gains across Europe, such as in Austria, Denmark, France, Germany and Italy. Some have taken office, while others have become the main opposition voice. In France, National Front<sup>40</sup> leader Marine Le Pen outpaced traditional centre-left and centre-right parties in the presidential elections of 2017, reaching the second and final election round, in which she received about a third of the votes cast. In the Netherlands, Geert Wilders’ Party of Freedom (PVV) came in second place in the national election of the same year. Meanwhile, the Alternative for Germany (AfD) shifted from being primarily neoliberal in focus to becoming an outspoken anti-immigrant populist party, receiving 12.6 per cent of the votes in the September 2017 federal elections, and becoming the first right-wing populist party to be represented in the German Bundestag since World War II. At the end of 2017, the coalition government formed by the centre-right Austrian People’s Party (ÖVP) and the far-right Freedom Party of Austria (FPÖ) resulted in the first western European state with a governing right-wing populist party (Ehmsen and Scharenberg, 2018). This continental shift towards right-wing populism also includes Italy, where the Five Star Movement (Movimento 5 Stelle) and the League (Lega) scored a major success in the March 2018 general elections, becoming coalition partners in the new government and the first populist government in Western Europe.<sup>41</sup>

The rise of the right-wing populist party, Sweden Democrats, in the 2018 elections in Sweden illustrates that this is Europe’s new normal. Since 2015, Sweden rapidly changed, from promoting one of the EU’s most open immigration policies to embracing one of its most restrictive, although it was thought to be immune from the trend to nationalistic politics (Ekman, 2018). Populist resentment towards irregular migration also played a crucial role in the victory of the pro-Brexit forces in the UK EU membership referendum, which took place on 23 June 2016 (Dinan et al., 2017).

In the aftermath of the mass influx of irregular migrants in 2015, most EU decisions taken to deal with the issue were approved at the meetings of the European Council, and taken in the Council, suggesting a shift towards intergovernmental policymaking as well as the bypassing of supranational institutions, exemplified by the 2016 EU-Turkey Statement. The controversial deal, which in practice closed all borders along the Western Balkan route, was agreed upon by EU leaders without the involvement of Parliament. The EU approach to irregular migration thus shows clear signs of following an intergovernmental logic of cooperation, where the supranational

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40 Renamed ‘National Rally’ (Rassemblement National, RN) on 1 June 2018.

41 The government, however, collapsed at the end of August 2019. At the beginning of September 2019 the Five Star Movement formed a government with the centre-left Democratic Party (Partito Democratico). Porro (2019) discusses the impact of the new coalition on Italy’s approach to irregular migration.

institutions have a lesser role leaving member states in the (JHA) Council in the driving seat.

The manifold approaches within the EU to irregular migration reveal an inherent tension in the development of a common policy. Above all, they reveal the inability of EU member states to act cohesively, particularly in the face of migration pressures. Nevertheless, EU actors all seem to support the same pragmatic strategy; that is, offering benefits, notably money, to third countries, in exchange for a reduction of irregular migration. Indeed, EU member states and institutions, are increasingly converging in the ‘fight against illegal migration’, resulting in a paradigm shift characterised by more restrictive policy prescriptions across Europe, involving strengthening the bloc’s external borders, and the externalisation of migration controls. The words of European Council President Donald Tusk, following the informal meeting in Salzburg in 2018, encapsulate the prevailing focus of the EU vis-à-vis irregular migration:

The migration debate showed that we may not agree on everything, but we agree on the main goal, which is stemming illegal migration to Europe.<sup>42</sup>

An apparent paradox thus emerges. Although the EU is more divided than ever over a common approach to irregular migration, it is united in preventing irregular arrivals. Indeed, Europe is more divided than ever over how to tackle the phenomenon, resulting in deadlocked inter-institutional negotiations on the reform of the Dublin Regulation (since 2016) and prolonged internal border controls (since 2015). However, when it is a question of the goal of preventing irregular migration, the EU tends to be surprisingly ‘united in diversity’.<sup>43</sup> Still, despite convergence in the tightening up of migration policies, EU member states and institutions have not managed to overcome their differences on fundamental aspects of EU integration, in particular concerning the principle of solidarity and fair sharing of responsibility.

### **Lack of solidarity and fair sharing of responsibility in the EU approach to irregular migration**

An inherent flaw in the EU approach to irregular migration is that it lacks a long-term comprehensive strategy involving sustainable, durable solutions, governed by the principle of solidarity and fair sharing of responsibility. In practice, the EU approach is characterised by short-term ad hoc initiatives and the absence of intra-EU solidarity. A good example here is the Commission’s 2015 emergency relocation mechanism to assist Italy and Greece (Carrera and Guild, 2015), which even so resulted in most member states failing to fulfil their obligations and relocate the figures they had committed to, revealing a lack of solidarity even in times of crisis.

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<sup>42</sup> Tusk quoted in European Council Press Release, 20 September 2018.

<sup>43</sup> ‘*In varietate concordia*’ is the official motto of the EU, adopted in 2000.

Lack of solidarity in this policy domain has resulted in a political deadlock since 2016 over reform of the Dublin Regulation, largely due to political controversy as regards the inclusion of a corrective allocation mechanism to fairly distribute migrants across EU member states and thus alleviate the pressure on frontline states (Di Filippo, 2016). So far, the only form of solidarity that has been institutionalised concerns the financial aspect, specifically through the Asylum Migration and Integration Fund (AMIF) which consists of a fixed amount per member state, in addition to a variable amount, for those member states requiring emergency assistance in the event of a mass influx of irregular migrants (EP, 2018).

The failure of European solidarity calls into question the resilience of the European integration project. Schengen, one of the major achievements of European integration, has been under huge stress since 2015, following the decision of some member states to ‘temporarily’ reinstate border controls – with the aim to prevent secondary movements of irregular migrants from neighbouring member states. Previously, this measure was primarily used in connection with large sporting events or high-level political meetings and usually carried out for only a few days or weeks. Member states justified the reintroduction of border control at their internal borders on account of the unprecedented and uncontrolled influx of irregular migrants and the risk related to organised crime and terrorist threats (Guild et al., 2015).

Germany was the first member state to implement such border controls, in September 2015, which led to the reintroduction of internal border controls in other member states, such as Austria, Sweden, France and Denmark. Although these measures were authorised by the EU, they were prolonged several times, and thus amount to a major and long-term restriction of the earlier state of integration. Internal border checks are set to expire on 12 November 2019, even though since 2017 the number of irregular arrivals dropped significantly owing to the implementation of the EU-Turkey Statement in March 2016 (European Commission, 2019b).

The reintroduction of border control, therefore, remains a prerogative of the member states. In addition, Schengen rules are strongly dominated by intergovernmental interests, reflected in the sustained unwillingness to lift internal border controls. This state of affairs raises questions concerning the absence of intra-EU solidarity and fair sharing of responsibility in the context of irregular migration, where precedence is given to national over common interests, and lack of mutual trust among member states is hindering progress towards a coherent policy. It also highlights that even those member states that were initially more liberal, namely Germany and Sweden, suspended Schengen rules in order to deter irregular migrants from entering their territory and encourage them to search for protection in other states. In addition to the reintroduction of ‘temporary’ border control at the internal borders within the Schengen area, other EU member states, such as Bulgaria, Hungary and Slovenia,

erected walls and fences along their internal borders to prevent the arrival of irregular migrants from other member states, resulting in further disunity within the EU.<sup>44</sup>

If there is one conclusion to be drawn with a relatively high level of certainty, it is that the long-term challenge of irregular migration requires more than the present ad hoc solutions based on compensatory economic solidarity. Moreover, as long as the principle of solidarity is voluntary, it will not work and hence will continue to pose a serious challenge in developing a coherent, long-term and comprehensive strategy to tackle the challenge of irregular migration. In the latter's absence, the risk is that the philosophy of each individual member state will prevail, resulting in the renationalisation of migration policies, permanent controls at the internal borders, and ultimately, the end of Schengen.

### **Conclusion: towards a coherent approach to irregular migration?**

This chapter examined the challenges related to developing a coherent policy towards irregular migration; a goal that has not yet been achieved. The issue of irregular migration dominates the current political agenda in Europe. It has been at the heart of recent election campaigns across the continent, resulting in the rise of right-wing populist parties and a decline in traditional mainstream political parties. It has also become Europe's most divisive issue due to discordant policy objectives with regard to how to deal with the phenomenon. Although at the time of writing irregular arrivals have dropped to pre-crisis levels, the issue remains highly controversial at both EU and national level. Given the circumstances, it is uncertain whether the EU will succeed in achieving policy coherence in this domain in the future.

The chapter illustrated that although the EU focus is increasingly on the prevention of irregular migration, the policy process in this sovereignty-sensitive field remains fragmented. In addition, it is marked by unilateral measures taken by individual member states to protect their domestic political interests against the perceived threats posed by irregular migration.

One of the major obstacles in formulating a coherent policy to deal with irregular migration concerns the variation in policy preferences across the EU. At the national level, policy approaches are deeply rooted in historical legacies as well as political, economic and social factors, including issues of religion and cultural identity. Moreover, the asymmetrical impact of irregular migration across EU member states, primarily the result of geographic location, has significantly influenced their respective approaches. At the EU level, discordance between the EU institutions' approaches reflects their respective objectives, even though following the influx of irregular migrants in 2015, the Commission and EP's stance changed significantly,

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<sup>44</sup> It is also important to point out that Spain erected fences in its enclaves Ceuta and Melilla on its borders with Morocco since 1993 to prevent irregular border crossings.

from promoting the rights of asylum seekers to satisfying political interest in the Council. These powerful cleavages thus make it harder to reach consensus in this policy domain.

Interestingly, since 2015, there has been some form of convergence in the EU approach to irregular migration, as EU member states and institutions are increasingly shifting their focus towards the 'fight against illegal migration' and the externalisation of migration controls. In other words, security-oriented measures have dominated, resulting in convergence towards more restrictive migration policies in order to prevent irregular migrants from reaching Europe. Nevertheless, it is important to point out that EU cooperation in this policy domain has not automatically translated into EU integration.

Indeed, despite visible convergence in restrictive migration policies, EU member states and institutions have not yet managed to overcome their differences on fundamental aspects of migration governance, in particular, the principle of solidarity and fair sharing of responsibility. The key challenge lies in the fact that those member states not located on the EU's external borders perceive no benefits in cooperating in matters of irregular migration. Hence, the tendency to 'free-ride' at the expense of the frontline states rather than cooperate in establishing a permanent burden-sharing mechanism to fairly distribute migrants across EU member states and alleviate the burden from such states. The absence of solidarity and fair sharing of responsibility within the EU has become a major barrier to policy coherence. So long as this principle will remain voluntary, it is most unlikely that EU member states will pull together and agree on a long-term solution.

Furthermore, the long-term challenge of irregular migration requires more than the present ad hoc solutions based on compensatory economic solidarity. Policy development has so far proven to be reactive rather than forward-looking. Particularly, since 2015, EU member states and institutions are increasingly opting for ad hoc policy solutions which operate outside legislative frameworks including intergovernmental agreements and soft policy approaches, exemplified by the EU-Turkey Statement, agreed upon by the heads of state or government of the EU member states and their Turkish counterparts. EU policymaking in this field thus shows clear signs of following an intergovernmental logic of cooperation where the supranational institutions have a lesser role leaving member states in the JHA Council in the driving seat.

The direction in which EU policy towards irregular migration will develop hence remains uncertain. Will the EU split further and pursue a policy strategy aimed exclusively at preventing irregular arrivals, or will it manage to find a way out of the current impasse and reform the Dublin Regulation in accordance with the principle of solidarity and fair sharing of responsibility? Taking into consideration the current political climate, the likelihood is that common positions will not be found in the near future. The development of a long-term comprehensive strategy will require

political will, mutual trust, and genuine solidarity. If undertaken successfully, however, these common efforts could re-energise European integration and have positive spillover effects in other policy areas.

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