STUDIA EUROPEJSKIE

STUDIES IN EUROPEAN AFFAIRS

Centre for Europe, University of Warsaw

Volume 27 • Number 3 • 2023

ISSN 1428-149X

CENTRE FOR EUROPE
UNIVERSITY OF WARSAW

STUDIA EUROPEJSKIE

STUDIES IN EUROPEAN AFFAIRS

Centre for Europe, University of Warsaw

Volume 27 • Number 3 • 2023

ISSN 1428-149X

Warsaw 2023

The Peer-reviewed Quarterly
"Studia Europejskie – Studies in European Affairs"
published by:
Centre for Europe, University of Warsaw
Al. Niepodległości 22, 02-653 Warszawa

Editor in Chief of the Quarterly:
Dr Artur Adamczyk

Deputy Editors in Chief:
Dr Małgorzata Pacek, *Professor Rafał Riedel*

Managing Editor:
Klaudiusz Kaleta

Language and stylistic correction:
Joanna Roderick, *Michael Roderick*

Technical correction:
Studio Poligraficzne Edytorka

ISSN 1428-149X
e-ISSN 2719-3780

Printing House:
Oficyna Wydawnicza ASPRA-JR
e-mail: sekretariat@aspra.pl
www.aspra.pl

Publication co-financed by Ministry of Education and Science

Table of Contents

ARTICLES

CENTRE FOR EUROPE UNIVERSITY OF WARSAW

ARTICLES

DOI: 10.33067/SE.3.2023.1

Jeronim Dorotić⋆

Towards the Empowerment of Culture: The EU's Response to Recent Crises Through Its Cultural Policy and Beyond

Abstract

Given that culture through cultural policies at all levels of governance has the potential to mitigate crises, the main aim of this paper is to indicate that the EU, through its recent actions (i.e. initiatives, measures, and projects) – and within the limits of its competences – is steadily moving in a direction to utilise the potential of culture in this regard mostly through its evolving cultural policy. This aim is achieved by applying qualitative methodology (i.e. a content analysis of relevant primary and secondary sources) in the following ways – firstly, the basic definitions of culture, cultural policies, and crisis are provided in order to eventually emphasise the growing recognition of the importance of culture in confronting crises according to recently published UNESCO and Council of Europe documents. Subsequently, after indicating the current course of the EU's cultural policy and its accentuated cross-sectoral dimension, what follows is a review and analysis of the relevant actions taken within the framework of the EU's cultural policy that are related to recent crises (i.e. the migrant crisis, the Coronavirus crisis, and the Ukraine crisis). In view of that, the results of this inquiry indicate that through its recent cultural actions – channelled mostly through its cultural policy – the EU is increasingly approaching culture as a valuable resource which has the potential to enhance resilience and recovery from crises in an EU context and beyond.

Keywords: Crisis, Culture, Cultural Policy, Cultural and Creative Sector, European Union

⋆**Jeronim Dorotić** – Catholic University of Croatia,
e-mail: jeronim.dorotic@unicath.hr, ORCID ID: 0009-0008-2657-181X.

Introductory Remarks: Crisis and Culture in an EU Context

The beginning of the process of European integration can be viewed as a response to crises caused by the tragic events of the two World Wars during the first half of the last century. Likewise, ever since it started, and up to the present day, the European project has been faced with numerous, challenging crises – e.g., from French president de Gaulle's refusal to support European institutions during the so-called "empty chair crises" (1965–1966) until more recent crises such as the lack of a common EU response over the war in Iraq (2003), the Constitutional Treaty failure (2005), the Eurozone crisis (2009–2010), the migration crisis (2015), Brexit (2016), the Coronavirus crisis (2020–2023), and the Ukraine crisis (from 2022) – which were continuously forcing EU policy-makers to adjust the course of the European integration process according to often unpredictable internal and external conditions. For this reason, it is not surprising that, in recent times, topics dealing with crises in an EU context have been the focus of the relevant authors' attention. For instance, in this regard, Ross (2011) offered insightful views regarding the EU and its crises during the first decade of the 2000s from the perspective of EU officials and interest groups. Moreover, in light of the Eurozone crisis, Habermas (2012) proposed that the Union shall further evolve from an international community into a cosmopolitan community. In addition, Boin, Ekengren, Rhinard (2013) have shed more light on the EU's crisis management capacities to confront the Union's internal and external challenges. Subsequently, increasing interest on this subject matter has also been reflected in a number of publications dealing with more recent crises in the EU (e.g., Demetriou, 2015; Laffan, 2018; Castells, 2018; Riddervold, Trondal, Newsome, 2021). Indeed, due to the fact that "over the last decade, the EU has faced an unprecedented number of challenges on multiple fronts" (Riddervold, Trondal, Newsome, 2021, p. 4), it is not unexpected that since 2020, the European Commission has been publishing annual *Strategic Foresight Reports* as a response to past and potential upcoming challenges the EU has encountered and will be encountering (European Commission – Strategic Foresight, n.d.).

On the other hand, it is interesting to notice that since the beginning of the European project, EU institutions have been gradually fostering incremental actions within the cultural sphere at the European level, which, in due course, has resulted in introducing culture within the Treaty on European Union (TEU, 1993) and the subsequent development of the EU's cultural policy. Hence, the introduction of culture within

the primary EU legal framework indicates that EU policy-makers have signified that culture embodies important integrative and legitimating aspects necessary for the further development of the EU project. In this respect, the implications of the emerging EU cultural policy on the overall European integration process have been approached during the last 30 years from various academic viewpoints. In general, some of these approaches encompass critical observations regarding the use of culture by the EU policy-makers in their quest for the legitimacy of the EU project (Shore, 1993; 2000; 2006), including the corresponding inquiries regarding the role of the EU's cultural policy in the process of European identity-building (Sassatelli, 2002; 2007; 2009). Furthermore, with regard to other relevant inquiries in the corresponding field, it should also draw attention to insights provided regarding the process of the "Communitarisation" of the cultural sector at the EU level (Littoz-Monnet, 2007), including an analysis of further significant developments of the EU's cultural policy caused by the introduction of the European Commission's Communication Agenda for Culture in a Globalized World in 2007 (Naess, 2009). Likewise, increasing scholarly interest in different aspects of an evolving EU approach towards culture is further reflected in a number of publications in various fields ranging from legal, external relations, cultural diversity, and cultural heritage viewpoints (e.g., Craufurd Smith, 2004; Batora, Mokre, 2011; Psychogiopoulou, 2016; Jakubowski, Hausler, Fiorentini, 2019). Nevertheless, besides the mentioned corpus of literature, it is also important to signify that the European Commission has shown increasing interest in supporting research which has resulted in studies that have shed more light on the broader socio-economic impact of culture in the European context such as The Study on the Economy of Culture in Europe, i.e. the first study conducted with the aim of exploring the direct and indirect socio-economic effects of the cultural and creative sectors in Europe (KEA European Affairs, 2006), and The Impact of Culture on Creativity ,i.e. the study conducted with the aim to accentuate the role of culture-based creativity on innovation in a European context (KEA European Affairs, 2009).

However, and in accordance with said provided insights, it can be asserted that although there is an extensive body of research which deals separately with both – the impact of crises in the EU context and the implications of the EU's cultural policy on the overall European integration process – there is still a lack of inquiries which provide specific insights regarding the actual and/or potential role of the EU cultural policy in facing and overcoming crises. Nevertheless, there are several possible reasons which can explain why this is so. Namely, culture was introduced within

the primary EU legal framework 30 years ago as an instrument which, within the limits of the EU competences, only complements Member States' cultural policies. Moreover, inquiries which more closely examine the wide-ranging, socio-economic implications of culture in a European context are relatively new occurrence (e.g., KEA European Affairs, 2006; 2009). Last of all, the fact that relevant international organisations in the field of culture have recently started to more explicitly recognise the importance of culture in mitigating crises within their official documents (e.g., UNESCO, 2015; Council of Europe, 2022) further indicates why this topic should still be given more scholarly attention.

Therefore, given that culture through cultural policies at all levels of governance has potential to mitigate crises, the main aim of this paper is to indicate that the EU, through its recent actions (i.e. initiatives, measures, and projects) – and within the limits of its competences – is steadily moving in a direction to utilise the potential of culture in this regard mostly through its evolving cultural policy. Consequently, this aim will be achieved by applying the qualitative methodology (i.e. a content analysis of the relevant primary and secondary sources) in the following way: firstly, basic definitions of "culture", "cultural policies", and "crisis" will be provided in order to eventually emphasise the growing recognition of the importance of culture in confronting crises according to recently published UNESCO and Council of Europe (COE) documents. Subsequently, after indicating the current course of the EU's cultural policy and its accentuated cross-sectoral dimension, what follows is a review and analysis of the relevant actions taken mostly within the framework of the EU's cultural policy that are related to recent crises (i.e. the migrant crisis, the Coronavirus crisis, and the Ukraine crisis). This article's conclusion section will encompass some final remarks regarding the results of this inquiry.

Identifying the Potential of Culture in Confronting Crises

In order to emphasise the growing recognition of the importance of culture in facing and overcoming crises, it is first necessary to provide basic definitions of the concepts of "culture", "cultural policies", and "crisis". Accordingly, these views – which are aiming to draw attention to the fact that culture may be regarded as an important resource in confronting crises – will be further exemplified by referring to recent documents from the relevant international organisations active in the cultural field (i.e. UNESCO and COE) on the subject matter. Thus, with the aim of narrowing down wide-ranging conceptualisations of "culture",

it is adequate to provide its formal definition articulated within UNESCO's Universal Declaration on Cultural Diversity (2001) by which it is reaffirmed that "culture should be regarded as the set of distinctive spiritual, material, intellectual, and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs" (UNESCO, 2001). Moreover, in line with the abovementioned definition which encompasses both tangible and intangible dimensions of culture, it is important to stress that in a contemporary, globalised world, activities in the cultural field are mostly being articulated and implemented through cultural policies beyond a strictly national context, that is, by various stakeholders at all levels of governance (i.e. those of the local, national, regional, and international). In this regard, according to UNESCO's Convention for the Protection and Promotion of the Diversity of Cultural Expressions (2005), cultural policies refer to "those policies and measures relating to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed to have a direct effect on the cultural expressions of individuals or groups or societies, and including on the creation, production, dissemination, distribution of and access to cultural activities, goods, and services" (UNESCO, 2005). Correspondingly, in order to conceptualise why culture matters in times of crises, it is necessary to provide basic insights on the crisis concept. Therefore, from the broader perspective of social sciences, "crisis" can be articulated as a "serious threat to the basic structures or the fundamental values and norms of a system, which, under time pressure and highly uncertain circumstances, necessitates making vital decisions" (Rosenthal, Charles, 't Hart, 1989, p. 10; according to Boin, 't Hart, Kuipers, 2018, p. 24). Likewise, Boin (Boin, 't Hart, Kuipers, 2018, pp. 24–25), in their further elaboration of the aforementioned definition, placed emphasis on the notions of threat, uncertainty, and urgency as a three key components of the crisis concept. Specifically, according to same authors, threat represents one of the main features of crisis because "crises occur when core values or life-sustaining systems of a community come under threat" (Boin, 't Hart, Kuipers, 2018, p. 24). Furthermore, urgency constitutes an integral part of crisis because "threats that do not pose immediate problems (…) do not induce a widespread sense of crisis" (Boin, 't Hart, Kuipers, 2018, p. 25). Lastly, uncertainty complements threats and urgency as one of the key components of crisis since it "pertains both to the nature and the potential consequences of the threat" (Boin, 't Hart, Kuipers, 2018, p. 25). In line with the provided basic insights regarding the key concepts of this inquiry, it can be argued that, although not explicitly, UNESCO's

conceptualisations of culture and cultural policies are implicitly indicating that culture has potential power to confront crises. More precisely, the fact that culture beyond the tangible inseparably encompasses intangible and therefore subjective elements which are shaping both individual and collective realities points to the additional fact that the design of cultural policies at all levels of governance may play a powerful role in maintaining sustainable "lifestyles, ways of living together, value systems, traditions, and beliefs" (UNESCO, 2001) when these are confronted with challenging crises characterised by threats, uncertainties, and urgencies (Boin, 't Hart, Kuipers, 2018).

According to the provided views, it can be asserted that cultural policies designed and applied with an aim to mitigate crises may be regarded as valuable means for this purpose. Therefore, it is interesting to note that this intention has been recognised rather recently in the documents of international organisations such as UNESCO and COE whose actions and initiatives are making great impact on cultural polices at all levels of governance. Namely, in the Strategy for the Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict, it has been explicitly stated that "participation and access to culture and its living expressions, including intangible heritage can help strengthen people's resilience and sustain their efforts to live through and overcome crisis" (UNESCO, 2015, p. 3). Likewise, in the preamble of the COE's recent Recommendation on the Role of Culture, Cultural Heritage and Landscape in Helping to Address Global Challenges, the power of culture and creativity are put forth as forces capable of sparking "lateral and critical thinking (…) and hence [can] contribute to supporting a collective ambition at addressing global challenges and global co-operation, engaging young people, changing behaviour and thus furthering democracy and human rights" (Council of Europe, 2022). Additionally, in the same part of this document, it is also emphasised that culture, along with cultural heritage and landscape – as manifestations of culture – have value and potential "in helping to address global challenges (including democratic, economic, health, climate, and technological challenges, along with hardships due to social inequality and the loss of biodiversity) and enhance the quality of life in a constantly evolving society" (Council of Europe, 2022). Therefore, according to denoted views expressed within selected documents by both UNESCO and COE, it can be affirmed that culture can be viewed as a valuable resource which – if managed through well-designed, and therefore, crisis-resistant cultural policies – contains limited albeit potentially powerful characteristics to confront crises. In other words, these characteristics,

among many others, refer to the potential of the tangible and intangible dimensions of culture to enhance resilience and recovery from crises by fostering wellbeing, psychological stability, intercultural dialogue, critical thinking, as well as by promoting the democratic values and principles of sustainable development at all levels of governance. In this regard, the following contextualisation of the current course of the EU's cultural policy serves the purpose to highlight its recent developments which suggest that culture is increasingly perceived from the EU level as a powerful resource which fosters the European integration process, and as such has potential in dealing with the Union's internal and external challenges.

The Current Course of the EU Cultural Policy

Even though the European integration process started in the economic field (i.e. by establishing the European Coal and Steal Community (ECSC) in 1952, which evolved soon after into the European Economic Community (EEC) in 1958), it wasn't until the Treaty on European Union (TEU) entered into force in 1993 that the European project gained a more explicit, political dimension by transforming itself from a Community into a Union (McCormick, 2008). Nevertheless, since the 1970s, along with the political dimension, European institutions have also gradually started to put more emphasis on the importance and necessity to foster the cultural dimension of the European integration process through incremental actions within the sphere of culture at the European level. Moreover, this intention to accentuate the role of culture as an important, legitimating factor of the European integration process, as well as to provide a legal basis for further actions in the cultural field, was clearly articulated by introducing culture within the TEU (1993) as an area of competence where the Union complements the actions of its Member States – i.e. culture was explicitly introduced in Article 128 of the Treaty on European Union (TEU) in 1993, which was later renumbered in Article 151 of the Treaty of Amsterdam (TA) in 1997, and finally in Article 167 of the current Treaty on the Functioning of the European Union (TFEU) within the framework of the Lisbon Treaty (LT) in 2009. In due course, the corpus of the EU actions in the cultural sphere evolved into that which may be regarded as the EU's cultural policy (Obuljen, 2004; Sassatelli, 2009). In this respect, it should be added that the introduction of culture within the framework of Article 167 of the Treaty on the Functioning of the European Union (TFEU) indicates both internal and external aspects – as well as the cross-sectoral dimension – of the evolving EU cultural policy.

Namely, this can be further asserted by referring to the aforementioned Article 167 TFEU which, from one perspective, highlights the internal aspect of the EU's actions in the cultural sphere (i.e. the mediating role of the Union in the field of culture according to the principle of subsidiarity, in terms of supporting – and not imposing – cultural initiatives at the level of individual Member States, as well as by encouraging mutual cooperation between them in the cultural field); and which, from the other perspective, accentuates the external aspect of the EU's approach to culture (i.e. fostering cooperation between the Union and its Member States with third countries and any relevant international organisations in the area of culture).

Accordingly, since further developments of the evolving EU cultural policy are mostly initiated by the Union's soft law instruments (e.g., communications, conclusions, and resolutions), it should be emphasised that, among the most important initiatives in this regard, the European Commission's Communication Agenda for Culture in Globalized World (European Commission, 2007) stands out. Subsequently, this pivotal document – which has placed culture in the focus of EU policy-making – has paved the way towards the New European Agenda for Culture (European Commission, 2018a). However, besides the aforementioned central initiatives, further developments of the EU's cultural policy are also echoed in other EU documents – e.g., those concerning the EU's interrelated approach to culture, cultural heritage, and sustainable development such as Council conclusions on cultural heritage as a strategic resource for a sustainable Europe (Council of the European Union, 2014); Towards an integrated approach to cultural heritage for Europe (European Commission, 2014); and the Report on the cultural dimension of sustainable development in EU actions (European Commission, 2022a).

Furthermore, it should be noted that besides the internal aspect of the evolving EU cultural policy, the significance of its external aspect has been steadily accentuated ever since the Agenda for Culture in Globalized World was introduced; therefore indicating that culture constitutes an important element of the EU's international relations and its Foreign and Security Policy. Accordingly, this intention to accentuate the importance of the cultural component in the external relations of the Union was later on reflected in several EU official documents – e.g., Cultural Dimensions of the EU's External Actions (European Parliament, 2011); Towards an EU Strategy for International Cultural Relations (European Commission, 2016); and Council Conclusions on an EU Strategic Approach to International Cultural Relations and a Framework for Action (Council of the European Union, 2019) – signifying that the implementation of

cultural actions by the EU in the international context can be viewed as an application of soft power, i.e. "the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment" (Nye, 2008, p. 94). Interestingly, a recent EU document which explicitly recognises the potential role of cultural heritage in mitigating crises within the field of the EU's external relations actually refers to Council Conclusions on the EU's Approach to Cultural Heritage in Conflicts and Crises (Council of the European Union, 2021a).

Nevertheless, in order to further contextualise the latest EU approaches in the field of culture, it is necessary to provide basic insights concerning the current course of the EU's cultural policy by highlighting its recent significant developments. In this respect, it is important to emphasise the main objectives of the European Commission's New European Agenda for Culture (2018) (hereinafter – the New Agenda) and the main priorities of the latest Work Plan for Culture 2023–2026 (adopted by the Council of the European Union in 2022). In other words, the New Agenda – which builds upon the propositions of the previously-adopted Agenda for Culture in a Globalising World – specifies three strategic objectives with social, economic, and external dimensions that are determining the current course of the EU's cultural policy. More precisely, the social dimension of the New Agenda explicates that the current EU approach towards culture aims at "harnessing the power of culture and cultural diversity for social cohesion and well-being" (European Commission, 2018a, pp. 2–3). Likewise, the economic dimension signifies the EU's intention of "supporting culture-based creativity in education and innovation, and jobs and growth" (European Commission, 2018a, pp. 4–6). Lastly, the external dimension of the New Agenda indicates that the current EU approach towards culture is also oriented towards "strengthening international cultural relations" (European Commission, 2018a, pp. 6–8).

On the other hand, the current Work Plan for Culture 2023–2026 identifies four priority areas of the EU's actions in the field of culture which are among other factors articulated in light of "the ongoing Russian war against Ukraine" as well as by taking into account "the serious impact of the COVID-19 pandemic on society as a whole" (Council of the European Union, 2022, p. 1). Moreover, these four priorities refer to the areas which are evidently directed towards achieving the social, economic, and external objectives of the EU's cultural policy. Namely, the corresponding four priority areas have been articulated under the following titles: a) Artists and cultural professionals: empowering the cultural and creative sectors"; b) Culture for the people: enhancing cultural participation and the role of culture in society"; c) Culture for the planet: unleashing the power of

culture" and d) Culture for co-creative partnerships: strengthening the cultural dimension of EU external relations" (Council of the European Union, 2022, p. 2).

Correspondingly, in the context of this paper it is important to signify that one of the actions under the third priority area of the Work Plan for Culture 2023–2026 refers to "safeguarding heritage against natural and human-made disasters" (Council of the European Union, 2022, p. 9); whereas one of the actions under its fourth priority area refers to "preserving cultural heritage and empowering local CCS in Ukraine" (Council of the European Union, 2022, p. 10). In addition, and with the aim of providing a complete, albeit still-basic insight regarding the present course of the EU's cultural policy, it is important to point out its major initiatives. In this regard, one of the main instruments of the EU's cultural policy is the current Creative Europe Programme (2021–2027) which is divided into the three following strands that cover specific sectors: the culture strand (i.e. cultural and creative sectors), the media strand (i.e. the audiovisual sector) and the cross-sectoral strand (i.e. actions across all cultural and creative sectors) (Regulation (EU) 2021/818). Likewise, through the years, the EU has also introduced and successfully implemented numerous initiatives in the field of culture at the European level such as the European Capitals of Culture, the European Heritage Label, the European Year of Cultural Heritage 2018, and the New European Bauhaus initiatives. Also, along with the aforementioned initiatives, it is noteworthy that within the framework of the EU's cultural policy, numerous prizes are awarded for achievements accomplished in various cultural fields at the European level (Iskra, Renard, 2023).

In line with these insights, it can be affirmed that evolving EU approaches towards culture indicate that the Union's cultural policy contains both internal and external aspects – as well as the cross-sectoral dimension – by which EU policy-makers are aiming to foster an overall socio-economic development of the EU and advance its position in international affairs. Moreover, recently highlighted developments of the EU's cultural policy demonstrate that various areas of the EU's public policies inevitably contain a cultural component and, for that reason, it can be asserted that culture is perceived at the EU level of governance as an important resource which fosters the European integration process. Consequently, it is not surprising that the following review and analysis of the relevant actions related to recent crises within the framework of the EU's cultural policy and beyond also indicate that EU institutions are increasingly viewing culture as a valuable resource in confronting crises.

The EU's Response to Crises Through Culture: Reflections on Actions Related to Recent Crises Within the EU's Cultural Policy and Beyond

In light of the provided insights, what follows is a review and analysis of the EU's response to recent crises through its actions in the cultural field. More precisely, this aim will be achieved by referring to relevant actions taken mostly within the framework of the EU's cultural policy that are related to the migrant crisis, the Coronavirus crisis, and the Ukraine crisis.

Migrant Crisis

The migrant crisis which occurred in 2015 represents the first of the aforementioned crises that the Union has had to face recently. In this regard, the EU's response to this crisis through its actions in the field of culture is reflected and summarised in the Commission's Staff Working Document (2018) which supplements the previously-denoted New European Agenda for Culture (hereinafter – the New Agenda). Therefore, in the context of providing more details regarding the implementation of the first objective of the New Agenda (i.e. that which refers to harnessing the power of culture for social cohesion and well-being), in this document, special attention is placed on "integrating refugees and other migrants" (European Commission, 2018b, p. 5). Specifically, this intention is expressed by pointing to the fact that 12 projects with a budget of EUR 2.35 million were selected already in 2016 under the special call of *Creative Europe Programme* for refugee integration (European Commission, 2018b, p. 5). For illustration purposes, among the aforementioned were also projects such as the A Million Stories project (which, through various media, individual interviews of refugees and asylum seekers in Denmark, Sweden, Germany, and Greece were presented); a project titled REACT – Refugee Engagement and Integration through Community Theatre (which brought together refugees with local host communities in theatre performances); and the Voices of Solidarity project (which engaged refugees and their host communities in processional performances across Europe by using diverse media) (Lewis, Martin, 2017, pp. 16–17). Nevertheless, since only a limited number of projects were funded through a denoted call, "the Commission made cultural projects for migrant inclusion eligible under other EU programmes including the Asylum & Migration Integration Fund, a Rights, Equalities & Citizenship programme, Erasmus+, and Europe for Citizens", including the possibility for other

"relevant projects to be supported under the European Structural and Investment Funds, including in rural areas" (European Commission, 2018b, p. 5). Furthermore, within the corresponding Commission's Staff Working Document (2018), it is also mentioned that a report titled How Culture and the Arts can Promote Intercultural Dialogue in the Context of the Migratory and Refugee Crisis (European Commission, 2017) contains numerous recommendations which have been articulated whose aim is to have an impact and reach relevant policy-makers from the local to the EU level on the subject matter (European Commission, 2018b, p. 5). In addition, it is important to stress that the EU's response to migration challenges through actions in the field of culture was eventually clearly articulated within the new Creative Europe Programme (2021–2027) in the following narrative which indicates that the EU will remain committed to approaching current and possible future migration crises through its cultural initiatives:

"Culture is key to strengthening inclusive and cohesive communities. In the context of migration issues and integration challenges, culture plays a fundamental role in providing opportunities for intercultural dialogue and in integrating migrants and refugees, helping them to feel part of host societies, and in developing good relations between migrants and new communities" (Regulation (EU) 2021/818).

According to the provided insights, it can be asserted that within the framework of its competences in the cultural field, the EU has responded to the migrant crisis by providing funding to a series of projects under the Creative Europe Programme, which have contributed to intercultural dialogue, cultural diversity, and the integration of refugees into their host communities through various cultural practices across Europe. Likewise, a fact that cultural projects for migrant inclusion were eligible for funding under the other EU programs besides the Creative Europe Programme indicates that the European Commission is aware that many complexities caused by the migrant crisis can be tackled by cultural initiatives across a broad variety of EU policy fields. In this regard, the EU has demonstrated its clear stance that culture represents a valuable resource in encountering migration and integration challenges, as well as the fact that it has shown that the Union's cultural actions – channelled mostly through its cultural policy, can contribute in lessening any potentially negative effects of a migrant crisis.

Coronavirus Crisis

Soon after the breakout of the migration crisis, which was followed by Brexit (2016), the EU in 2020 had to face the unprecedented Coronavirus crisis; one of the most challenging moments in the history of European integration. For this reason, it is not surprising that EU institutions had to take numerous measures to lessen the negative effects of the pandemic in its cultural and creative sector (CCS), but also to enable its recovery. In view of this, it is important to point out that the CCS was one of the most affected sectors at the hands of the Coronavirus crisis, which is why the European Commission and the European Parliament reacted promptly to secure support for corresponding sectors within the new EU budget (2021–2027) and especially within its Recovery Instrument (i.e. Next Generation EU) (KEA European Affairs, 2020, p. 9). However, it should be noted that this reaction from those EU institutions is not unexpected since cultural and creative sectors and industries "account for between 4 and 7% of EU GDP and 8.7 million jobs in the EU" (European Parliament, 2021). Eventually, the overall support to the CCS within the new EU budget (2021–2027) has increased more than ever before. More precisely, this especially refers to almost EUR 2.4 billion in secured support for a new 2021–2027 Creative Europe Programme (adopted in May 2021) which represents an increase of 63% in comparison to the previous 2014–2020 period (European Commission, 2021). Likewise, the EU's response to the Coronavirus crisis is also manifested in providing support to the CCS through instruments that are potentially available to stakeholders in corresponding fields through Next Generation EU such as the Recovery and Resilience Facility, REACT-EU, Invest-EU, and the European Agricultural Fund for Rural Development (EAFRD) (Hamhuis, 2021).

Moreover, shortly after the new Creative Europe Programme entered into force, the Council of the European Union, in June 2021, delivered its Conclusions on the recovery, resilience and sustainability of the cultural and creative sectors in which it identified six priorities as a response to the pandemic. Specifically, these priorities aimed to: "Improve access to available funding", "Enhance the resilience of CCS professionals", "Further strengthen mobility and cooperation", "Expedite the digital and green transitions", "Improve knowledge and preparedness for future challenges", and "Take cultural scenes and local communities into account" (Council of the European Union, 2021b, pp. 5–7). Correspondingly, and in line with the aforementioned Conclusions, in October 2021, the European Parliament also delivered the Resolution on the situation of artists and

the cultural recovery in the EU by which it has further accentuated importance of revitalising the CCS in Europe due to the pandemic (European Parliament, 2021). In this respect, it can be underlined that the European Parliament (among other propositions) suggests the European Commission and the Member States "recognise the intrinsic value of culture, as well as the fundamental role of culture for society, its progress and our well-being, the economy and inclusiveness, and to translate this recognition into adequate and continuous financial and structural support" (European Parliament, 2021). Subsequently, it is important to signify that behind the aim to support the recovery of the CCS due to the pandemic, there is also a clear intention expressed in the following narrative of the EU policy-makers to empower the potential of culture in confronting possible future crises through new Creative Europe Programme and other relevant EU programs:

"It is important that the Programme addresses the structural challenges of Europe's cultural and creative sectors, which have been exacerbated by the COVID-19 pandemic. The Programme encompasses the fundamental role of European culture and media in citizens' well-being and in empowering them to take informed decisions. The Programme, together with other relevant Union funding programmes and Next Generation EU, should support the short-term recovery of the cultural and creative sectors, enhance their longer-term resilience and competitiveness in order to best address potential major crises in the future and accompany their digital and ecological transition" (Regulation (EU) 2021/818).

Subsequently, the provided insights indicate that through actions taken mostly within the framework of its cultural policy, the EU has recognised the importance of securing the recovery and long-term resilience of the cultural and creative sector due to the Coronavirus crisis, since this sector has proven that it plays an important role in maintaining and enhancing the overall socio-economic wellbeing of European citizens. Moreover, for these reasons, securing recovery and resilience of the CCS also indicates that, from the perspective of the EU policy-makers, culture represents a powerful resource with an ability to not just lessen the effects of unexpected crises, but also in preventing potential crises.

Ukraine Crisis

In February 2022 – at a time when the effects of the Coronavirus pandemic had started to lessen – the EU was unexpectedly faced with a Ukraine-based crisis concerning Russia's invasion of its sovereign

neighbour. In this regard, the Union expressed its immediate support and solidarity towards Ukraine, which was soon enough followed by the EU's support to Ukraine's cultural and creative sector. In view of that, and taking into account the relatively recent occurrence of the Ukraine crisis, it is adequate to refer mostly to official, European Commission web pages (among other corresponding pages), and sources in order to obtain any relevant information about the recent EU response to the Ukraine crisis through its actions in the cultural sphere. In general, this response refers to the EU providing support-based resources to Ukraine's CCS stakeholders as well as the Union's support for the protection of Ukraine's cultural heritage (European Commission, 2022b; European Commission, n.d.).

Therefore, in regard to the EU's support resources to Ukrainian artists and cultural and creative professionals and organisations, the European Commission, already in September 2022, opened a special call under the 2023 *Creative Europe* annual work programme which amounted to EUR 5 million. Moreover, Creative Europe's mobility action titled Culture Moves Europe – which supports mobility grants – has, since 2022, been open to Ukrainian artists and cultural professionals (European Commission, 2022b; European Commission, n.d.). Furthermore, corresponding EU funding opportunities also include support for non-translated Ukrainian books under the exceptional Creative Europe call during 2022–2023, i.e. the Circulation of European literary works (CREA-CULT-2023-LIT) (European Commission, n.d.). In addition, Ukrainian artists and cultural professionals also have the opportunity to engage in mobility exchanges within the EU4Culture programme (under the European Neighbourhood Instrument) which, since 2021, has supported the CCS through cultural co-operation among the Eastern Partnership countries (i.e. Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine) (European Commission, n.d.; Goethe Institute, 2023). Also, the platform titled Creatives Unite – launched as a response to the Coronavirus crisis in 2020 with an aim to encourage cooperation and the exchange of good practices between CCS stakeholders – represents yet another instrument co-funded by the EU (within the Creative FLIP Pilot project under the Creative Europe Programme) which provides information about initiatives and responses to the Ukraine crisis taken by representatives from the CCS and beyond (Creatives Unite, n.d., European Commission, 2022b; European Commission, n.d.). Likewise, it is worth noting that, in 2022, the Cultural Relations Platform (i.e. an EU project launched in 2020 under the Partnership Initiative which gathers cultural experts in the field of the EU's international cultural relations) published a report titled

Ukrainian Cultural Actors Mapping and Needs Assessment (Karnaukh, Kravchuk, 2022) one of whose aims was to shed more light on the needs of Ukrainian cultural stakeholders in the context of the war in Ukraine (European Commission, n.d.).

Nonetheless, the EU response to Ukraine crisis also includes support for the protection of Ukraine cultural heritage which has been provided through various initiatives. Namely, among such early initiatives launched already in 2022 is SUM – Save the Ukraine Monuments (initiated within the EU-funded 4CH Project that has been running since 2021 under the EU's research and innovation program named Horizon 2020) whose purpose is to duplicate the digital documentation of Ukraine's cultural heritage on safe servers in the EU (European Commission, 2022b; European Commission, n.d.; 4CH Project, n.d.). Similarly, a new social media campaign called #ARTvsWAR was initiated in 2022 by the European External Action Service (EEAS) in order to provide support to Ukrainian cultural heritage in times of war (European Commission, 2022b; European Union External Action, 2022). Moreover, among more recent corresponding EU initiatives is also the campaign #TogetherWeAreEurope initiated by the EU Delegation to Ukraine in support of Ukrainian culture and arts during the war (European Commission, n.d.; Delegation of the European Union to Ukraine, 2023). Lastly, it is also important to point out that in 2023 the European Commission fully funded the Creative Europe Desk in Ukraine (European Commission, 2023; European Commission, n.d.).

Accordingly, although the war in Ukraine occurred relatively recently, provided insights indicate that the EU's prompt response to this crisis reflects its genuine stand to provide support to Ukrainian CCS stakeholders as well as to provide support for the protection and eventual reconstruction of Ukraine's cultural heritage. Indeed, provided reflections regarding the EU's response to the Ukraine crisis through a number of cultural initiatives suggest that this support will gradually grow. However, according to the aforementioned initiatives, it is also evident that the EU's support resources to Ukraine's CCS are not provided strictly by the instruments available within the sphere of the EU's cultural policy (e.g., via the Creative Europe Programme), but also through various EU supporting mechanisms in other policy areas (e.g., within the EU's neighbourhood, foreign relations or research and innovation policies) which indicates that the EU is increasingly approaching culture as a cross-sectoral, policy-making field.

Conclusions

Given that culture through cultural policies at all levels of governance has the potential to mitigate crises, the main aim of this paper was to indicate that the EU, through its recent actions (i.e. initiatives, measures, and projects) – and within the limits of its competences – is steadily moving in a direction to utilise the potential of culture in this regard mostly through its evolving cultural policy. Accordingly, and by applying the qualitative methodology, the results of this inquiry affirm that through its recent cultural actions – channelled in general through its cultural policy – the EU is increasingly approaching culture as a valuable resource which has the potential to enhance resilience and recovery from crises in an EU context and beyond. In view of that, this paper indicates that from UNESCO's conceptual point of view, culture – if managed through crisis-resistant cultural policies – has the potential to confront crises. Apparently, this view springs from the awareness that culture, beyond the tangible, also inevitably encompasses the intangible dimension which is shaping individual and collective realities. Therefore, it can be asserted that culture – in the broadest sense of its meaning – contains a limited, but still not-fully-acknowledged potential to maintain the wellbeing of societies and their members when they are challenged with crises. Nonetheless, recent UNESCO (2015) and COE (2022) documents signify that the potential of culture in mitigating crises is gradually being recognised at the level of relevant international organisations in the cultural field. In a view of that, this paper further indicates that evolving EU approaches towards culture are reflected in the Union's evolving cultural policy which is characterised by both internal and external aspects, as well as by its cross-sectoral dimension – and as such, can be viewed as a valuable resource in fostering socio-economic wellbeing and advancing the external position of the EU. Therefore, provided reflections on cultural actions within the EU's cultural policy and beyond that are related to recent crises (i.e. the migration crisis, the Coronavirus crisis, and the Ukraine crisis) further confirm that, even though in a limited-yet-still-evolving manner, the EU is increasingly approaching culture as a valuable resource in meeting crises. In other words, the EU's response to recent crises through its cultural actions (e.g., by promoting intercultural dialogue in the context of the migration crisis, as well as by supporting the recovery and resilience of the cultural and creative sector due to the Coronavirus crisis's negative effects, and by providing prompt support to Ukrainian CCS stakeholders in the midst of a war), demonstrate that culture has been recognised at the EU level as an important resource which has multi-faceted potential

in dealing with the Union's internal and external challenges. Indeed, it can be expected that this potential will be recognised even more in the near future.

References

Batora, J. and Mokre, M. (eds.) (2011) *Culture and External Relations: Europe and Beyond*. Oxford, Ashgate. ISBN: 9781409411161.

Boin, A., 't Hart, P. and Kuipers, S. (2018) *The Crisis Approach* in Rodriguez, H., Donner, W. and Trainor, J.E. (eds.) *Handbook of disaster research* (2nd edition). Cham: Springer, pp. 23–38. DOI: https://doi.org/10.1007/978-3-319-63254-4_2.

Boin, R.A., Ekengren, M. and Rhinard, M. (2013) *The European Union as Crisis Manager: Patterns and Prospects*. Cambridge: Cambridge University Press. DOI: https://doi.org/10.1017/CBO9781139565400.

Castells, M. (ed.) (2018) *Europe's Crises*. Cambridge: Polity Press. ISBN: 978-1-509-52487-7.

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/c 202/01). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT (Access 10.05.2023).

Council of Europe (2022) Recommendation CM/Rec(2022)15 of the Committee of Ministers of the Council of Europe on the role of culture, cultural heritage and landscape to address global challenges, Turin 20.05.2022. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67952 (Access 5.05.2023).

Council of the European Union (2014) Council conclusions of 21 May 2014 on cultural heritage as a strategic resource for a sustainable Europe, OJ C 183, 14.06.2014, pp. 36–38. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XG0614%2808%29 (Access 20.07.2023).

Council of the European Union (2019) Council conclusions on an EU strategic approach to international cultural relations and a framework for action, OJ C 192, 7.06.2019, pp. 6–10. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019XG0607%2801%29 (Access 20.08.2023).

Council of the European Union (2021a) Council Conclusions on EU Approach to Cultural Heritage in conflicts and crises (doc. 9837/21). Available at: https://data.consilium.europa.eu/doc/document/ST-9837-2021-INIT/en/pdf (Access 20.07.2023).

Council of the European Union (2021b) Council conclusions on the recovery, resilience and sustainability of the cultural and creative sectors, OJ C 209, 2.06.2021, pp. 3–9. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XG0602(01) (Access 6.05.2023).

Council of the European Union (2022) Council Resolution on the EU Work Plan for Culture 2023–2026, OJ C 466, 07.12.2022, pp. 1–18. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022G1207(01) (Access 5.05.2023).

Craufurd Smith, R. (ed.) (2004) *Culture and European Union Law*. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/acprof:oso/9780199275472.001.0001.

Creatives Unite (n.d.). *About Creatives Unite*. Available at: https://creativesunite.eu/ (Access 25.08.2023).

Delegation of the European Union to Ukraine (2023) "Together, we preserve. Together, we create": new communication campaign on EU support for Ukrainian culture and art in wartime launched. Available at: https://www.eeas.europa.eu/delegations/ukraine/together-we-preserve-together-we-create-new-communication-campaign-eu-support_en (Access 25.08.2023).

Demetriou, K.N. (ed.) (2015) *The European Union in Crisis: Explorations in Representation and Democratic Legitimacy*. Switzerland: Springer. DOI: https://doi.org/10.1007/978-3-319-08774-0.

European Commision (n.d.) European support to Ukraine's cultural and creative sectors. European Commission. Directorate-General for Education, Youth, Sport and Culture. Available at: https://culture.ec.europa.eu/european-support-to-ukraines-cultural-and-creative-sectors (Access 25.08.2023).

European Commission – Strategic Foresight (n.d.) Strategic foresight. European Commission. Directorate-General for Communication. Available at: https://commission.europa.eu/strategy-and-policy/strategic-planning/strategic-foresight_en (Access 17.08.2023).

European Commission (2014) Towards an integrated approach to cultural heritage for Europe (COM/2014/0477 final). Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52014DC0477 (Access 20.08.2023).

European Commission (2016) Towards an EU strategy for international cultural relations (JOIN/2016/029 final). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2016%3A29%3AFIN (Access 20.08.2023).

European Commission (2017) How culture and the arts can promote intercultural dialogue in the context of the migratory and refugee crisis: Report with case studies, by the working group of EU Member States' experts on intercultural dialogue in the context of the migratory and refugee crisis under the open method of coordination. European Commission, Directorate-General for Education, Youth, Sport and Culture. Publications Office. DOI: https://data.europa.eu/doi/10.2766/468525.

European Commission (2018a) A New European Agenda for Culture (COM/2018/267 final). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0267 (Access 6.05.2023).

European Commission (2018b) Commission Staff Working Document. A New European Agenda for Culture – Background Information (SWD(2018) 167 final). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018SC0167 (Access 6.05.2023).

European Commission (2021) Creative Europe: Over €2 billion to support the recovery, resilience and diversity of cultural and creative sectors. European Commission – Press release. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2587 (Access 5.06.2023).

European Commission (2022a) Report on the cultural dimension of sustainable development in EU actions (COM/2022/709 final). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0709 (Access 20.08.2023).

European Commission (2022b) EU supports Ukraine through culture. European Commission. Directorate-General for Education, Youth, Sport and Culture. Available at: https://culture.ec.europa.eu/news/eu-supports-ukraine-through-culture (Access 7.06.2023).

European Commission (2023) Commission to fully fund the Creative Europe Desk in Ukraine. European Commission. Directorate-General for Education, Youth, Sport and Culture. Available at: https://culture.ec.europa.eu/news/commission-to-fully-fund-the-creative-europe-desk-in-ukraine (Access 25.08.2023).

European Parliament (2011) European Parliament resolution of 12 May 2011 on the cultural dimensions of the EU's external actions (2010/2161(INI)). Available at: https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:52011IP0239 (Access 20.08.2023).

European Parliament (2021) European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU (2020/2261(INI)), pp. 88–98. Available at: https://eur-lex.europa.

eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021IP0430 (Access 7.06.2023).

European Union External Action (2022) #ARTvsWAR. European Union External Action. The Diplomatic Service of the European Union. Available at: https://www.eeas.europa.eu/eeas/artvswar_en (Access 25.08.2023).

Goethe Institute (2023) *Fostering culture in the Eastern Partnership countries. EU4Culture*. Goethe Institute. Available at: https://www.goethe.de/ins/ge/de/kul/sup/e4c.html (Access 25.08.2023).

Habermas, J. (2012) *The Crisis of the European Union: A Response*. Cambridge: Polity. ISBN: 978-0-745-66242-8.

Hamhuis, S. (2021) *How to benefit from the NextGenerationEU Recovery Plan if you work in culture. KEA European Affairs*. Available at: https://keanet.eu/opinions/nextgenerationeu-recovery-plan-if-you-work-in-culture/ (Access 25.05.2023).

Iskra, K.A. and Renard, O.Y.A. (2023) *Culture. Fact Sheets on the European Union*. European Parliament. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/137/culture (Access 20.04.2023).

Jakubowski, A., Hausler, K. and Fiorentini, F. (eds.) (2019) *Cultural heritage in the European Union: A critical Inquiry Into Law and Policy*. Leiden: Brill Nijhoff. ISBN: 978-90-04-36533-9. DOI: https://doi.org/10.1163/9789004365346.

Karnaukh, A. and Kravchuk, K. (2022) *Ukrainian Cultural Actors Mapping and Needs Assessment*. Kyiv: Cultural Relations Platform. Available at: https://uploads-ssl.webflow.com/62a1db362f4c742516937d9f/63bd3e72e586a8d3974f54cc_2022_11_Ukraine-Latest-Report-1.pdf (Access 25.08.2023).

KEA European Affairs (2006) *The economy of culture in Europe. Study prepared for the European Commission (Directorate-General for Education and Culture)*. Brussels: European Commission DG5. Available at: https://ec.europa.eu/assets/eac/culture/library/studies/cultural-economy_en.pdf (Access 17.08.2023).

KEA European Affairs (2009) *The impact of culture on creativity. Study prepared for the European Commission (Directorate-General for Education and Culture)*. Brussels: KEA European Affairs. Available at: https://keanet.eu/wp-content/uploads/2019/09/impactculturecreativityfull.pdf (Access 17.08.2023).

KEA European Affairs (2020) *The Impact of the COVID-19 Pandemic on the Cultural and Creative Sector. Report for the Council of Europe*. Brussels: KEA. Available at: https://keanet.eu/wp-content/uploads/Impact-of-COVID-19-pandemic-on-CCS_COE-KEA_26062020.pdf.pdf (Access 22.06.2023).

Laffan, B. (ed.) (2018) *Europe's Union in Crisis: Tested and Contested* (1st ed.). Routledge. DOI: https://doi.org/10.4324/9781315175461.

Lewis, R. and Martin, P. (2017) *Research for CULT Committee – EU funding for cultural work with refugees: towards the next programme generation*. Brussels: European Parliament, Policy Department for Structural and Cohesion Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2017/602005/IPOL_IDA(2017)602005_EN.pdf (Access 23.08.2023).

Littoz-Monnet, A. (2007) *The European Union and Culture: Between Economic Regulation and European Cultural Policy*. Manchester University Press. DOI: https://doi.org/10.7228/manchester/9780719074356.001.0001.

McCormick, J. (2008) *Understanding the European Union: A Concise Introduction (4th edition)*. Basingstoke: Palgrave Macmillan. ISBN: 978-0-2302-0102-6.

Naess, H.E. (2009) *A New Agenda? The European Union and Cultural Policy*. London: Alliance Publishing Trust. ISBN: 0955880432.

Nye, J.S., Jr. (2008) "Public Diplomacy and Soft Power", *The Annals of the American Academy of Political and Social Science*. Vol. 616, pp. 94–109. DOI: https://doi.org/10.1177/0002716207311699.

Obuljen, N. (2004) *Why We Need European Cultural Policies: The Impact of EU Enlargement on Cultural Policies in Transition Countries*. Amsterdam: European Cultural Foundation. ISBN: 10-90-6282-046-8.

Psychogiopoulou, E. (ed.) (2016) *Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe*. London: Palgrave Macmillan. DOI: https://doi.org/10.1057/9781137453754.

Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, OJ L 189, 28.05.2021, pp. 34–60. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0818&qid=1689578897490 (Access 10.05.2023).

Riddervold, M., Trondal, J. and Newsome, A. (2021) *European Union Crisis: An Introduction* in Riddervold, M., Trondal, J. and Newsome, A. (eds.) *The Palgrave Handbook of EU Crises*. Cham: Palgrave Macmillan, pp. 3–47. DOI: https://doi.org/10.1007/978-3-030-51791-5_1.

Ross, G. (2011) *The European Union and its Crises: Through the Eyes of the Brussels' Elite*. New York, NY: Palgrave Macmillan. DOI: https://doi.org/10.1057/9780230343306.

Sassatelli, M. (2002) "Imagined Europe: The Shaping of a European Cultural Identity Through EU Cultural Policy", *European*

Journal of Social Theory. Vol. 5, pp. 435–451. DOI: https://doi.org/10.1177/136843102760513848.

Sassatelli, M. (2007) "The Arts, the State, and the EU: Cultural Policy in the Making of Europe", *Social Analysis*. Vol. 51, pp. 28–41. DOI: https://doi.org/10.3167/sa.2007.510103.

Sassatelli, M. (2009) *Becoming Europeans: Cultural Identity and Cultural Policies*. Basingstoke: Palgrave Macmillan. DOI: https://doi.org/10.1057/9780230250437.

Shore, C. (1993) "Inventing the People's Europe: Critical Approaches to European Community Cultural Policy". *Man.* Vol. 28(4), pp. 779–800. DOI: https://doi.org/10.2307/2803997.

Shore, C. (2000) *Building Europe: The Cultural Politics of European Integration*. London: Routledge. DOI: https://doi.org/10.4324/9781315008462.

Shore, C. (2006) "In uno plures (?) EU Cultural Policy and the Governance of Europe", *Cultural Analysis*. Vol. 5, pp. 7–26.

The 4CH Project (n.d.) *SUM – Save the Ukraine Monuments. The 4CH Project. Competence Centre for the Conservation of Cultural Heritage*. Available at: https://www.4ch-project.eu/ (Access 25.08.2023).

UNESCO (2001) *Universal Declaration on Cultural Diversity*. Paris. Available at: https://www.ohchr.org/sites/default/files/diversity.pdf (Access 15.06.2023).

UNESCO (2005) *Convention for the Protection and Promotion of the Diversity of Cultural Expressions*. Paris. Available at: https://www.unesco.org/creativity/en/2005-convention (Access 15.06.2023).

UNESCO (2015) *UNESCO General Conference, Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict (2 November 2015)*, UNESCO Doc 38/C/49, 38th session, Paris. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000235186 (Access 5.07.2023).

DOI: 10.33067/SE.3.2023.2

Sylwia K. Mazur⋆

Too Little, Too Slow – An Analysis of 2022's Developments in the EU's Migration and Asylum Policy

Abstract

Migration and asylum are two of the most challenging issues in Europe. With every crisis, new shortcomings are exposed. However, actions taken by the European Union and its Member States have proven that common migration and asylum policy remains a distant goal. In the presented paper, the author analyses developments in the European Union migration and asylum policy of 2022, stating that, despite the momentum caused by the support given to Ukrainians with temporary protection, hopes for comprehensive asylum and migration policy reform should be toned down, despite the end of the legislative period looming on the horizon.

Keywords: European Union, Migration Policy, Asylum, Crisis, Temporary Protection

Introduction

The European Union and its Member States entered 2022 with fresh memories of a crisis on the border between Poland and Belarus. In February of that year, Russia's unprovoked invasion on Ukraine forced 8 million people to flee their homes and triggered – for the first time in the history of the European Union – the Temporary Protection Directive (Council Directive, 2001). In June 2022, at least 27 migrants and asylum seekers lost their lives attempting to enter Melilla, Spain. Spain pushed

⋆ **Sylwia K. Mazur** – Catholic University of Portugal, e-mail: smazur@ucp.pt, ORCID ID: 0000-0002-9596-0797.

for irregular migration to be considered a hybrid threat on NATO's roadmap.

The issue of migration also affects the enlargement process (e.g. no progress on Kosovo visa liberalisation was made) which is considered a "geostrategic investment in peace stability, security, and economic growth" (European Commission, 2021) and creates internal divisions. After fifteen years of membership in the EU, Bulgaria and Romania were not admitted into the Schengen Area, being vetoed on the basis of security risks caused by illegal migration. Internally, France and Italy found themselves in a diplomatic spat over the disembarkation of a migrant rescue ship named Ocean Viking, and OLAF reported that Frontex routinely covered up pushbacks by the Greek coastguard.

Migration and asylum policies are shared competences between the EU and its Member States. Pursuant to Article 79 of the Treaty on the Functioning of the European Union (TFEU), the Union "shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows", ensure the fair treatment of third country nationals residing in Member States, and enhance measures to prevent illegal immigration and trafficking. In this area, the Treaty of Lisbon not only introduced the ordinary legislative procedure, but also underlined the principle of solidarity between EU countries. Regarding protection for people fleeing persecution or serious harm in a country of origin, since 1999 the EU has been developing the Common European Asylum System (CEAS), a policy framework aimed at guaranteeing harmonised, uniform standards for third-country nationals seeking international protection in the EU. As a compensatory measure developed to balance open borders and freedom of movement, CEAS emphasises a fair and harmonised asylum procedure in examining cases, irrespective of the Member State where the application is lodged (European Commission, 2016).

In recent years, the EU responded to multiple migratory pressures, but available instruments have not sufficiently addressed challenges that force the EU to respond with emergency measures. Despite an almost tangible need for a comprehensive reform as exposed by the mentioned permacrisis, progress is slow. The European Council was expected to adopt strategic guidelines for an area of freedom, security, and justice in spring 2020. Three years later, those guidelines, crucial to legislative and operational planning, remain absent. Progress on the New Pact on Migration and Asylum – which according to the European Commission (2020b) should be a "fresh start" for migration and asylum – remains sluggish. Member States working on their own or in small groups, e.g. the "big four" (Italy, Spain, France and Germany), MED5 (Italy, Spain,

Greece, Malta and Cyprus), or the Austro-Serbo-Hungarian trio alliance against "asylum tourism" will not be able to deal with future conflict-induced crises, pressures caused by climate change, or factors such as the instrumentalisation of migration.

In the presented paper, and in their analysing of developments in the European Union migration and asylum policy in 2022, the author argues that despite momentum triggered by the maiden launch of temporary protection granted to Ukrainians and the political agreement on a Joint Roadmap on the CEAS and the New Pact on Migration and Asylum signed in September 2022, the EU is nowhere near a comprehensive reform of its asylum and migration policy, therefore hopes for such reform – not only expressed by the NGO's representatives, but also by EU Commissioner Vera Jourova (Zachová, 2022) – should be toned down. With approaching European Parliament elections, chances to introduce legislative and non-legislative instruments proposed by the European Commission under the abovementioned New Pact on Migration and Asylum umbrella are dwindling. However, migration and asylum policy in the EU has been far from static, as has been confirmed by 2022's developments. In this paper, following the introduction, developments in four areas of the EU migration and asylum policy will be analysed. This analysis relies on legal acts (and the proposals of such), related literature in law and politics, and policy documents and reports.

Too Quiet on the Solidarity Front…

Despite its relative success in securing external borders, along with developing cooperation with third countries and curbing irregular arrivals, the European Union cannot recover from a solidarity crisis that accompanied migratory pressure in 2015/16. One would assume that with principle of solidarity enshrined in Article 80 of the TFEU, failure of the emergency relocation mechanism (Council Decision, 2015), including Hungary and Slovakia turning to the Court of Justice of the EU to annul the Decision establishing the second relocation scheme; and the European Commission's emphasis on solidarity and responsibility as pillars of the previously mentioned 2020 Pact on Migration and Asylum, more would have been achieved in 2022. However, the Dublin system based on the "first country of entry criterion" is standing still with slow progress on the Proposal for a Regulation on Asylum and Migration Management (2020). To rub salt into the wound, proposed rules on responsibility allocation remain akin to the current Dublin system (European Parliament, 2021; ECRE 2021).

After the 2015/16 crisis, different solidarity schemes were presented (e.g. Malta Declaration from 2019 or voluntary relocation scheme for unaccompanied minors and vulnerable asylum seekers), but it was under the French Presidency (with the support of Germany) when the Declaration of Solidarity (2022) was signed by 21 states (eighteen Member States and three Schengen associated states). The Voluntary Solidarity Mechanism introduced by the declaration allowed for the voluntary relocation of over 8,289 asylum seekers from five frontal states and offered financial contributions to those states. Although the VSM was presented as a gradual step toward permanent relocation mechanisms enshrined in the proposed Pact on Migration and Asylum from the beginning, the fact that the solidarity scheme was again temporary and non-legislative raised doubts over the willingness of Member States to share responsibility for providing protection to those in need. Also, the Czech Republic, which took over the Presidency of the European Union Council from France, presented its version of a solidarity scheme with "flexible responsibility" at its core. Despite its flaws (ECRE, 2023, p. 7), it has to be recognised that this time, the proposal incorporated a mandatory solidarity contribution.

However, the proposal for the Asylum and Migration Management Regulation (2020) which is a part of the New Pact on Migration and Asylum includes only "half-compulsory" solidarity instead of a binding mechanism allowing for the fair distribution of asylum seekers among all Member States, protracting unsuccessful attempts to introduce an equitable burden-sharing mechanism within the EU (Noll, 2000, p. 285–311), and which will undoubtedly be one point of contention between Member States if work on the draft is resumed. Commitment to conclude the reform of the asylum system by March 2024 might fall short, since Italy's position that "mandatory relocations must be the heart of any solidarity mechanism" (Non paper, 2023, p. 3) is unacceptable for other Member States, thereby broadening the gap between frontline states and those unaffected directly by migratory pressures.

Finally, a solidarity crisis is also reflected in the fact that solidarity within the EU concerns inter-Member-State relations, completely ignoring solidarity with those who are in need of international protection. With, however, one exception…

Temporary Protection Directive – An Overdue Premiere

Temporary protection is a well-established notion in international refugee law (UNHCR, 2012), some even considered it a customary

international law (Perluss and Hartman, 1986). The lack of a common temporary scheme at the European level was a serious regulatory challenge, becoming especially noticeable during the war in the Former Yugoslavia (Kerber, 1999, p. 35). After protracted policy debates throughout the 1990s, the Temporary Protection Directive was introduced at the beginning of the century. This so-called "off-the-shelf" measure allows asylum seekers to avoid the cumbersome asylum process and/or prevents them from falling into irregular status. Simultaneously, it alleviates migratory pressure on asylum systems of Member States by waving the need of processing individual applications. Finally, it is perceived as an instrument of the solidarity between Member States (Thym, 2022). Despite all of this, it remained unused during previous migratory pressures in 2011 and 2015.

The Russian aggression on Ukraine forced 8 million people to flee Ukraine and internally displaced over 5 million people (UNHCR, 2023). On 4th March 2022, the European Council unanimously adopted a decision establishing the existence of a mass influx of displaced persons fleeing Ukraine (Council of the EU, 2022) and acted by, for the first time in history, activating the TPD. Under the Directive and Decision, temporary protection was granted to multiple categories of persons. With the Operational Guidelines (2022), the European Commission underlined that the directive allows for an extension of temporary protection to additional categories of displaced persons, specifically those who are displaced for the same reasons and from the same country or region of origin. Both the Council and the Commission have to be notified immediately in such cases.

The scheme on offer to protect those leaving Ukraine is quite generous. Firstly, Ukrainian citizens with biometric passports (and other third-country nationals exempted from the short-stay visa requirement) have been able to move freely within the EU once admitted to EU territory, a move called "an unexpected renaissance of 'free choice'" (Thym, 2022). It allows those citizens to not only to choose preferred Member State where they enjoy rights attached to temporary protection, but also to join family and friends already present in the EU. Secondly, no threshold regarding indiscriminate violence in Ukraine was set. Thirdly, people enjoying temporary protection can apply for international protection at any time. If refused, they should be able to continue to enjoy temporary protection. Finally, the European Commission called for Member States to allow Ukrainians with expired documents to consider them as evidence of the identity or residence status of the person concerned (Operational Guidelines, 2022, p. 5).

Despite strong approval for this admission, dubbed "the most appropriate instrument under the current exceptional circumstances" (EPRS, 2022, p. 1), a "smart and pragmatic response" (Thym, 2022) and a "politically apt" move (Rasche, 2022, p. 1); and assurance by Vice-President of the European Commission Margaritis Schinas that "skin colour is not a criterion for EU policy" (EPRS, 2022, p. 9), the EU Commissioner for Home Affairs, Ylva Johansson, stated that it is unlikely to activate TPD again for those who arrive via the Mediterranean Sea route (Vasques, 2022), with a high probability of wholehearted solidarity with Ukrainians as a single-use measure.

Continuous Externalisation With All Eyes on Africa

Externalisation is an umbrella concept "encompassing any migration control measure affecting refugees undertaken either unilaterally or multilaterally, either extraterritorially or with extraterritorial effects" (Tan, 2021, p. 8). The external dimension of EU policy is a notion which has been developing since the 1990s. The list of so-called "outsourced" practices with various states is quite long and includes financial and operational assistance, training, and support in capacity building on migration management and border protection, among others. All of them require cooperation with countries of origin and transit, amplifying relations with African states. As diplomatically put by Rwandan President Paul Kagame and Greek Prime Minister Kyriakos Mitsotakis, both continents "share challenges related to their most valuable asset: human capital" (2022).

During the long-awaited EU-Africa Summit, which took place at the beginning of the year, European and African leaders promised a "new spirit" for the EU-African partnership. Paradoxically, in terms of migration, the post-summit declaration focused on "preventing irregular migration, enhancing cooperation against smuggling and trafficking in human beings, supporting strengthened border management, and achieving effective improvements on return, readmission and reintegration" (Joint Vision, 2022, p. 5). Durable solutions for asylum seekers and legal pathways were, unsurprisingly, vague. The EU's pivot to Africa seems to be full of low points, but that did not prevent individual frontline Member States from working on or sustaining bilateral agreements with African states. In November 2022, Austrian Chancellor Karl Nehammer hosted a lunch with the ambassadors of fourteen African states to discuss the fight against illegal migration, including readmission agreements. Italy, disappointed by the relocation outcome, called for the creation of redistribution hubs

in third countries which would allow entry to Europe to only those who have the right to do so. Those who do not qualify would be sent back to their home countries (Pascale, 2022).

Italy's proposal was not the only one resembling the idea of disembarkation centres which would be responsible for the first screening of asylum applications (European Commission, 2018). In September 2022, Denmark, with Rwanda, announced a "joint ambition" to collaborate on asylum by creating an asylum system centre in an African state. This process is built on an amendment introduced in June 2021 to Denmark's Alien Act. According to Amnesty International, Rwanda should not be considered a safe country for transferred asylum seekers.

To sum up, the externalisation is criticised as: a constraint on the movement of people needing international protection who often do not have any options but to move irregularly; a factor accelerating the imbalance in protection responsibilities; and an element undermining the EU's soft power (ECRE, 2021b, p. 1). Additionally, the "outsourcing" of migration activities raises questions on the derivative responsibility of the Member States under international law when third-country counterparts are violating human rights through their push backs or the abolition of the non-refoulement principle. In addition, seemingly neutral training sessions and capacity building programs could potentially fall under the scope of Article 16 of ARSIWA (2001). Despite that, the European Commission announced, while introducing the New Pact on Migration and Asylum, that "the EU will seek to promote tailor-made and mutually beneficial partnerships with third countries", ignoring the fact that states with which the EU would like to partner, do not see migration as a priority (ECRE, 2021b, p. 2).

The European Union Agency for Asylum In, the European Asylum Support Office Out; FRONTEX Still Standing

One of the most visible changes to the EU migration and asylum policy after the 2015/16 crisis is undoubtedly the evolution of European migration agencies, with some even calling the phenomena *agencification* (Fernández-Rojo, 2021, p. 1). The European Asylum Support Office (EASO), established in 2010, provides the necessary tools to help Member States prepare for migratory pression and an influx of asylum applications connected with it, and implement EU legislation on the ground. At the beginning of 2022, it was replaced by the European Union Agency for Asylum (EUAA). This new agency is responsible for

improving the functioning of the Common European Asylum System by providing enhanced operational and technical assistance to Member States and bringing more consistency to the assessment of applications for international protection. The ultimate goal of the Agency is to achieve a harmonisation of asylum practices in Member States. This Malta-based agency is less controversial than Frontex or the European Border and Coast Guard Agency.

In 2020, the European Anti-Fraud Office released a report on serious misbehaviour of Frontex employees during operational activities in Greece. The report sets out eight cases of illegal acts and cover ups by staff, including witnessing pushbacks of boats seeking to make protection claims in Greece and failing to file incident reports of various violations of fundamental rights (OLAF, 2021). Frontex has claimed that "these were practices of the past" (Frontex, 2022). Moreover, originally the level of controversy was increased by the lack of public disclosure of the report which had only be presented to selected members of the Civil Liberties, Justice, and Home Affairs' Parliamentary Committee.

Despite patterns of fundamental rights violations and the "sheer breadth, volume, and seriousness of these findings" (Strik, 2023), Frontex is set to grow by 2027 to 10,000 staff monitoring the EU's external borders. Frontex will also enhance its border management cooperation with four Western Balkan States, and be given a mandate to "assist those countries to manage migration flows, counter illegal migration, and tackle border crossing crime" by exercising executive powers such as border checks and registrations (Council of the EU, 2022b). It is a clear sign that, from 2019, when the first joint operation on the territory of a non-EU country was concluded, the EU is working on blocking migration beyond its borders.

Conclusions

In the area of immigration and asylum policy, the European Union and its Member States opt for a set of voluntary, *ad hoc* solutions, full of contradictions and a diminishing rights-based approach instead of a sturdy and efficient framework. Despite triggering the TPD, which was a "very positive step to ensuring solidarity and compassion towards those who are suffering and in need of protection" (CEPS, 2022, p. 32), the past year has not brought forth any answers regarding the solidarity mechanism (permanent vs. temporary; rigid vs. flexible; expressed solely in mandatory relocation and/or in financial aid). The TPD itself is not the metaphorical silver bullet for a multifaceted challenge (Savino and Gatta, 2022). With a recorded 330,000 irregular border crossings in 2022

(the highest since 2016) and the low return rate of 22%, migration will be increasingly integrated into security frameworks, amplifying Frontex's role and focus on relations with countries of origin and transit, which, for now, seems to be the only issue that Member States tend to agree on.

Steps taken by Brussels and European capitals proved that, due to the lack of viable solutions, the situation in the European Union amounts to what in organisational theory is described as "organised hypocrisy" (Brunsson, 1986). The EU continues to decouple its principles and values (albeit rooted in law) from its actions, unleashing the "organised hypocrisy" (Lavenex, 2018). Despite the fact that the central Mediterranean route remains the world's deadliest, with around 26,000 deaths and disappearances (IOM, 2022) to its name, and an increased number of deaths recorded on the sea migration routes leading to Spain where deaths in 2021 were 103% higher than in 2020 (Caminando Fronteras, 2022), the EU is, surprisingly, lacking even basic legislation on search and rescue activities by private entities, which number has increased significantly in recent years (Rantos, 2022, para. 3).

References

6th European Union – African Union Summit: A Joint Vision for 2030. Available at: https://www.consilium.europa.eu/media/54412/final_declaration-en.pdf (Access 13.08.2023).

Brunsson, N. (1986) "Organizing for Inconsistencies: On Organizational Conflict, Depression and Hypocrisy as Substitutes for Action", *Scandinavian Journal of Management Studies*. Vol. 2, No. 3/4, pp. 165–185. DOI: 10.1016/0281-7527(86)90014-9.

Caminando Frontereas (2022) *Monitoreo del Derecho a la Vida – Año 2021*. Available at: https://caminandofronteras.org/monitoreo/monitoreo-del-derecho-a-la-vida-2021/ (Access 13.08.2023).

Carnegie Europe (2022) *Judy Asks: Is Migration Europe's Achilles Heel?* Available at: https://carnegieeurope.eu/strategiceurope/88486 (Access 13.08.2023).

Center for European Policy Studies (2022) *The EU grants temporary protection for people fleeing war in Ukraine*. Available at: https://www.ceps.eu/wp-content/uploads/2022/03/CEPS-PI2022-09_ASILE_EU-grants-temporary-protection-for-people-fleeing-war-in-Ukraine-1.pdf (Access 13.08.2023).

Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (2015) Official Journal of the European Union L 248/80,

22 September. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015D1601 (Access 13.08.2023).

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (2001), Official Journal L 212. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055 (Access 13.08.2023).

Council of the EU (2022) *Ukraine: Council unanimously introduces temporary protection for persons fleeing the war*. Available at: https://www.consilium.europa.eu/en/press/press-releases/2022/03/04/ukraine-council-introduces-temporary-protection-for-persons-fleeing-the-war/ (Access 13.08.2023).

Council of the EU (2022b) *Border management: Council authorises the opening of negotiations with four Western Balkans partners on Frontex cooperation*. Available at: https://www.consilium.europa.eu/en/press/press-releases/2022/11/18/border-management-council-authorises-the-opening-of-negotiations-with-four-western-balkans-partners-on-frontex-cooperation/ (Access 13.08.2023).

European Anti-Fraud Agency (2021) *OLAF Final Report on Frontex*. Available at: https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/ (Access 13.08.2023).

European Commission (2016) *Common European Asylum System*, 6.12.2015. Available at: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en (Access 13.08.2023).

European Commission (2018) *Managing migration: Commission expands on disembarkation and controlled centre concepts*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4629 (Access 13.08.2023).

European Commission (2020) *A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706 (Access 13.08.2023).

European Commission (2020b) *Communication from the Commission on a New Pact on Migration and Asylum*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609 (Access 13.08.2023).

European Commission (2021) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2021 Communication on EU Enlargement Policy*. Strasbourg, 19.10.2021. COM(2021) 644 final.

Available at: https://neighbourhood-enlargement.ec.europa.eu/2021-communication-eu-enlargement-policy_en (Access 13.08.2023).

European Commission (2022) *Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01, C/2022/1806*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022XC0321%2803%29&qid=1647940863274 (Access 13.08.2023).

European Council on Refugees and Exiles (2021) *ECRE Comments On The Commission Proposal For A Regulation On Asylum And Migration Management COM(2020) 610 2020/0279 (COD)*. Available at: https://ecre.org/wp-content/uploads/2021/03/ECRE-Comments-RAMM.pdf (Access 13.08.2023).

European Council on Refugees and Exiles (2021b) *Tightening the screw: use of EU external policies and funding for asylum and migration*. Available at: https://ecre.org/wp-content/uploads/2021/03/Policy-Note-34.pdf (Access 13.08.2023).

European Council on Refugees and Exiles (2023) *Solidarity: the eternal problem. Recent developments on solidarity in EU asylum policies: ECRE's analysis and recommendations*. Available at: https://ecre.org/wp-content/uploads/2023/01/Policy-Papers-09.pdf (Access 13.08.2023).

European Parliament (2021) *The European Commission's New Pact on Migration and Asylum – Horizontal substitute impact assessment*. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU(2021)694210_EN.pdf (Access 13.08.2023).

European Parliament (2022) *Fact Sheets on the European Union: Immigration Policy*. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/152/immigration-policy (Access 13.08.2023).

European Parliament Research Service (2022) *Briefing, Temporary Protection Directive*. Available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729331 (Access 13.08.2023).

Fernández-Rojo, D. (2021) *EU migration agencies*. Cheltenham: Edward Elgar Publishing Limited. DOI: https://doi.org/10.4337/9781839109348 (Access 13.08.2023).

French Presidency of the European Union Council (2022) *First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism*. Available at: https://wayback.archive-it.org/12090/20221120105510/https://presidence-francaise.consilium.europa.eu/en/news/first-step-in-the-gradual-implementation-

of-the-european-pact-on-migration-and-asylum-modus-operandi-of-a-voluntary-solidarity-mechanism-1/ (Access 13.08.2023).

Frontex (2022) *Statement of Frontex Executive Management following publication of OLAF report*. Available at: https://frontex.europa.eu/media-centre/news/news-release/statement-of-frontex-executive-management-following-publication-of-olaf-report-amARYy (Access 13.08.2023).

International Law Commission (2001) *Responsibility of States for Internationally Wrongful Acts*.

International Organisation for Migration, *Missing Migrants Project*. Available at: https://missingmigrants.iom.int/region/mediterranean (Access 13.08.2023).

Italian Non paper on Migration in view of the extraordinary European Council (2023) Available at: https://aeur.eu/f/587 (Access 13.08.2023).

Joined Cases C-14/21 and C-15/21 Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Capitaneria di Porto di Palermo (C-14/21) Ministero delle Infrastrutture e dei Trasporti and Capitaneria di Porto di Porto Empedocle (C-15/21) [2022] OJ C 424, Opinion of AG Rantos.

Kerber, K. (1999) "Temporary Protection in the European Union: A Chronology", *Georgetown Immigration Law Journal*. Vol. 14(1), p. 35–50.

Lavenex, S. (2018) "'Failing Forward' Towards Which Europe? Organized Hypocrisy in the Common European Asylum System", *Journal of Common Market Studies*. Vol. 56(5), pp. 1195-1212. DOI: 10.1111/jcms.12739.

Mitsotakis, K. and Kagame, P. (2022) *Investing in human capital is key to making migration benefit the EU and Africa*. Available at: https://www.euractiv.com/section/africa/opinion/investing-in-human-capital-is-key-to-making-migration-benefit-the-eu-and-africa/ (Access 13.08.2023).

Noll, G. (2000) *Negotiating Asylum*. The Hague: Wolters Kluwer. DOI: 10.1163/9789004461543.

Pascale, F. (2022) *Molteni (Lega): adesso l'Europa deve passare dalle parole ai fatti*. Available at: https://euractiv.it/section/futuro-delleuropa/interview/molteni-lega-leuropa-deve-passare-dalle-parole-ai-fatti/ (Access 13.08.2023).

Perluss, D., Hartman J.F. (1986) "Temporary Refuge: Emergence of a Customary Norm", *Virginia Journal of International Law*. Vol. 26(3), pp. 551–626.

Rasche, L. (2022) *Implementing Temporary Protection in the EU: From crisis response to long-term strategy*. Available at: https://www.delorscentre.eu/en/detail/publication/temporary-protection (Access 13.08.2023).

Savino, M. and Gatta, F.L. (2022) *On the Brink of a New Refugee Crisis*. Available at: https://verfassungsblog.de/on-the-brink-of-a-new-refugee-crisis/ (Access 13.08.2023).

Strik, T. (2023) *OLAF report shows yet again how Frontex systematically ignores human rights*. Available at: https://www.theparliamentmagazine.eu/news/article/olaf-report-frontex-mismanagement-human-rights (Access 13.08.2023).

Tan, N.F. (2021) "Conceptualising externalisation: still fit for purpose?", *Forced Migration Review*. Vol. 68, pp. 8–9.

Thym, D. (2022) Temporary Protection for Ukrainians. The Unexpected Renaissance of 'Free Choice'. Available at: https://verfassungsblog.de/temporary-protection-for-ukrainians/ (Access 13.08.2023).

United Nations High Commissioner for Refugees (2023) *One year after the Russian invasion, insecurity clouds return intentions of displaced Ukrainians.* Available at: https://www.unhcr.org/news/press/2023/2/63f78c0a4/unhcr-year-russian-invasion-insecurity-clouds-return-intentions-displaced.html (Access 13.08.2023).

Vasques, E. (2022) *No Temporary Protection Directive for Mediterranean crisis, Commissioner says*. Available at: https://www.euractiv.com/section/justice-home-affairs/news/no-temporary-protection-directive-for-mediterranean-crisis-commissioner-says/ (Access 13.08.2023).

Zachová, A. (2022) *Jourova: EU budget for Ukrainian refugees insufficient*. Availableat: https://www.euractiv.com/section/politics/short_news/jourova-eu-budget-for-ukrainian-refugees-insufficient/ (Access 13.08.2023).

DOI: 10.33067/SE.3.2023.3

Filip Tereszkiewicz[*]

Von der Leyen's European Commission's Vision of the EU's International Role as a Normative-Regulatory Power in the Digital Area for the 2019–2024 Period

Abstract

The aim of this paper is to examine whether the documents prepared by the European Commission (EC) under the leadership of Ursula von der Leyen are based on a coherent vision of the international role to be played by the EU in the digital area. It attempts to achieve this goal by referring to two concepts popular in the analysis of the international role of the EU: as a normative and regulatory power. The question posed is, To what extent does the European Commission want the EU to play the role of a normative or regulatory power on the international stage in the field of digital policy? To answer it, the author focuses on an analysis of von der Leyen's speeches and selected EC documents. Following Mayring, the author has used a method involving the qualitative content analysis of speeches and policy documents. The author tries to find signs that the EC wants the Union to play a role as a normative or regulatory power in the digital sphere. The study shows that the titular institution refers to these concepts in its documents. The Commission also assumes that the Union can play both roles simultaneously, thus strengthening its ability to influence third parties in the digital sphere. However, whether it does so intentionally or because it lacks a concrete vision of the EU's international role in the digital area remains unresolved.

Keywords: EU, European Commission, Ursula von der Leyen, Normative Power, Regulatory Power, International Role

[*] **Filip Tereszkiewicz** – University of Opole, e-mail: f.tereszkiewicz@gmail.com, ORCID ID: 0000-0001-8551-0250.

Introduction

The question of the EU's cyber actorness is significant because the common line taken in related literature is to criticise the EU for not being an effective cyber actor. Sliwinski, for example, argues that two major factors limit the EU; its intergovernmental character, and the lack of a collective vision on cyber-actorness with the EU and between Member States (Sliwinski, 2014, p. 468). Klimburg and Tirmaa-Klaar point out that within EU institutions, activity in the digital field has largely been approached in an *ad hoc* manner, with a number of different initiatives being executed by a number of different bodies, with only marginal coordination (Klimburg, Tirmaa-Klaar, 2011, p. 41). This inconsistency is due to the lack of a well-thought-out, long-term strategy in the digital field. However, there have been some developments in recent years. These have already been highlighted by Carrapico and Barrinha (2017), who have studied EU cohesion in the cyber area. They note that both the growing political importance attributed to cyber security and the gradual consolidation of the digital area mean that the EU may be moving towards more coherent action in this field. A similar view is taken by Christou, who notes that although Member States retain important national prerogatives in cyberspace, a "significant movement towards EU autonomy" in this area is evident, indicating the development of an EU digital policy (Christou, 2018, p. 17). It can be assumed that this process has accelerated with 2019's formation of the European Commission (EC) at the end of that year. Indeed, this EU institution, chaired by Ursula von der Leyen, has made the digital agenda one of its priorities (von der Leyen, 2019). The various documents and legal acts that have been prepared and adopted since then are evidence of the EU's growing activities in the digital field, including on the international stage. Given the above, it is worth examining whether the EC's documents are based on a coherent vision of the EU's international activity in the digital field. This study refers to two concepts popular in the analysis of the role of the European Union in the international environment and asks, To what extent does the European Commission want the EU to play the role of a normative or regulatory power on the international stage in the field of digital policy? The first concept has been chosen because some authors note that the EU in the digital field often refers to European values (Kurowska, 2019; Claessen, 2020). The second, on the other hand, explains the effectiveness of the EU in promoting its regulations and standards in the global economy (Wessels, 2015; Bendiek, Pander, 2019; Brandão, Camisão 2021). In political-science literature, the mentioned

concepts are usually analysed separately mainly because of the different areas: foreign and security policy and economic policy. However, in the case of digital policy, it makes sense to combine them, primarily because actions taken in this territory affect the Union's international position in both the political and economic fields. It is increasingly visible that digital policy has a holistic character, covering the whole spectrum of sectoral policies, including external action and security policy. It seems, therefore, that the parallel search for evidence that the EC wants the EU to play a role as a normative and regulatory power in the digital area will allow for a broader view of this policy, going beyond traditional, sectoral approaches. Additionally, another problem is particularly evident in the research on the EU's role in the digital field. Most publications deal with cyber-security issues (Samonek, 2020) and only a few authors choose to go beyond this area in their research (Kurowska, 2019; Pawlak et al., 2019). A similar problem was recognised by Carrapico and Barrinhy, who noted that research in European Studies had not fully covered the digital area. In their view, "adding the disciplinary lenses of European Studies to this field would encourage different questions", including those concerning the EU's role in the digital area (Carrapico, Barrinhy 2018, p. 301). Thus, by going beyond the cybersecurity field as well as posing the question of the EU's activity in digital issues and indicating the role it can play internationally in this field, this article fills various gaps in research concerning the area of European studies.

The article consists of three parts. The first presents the methodological assumptions of the paper. The second part describes the main features of the concepts of normative power and regulatory power. Finally, the third part presents the findings of the study, demonstrating that the EC wants the EU to play both a normative and a digital power role in the digital environment. The paper ends with conclusions.

Materials and Methods

The EC has been active in the digital field for many years, whether preparing EU positions and legislative proposals or trying to encourage greater coherence among Member States. However, this work is focused exclusively on the EC's term of office under Ursula von der Leyen, which begun on 1st December 2019. The author's decision stems primarily from the observation that the current EC is prioritising this area, pointing to its importance for the future of the EU and its cross-sectoral and cross-policy nature. Driven by the criterion of the nature of the adopted documents, the author has decided to analyse selected documents published by the

EC on various digital issues – both that of a general nature: Shaping Europe's Digital Future (European Commission, 2020a) and 2030 Digital Compass: the European way for the Digital Decade (2021), as well as that of a specific nature: The EU's Cybersecurity Strategy (European Commission, 2020b), White Paper on Artificial Intelligence (European Commission, 2020c), and the European Declaration on Digital Rights and Principles for the Digital Decade (2022). The author has omitted legal acts and focused on documents of a political nature. Legislative acts are one of the instruments used as a part of regulatory power, so, from the point of view of this investigation, it is more interesting to indicate the necessity of their adoption than the content itself. In regulations, it is difficult to find direct motives for their establishment, and these, in turn, determine whether a piece of legislation is a conscious implementation of the regulatory power's strategy or normal legislative activity aimed only at the internal market.

In addition, the author has analysed three State of the Union Addresses given by Ursula von der Leyen which have been analysed along with her speech at the opening session of the 2021 Digital Assembly. These speeches presented not only the EC's strategic action plan for the coming years, but also the vision of the EU's role in the digital field. Speeches by other members of the EC have been omitted, as preliminary research suggests that they are of limited relevance to this institution's activities in the digital area.

In this study, the author used content analysis. As Crespy notes, it has become a leading approach in EU research (2015). The method applied involves a qualitative content analysis of speeches and policy documents. Following Mayring, the author understands qualitative content analysis as a mixed-method approach in which qualitative and quantitative aspects constitute two distinct analytical steps: assigning categories to a text as a qualitative step, reworking multiple passages of the text, and analysing the occurrence of a category as a quantitative step (2014). Thus, the author has focused on the content aspects of speeches and documents and did not only focus on the "signifiers" (i.e., individual "words" or the "co-occurrence of words"), but also on the "signifieds", i.e., on the meanings. The activity of identifying and categorising symbols associated with the role of a normative or regulatory power is a qualitative aspect of the author's research and it has been done by considering not only the individual symbol, but also the larger sentence structure of which that symbol is a part. However, information on the number of individual signifiers and signifieds has not been collected because the diverse nature of the documents analysed means that this information would have no

analytical value. Quantitative data in this case would not make it possible to assess whether the EC wants the EU to play the role of a normative or regulatory power. One signifier in a Ursula von der Leyen speech may have more political significance than a dozen signifiers in an EC document. To summarise, within the texts analysed, the author looked for (1) signifiers referring to values, principles, and norms typical of the concept of normative power; (2) signifiers and signifieds referring to a normative power and regulatory power; (3) signifiers and signifieds indicating the EC's planning of the use of instruments typical of a normative power and regulatory power.

Key Concepts

The Concept of the European Union as a Normative Power

The concept of the EU as a normative power has been in the literature for several years. It was proposed by Manners in 2002. According to him, the term denotes the EU's ability to disseminate important norms and values in international relations (Manners, 2002, p. 239). They are embodied in the *acquis communitaire*, and include: peace, freedom, democracy, the rule of law, and human rights. Four minor norms are also identified by Manners: social solidarity, anti-discrimination, sustainable development, and good governance. Manners argues that these norms distinguish the EU from other political actors and lead it to act normatively (Manners, 2002, p. 240). Moreover, he is convinced that the EU will remain and continue to be a normative power for the foreseeable future (Manners, 2008, p. 45). Therefore, in this study, the author treated Manners' indicated values as signifiers.

The EU promotes its values through policies that are part of its external action. Among the instruments for exporting them, Manners distinguishes: spontaneous diffusion, political dialogue, EU policies, the use of communication strategies, the transfer of mutual benefits, procedural activism, and EU presence in third countries (Manners, 2002, p. 239). This paper looks for evidence in the documents analysed to show that Ursula von der Leyen's EC plans to apply these tools in the digital field. Thus, in this study, these instruments are symbols, and the author looks for signifiers and signifieds showing that the EC wants to use them in order for the EU to play a role as a normative power in the digital area (see Table no. 1).

Table 1. The Coding of Instruments Characteristic of Normative Power: Categories of Symbols

Instruments Specific to Normative Power	Examples
Spontaneous diffusion	the EU will inspire; the EU will promote its values/principles/standards; the EU will diffuse its values/principles/norms; the EU will spread its values/principles/norms
The EU's presence in third countries	direct presence; EU delegation; EU-funded investment; EU funds; EU programmes; EU missions
Political dialogue	international coalitions; dialogue with partners; leadership summits; cooperation with partners; working with partners; alliances with partners
The EU's policies	development assistance policy; common commercial policy; digital policy; CFSP; EEAS; diplomacy
Different communication strategies	communication strategy; cooperation with relevant stakeholders; a differentiated approach
The transfer of mutual benefits	benefits for all stakeholders; profits for partners; mutual benefits
Procedural activism	the preparation of new documents/legislative acts; the legislative process; international negotiations; international groups/teams

Source: The author's own study based on analysed speeches and documents.

The Concept of the European Union as a Regulatory Power

The concept of the EU as a regulatory power was formulated at the beginning of the XXI century. Regulatory power occurs when a single international actor is able, through market mechanisms, to externalise its laws and regulations beyond its borders, resulting in the globalisation of standards. There is a broad consensus in the literature that the EU is a regulatory power (Scott, 2014; Young, 2015; Bradford, 2020). EU policy makers and scholars have long acknowledged that the EU increasingly promotes regulation beyond its borders through trade (Young, Peterson, 2014). Even the EU institutions note in their documents that the EU is "emerging as a global rule maker" (European Commission, 2007). Thus, both in the academic literature and in EU documents, the EU is characterised as an influential actor that moves domestic regulation beyond its borders.

The literature points to the critical resources of a regulatory power; a large market, advanced regulatory capacity, and rigorous regulation. Bradford notes that for a country to exercise global regulatory power, it must also have regulatory propensity by which she alludes to a prevalent national preference for strict regulatory standards and a predisposition to regulate inflexible targets. According to her, the EU has all these characteristics (Bradford 2012, pp. 10–11).

The instruments through which the Union plays its role as a regulatory power include intra-EU legislation (regulations and directives), the creation of international bodies with private participation, the negotiation and conclusion of international agreements, and activities with or within international organisations (Young, 2015). This paper looks for evidence that Ursula von der Leyen's Commission plans to use these tools in the digital sphere. In the author's study, these instruments are therefore symbols, and he tries to find signifiers and signifieds in examined texts indicating that the EC wants the EU to play a role as a regulatory power in the digital area (see Table no. 2).

Table 2. The Coding of Instruments Characteristic of Regulatory Power: Categories of Symbols

Instruments Specific to Regulatory Power	Examples
Adopting intra-EU legislation	regulation; directive; legislative proposal
The creation of international bodies with private entities	cooperation with private actors; the establishment of a joint body/ organisation; in partnership with a private entity; in participation with a private entity
The negotiation and conclusion of international agreements	international/bilateral/multilateral agreement; partnership; convention; negotiation
Activities with/within international organisations	forums of international organisation; Council of Europe; United Nations; OECD; G-20, WTO

Source: The author's own study based on analysed speeches and documents.

Results

The European Union as a Normative Power in the Digital Area

Values Promoted by the EU in the Digital Area

An analysis of documents and speeches shows that the EC and its president want the EU to play the role of a normative power on the international scene in the cyber field. Although there is no literal reference to Manners's concept (a signifier), numerous signifieds can be found, as the EC is taking and planning action to ensure that European values are applied in the online world (Manners, 2022).

However, there is a need to start by establishing what these European values actually are in the context of the digital environment. Of course, it should be remembered that their sources can be found in Article 2 TEU and the Charter of Fundamental Rights, as well as in the Council of Europe *acquis*. The European Commission, in its documents, is unlikely to go beyond the framework outlined by the aforementioned legal acts. However, it is worth examining what specific digital values appear in the statements of the President of the Commission as well as in the documents analysed.

Ursula von der Leyen often mentions European values in her speeches on the EU's role in the digital area (von der Leyen, 2019, pp. 15, 20; 2020; 2021a; 2021b; 2022). She certainly includes among them such issues (signifiers) as privacy, freedom of expression, respect for international law, the free flow of data, cyber security, multilateralism, human-centred digital transformation, access for all to the internet, the right to learn digital skills, and algorithms that respect people. So, these are not literally the values that Manners describes as being typical of a normative power. Nevertheless, some connections can be seen. For example, privacy, freedom of speech, the free flow of data, and access for all to the internet are linked to values such as freedom and democracy. It can, therefore, be concluded that the values that Ursula von der Leyen believes should be (internationally) promoted in the digital sphere are linked to Manners' concept of normative power and thus to the European values defined in the *acquis communautaire* of the EU and the Council of Europe.

References to the above-mentioned symbols can also be found in documents published by the EC. Two of these documents are fundamental as they directly address the European values that the Commission believes the EU should promote in the digital environment, namely; "Digital Compass…" (2021) and "European Declaration…" (2022). In addition to

the values typical of the concept of a normative power (freedom of speech, freedom of choice, freedom of information, non-discrimination, rule of law, and democracy), these documents list the rights and principles which, if implemented and diffused, could fundamentally change the digital environment. These include, for example, such signifiers as the right to the internet, the right to disconnect from it; the right to work-life balance in a digital environment; the right to decide on one's digital legacy; the right to access online public services; the ethical principles of human-centred algorithms; and the protection and empowerment of children in online spaces.

References to European values can also be found in the other analysed documents. These are largely identical to the values typical of normative power. However, they have been supplemented with principles and norms closely related to the digital sphere: privacy, the right to the internet, the right to disconnect from the internet, the resilience of the digital ecosystem or openness of the internet, etc. So, it can be argued that "digital values" fall into the category of broadly defined fundamental rights as set out in Article 2 TEU, the Charter of Fundamental Rights (2012), and the European Convention on Human Rights (Council of Europe, 1950), and thus fit into the concept of normative power.

In summary, in four of the five documents analysed, signifiers can be found pointing to the symbols the author has defined. These documents refer to values typical for a normative power which may indicate that Ursula von der Leyen's EC refers to this concept. The only document in which there is no direct reference to Manners' values is "Shaping Europe's…". Thus, it can be said that the EC refers to the values promoted by the normative power and defined in the EU and Council of Europe *acquis*. It therefore seems reasonable to conclude that in the speeches and documents analysed, Ursula von der Leyen's EC attempts to adapt its terminology to the value system developed in the EU and the Council of Europe and positioned by Manners in the concept of a normative power. In this context, there has been no expansion of the general European value system and therefore the European Commission does not position itself as an "innovator" in this field.

Instruments to Promote European Values in the Digital Area

Evidence of the convergence of the EC's intentions with the concept of a normative power is the fact that it intends to use a number of instruments typical of this role in its international activity. In the speeches and documents analysed, there are both signifiers and signifieds to support this thesis, the first of which occur in large numbers when Ursula von der Leyen as well as the EC indicate that EU values in the cyber domain

will be subject to a process of spontaneous diffusion. The EC assumes that it will take place within the framework of the Global Strategy for Digital Cooperation, which aims to bring the European approach to digital transformation to the international arena. It is the EC's intention that this process will result in the formation of a digital society based on European values (European Commission, 2020a, pp. 16–17). A similar aim can be found in the "European Declaration…" and "White Paper..." (European Commission, 2020c, p. 1).

The EC also intends to use political dialogue to promote its values. In the case of this instrument, we can observe both the occurrence of signifiers and signifieds. For example, such a strategy was mentioned by Ursula von der Leyen in her 2020 State of the Union address and speech at the 2021 Digital Assembly. She emphasised that the Union would form ambitious coalitions on digital ethics issues (von der Leyen, 2020), and she mentioned the UN in this context (von der Leyen, 2021a). This position was confirmed in documents prepared by the EC (European Commission, 2020b, p. 24).

An analysis of Ursula von der Leyen speeches and EC documents has shown that, although there is no direct reference to a normative power strategy, literal references to instruments typical of normative power can be found in some of them. It should be also noted that none of the documents envisages the use of all instruments typical of normative power. The closest to this model is the "European Declaration…", which is due to the fact that it focuses on the values that the EC wants to promote in the digital field. Thus, this document is evidence that the strategy of a normative power is consciously pursued by Ursula von der Leyen's EC. A similar conclusion can be reached by looking at the announcement of the use of particular instruments. Two of them can be found in almost all the analysed speeches/documents in the forms of spontaneous diffusion and policy dialogue. The literature indicates that they are characteristic of a normative power and, consequently, their widespread presence in the examined documents confirms the implementation of the normative power strategy. On the other hand, it is difficult to explain why other instruments are so rarely present in the analysed speeches/documents. For example, only the "European Declaration…" envisages the use of so-called "procedural activism". Relatively rarely does Ursula von der Leyen's Commission announce the use of differentiated communication strategies and the transfer of mutual benefits. Perhaps this is due to the specific nature of the digital area, where it is easier to promote values and principles through dialogue and spontaneous diffusion than through procedural and communication activities.

The European Union as a Regulatory Power in the Digital Area

The analysis above has demonstrated that Ursula von der Leyen's EC wants the EU to play the role of a normative power in the digital domain. However, an analysis of the same speeches and documents shows that the Commission also plans for the EU to play, on the international stage, the role of a regulatory power in the digital area. Both signifiers and signifieds can be found in them. For example, this is clearly stated by Ursula von der Leyen, who, in her State of the Union address, said that the EU must be a leader in digitisation, otherwise "it will have to follow the way of others, who are setting these standards for us" (von der Leyen, 2020). Additionally, in her speech at the 2021 Digital Assembly, she said that the European artificial intelligence (AI) solutions applicable in the single market could be followed worldwide, including by private companies (von der Leyen, 2021a). The EC points out that the EU should play to its strengths in this area; an open and competitive single market, the role of an assertive player in international trade, a solid industrial base, and highly qualified citizens (2021, p. 1). It notes that many countries around the world have aligned their legislation with the EU data protection regime. Therefore, building on this success, the EU should actively promote its model of a secure and open internet (European Commission, 2020a, pp. 14–15).

According to the Commission, the EU is and will remain the most open region for trade and investment in the world. However, it will use all the instruments at its disposal to ensure that every entity wishing to operate in Europe complies with EU rules (European Commission, 2020a, p. 15). This is important not only to maintain a level playing field in the digital sector, but also to diffuse legal solutions within the Union.

In pursuing its strategy of regulatory power, the EC intends to use its typical mechanisms. Firstly, it plans to force changes on external actors by adopting internal legal acts. Legislative plans in this area were indicated both in Ursula von der Leyen's speeches and in documents of the EC, so there were clearly signifiers here. Negotiating and concluding international agreements with third countries is a further mechanism for playing the role of a regulatory power. In the documents analysed, it is possible to find both signifiers and signifieds indicating that the EC Ursula von der Leyen intends to use these instruments to disseminate its regulatory solutions. These will address various digital areas, such as securing 5G networks (European Commission, 2020b, p. 10), a digital economy (von der Leyen, 2021, p. 23); reliable data (European Commission, 2020a, p. 15), and digital partnerships (von der Leyen, 2021).

Summing up the analysis above, Ursula von der Leyen's EC undoubtedly wants the EU to play the role of a regulatory power in the digital area. It not only directly refers to this concept, but also plans to use all the instruments typical for that end. It is clear that in this area, signifiers and signifieds referring to the instruments of a regulatory power can be found in speeches and documents. All of them indicate that the EU will adopt internal regulations in this area. However, it should be remembered that EU legislative acts do not always have to be consciously directed towards the implementation of a regulatory power's strategy. Nevertheless, the context in which information about planned legislation is placed in the scrutinised documents indicates that the EC takes into account its impact on external stakeholders. In addition, Ursula von der Leyen's speeches, along with three documents, announced the negotiation of international agreements in the digital area and activity in international organisations to promote European regulations. In contrast, in only three documents did the EC announce the creation of international bodies with the participation of private actors. However, it cannot be ruled out that, in practice, this instrument will be applied more often, especially as the EU has a wealth of experience in its use, in particular in the fight against child pornography on the internet (Jazłowiecka, Tereszkiewicz, 2014).

Conclusions

The conducted analysis showed that Ursula von der Leyen's Commission in the same extent wants the EU to both promote cyber-values and shape an enforceable, regulatory framework for the cyber area. It therefore wants the EU to play the role of "a normative-regulatory power" on the international scene. In the speeches as well as in the examined documents, the author found signifiers and signifieds referring to these two roles. Both the values to be promoted in the digital area (normative power) and the possibility to influence third-country actors through internal regulation and the attractiveness of the single market (regulatory power) are indicated. It is interesting that Ursula von der Leyen's EC does not separate these roles from each other, recognising that in the digital field they can be played simultaneously. Hence, according to the EC, the concept of regulatory power does not stand in opposition to the narrative that the EU is a normative power that leads by example.

It is unclear what the effects of the EC's actions will be. Firstly, Manners pointed out that the effectiveness of a normative power depends on its stability and long-term impact on the international environment

(Manners, 2011). Therefore, it becomes important whether the activity of Ursula von der Leyen's Commission will be continued by its successor. If the next EC President changes the approach to digital issues, the actions carried out by the current EC will not work. Secondly, technological change and Industrial Revolution 4.0, resulting in a move away from global standardisation of industrial production, may weaken the EU's ability to play the role of a regulatory power (Borowicz, 2021). Furthermore, the concepts of normative power and regulatory power are based on opposing assumptions. In simple terms, the first assumes influence by example and spontaneous diffusion, while the second utilises legislative action and forced compliance with existing regulations in the internal market. Thus, we can say that we have soft power on the one hand and hard power on the other. It is not without reason that these roles are played out in different areas of EU external activity; normative power in foreign policy where it has limited competence, and regulatory power in economic policy where its position is very strong. Despite these differences, Ursula von der Leyen's EC seeks to bring these two concepts together in the digital area and develop a common vision of the EU's international role as a "normative-regulatory power". It remains to be seen what the results of this will be and whether it is even possible. Experiences observed in the real economy and in foreign policy suggest that the introduction of legal regulations in the internal market and their effective enforcement is more effective in influencing foreign partners than political-diplomatic efforts to diffuse values (Kurowska, 2019). This raises the question of whether this new role is a consciously-adopted concept that will be put into practice, or whether it is the result of a lack of a concrete vision of which role the EU should play in the digital area and a mere duplication of ideas that exist in political and academic discourse. The results of this analysis suggest that this is a consciously adopted role. However, this will require further research focusing on both the legislative proposals being prepared by the EC and the actions it will take in the digital area.

References

Bendiek, A. and Pander, M.E. (2019) "The EU's Regulatory Approach to Cybersecurity". SWP Working Papers 2. Available at: https://www.swp-berlin.org/publications/products/arbeitspapiere/WP_Bendiek_Pander_Maat_EU_Approach_Cybersecurity.pdf (Access 28.07.2023). DOI: https://doi.org/10.1142/9789811219160_0002.

Borowicz, A. (2021) "Does the New Industrial Strategy for Europe Follow the Path of the Concept of Industry 4.0?", *Studia Europejskie – Studies in European Affairs*. Vol. 25(1), pp. 85–102.

Bradford, A. (2012) "The Brussels Effect", *Northwestern University Law Review*. Vol. 107(1), pp. 1–68.

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

Brandão, A.P. and Camisão, I. (2021) "Playing the Market Card: The Commission's Strategy to Shape EU Cybersecurity Policy, *Journal of Common Market Studies*. Vol. 60(5), pp. 1335–1355. DOI: https://doi.org/10.1111/jcms.13158.

Carrapico, H. and Barrinha, A. (2017) "The EU as a Coherent (Cyber) Security Actor?", *Journal of Common Market Studies*. Vol. 55(6), pp. 1254–1272. DOI: https://doi.org/10.1111/jcms.12575.

Claessen, E. (2020) "Reshaping the internet – the impact of the securitisation of internet infrastructure on approaches to internet governance: the case of Russia and the EU", *Journal of Cyber Policy*. Vol. 5(1), pp. 140–157. DOI: https://doi.org/10.1080/23738871.2020.1728356.

Charter of Fundamental Rights of the European Union (2012) Official Journal of the European Union C 326/02.

Christou, G. (2018) "The collective securitisation of cyberspace in the European Union", *West European Politics*. Vol. 42(2), pp. 278–301. DOI: https://doi.org/10.1080/01402382.2018.1510195.

Council of Europe (1950) Convention for the Protection of Human Rights and Fundamental Freedoms. Available at: https://www.echr.coe.int/documents/d/echr/convention_eng (Access 28.07.2023). DOI: https://doi.org/10.1017/9781316677117.077.

Crespy, A. (2015) *Analysing European Discourses* in Lynggaard, K., Manners, I. and Löfgren, K. (eds.) *Research Methods in European Union Studies*. London: Palgrave Macmillan, pp. 102–120. DOI: https://doi.org/10.1057/9781137316967_7.

European Commission (2007) The External Dimension of the Single Market Review. SEC(2007) 1519. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007SC1519andfrom=EN (Access 28.07.2023).

European Commission (2020a) Communication: Shaping Europe's digital future. Available at: https://commission.europa.eu/system/files/2020-02/communication-shaping-europes-digital-future-feb2020_en_4.pdf (Access 28.07.2023).

European Commission (2020b) Joint Communication to the European Parliament and the Council. The EU's Cybersecurity Strategy for the Digital Decade. JOIN(2020) 18 final.

European Commission (2020c) White Paper on Artificial Intelligence – A European approach to excellence and trust. COM(2020) 65 final.

European Commission (2021) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 2030 Digital Compass: the European way for the Digital Decade. COM(2021) 118 final.

European Commission (2022) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Establishing a European Declaration on Digital rights and principles for the Digital Decade. COM(2022) 27/28 final.

Jazłowiecka, D. and Tereszkiewicz, F. (2014) *Ochrona młodych użytkowników sieci w prawie Unii Europejskiej – wybrane aspekty* in Kalczyńska, M. and Rajchel, A. (eds.) *Społeczeństwo internautów a kultura globalna. Młody użytkownik sieci*. Opole: Oficyna Wydawnicza Politechniki Opolskiej, pp. 11–22.

Klimburg A. and Tiirmaa-Klaar H. (2011) "Cybersecurity and cyberpower: Concepts, conditions and capabilities for cooperation for action within the EU". *European Parliament Study*. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2011/433828/EXPO-SEDE_ET(2011)433828_EN.pdf (Access 28.07.2023).

Kurowska, X. (2019) "The politics of cyber norms: Beyond norm construction towards strategic narrative contestation", *Research in Focus*. Available at: https://eucd.s3.eu-central-1.amazonaws.com/eucd/assets/B38tpmnS/xymena-kurowska-politics-of-cyber-norms-march-2019-eucyberdirect.pdf (Access 28.07.2023).

Manners, I. (2002) "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies*. Vol. 40(2), pp. 235–258. DOI: https://doi.org/10.1111/1468-5965.00353.

Manners, I. (2008) "The normative ethics of the European Union", *International Affairs*. Vol. 84(1), pp. 45–60. DOI: https://doi.org/10.1111/j.1468-2346.2008.00688.x.

Manners, I. (2011) *The European Union's Normative Power: Critical Perspectives and Perspectives on the Critical* in Whitman, R.G. (ed.) *Normative Power Europe: Empirical and Theoretical Perspectives*. London: Palgrave Macmillan, pp. 226–247. DOI: https://doi.org/10.1057/9780230305601_12.

Mayring, P. (2014) "Qualitative Content Analysis. Theoretical Foundation, Basic Procedures and Software Solution", *Social Science Open Access Repository*. Available at: http://nbn-resolving.de/urn:nbn:de:0168-ssoar-395173 (Access 28.07.2023).

Pawlak, P. et al. (2019) "Pathways to Change: Resilience, Rights and Rules in Cyberspace", *Research in Focus*. Available at: https://eucd.s3.eu-central-1.amazonaws.com/eucd/assets/IOB_seK6/pawlak-kurowska-tikk-heinl-delerue-1.pdf (Access 28.07.2023).

Wessel, R.A. (2015) *Towards EU cybersecurity law: Regulating a new policy field* in Tsagourias, N. and Buchan, R. (eds.) *Research Handbook on International Law and Cyberspace*. Cheltenham: Edward Elgar Publishing Limited, pp. 403–425. DOI: https://doi.org/10.4337/9781782547396.00032.

Scott, J. (2014) "Extraterritoriality and Territorial Extension in EU Law", *American Journal of Comparative Law*. Vol. 62(1), pp. 87–126. DOI: https://doi.org/10.5131/ajcl.2013.0009.

Sliwinski, K.F. (2014) "Moving beyond the European Union's Weakness as a Cyber-Security Agent", *Contemporary Security Policy*. Vol. 35(3), pp. 468–86. DOI: https://doi.org/10.1080/13523260.2014.959261.

Samonek, A. (2020) "What Is the Future of European Cyber Security? Three Principles of European Cooperation and the Hybrid Joint Strategy of Cyber Defence", *Studia Europejskie – Studies in European Affairs*. Vol. 24(2), pp. 43–60. DOI: https://doi.org/10.33067/se.2.2020.3.

Treaty of the European Union (2012), Official Journal of the European Union C 326/13.

von der Leyen, U. (2019) *A Union that strives for more. My agenda for Europe: Political Guidelines for the Next European Commission 2019–2024*. Available at: https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf (Access 28.07.2023).

von der Leyen, U. (2020) *State of the Union Address by President von der Leyen at the European Parliament Plenary. Building the world we want to live* in *A Union of vitality in a world of fragility*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655 (Access 28.07.2023). DOI: https://doi.org/10.1093/oso/9780192896216.003.0017.

von der Leyen, U. (2021a) *President von der Leyen's speech at the high-level opening session of the 2021 Digital Assembly, Leading the Digital Decade*. Available at: https://ec.europa.eu/commission/presscorner/detail/it/speech_21_2804 (Access 28.07.2023).

von der Leyen, U. (2021b) *State of the Union Address. Strengthening the Soul of our Union*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701 (Access 28.07.2023).

von der Leyen, U. (2022) *2022 State of the Union Address by President von der Leyen. A Union that Stands Strong Together*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_5493 (Access

28.07.2023). DOI: https://doi.org/10.1093/oso/9780192896216.003.0017.

Young, A.R. and Peterson J. (2014) *Parochial Global Europe: 21st Century Trade Politics*. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/acprof:oso/9780199579907.001.0001.

Young, A.R. (2015) "The European Union as a global regulator? Context and comparison", *Journal of European Public Policy*. Vol. 22(9), pp. 1233–1252. DOI: https://doi.org/10.1080/13501763.2015.1046902.

DOI: 10.33067/SE.3.2023.4

*Adam A. Ambroziak**

Integration of the European Single Market Thirty Years After Its Creation

Abstract

The European single market was launched on 1st January 1993. Presumably, it is at that time that three fundamental barriers (physical control at the border, various technical requirements, and differing systems of indirect taxation) were formally removed to ensure four treaty-based freedoms: free movement of goods, freedom to provide services, free movement of people and free movement of capital. The EU single market is characteristic in nature due to the scope of legislation governing businesses and consumers, which is largely subject not to unification, rather only harmonisation. Regrettably, this has resulted in EU legislation being (deliberately at times) not always correctly implemented into the national legal system. This leads to market fragmentation and creates barriers, rather than eliminating them. This study aims to identify the relationship between full and correct implementation of EU legislation into the Member States' legal systems versus progress in European single market integration. Therefore, the evolution of indicators defining how much EU single market legislation in the Member States has been implemented was examined. At the same time, changes in transposition deficit (from 1997 to 2021) and conformity deficit (from 2004 to 2021) for particular Member States were critically analysed. Further, it was analysed how much the single market was integrated from the perspective of goods being the main components of the single European market. To this end, intra-EU trade was analysed as broken down into exports and imports of goods, versus the global trade of individual Member States (including trade with non-EU partners). The outcome of the study shows that both transposition and conformity deficit levels are quite high. In turn, intra-EU trade in goods does not largely correspond to the extent of implementation of EU legislation, which may

* **Adam A. Ambroziak** – SGH Warsaw School of Economics,
e-mail: Adam.A.Ambroziak@sgh.waw.pl, ORCID ID: 0000-0002-4618-8497.

be caused by growing interest in non-EU partners without compromising EU presence.

Keywords: Single European Market, Transposition Deficit, European Union, Trade in Goods

Introduction

The European single market is definitely one of the most important achievements of economic integration within the European Union. This is because it ensures not only the free flow of products, i.e. manufactured goods and offered services, but also the factors of production necessary to produce them, i.e., capital and labour. The European single market was launched on 1st January 1993 in its expanded form as defined by Bélla Balassa. Presumably, it is at that time that three fundamental barriers were formally removed to ensure four treaty-based freedoms: physical control at the border, various technical requirements, and differing systems of indirect taxation. This undertaking posed a huge challenge to Member States' economies, as it aimed to eliminate the remaining barriers that businesses, consumers and employees faced in effectively functioning on the EU market.

The adoption of political decisions and operational documents across European institutions relating to the functioning of the EU internal market shows how important it was. Within only a few months of the 1993 launch of the single market, the European Council underscored in EU membership criteria that each candidate country was required to ensure "the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union" (EUCO, 1993). Subsequently, as the extensive 2004 enlargement, including Poland's accession, approached, the EU institutions repeatedly stressed the nature and essence of the single European market. The quintessence of these activities is the reports (scoreboards) currently prepared by the European Commission on the implementation of market legislation in national legal systems by all Member States (EC, 2013). It shows the special nature of the EU internal market which, being subject to shared competences between the European Union and the Member States, is not largely unified, rather harmonised. Regrettably, this resulted in the EU legislation being (deliberately at times) not always correctly implemented into national laws. This leads to market fragmentation and creates barriers, rather than eliminating them. Hence, it is not surprising that thirty years after the market's symbolic implementation the European Council still "supports the renewed focus on enforcing existing Single Market rules and

on removing barriers" (EUCO, 2023), whereas the Commission devises subsequent strategies and communications (EC, 2023b, Ambroziak, 2012; Kurczewska, Stefaniak, 2022). That the European market is attractive and it plays a role in the global economy is also shown by numerous non-EU countries being interested in closer integration through contracts establishing free trade zones or even joining the market (Norway, Iceland, Liechtenstein), without being an EU member.

The reason for EU institutions continuing to claim it is necessary to eliminate barriers in the internal market may be down to four factors: a) the existing EU legislation has not been fully or correctly implemented, b) there is a lack of adequate legislation for the rapidly developing digital market, for instance, c) EU legislation is not able to cover all aspects of economic activity, as some of them fall under the exclusive competence of Member States, and d) the existing impediments are not barriers in the sense of the EU treaties, but are administrative burdens applied by Member States on a non-discriminatory basis.

The study on EU legislation transposition has so far primarily focused on the analysis of the legislative process (Haverland, Romeijn, 2007), including with respect to particular countries or country groups (Sverdrup, 2004; De Coninck, 2015; Lazar, Lazar, 2015; Musiałkowska, 2017; Toshkov, 2008), the determinants of delays in implementation (Kaeding, 2006), including for selected sectors (Kaeding, 2008; Michelsen, 2008), as well as with respect to economic or political turbulences (Pircher, Loxbo, 2020). Other studies ventured to analyse the outcome of EU directive transposition from the perspective of the Commission affecting the efforts of Member States (Moriana et al., 2017) and integration processes in the EU (Ručinská, Fečko, 2019; Howarth, 2022). To the best of the author's knowledge, however, the lacking aspect is the relationship between the extent of the implementation of EU legislation (i.e., the extent of market unification) and economic links in the form of intra-EU trade.

Therefore, this study aims to identify the relationship between full and correct implementation of the EU legislation into the Member States' legal systems versus progress in European single market integration. Therefore, the evolution of indicators defining how much EU single market legislation in the Member States has been implemented was examined. At the same time, changes in transposition deficit and conformity deficit for particular Member States (from 1997 to 2021 as well as from 2004 to 2021, respectively) were critically analysed. Further, it was analysed how much the internal market was integrated from the perspective of goods being the main components of the single European market. To this end, intra-

EU trade was analysed as broken down into exports and imports of goods, versus the global trade of individual Member States (including trade with non-EU partners). The resulting data were compared with the extent of EU legislation transposition into EU Member States' legal systems.

This study employed the available European Commission's data published as part of annual Scoreboard reports, as well as data in international trade statistics and the balance of payments of EU Member States. The period from 2004 to 2021 was taken as the main period surveyed (unless otherwise indicated), since it encompassed all the EU Member States excluding the UK.

The first part of the paper presents the evolution of indicators defining the extent of implementation of EU legislation into Member States' legal systems. The follow-up part describes the extent of integration of the market of goods. A comparative analysis was employed of intra- and extra-EU trade in goods along with trends in trade versus transposition parameters of market legislation. Conclusions are provided in the final part.

Evolution of Transposition and Implementation of EU Law

The legislation on the European single market (ESM) consists of the Treaty on the European Union, the Treaty on the Functioning of the European Union, and the entire secondary law of the EU, from regulations, directives, and decisions, to guidelines and notices of individual EU institutions. The legal basis for the introduction of the ESM became the Single European Act of 1986, which introduced Article 8a into the then Treaty establishing the European Economic Community, which stipulated that "the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992", and that "the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured". While treaty provisions do not fundamentally change, the regulations adopted across various EU institutions do, and this occurs much more often. The changes address the needs of politicians, businesses, as well as the CJEU case law. Consequently, bureaucracy escalation or even inflation of EU legislation are often noted. This is because of two parallel processes: increasing regulation due to bureaucratisation of economic life (Berglund et al., 2006) and the need to introduce new solutions to rectify the identified shortcomings in existing legislation on account of ever deeper and broader integration. In the first

case, the new legislation is conducive to increasing harmonisation and to expanding it over successive elements in a given area, e.g., free flow of goods, whereas in the other case, EU legislation is implemented in new activity domains, e.g., digital trade. Consequently, it is now very difficult to clearly determine the scope of an internal market, which covers not only four treaty-based freedoms, but it also elements of industrial policy, competition and consumer protection, and health, environmental, climate and energy policies.

The original process of developing the internal market chiefly envisaged directives being acts in law leading to harmonisation of Member States' laws. This is because the intention was to eliminate severe discrepancies in the national regulations. A perfect legal basis for that was the current Article 26 of TFEU, which holds that "the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties" and Article 114, which refers to "the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market". Such an attitude implied it was necessary for Member States to introduce complex legislative procedures into the national legal system. Thus transposition, which is incorporating EU legislation into the national law, and then implementing the laws adopted, was vital. The quality and efficiency of the process, however, may have varied depending on the procedure model in particular Member States (Steunberg, Rhinard, 2010), political will, and the so-called state failure. A significant delay in transposition and delays in keeping the prescribed deadlines were yet another issue (Borghetto et al., 2006).

In fact, the problem was acknowledged at the very beginning of the ESM. As early as in 1996, i.e. three years after the launch of the ESM, the European Council noted that "whilst noting the progress that has been accomplished in this area, it remains concerned with the delays in the transposition and implementation of a number of Directives" (EUCO, 1996). In response, the European Commission, as guardian of the treaties and of compliance with EU legislation, prepared the first Action Plan for better implementation of EU Legislation (EC, 1997a) which was fully endorsed by the European Council in 1997 (EUCO, 1997). It is at that time that the Commission noted that it was necessary to take up "renewed political effort to remove remaining obstacles", and underlined "the crucial importance of timely and correct transposition of all agreed legislation into national law (…) and the necessity of active enforcement of Community law in the Member States". It is also worth noting that

the EU leaders agreed to request "the Commission to examine ways and means of guaranteeing in an effective manner the free movement of goods, including the possibility of imposing sanctions on Member States". Given the European Council's aforesaid instructions, the Commission launched multi-layered and growing ever more complex annual examination of the extent of transposition and implementation of EU legislation. The main indicator analysed by all the parties concerned is transposition deficit. It is calculated as the percentage of single market directives not yet completely notified to the Commission as a ratio of the total number of directives that should have been notified by the deadline. Internal Market directives covered by the aforementioned calculations are those that have an impact on the functioning of the internal market as defined in Articles 26 and 114 (1) of the TFEU. This includes the four freedoms and the supporting policies having a direct impact on the functioning of the Internal Market (such as taxation, employment and social policy, education and culture, public health and consumer protection, energy, and transport and environment, except nature protection) (EC, 2023).

In the first study of 1997, the transposition deficit was estimated at 6.3% for the whole EU, while it varied markedly, ranging from 3% in Denmark to 10% in Austria (EC, 1997b). From that moment on, the European Commission started to use the Scoreboard, more or less openly, to "name and shame" the Member States which, politically, had so far endorsed transposition improvement and the implementation of EU legislation. Consequently, as early as the next year, the average transposition deficit fell to 3.9% (the lowest in Finland at 1.2% and the highest in Belgium at 7.1%) (EC, 1998).

The years that followed saw a further decline in the transposition deficit of EU directives, reaching 3% in November 2000. At that time, countries such as Denmark, Sweden and Finland recorded a rate of 1.1–1.3%, while the three countries with the highest rate were Greece, France, and Portugal (4.4–6.5%) (EC, 2000). In a wave of this rather radical reduction in the transposition deficit, in the spring of 2001, the European Council (under the Swedish presidency) urged "Member States to accord high priority to transposing internal market directives into national law, aiming at an interim transposition target of 98.5% for the 2002 Spring Council" (EUCO, 2001), which was seen as determining the maximum deficit level at 1.5%. By the next year, the EU had reached a level of 2%. This was due to a large reduction in the rate of unimplemented directives in countries with the highest transposition deficits to date (Greece, France and Austria down to 2.9–3%) and an even greater reduction in the lowest-rate countries, that is Sweden, Denmark and Finland (down to 0.7–0.8%)

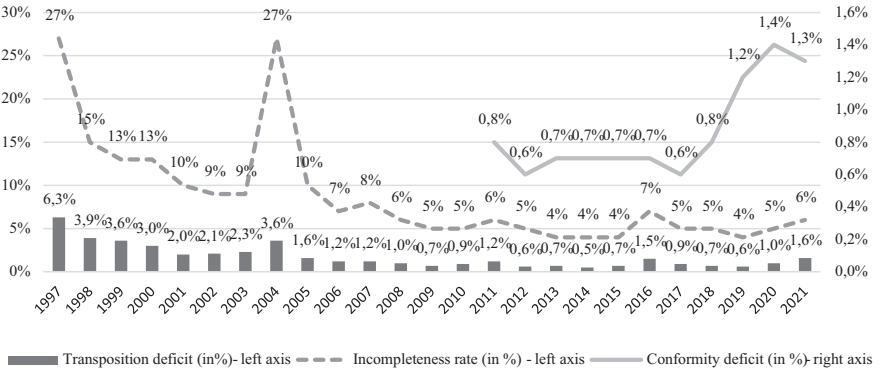


Figure 1. Evolution of the Transposition Deficit in the European Union from 1997 to 2021 (%)

Source: EC 2023a.

(EC, 2001). This inspired the EU leaders to agree that the Member States should "make further efforts to meet that target and for a transposition target of 100% to be achieved by the Spring European Council in 2003 in the case of directives whose implementation is more than two years overdue" (EUCO, 2002). This was a departure from solely quantitative analysis to a kind of political analysis. This is because not only a general number of unimplemented, but also severely delayed directives came under scrutiny. The two-year period indeed demonstrates not so much a prolonged and perhaps more complicated legislative process in a given Member State, but an intentional postponement. This is important because, in deciding to use directives as the legal acts governing the ESM, qualified majority voting was introduced under the Single European Act for their adoption. Consequently, it was assumed, apparently wrongly, that in spite of the failure to approve a given act in the EU decision-making process, relevant provisions would be incorporated into the national systems.

A downward trend in the transposition deficit continued until 2000, when the rate was at 2%. In turn, in the following years, a growing tendency became conspicuous, which prompted the European Council in 2003 to repeat that "Member States must make a renewed effort (…) to meet the Stockholm and Barcelona targets for transposing Internal Market legislation", this time by July 2003 (EUCO, 2003). In its 2003 Scoreboard, the European Commission recorded further deficit growth up to 2.3%. At that time, the highest deficits were recorded for France, Greece and

Germany (4.1–3.5%), whereas the lowest were for the United Kingdom, Spain and Denmark (1.2–0.7%) (EC, 2004). In view of the approaching enlargement, this was an alarming trend. Hence, at the beginning of the next year, the European Council underlined "the need to address the unacceptably high deficits in transposing agreed measures into national law, and to complete the legislative programme arising from the Lisbon Agenda" (EUCO, 2004).

The enlargement of 2004 not only markedly increased the number of Member States, but it also raised the deficit to 7.1% in May. In November that year, however, the deficit rebounded to 3.6%, due to delays not so much in implementation as in the administrations of the new Member States giving notification of the implementation (EC, 2005). Consequently, it was primarily the new Member States (Lithuania, Hungary and Slovenia at 0.7%) that in mid-2005 had already become the leaders in implementing market directives, the worst performers being Greece, Luxembourg and Italy (3.7–4.1%).

Four years into enlargement, in 2008, the average transposition deficit of ESM legislation fell to 1%, demonstrating that, in spite of twelve new Member States joining, the 2003 target result could be achieved. At that time, a decision was made to adopt an even more ambitious goal of 1% by 2009 at the latest, while stressing the importance of determining relevant transposition deadlines. The rationale was that "clear and consistent EU rules are a prerequisite for a well-functioning Internal Market as are timely, correct and high-quality transposition of Community legislation and effective application and enforcement of common rules" (EUCO, 2007). The level reached in 2009 was 0.7%, much as the following years saw a rise to 1.2% in 2011, to which the ongoing economic and financial crisis probably partly contributed. It was at that time that the Commission proposed in its "Single Market Act" to initiate "a more determined policy in this field" and announced that it "will call on the Member States to improve the transposition of – and compliance with – their national legislation, using numerical targets." The Commission also noted that "this approach has already enabled the transposition deficit to be reduced to 1%." (EC, 2011). This proposal was not, however, repeated in any other document of the European Council, so it did not gain political approval, which is not to say the Member States failed to make efforts to reduce the transposition deficit, which went down to as much as 0.5% in 2014. At that time, it was Croatia, Malta, Greece, Sweden, and Denmark which posted particularly low levels of the said indicator (0.1–0.2%) with Cyprus, Romania and Slovenia recording the highest numbers (1–1.4%) (EC, 2015). The year 2016 was noteworthy, when the deficit exceeded 1.5% with

a number of countries contributing whose national rates went even beyond 2%, including, for example, Romania, Finland, Croatia, Luxembourg, Bulgaria, Spain, Cyprus and Portugal (EC, 2017). This was mainly due to the adoption of a significant number of new directives, which definitely caused the statistical performance of some Member States to worsen. On the other hand, however, there were also countries that maintained a low deficit level of 0.4–0.7% (Malta, Denmark, Slovakia).

A return to markedly lower deficit values of 0.6–0.7% up to 1% will be seen in 2020 and 1.6% in 2021. The most recent doubling of values can be linked to the COVID-19 pandemic and the shift in priorities of Member States from implementing new legal solutions to pursuing autonomous policies to support entrepreneurs (Ambroziak, 2022) despite ensuring a relatively smooth functioning of the EU market (Ambroziak, 2021).

Given how the transposition deficit is spread among the Member States, in fact the deficit went down over the 2004–2021 period in the vast majority of them. For such countries as Germany, Italy, Greece, and Luxembourg, as well as Czechia, Latvia, Estonia and Slovakia, the deficit fluctuated considerably. Ultimately, following almost thirty years of the European single market, the lowest average transposition deficits were recorded for Latvia, Poland, Bulgaria, Croatia and Hungary, as well as Germany, Spain and the Netherlands (below 1%), and the highest for Cyprus, Greece, Ireland and Belgium (over 1.5%).

That analysis shows that it is impossible to clearly demarcate between the best and the worst countries with respect to EU membership compliance construed as transposition of EU legislation into the national systems. In the following years of the surveyed period, the composition of country groups with the highest and the lowest ratio varied. Both of these groups included the countries that joined the EU somewhat later and the founders of the EU and ESM. Both of these groups included countries big and small, of the South and North, or West and East, as well as those of a better or worse level of development, more and less affluent.

The foregoing is due to a number of reasons. First, the study date was not correlated with the adoption dates of new regulations and the necessity to implement them. Such an argument is rather ill-founded, as all the countries faced similar legislative challenges. Second, the reasons for deficit should be identified, including the links to electoral cycles in particular Member States, and the resulting delays, for instance, in the parliamentary legislative process. Third, not all legislation adopted at the EU level was a priority for all the Member States. Thus the national processes could be expected to be obstructed by governments that did not

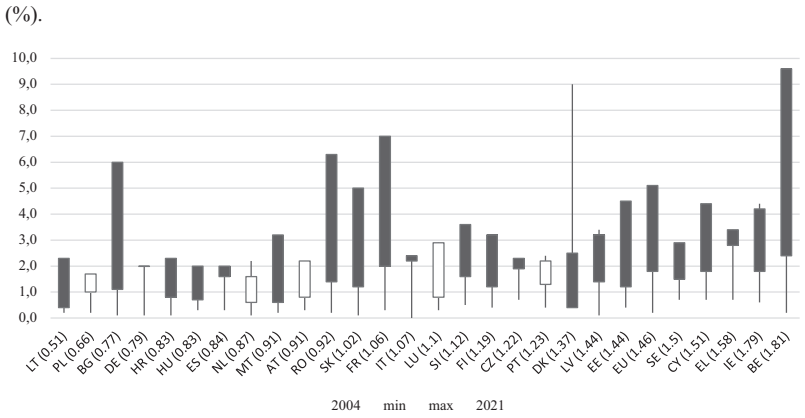


Figure 2. Evolution of the Transposition Deficit in the EU Member States from 2004 to 2021

Black bar: a decrease, white bar: an increase in 2021 as compared to 2004.

Note: the value in parentheses is the average value of transposition deficit during the study from 1997 to 2021 (for countries which joined after 1997, the accession year is the start date).

Source: The author's own calculations based on EC 2023a.

necessarily support or which downright opposed the adoption of certain acts in law.

The qualified majority system in the Council and the very strong position of the European Parliament makes it very difficult or, in many cases, impossible, to block the adoption of given legislation at the EU level. In such cases, Member States resorted to certain solutions that blatantly defied EU law, but which were expected at the national level, and postponed the correct implementation of EU legislation. The legislation was unknowingly improperly implemented, or openly obstructed to some extent knowingly. In the first case, it is true that Member States notify the Commission of the implementation of EU legislation, including primarily directives, but based on information from businesses, consumers, other Member States, and sometimes national decision-makers' own enunciations, it turns out that it was implemented incorrectly. Due to a failure to align the national legislation with EU law, the Commission may initiate an infringement proceeding. In such a case, a particular legal act is classified as *conformity deficit*. The Commission only took notice of this problem in the latter years of the second decade of the ESM, hence the available data covers the period from 2011 to 2021. Initially during that period, the conformity

deficit remained relatively low at 0.6–0.7%, however, as of 2018, it began to rise significantly in almost all Member States to 1.3% for the whole EU (Figures 1 and 3). The highest values were recorded by Italy and Poland, with Czechia, Germany, Bulgaria, Hungary, Greece and France joining in recent years. It should be borne in mind that this indicator does not necessarily reflect national regulations being actually inconsistent with EU law, as the ultimate adjudication in this regard is made by the European Court of Justice. However, the European Commission's inclusion of specific cases in these statistics means that it had serious doubts and there were reasons to initiate an infringement proceeding.

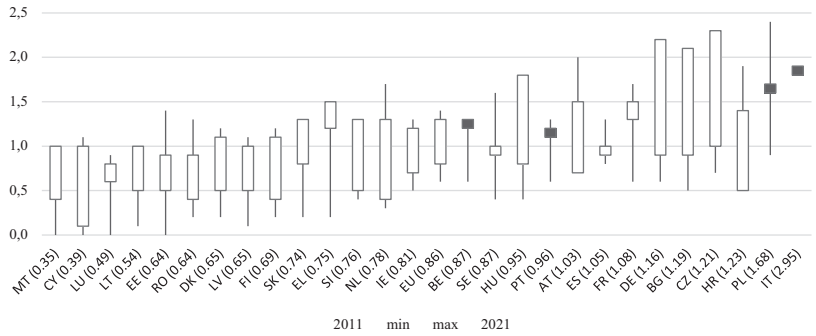


Figure 3. Evolution of the Conformity Deficit in 2004–2021 (%)

Black bar: a decrease, white bar: an increase in 2021 as compared to 2004.

Source: The author's own calculations based on EC 2023a.

Thus, with both the percentage demonstrating the transposition deficit and the percentage of incorrectly implemented directives, the overall indicator of failure to fully and correctly implement the directives of the single European market would be much higher. This hypothetical index, constructed by adding up the aforementioned indicators, presents national legislation implementing ESM directives differently (Figure 4). From the perspective of both a business and a consumer, it does not matter whether a directive has been ill-transposed or not implemented at all, as their rights are not secured uniformly across the European Union. This leads to a conclusion that there is internal market fragmentation. In 2021, the highest accumulated percentage for both of these indicators was posted for Romania, Spain, and Sweden (over 4%). It is only Denmark and Germany that did not exceed the critical threshold of 1.5%. At the same time, the highest averages were recorded for Italy (3.9%) and Poland (3.1%).

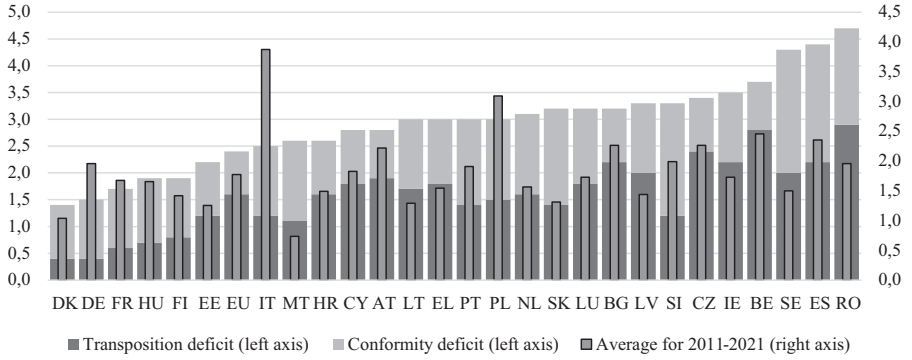


Figure 4. Summary (Transposition and Conformity) Indicator of a Failure to Fully and Correctly Implement EU Internal Market Directives in 2021 (%)

Source: The author's own calculations based on EC 2023a.

The European single market consists of 27 national markets, however the adoption of EU regulations should ensure similar/approximate business conditions across all the EU Member States. In fact, any derogations, whether regarding incorrect transposition, non-transposition, or late transposition, give rise to single market fragmentation. In order to encapsulate this trend, the European Commission introduced an incompleteness rate index which reflects the number of unimplemented directives as a percentage of all internal EU market directives (Figure 1). Evolution of this index follows a trajectory that coincides with the percentage of the transposition deficit, but at a much higher level. This is because it identifies any directive that has not been properly implemented (even in a single Member State) as market fragmentation. In recent years, this percentage ranged from 4 to 5%, although it rose to 6% at the EU level in 2021.

As a consequence of the above struggle with the process of transposition and implementation of EU directives, the European Commission is gradually replacing them with regulations, i.e., legal acts directly applicable in all EU Member States. The original plans for the creation of a single European market envisaged almost 300 directives. In subsequent years, the number increased rapidly until the culminating year of 2006, when the pool of internal market directives amounted to 1639 items. At that time, however, the rate of enactment of EU regulations i started to accelerate, to outnumber directives more than fivefold in 2021 (5669 versus 997) (Figure 5).

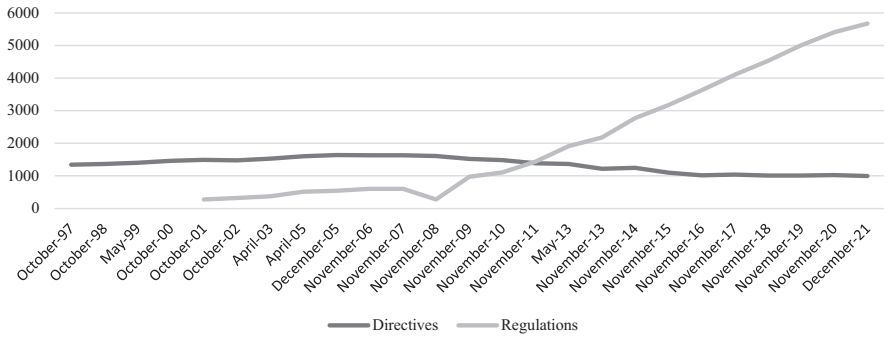


Figure 5. Number of Directives and Regulations in the European Union from 1997 to 2021

Source: EC 2023a.

Developments in Trade in Goods as an Example of the Integration of the European Single Market

The level of real integration of the European single market is evidenced by indicators defining the geographic location of trade in goods. Intra-EU exports increased from EUR 1.5 trillion in 2004 to EUR 4.2 trillion in 2022, or almost three times, while extra-EU exports went from EUR 1 trillion to EUR 2.6 trillion, an increase of 2.6. This implies a higher rate of growth of intra-EU exports in goods versus extra-EU exports from 2004 to 2021 (Figure 6). However, this was not a constant rate of growth throughout the surveyed period, and the rate of growth of extra-EU exports remained higher than intra-EU exports for years. Each change in the direction of goods exports occurred during an economic crisis: from 2009 to 2010 and from 2020 to 2021. Nonetheless, whatever the rate of growth, the share of intra-EU trade in the Member States' overall foreign exports of goods remained relatively high (over 60%, incl. 62.2% in 2021), much as it dropped to 57.5% in 2012. During the surveyed period, intra-EU imports also markedly exceeded extra-EU imports, although to a somewhat lesser extent than for exports. Also in this case, considerable growth was identified in 2022 versus 2004. It was, however, significantly lower, and the share of intra-EU imports fell to 57.7% in 2022 following a gradual increase between 2013 and 2019 to 61.4%.

It follows that both intra-EU exports and imports of goods remain a vital part of foreign trade in a majority of Member States. A particularly high percentage (more than 70%) of intra-EU sales versus the global exports was recorded for countries that have joined the EU since 2004, as well

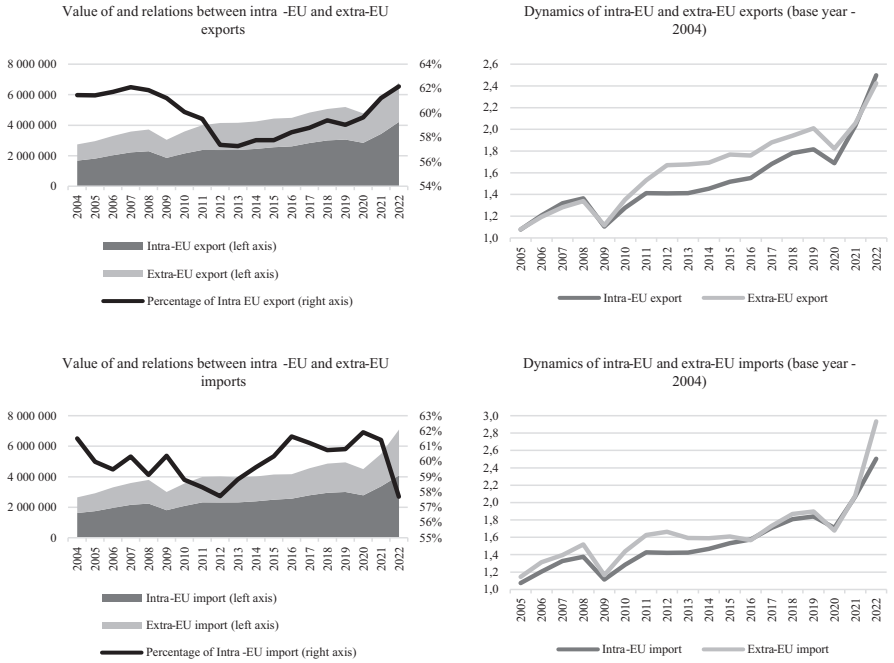


Figure 6. Intra-EU and Extra-EU Trade in Goods from 2004 to 2022 (in mln EUR)

Source: The author's own calculations based on the Eurostat data.

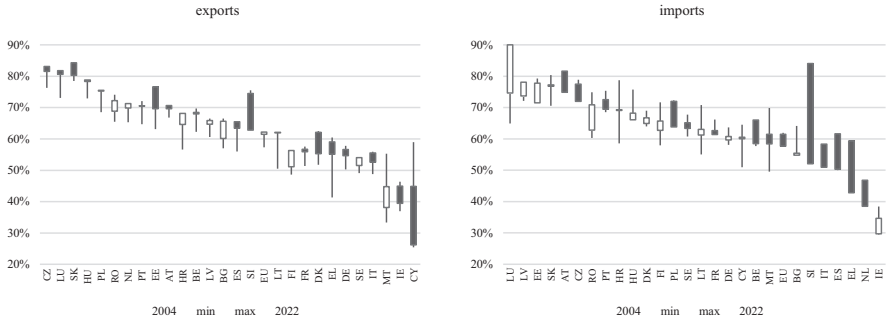


Figure 7. Share of Intra-EU Trade in Global Foreign Trade of EU Member States from 2004 to 2022

Black bar: a decrease, white bar: an increase in 2022 as compared to 2004.

Source: The author's own calculations based on the Eurostat data.

as for smaller countries of the old EU, including, for example, Czechia, Luxembourg, Slovakia, Hungary and Poland. By contrast, in countries such as Italy, Sweden, Germany, Greece or Denmark and France, the share was lower, at 53–56%. The lowest rate was registered in island states, due to their ties with non-EU countries: Malta, Cyprus and Ireland. A similar trend was recorded for imports of goods: the highest share of intra-EU imports in goods in global foreign imports (more than 70%) was recorded for Luxembourg, Latvia, Estonia, Slovakia, Austria and Czechia, and the lowest (about 50%) for Slovenia, Italy, Spain, Greece, the Netherlands and Ireland (Figure 7).

Transposition Deficit and Trade in Goods in the EU

Along with the reduction in the transposition deficit of EU internal market directives, intensification of trade in goods is to be expected on the ESM. For the EU as a whole, this process was encapsulated by analysing the change in the share of intra-EU trade in the overall trade of EU Member States. This country-by-country approach is important because it is not the entire EU that trades with itself, rather businesses located in individual Member States that export and import goods. This trade follows regulations applicable for the exporter's and importer's country (the term *intra-EU trade* refers to trade between EU Member States). Consequently, the degree of trade intensification within the EU is presumably inversely proportional to the transposition deficit. It follows that the greater the conformity of national legislation with EU requirements for the internal market, the greater the intensity of trade with other Member States should be. At the same time, the relationship should work inversely, i.e. the lower the percentage of correctly implemented legislation, the more trade is obstructed, which translates into lower turnover within the EU. To verify this hypothesis, the evolution of the transposition deficit was compiled with changes in the share of Member States' intra-EU trade in their foreign trade overall.

Several comments need to be made regarding the proposed research solution. First, the transposition deficit data available and presented above refer to the number of unimplemented directives, not the degree of real unification. This is because a failure to implement a single directive can make it significantly more difficult or even impossible for a given product to enter a Member State's market. Second, the available data is aggregated at the level of all internal market directives, and a lack of transposition, if any, may not necessarily affect an area which directly impacts trade. On

the other hand, any impediment to the recognition of qualifications, for example, which results in reduced movement of workers, may prompt reduced demand for certain goods (for example those from a country from which workers do not come) and ultimately translate into trade decline. Third, the identified transposition deficit did not necessarily affect trade in a given year, as the implementation problem data concern the end of a given year, whereas trade was ongoing throughout the year. Fourth, amid lacking disaggregation of the transposition deficit data, the trade data were not aggregated for individual groups of goods either. Fifth, primarily in the case of smaller countries, trade undergoes significant fluctuations which are not necessarily associated with the legal situation in the target country. Sixth, the shift in importance of intra-EU trade in the overall foreign trade of Member States may be due to increased trade with one or a group of third countries with which the EU has recently established preferential trade relations.

Therefore, a decision was made nevertheless to compile data (including those treated by simple statistical calculations) on transposition deficit and the share of intra-EU trade in goods in the overall foreign trade of Member States. Since the extent to which national legislation is unified can affect trade in various ways, exports (intra-EU sales) and imports (intra-EU acquisitions) were shown separately. In addition, the period from 2004 to 2021 was taken as the period under review to cover the trade of majority of current EU members (the UK was disregarded in the calculations). Having regard for the above limitations and the comments made, the study employed the following:

- 2021 transposition deficit;
- change in 2021 transposition deficit versus 2004;
- average transposition deficit in the period 2004–2021;
- share of intra-EU exports in goods in total exports of 2021;
- change in the share of intra-EU exports in goods in total exports of 2021 versus 2004;
- average share of intra-EU exports in goods in total exports from the period 2004–2021;
- share of intra-EU imports in goods in total imports of 2021;
- change in the share of intra-EU imports in goods in total imports of 2021 versus 2004;
- average share of intra-EU imports in goods in total imports from the period 2004–2021.

The above shares were determined on the basis of European Commission data included both in the Scoreboard of 2022 as well as in the Eurostat database. In order to encapsulate the changes and in an attempt to find

links between the transposition deficit and intra-EU trade orientation, they were disaggregated at the level of EU Member States (Table 1).

In compiling data on the level of ESM integration and EU Member States' trade orientation towards the European single market, it can be concluded that the countries with the lowest values of the transposition indicator in 2021 (less than 1%) and average values for the period 2004–2021 include Denmark, France, Hungary and Finland, as well as Germany (with a one-off increase of up to 9% in 2007 left aside). They typically recorded a relatively low share of intra-EU exports in goods in their overall foreign sales (at 53.0 to 54.6% in 2021, save for Hungary at 78%). In the surveyed period, the values were gradually giving way to non-EU exports. In turn, intra-EU imports are strikingly different for the countries. In this case, the transposition leaders recorded above-average growth and the ultimate value of the share of intra-EU acquisition versus all the foreign imports of goods throughout the period from 2004 to 2021 under review. This may be down to the countries' legislation being radically adapted to the EU requirements.

It is hard to find common tendencies for those Member States which recorded the transposition deficit at 1–1.5% and 1.5–2% at the end of 2021. As for the exports, many countries recorded the highest shares of intra-EU sales of goods in overall foreign exports (Slovakia, Luxembourg, Poland, and Portugal at 71.5–80.5%), and also posted the transposition deficit at levels largely surpassing the political goals in place. It is also worth noting that a share of intra-EU exports well above the EU average was recorded for such countries as Czechia, Romania and Bulgaria (80.4%, 73.2% and 66.5%, respectively). At the same time, these countries recorded the highest transposition deficit (2.4%, 2.9% and 2.2%, respectively). In posting above an average transposition deficit, the above-mentioned countries with high intra-EU exports were joined by those for which the EU market was not as important as exports to non-EU partners (in the case of Cyprus, it accounted for only 27.8% of all foreign sales, Ireland – 28.1%, for Sweden and Greece – about 53% each).

The case is somewhat different for imports. Countries with the lowest transposition deficit at the end of 2021, as well as its value over the 2004–2021 period, being average (allowing for the comments made above regarding Germany), also recorded an above average share of intra-EU imports in their total imports of goods. However, the highest reliance on intra-EU acquisition was recorded by countries such as Luxembourg (88.7%), Slovakia (78.2%), Austria (76.4%), Czechia (73.7%), Latvia (73.2%) and Romania (72.5%), whose 2021 transposition deficit exceeded not only 1%, but 2% at times. Consequently, although the first group of

countries could hint at a link between low transposition deficit and a high share of EU imports in these countries' global imports, the other group is completely random and it is difficult to find a clear link between these indicators.

Conclusions

This study makes it possible to formulate several conclusions and recommendations for further analysis. First, during the period under review, a general increase in transposition deficit was recorded with a concomitant increase in conformity deficit. This means that, in principle, Member States poorly transpose and implement EU internal market legislation. No genuine efforts at the national level to ensure harmonisation of laws follow the political guidelines of the European Council on the role of the single European market. With the single European market in place for thirty years, there is no clear demarcation line between the best and worst performers of EU membership obligations, i.e. transposing EU legislation into national law. In the subsequent years of the analysed period, the composition of groups of countries with the highest and the lowest indicators varied. Both of these groups included the countries that joined the EU somewhat later and the founders of the EU and ESM. Both of these groups include countries big and small, of the South and North, or West and East, as well as those of a better or worse level of development, more and less affluent. With not only transposition deficit, but also the conformity indicator being relatively high, progressive market fragmentation ensued. In response to this, the nature of the single European market legislation is gradually changing. Instead of directives requiring transposition and implementation, the European Commission is increasingly proposing regulations directly applicable in all Member States.

In this way, the traditional internal market model based on directives requiring transposition and implementation in the Member States as an element of harmonization (i.e., the elimination of significant differences between Member States' laws), is gradually being abandoned. In addition to the aforementioned weaknesses of having to implement EU legislation into national legislation, it turns out that the directives do not in fact leave, as previously thought, "space" for interpretation and adaptation of national law with regard to the substantive issues. Consequently, the Member States, albeit not blatantly, are increasingly embracing both the swap of existing directives for regulations (e.g., on technical provisions and product safety), as well as the regulations governing new areas of economic activity (roaming, digital commerce).

Contrary to the negative results of legislative transposition, the shares of intra-EU exports and imports in goods in total foreign sales of EU Member States are relatively high. This means that the relative harmonization currently underway to unify laws ensures that products from other Member States are included. However, the relationship between the compatibility of national regulations with EU law and the geographic orientation of trade in goods cannot be clearly identified.

In the former case, this may be due to the internal market for EU goods being free, as a rule, from major barriers, while those barriers that exist do not affect trade so much (much as it may slightly vary for individual goods). In addition, the value of intra-EU trade in goods continues to grow, and increasing trade with non-EU countries means a gradual improvement in the competitiveness of European goods and, thanks to EU trade policy, entry into new markets.

In order to more precisely encapsulate the link between the transposition of EU legislation, that is the openness of Member State economies to entities from other EU countries, data disintegration and analysis would be necessary for individual areas of legislation, groups of goods.

ANNEX

Table 1. Trade Deficit and Shares of Intra EU Trade in Goods in 2004–2021

	Transposition deficit			Share of intra EU export in total export			Share of intra EU export in total export		
	2021	Change 2021–2004	Average 2004–2021	2021	Change 2021–2004	Average 2004–2021	2021	Change 2021–2004	Average 2004–2021
DK	0.40	-1.90	0.51	53.0%	-9.15	56.9%	68.0%	3.11	65.9%
DE	0.40	-2.10	1.37	54.3%	-2.37	53.7%	63.7%	3.98	60.5%
FR	0.60	-2.60	0.91	54.6%	-2.09	54.1%	66.0%	3.35	63.8%
HU	0.70	-1.30	0.83	78.1%	-0.63	76.3%	71.2%	5.18	70.0%
FI	0.80	-1.50	0.83	56.2%	5.06	52.1%	69.7%	6.93	64.3%
MT	1.10	-4.90	0.77	48.1%	10.01	42.2%	59.7%	-1.76	60.6%
EE	1.20	-3.80	1.02	67.0%	-9.57	68.4%	72.0%	0.53	75.7%
IT	1.20	-3.30	1.44	52.7%	-2.82	52.2%	56.7%	-1.68	55.0%
SI	1.20	-2.00	1.19	67.7%	-6.78	73.4%	56.0%	-28.03	70.6%
PT	1.40	-1.80	1.44	71.5%	0.99	69.1%	73.6%	1.12	72.7%
SK	1.40	-4.90	0.92	80.5%	-3.78	81.1%	78.2%	0.99	75.5%
PL	1.50	-1.40	1.50	75.0%	-0.21	72.9%	66.4%	-5.60	68.4%
EU	**1.60**	**-2.00**	**1.12**	**61.2%**	**-0.24**	**59.8%**	**61.4%**	**-0.09**	**60.1%**
HR	1.60	1.60	0.87	67.4%	2.79	62.1%	74.3%	5.24	69.0%
NL	1.60	-0.40	0.84	69.4%	-0.45	68.2%	41.2%	-5.62	41.6%
LT	1.70	0.70	0.66	57.6%	-4.33	56.6%	68.5%	7.33	61.9%
CY	1.80	-2.60	1.51	27.8%	-17.08	45.7%	64.5%	3.99	59.6%
EL	1.80	-3.30	1.46	53.8%	-5.28	52.1%	51.6%	-7.72	52.4%
LU	1.80	-2.40	1.79	80.8%	-1.00	79.1%	88.7%	14.12	77.4%
AT	1.90	-0.40	1.22	69.1%	-1.52	68.6%	76.4%	-5.24	76.7%
LV	2.00	-5.00	1.06	63.7%	-1.07	63.8%	73.2%	-0.52	75.2%
SE	2.00	0.00	0.79	53.7%	2.16	51.9%	66.4%	1.27	64.0%
BG	2.20	2.20	0.91	66.5%	6.32	61.4%	60.5%	5.74	59.5%
IE	2.20	-0.20	1.07	38.1%	-6.85	41.6%	38.0%	8.27	33.5%
ES	2.20	0.90	1.23	62.1%	-3.37	60.8%	54.6%	-6.98	55.4%
CZ	2.40	-7.20	1.81	80.4%	-2.64	79.5%	73.7%	-3.71	74.9%
BE	2.80	-0.60	1.58	66.7%	-1.76	65.7%	62.6%	-3.35	62.1%
RO	2.90	2.90	1.10	73.2%	4.33	69.4%	72.5%	9.67	70.3%

Source: The author's own calculations based on EC (2023) and Eurostat.

References

Ambroziak, A.A. (2012) "Bilans dwudziestolecia istnienia rynku wewnętrznego Unii Europejskiej – aspekty wdrażania legislacji unijnej", *Studia Europejskie*. Vol. 64(4), pp. 51–78.

Ambroziak, A.A. (2013) "Handlowe skutki ewolucji prawa swobodnego przepływu towarów. Bilans dwudziestolecia istnienia rynku wewnętrznego UE", *Studia Europejskie*. Vol. 65(1), pp. 75–100.

Ambroziak, A.A. (2021) "Does the European Single Market Exist in the Era of a Coronavirus Pandemic? The Case of Intra and Extra-EU Trade in COVID-19-related Products", *Studia Europejskie – Studies in European Affairs*. Vol. 25(1), pp. 63–83. DOI: 10.33067/SE.1.2021.3.

Ambroziak, A.A. (2022) *Poland's State Aid Policy During the COVID-19 Outbreak* in Ambroziak, A.A. (ed.) *Poland in the European Union. Report 2022*. Warsaw: SGH Publishing House, pp. 39–78.

Berglund, S., Gange, I. and van Waarden, F. (2006) "Mass production of law. Routinization in the transposition of European directives: a sociological-institutional account", *Journal of European Public Policy*. Vol. 13, pp. 692–716. DOI: https://doi.org/10.1080/13501760600808550.

Borghetto, E., Franchino, F. and Giannetti, D. (2006) "Complying with the transposition deadlines of EU directives: evidence from Italy", *Rivista Italiana di Politiche Pubbliche*. Vol. 5, pp. 7–38.

De Coninck, I. (2015) *Transposition of European legislation: Flemish and Scottish performance*, Working Paper No 1. Available at: https://www.ippapublicpolicy.org/file/paper/1434093631.pdf (Access 1.05.2023).

EC (1997a) Draft Action Plan for the Single Market, COM(97) 184 final, Brussels, 6.05.1997.

EC (1997b) Single Market Scorebord, No 1, November 1997, Brussels.

EC (1998) Single Market Scorebord, No 2, May 1998, Brussels.

EC (2000) Single Market Scorebord, No 7, November 2000, Brussels.

EC (2001) Single Market Scorebord, No 9, November 2001, Brussels.

EC (2004) Single Market Scorebord, No 13, July 2004, Brussels.

EC (2005) Single Market Scorebord, No 14, July 2005, Brussels.

EC (2011) Single Market Act. Twelve levers to boost growth and strengthen confidence. "Working together to create new growth", COM(2011) 206 final, 13.04.2011, Brussels.

EC (2015) Single Market Scorebord, Performance per governance tool, Reporting period: 5/2014–11/2014. Available at: https://single-market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en (Access 6.05.2023).

EC (2017) Single Market Scorebord, Performance per governance tool, Reporting period: 12/2015–12/2016. Available at: https://single-

market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en (Access 6.05.2023).
EC (2023a) Single Market Scorebord, Performance per governance tool. Available at: https://single-market-scoreboard.ec.europa.eu/enforcement-tools/transposition_en (Access 6.05.2023).
EC (2023b) The Single Market at 30, COM(2023)162 final, Brussels.
EUCO (1993) Presidency Conclusions, 21–22 June 1993.
EUCO (1996) Presidency Conclusions, 13–14 December 1996, Dublin.
EUCO (1997) Presidency Conclusions, 17–18 June 1997, Amsterdam.
EUCO (2001) Presidency Conclusions, 23–24 March 2001, Stockholm.
EUCO (2002) Presidency Conclusions, 15–16 March 2002, Barcelona.
EUCO (2003) Presidency Conclusions, 20–21 March 2003, Brussels.
EUCO (2004) Presidency Conclusions, 25–26 March 2004, Brussels.
EUCO (2007) Presidency Conclusions, 8–9 March 2007, Brussels.
EUCO (2023) Conclusions, EUCO 4/23, 23 March 2023.
Howarth, D. (2022) *The increasingly differentiated European Single Market?* in Leruth, B., Ganzle, S. and Trondal, J. (eds.) *The Routledge Handbook of Differentiation in the European Union*. Routledge, pp. 391–407. DOI: https://doi.org/10.4324/9780429054136-27.
Haverland, M. and Romeijn, M. (2007). "Do member states make European policies work? Analysing the EU transposition deficit", *Public Administration*. Vol. 85(3), pp. 757–778. DOI: https://doi.org/10.1111/j.1467-9299.2007.00670.x.
Kaeding, M. (2006) "Determinants of transposition delay in the European Union", *Journal of public Policy*. Vol. 26(3), pp. 229–253. DOI: https://doi.org/10.1017/s0143814x06000547.
Kaeding, M. (2008) "Lost in translation or full steam ahead: the transposition of EU transport directives across member states", *European Union Politics*. Vol. 9(1), pp. 115–143. DOI: https://doi.org/10.1177/1465116507085959.
Kuczewska, J. and Stefaniak, J. (2022) *Implementacja programu rynku wewnętrznego Unii Europejskiej z uwzględnieniem efektów dla przedsiębiorstw* in Gorynia, M., Kuczewska, J. and Nowak, A.Z. (eds.) *Polskie przedsiębiorstwo na jednolitym rynku europejskim: wyzwania współczesności*. Warszawa: Polskie Wydawnictwo Ekonomiczne, pp. 25–44. DOI: https://doi.org/10.31338/uw.9788323553489.pp.75-86.
Laursen, K. (1998) *Revealed comparative advantage and the alternatives as measures of international specialisation, Danish Research Unit for Industrial Dynamics (DRUID)*. Working Paper No 98–30. Aalborg: Copenhagen Business School and Department of Business Studies, Aalborg University.

Michelsen, J. (2008) "A Europeanization deficit? The impact of EU organic agriculture regulations on new member states", *Journal of European Public Policy*. Vol. 15(1), pp. 117–134. DOI: https://doi.org/10.1080/13501760701702256.

Moriana, V.F., Vida, A.M. and De Lombaerde, P. (2017) *The European Commission Single Market Scoreboard* in De Lombaerde, P. and Saucedi Acosta, E.J. (eds.) *Indicator-Based Monitoring of Regional Economic Integration: Fourth World Report on Regional Integration*, No. 13, pp. 3–26. DOI: https://doi.org/10.1007/978-3-319-50860-3_1.

Lazar, C. and Lazar, M. (2015) "Perceptions of good governance in Romania through statistical indicators", *Journal of Law and Administrative Science*, Vol. 441.

Musiałkowska, I. (2017) "Implementation of European Union law in Poland", *Common Values*. December, pp. 179–192. DOI: https://doi.org/10.5771/9783845284774-179.

Pircher, B. and Loxbo, K. (2020) "Compliance with EU Law in Times of Disintegration: Exploring Changes in Transposition and Enforcement in the EU Member States between 1997 and 2016", *Journal of Common Market Studies*. Vol. 58(5), pp. 1270–1287. DOI: https://doi.org/10.1111/jcms.13030.

Ručinská, S. and Fečko, M. (2019) "European Union Internal Market and its barriers: mission accomplished or never ending story?", *Online Journal Modelling the New Europe*. Vol. 29, pp. 25–52. DOI: https://doi.org/10.24193/ojmne.2019.29.02.

Steunenberg, B., and Rhinard, M. (2010) "The transposition of European law in EU member states: Between process and politics", *European Political Science Review*. Vol. 2(3), pp. 495–520. DOI: 10.1017/S1755773910000196.

Sverdrup, U. (2004) "Compliance and conflict management in the European Union: Nordic exceptionalism", *Scandinavian Political Studies*. Vol. 27(1), pp. 23–43. DOI: https://doi.org/10.1111/j.1467-9477.2004.00098.x.

Toshkov, D. (2008) "Embracing European law: compliance with EU directives in Central and Eastern Europe", *European Union Politics*. Vol. 9(3), pp. 379–402. DOI: https://doi.org/10.1177/1465116508093490.

DOI: 10.33067/SE.3.2023.5

Jakub Kociubiński★

The EU Framework for the Screening of Foreign Direct Investment as a Response to the Belt and Road Initiative in the Post-COVID Era

Abstract

After the limbo caused by the COVID-19 pandemic, Chinese investments have picked up in the first quarter of 2023. Investments through China's Belt and Road Initiative are carried out by approaching potential participants individually, or via dedicated platforms outside the EU's legal and institutional framework. Thus, the EU Framework for the Screening of Foreign Direct Investment – which is likely to get its so-called "baptism of fire" after its COVID-induced hibernation – can be seen as an implicit response to said Chinese initiative. This framework should be considered a message directed simultaneously towards foreign actors, discouraging them from attempting to carry out investments in the EU with the intention of bypassing the relevant European rules, and also towards Member States, cautioning them against facilitating such operations. The author will argue that the regulatory model has too many in-built unknowns that could prevent the framework from achieving its objectives.

Keywords: Foreign Direct Investment, Security, Internal Market, EU Law, EU Interest

★ **Jakub Kociubiński** – University of Wrocław, e-mail: jakub.kociubinski@uwr.edu.pl, ORCID ID: 0000-0002-4391-7439.

Introduction – The FDI Regulation in a Post-COVID Context

The European Union (EU) strives to provide a welcoming climate for foreign direct investments (FDIs), and to capture the value-adding benefits that inward projects would bring to its economy, but despite such an absorptive stance toward foreign capital, there are the increasingly vocal concerns over certain types of investments. The argument runs that giving control of critical assets to foreigners can disrupt access to goods and services and even provide access to channels of infiltration and surveillance into critical infrastructure. Another concern is that a foreign investor may share some critical technological know-how (Das, 2017, p. 295; Zhang, Van Den Buckle, 2014, p. 159). Over recent years, industry as well as the general public have become increasingly vocal about these attempts which has contributed to the adoption of the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (FDI Regulation, 2019). In the European Commission's (EC, the Commission) words, it will provide (among others) "a tool to protect projects and programmes which serve the Union as a whole" (FDI Regulation, 2019, recital 19).

Even a cursory look at *ratione materiae* of the FDI Regulation will reveal overlaps and potential sources of tension with China's Belt and Road Initiative (B&R). Launched with much fanfare in 2013, the Initiative is an extensive political and economic project of the People's Democratic Republic of China involving trade expansion and increasing economic ties by engaging in the construction of infrastructure projects in target countries. Following a significant fall in foreign direct investment resulting from the pandemic, the FDI Regulation was left in limbo. Now, however, despite an uncertain global situation, and after COVID restrictions were eased, China's economic activity picked up in early 2023 with a renewed wave of foreign direct investment. At the same time, a mounting wave of protectionist sentiment in Europe manifested itself through increased fears of Chinese state-sponsored economic expansion (James, 2018; Fratzscher, 2020; Babić, Dixon, 2022); a generally unfavourable reception of the B&R Initiative in Europe; attempts to develop the Union's own counter-strategy – *EU-Asia Connectivity Strategy* (2018); and, finally, an apparently indefinite pause on the EU-China Investment Agreement. When seen together, one can reasonably assume that the FDI Regulation will soon get the opportunity to receive the aforementioned baptism of fire.

In the light of these developments, in this paper, the author would like to put forward the argument that the FDI Regulation should be seen as an implicit response to the B&R Initiative (Barton, 2021, p. 1). It should be seen in the interlinked politico-legal context as a message directed, on the one hand, towards Member States to remind them about their Treaty obligations and to caution them about engaging in bilateral investment projects possibly undermining European interests, especially in the light of the apparent halt on the EU-China investment deal. On the other hand, it should also be seen as a message directed at foreign actors – both States and businesses – discouraging them from any attempts at carrying out investments in the EU's Internal Market with the intention to bypass the relevant European rules (Bismuth, 2020, p. 103). However, with the approach taken in the FDI Regulation, the implication being that it is the initial stage of the building process, a *ballon d'essai* for a broader, more comprehensive EU FDI screening mechanism, especially owing to the yet-to-be-defined concept of EU security as its substantive backbone and opinion-based model, the author will argue that the EU policymaker is trying to accomplish too many goals at once and thus may fail to achieve any of them thanks to the tools chosen to achieve them interfering with one another.

The Belt and Road Initiative as a Source of Tension With the European Union

The mentioned tension between the European acquis and the Belt and Road Initiative is evident in two interconnected aspects – those of the political and legal. These aspects revolve around the issues of what the subject of Chinese investments could be and how these investments will be carried out.

The initiative in question is currently the main area of strategic interest for China (Kowalski, 2018, p. 79; Zhang, Xu, 2016, ch. 1). Although its implementation has a checkered history, the B&R's agenda is still very much alive after the COVID-induced limbo. Its main, declared goal of facilitating trade links is supposed to be fulfilled by investments in critical transport and energy infrastructure such as roads, ports, railway lines or power plants in target countries (Zhang, Xu, 2016).

Here, security threats may arise from foreign investments that grant access to control systems of critical infrastructures, such as power generation. Simultaneously, conflicts with EU law may occur – this being the more plausible scenario – when a B&R infrastructure project, due to being established through international, bilateral agreements between

a target State and China, potentially violates preexisting EU rules, for example, those related to public procurement. Additionally, the location of a B&R project may interfere with existing or planned European infrastructures, such as trans-European networks for transport and energy (Verhoeven, 2020, p. 283).

Additionally, Chinese economic expansion often involves attempts at taking over or at least acquiring shares in businesses possessing valuable technological know-how, such as military technologies, microchips, etc. In such cases, investments may also be utilised to gain access to these technologies and transfer them to other domestic operators. The Chinese takeover of German robot maker KUKA in 2016 is considered a pivotal moment in this context (Braw, 2020). The case caused political upheaval and is cited as a *cause célèbre* by supporters of the need for preventive FDI screening mechanisms (European Parliament, 2017). It is important to note that this mode of expansion predates the B&R initiative and is only tangentially linked to it, serving as a separate component of Chinese expansion, nevertheless being relevant in this context.

The already-mentioned second aspect pertains to how Belt and Road projects are being launched. China has adopted a strategy of approaching potential European participants individually through bilateral agreements or via dedicated political platforms (such as CEEC, the so-called "16/14 + 1 Initiative"). In any case, these agreements are established outside the EU legal and institutional framework (Chaisse, 2020, p. 560). Some view this approach as one which erodes the EU's unity along the lines of a "divide and conquer" strategy (Ploberger, 2019, p. 4.3).

Based on the synoptic overview above, one can conclude that nomothetic knowledge suggests a likelihood of security threats arising from certain Chinese investments as being intuitively understood. However, to proceed with further discussion, these vague and superfluous notions need to be clarified and translated into a legal concept of security. Subsequently, a control mechanism must be developed – based on this concept – to effectively use it as a yardstick for FDI control.

FDI Regulation – An Overview

Assuming that the European Commission, acting under the FDI Regulation, finds that a foreign investment targeted at projects or programmes of Union interest constitutes a threat to public security/order, it may address an opinion to the Member States. Article 9(5) of the FDI Regulation explicitly states that „The Member States where the foreign direct investment is planned or has been completed shall take

utmost account of the Commission's opinion and provide an explanation to the Commission in case its opinion is not followed". The Explanatory Memorandum further explained that Member States „should consider ways of taking [the EC's opinion] into account whether through their domestic screening mechanism or (…) in their broader policy making" (Explanatory Memorandum, 2017).

Even a cursory look at this procedure reveals an in-built ambiguity pertaining to the impact the EC screening may have on Member States. According do Article 288(5) TFEU, opinions shall have no binding force (Treaty on the Functioning of the European Union , 2012, p. 47). Typically, EU legislators resort to non-legally-binding instruments in the absence of clear-cut, attributed competencies in the matter. But that is not the case here. Although, prior to the adoption of the FDI Regulation, the mechanisms for screening inbound investments were left to the Member States, the EU holds exclusive competence concerning foreign direct investment. This is included in the list of matters falling under the common commercial policy, as outlined in Article 207(1) TFEU. Then the following argument would deserve consideration; if the Commission finds that a foreign investment targeted at projects or programmes of Union interest constituted a threat to public security/ order, by implication, this means that a Member State had infringed the duty of loyal cooperation. According to this principle, Member States must not only effectively implement EU law, but also refrain from acting unilaterally in contravention of that law from the very moment that the EU makes a rule on an issue. For the above reasons, allowing foreign investment contrary to the EC's opinion could be easily interpreted as hampering the effective exercise of EU law in a particular policy area. As a result, the opinion could possibly trigger an infringement procedure under Article 258 TFEU.

In the light of the above overview, and in the context of this paper's research question, the following issues emerge: how should the concept of European security be fleshed out, considering that its endangerment may trigger State liability; how can the Regulation's opinion-based mechanism ensure access to judicial review; and, ultimately, how does all this translate into the act's effectiveness? These issues will be discussed in turn.

Security – A European or National Concept?

The concept of security – the primary substantive criterion in the FDI Regulation – is lexically, and rather intuitively, understood as a certain state of mind, i.e., the absence of fear (Wolfers, 1952, p. 481). Such a description

indicates a high degree of case-specificity and ambiguity which makes it difficult to forge into a legal concept – one which is definable, predictable, and repeatable. Its interpretation in EU law gleaned from the Court of Justice's (CJEU, the Court) case law present broad strokes at best. While these cases are not FDI Regulation-related (no cases yet exist), they ought to provide the closest available analogy since they deal with restrictions to free movement in the EU's Internal Market. The reason for this is that all FDIs fall under the free movement of capital that itself can be restricted on the ground of security and public order, and the security criterion under the FDI Regulation is formally anchored in free movement rules thus modelled after the corresponding Treaty provision (Hindelang, 2009, p. 81).

As an exception, *ordre public* criterion must be interpreted restrictively (Jäger, 2008; Arens-Sikken, 2008). It means, firstly, that a derogation measure is not permitted if there are less intrusive remedies available (Albore, 2008; Reisch, 2002). Secondly, it means that a threat must be real and tangible (Hindelang, 2009, p. 253; Jipa, 2008), and must be corroborated by facts or circumstances. Consequently, a system of prior authorisation for FDIs which confines itself to defining, in general terms, the affected investments as representing a threat to public policy and public security, with the result that the persons concerned are unable to ascertain the specific circumstances in which prior authorisation is required is not permissible under Article 65(1)(b) TFEU – the Treaty provision governing investments (Scientologie, 2000). In other words, a mere statement by the Member State that a given investment may pose a risk to security is insufficient to invoke this exception.

Overall, all these permissible *ordre public* justifications share a common denominator, which may be summarised as the objective of ensuring continuity in public services and safeguarding the functioning of a State's institutions (Barnard, 2016, p. 546). Notably, in a series of cases, the Court held that a measure essentially allowing the authorities to oppose any significant investment into certain predesignated strategic companies by requiring prior authorisation before an individual was entitled to hold share capital exceeding a specific ceiling is, in principle, justifiable under the security exception (Golden Shares I, 2002; Golden Shares II, 2002; Golden Shares III, 2002; Golden Shares IV, 2003).

Although national measures restricting free movement must be seen and assessed in the European context, the *raison d'être* for these restrictions originate entirely from domestic policies (Scientologie, 2000). That is to say, measures are taken in response to threats to national interests. Conversely, scrutiny carried out under the FDI Regulation seeks to

counteract threats to "projects and programmes of Union interest" on the grounds of security or public order (FDI Regulation, 2019, recital 19). Such a *ratio legis* poses a problem, because despite the fact that *ordre public* criterion appear in the text of the Treaty, the Union's public security does not exist as a self-standing category, detached from its counterparts in Member States (Van Duyn, 1974). It is merely an amalgamation of various national security-related justifications. The FDI Regulation's *ratione materiae* necessitate a possible re-evaluation of this position by exploring the question of whether a particular instance of foreign investment can negatively affect the Union's interests without causing any marked detrimental effects on the Member States. Otherwise if there was a threat, domestic authorities would block said investment on the grounds of their national policy.

In principle, even assuming that an investment project could be contrary to EU interests, the principle of loyal cooperation should have precluded the Member States from pursuing that course of action (Klamert, 2014, p. 71 et seq. and the cases cited therein). In practice, it hinges on the premise that authorities are able to *ex ante* ascertain and identify infringing activity with reasonable certainty. A straightforward task, as long as either the substantial criterion is clearly defined or when CJEU case law is capable of providing sufficient guidance. None of these conditions are met for the EU security criterion. The lack of intentional wrongdoing is not a valid defence, but then an infringement would be addressed at a later stage through Article 258 TFEU's procedure at which point the harm from an FDI would possibly have been done already (Tachographs, 1979; Spanish Strawberries, 1997).

If the States had not seen the need to block an investment on domestic policy grounds, then the very existence of the FDI Regulation leads to the conclusion that the EU's public security must be independent from that of its Member States. Although the concept remains ill-defined, without it one could question the very *rationale* of the FDI Regulation. Such „Europeanised" security is indispensable to the regulation's applicability because the act at issue essentially reversed the paradigm of control over national measures restricting the Internal Market's freedoms; typically, the Commission cannot challenge the Member States' decision not to invoke the exception, whereas, under the FDI Regulation, the assessment seeks to establish whether these exceptions should apply (assuming this exception is not enshrined in EU Law).

The regulation in question can therefore be viewed as an attempt to introduce a new concept of „EU security" in relation to „projects and programmes of Union interest". There is no interpretive precedent to rely

on, and in any case, an attempt to create *in abstracto* one-size-fits-all sets of exhaustive criteria, given the multitude of possible scenarios whereby each sector and each type of investment poses unique risks, seems futile. Vague, open-ended notions such as security will remain indefinable in absolute terms, thus the understanding must inevitably, and to a large degree, depend upon judicial acquis (Engberg, 2016). It takes time to develop. In this context, the FDI Regulation's role may arguably be to flesh out this so-far-undefined notion of the EU security by acting as a „trip wire" for the Member States, providing a warning before they commit themselves to navigating a course contrary to that of European interests. While it goes without saying, in the interim, legal certainty will likely be adversely affected before the concept is sufficiently elucidated, but this may explain why the EU legislator has opted for a light-handed, opinion-based model; it should allow for the smoother development of case law as opposed to interpretations issued through infringement proceedings under Article 258 TFEU.

Yet a cautionary note must be sounded about adequacy of the aforementioned approach. Firstly, if experiences with national screening mechanisms (around half of the Member States have one) is any indication, then one may venture an educated guess that FDI Regulation case-law will not be extensive. Secondly, it remains unclear the degree to which the EC's opinion indicating a threat to the EU security will be followed – they are formally non-binding – and whether the Commission will pursue any action for infringement for acting against the EU's interests when said opinion is disregarded. This latter point will be further elaborated upon.

Operationalising European Security

Attempts to operationalise (or rather decode) the concept of the EU security, drawing from existing case-law and available documents, in such a way that they fit the FDI Regulation's *ratio legis*, necessitate addressing the salient points given below.

The key objectives the Commission aims to implement through the FDI Regulation has been described in the associated Explanatory Memorandum as protecting critical technologies in response to "concerns about foreign investors, notably state-owned enterprises, taking over European companies with key technologies for strategic reasons" (the associated Explanatory Memorandum is silent on what "critical technologies" entail. However, the FDI Regulation itself, in Article 4(1)(b), contains a reference to Council Regulation (EC) No 428/2009 of 5th May 2009, setting up a Community regime for the control of exports,

transfer, brokering, and the transit of dual-use items, Official Journal L134, 29 May 2009, p. 1; the regulation non-exhaustively lists the following critical technologies: artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.).

This brings up the question of whether relinquishing some key technologies would adversely affect the Union's interests but on the specific ground of security and/or public order. On the one hand, it can be convincingly argued that having access to some, for instance, defence-related or dual-use technologies or access to control systems for critical infrastructure could indeed compromise European security. A separate issue is what causal connection between technology and security is required, but, generally speaking, this line of reasoning is defensible. On the other hand, however, the more plausible scenario involves technologies that affect the business capabilities of companies, which in turn translate into a competitive advantage. According to this competition-oriented view of the EU's interests, the requirement of being „on the grounds of security" – when taken literally – appears not to be satisfied.

In furtherance of the above, the scope of security with regard to infrastructure investments and „projects and programmes of Union interest" – the two protected categories under the FDI Regulation – also raise interpretive questions [FDI Regulation, 2019, Art. 8(3)]. At some level of generality, one could convincingly argue that „typical" investments carried out under the B&R Initiative – road and rail infrastructure, electricity grids, and power plants – have a prominent security dimension to cyber threats, surveillance, and so on. However, it does not necessarily mean that a particular project poses any sort of security risk. Consider the following situation; a foreign investor is participating in an infrastructure project acting as a prime contractor. It does not pose any apparent security risks owing to the nature of involvement and subsequent operations arrangements – for instance, the building of a port's pier or a segment of a highway – but that project (primarily due to its location) interferes with one of the European networks' programmes – TEN-T, TEN-E etc. Under the principle of loyal cooperation, Member States should refrain from any measure which could jeopardise the attainment of the Union's objectives so such a project should have never been allowed to go ahead regardless of the FDI Regulation which would have been *prima facie* inapplicable due to the lack of security-related concerns [FDI Regulation, 2019, Art. 8(1)]. However, the mere fact that a project of this nature could, in principle, pose a security risk, compounded with the blurred notion of security, means that it is relatively easy to justify preventive control of practically

every project which overlaps with any of the EU's policies instead of *ex post* through infringement proceeding which lends some credence to its role as a „trip wire" as referred to earlier.

Underlying all these considerations is the question – asked previously in an exclusively national context – of whether there exists a clear-cut and easily distinguishable security criterion *per se* or whether, under this label, restrictions can be imposed in order to protect some other legitimate interests. Although non-security-related public interest may constitute a valid, objective justification – in a general sense – rules governing the permissible restrictions on the freedoms of the Internal Market, when read literally, do not provide legal grounds for an open-ended "rule of reason-like" exceptions (Hindelang, 2009, p. 255). In practice, however, under the case law stemming from the landmark *Cassis de Dijon* case (introducing the so-called „mandatory requirements"), it is submitted that that exceptions to free movement provisions are not limited to those expressly mentioned in the Treaties (Cassis de Dijon, 1979). As a result, the public security/public policy criterion allows a high degree of interpretative flexibility (Barnard, 2016, pp. 159–160).

Due to the lack of dedicated case-law, one can only speculate as to whether the same interpretive approach will be adopted in FDI Regulation cases. One may lean toward an affirmative answer. Firstly, foreign direct investments fall within the scope of the TFEU provisions on the free movement of capital. Secondly, the so-called „mandatory requirements" evoked by the Court are well established in the case law of the Internal Market. And thirdly, there are no objective, factual grounds on which a different approach under the FDI Regulation as compared to other areas with the ambit of the Internal Market's freedoms, especially with regard to other FDIs before the regulation came into force, could be justified.

Access to Judicial Review

All of these questions about the scope of security criterion under the FDI Regulation are compounded by the opinion-based model adopted by the EU legislator which simultaneously waters down the States' obligations and impede parties' (investors and investees) access to courts should an investment become blocked. Referring to the hypothesis set out earlier, the author would argue that a choice for this specific regulatory setup should be viewed as an unsuccessful (if not downright self-defeating) attempt at conveying a message to both the Member States as well as to foreign investors.

Formally speaking, even though the FDI Regulation stipulates that "The Member State should take utmost account of the opinion received from the Commission", according to Article 288 TFEU, opinions have no binding force. "The Member State" is thus under no obligation to block an investment despite the EC's opinion and also given that the FDI Regulation explicitly states that it should be applied "without prejudice to sole responsibility of Member States for safeguarding their national security" (FDI Regulation, 2019, recital 19).

However, this does not preclude the possibility of starting an infringement proceeding under Article 258 TFEU; since FDIs remain a part of the exclusive EU common commercial policy, then under the non-derogable principle of loyal cooperation, Member States must refrain from any action which is contrary to the interests of the Union (Centro-Com, 1997). According to well-established case-law, the Member State's ability to take final decisions on FDIs provided for in secondary legislation should not be construed as precluding any review, especially through the lens of general principles (Watts, 2006; FKP Scorpio, 2006). Consequently, an infringement action could be launched not for disregarding the EC's opinion, but for hindering the attainment of the objectives of the EU despite being given a warning in the form of said opinion.

Assuming the Commission can indeed credibly threaten the Member States with being taken to Court on the basis of Article 258 TFEU, then that must mean that the notion of security is interpreted in a flexible, mandatory requirement-type manner with greater emphasis on EU interests. Otherwise, an action based purely on a narrow, literal interpretation of security would be inadmissible, or unwinnable, since it has been mentioned that the Member States retain the final say over their national security. All these factors provide some justification for a tentative conclusion that one of the FDI Regulation's roles, though not explicitly stated, is to convey a message of caution and serve as a „trip wire" to the Member States about entering into bilateral investment projects outside the Union's framework since all of them could ultimately lead to Article 258 TFEU action.

As regards to a message directed towards foreign countries and businesses, an onerous and potentially ineffective path to judicial review, could be seen in this context. Opinions are unchallengeable through action for annulment brought under Article 263 TFEU. Should a Member State then act upon the Commission's opinion and block an FDI, then, by implication, recourse should be sought from national courts. This presents the following problems; assuming domestic courts deemed

themselves competent to review whatever national legislation has been adopted to block an FDI following the EC's opinion, this, by implication, would lead to an indirect legality review of the opinion at issue and these courts would de facto decide what constitutes the EU's interests with regards to security and „projects and programmes of Union interest". At that point, the subsequent applicability of Article 258 TFEU is unlikely but not totally excluded. Alternatively, a declaration of inadmissibility by a national court may violate the right of access to judicial protection, because, at the same time, the EC's opinions are directly unchallengeable at the EU level.

These controversies could, in principle, be avoided through the Preliminary Question procedure before they become contentious issues (Foto-Frost, 1987). Alternatively, a national court may request the Commission to indirectly participate in the proceedings, by way of providing „evidence and information" (Eurobolt, 2019). Such a request should, ideally, complement the Preliminary Question, and at the very least could provide a somewhat viable alternative if the Article 267 TFEU route is not used. However, in practice, national courts enjoy considerable discretion in their decision regarding whether or not to refer a case to the CJEU even if, in principle, they should do so. This is further compounded by the observable tendency to frame cases pending before the courts of Member States as one of national law – purely domestic – so these courts traverse familiar terrain (Jakab, Kochenov, 2017, p. 44). Since the EC's opinion is not legally binding, meaning there is no formal implementation, a national act blocking FDI in response to that opinion would have to have a separate legal basis in a domestic act, so an argument for a non-EU case – which would settle the preliminary question issue – is somewhat defensible. Even though the opposite view is much more justifiable, it creates just enough doubt as to whether the case is predominately domestic or whether EU law is mostly at issue, so Article 267 TFEU cannot fully be relied upon.

Conclusions – Known Unknowns

If one were to view the FDI Regulation in the context of a Chinese investment push exemplified by the B&R Initiative, as a message both *in foro interno* and *in foro externo,* then the choice of an opinion-based regulatory model is the primary source of problems affecting all other functional characteristics of the regulation in question.

It can be somewhat explained primarily by the vague nature of the notion of security, in its Union aspect, constituting the main substantive

criterion. But it's not entirely justified since the EU has competencies to regulate the matter through so-called „hard-law". The framework could have been decision-based (within the meaning of Article 288 TFEU). Of course, it can be argued that this particular model has also been selected to accommodate domestic political considerations, essentially to ameliorate concerns over intervening too deeply in the Member States' legal orders. However, if this factor were indeed to be decisive as regards the area which falls within the exclusive competence of the Union, then it would be better to dispense with this framework altogether.

Ambiguous criteria such as security will always remain open to varying interpretations coloured by political motivations. The questions of whether the new regulation may in fact serve to hide protectionist intentions indicative of mounting economic nationalism in Europe are unavoidable, regardless of actual intentions. The choice of regulatory model will not change that because underlying calculations follow a political logic whereby the adoption of such a framework restricting inward investment flow FDIs is a signal by itself for any investment-oriented countries. In the politicised world of international trade, a regulation like this must always be viewed through a political lens. So, the question is not whether it sends a signal to potential investors, but what that message may actually be.

In this context, the only thing that this opinion-based model does is to add uncertainty to the EU's policy. Because while the framework in question can potentially be used to effectively block almost every investment and includes an indirect threat of resorting to Article 258 TFEU against the Member States, its regulatory thrust – the message it means to convey – becomes essentially blunted since its ultimate effectiveness depends on too many unknowns; firstly, how security will be interpreted, secondly, how Member States and national courts would approach the EC's opinion, thirdly, how militant the EC's approach would be in pursuing infringement action once its opinion gets disregarded, and fourthly, the fact that its ultimate effectiveness depends on what stance the Court would take during such infringement proceedings.

Acknowledgement

This publication has been supported by National Science Centre, Poland (Narodowe Centrum Nauki) under project no. 2021/43/B/HS5/00548.

References

Albore (2000) C-423/98, ECLI:EU:C:2000:401. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=45100&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1629894 (Access 17.08.2023).

Arens-Sikken (2008) C-43/07, ECLI:EU:C:2008:490. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=67987&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1629112 (Access 17.08.2023).

Babić, M. and Dixon, A. (2022) "Is the China Effect Real? Ideational Change and the Political Contestation of Chinese State-Led Investment in Europe", *The Chinese Journal of International Politics*. Vol. 15(2), pp. 111–139. DOI: https://doi.org/10.1093/cjip/poac009.

Barnard, C. (2016) *The substantive law of the EU: the four freedoms*. Oxford: Oxford University Press.

Barton, B. (2021) "The Belt-and-Road Initiative as a paradigm change for European Union-China security cooperation? The case of Central Asia", *Asia Europe Journal*. Vol. 19, pp. 391–409. DOI: https://doi.org/10.1007/s10308-021-00606-6.

Bismuth, R. (2019) *Reading Between the Lines of the EU Regulation Establishing a Framework for Screening FDI into the Union* in Bourgeois, J. (ed.) *EU Framework for Foreign Direct Investment Control*. Alphen aan den Rijn: Kluwer Law International. DOI: https://doi.org/10.54648/cola2020759.

Braw, E. (2020) *How China Is Buying Up the West's High-Tech Sector. Foreign Policy*. Available at: https://foreignpolicy.com/2020/12/03/how-china-is-buying-up-the-wests-high-tech-sector/ (Access 10.08.2023).

Chaisse J. (2019) *China's international investment strategy: bilateral, regional, and global law and policy*. Oxford: Oxford University Press. DOI: https://doi.org/10.1163/24689017_00401018.

Centro-Com (1997) C-124/95, ECLI:EU:C:1997:8. Available at: https://curia.europa.eu/juris/showPdf.jsf?text=&docid=100435&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1639561 (Access 17.08.2023).

Commission v Belgium (Golden Shares III) (2002) C-503/99, ECLI:EU:C:2002:328. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=47379&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1634338 (Access 17.08.2023).

Commission v France (Golden Shares II) (2002) C-483/99, ECLI:EU:C:2002:327. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=47378&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1634088 (Access 17.08.2023).

Commission v France (Spanish Strawberries) (1997) C-265/95, ECLI:EU:C:1997:595. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=43536&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1636728 (Access 17.08.2023).

Commission v Portugal (Golden Shares I) (2002) C-367/98, ECLI:EU:C:2002:326. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=47377&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1633865 (Access 17.08.2023).

Commission v Spain (Golden Shares IV) (2003) C-463/00, ECLI:EU:C:2003:272. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=48279&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1634643 (Access 17.08.2023).

Commission v United Kingdom (Tachographs) (1979) C-128/78, ECLI:EU:C:1979:32. Available at: https://curia.europa.eu/juris/showPdf.jsf?text=&docid=90103&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1635711 (Access 17.08.2023).

Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Official Journal L 134, 29 May 2009, p. 1). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0428 (Access 10.08.2023).

Das, R.C. (2017) *Handbook of research on economic, financial, and industrial impacts on infrastructure development*. Hershey, Pa: Igi Global. DOI: 10.4018/978-1-5225-2361-1.

Engberg, J. (2016) *Autonomous EU Concepts: Fact or Fiction?* in Šarčević, S. (ed.) *Language and Culture in EU Law*. London: Routledge. DOI: https://doi.org/10.4324/9781315591445-18.

Eurobolt BV (2019) C-644/17, ECLI:EU:C:2019:555. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=215764&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1641058 (Access 17.08.2023).

European Parliament (2017) Foreign direct investment screening. A debate in light of China-EU FDI flows, EPRS (European Parliamentary Research Service), PE 603.941. Available at: https://

www.europarl.europa.eu/RegData/etudes/BRIE/2017/603941/EPRS_BRI(2017)603941_EN.pdf (Access 10.08.2023).

Explanatory Memorandum. Proposal for a Regulation establishing a framework for screening foreign direct investments into the EU COM(2017) 487 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0487 (Access 10.08.2023).

FKP Scorpio (2006) C-290/04, ECLI:EU:C:2006:630. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=65389&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1640511 (Access 17.08.2023).

Foto-Frost (1987) 314/85, ECLI:EU:C:1987:452. Available at: https://curia.europa.eu/juris/showPdf.jsf?text=&docid=94312&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1638269 (Access 17.08.2023).

Fratzscher, M. (2020) "Populism, Protectionism and Paralysis", *Intereconomics*. Vol. 55(1), pp. 2–3. DOI: https://doi.org/10.1007/s10272-020-0859-3.

Hindelang, S. (2009) *The Free Movement of Capital and Foreign Direct Investment*. Oxford: Oxford University Press.

Jäger (2008) C-256/06, ECLI:EU:C:2008:20. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=69717&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1627900 (Access 17.08.2023).

Jakab, A. and Kochenov, D. (2017) *The enforcement of EU law and values: ensuring member states' compliance*. Oxford: Oxford University Press. DOI: https://doi.org/10.54648/euro2018020.

James, H. (2018) "Deglobalization: The rise of disembedded unilateralism", *Annual Review of Financial Economics*. Vol. 10, pp. 219–237. DOI: https://doi.org/10.1146/annurev-financial-110217-022625.

Jipa (2008) C-33/07, ECLI:EU:C:2008:396. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=67583&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1631140 (Access 17.08.2023).

Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Baank. Connecting Europe and Asia – Building blocks for an EU Strategy EU-Asia Connectivity Strategy JOIN(2018) 31 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN:2018:031:FIN (Access 10.08.2023).

Klamert, M. (2014) *The principle of loyalty in EU law*. Oxford: Oxford University Press.

Kowalski, B. (2018) *The Belt and Road Initiative, China's Foreign Policy and the XIX Party Congress* in Cvetković, V.N. (ed.) *The New Silk Road*. Belgrade: University of Belgrade. DOI: https://doi.org/10.18485/fb_nsr.2018.ch5.

Official Journal L 79, 21 March, pp. 1–14. Available at: https://eur-lex.europa.eu/eli/reg/2019/452/oj (Access 10.08.2023).

Ploberger, F. (2019) *Political Economic Perspectives of China's Belt and Road Initiative: Reshaping Regional Integration*. Milton: Routledge. DOI: https://doi.org/10.4324/9780429059636.

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (2019)

Reisch (2002) C-519/99 etc, ECLI:EU:C:2002:135. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=46777&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1630298 (Access 17.08.2023).

Rewe v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon) (1979) 120/78, ECLI:EU:C:1979:42. Available at: https://curia.europa.eu/juris/showPdf.jsf?text=&docid=90055&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1637492 (Access 17.08.2023).

Scientologie (2000) C-54/99, ECLI:EU:C:2000:124. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=45038&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1631623 (Access 17.08.2023).

Treaty on the Functioning of the European Union (2012) Official Journal C 362, 26 October, pp. 47–390. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT (Access 10.08.2023).

Van Duyn (1974) 41–74, Opinion of AG Mayras, ECLI:EU:C:1974:123. Available at: https://curia.europa.eu/juris/showPdf.jsf?text=&docid=88773&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1635434 (Access 17.08.2023).

Verhoeven, S.I. (2020) *EU Legal Obstacles to the Belt and Road Initiative: Towards a China-EU Framework on the Belt and Road Initiative* in Leandro, F. and Duarte, P. (eds.) *The Belt and Road Initiative*. Singapore: Palgrave Macmillan. DOI: https://doi.org/10.1007/978-981-15-2564-3_12.

Watts (2006) C-372/04, ECLI:EU:C:2006:325. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=56965&pageI

ndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1640302 (Access 17.08.2023).

Wolfers, A. (1952) "National Security as an Ambiguous Symbol", *Political Science Quarterly*. Vol. 67(4), pp. 481–502. DOI: https://doi.org/10.2307/2145138.

Zhang, H. and Van Den Bulcke, D. (2014) "China's direct investment in the European Union: a new regulatory challenge?",*Asia Europe Journal*. Vol. 12, pp. 159–177. DOI: https://doi.org/10.1007/s10308-014-0383-9.

Zhang, J. and Xu, M. (2017) *China's belt and road initiatives and its neighboring diplomacy*. New Jersey: World Scientific. DOI: https://doi.org/10.1007/s10308-014-0383-9.

DOI: 10.33067/SE.3.2023.6

Aleksandra Borowicz[★]
Joanna Czerepko[★★]

Possible Consequences of Corporate Sustainability Reporting Directive on Polish Transport Companies

Abstract

Over the past 2 or 3 years, the European Commission has been gradually introducing further regulations with the ultimate goal of establishing European standards for Environmental Social and Governance (ESG) reporting. The aim of this paper is to discuss the regulations contained in the recently adopted Corporate Sustainability Reporting Directive (CSRD), which became effective in January 2023 and to provide a deeper understanding of the distinctive characteristics of Polish transport companies and their value chain relationships with other entities. As an introduction to the main provisions of the recently introduced CSRD, the authors will first outline its core principles. They will then present the fundamental issues related to the value and supply chain and the European Commission's (EC) newly introduced notion of the chain of activities. The article concludes with recommendations for companies.

In order to achieve the research objective, the article uses quantitative and qualitative research methods. Statistical methods point to the importance of Polish transport companies in the European Union. Qualitative methods were used to review legislative documents of the European Union related to this topic.

Our findings contribute to growing, but still limited literature on European regulations in the area of ESG reporting and impact of these regulations on companies.

★ **Aleksandra Borowicz** – University of Gdańsk,
e-mail: aleksandra.borowicz@ug.edu.pl, ORCID ID: 0000-0001-6183-7902.

★★ **Joanna Czerepko** – University of Gdańsk,
e-mail: joanna.czerepko@ug.edu.pl, ORCID ID: 0000-0001-9435-7454.

Keywords: ESG, Supply Chain, Value Chain, Sustainability, CSRD, Non-Financial Reporting

Introduction

Transport companies are facing new challenges as the nature of their business ties them to ESG (Environmental Social and Governance) reporting obligations stemming from EU regulations such as the CSRD. The inherent character of this directive imposes an obligation to report on the three dimensions of progress and strategy in the area of sustainable development (SD), due to the numerous links with other actors in the EU and the role this industry plays in the economy. At this point, the regulations are relatively general in nature and companies can only take steps to try and prepare for 2024, when the CSRD makes SD reporting mandatory.

The draft wording of the Corporate Sustainability Due Diligence Directive (CSDD) states that the success of the European Union's sustainable development goals will be determined by the behaviour of businesses operating in all sectors of the economy. This is because businesses, especially large ones, are positioned within global value chains. Human rights and environmental protection are also in the best interest of businesses, particularly given the growing awareness of consumers and investors in these areas. At the European Union and national level, there are already a number of initiatives in place to support businesses working towards a value-oriented transformation. In line with the idea of building a climate-resilient Europe, which underpins the EU's climate change adaptation strategy, investment and policy decisions should take into account climate and adaptation to future challenges, and that includes larger companies managing value chains.

This paper focuses on the operations of Polish transport companies within chains of activities and the impact of CSRD and CSDD on their business performance. The aim of this paper is to discuss the regulations contained in the recently adopted CSRD, which became effective in January 2023 and to provide a deeper understanding of the distinctive characteristics of Polish transport companies and their value chain relationships with other entities. Our study effectively fills a crucial research gap owing to the innovative nature of our chosen topic and its alignment with the emerging ESG regulations. Furthermore, our findings hold significant relevance for both the European and Polish economies, given the prominent role of Polish companies in this particular sphere.

The authors will begin by introducing the core principles of the CSRD and its connection to other legislative efforts by the European Commission, such as due diligence.

Furthermore, the paper will elaborate on the key aspects of the value and supply chain, emphasizing the newly introduced concept of the chain of activities by the European Commission, which significantly expands the scope of reporting entities. Within this context, the research will examine the operations and significance of the Polish transport sector within the broader European landscape and in relation to the CSRD.

The conclusions drawn from this research will offer valuable recommendations for companies operating in this domain. To achieve these research objectives, both quantitative and qualitative research methods have been employed. The statistical analysis highlights the notable role of Polish transport companies within the European Union, while the qualitative approach involves an in-depth review of relevant legislative documents pertaining to this subject matter.

Sustainability Reporting – CSRD Principles

There is a vast of research on financial reporting in business literature, while the combination of reporting and sustainability shows an existing gap in this regard (Siri & Zhu, 2019). ESG as a concept is relatively new and there is still room in the literature to fill this gap. However, ESG ratings are emerging as a key component of the global drive to deliver on sustainability. ESG is a set of laws and regulations that apply to companies as regards their sustainability. For a wide range of CSR policies, practices and achievements, ESG evaluations provide one of the few comparable data sources. ESG ratings are considered to be impactful in improving the progress in implementation of sustainability within companies (Clementino & Perkins, 2021). The dimensions in which companies are assessed include:

- E as environment, including climate change adaptation and climate neutrality targets,
- S as social, encompassing issues of equality with regard to gender, age and respect for human rights,
- G as governance, covering administrative issues, corporate management, ethics and lobbying activities.

Measures around ESG criteria are hardly a new practice in the European Union. When it comes to environmental, social and governance investments, over a period of roughly 20 years, the EU has created the most comprehensive regulatory regime, which continues to evolve. The

EU was the first to develop the so-called EU taxonomy, which outlines sustainable activities and disclosure rules for financial market participants and large companies (Sipiczki, 2022).

While progress has been made, it is pointed out that climate issues in particular are the ones that simply cannot wait, and greater stakeholder engagement is required to achieve this. Therefore, global organisations, institutions and other public and private actors are striving to accelerate this process (Tettamanzi, Venturini, & Murgolo, 2022).

The European Union, as part of the European Green Deal strategy, has decided to introduce regulations that will make the vast majority of companies report their environmental and human impact activities. These measures are intended to evaluate this progress on an ongoing basis. However, the Non-Financial Reporting Directive (NFRD), which came into force in 2014, already obliges large public entities to report on ESG in the following areas: the environment, employment conditions and social issues, respect for human rights, anti-corruption activities and ensuring gender, age and educational diversity on corporate boards (European Parliament and European Council, 2014). Some 11,700 EU entities have been subject to this obligation since 2016 (European Commission, 2023). The entry into force of the CSRD is not in contradiction to the NFRD, which remains binding.

On 5 January 2023, the EU introduced the new Corporate Sustainability Reporting Directive (CSRD) (Directive, 2022), the provisions of which in the area of ESG reporting are expected to cover some 50,000 large entities and listed SMEs (the second ESG reporting Corporate Sustainability Due Diligence Directive is undergoing the legislative process. On 1 June 2023, a vote took place in the European Parliament, according to which the EP's position on the proposal for this directive was adopted). The Directive applies to large EU undertakings or groups thereof and those that hold securities, including debt securities with nominal value of less than EUR 100,000 (equivalent or depositary receipts), listed on an EU regulated market (excluding micro-enterprises). As regards non-EU players, these are to be units with so-called significant revenues and an EU branch or subsidiary. Significant revenue means an annual net turnover of more than €150 million in each of the last two financial years, with the enterprise "at the same time having at least one large subsidiary, one subsidiary listed on an EU regulated market or one EU branch that generated more than €40 million in annual net turnover in the previous financial year". Under the directive, companies shall have an ESG reporting obligation from 2024, which effectively means that there will be reports for the 2024 financial year published in 2025.

The CSRD uses the term value chain, while it is worth noting that in the draft CSDD the current term is the so-called chain of activities, moving away from the traditional concepts of value chain and supply chain (this is due to the divergent views of the Member States when defining these issues. This is intended to make the terms easier to use, but as we see there are already differences in the terms used between the regulations). The CSRD defines the scope of information that companies are obliged to include in their reporting. Large, small and medium-sized undertakings, with the exception of micro businesses, that are public-interest entities, are required to provide information on their business model, their resilience and strategy towards sustainability risks, their plans for the transition to a sustainable economy, including actions that will contribute to limiting global warming to 1.5 degrees Celsius and the reduction of greenhouse gas emissions. The report must also include a description of the steps taken by the entity to ensure due diligence in accordance with EU requirements and the impact of the measures adopted on the entity's operations and value chain, including the supply chain. Undertakings are also required to describe the principal risks, how the risks are managed, including the risk response. All of these must include appropriate measurable and verifiable metrics to evaluate the declarations made.

Under the CSRD, Chapter 6a Sustainability Reporting Standards has been added and ESG areas to be reported on have been identified. The chapter also emphasizes the importance of ensuring that sustainability reporting standards do not place an excessive administrative burden on companies. Article 29b of CSRD includes the information that entities are required to disclose in terms of ESG includes the following (European Parliament and European Council, 2022):

1) As regards environmental factors (E): "climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions; climate change adaptation; water and marine resources; resource use and the circular economy; pollution; biodiversity and ecosystems"
2) As regards social and human rights factors (S): "equal treatment and opportunities for all, including gender equality and equal pay for work of equal value, training and skills development, the employment and inclusion of people with disabilities, measures against violence and harassment in the workplace, and diversity; working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective agreements, the information, consultation and participation

rights of workers, work-life balance, and health and safety; respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions (…)"

3) As regards governance factors (G): "the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their composition, as well as their expertise and skills (...); the undertaking's internal control and risk management systems, in relation to the sustainability reporting; business ethics and corporate culture; activities related to exerting political influence, including lobbying activities; relationships with customers, suppliers, including payment practices, especially with regard to late payment to small and medium-sized undertakings".

The Directive notes that the information provided should be reliable and verifiable. It can be quantitative as well as qualitative. This information is to be part of a single electronic reporting format. The Directive makes it clear that companies subject to the reporting obligation will be required to get a third party to validate the CSRD data submitted. With regard to the entities covered by the CSRD, due to the gradual approach towards the introduction of CSRD reporting obligations, EU subsidiaries of non-EU entities in particular should progressively prepare for this reporting, irrespective of reporting by the non-EU parent undertaking.

Supply Chain, Value Chain vs. Chain of Activities

As noted earlier, the CSRD uses the term *value chain*, but a subsequent draft solution (the CSDD) suggests an approach framed in terms of a chain of activities replacing the concept of the value chain and the supply chain. In order to understand this position, it is worth going back to the literature studies and putting in order the evolution of this terminology.

The concepts associated with the chain approach to the economy and the enterprise took shape in the second half of the 20th century. They were initiated by the emergence of mass production, when the need to develop markets began to be recognised. Their early development was related to the distribution function, i.e. packaging, transport, handling and warehousing. G. Gereffi's defined the global production networks and, later, of the global value chain. In opposition to Gereffi's global approach, M.E. Porter in the 1980s pointed out in his work the new meaning of the value chain. In the same period, the term *supply chain* emerged in the literature (Frankowska, 2015).

The supply chain is a concept that envisages the interaction of companies and their customers in different functional areas. Haulihan (Haulihan, 1988) proposed an approach that emphasises the flow of goods from the supplier, through the manufacturer and distributor, to the buyer. In 1989 Stevens wrote about supply chain integration, which involves aligning, linking and coordinating people, processes, information, knowledge and strategies across the supply chain (between all contact points) (Stevens, 1989). According to Christopher (1998), the supply chain represents a network of organizations that are engaged (by upstream and downstream connections) in various processes and activities that produce value in the form of products and services for the final consumer. In a wider context, the supply chain consists of two or more legally separate organizations, linked by flows of materials, information and finance. These organizations can be producers of parts, components or final products, logistics service providers and even the (final) customer himself (Stadtler, 2004, p. 9). Theories also began to develop in relation to the supply chain, pointing out the sustainability aspect. In 1998, Elkington proposed concept of the triple bottom line (TBL), which simultaneously takes into account and balances economic, environmental and social objectives from a microeconomic point of view (Elkington, 1998). Furthermore, the TBL idea was one of the pillars used by Carter and Rogers (2008) to define sustainable supply chain management (SSCM) as "the strategic, transparent integration and achievement of an organization's social, environmental, and economic goals in the systemic coordination of key interorganizational business processes for improving the long-term economic performance of the individual company and its supply chains". The main goals of SSCM are to provide maximum value to all stakeholders and meet customer expectations by achieving a sustainable flow of products, services, information and capital, and enabling collaboration between the various actors in the supply chain (Saeed, Kersten, 2017).

The value chain, conversely, can be interpreted in two ways. The CSDD addresses two approaches to some extent. The first approach, proposed by the previously mentioned Porter, is based on the observation that the source of an entity's competitive advantage lies in the value it creates for customers. The value may consist in lower prices or unique benefits whose value outweighs the higher price. In such an approach, the value chain is a tool that seeks to identify the separate but related activities that are the source of value. These activities are singled out from the totality of tasks performed by buyers, suppliers and companies. According to Porter, the value chain concept allows one to observe in a systematic way the sources of value generated for the buyer (which makes it possible to demand

higher prices) and to understand why one product (service) may displace others (Porter, 2006). The value chain was therefore designed to show total value and consists of the company's value-related activities and its margin (Kippenberger, 1997; more: Porter, 2001; Porter, 2006; Kuźniar, 2017; Borowiec, 2013). In the chain, an upstream and a downstream segment can be distinguished. The upstream section includes producers of raw materials and intermediate products and suppliers. The downstream section, on the other hand, starts with the company producing the final product, through distributors/sellers and concludes with the end customer (Kuźniar, 2017).

In the draft CSDD, the term *value chain* has been replaced by a neutral term *chain of activities*. This approach reflects the divergent views of Member States on the scope of the regulation, i.e. whether it should apply to the entire value chain or be limited to the supply chain. Another argument for the introduction of the new term is to avoid confusion with the already existing definitions, as the scope of the definition of the term has been modified. The proposed solution includes a list of business partner activities covered by the proposed term. An exemption of products being subject to export controls (i.e. dual-use items and weaponry) has also been added with respect to the distribution, transport, storage and disposal of such product.

The Role of Transport in the Chain Approach to Business Operations

Transport plays a pivotal role in the process of European integration and is closely connected to the creation of the Single Market, which fosters employment opportunities and economic advancement. Being among the initial policy areas of the present-day European Union (EU), it was considered essential in realizing three out of the four fundamental freedoms of a common market, as outlined in the Treaty of Rome in 1957: namely, the unrestricted movement of individuals, services, and goods (European Commission, 2018, p. 1). This indicates how important this sector has been for the development of cooperation. On the other hand, already in the 1990s, transport was identified as one of the most burdensome sectors of human activity (Pawłowska, 2017).

Transport is significant in the chain approach to business processes. It brings markets closer together, enables production to increase, activates regions around infrastructure, i.e. it is a sector of the national economy that enables the rest of the economy to function efficiently and effectively (Koźlak, 2012). In terms of the supply chain, transport is responsible for the spatial flow of streams of goods using the appropriate (transport)

means. When the value chain is considered, transport occurs both with respect to activities aimed at supplying factors of production (inbound logistics, including, for example, ordering and receiving materials and raw materials) and activities related to the transfer of products to customers (outbound logistics – including the transport of products to customers). A distinction is also made with regard to passenger transport, which, within the scope of company activities, can be responsible for, among other things, employee mobility.

The structure of freight transport in the European Union in 2020 was dominated by road transport. It handled the haulage of 1803.4 billion tkm (a tonne-kilometre is a unit of measurement defined as the transport of one tonne of goods over a distance of one kilometer). Sea transport (924.3 tkm) and rail transport (377.3 tkm) were also of significance. Air freight accounted for the smallest share of the freight transport structure.

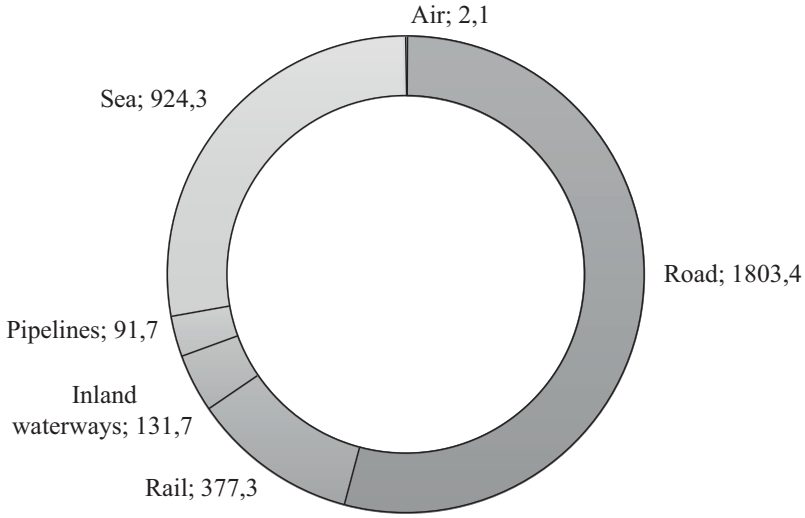


Figure 1. Structure of EU-27 Freight Transport Modes in 2020 in Ton Kilometres

Source: The author's own study based on the Statistical Pocketbook 2022. EU Transport in Figures. Available at: https://transport.ec.europa.eu/facts-funding/studies-data/eu-transport-figures-statistical-pocketbook/statistical-pocketbook-2022_en (Access 22.05.2023).

Road transport represents the dominant sector, both in the European Union and Poland. Enterprises involved in road freight (101.614 undertakings) accounted for 58% of the total number of companies in

Poland, while passenger transport (49.453 entities) accounted for 28% [in the European Union the figures were, respectively: 44% (555.305 entities) and 33% (416.944)]. At the same time, Polish road haulage companies account for 18.3% of the total number of European road hauliers in freight transport and 11.9% in passenger transport. This result puts Poland in second place in the EU – behind Spain with 18.6% of road transport operators i.e. 103.033 entities (Directorate-General for Mobility and Transport of European Commission, 2022).

One major drawback of transport in terms of a sustainable chain of activities and the ESG criteria being introduced are the externalities it generates. The adverse effects are felt both by the natural environment and by society, for which the widespread growth of this sector made it possible to surpass an important barrier to civilizational progress. These effects vary depending on the level of economic development, the sophistication and use of the various transport sectors, the geographical location (including climate), and the sensitivity of environmental components (Badyda, 2010). According to the European Environment Agency, transport accounted for 25.9% of total carbon dioxide emissions in the European Union in 2019, with up to 71.7% attributable to road transport. Furthermore, there was a 33% increase in the sector's emissivity between 1990 and 2019, while other sectors saw an overall decrease of 24%. Observations in subsequent years were distorted by the strong impact of the COVID-19 pandemic on the transport services market: in 2020, the sector's emissivity declined by an average of 18.6%, with aviation down 56.8% and road transport down around 15.4%. In 2019 in the EU27, transport (both urban and non-urban) was the largest emitter of nitrogen oxides (NOx), with a contribution of 46.6%. Transport also emits particulate matter with a diameter of less than 10 μm (PM 10) and 2.5 μm (PM 2.5), contributing 12% each to these pollutants in 2019 (EEA, 2022).

Transport also generates noise pollution. Road traffic is the most important source of noise pollution in both urban and non-urban areas. Railways and aircraft also cause noise problems in specific locations (EEA, 2021). Transport can have significant negative impacts on ecosystems and biodiversity in a variety of ways, including altering the quality and connectivity of habitats and creating physical barriers to the movement of animals between areas of habitat or plant growth. The costs of accidents, primarily road accidents, represent another problem (EEA, 2022). Moreover, transport exploits immense areas for the development of its infrastructure (both point and linear). This has the effect of distorting the natural relief and landscape, causing defragmentation of the ecosystem, disturbing the structure of the bedrock, devastating the plant world and

threatening the fauna (Pawłowska, 2018). Summarising, transport is one of the most important drivers of development, but at the same time it generates a great deal of external and indirect costs.

Conclusions and Recommendations

As illustrated, the ESG framework provided for by the CSRD is rather general and needs to be further clarified. The EFRAG Technical Advisory Panel presented a draft of such standards, known as the European Sustainability Reporting Standards (ESRS), at the end of 2022. In line with the idea of transposing the directive into national law, it seems that discrepancies between Member States may arise to some extent, which will hinder the reporting and comparability of these reports. Moreover, for companies operating in several Member States, this may expose inconsistencies in data collection and reporting.

However, it can be seen that transport operators are already taking a number of measures to mitigate and assess the externalities they generate. A number of operators, regardless of transport mode, produce and publish sustainability reports. These include Ryanair, Wizz Air, Raben Group, DPD, PKP Cargo.

When it comes to environmental issues, there is a clear interest in improving last-mile logistics. This stage is often described as the most expensive, inefficient and pollution-generating stage in the supply chain. The scope of the changes is vast: on the one hand, other delivery locations are becoming more widespread (e.g. automated shipping and collection facilities (i.e. InPost parcel lockers), collection points that are part of the operator's network (i.e. DPD Pickup) or cooperating entities (e.g. the Żabka chain of convenience stores with DPD, Poczta Polska and DHL – with the option of parcel tracking via the Żappka app). In addition, solutions using autonomous drones, among others, are being implemented to reduce emissions and congestion. An example is DHL's cooperation with Ehang (Cichosz, 2020). Among transportation companies, a growing electrification of the fleet has become evident (e.g. in the courier service industry – InPost, DPD). This can be seen, for example, in the aviation industry: in the Fly Net Zero document, IATA calls for both the introduction of Sustainable Aviation Fuel (SAF) and work on fleet electrification, reduction of combustion, aerodynamics and decarbonisation of operations, as well as the inclusion of passengers in CO2 offsets through individual voluntary carbon offset programmes. Inclusion of SAF is also a requirement of ReFuelEU and CORSIA proposed by ICAO. The replacement of short-distance air traffic with rail

traffic is also being advocated. France sets a good example in this respect, with the introduction in 2023 of a ban on flights on routes where rail travel is possible in less than 2.5 hours. Transport companies also point to reductions in office-related processes, including segregating waste for recycling and minimising waste through, for example, the use of electronic workflows, and reducing the amount of plastic used.

The social factor also seems to be a challenge, which includes ensuring parity in the employment of men and women and securing proper working conditions – especially for drivers. However, in its Sustainability Report, Raben Group demonstrates the measures that can be taken, among them the creation of a code of ethics, driver training, providing employees with a platform for whistleblowing, a transparent recruitment process, and inclusive team building events.

In terms of corporate governance, it is noticeable that companies that have chosen to publish sustainability reports incorporate a great deal of information on how the undertaking is managed, most notably organisational charts. The use of guidelines derived from international standards, such as the GRI, is also common.

Sustainability has been a marked trend across the European Union. Due to its high carbon footprint, transport is one of the main sectors being decarbonised, as evidenced by additional requirements in EU documents (e.g. the already mentioned ReFuelEU as part of the Fit for 55 package). Consequently, it is worth undertaking further research to focus on the impact of ESG criteria on the transport services market, with a particular emphasis on new solutions implemented by companies in response to the requirements imposed upon them.

References

Badyda, A.J. (2010) „Zagrożenia środowiskowe ze strony transportu", *Nauka*. Vol. 4, pp. 115–125.

Borowski, J. (2013) "Łańcuch wartości jako nowa teoria zarządzania strategicznego", *Optimum. Studia Ekonomiczne.* Vol. 2(62), pp. 11–25. DOI: https://doi.org/10.15290/ose.2013.02.62.02.

Carter, C.R. and Rogers, D.S. (2008) "A framework of sustainable supply chain management: moving toward new theory", *International Journal of Physical Distribution & Logistics Management*. Vol. 38(5), pp. 360–387, DOI: https://doi.org/10.1108/09600030810882816.

Christopher, M. (1998) *Logistics and Supply Chain Management – Strategies for reducing cost and improving service*, 2nd ed. London: Financial Times/ Pitman Publishing. DOI: https://doi.org/10.1080/13675569908901575.

Cichosz., M. (2020) *Drony w logistyce ostatniej mili – innowacja wspierająca zrównoważoną logistykę* in Zagrajek, P. (ed.) *Sektor lotniczy w erze transformacji społecznej i technologicznej: monografia dedykowana prof. Elżbiecie Marciszewskiej*. Warsaw: SGH, pp. 415–430.

Ciliberti, F., Pontrandolfo, P. and Scozzi, B., (2008) "Logistics social responsibility: Standard adoption and practices in Italian companies", *International Journal of Production Economics*. Vol. 113(1), pp. 88–106. DOI: https://doi.org/10.1016/j.ijpe.2007.02.049.

Clementino, E. and Perkins, R. (2021) "How Do Companies Respond to Environmental, Social and Governance (ESG) ratings? Evidence from Italy". *Journal of Business Ethics*, Vol. 171(2), pp. 379–397. DOI: https://doi.org/10.1007/s10551-020-04441-4.

Directive (EU) 2022/2464 of the Parliament and of the Council. Official Journal of the European Union. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464 (Access 20.06.2023).

Directorate-General for Mobility and Transport of European Commission (2022). EU transport in figures. Statistical pocketbook. Luxembourg. Available at: https://op.europa.eu/en/publication-detail/-/publication/f656ef8e-3e0e-11ed-92ed-01aa75ed71a1 (Access 20.06.2023).

EEA (2021) "Exposure of Europe's population to environmental noise". Available at: https://www.eea.europa.eu/ims/exposure-of-europe2019s-population-to-noise (Access 20.06.2023).

EEA (2022) "Transport and Environment Report 2022". Available at: https://www.eea.europa.eu//publications/transport-and-environment-report-2022 (Access 20.06.2023).

Elkington, J. (1998) *Cannibals with Forks: The Triple Bottom Line of the 21st Century*. Stoney Creek: New Society Publishers.

European Commission (2023) Corporate sustainability reporting. European Commission: European Commission. Available at: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (Access 20.06.2023).

European Parliament and European Council (2014) Directive 2014/95/EU of the European Parliament and of the Council (No. L 330/1). Official Journal of the European Union: Official Journal of the European Union. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0095 (Access 20.06.2023).

European Parliament and European Council (2022). Directive (EU) 2022/2464 of the Parliament and of the Council. Official

Journal of the European Union: Official Journal of the European Union. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464 (Access 20.06.2023).

Frankowska, M. (2015) „Łańcuch logistyczny, łańcuch dostaw i łańcuch wartości – próba usystematyzowania koncepcji", *Problemy Transportu i Logistyki*. Vol. 31, pp. 77–91. DOI: https://doi.org/10.18276/ptl.2015.31-05.

Houlihan, J.B. (1988) "International Supply Chains: A New Approach", *Management Decision*. Vol. 26(3), pp. 13–19. DOI: https://doi.org/10.1108/eb001493.

IATA (2021) *Fly net zero*. Available at: https://www.iata.org/en/programs/environment/flynetzero/ (Access 20.06.2023).

Kippenberger, T. (1997) „The value chain: the original breakthrough", *The Antidote*. Vol. 2(5), pp. 7–10. DOI: https://doi.org/10.1108/EUM0000000006430.

Koźlak, A. (2012) *Nowoczesny system transportowy jako czynnik rozwoju regionów w Polsce*. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego.

Kuźnar, A. (2017) „Udział Polski w globalnych łańcuchach wartości", *Horyzonty Polityki*. Vol. 8(22), pp. 49–67. DOI: https://doi.org/10.17399/HP.2017.082203.

Mejías, A.M., Paz, E. and Pardo, J.E. (2016) "Efficiency and sustainability through the best practices in the Logistics Social Responsibility framework", *International Journal of Operations & Production Management*. Vol. 36(2), pp. 164–199. DOI: https://doi.org/10.1108/IJOPM-07-2014-0301.

Pawłowska, B. (2017) *An overview of the progress towards sustainable transport development by using TERM indicators* in Suchanek, M. (ed.) *Sustainable transport development innovation and technology*. Proceedings of the 2016 TranSopot Conference. Spronger, pp. 27–46.

Pawłowska, B. (2018) "External costs of transport in Poland". *Scientific Review – Engineering and Environmental Sciences*. Vol. 27(1), pp. 28–41.

Porter, M.E. (2001) *Porter o konkurencji.* Warszawa: Polskie Wydawnictwo Ekonomiczne.

Porter, M.E. (2006) *Przewaga konkurencyjna. Osiąganie i utrzymywanie lepszych wyników.* Gliwice: Helion.

Saeed, M.A. and Kersten, W. (2017) "Supply chain sustainability performance indicators: A content analysis based on published standards and guidelines", *Logistics Research*. Vol. 10(12), pp. 1–19. DOI: https://doi.org/10.23773/2017_12.

Sipiczki, A. (2022) "A Crticial Look at the ESG Market". *CEPS Policy Insights* (15). Available at: https://www.sipotra.it/wp-content/

uploads/2022/05/A-CRITICAL-LOOK-AT-THE-ESG-MARKET.pdf (Access 20.06.2023).

Stadtler, H. (2004) *Supply Chain Management – An Overview* in Stadtler, H. and Kilger, Ch. (ed.) *Supply Chain Management and Advanced Planning.* Berlin: Springer, pp. 9–36. DOI: https://doi.org/10.1007/978-3-540-74512-9_2.

Stevens, G.C. (1989) "Integrating the Supply Chain", *International Journal of Physical Distribution & Materials Management*. Vol. 19(8), pp. 3–8. DOI: https://doi.org/10.1108/EUM0000000000329.

DOI: 10.33067/SE.3.2023.7

Liga Brikena⋆

EU Business Efficiency and Growth: The Ex-post Phase in Business Negotiations

Abstract

European Small and Medium-sized Enterprises (SMEs) and entrepreneurs are so-called "frontliners" in European Union transitions and strategies while also implementing the EU Resilience and Recovery Plan, which requires an increase of business effectiveness. Business-negotiation management brings confidence in the achieving of business goals. The negotiation phase model ensures accuracy in monitoring progress and also in the evaluation of possible outcomes. The aim of this article is to map the cumulative scientific knowledge and evolutionary nuances of well-established fields in business negotiation management from a corporate perspective, uncover emerging trends in journal articles and research constituents as well as to explore the intellectual structure of a specific domain in the extant literature of the ex-post phase in the negotiation phase model and its linkages to business objectives of both business entities and SMEs. Based on an inductive and deductive approach, the author presents a description of linkages of the business negotiation process phase model and business objectives. Such a description is useful for practitioners in identifying the literature relevant to their business activities based on negotiations, and worthwhile for academics to navigate further research.

Keywords: EU Business, Business Objectives, Negotiation Phase Model, Negotiation Process

⋆ **Liga Brikena** – Riga Stradins University, e-mail: liga.brikena@rsu.lv, ORCID ID: 0000-0001-8944-3403.

Introduction

Facing the consequences of various crises, Europe's aim in building recovery and resilience facility is set to ensure a transformation of European economies. The enhancement of the sustainability, resilience, and growth of the EU economies through green, digital, and social transitions as well as job creation, lies at the heart of the EU Resilience and Recovery Plan. EU business entities, especially SMEs representing 99% of all businesses in the EU (EU Commission, 2022), are noted as key elements in building economic recovery and resilience. Thus, SMEs and entrepreneurs are so-called "frontiers" in transitions and the successful path of those transitions. EU Member States are decisively continuing their route to sustainable business development. Business negotiation, were it to be explored from the perspective of resolving conflicts or dealmaking in the form of collaborative decisions by pursuing the theory of integrative negotiation strategies (Raiffa, Richardson, Metcalfe, 2007), has become a sustainable business practice. Negotiation skills are still among the top 15 soft skills demanded by employers, even in the light of forthcoming change (World Economic Forum, 2020). The path of negotiations determines a lot – the myriad terms for economic transactions, the development and execution of business strategy, the results of forming business alliances, the management of interdependent work in companies, etc.

It has already been noted by negotiation researchers that, since 1965, when Walton and McKersie's work "A Behavioural Theory of Labour Relations" was published, negotiations have been studied extensively (Brett, Thompson, 2016). Several theories have evolved during decades of negotiation studies. So-called "interest-based bargaining" developed by Fisher, Ury, and Patton, basic human deeds theory developed by Bruton, and narrative theory developed by Cobb have all been identified as leaders in scientific research (Seul, 2022). However, this list is not definitive.

Based on research designs with a multidisciplinary approach, research on negotiation has evolved on a more supplementary basis than negotiation fundamentals. A single negotiation activity has a clear orientation on the negotiation outcomes. Negotiations are defined as goal-oriented social interactions where parties enter to agree on the resolution of opposing interests (Pruitt, 1981; Raiffa, Richardson, Metcalfe, 2007). Moreover, the negotiation process is a typical entrepreneurial activity embodied in a series of interactions among stakeholders, i.e., founders, partners, investors, and others (Dinnar, Susskind, 2018). From this situational perspective, negotiation skills serve as success drivers for businesses. The development of negotiation skills has been the focus of

academic interest intersecting the spheres of management, psychology, international business, law, and others (Barber, 2018). Having been recognised as success drivers for business success, extensive research has been conducted to ensure a theoretical and practical base for negotiation pedagogy. Despite the fact that only in relatively recent years, and as an answer to the deficiency in comprehensive standards for the assessment of negotiation skills, researchers have developed a negotiation competency model (Smolinski, R., Xiong, Y., 2020) to foster innovation in negotiation pedagogy.

To the extent it refers to business success, in addition to a focus on the better performance of negotiators based on the development of negotiation skills of actors as individuals (referred to as a "situational view" on negotiations), researchers' attention has been turned to the performance of companies as negotiators. In respect of the statement that, in reality, an outcome of a negotiation does not hinge solely on the negotiator's individual skills (Ertel, 1999), every company is confronted by the following question – what actions, except the development of a mastery of individual negotiators, contribute to overall negotiation practice within a company? Thus, the situational view on business negotiations has been modified to a corporate perspective with an integrative approach in negotiation management at the company level.

In the scope of theoretical aspects, scientific literature provides clear argumentation on the importance of the so-called "negotiation capability of the company". However, compared with decades of research on negotiation fundamentals as well as multidisciplinary research on organisation behaviour, concepts of psychology, economic implications, and other aspects of negotiation, scientific findings that focused on the corporate perspective of negotiation have been reasonably modest. The perspective presented by Ertel (1999) on negotiation as a corporate capability has been indicated as the "starting efforts" of this approach (Caputo, 2019). At that time, Ertel proposed approaching the negotiation process from an institutional viewpoint and introduced negotiation management at a corporate level by activities on four broad building blocks – the first being building negotiation infrastructure that ensures tight links between a negotiator's priorities and a company's priorities, the second, building a measurement system for the evaluation of a negotiator's performance, the third, the development of separation between individual deals and ongoing relationships, and the final of the four, providing clear benchmarks for walkaways when deals do not comply with company interests (Ertel, 1999). Ten years later, the institutional view on negotiations for business success was blueprinted by Movius and Susskind

(2009) in their work "Built to Win: Creating a World-Class Negotiating Organization". The authors present a model for managing negotiations as a corporate capability by the development of five building blocks – negotiation as core competence, leadership for value creation, training and coaching, organisational operating procedures, and assessment, reflection, and reinforcement (Movius, Susskind, 2009). In addition, the authors recommend nine steps for bringing the proposed model to life. Advocating the shift from the understanding of negotiations as individual practices to organisation capability, Caputo and Borbely identified the necessity of research to fill in a knowledge gap in building the negotiation capability of an organisation at a corporate level and also developed their four-level Organisational Model of Negotiations (Caputo, Borbely, 2017). This model firstly incorporates – in an integrative structure – the aspects of organisational behaviour when negotiation responsibilities are carried out by a company's employees (I level – the Individual level), secondly comes linkages, as well as the direct and contextual impact of various negotiations on one another at an organisation (II level – the Linkage level), thirdly comes the management of negotiation function within a company (III level – the Infrastructure level), and, finally, it is the interconnection with the strategy of a company (IV level – the Organisational Capability level). Together with the four-level Organisational Model of Negotiations, Caputo and Borbely clearly define the gap in research in the business field as regards infrastructure along with strategy levels of negotiations for business success (Caputo, Borbely, 2017).

According to the aim of EU business entities to strive for sustainable business development through innovation, researchers' attention has been drawn to an exploration of the negotiation process as an integrative business practice. Sustainability components in the business negotiation process are not new in scientific literature and are characterised by mutually beneficial solutions, a path to better relationships and greater innovation, as well as higher growth and profits (Karsaklian, 2017). Thus, negotiations within entrepreneurship and business activities are considered fundamental to fostering change and moving towards the recovery and resilience of European economies. Moreover, negotiations – now being identified as one of many dynamic capabilities of business entities – are of vital importance for those entities in their adapting to changing business ecosystems, as well as to collaboration and the forming of effective alliances that reach sustainability goals (Caputo, Borbely, 2017). When it comes to innovation, a systematic review of the negotiation process in open innovation (Barchi, Greco, 2018) reveals that negotiations have been recognised as being crucial to fostering innovation, and the

necessity of a clearly-defined structure in the process with the use of modern technology's support has been pointed out as a solution towards becoming more efficient and effective. Moreover, the existence of efficient and effective internal and external negotiations for a business entity is one of the core bases for successful, open-innovation negotiations.

With reference to the previously-mentioned theoretical fundamentals, the aim of this article is to map the cumulative scientific knowledge and evolutionary nuances of well-established fields in business negotiation management from a corporate perspective, to uncover emerging trends in journal articles and research constituents, as well as to explore the intellectual structure of a specific domain in the extant literature of the ex-post phase in negotiation phase model and its links to the business objectives of business entities and SMEs. Based on an inductive and deductive approach, the author presents a description of the links between the business negotiation process phase model and business objectives.

A literature search has been conducted on the state of negotiation management at a corporate level, negotiation-process phases, business objectives and negotiation goals, and outcomes of the ex-post phase in the negotiation process. The author used the scientific databases Science Direct, Wiley, Sage, ProQuest, and Google Scholar as search sources. Afterwards, based on inductive and deductive approach and graphical method for visual representation, the author presents descriptive linkages of the business negotiation process and the business objectives of a business entity.

Such models and modelling were introduced as essential elements of negotiation management already decades ago, and descriptive negotiation process models have been used primarily for the purpose of assisting one to understand the local dynamics of a negotiation in contrast to predicting an a priori outcome (Nyhart, Samarasan, 2015). For a conceptualisation of the business negotiation process, it will further be analysed as a business process in a flow format, thus complying with the relation of a business process to the activities of business entities, following an argument that business processes define a way of how businesses reach their business objectives (Aguilar-Saven, 2004). In contrast to negotiation processes as decision making or problem-solving concepts, the business negotiation process is further perceived in the scope of six consecutive phases: 1) the preparation phase, 2) the initiation of negotiations, 3) the core phase of negotiations; 4) contract negotiations; 5) the implementation and renegotiation phase; and 6) the ex-post phase.

The Phases of the Business Negotiation Process and Its Implementation in EU Business Entities

In a broader perspective, negotiation is defined as a process by which a joint decision is made by two or more parties (Pruitt, 1981), and, from the point of view of negotiation fundamentals, is a social intercourse of actors. Here, the idea behind the process itself lies in the interdependent activities among interested parties to direct mutual interaction towards a joint decision that, in business negotiation, is materialised in an agreement as a description of a deal. Negotiation research has examined the negotiation process in a broader perspective. Scholars have studied the inherent preparations, steps, offers, strategy, tactics, behaviours, communication and information sharing, along with integrative and distributive negotiations from the point of view of the negotiation process (Angal, 2007).

In negotiation research for analytical purposes, the negotiation process has already been structured by the usage of the phase model. However, phases of the negotiation process have been presented in a different manner. A common representation of negotiation phases is limited to three phases: 1) the preparation phase, 2) the core negotiation phase, and 3) deal closing. Some authors have identified this general structure more specifically: 1) initiation, 2) problem solving, and 3) resolution (Kujala, Murtoaro, Artto, 2007).

Within the framework of the three negotiation phases, the core tasks and activities that must be accomplished within a particular phase have been identified. For example, the preparation phase, in principle, should be finalised by a clear vision of the aim of negotiations. In addition, based on a comprehensive literature review, the task of building mutual trust, bargaining, and contracting power has been identified as a mandatory element during preparation for open innovation negotiations (Barchi, Greco, 2018). Furthermore, on the subject matter of negotiations, negotiators should develop a strategy which considers the impact on relationships, and additionally develop tactics, plan how to run the process to an agreement, and ensure follow up measures (Lindholst, Bülow, Fells, 2018). The preparatory phase has been identified as important and time consuming (Jung, Kerb, 2019), and, during the preparatory phase, negotiators work on the identification of all the issues, setting priorities, and the development of support arguments (Carrell, Heavrin, 2008). As negotiation research has identified, planning is a decisive factor in the success or failure of a negotiation, and the individual tasks of a negotiator during the preparatory phase refers to the awareness of conflict, along

with any inherent needs, objectives, strategy, their opponent, and tactics (Saner, 2012). Additionally, setting up the so-called 'negotiation arena' has been indicated as an evitable task during the preparatory phase (Carnevale, 2019), under which lies an idea of information gathering, along with the analysis and planing of the core negotiation phase in a way to facilitate the reach of negotiation goals under the negotiation strategy chosen for a particular negotiation. Indeed, the specific structuring of preparation depends on the individual circumstances and concrete framework of the negotiations (Jung, Kerb, 2019).

The negotiation process in negotiation research has also been analysed as a four-phase model, consisting of preparation, information sharing, making offers and concessions, and closing a deal (Maddux, 1995; Angal, 2007; Fells, et al., 2015).

As a matter of fact, these representations of the negotiation process are oriented to reaching a deal or the satisfaction of the interests of the parties which could not been satisfied without engagement into a negotiation, and contract signing is the final stage of the negotiation process. Such an approach is justifiable during the negotiation analysis from the negotiator's perspective in a context of negotiations as a single interaction, The sale of a particular comodity as an excision of a continuous business activity serves as an example. However, business negotiations through which companies meet their business objectives by consonant deals are a subject of the entailment of continuity and predictability. It has already been identified in research that post-agreement behaviour may matter for negotiations involving goods, but it is critically important for service-based negotiations because services are delivered after an agreement has been reached (Hart, Schweitzer, 2020). Companies seek to secure a deal negotiated during the implementation phase. Thus, considering the necessity of organisations to manage negotiations at the organsiational level and not only during the contract negotiation phase, neither contract implementation nor renegotiation appear to be successful steps in the negotiation process. Moreover, due to arguments presented further in this article, the ex-post phase serves a function of the concluding stage in the negotiation process.

Apparently, from a corporate perspective, closing a deal and signing an agreement are not the final steps taken by companies in their efforts as regards negotiation management. The contract implementation phase is vital as the outcome of contract implementation appears to present real data for the evaluation of the extent to which negotiation material objectives are met. Thus, the contract implementation phase plays its role in securing a deal reached in the previous phase. Further negotiation

research has indicated the importance of post-negotiation performance (for example: Hart, Schweitzer, 2020) and identified the specific impact of the post-agreement phase in relationship management (Fells, et al., 2015), thus correlating with the non-material goals of relationship gains as negotiation outcomes. Reflection and evaluation activities are the core of the proceeding ex-post phase, which pursues its main aim to contribute to proceeding and parallel negotiations as described in studies of linkage theory (see, for example, Crump, 2007). Summing up, the authors mentioned above follow a traditional perception of the negotiation process in six subsequent phases: 1) the preparatory phase, 2) the initiation phase, 3) the core negotiation phase, 4) the agreement phase; 5) the agreement implementation phase, and 6) the ex-post phase.

The most evident, albeit slightly different view on phases of the negotiation process and contribution to the theory around negotiation phases was delivered by Barber (2018) by identifying the macro phases of the negotiation phase model, as well as clarifying phase boundaries (Barber, 2018). Based on an extensive literature review as well as by the representation of examples from real-life negotiations, Barber identifies six macro phases: 1) the value network fit phase, 2) the deal design phase, 3) the interaction phase, 4) the ratification phase, 5) the post-deal evaluation phase, and 6) the follow-up phase. As proposed by Barber, the first phase in a negotiation process is a "value network fit phase" and core task of this phase is to consider the partners, suppliers, competitors, and regulatory bodies that impact a company at a strategic level. The main actors in this phase are the final decision makers along with the lead negotiator working together with other strategic-level staff. In Barber's macro phase model, this phase ends with the creation of overall goals, the confirmation of partners, and a clear understanding of purpose. As admitted by Barber, this phase might also be omitted in case the deal is not strategically important. In comparison to the traditional perception of a negotiation process in six subsequent phases, the "value fit phase" is a part of the preparatory phase. The preparatory phase in a traditional negotiation process also includes tasks, actors, and activities that are identified in Barber's "deal design" macro phase. Phases 3, 4, 5, and 6 in Barber's macro phase model (in general terms) comply with the phases of: the core negotiation phase, the agreement phase, the agreement implementation phase, and the ex-post phase indicated in the perspective on the negotiation phase model.

By modelling the phases of the negotiation process and providing a solid case analysis on negotiation phases (for example: Barber, 2018; Barchi, Greco, 2018; Lindholst, Bülow, Fells, 2018), academics have started mapping a clear road for EU business entities to build their

capability for conducting successful negations for business growth. The further development and clarification of negotiation process, as well as the involvement of EU business entities in research in the form of case studies or other research designs might increase the motivation of EU business entities to achieve success in business through a developed negotiation process.

Business Objectives in Business-Strategy Development

European countries have realised myriad achievements of industrial success providing employment for new generations, achievements which are based on effective business negotiation to a large extent. The strong role in business strategies play clear business objectives. Business objectives should clearly define what should be accomplished to realise a company's mission. Thus, business objectives are stated within strategy development. The process of setting business objectives as a part of the concept of "managing by objectives" was introduced by Peter Drucker already in 1954 and is still recognised in scientific literature (Kumar, 2012). There is no doubt among scholars and practitioners that the existence of business is based on purposeful actions that are goal oriented. The aim of the management process of a company is to ensure the progress of that company towards business success.

Moreover, businesses develop their strategies and set business goals that mainly focus on growth and market share and position in a way that allows them to align themselves for corporate objectives (Sehgal, 2011). However, successful long-term businesses almost always start with a set of non-financial objectives along with derived financial objectives consistent with the pursuit of their broader goals. Moreover, setting only financial objectives is risky for a business because the single-minded pursuit of financial objectives can lead to actions that undermine long-term viability (Bloomsbury, et al., 2010).

A recognisable contribution to the foundations of ground knowledge in the field of strategic objectives was made by distinguished scholars and which dates back to 1977. At that time, businesses were oriented on the achievement of traditional strategic objectives which were set mainly in financial terms – profitability, growth, market share, etc. Kaplan and Norton, in 1992, proposed the Balanced Scorecard (BSC) method, which has been widely recognised as the best-known management tool for companies (Perez, et al., 2017). As proposed by Kaplan and Norton, BSC incorporates four interconnected perspectives – financial, customer,

internal processes and learning, and the growth of human capital. Each of these perspectives contain a set of objectives, measures, targets, and incentives, all of which are united into a hierarchical structure that reveals cause and effect chains (Guix, Font, 2020).

In accordance with the BSC method, business objectives are translated into a set of key performance indicators which serve for the measurement of achieving business goals and ensure clear communication of what should be achieved under each goal. Moreover, in a study that aims to determine the effectiveness of business objectives and key performance indicators (KPIs), its authors have identified typical business objectives for different types of enterprises (Stefanović, et al., 2015). They have confirmed that four perspectives of BCS are effective in defining business objectives, however, KPIs differ depending on enterprise type. In this study, the authors propose a complete set of KPIs for such types of enterprises as manufacturing enterprises, service enterprises, and public enterprises. The differences are visible in KPIs of all four perspectives. For example, profit and liquidity are identified as financial KPIs for all three types of enterprises, however, cost management is a KPI for manufacturing companies and the execution of financial plans is a KPI for service companies, but KPIs like this are not assigned to public companies which prefer to use social responsibility and stakeholder support as indicators instead. The authors of this study conclude that controlling KPIs and business objectives, as well as the development of specific improvement strategies, lead to an increase of effectiveness of business objectives and KPIs themselves, considering the differences in KPIs characteristic to enterprise type.

While exploring the development of business objectives from a more general perspective than the methodological BCS approach, it is noted that changes in the economic growth paradigm and sustainability requirements are the two main trends in the evolution of business objectives. In general, the evolution of business objectives is closely interlinked with contemporary trends in strategic planning. For a long time, pure economic growth has been the driving force in strategy formulation and strategy execution for businesses and has been focused on the financial performance of companies (Edwards, 2021). Recently, however, organisation and management scholars (Banerjee, et al., 2021) have started a scientific discussion advocating that the contemporary understanding of economic growth as a core objective of business should be re-evaluated with the intent of reducing production and consumption and increasing value instead. Although corporate, social responsibility and sustainability paradigms are having impact on business development

organisation and management, scholars (Banerjee, et al., 2021) note that the primacy of economic growth still exists. They also indicate that economic growth persists in the sustainability development of businesses as the United Nations' Sustainable Development Goals set the benchmark of global GDP growth rate.

For a long time, economic growth primacy incorporated into business objectives supported the general statement that businesses are created by founders with the core interest of growing the monetary value of their capital invested. One of the core tasks of business managers appointed by their companies' founders is to develop company strategy and thus set business objectives with respect to shareholder interests. According to Freeman and McVea (Freeman, McVea, 2001), stakeholder theory has evolved in the form of a shareholder – approach in strategic management, stating that managers are not able to ensure the successful development of a business by solely pursuing shareholders' interests. Instead, the successful development of a business requires the integration of stakeholder concerns, i.e., those concerns of shareholders, employees, customers, suppliers, lenders, and society itself, despite the fact that these groups might have opposing interests. Thus, within strategic planning, managers should develop objectives that stakeholders would support. Providing an overview of the development of the shareholder approach in scientific literature, Freeman and McVea (2001) have pointed out that, in contrast to the fiduciary duty of managers to operate a business for value creation for shareholders, respecting stakeholders is a moral duty of managers and is something which fosters business success. Referring to the instrumental dimension of stakeholder theory, Donaldson and Preston (1995) in their widely cited article "The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications" explain that instrumental uses of stakeholder theory make a connection between stakeholder approaches and desired objectives (Donaldson, Preston, 1995). With references to theorical articles and empirical studies, these authors have hypothesised that, in accordance with the stakeholder paradigm, businesses which indeed execute stakeholder management should outperform their rivals in traditional corporate objectives (e.g., profitability, stability, growth, etc.). However, referring to the scientific literature devoted to social/financial performance studies, those authors have also stated that they did not find, at that time (1995), any compelling empirical evidence that stakeholder management is an optimal strategy for maximising the conventional, financial performance of a company (Donaldson, Preston, 1995).

In practice, business entities should ensure legal compliance, and managers should respect legal norms in strategy development. According

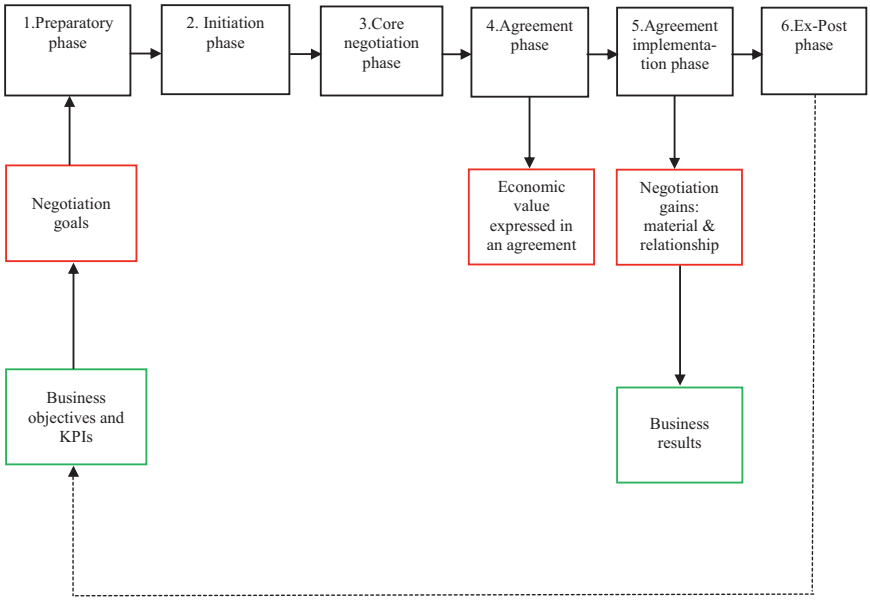
to Quinn (2019), some countries in the EU have tried to incorporate an understanding of corporate objectives into business law by defining the duties of directors to lead companies towards overall shareholder benefit. However, there is another approach used by the EU Member States, when, at a national level, EU countries explore "shareholders' primacy" as a social norm and replace it with corporate social responsibility. Quinn (2019) develops the idea that business law in the EU should oblige business managers to distinguish shareholder interests from company interests and respect them both. Nevertheless, at an EU level, sustainability has been incorporated in business law in a form of corporate sustainability-reporting introduced in the EU with The Corporate Sustainability Reporting Directive (CSRD – 2022/2464/EU), that entered into force on 5th January 2023. Through CSRD – 2022/2464/EU, it is ensured that investors and other stakeholders have access to the information they need to assess sustainability issues and, by their engagement, foster sustainable value creation in companies.

Scientific literature reveals various peculiarities of strategic management in SMEs in comparison with huge corporations. The effectiveness of strategic management drives success in business to a large extent. However, it has been admitted in scientific literature that SMEs have a more informal attitude towards strategic management and business objectives. It has also been shown that the business objectives of owner-managed SMEs are dependent on their owners' lifestyles and perceptions of business success (Weber, Geneste, Connell, 2015). A recent study devoted to a strategic management controlling system and its importance for SMEs in the EU (Pavlák, Písař, 2020) indicates low levels of long-term SME goals, financial planning, and controlling management development. The authors of this study precisely characterise the attitude of SME management representatives by their joint statement evolved during their research: "We do not have time to take care of where we will be in three years, because we must work today". An even more recent study of the level of strategic management of SMEs in Czechia (Maříková, et al., 2022) reveals that there is a statistical dependence of the level of strategical management of SMEs and the size of a company measured by the number of employees; enterprises with more 50 employees are more likely to be strategically managed than smaller enterprises. To foster the development of SMEs as the backbone of a strong EU economy, it should be concluded that it is worth investing in an upgrading of skills in SMEs (as prioritised in The Small Business Act for European SMEs) not only with a focus on the innovation or digitalisation of SMEs, but also on strategic management.

A Descriptive Model of Linkages Between the Negotiation Process and Business Objectives

A descriptive model of the linkage between the negotiation process and business objectives of a company is presented in Figure 1 below. The negotiation process is represented in accordance with the traditional perception of the negotiation process in six subsequent phases: 1) the preparatory phase, 2) the initiation phase, 3) the core negotiation phase, 4) the agreement phase; 5) the agreement implementation phase, and 6) the ex-post phase. The model represents direct linkages of business objectives to phases of the negotiation process.

Figure 1. A Descriptive Model of Linkage Between the Negotiation Process and the Business Objectives of a Business Entity



Source: The author's own elaboration.

The business objectives of a company play a role in the preparatory phase of the negotiation process through negotiation goals. If the negotiation goals and desired outcomes of negotiation intercourse are tied to larger corporate goals, as suggested by Danny Ertel (1999), both financial and non-financial objectives are topical. To be more specific regarding the typology of business negotiation goals, negotiation literature distinguishes content

goals (also referred to as material goals, or, goals regarding substance) from relationship goals and states that both types of goals should be identified and addressed during the negotiation process to provide satisfactory outcomes (Carrell, Heavrin, 2008). Indeed, when setting negotiation goals, negotiators identify their material interests as well as relationship goals, and the latter are a direct reflection of the non-financial business objectives of a company. As indicated in scientific literature, the aspects of material and relationship interests when setting negotiation goals differ depending on the negotiation framework. A distributive framework is used in situations when negotiators focus on their individual interests in negotiation situations when resources are limited and parties of the negotiation compete over these resources. This is in contrast to an integrative framework which is used when negotiators are searching to maximise common gains for the parties involved (Zetik, Stuhlmacher, 2002). Addressing goal classification from the point of view of their identification time, there are prospective goals, transactional goals, and retrospective goals (Carrell, Heavrin, 2008). Prospective goals are a subject of the preparation phase in a negotiation process. Transactional goals emerge during the initiation stages of a negotiation until the contract implementation stage.

Direct conformity of negotiation goals to company business objectives facilitates further actions of negotiators advocating for the interests of a company. Further choices of negotiations in a dynamic interaction among parties during the initiation phase, the core negotiation phase, contract negotiations, and the contract implementation phase appear to depend not only on negotiation goals, but on bigger, corporate goals as well. As corporate business objectives address financial goals, both dimensions – those of the material and non-material, are objective values to be represented in negotiation goals and in the consequent, strategic choices of negotiators.

To foster green, digital, and social transitions of the EU economy, EU business entities, and especially SMEs, need to facilitate change, growth, and establish aliances. From this perspective, business negotiation is a practice ensuring a smooth path towards these goals, expecially through such sustainability aspects of negotiations as mutually-beneficial solutions, the path to better relationships and greater innovation, as well as higher growth and profits. Although researcher attention has been turned to the performance of companies as negotiators, there still exists a gap in knowledge on business negotiation, as the phase model and the need of future theoretical and empirical research has already been established.

The ex-post phase or follow-up stage, on one hand, finalises the negotiation process, but on the other hand serves as a transition for further

negotiation processes. Primarily, the ex-post phase has been obtained from project management theory, where it has been identified as a transitional phase with the following specific tasks: to evaluate (negotiation) a project, to build up knowledge for future offerings, and possibly to supply additional services to the buyer (Kujala, Murtoaro, Artto, 2017). In addition, the ex-post phase is a time to reflect on negotiation and create a sustainable learning effect for future negotiations by two directions of self-reflection – what went well and what could be improved for future negotiations (Jung, Kerb, 2019).

As core activities in the ex-post stage include structuring and analysing information on comprehensive negotiation processes, the accuracy of information processing itself gains significance. The negotiation process is, mentally, highly demanding (Jung, Kerb, 2019) and because negotiators might have difficulties because of the risk of experiencing selective memory long after negotiation meetings have concluded (Nixon, 2005), the accurate recalling of information appears to be complicated. Several suggestions have been offered to avoid such difficulties. Records or notes of negotiation meetings are a reliable source of information, and companies which choose to benefit from maintaining databases where such information could be stored would benefit greatly post-negotiation (or in strategy development), especially if the interests of a company are presented by numerous representatives. Moreover, if at least two people have been present during different stages of the negotiation process, one of them is compelled to undertake of the role of analyst during the negotiations as well as being a partner to reflect in the ex-post phase (Jung, Kerb, 2019). When appropriate, it is suggested to involve the other party in the reflection process and exchange negotiation notes as well as gather useful information for further interaction (Nixon, 2005). Apparently, such conversations could take place in low-stress situations for negotiators and thus enable information exchange.

From the perspective of organisational needs, learning is an expected outcome during the ex-post phase of negotiations. Organisational learning has been recognised as a factor accelerating the changes of behaviour in a project-based company because of that company's experience, and the ability of a company to learn more quickly than its competitors is the only sustainable form of competitive advantage (Koskinen, 2012). Aside from the learning objectives, the potential of negotiations to shape the strategy of a company has been indicated in negotiation research by the development of the model of circularity between strategy and negotiations (Caputo, Borbely, Dabic, 2019). To ensure the strategic contribution of negotiation at an organisational level, companies are interested in the development of the

organisational model of negotiation with four levels determined by specific negotiation-management focus (Caputo, Borbely, 2017). These models serve as an assertion and continuation of the statement that organisations should have an interest in treating negotiation as a collective activity and should act upon it (Ertel, 1999). Moreover, the effectiveness of these models depends on the management of information shared by negotiators to contribute to the entire negotiation capability of companies. If business objectives are a direction indicator through the phases of business negotiation phases 1–5, then the ex-post phase requires the reflection of not only respect to the negotiator's individual performance and satisfying the learning need of a company, but to business objectives as well.

When the ex-post phase is indicated in a process model of business negotiation, this phase is a useful tool to satisfy the need for control to a reasonable degree. When multiple employees negotiate for the interests of a company, agency theory brings about multiple challenges, especially the disproportionality of the information between the principal and the agent (Sharma, 1997). Employees, in contrast to agents, are considered being institutionally closer to their fellow independent colleagues than the rest of their organisational hierarchy (Borbely, 2011). This advocates for the argument that the possible divergence of interests between principal and agent is reduced in comparison to the employee and contractual agent. Nevertheless, companies favouring establishing control over the performance and routine of information gathering from negotiators as one of the deliverables of the ex-post phase is an instrument of the contributing disbalance of information and control appliance in a self-reporting and self-assessment sense.

The ex-post phase is a concluding step in the negotiation process. Thus, the existence of a link to business objectives will exist when secured by the organisation. The link established by companies from the ex-post phase to business objectives is, apparently, informational. The informative function of the link is accomplished through the provision of information obtained during the ex-post phase and which shapes the business objectives of a company set for a following period. Examples of such information are: indications of a tendency of the expansion or narrowing of the zone of possible agreements, changes in standardised and non-negotiable contract terms of suppliers, fluctuations in negotiation powers, the characterisation of competitive capability of a company to negotiate, the impact of a negotiation strategy (distributive or integrative) in non-financial business objectives and negotiation goals, etc.

The other deliverables of the ex-post phase are the reflection of negotiation outcomes, of the negotiation process, and of necessary

improvements to perform better. This reflection has two orientations: 1) improvements which depend on negotiators, such as negotiation skills, strategic moves, etc., and 2) improvements in negotiation environments and infrastructure. Both directions serve the need to strengthen the negotiation capability of a company. Improvements in the overall negotiation performance of a company facilitate the achievement of corporate goals through better deals and contributions to relationships. Thus, the indirect link from the ex-post phase to the business objective becomes visible.

Conclusions

To foster green, digital, and social transitions of the EU economy, EU business entities in general and SMEs in particular need to facilitate change, growth, and establish aliances. From this perspective, business neotiation is a practice ensuring a smooth path towards these goals, especially through such sustainability aspects of negotiations as mutually-beneficial solutions, a path to better relationships and greater innovation, as well as higher growth and profits. Scientific literature reveals a number of peculiarities of strategic management in SMEs in comparison with huge corporations. The effectiveness of strategic management drives success in business to a large extent. However, it has been stated in scientific literature that SMEs have a more informal attitude towards strategic management and business objectives. In accordance with empirical studies in several EU countries, there are reasonable deficiencies in SMEs' strategic management.

Moreover, a working knowledge of the theoretical framework of the phase model in business negotiation is limited by theoretical contributions, and studies of its practical implementation are lacking, which is confirmed by the above analysis. Further theoretical and empirical research is required, and which will be specifically beneficial for SMEs in Europe. An overview of trends in journal articles and research constituents in a specific domain of business negotiation reveals the importance of a sustainable confirmity of negotiation goals to business objectives. To secure sustainable confirmity is purposeful for negotiators to reflect on the coherence of the business objectives of a company and negotiation intercourse. Business objectives are a direction indicator through business negotiation phases one to five.

Aside from other deliverables of the ex-post phase (the 6th phase), information managed by negotiators which shapes the business objectives of a company – information that is integrated in strategy development, constitutes a direct, informative link to the business objectives of

a company. The direct link between the ex-post phase and corporate business objectives manifests in the information flow by shaping the business objectives of an upcoming period. There are six conceivable examples of information held by negotiators: 1) indications of a tendency of the expansion or narrowing of the zone of possible agreements, 2) changes in standardised and non-negotiable contract terms of suppliers, 3) fluctuations in negotiation powers, 5) a description of the corporate capability of a company to negotiate, and 6) the impact of a negotiation strategy in non-financial business objectives and negotiation goals.

To conclude, the above research confirms the need for further studies on the content and impact of identified linkages for EU business entities. Guidelines suggested by researchers as regards the establishment of information-sharing routines for companies to secure direct and indirect links of the ex-post phase to business objectives justify the topicality of linkage model presented in this article.

References

Angal, H. (2007) "Current trends in business negotiation research: An overview of articles published 1996-2005.SSE/EFI", *Working Paper Series in Business Administration*. No 2007:003. February 2007.

Aguilar-Saven R.S. (2004) "Business process modelling. Review and framework", *International Journal of Production Economics*. Vol. 90(2), pp. 129–149. DOI: https://doi.org/10.1016/S0925-5273(03)00102-6.

Barber, W.W. (2018) "Identifying Macro Phases Across the Negotiation Lifecycle", *Group Decision and Negotiation*. Vol. 27, pp. 885–903. DOI: https://doi.org/10.1007/s10726-018-9591-9.

Banerjee, S.B., Jermier, J.M., Peredo, A.M., Perey, R. and Reichel, A. (2021) *Theoretical perspectives on organizations and organizing in a post-growth era. Organization*. Vol. 28(3), pp. 337–357. DOI: https://doi.org/10.1177/1350508420973629.

Barchi, M. and Greco, M. (2018) "Negotiation in open innovation: A literature review", *Group Decision and Negotiation*. Vol. 27(3), pp. 343–374. DOI: https://doi.org/10.1007/s10726-018-9568-8.

Brett, J. and Thompson, L. (2016) "Negotiation", *Organizational Behavior and Human Decision Processes*. Vol. 136, pp. 68–79. DOI: https://doi.org/10.1016/j.obhdp.2016.06.003.

Bloomsbury, P.B., Ebbutt, B., Rennison, N., Russell, J. and Roseby, P. (2010) *Setting Objectives for a Business by Allan A. Kennedy. Business essential*. ProQuest Ebook Central. Available at: https://about.proquest.com/en/products-services/ebooks-main (Access 7.07.2023).

Borbély, A. (2011) "Agency in Conflict Resolution as a Manager–Lawyer Issue: Theory and Implications for Research", *Negotiation and Conflict Management Research*. Vol. 4(2), pp. 129–144. DOI: https://doi.org/10.1111/j.1750-4716.2011.00076.x.

Caputo, A. (2019) *Contextualizing Negotiation in Strategy* in *Strategic Corporate Negotiations*. Palgrave Pivot, Cham, pp. 47–63. DOI: https://doi.org/10.1007/978-3-030-15479-0_3.

Caputo A., Borbely, A. and Dabic, M. (2019) "Building theory on the negotiation capability of the firm: evidence from Ryanair", *Journal of Knowledge Management*. Vol. 23(2), pp. 240–262. DOI: https://doi.org/10.1108/JKM-02-2018-0117.

Caputo, A. and Borbely, A. (2017) "Approaching negotiation at the organizational level", *Negotiation and Conflict Management Research*. Vol. 10(4), pp. 306–323, DOI: https://doi.org/10.1111/ncmr.12106.

Carrell, M.R. and Heavrin, C. (2008) *Negotiating Essentials: Theory, skilss, and pratctices*. Pearson Prentice Hall.

Carnevale, P.J. (2019) "Strategic time in negotiation", *Current Opinion in Psychology*. Vol. 26, pp. 106–112. DOI: https://doi.org/10.1016/j.copsyc.2018.12.017.

Crump L.A. (2007) "Temporal model of negotiation linkage dynamics", *Negotiation Journal*. Vol. 23, pp. 117–153. DOI: https://doi.org/10.1111/j.1571-9979.2007.00133.x.

Dinnar, S. and Susskind, L. (2018) "The Eight Big Negotiation Mistakes that Entrepreneurs Make", *Negotiation Journal*. Vol. 34, pp. 401–413. DOI: https://doi-org.db.rsu.lv/10.1111/nejo.12244.

Donaldson, T. and Preston, L.E. (1995) "The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications", *The Academy of Management Review*. Vol. 20(1), pp. 65–91. DOI: https://doi.org/10.2307/258887.

Edwards, M.G. (2021) "The growth paradox, sustainable development, and business strategy", *Business Strategy and the Environment*. Vol. 30(7), pp. 3079–3094. DOI: https://doi-org.db.rsu.lv/10.1002/bse.2790.

Ertel, D. (1999) *Turning negotiation into a corporate capability*. Harward Business Review. May-June, 99304.

EU Commission (2022) *Recovery and Resilience Scoreboard: Thematic analysis*. Available at: https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html (Access 7.07.2023).

Fells, R., Rogers, H., Prowse, P. and Ott, U.F. (2015) "Unravelling Business Negotiations Using Practitioner Data", *Negotiation and Conflict Management Research*. Vol. 8(2), pp. 119–136. DOI: https://doi.org/10.1111/ncmr.12050.

Freeman, R. and McVea, J. (2001) "A Stakeholder Approach to Strategic Management", *SSRN Electronic Journal*. DOI: https://doi.org/10.2139/ssrn.263511.

Guix, M. and Font, X. (2020) "The Materiality Balanced Scorecard: A framework for stakeholder-led integration of sustainable hospitality management and reporting", *International Journal of Hospitality Management*. Vol. 91. DOI: https://doi.org/10.1016/j.ijhm.2020.102634.

Hart, E. and Schweitzer, M.E. (2020) "Getting to less: When negotiating harms post-agreement performance", *Organizational Behaviour and Human Decision Processes*. Vol. 156, pp. 155–75. DOI: https://doi.org/10.1016/j.obhdp.2019.09.005.

Jung, S. and Kerb, P. (2019) *The Essentials of Contract Negotiation*. Springer International Publishing.

Karsaklian, E. (2017) *Sustainable Negotiation: What Physics Can Teach Us About International Negotiation*. Malaysia: Emerald Publishing Limited. DOI: https://doi.org/10.1108/9781787145757.

Koskinen, K.U. (2012) "Organizational Learning in Project-Based Companies: A Process Thinking Approach", *Project Management Journal*. Vol. 43(3), pp. 40–49. DOI: https://doi-org.db.rsu.lv/10.1002/pmj.21266.

Kujala, J., Murtoaro, J. and Artto, K. (2007) "A negotiation approach to project sales and implementation", *Project Management Journal*. Vol. 38(4), pp. 33–44. DOI: https://doi.org/10.1002/pmj.20018.

Kumar, S. (2012) "Management by objectives (MBO): A tool of performance appraisal", *Indian Journal for Public administration*. Vol. LVIII, No. 4. October–December, pp. 749–756. DOI: https://doi.org/10.1177/0019556120120411.

Lindholst, M., Bülow, A.M. and Fells, R. (2018) "The practice of preparation for complex negotiations", *Journal of Strategic Contracting and Negotiation*. Vol. 4(1–2), pp. 119–140. DOI: https://doi.org/10.1177/2055563620907364.

Maddux, R.B. (1995) *Successful Negotiation: Effective "Win-Win" Strategies and Tactics*. Boston: Course Technology Crisp.

Maříková, M., Rolínek, L., Vrchota, J. and Řehoř, P. (2022) "Determination of the level of strategic management in SMEs", *Central European Business Review*. Vol. 11(3). DOI: https://doi.org/10.18267/j.cebr.296.

Movius, H. and Susskind, L. (2009) *Built to win: creating a world-class negotiation organization*. Harvard Business School Publishing.

Nixon, P. (2005) *Negotiation Mastering Business in Asia*. New York, Singapore: John Wiley & Sons, Incorporated. Available at: https://ebookcentral-

proquest-com.db.rsu.lv/lib/rsub-ebooks/detail.action?docID=990621 (Access 7.07.2023).

Nyhart, D.J. and Samarasan, K.D. (2015) *The Elements of Negotiation Management*. Sloan School of Management. Creative Media Partners. Available at: https://dspace.mit.edu/bitstream/handle/1721.1/47445/elementsofnegoti00nyha.pdf;sequence=1 (Access 7.07.2023).

Perez C.A., Montequín, V.R., Fernández, F.O. and Balsera, J.V. (2017) "Integration of Balanced Scorecard (BSC), Strategy Map, and Fuzzy Analytic Hierarchy Process (FAHP) for a Sustainability Business Framework: A Case Study of a Spanish Software Factory in the Financial Sector", *Sustainability*. Vol. 9(4), p. 527. DOI: https://doi.org/10.3390/su9040527.

Pruitt, D. (1981) *Negotiation Behavior. Introduction*. Sheffield: Academic press. Available at: https://shop.elsevier.com/books/negotiation-behavior/warr/978-0-12-566250-5 (Access 7.07.2023).

Quinn, J. (2019) "The sustainable corporate objective: Rethinking directors' duties", *Sustainability*. Vol. 11(23), p. 6734. DOI: https://doi.org/10.3390/su11236734.

Raiffa, H., Richardson, J. and Metcalfe, D. (2007) *Negotiation analysis: The Science and Art of Collaborative Decision Making*. Harvard University Press. DOI: https://doi.org/10.2307/j.ctv1cbn3p6.

Saner, R. (2012) *The expert negotiator*. Leiden, Boston: Martinus Nijhoff Publishers. ProQuest Ebook Central. Available at: https://about.proquest.com/en/products-services/ebooks-main (Access 7.07.2023).

Sehgal, V. (2011) *Supply Chain As Strategic Asset: The Key to Reaching Business Goals*. John Wiley & Sons, Incorporated, Hoboken. DOI: https://doi.org/10.1002/9781118269176.

Seul, J.R. (2022) "On Negotiation Building Blocks and Bridging the Worlds We Build", *Negotiation Journal*. Vol. 38, pp. 405–433. DOI: https://doi-org.db.rsu.lv/10.1111/nejo.12408.

Sharma, A. (1997) "Professional as agent: Knowledge asymmetry in agency exchange. Academy of Management", *The Academy of Management Review*. Vol. 22(3), pp. 758–798. DOI: https://doi.org/10.2307/259412.

Smolinski, R. and Xiong, Y. (2020) "In Search of Master Negotiators: A Negotiation Competency Model", *Negotiation Journal*. Vol. 36, pp. 365–388. DOI: https://doi-org.db.rsu.lv/10.1111/nejo.12332.

Stefanović, M., Tadic, D., Arsovski, S., Pravdic, P., Abadić, N. and Stefanović, N. (2015) "Determination of the effectiveness of the realization of enterprise business objectives and improvement strategies in an uncertain environment", *Expert Systems*. Vol. 32, pp. 494–506. DOI: https://doi:10.1111/exsy.12102.

Pavlák, M. and Písař, P. (2020) "Strategic management controlling system and its importance for SMEs in the EU", *Problems and Perspectives in Management*. Vol. 18(3), pp. 362–372. DOI: https://doi.org/10.21511/ppm.18(3).2020.30.

Weber, P., Geneste, L.A. and Connell, J. (2015) "Small business growth: Strategic goals and owner preparedness", *The Journal of Business Strategy*. Vol. 36(3), pp. 30–36. DOI: https://doi.org/10.1108/JBS-03-2014-0036.

World Economic Forum (2020) The Future of Jobs Report 2020. Available at: https://www.weforum.org/reports/the-future-of-jobs-report-2020/?DAG=3&gclid=Cj0KCQiA6rCgBhDVARIsAK1kGPIkgAdEOfDtZm05v09naG2a1w_3yrZ38WJjdr3EHgZil5EdwXeMPfsaAvmmEALw_wcB (Access 7.07.2023).

Zetik, D.C. and Stuhlmacher, A.F. (2002) "Goal Setting and Negotiation Performance: A Meta-Analysis", *Group Processes & Intergroup Relations*. Vol. 5(1), pp. 35–52. DOI: https://doi.org/10.1177/1368430202005001537.

Zheng, S. and Negenborn, R.R. (2015) "Price negotiation between supplier and buyer under uncertainty with fixed demand and elastic demand", *International Journal of Production Economics*. Vol. 167, pp. 35–44. DOI: https://doi.org/10.1016/j.ijpe.2015.05.024.

DOI: 10.33067/SE.3.2023.8

Tomasz Grodzicki⋆

Innovation Potential in the Western Balkans Relative to the European Union and Selected Neighbouring Countries

Abstract

Although Western Balkan economies are still on the list of EU candidates or potential candidate countries, they do have some integration with EU economies. The EU is the leading trading partner of the Western Balkans and is one of the top destinations for the flow of people. The Western Balkan economies have been trying to address their populations' ongoing emigration (the so-called "brain drain" phenomenon) by implementing targeted economic policies. Since one of the main contributors to economic growth is the ability to create innovation, it is crucial to building innovation potential. The main challenge for innovation policy is to provide a favourable environment for entrepreneurship and economic growth to create jobs. Thus, this paper aims to examine innovation potential – an innovation input – as it creates the conditions needed for innovation development. The results of analysing the data (on research and development spending, human resources, an environment friendly to innovation, and intellectual property rights) indicate that the Western Balkan countries are lagging behind the EU in many aspects of innovation potential, so they should still develop their strategies towards creating higher innovation potential. Thus, they will be able to have a higher level of innovation and, as a result, be more competitive in economic terms.

Keywords: Economic Growth, Innovation Potential, Western Balkans, European Union

⋆ **Tomasz Grodzicki** – Nicolaus Copernicus University in Torun, e-mail: t.grodzicki@umk.pl, ORCID ID: 0000-0001-7819-2127.

Introduction

Innovation is a key term that has been widely described in scientific literature. Innovation potential has not been as frequently described as innovation, invention, or innovativeness has, but there have still been some attempts at the hands of different researchers to try to define it. Innovation, essentially, is an economy's engine that improves productivity, efficiency, and effectiveness. Innovation potential determines said economy's creative capacity, which, when properly used, contributes to the creation of innovation in a given territory.

The aim of this paper is to examine the performance in innovation potential of the Western Balkan (WB) countries relative to the EU's average. Since WB economies are in the process of EU accession, comparing their innovation potential with the EU's average is vital.

The paper focuses on five out of the six following Western Balkan (WB) countries in Southern and Eastern Europe: Albania, Bosnia and Herzegovina (BiH), Montenegro, North Macedonia, and Serbia. These countries are formally either potential candidates or candidate countries and are included in the EU Enlargement Policy. The Republic of Kosovo has been excluded from this study due to missing data.

This paper begins with a definition and literature review of the concept of innovation potential and presents the results of previous research on innovation in Western Balkan countries. It goes on to apply selected data on innovation potential (namely: research and development spending, human resources, an environment friendly to innovation, and intellectual property rights) to present the performance of the WB countries and compares the results with the EU's average and/or other EU Balkan countries. This is due to the fact that some indicators are not presented in relative terms but in absolute numbers, e.g., patent applications or scientific and technical journal articles. One of the solutions may be dividing them by a common denominator such as population, or the total number of researchers, etc. However, in the case of patent applicants, data for the EU as a whole are not available (there is complete, comprehensive data for 2018 only, when all EU countries provided said data, enabling the total EU number of applicants to be calculated). Thus, comparing the results with other Balkan countries that are part of the EU seems to be justified. Also, other studies analysing innovation in the WB countries very often compare their results with their neighbouring EU countries. The data range is from 2010 to 2020, extracted from the World Bank database. Finally, this paper discusses the results, makes its conclusions, and presents ideas for future research.

The Concept of Innovation Potential

Innovation is crucial for countries to grow their economies, however, one should note that creating innovation is not a random process that can be based on luck. Indeed, it requires some specific settings, environment, resources, etc. Therefore, an important question is whether a given country or even countries – in this case, the Western Balkans – have these characteristics so as to be able to bring about innovation. This ability to create future innovation can be referred to as innovation potential.

Innovation potential is very often perceived as being all means and resources that can be used to create innovations. Such an understanding is often referred to in the literature as inputs to innovation (Hinloopen, 2003; Mairesse, Mohnen, 2010), innovation drivers (Crescenzi et al., 2014; Kourtit et al., 2011), engines (DeSai, 2013), and innovation ecosystem (Dedehayir et al., 2018; Gomes et al., 2018). However, the concept of innovation potential should not be limited only to the resources available for innovation. Innovation mechanisms also include potential development through innovation and investment (Bozic, Botric, 2017; Valitov, Khakimov, 2015). Therefore, innovation potential consists of resources, processes, and conditions that are sufficiently needed for the implementation of innovation activities and, as a result, technological development (Lomachynska, Podgorna, 2018; Nauwelaers, Reid, 1995). Innovation potential determines the innovativeness of the processes in a given territory. Innovation contributes to the competitiveness of economies at every level (national, regional, and local) and thus leads to modernisation, economic growth, and social development (Archibugi, Iammarino, 1999; Jusufi, 2023; Lin, 2011; Sahlberg, 2006). Innovation, of course, enables the solving of problems occurring on a global scale, such as climate change or social inequalities (Adams et al., 2016; Gupta et al., 2020; Mazzanti et al., 2020; Melville, 2010; Oh, 2020; Santos, 2012).

Although there are no studies on innovation potential in the Western Balkans, there are some on innovation. Cvetanovic and others (2014) conducted research on six WB countries (Albania, Bosnia and Herzegovina, Macedonia, Serbia, Croatia, and Montenegro) and six EU countries (Bulgaria, Greece, Hungary, Romania, and Slovenia) in 2012. Their results were based on the Global Innovation Index Report along with the Global Competitiveness Index Report, both of which indicated that the WB countries were lagging behind in terms of innovation with the selected group of EU countries that (besides Greece) joined the EU at the latest (Croatia joined the EU in 2013), either in 2004 or 2007. Despotovic and others (2014) conducted a similar study based on a similar group of

countries, and they arrived at the same conclusion. Sanfey and others (2016) analysed the Western Balkans as a whole and compared them with the EU-11 (the so-called "new" Member States), the EU, and EU-15 (the old Member States). Apart from the Global Innovation Index, they focused on selected measures of innovation such as spending on R&D, the percentage of firms engaging in product and process innovation, and focused on the percentage of firms engaging in organisational and marketing innovation. This study's results clearly underline that spending on R&D in the WB countries was around 20% of the EU-11, and far less as compared to the EU average. Some other studies also indicated significant disparities between innovation levels in the WB countries and the EU (Cvetanović et al., 2021; Grieveson et al., 2018). Thus, this paper investigates whether the problem lies at the heart of innovation potential.

Innovation Potential in the Western Balkan Countries

The most commonly used indicator for measuring innovation potential is Research and Development (R&D) expenditures expressed as a percentage of GDP (Ambroziak, 2016; Cavdar, Aydin, 2015; Griffiths et al., 2009; Janger et al., 2017). Gross domestic expenditures on R&D consist of both capital and current spending in four main sectors: business enterprise, government, higher education, and private non-profit. R&D includes not only basic and applied research but also experimental development. There is a long way ahead for the WB countries that they might catch up with the EU's level of R&D expenditures (Figure 1). The best-performing WB country was Serbia, which spent from almost 0.7% in 2010 to 0.91% in 2020 of its GDP on R&D activities. The highest value for this indicator for both North Macedonia and Montenegro was around 0.5% and 0.32% for BiH. The EU's average level of spending for R&D was about 2% in 2010 and 2.32% in 2020. When comparing the WB countries with the selected EU neighbouring countries, one may note that only Slovenia remains relatively high in this indicator's performance (ranging from 1.87% to 2.56%), oscillating close to the EU's average. Greece has significantly progressed from 0.6% in 2010 to nearly 1.5% in 2020. Croatia has also enjoyed an upward trend; in 2020, its spending on R&D reached nearly 1.25% of its GDP. Bulgaria did not manage to achieve 1% in this indicator, and lagged behind not only aforementioned three EU members, but even Serbia in recent years. Nevertheless, the performance of the WB countries as a whole is not satisfactory, and they have created a challenge for themselves to increase their R&D expenditures in order to be able to catch up with at least their EU neighbours and even, eventually, with the EU's average.

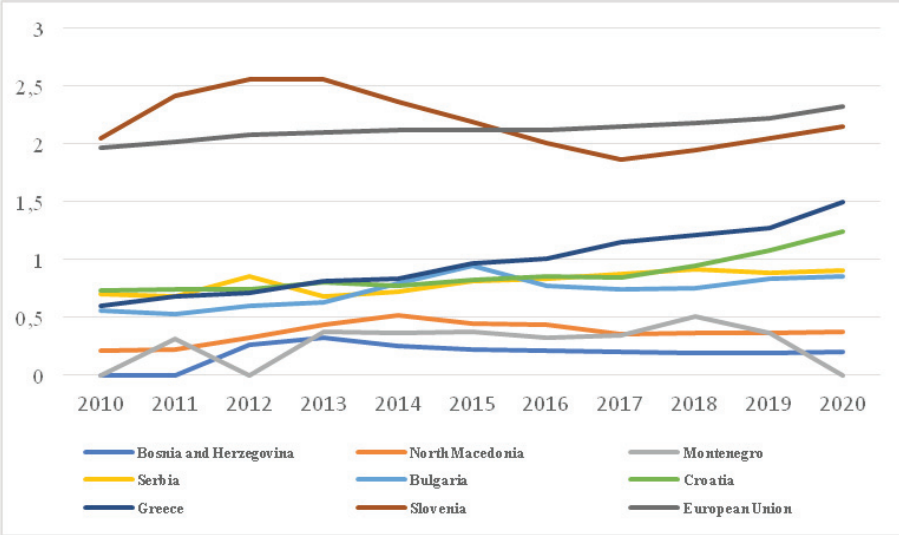


Figure 1. Gross Domestic Expenditures on Research and Development, Expressed as a Percent of GDP

Note: The only available data for Albania was 0.09 in 2007 and 0.15 in 2008.

Source: The author's own elaboration based on World Bank data.

While the WB countries should mobilise their resources to increase their gross domestic expenditures on R&D, they also need to focus on human resources, especially those employed in the R&D sector (Figure 2). The number of researchers engaged in R&D processes is a prevalent indicator of innovation potential applied in research papers (Boden, 2000; Buerger et al., 2012; Lee, 2015; Mueller, Peters, 2010). Out of all the WB countries, except for Albania (due to the aforementioned lack of data), the highest number of researchers engaged in R&D per million people was noted in Serbia in 2020 – with a value of 2167. The remaining WB countries were far below this number. Indeed, as regards BiH, their highest number was 485 in 2017, while North Macedonia had 858 in 2015, and Montenegro had 835 researchers engaged in R&D per million in 2015. The EU average was 4257 R&D researchers per million in 2020, indicating that Serbia – as a WB leader in this indicator – is a bit more than halfway to catching up with the EU-27. The leader of the EU Balkan countries is Slovenia, with results significantly exceeding the EU's average. Greece eventually reached 4000 researchers per million of the population in 2020, hence it is still ahead of the EU's average. Although Bulgaria started with fewer

researchers per million than Serbia, it managed to grow this number to more than 2400 in 2020. Croatia had more researchers per million than Serbia only in 2010, 2019, and 2020. Hence, human resources in R&D is undoubtedly a critical issue that has to be addressed by WB countries in order to enhance their innovation potential.

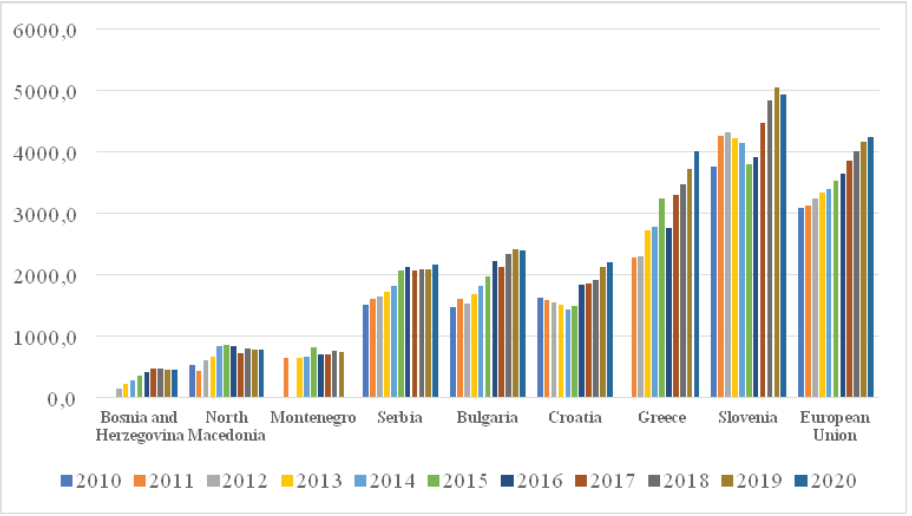


Figure 2. The Number of Researchers Engaged in Research and Development, Expressed per Million of the Population

Note: Data for Albania were missing; the only available data were in 2008, with a value of 156; there was also a lack of data for some years for BiH and Montenegro.

Source: The author's own elaboration based on World Bank data.

Innovation potential can also be described in terms of patent applications (Noh, Lee, 2020; Pavitt, 2005; Rogers, 1998; Whalen et al., 2020). A patent guarantees exclusive rights for an invention, a product or a process that offers a new, technical solution to a problem or provides a new way of doing something. Table 1 below presents the number of patent applications by residents in the WB countries and the EU Balkan economies. Since it shows the total number of applications, a comparison with the EU-27 would not allow for a comparison of their relative performances. Serbia leads this ranking with 290 patent applications in 2010 and 138 applications in 2020. Albania submitted not more than 20 applications per year, while BiH submitted 87, North Macedonia 50, and Montenegro 37. Compared with the EU Balkan countries, only Serbia is a competitive economy with regard to patent applications. Since Greece is a well-established EU country in terms of its length of EU membership and has enjoyed the benefits from the EU's policies for a long time, it

cannot be compared to the WB economies, whereas the remaining EU Balkan countries can be treated as relatively new EU Member States. Serbia had a similar performance to Croatia, and performed only slightly worse than Bulgaria over the period of 2010–2020.

Table 1. Number of Patent Applications by Residents

Country Name	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Western Balkan countries											
Albania	-	3	-	-	10	14	20	16	15	4	-
BiH	56	43	2	7	41	0	60	87	84	45	50
North Macedonia	27	37	50	42	-	-	-	-	-	-	47
Montenegro	23	20	37	23	13	23	10	-	3	16	5
Serbia	290	180	192	201	202	178	192	171	163	168	138
EU Balkan countries											
Bulgaria	243	262	245	282	218	280	230	202	180	186	239
Croatia	257	230	217	230	170	169	175	148	121	195	117
Greece	728	721	628	698	651	550	606	498	430	356	400
Slovenia	442	470	-	-	-	-	-	-	255	-	-

Note: - means that data were not available.
Source: The author's own elaboration based on World Bank data.

Another topical indicator of innovation potential is the number of scientific articles published in the fields of biology, biomedical research, chemistry, clinical medicine, earth and space sciences, engineering and technology, mathematics, and physics (Hicks et al., 2000; Morillo et al., 2003; Okubo, 1997; Taylor, 2004). Albanian scientists and engineers published only between 43 to 67 papers per million of the population, the lowest output of all the considered countries (Figure 3). At the same time, researchers from BiH and North Macedonia published, on average, 281 and 206 papers respectively in 2020. For BiH, the progress in this indicator was substantial as its scientists started from 130 papers in 2010 and went on to more than double this number by the end of 2020. Researchers from Montenegro enjoyed even more significant improvement since they started with, on average, 175 papers in 2010 per million, and in 2020, they reached almost 500 publications. Serbia is the leader of the WB countries in this respect, with, on average, 687 papers in 2020 per million, improving upon Bulgaria's result of 594 papers. Greece, Croatia, and Slovenia published more than 1000 papers per million in the whole period, and, in 2020, they reached 1172, 1186, and 1821 respectively. The EU's average was 1282 in 2020, far more than any countries of the Western Balkans. Although the WB countries noted some progress in the number of scientific papers, they still have a long way to catch up with the EU's average.

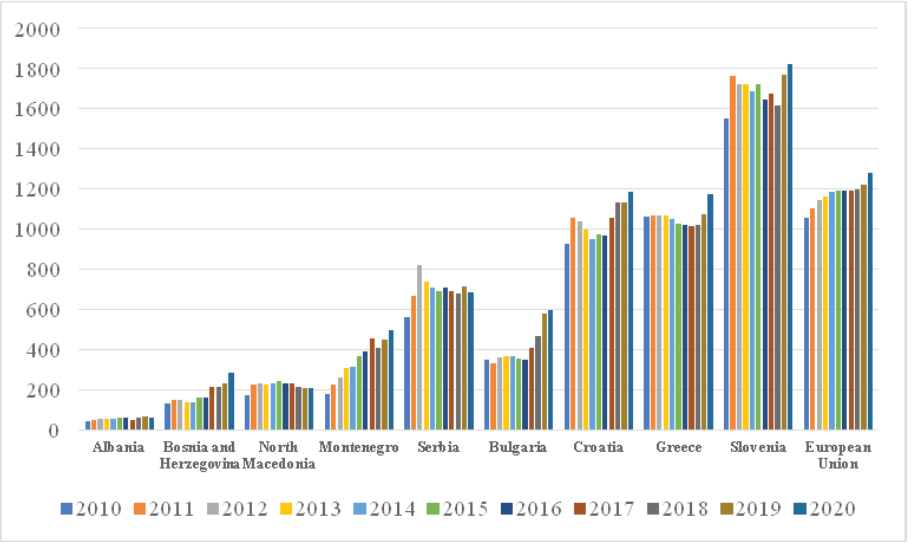


Figure 3. The Number of Scientific and Engineering Articles (Published in the Following Fields: Biology, Biomedical Research, Chemistry, Clinical Medicine, Earth and Space Sciences, Engineering and Technology, Mathematics, and Physics) per Million of the Population

Source: The author's own elaboration based on World Bank data.

Table 2. The Number of Days Needed for Businesses to Secure Rights to Property

Country Name	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
European Union	39	33	29	27	27	26	25	25	26	27
Western Balkan countries										
BiH	32	32	24	24	24	24	24	35	35	35
North Macedonia	60	43	43	31	31	30	30	30	30	30
Montenegro	70	70	70	69	69	69	69	69	69	69
Serbia	89	34	34	34	52	52	34	34	34	33
EU Balkan countries										
Bulgaria	19	19	19	19	19	19	19	19	19	19
Croatia	103	73	73	73	73	63	48	48	48	33
Greece	26	26	26	26	26	26	26	26	26	26
Slovenia	113,5	110,5	95,5	80,5	65,5	50,5	50,5	50,5	50,5	50,5

Note: Data for Albania are not available.

Source: The author's own elaboration based on World Bank data.

A country needs to have well-functioning institutions to create an innovation-friendly environment (Ali et al., 2020; Hekkert et al., 2007; Sondermann, 2018). One possible way to measure such metrics is to look at the time required to register property rights (table 2). In WB countries, the shortest time to register property rights was noted in BiH, where there were just 24 days needed to do so in the period of 2012–2016. In 2019, the leader in this indicator was North Macedonia, with 30 days required for property rights registration, while in Serbia it was 33 days, BiH – 35 days, and Montenegro – 69 days (no data available for Albania). The EU average was 27 days in 2019. This means that WB countries, except for Montenegro, are on the right track to catching up with the EU-27 due to the fact that the difference is not particularly stark. For other Balkan countries, the time for property-right registration differs, with 19 days needed in Bulgaria, 33 days in Croatia, 26 days in Greece, and more than 50 days in Slovenia in 2019.

Discussion and Conclusions

Western Balkan economies are still on their way to catching up with EU countries in economic development and innovation potential. Their performance in most innovation potential indicators confirmed there is a long way to go before they reach the average EU level in generating innovation. It is a matter of increasing financing and enhancing the innovation ecosystem through good institutions, well-educated and specialised human capital, good innovation policies, infrastructure, etc. Through its pre-accession funds, the EU supports innovation, but most of the money goes to EU Member States. Therefore, for WB countries, the ideal situation to foster innovation potential would be to join the EU. However, in the meantime, while being the candidate of potential candidate countries, they should work on their economic systems to be more efficient, productive, and more market-oriented to eventually stimulate innovation processes.

Although the performance of BiH, Montenegro, and North Macedonia (data for Albania were missing to a large extent) are somewhat similar and relatively far from the EU average, Serbia deserves special attention. It is a country that has treated its innovation policy with great importance and stands out from the remaining WB countries in terms of R&D expenditures, R&D personnel, patent applications, and published scientific papers.

It is vital to underline that a problem with the innovation of WB countries indicated in the literature review is undoubtedly related to their relatively poor innovation potential (except for Serbia). Developing their

innovation potential would then allow for a fostering of their innovation-based performance.

Further research on this topic could include spatial differentiation of regional innovation potential in order to see which are the top innovators and which are lagging. It would also be a good idea to compare their performance with EU Balkan regions in a dynamic view to see whether there are any catching-up processes occurring between them.

References

Adams, R., Jeanrenaud, S., Bessant, J., Denyer, D. and Overy, P. (2016) "Sustainability-oriented Innovation: A Systematic Review", *International Journal of Management Reviews*. Vol. 18(2), pp. 180–205. DOI: https://doi.org/10.1111/ijmr.12068.

Ali, A., Kelley, D.J. and Levie, J. (2020) "Market-driven entrepreneurship and institutions", *Journal of Business Research*. Vol. 113, pp. 117–128. DOI: https://doi.org/10.1016/j.jbusres.2019.03.010.

Ambroziak, A.A. (2016) "Recent Changes and Developments in State Aid for Research, Development and Innovation in the European Union". *Studia Europejskie – Studies in European Affairs*. Vol. 20(4), pp. 73–94.

Archibugi, D. and Iammarino, S. (1999) "The policy implications of the globalisation of innovation", *Research Policy*. Vol. 28(2), pp. 317–336. DOI: https://doi.org/10.1016/S0048-7333(98)00116-4.

Boden, M. and Miles I. (eds.) (2000) *Services and the Knowledge-Based Economy*. Routledge.

Bozic, L. and Botric, V. (2017) "Innovation investment decisions: Are post (transition) economies different from the rest of the EU?", *Eastern Journal of European Studies*. Vol. 8(2), pp. 25–43.

Buerger, M., Broekel, T. and Coad, A. (2012) "Regional Dynamics of Innovation: Investigating the Co-evolution of Patents, Research and Development (R&D), and Employment", *Regional Studies*. Vol. 46(5), pp. 565–582. DOI: https://doi.org/10.1080/00343404.2010.520693.

Cavdar, S.C. and Aydin, A.D. (2015) "An Empirical Analysis about Technological Development and Innovation Indicators", *Procedia – Social and Behavioral Sciences*. Vol. 195, pp. 1486–1495. DOI: https://doi.org/10.1016/j.sbspro.2015.06.449.

Crescenzi, R., Pietrobelli, C. and Rabellotti, R. (2014) "Innovation drivers, value chains and the geography of multinational corporations in Europe", *Journal of Economic Geography*. Vol. 14(6), pp. 1053–1086. DOI: https://doi.org/10.1093/jeg/lbt018.

Cvetanovic, S., Despotović, D., Mladenović, I. and Jovović, D. (2014) "The analysis of innovation in Western Balkan countries in 2012". *Economic*

Research-Ekonomska Istraživanja. Vol. 27(1), pp. 830–846. DOI: https://doi.org/10.1080/1331677X.2014.974920.

Cvetanović, S., Panić, A.A. and Kostić, A. (2021) „National Innovation Capacity and Economic Progress of Countries", *Economic Themes*. Vol. 59(3), pp. 297–314. DOI: https://doi.org/10.2478/ethemes-2021-0017.

Dedehayir, O., Mäkinen, S.J. and Roland Ortt, J. (2018) "Roles during innovation ecosystem genesis: A literature review", *Technological Forecasting and Social Change*. Vol. 136, pp. 18–29. DOI: https://doi.org/10.1016/j.techfore.2016.11.028.

DeSai, J. (2013) *Innovation Engine: Driving Execution for Breakthrough Results*. John Wiley & Sons.

Despotovic, D.Z., "Cvetanović, S.Ž. and Nedić, V.M. (2014) "Innovativeness and Competitiveness of the Western Balkan Countries and Selected EU Member States", *Industrija*. Vol. 42(1), Article 1. DOI: https://doi.org/10.5937/industrija42-4602.

Gomes, L.A. de V., Facin, A.L.F., Salerno, M.S. and Ikenami, R.K. (2018) "Unpacking the innovation ecosystem construct: Evolution, gaps and trends", *Technological Forecasting and Social Change*. Vol. 136, pp. 30–48. DOI: https://doi.org/10.1016/j.techfore.2016.11.009.

Grieveson, R., Grübler, J. and Holzner, M. (2018) *Western Balkans EU Accession: Is the 2025 Target Date Realistic? (Research Report 22). Policy Notes and Reports*. Available at: https://www.econstor.eu/handle/10419/204265 (Access 23.07.2023).

Griffiths, M.D., Gundry, L., Kickul, J. and Muñoz Fernandez, A. (2009) "Innovation ecology as a precursor to entrepreneurial growth: A cross-country empirical investigation", *Journal of Small Business and Enterprise Development*. Vol. 16(3), pp. 375–390. DOI: https://doi.org/10.1108/14626000910977116.

Gupta, S., Kumar, V. and Karam, E. (2020) "New-age technologies-driven social innovation: What, how, where, and why?", *Industrial Marketing Management*. Vol. 89, pp. 499–516. DOI: https://doi.org/10.1016/j.indmarman.2019.09.009.

Hekkert, M.P., Suurs, R.A.A., Negro, S.O., Kuhlmann, S. and Smits, R.E. H.M. (2007) "Functions of innovation systems: A new approach for analysing technological change", *Technological Forecasting and Social Change*. Vol. 74(4), pp. 413–432. DOI: https://doi.org/10.1016/j.techfore.2006.03.002.

Hicks, D., Breitzman, A., Sr, Hamilton, K. and Narin, F. (2000) "Research excellence and patented innovation", *Science and Public Policy*. Vol. 27(5), pp. 310–320. DOI: https://doi.org/10.3152/147154300781781805.

Hinloopen, J. (2003) "Innovation performance across Europe", *Economics of Innovation and New Technology*. Vol. 12(2), pp. 145–161. DOI: https://doi.org/10.1080/10438590303125.

Janger, J., Schubert, T., Andries, P., Rammer, C. and Hoskens, M. (2017) "The EU 2020 innovation indicator: A step forward in measuring innovation outputs and outcomes?", *Research Policy*. Vol. 46(1), pp. 30–42. DOI: https://doi.org/10.1016/j.respol.2016.10.001.

Jusufi, A. (2023) "Relationship Between Innovation and Financial Performance in The Global Environment of Exporting Companies", *Journal of Liberty and International Affairs*. Vol. 9(2), Article 2. DOI: https://doi.org/10.47305/JLIA2392089j.

Kourtit, K., Nijkamp, P. and Stough, R.R. (2011) *Drivers of Innovation, Entrepreneurship and Regional Dynamics*. Springer Science & Business Media. DOI: https://doi.org/10.1007/978-3-642-17940-2.

Lee, Y.-N. (2015) "Evaluating and extending innovation indicators for innovation policy", *Research Evaluation*. Vol. 24(4), pp. 471–488. DOI: https://doi.org/10.1093/reseval/rvv017.

Lin, J.Y. (2011) "New Structural Economics: A Framework for Rethinking Development", *The World Bank Research Observer*. Vol. 26(2), pp. 193–221. DOI: https://doi.org/10.1093/wbro/lkr007.

Lomachynska, I. and Podgorna, I. (2018) „Innovation Potential: Impact on the National Economy's Competitiveness of the EU Developed Countries". *Baltic Journal of Economic Studies*, Vol. 4(1), Article 1. DOI: https://doi.org/10.30525/2256-0742/2018-4-1-262-270.

Mairesse, J. and Mohnen, P. (2010) *Using Innovations Surveys for Econometric Analysis* (working paper 15857). National Bureau of Economic Research. DOI: https://doi.org/10.3386/w15857.

Mazzanti, M., Tapia, C. and Pegoraro, A. (2020) "Innovative local policy instruments enabling sustainable innovation: Benchmarking worldwide best practices", *Argomenti*. Vol. 16, Article 16. DOI: https://doi.org/10.14276/1971-8357.2138.

Melville, N.P. (2010) "Information Systems Innovation for Environmental Sustainability". *MIS Quarterly*, Vol. 34(1), pp. 1–21. DOI: https://doi.org/10.2307/20721412.

Morillo, F., Bordons, M. and Gómez, I. (2003) "Interdisciplinarity in science: A tentative typology of disciplines and research areas", *Journal of the American Society for Information Science and Technology*. Vol. 54(13), pp. 1237–1249. DOI: https://doi.org/10.1002/asi.10326.

Mueller, K. and Peters, B. (2010) *Churning of R&D Personnel and Innovation*, SSRN Scholarly Paper 1622715. DOI: https://doi.org/10.2139/ssrn.1622715.

Nauwelaers, C. and Reid, A. (1995) "Methodologies for the evaluation of regional innovation potential", *Scientometrics*. Vol. 34(3), pp. 497–511. DOI: https://doi.org/10.1007/BF02018016.

Noh, H. and Lee, S. (2020) "What constitutes a promising technology in the era of open innovation? An investigation of patent potential from multiple perspectives", *Technological Forecasting and Social Change*. Vol. 157, Article 120046. DOI: https://doi.org/10.1016/j.techfore.2020.120046.

Oh, C. (2020) "Discursive Contestation on Technological Innovation and the Institutional Design of the UNFCCC in the New Climate Change Regime", *New Political Economy.* Vol. 25(4), pp. 660–674. DOI: https://doi.org/10.1080/13563467.2019.1639147.

Okubo, Y. (1997) *Bibliometric Indicators and Analysis of Research Systems: Methods and Examples*. OECD. DOI: https://doi.org/10.1787/208277770603.

Pavitt, K. (2005) "Patent statistics as indicators of innovative activities: Possibilities and problems", *Scientometrics*. Vol. 7(1–2), pp. 77–99. DOI: https://doi.org/10.1007/bf02020142.

Rogers, M. (1998) *The Definition and Measurement of Innovation*. Melbourne Institute working paper no. 10/98. Melbourne Institute of Applied Economic and Social Research. Available at: https://melbourneinstitute.unimelb.edu.au/publications/working-papers/search/result?paper=2155929 (Access 23.07.2023).

Sahlberg, P. (2006) "Education Reform for Raising Economic Competitiveness", *Journal of Educational Change*. Vol. 7(4), pp. 259–287. DOI: https://doi.org/10.1007/s10833-005-4884-6.

Sanfey, P., Milatovic, J. and Kresic, A. (2016) *How the Western Balkans Can Catch Up*. SSRN Scholarly Paper 3119685. DOI: https://doi.org/10.2139/ssrn.3119685.

Santos, F.M. (2012) "A Positive Theory of Social Entrepreneurship", *Journal of Business Ethics*. Vol. 111(3), pp. 335–351. DOI: https://doi.org/10.1007/s10551-012-1413-4.

Sondermann, D. (2018) "Towards more resilient economies: The role of well-functioning economic structures", *Journal of Policy Modeling*. Vol. 40(1), pp. 97–117. DOI: https://doi.org/10.1016/j.jpolmod.2018.01.002.

Taylor, M.Z. (2004) "Empirical Evidence Against Varieties of Capitalism's Theory of Technological Innovation", *International Organization*. Vol. 58(3), pp. 601–631. DOI: https://doi.org/10.1017/S0020818304583066.

Valitov, S.M. and Khakimov, A.Kh. (2015) "Innovative Potential as a Framework of Innovative Strategy for Enterprise Development",

Procedia *Economics and Finance*. Vol. 24, pp. 716–721. DOI: https://doi.org/10.1016/S2212-5671(15)00682-6.

Whalen, R., Lungeanu, A., DeChurch, L. and Contractor, N. (2020) "Patent Similarity Data and Innovation Metrics", *Journal of Empirical Legal Studies*. Vol. 17(3), pp. 615–639. DOI: https://doi.org/10.1111/jels.12261.

DOI: 10.33067/SE.3.2023.9

Stanisław Lipiec★

An Alternative Resolution of International Disputes: A Review of the Polish Approach

Abstract

In the age of globalisation, alternative forms of dispute resolution (ADR) are gaining new importance. In Poland, an increasing number of mediations and arbitrations in international (cross-border) cases are being observed. However, the number and importance of international ADR in Poland is much lower than in other European countries.

Polish advocates and legal advisers, experienced in conducting international arbitration and mediation, explain the Polish specificity, genesis, and perspectives of ADR in international disputes. The comparison of lawyers' experiences with the collected data thoroughly describes the state of out-of-court forms of dispute resolution in these types of situations.

The study, based on interviews with Polish jurists, statistical data analysis, and an analysis of nonreactive materials, demonstrates the far-reaching deficiencies and problems of the Polish system of alternative dispute resolution in transnational cases.

Keywords: Alternative Dispute Resolution, ADR, Arbitration, Mediation, International Law, Sociology of Law, Lawyers

Introduction

Alternative forms of dispute resolution (ADR) are increasingly used to effectively resolve conflicts. Among lawyers, these alternative forms are also growing in popularity, and more and more conflicted parties are trying to solve their problems away from the courtroom. Negotiation, mediation, and arbitration are now an integral part of dispute resolution throughout Europe. In large commercial disputes especially, ADR is used frequently and effectively. Most developed western European

★ **Stanisław Lipiec** – Jagiellonian University; e-mail: staszeklipiec@gmail.com, ORCID ID: 0000-0002-1014-1208.

companies negotiate or participate in mediation and arbitration before entering into litigation. In some countries, such as the Netherlands, it is estimated that more than 90% of business disputes are resolved amicably (Nordic Council of Ministers, 2002, pp. 27–49; Report Regulation, 2019, pp. 20–23).

In the age of globalisation, informal ways of resolving disputes are particularly rising in value. With increasing international trade and population migration, the number of cross-border disputes, both business and consumer, is growing. In the case of consumers, the numbers and relevance of disputes in family and cross-border consumer matters are particularly increasing (Hodges, 2012, pp. 195–197; Hodges et al., 2012; Lipiec, 2022, pp. 15–31). When a case involves individuals and companies operating in different countries, living in different jurisdictions, and speaking different languages, it is extremely difficult to resolve conflicts in a traditional, judicial manner. Choosing a single body to resolve a dispute between participants from various parts of the world can be a daunting task. Furthermore, in the classic method of conflict resolution, a dispute involves lawyers, judges, and prosecutors who are attached to a particular country, legal system, and culture, and are not interested in operating in various legal spaces. Additional difficulties in the classical judicial resolution of conflicts are procedural issues such as court jurisdiction, summonses for hearings, and service of correspondence. Therefore, a judicial process that involves many international factors becomes complex and lengthy. Thus, in relatively small cases of an international (cross-border) nature, there are no court proceedings. Oftentimes, parties prefer to abandon a case rather than to undertake the expense and difficulty of conducting complicated procedures. ADR methods, however, can be particularly helpful in these types of cases (2nd Alternative Dispute Resolution (ADR) Assembly 2021; Gaultier, 2013, pp. 42–56).

The popularity of ADR in international relations varies by country, legal environment, and by type of case. In Poland, negotiation, mediation, and arbitration are widely known among advocates, legal advisers (in Poland, they are also called attorneys-at-law), and judges. They are also becoming increasingly popular among large companies. There is a broad community of mediators and arbitrators. There are also numerous specialised institutions in Poland that conduct arbitration, including international arbitration. Individuals, however, are completely unfamiliar with these forms of dispute resolution and, as a consequence, avoid using them. Despite the existence of satisfactory legal conditions for conducting ADR and a fairly common knowledge of ADR among professionals in Poland, in practice, out-of-court forms of conflict resolution are not used.

Even in family matters, where mediation is legally preferred, the number of cases referred to mediation is very low. Especially in the area of conflict resolution with international elements, mediation in Poland is a niche practice. In cross-border cases of individuals, ADR is practically unused, and, in business disputes, it remains a curiosity in Poland (Biel, Jopek-Bosiacka, 2016, pp. 149–161; Gmurzyńska, Morek, 2012; Rudolf et al., 2016, pp. 12–44).

Polish advocates and legal advisers are the professional group that has a particularly good perspective on the use of ADR in practice in Poland. Therefore, the authors asked Polish jurists to talk about the practical use of ADR in Poland in cases with foreign elements. The experts were asked whether foreigners staying in Poland, foreign companies in Poland, and Poles working abroad participate in forms of alternative conflict resolution or not. Furthermore, the authors asked Polish lawyers to indicate how mediation, arbitration, and negotiation are conducted with foreign participation. In addition, the issue of the actual functioning of Polish mediators and arbitrators in cases involving foreigners or foreign companies and the activity of non-Polish forms of mediation or arbitration involving Poles was raised.

Preliminary discussions with Polish jurists allowed for the formulation of the main hypothesis: The use of alternative dispute resolution methods in international relations is rare in Poland, and its number and relevance are practically not increasing. It was also noted that ADR with international elements other than commercial does not occur in Poland. Furthermore, the methods of out-of-court dispute resolution in cross-border relations indicated in Polish and EU legal acts concerning family and consumer cases do not really function in Poland. Finally, disputants do not have the knowledge nor willingness to participate in arbitration-mediation procedures in cross-border cases despite their attorneys or judges' knowledge of ADR procedures.

The main objective of the study is to explain the mechanisms, reasons, and effects of ADR methods in cross-border, international relations, and with international elements (explication objective). The implementation objective of making proposals to remedy the lack of use of ADR to resolve cross-border disputes also remains important. The descriptive objectives concerning mediation or arbitration remain less relevant here.

Research Methods

The survey results are part of a larger study of the Polish justice system and the provision of legal services by Polish lawyers (Lipiec, 2020). The

survey was conducted between 7th October 2017 and 22nd January 2019, and then completed between November 2020 and March 2021.

The entire study was based on a variety of quantitative and qualitative research methods. The methodological core was based on in-depth, structured interviews with representatives of bar associations from all over Poland. In addition, the results obtained were checked, supplemented, and verified by means of non-reactive material research, the primary method of which was website-content analysis and other statistical materials. The legal application and acts of the law were analysed within the functional method of analysis (Babbie, 2008, pp. 342–360; Frankfort-Nachmias, Nachmias, 2001; Kędzierski, 2018, pp. 34–46).

The presented results of the study on alternative dispute resolution in international and transnational matters were obtained mainly through the method of structured, in-depth interviews (SSI). Interviews were conducted with 43 members of the bar associations' councils of advocates and legal advisers' bar associations from all over Poland (*okręgowa rada adwokacka*, ORA; *okręgowa izba radców prawnych*, OIRP). The distribution of the interviewees also covered the entire country. A council was represented by an interviewee. The interviews were conducted in person, usually at the headquarters of the bar councils; they were recorded, and subsequently transcribed, coded, categorised, and translated into English. Due to the uniformity of the legal adviser profession and the interview advocate profession, the analysis was done jointly, since both professions are treated identically in the report. The Atlas.ti programme was used to work with the research material. The analysis of the interviews focused on relevance. The conducted research has a strictly qualitative character (ATLAS.ti, 2021; Horton et al., 2004; Nicpoń, Marzęcki, 2010, pp. 246–251; Przybyłowska, 1978, pp. 62–64).

Lawyers are a professional group of people who enforce the law in practice. They are, so to speak, "immersed" in the law, and their task is to apply it. Simultaneously, they operate in a self-contained, autonomous socio-legal system. Lawyers, legal norms, legal regulations, and the judiciary, as a self-contained and independent system, however, constantly interact with other social systems. In this way, the independent, autopoietic legal system continuously integrates with other systems. Lawyers, meanwhile, are the ideal link between the legal system and the outside world and are an ideal example of Eugen Ehrlich's relationship between living law and Roscoe Pound's law in action along with continuous interaction between systems. They exemplify the autopoietic system and the application in Niklas Luhmann terms. Specifically, they are a combination of the law in action and the autopoieticity of the system. Therefore, they are a link

from the idea of the independence, and even the separation, of the legal system from other social subsystems. This idea formed the theoretical background of this paper's theoretical hypothesis (Głażewski, 2009, pp. 39–55; Hertogh, 2009).

The study belongs to the paradigm of the sociology of law and legal anthropology. The general and detailed assumptions of the study were based on the achievements of grounded theory as interpreted by Kathy Charmaz. What is important here is the conclusion that the content of the investigation should be grounded in its course, and the researcher must listen to the testimony of the interviewees in its entirety and not impose his or her opinions and findings. The main guide for conducting the interviews was Steiner Kvale's methodological recommendations, especially with regard to the conducting of qualitative interviews (Abel, 1985; Charmaz, 2013; Kvale, 2012; Podgórecki, Kurczewski, 1971).

The research group consisted of 43 people, comprising 22 legal advisers, and 21 advocates. In most cases (28 people), they were heads of bar councils (deans). The reasons for choosing this particular research group included the particular experience levels of the council members, a broad view of the legal environment in each region, high levels of trust from other lawyers generally speaking, and the above-average professional experience of the usually older council members.

The population of Polish advocates and legal advisers is male dominated, which is reflected in the survey sample (59% men). 52% of the survey participants were between 30 and 50 years old, while 40% were more than 51 years old. The research sample is over-represented by senior legal professionals with well-established careers because they have a broad overview of the substantive situation. It is also interesting that 29% of the survey participants speak Russian at an advanced level, and 62% speak English. The research group is dominated by graduates of the University of Warsaw, Jagiellonian University, and the University of Silesia (79% in total). Graduates of non-Polish universities are not observed.

Research Results

In general, the development of ADR has long been prominent. As the phenomenon of globalisation increases, the number of international (cross-border) cases resolved by negotiation, mediation, and arbitration increases similarly. Indeed, we are witnesses to the institutional development of ADR. According to *International Arbitration Information* by Aceris Law LLC, globally, we currently have more than 200 permanent mediation or arbitration panels working internationally (International Arbitration

Resources, 2020). The number of smaller, permanent arbitration and mediation forums is more than ten times larger, while the number of ad hoc initiatives is vast and somewhat difficult to determine. However, despite the existence of many permanent and temporary out-of-court dispute resolution initiatives, most of them provide a commercial service. In spite of this, mediation and arbitration for individuals are not very popular (De Boisseson, 1999, pp. 349–355; Stürner et al., 2015).

Parallel to the development of organisations, a legal structure of international and cross-border ADR is developing. The expansion of legal institutions for mediation and arbitration has an intrastate, international, and corporate character. All three of these regimes complement and interpenetrate each other. Particularly noteworthy here are the EU regulations that facilitate the conduct of cross-border mediation and arbitration in EU countries in civil and commercial matters (especially the 2008 Directive and the 2013 Directive) (Towards a European Horizontal Framework for Collective Redress, 2013; Directive 2008/52/EC, 2008; Regulation (EU) No 524/2013, 2013). The recommendations of the Council of Europe on family mediation also play an important role in the conduct of cross-border family mediation (Mediation, 2021). Furthermore, national Polish regulations in each field of law are progressively facilitating the conduct of international mediation and the recognition of arbitration court judgements (Ministerstwo Sprawiedliwości, 2021; Mediacja w państwach UE, 2021; Van Dyck et al., 2011, pp. 52–85; Zemke-Górecka et al., 2021, pp. 27–51).

Meanwhile, the number of active mediators is growing every year. This phenomenon concerns all European countries, although it is particularly visible in Poland. There are currently 26 mediator associations in Poland, but the number of all active mediators is unknown. According to the Ministry of Justice, the number of mediations conducted on the order of the courts, or mediation agreements approved by the Polish courts increases annually by 10% (Mediacja w państwach UE, 2021). The number of out-of-court mediations is unknown, but there is a belief that it is increasing mainly in the area of family mediations. A similar situation exists in the case of arbitration conducted in Poland. Here, it is estimated that the number of procedures is growing year-over-year by 20%. However, this form of dispute resolution is almost entirely related to the resolution of business and commercial problems. No mediation or arbitration statistics indicate the exact number of cases involving international elements, although the numbers of such cases are reported to be increasing (Gójska, 2013, pp. 100–126; Nowaczyk, 2009, pp. 145–149; Money.pl, 2020).

Polish advocates and legal advisers are, potentially, well prepared to participate in ADR. Currently, academic education and legal applications include content on arbitration mediation (Naczelna Rada Adwokacka, 2019; Krajowa Izba Radców Prawnych, 2018). Therefore, some jurists also act as mediators and arbitrators. The mediation centres of the Polish Bar Council [Naczelna Rada Adwokacka, (NRA)] and the National Chamber of Legal Advisers [Krajowa Izba Radców Prawnych, (KIRP)] are among the most numerous in the country (CM KIRP, 2021; CM NRA, 2021). Most Polish jurists are familiar with ADR procedures and are basically familiar with information on mediation, negotiation, and arbitration. However, it is a fact that for most Polish legal professionals, information on out-of-court settlement methods is purely theoretical and rather basic. Relatively few of those professionals are active mediators and arbitrators. Only 31 out of 750 advocates and legal advisers operating in the mediation centres of the NRA and the KIRP declare themselves mediators or arbitrators capable of handling international cases, and only 165 speak at least one foreign language. For most Polish legal professionals, ADR is still a curiosity. Only a minority actively participate in these procedures as party representatives, arbitrators, or mediators (Gotshal, 2014).

Polish lawyers highlight the fact that, despite the increasing participation of legal professionals in ADR and the effective changes in the ADR market and legal developments, mediation, arbitration, and negotiation remain niche topics. Especially in a cross-border (international cases) sense, these methods are vaguely used in the practice of most Polish jurists. In fact, except for a small group of international legal specialists, Poles do not use supranational ADR. This applies both to private mediation and negotiation, as well as to mediation commissioned by the courts. The theoretical knowledge of lawyers, and an accessible legal and institutional environment do not translate into an actual increase in the number of mediations and arbitrations in international cases. Only in disputes between large multinational corporations do occasional opportunities for negotiation or arbitration arise. In some types of disputes or companies, they are the standard. However, in the case of smaller Polish companies and individuals, lawyers do not really see much need or inclination for mediation or negotiation in international relations. If such cases do appear, they are not particularly noticeable (Bogucki, 2018, pp. 20–25).

However, despite the relative increase in the number of mediation, arbitration, and negotiation cases in international relations, it is still less popular in Poland than in western countries, and this is especially true with regard to the United States. Furthermore, the high level of competence of lawyers and the more numerous mediation and arbitration initiatives

do not translate into the number and importance of out-of-court forms of dispute resolution. However, Polish jurists and their clients do not trust conciliatory forms of agreement. In Poland, a brutal court decision is more important than a mutually beneficial agreement, hence the still low popularity of ADR and the increasing burden of courts with often trivial problems. This situation is characteristic of Poland and Eastern European countries. In other regions of the world, the popularity of mediation and arbitration is growing rapidly and this fact is reflected in the number and importance of such cases (Alexander et al., 2017; Townsley, 2016). An experienced legal adviser and arbitrator from Gdansk, Poland, notes the following.

> "I remember even 10 or 15 years ago when I was interested in matters of out-of-court dispute resolution. In fact, I teach trainee legal advisers about these matters. When we look at other countries, we can really notice that we are at the tail end of the world. If you look at the statistics, it turns out that there are countries where only 10% (or even less) of cases end up in court. For example, in the Netherlands, and also in the United States, it is only 4% of cases. Everything is resolved out of court. This sometimes occurs through lengthy negotiations, but there are also agreements in huge cases. Here's an example from a Twinning Meeting, where we had a seminar on mediation. The English came to us, they played the mediation meeting very beautifully and showed us how to solve the case. But the problem in Poland is that everyone, including judges, thinks that lawyers are reluctant to mediate, that they are bothered by mediation. This is the general perception of the role of attorneys in mediation. And then you, as a result, are a little reluctant. You do not want to encourage the parties to mediate or participate in arbitration procedures. Mediation and arbitration can also be a bit complicated, because you need to have a lot of soft skills, and in the courtroom, as we know, there is usually not much going on. I also agree that mediation is very valuable and important. Unfortunately, ADR does not work in Poland".

Polish jurists also note that at the turn of the twentieth century, there was great enthusiasm in Poland for international arbitration, negotiation, and mediation. Perhaps this was the result of a lack of confidence in the Polish judiciary along with the intensive penetration of the then-fledgling Polish economy by American companies. At that time, the first mayoral arbitration initiatives, such as the Arbitration Court at the Polish Chamber of Commerce [Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej (KIG)] were developed. However, the first decades of the 21st century witnessed a regression of international ADR in Poland, similarly related to the lack of a legal environment. Only recently have out-of-court forms of dispute

resolution gained importance. A highly experienced legal adviser from Katowice describes this situation thusly:

> "In the second half of the 1990s, it seemed that arbitration was a panacea for everything, but it turned out (especially for those foreign entities that were dissatisfied) that it took a very long time, and then you still had to have the arbitral award approved by the court, which made the proceedings even longer. Therefore, there was a period of boom, when we had a lot of these arbitration cases involving domestic and foreign entities. The lengthening of the proceedings meant that there were fewer and fewer of them".

There is a small group of advocates and legal advisers in Poland and a few professional Warsaw-based mediators who are engaged almost exclusively in conducting international (cross-border) business negotiations or arbitrations. These professionals are almost solely involved with large, multinational corporations based in Warsaw. For lawyers, in general, this is still an exotic topic; very few have actually participated in such initiatives. According to the survey's participants outside Warsaw, non-corporate lawyers may very rarely encounter only the subcontracting elements of arbitration cases or negotiations. This is usually in connection with analysing contractual provisions regarding arbitration clauses. However, these are isolated situations that do not require the participation of a lawyer in actual arbitration or negotiation. It can be assumed that in Poland there are several lawyers who have personally participated in international arbitration as a party representative or arbitrator.

Representatives of this small group of experienced professionals emphasise that they are generally not enthusiastic about participating in arbitration or mediation. ADR has not been completely adopted in Poland. Despite great interest, knowledge, and the legal environment, clients and their attorneys are still distrustful of mediation or arbitration. They complain about the Polish justice system, especially with regard to the lengthiness of proceedings and the complexity of procedures, and they prefer to participate in clearly codified and proprietary procedures rather than fancy mediation or arbitration. Therefore, few Polish jurists recommend that their clients participate in such procedures. The exceptions here are English, Japanese, or American companies, which, as a rule, demand negotiations and other forms of dispute resolution. This is due to their legal tradition.

However, if a client wishes that a lawyer pursues an out-of-court dispute resolution, Polish professionals generally do not recommend mediation or arbitration in Poland. Jurists believe that in Poland there is still a strong temptation to settle unfair and biased disputes. Therefore, they usually suggest settling disputes in foreign arbitrations in Vienna, Stockholm,

Paris or Switzerland and, even in some cases, Moscow. In Poland, only the Arbitration Court of the Polish Chamber of Commerce (KIG) is regarded to be up to the highest global standards. Two legal advisers based in Szczecin and Gdansk, who participate in mediations and arbitrations as attorneys for parties, mediators, and arbitrators, indicate that:

> "These are provisions for large contracts. In the case of smaller matters, no one thinks about arbitration. If I give my opinion on a contract and there is a clause in it for international arbitration, I immediately give a negative opinion on such a provision because it consents to something uncertain, and we do not know what rules of procedure it is based on. As a matter of principle, I do not agree with arbitration courts at all, even in the Polish legal system, because if there is mediation or arbitration, I do not really believe in it. But this is my conviction as an attorney. I prefer the worst judgement but in a common court, because the rules of procedure are well established there, whereas with arbitration, many different situations occur".

Polish lawyers involved in mediation and arbitration in international matters highly value the Polish Arbitration Court at the Polish Chamber of Commerce. Many of the interviewees are or have previously been arbitrators there. According to most of them, it is the only highly specialised arbitration court in Poland that is competent to handle any dispute, including those of a cross-border, international nature. Polish jurists trust the tribunal and its arbitrators. They point to the organisation as one which meets all national and international arbitration standards, as do similar institutions in Paris, Stockholm, and Lausanne (International Arbitration Resources, 2020). The specialists who make up the arbitrator team are the best in Poland and are also experts in international matters. As indicated by the court, the team includes 200 arbitrators. Significantly, of the 192 arbitrators registered with the court, as many as 45 have a nationality other than Polish, while all Polish arbitrators speak at least one foreign language. Ninety-six arbitrators indicate international arbitration as their specialisation. Of 160 arbitration cases conducted by the Court of Arbitration, 30 per year are international or cross-border in nature. The mediators on the court show a similar level of professionalism and international orientation (Prawo.pl, 2017; Lista arbitrów, 2021; Money.pl, 2021; Kurier365, 2019). However, a significant problem with this court and mediation platform is the concentration on large commercial arbitration and Internet-domain-related cases. Other cases, mainly consumer cases, are generally not conducted there.

Polish legal experts report that there are many international and cross-border mediation initiatives and several arbitration forums in Poland.

However, none of them have achieved such a position in international cases as the KIG (Polskie Stowarzyszenie Sądownictwa Polubownego, 2021; Instytucje arbitrażowe na świecie, 2021; Ultima Ratio, 2019). In other arbitration courts, cases with international elements appear very rarely. If they do, they are for medium-sized companies with a regional scope. The researchers emphasise that they have encountered single arbitration cases with international elements in the arbitration court of the Lewiatan Confederation (Konfederacja Lewiatan) (Sąd arbitrażowy Lewiatan, 2021). Here, the cases also relate exclusively to commercial matters. The Lewiatan Confederation does not have as much experience nor a reputation as the court at KIG, but, year by year, its importance in Polish international commercial arbitration is increasing. This is certainly influenced by the relatively large number of foreign arbitrators among the Confederation's 209 arbitrators; 30 are foreigners, and all of them speak at least one foreign language. In addition, the selected arbitrators specialise in different aspects of international commercial matters (Arbitrzy, 2021). It seems that this arbitration forum will be a kind of competition for the KIG. It is only a pity that here, arbitration is conducted solely in economic matters. A Toruń-based legal adviser describes the most important Polish arbitration courts thusly:

> "Clients often ask about arbitration in Paris. In Polish courts, Lewiatan often appears, as does the National Chamber of Commerce, and the arbitration court in the Chamber. But there is no preference for this or that, and different proposals are made in this field".

Furthermore, legal professionals emphasise that mediation-arbitration cases in the international context in other arbitral tribunals do arise. However, these cases are very rare. During the period of their long career, they have noticed single cases of a transnational nature in the Arbitration Court of Chambers and Economic Organisations of Greater Poland (Sąd Arbitrażowy Izb i Organizacji Gospodarczych Wielkopolski) and in the Arbitration Court for Domains of the Polish Chamber of Information Technology and Telecommunications. These two organisations also deal almost exclusively with commercial cases. Pomeranian lawyers emphasise that in Gdynia there is the International Arbitration Court at the Polish Chamber of Shipping (Międzynarodowy Sąd Arbitrażowy przy Krajowej Izbie Morskiej) for the maritime economy (Międzynarodowy Sąd Arbitrażowy, 2021). Its arbitrators specialise in international disputes. However, probably due to its high level of specialisation, its location in Gdynia, and its small size, it is not well known and completely unrecognised outside of Pomerania. Moreover, the scope of international

cases is limited to maritime matters. However, this arbitration court should be noted as possibly the most international in Poland. One of the arbitrators describes the functioning of the court thusly:

> "There is also the International Arbitration Court of the Polish Chamber of Shipping in Gdynia. It has strictly international arbitration cases, but there are not many cases there. For example, we recently had a case between a Russian entrepreneur and a Polish entrepreneur. Russian lawyers represented the Russians. There was suspicion that the Polish arbitration court was not objective because of bias against the Russians. This is not true, but that is how it works. However, there are sometimes maritime cases from countries of the European Union. They are rare, but they do occur. The Polish, European, and non-European cases are similar. International cases are most often ad hoc arbitrations".

However, the number and relevance of cases with international elements is unknown here. The number of mediations with international elements is also unknown. Certainly, international commercial arbitration cases arouse more interest among Polish lawyers than similar mediations.

Poles still have very limited confidence in mediation and arbitration. Even Anglo-Saxon companies that traditionally negotiate, mediate, and arbitrate extensively are wary of Polish arbitration initiatives. When contracts are drawn up between Polish and foreign companies, in which arbitration clauses are expected, provisions for Polish arbitration are rare (Gmurzyńska, 2008, pp. 30–38; Sobczak, 2017, pp. 171–174). This equally applies to the most prestigious Arbitration Court of the Polish Chamber of Commerce. Foreign entrepreneurs are much more likely to submit their disputes to arbitrators of the ICC International Court of Arbitration in Paris, the LCIA International Court of Arbitration in London, the Arbitration Institute of the Stockholm Chamber of Commerce, the Zurich Chamber of Commerce, the Vienna International Arbitral Centre, and even the ICAC International Court of Arbitration in Moscow (ICC International Chamber of Commerce, 2021; The Arbitration Institute of the Stockholm Chamber of Commerce, 2020; The International Commercial Arbitration Court, 2021; The London Court of International Arbitration (LCIA), 2021; Vienna International Arbitral Centre, 2021; Zurich Chamber of Commerce, 2020). These arbitration courts also have Polish arbitrators, albeit in very limited numbers. However, these platforms enjoy greater recognition, trust, and impartiality than Polish arbitration courts. In practice, the use of these arbitrations by contractual parties is extremely rare. Clauses for these courts usually remain dead and apply only to the most serious contracts.

Unfortunately, all proposals to submit problems to the arbitration process still concern the largest business transactions. Participation in arbitration, or particularly mediation of an international nature by individuals in non-business matters, tends to be completely absent. Attorneys from Gdańsk and Poznan note the following international arbitration issues:

> "Sometimes, I am involved in the development of contracts with foreign contractors. When we negotiate a dispute-resolution clause, everyone would prefer to submit to the jurisdiction of either a Polish court, as far as Poles are concerned, or Polish arbitration. That is why a neutral one is chosen, such as in Stockholm, Vienna or Switzerland, specifically, Zurich, Bern, or Lausanne. These are the most common locations. Actually, Vienna, Stockholm, and London are the most common. It is customary that these are chambers with extensive experience, and cases are most willingly submitted to arbitration there. And besides, they seem more neutral to the parties, especially Austria and Sweden".
>
> "Foreign elements do appear in international arbitration. There is a certain group of arbitrators who deal with such things. For example, they are members of the Court of Arbitration at the International Chamber of Commerce in Paris. These are people who know the language very well; they are excellent lawyers. In Poland, there are also foreign elements, such as the need to conduct an arbitration case in a foreign language, as agreed by the parties. Of course, the arbitrator must know the language in which the case is being conducted. Arbitration is a court of law, so if someone wants to resolve a case amicably, they usually settle it through negotiations without arbitration. Only in the case of really big, serious cases, mainly international ones, is arbitration organised, but only when it is absolutely impossible to reach an agreement".

All forms of negotiation, mediation, and arbitration in international matters relate to commercial matters. The interviewees had never met any individuals who had postulated or participated in ADR in the context of international affairs. Besides, for individuals, mediation or negotiation in ordinary, everyday matters is also an abstraction. Lawyers emphasise that they would rather not recommend consumers participate in mediation or proceedings before conciliation courts, although appropriate procedures and organisations do exist in Poland. According to experts, a judgement by a common court is always better than an uncertain mediation settlement or arbitration court judgement for a consumer. However, this view is slowly being devalued thanks to younger lawyers becoming more involved in out-of-court forms of dispute resolution.

Despite reservations toward ADR, those younger lawyers note that, especially in cross-border family matters, international mediation should

gain importance. Such solutions are strongly supported by the European Union (EU) and the Organization for Security and Co-operation in Europe (OSCE). There are also relevant legal regulations. Jurists emphasise that in situations where parents and children are located in different countries, it is difficult to conduct cross-border litigation. The ideal solution in such a case is international mediation in family matters which can now be conducted online or by correspondence. Attorneys specialising in family matters point out that cross-border family mediation conducted remotely may also soon develop rapidly in Poland. Examples of EU and western European solutions demonstrate great potential and need in this area (Mania, 2015, pp. 76–86; Miranda, 2014, pp. 97–125, 165–261; Zagórska, 2013, pp. 104–115).

In addition, the lawyers participating in the survey noted an increase in problems related to population migrations, cross-border shopping, and other consumer contracts in cross-border relations such as travel services. Consequently, the number of civil and cross-border disputes before the European courts is increasing. However, the problem of this classical form of conflict resolution is the far-reaching procedural difficulties linked to the cross-border nature of the process (e.g., service, summonses, and translations) and cultural differences in legal and language knowledge. Therefore, consumers are very reluctant to enter cross-border litigation. Lawyers therefore see the prospect of solving civil cross-border consumer disputes precisely in the form of ADR. A large field for the development of these forms of conflict resolution is small consumer disputes in the field of tourist services and cross-border trade. Lawyers predict that within the next five years, the market for cross-border consumer mediation and arbitration in Europe will develop so that 75% of mail order and tourism-based issues will be resolved outside of ordinary courts (Hodges et al., 2012; Van Dyck et al., 2011).

Legal professionals have noted interesting initiatives of the European Commission to resolve cross-border consumer disputes. The online dispute resolution (ODR) and SOLVIT initiatives are highly appreciated by said professionals, but are considered only the first proposals in this area. Lawyers regard them as a step in the right direction, but not an entirely sufficient one. They emphasise that they are very little-known and are not trusted by consumers in Poland. Poles still choose to refer cases to common courts or accept defeat rather than use these EU dispute resolution initiatives. Although they appreciate these solutions, the survey participants do not identify these ADR platforms as important media for their clients to resolve their conflicts with traders (Ciechomska, 2006, pp. 18–22; European Commission, 2021a, 2021b, 2021c, Functioning of the

European ODR Platform. Statistical report, 2020, pp. 1–4; Handley, 2018; Mania, 2010, pp. 15–21).

ADR initiatives in the international context do not address administrative, criminal, or labour law issues. These potential fields of out-of-court dispute resolution remain beyond the mental outlook of Polish lawyers and their clients. The fact is that even cases from these branches of law can be solved by ADR as they can in international (cross-border) cases. So far, however, such activities have not been observed in Poland. Despite the growth and deepening of mediation and arbitration initiatives, a preferential view of the primacy of court judgements over always victorious and cheaper ADR solutions still prevails in Poland. In everyday and local matters, Poles and their lawyers rarely resort to mediation or arbitration. Hence, in more complicated and less understandable international matters, these forms of conflict resolution are not gaining in popularity. It is apparent, though, that this situation is slowly changing, but it will take some time before international arbitration or mediation becomes as popular in Poland as it is in western Europe (Kocur et al., 2016, pp. 4–31; Rudolf et al., 2016, pp. 12–72).

Conclusions

Alternative ways of solving conflicts are growing in popularity each year. In some western European countries, along with Japan and the United States, mediation, arbitration, and negotiation are the main forms of communication between parties with different views. ADR is particularly developing in international business cases involving large companies. The huge number of mediators and arbitrators and mediation-arbitration institutions means that the development of this form of conflict resolution in the western world is slowly beginning to replace litigation. In areas such as family and consumer matters, these forms of procedure are developing intensively. Thanks to mediation and international arbitration, borders can blur, and cease to be barriers to conciliatory problem solving (De Boisseson, 1999, pp. 350–256; Townsley, 2016, pp. 242–249; Van Dyck et al., 2011, pp. 84–91).

In Poland, we can also observe the intensive development of out-of-court forms of conflict resolution. Commercial mediation especially is gaining importance. However, mediations in cross-border and international cases are still very rare in Poland and, in fact, for all intents and purposes, do not occur. There are several important arbitration forums in Poland, especially the Arbitration Court of the Polish Chamber of Commerce. They handle cases mainly in the field of commercial arbitration. This field of work is

developing year by year, but much more slowly than in other western-European countries. International cases appear in Polish arbitration courts, but only rarely, and usually involve very large contracts and disputes between large companies. Unfortunately, Polish entrepreneurs still have little confidence in Polish arbitrators and mediators. Therefore, they choose to refer their disputes to arbitration in Paris, Stockholm, or Switzerland rather than Warsaw. However, arbitration clauses or actual arbitrations in cross-border or international cases remain sporadic in Poland.

The research hypotheses as presented in the Introduction are fully confirmed. In Poland, the functioning of ADR in cross-border and international matters is practically non-existent. At most, they are of a marginal character. Any such mediation or arbitration concerns only business-related cases. Although Polish and EU law create the legal environment and promote the functioning of cross-border consumer or family mediation, it practically does not function in Poland. Attorneys, courts, and parties do not even know that in cross-border family or consumer disputes, they can use cross-border mediation or arbitration. The problem here is the high level of mistrust among legal professionals, the various gaps in their knowledge, and a lack of confidence in the non-state dispute resolution system. Not without significance is, additionally, the lack of proper education in Poland that promotes peaceful problem solving instead of confrontation. Furthermore, Poland's limited legal trade with foreign countries means that there is less need to resolve cross-border disputes than in highly interconnected countries.

Alternative forms of conflict resolution are much more valuable than judicial forms. Therefore, their development in Poland from both cross-border and international perspectives should be considered an important objective for the entire justice system. The change in the current situation must begin in schools; students must be taught peaceful and consensual conflict resolution. The school curriculum should be supplemented with elements of mediation and school negotiation. In the course of legal education, more emphasis should be placed on the practical training of future lawyers in ADR. Moreover, it is vital to promote mediation or arbitration among ordinary citizens and legal professionals. It is possible that, in cross-border disputes, parties in conflict should be obliged to use mediation and arbitration before going to court. This would relieve the courts of the burden of handling difficult and bureaucratic disputes with international elements (Barabas, 2018, pp. 11–29; Czyżowska, 2018, pp. 197–203; Żaczkiewicz-Zborska, 2021).

Changes to the law on international ADR are less important here, as the current law in this area is satisfactory. What is most important now

is the practical promotion and use of ADR forms in consumer, family, and other civil international matters. The legal compulsion of parties to alternative proceedings should be considered as a kind of prejudgement prior to cases being referred to ordinary proceedings. The solution to the lack of ADR in international cases is very simple. At the same time, it is extremely difficult.

References

2nd Alternative Dispute Resolution (ADR) Assembly (2021) Presentations. Available at: https://adr-assembly.b2match.io/page-641 (Access 11.07.2023).

Abel, R.L. (1985) *Lawyers and the power to change, Law and policy*. Oxford: Blackwell.

Alexander, N., Walsh, S. and Svatos, M. (eds.) (2017) *EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes*. Alphen aan den Rijn: Kluwer Law International B.V. DOI: https://doi.org/10.54648/joia2018007.

Arbitrzy (2021) Sąd Arbitrażowy Lewiatan. Available at: https://www.sadarbitrazowy.org.pl/pl-PL/arbitrator/o-sadzie/arbitrzy (Access 11.07.2023).

ATLAS.ti (2021). Available at: https://atlasti.com/ (Access 11.07.2023).

Babbie, E.R. (2008) *Podstawy badań społecznych*. Warszawa: Wydawnictwo Naukowe PWN.

Barabas, M. (2018) „Mediacja cywilna w polskim i włoskim systemie prawnym – próba porównania. Analiza pomysłu wprowadzenia obligatoryjnej mediacji cywilnej w Polsce", *Studia Iuridica*. No. 76, pp. 9–31. DOI: https://doi.org/10.5604/01.3001.0012.8607.

Biel, Ł. and Jopek-Bosiacka, A. (2016). *Country Report: Poland* in Townsley, B. (ed.) *Understanding Justice an Enquiry into Interpreting in Civil Justice and Mediation*. London: Middlesex University.

Bogucki, A. (2018) „Mediacja w działalności gospodarczej", *Studia i Materiały Wydziału Zarządzania i Administracji Wyższej Szkoły Pedagogicznej im. Jana Kochanowskiego w Kielcach*. No. 1, pp. 17–25. DOI: https://doi.org/10.15290/sp.2000.10.19.

Centrum Mediacji przy Krajowej Izbie Radców Prawnych (2021) Available at: http://mediacje.kirp.pl/ (Access 11.07.2023).

Centrum Mediacji przy Naczelnej Radzie Adwokackiej (2021) Available at: http://centrummediacji.nra.pl/ (Access 11.07.2023).

Charmaz, K. (2013) *Teoria ugruntowana: praktyczny przewodnik po analizie jakościowej*. Warszawa: Wydawnictwo Naukowe PWN.

Ciechomska, J. (2006) „Funkcjonowanie systemu SOLVIT oraz główne obszary interwencji", *Wspólnoty Europejskie*. Vol. 11(180), pp. 17–23.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards a European Horizontal Framework for Collective Redress" (2013) Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52013DC0401 (Access 11.07.2023).

Czyżowska, N. (2018) „Mediacje w szkole: narzędzie rozwoju uczniów i nauczycieli", *Kwartalnik Naukowy Fides Et Ratio*. Vol. 34(2), pp. 197–206.

De Boisseson, M. (1999) "Thoughts on the Future of ADR in Europe: A Critical Approach", *Arbitration International*. Vol. 15(4), pp. 349–357. DOI: https://doi.org/10.1093/arbitration/15.4.349.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, 2008. 136.

European Commission (2019) Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes.

European Commission. (2021a) Online Dispute Resolution (www document). Eur. Comm. Available at: https://ec.europa.eu/consumers/odr (Access 11.07.2023).

European Commission. (2021b) Single Market Scoreboard – SOLVIT (www document). Single Mark. Scorebrd. Available at: https://ec.europa.eu/internal_market/scoreboard (Access 11.07.2023).

European Commission. (2021c) What is SOLVIT? (www document). European Commission. Available at: https://ec.europa.eu/solvit/what-is-solvit (Access 11.07.2023).

Frankfort-Nachmias, C., Nachmias, D. (2001) *Metody badawcze w naukach społecznych*. Poznań: Zysk i Spółka.

Functioning of the European ODR Platform. Statistical report. (2020) European Commission, Brussels.

Gaultier, T. (2013) "Cross-border mediation: a new solution for international commercial dispute settlement?", *International Law Practicum*. No. 26, pp. 38–58.

Głażewski, M. (2009) „Teoria systemów autopojetycznych Niklasa Luhmanna – między metafizyką a metabiologią", *Przegląd Pedagogiczny*. No. 1, pp. 39–55.

Gmurzyńska, E. (2008) „Mediacja w sporach gospodarczych – rzeczywistość czy iluzja?" *ADR Arbitraż i Mediacja*, pp. 27–40.

Gmurzyńska, E. and Morek, R. (2012) *Poland* in Palo, G.D. and Trevor, M.B. (eds.) *EU Mediation Law and Practice*. Oxford: OUP Oxford.

Gójska, A. (2013) „Mediacja w postępowaniu cywilnym w Polsce w statystykach Ministerstwa Sprawiedliwości", *Profilaktyka Społeczna i Resocjalizacja*. Vol. 22, pp. 99–128.

Gotshal, W. (2014) *Mediation in Europe: the most misunderstood method of alternative dispute resolution* (www document). Lexology. Available at: https://www.lexology.com/library/detail.aspx?g=59084c8a-49b8-4b45-9f82-5a69ae7dfe57 (Access 11.07.2023).

Handley, J. (2018) *Across the pond: first year results of the EU-mandated*. ODR platform, p. 61.

Hertogh, M. (ed.) (2009) *Living law: reconsidering Eugen Ehrlich*. Oxford: Hart Publishing.

Hodges, C. (2012) "Consumer ADR in Europe", *Zeitschrift für Konfliktmanagement*. Vol. 15(6), pp. 195–197. DOI: https://doi.org/10.9785/ovs-zkm-2012-195.

Hodges, C., Benöhr, I. and Creutzfeldt, N. (2012) *Consumer ADR in Europe*. Portland: Bloomsbury Publishing.

Horton, J., Macve, R. and Struyven, G. (2004) *Qualitative Research: Experiences in Using Semi-Structured Interviews* in Humphrey, C. and Lee, B. (eds.) *The Real Life Guide to Accounting Research. Elsevier*. Oxford, pp. 339–357. DOI: https://doi.org/10.1016/B978-008043972-3/50022-0.

ICC International Chamber of Commerce (2021) Available at: https://iccwbo.org/ (Access 11.07.2023).

Instytucje arbitrażowe na świecie (2021) Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej w Warszawie. Available at: https://sakig.pl/o-sadzie/instytucje-arbitrazowe-na-swiecie (Access 11.07.2023).

International Arbitration Resources (2020) Aceris Law LLC. Available at: https://www.international-arbitration-attorney.com/ (Access 11.07.2023).

Kędzierski, D. (2018) „Metodologia i paradygmat polskich szczegółowych nauk prawnych", *Transformacje Prawa Prywatnego*. No. 3, pp. 5–58.

Kocur, M. et al. (2016) *Badanie arbitrażu 2016*. Warszawa: Akademia Leona Koźmińskiego.

Krajowa Izba Radców Prawnych (2018) Szkolenie pt. "Negocjacje i mediacje narzędziem pracy radcy prawnego". Available at: https://kirp.pl/szkolenie-pt-negocjacje-mediacje-narzedziem-pracy-radcy-prawnego/ (Access 11.07.2023).

Kurier365 (2019) *Statystyki Sądu Arbitrażowego w 2018 roku* (www document). Kurier365.pl. Available at: https://kurier365.pl/biznes/firmy/29347-statystyki-s%C4%85du-arbitra%C5%BCowego-w-2018-roku.html (Access 11.07.2023).

Kvale, S. (2012) *Prowadzenie wywiadów. Niezbędnik Badacza*. Warszawa: Wydawnictwo Naukowe PWN.

Lipiec, S. (2022) *Prawnicy – międzynarodowa praktyka. Materiały dodatkowe*. Poznań: Wydawnictwo Rys.

Lipiec, S. (2020) *Świadczenie międzynarodowych usług prawniczych. Studium socjologiczno-prawne polskich prawników* (rozprawa doktorska). Kraków.

Lista arbitrów (2021) Sąd Arbitrażowy Przy Krajowej Izbie Gospodarczej w Warszawie. Available at: https://sakig.pl/arbitraz/arbitrzy/lista-arbitrow (Access 11.07.2023).

Mania, K. (2015) "Online dispute resolution: The future of justice", *International Comparative Jurisprudence*. Vol. 1(1), pp. 76–86. DOI: https://doi.org/10.1016/j.icj.2015.10.006.

Mania, K. (2010) "ODR (Online Dispute Resolution) w sporach konsumenckich", *ADR Arbitraż i Mediacja*. Vol. 2(10), pp. 15–21.

Mediacja w państwach UE (2021) *Europejski Portal e-sprawiedliwość*. Available at: https://e-justice.europa.eu/64/PL/mediation_in_eu_countries?POLAND&member=1 (Access 11.07.2023).

Mediacje (2021) Informator Statystyczny Wymiaru Sprawiedliwości. Available at: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (Access 11.07.2023).

Mediation (2021) European Commission for the Efficiency of Justice (CEPEJ). Available at: https://www.coe.int/en/web/cepej/cepej-work/mediation (Access 11.07.2023).

Międzynarodowy Sąd Arbitrażowy (2021) Krajowa Izba Gospodarki Morskiej. Available at: http://www.kigm.pl/miedzynarodowy-sad-arbitrazowy (Access 11.07.2023).

Ministerstwo Sprawiedliwości (2021) Akty prawne i dokumenty regulujące mediację. Available at: https://www.gov.pl/web/sprawiedliwosc/polskie-akty-prawne-regulujace-mediacje2 (Access 11.07.2023).

Miranda, A. (ed.) (2014) *Mediation in Europe at the cross-road of different legal cultures*. Roma: Aracne editrice.

Money.pl (2020) *Rośnie popularność mediacji. Szykuje się rekord* (www document). Available at: https://www.money.pl/gospodarka/rosnie-popularnosc-mediacji-szykuje-sie-rekord-6483562399270529a.html (Access 11.07.2023).

Naczelna Rada Adwokacka (2019) *Program szkolenia dla prawników w zakresie mediacji* Available at: https://www.adwokatura.pl/ogolnoprawne/program-szkolenia-dla-prawnikow-w-zakresie-mediacji/ (Access 11.07.2023).

Nicpoń, M. and Marzęcki, R. (2010) *Pogłębiony wywiad indywidualny w badaniach politologicznych* in *Przeszłość, teraźniejszość, przyszłość: problemy badawcze młodych politologów*. Kraków: Libron, pp. 245–252.

Nordic Council of Ministers (2002) *A Study on Alternative Dispute Resolution and Cross-border Complaints in Europe*. Copenhagen: Nordic Council of Ministers.

Nowaczyk, P. (2009) „Perspektywy rozwoju sadownictwa polubownego w Polsce", *ADR Arbitraż i Mediacja*. Vol. 1(5), pp. 145–149.

Podgórecki, A. and Kurczewski, J. (1971) *Zarys socjologii prawa*. Warszawa: Państwowe Wydawnictwo Naukowe.

Polskie Stowarzyszenie Sądownictwa Polubownego (2021) *Arbitraż w Polsce*. Available at: https://polisharbitration.pl/arbitraz-w-polsce/ (Access 11.07.2023).

Prawo.pl. (2017) *KIG: arbitraż także dla mniejszych firm.* Available at: https://www.prawo.pl/prawnicy-sady/kig-arbitraz-takze-dla-mniejszych-firm,73108.html (Access 11.07.2023).

Przybyłowska, I. (1978) „Wywiad swobodny ze standaryzowaną listą poszukiwanych informacji i możliwości jego zastosowania w badaniach socjologicznych", *Przegląd Socjologiczny*. Vol. 30, pp. 62–63.

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (2013).

Report from the Commission to the European Parliament, the Council and the European

Rudolf, A. et al. (2016) *Diagnoza stanu stosowania mediacji oraz przyczyn zbyt niskiej w stosunku do oczekiwanej popularności mediacji. Raport końcowy*. Warszawa: Ministerstwo Sprawiedliwości.

Money.pl (2021) SA KIG: Wpłynęło 168 nowych spraw w 2020 r., najwięcej z kategorii budownictwo. Available at: https://www.money.pl/gielda/sa-kig-wplynelo-168-nowych-spraw-w-2020-r-najwiecej-z-kategorii-budownictwo-6602053158090369a.html (Access 11.07.2023).

Sąd Arbitrażowy Izb i Organizacji Gospodarczych Wielkopolski (2021) Wielkopolska Izba Przemysłowo-Handlowa. Available at: https://wiph.pl/caim-i-sad-arbitrazowy/sad-arbitrazowy-izb-i-organizacji-gospodarczych-wielkopolski/ (Access 11.07.2023).

Sąd arbitrażowy Lewiatan (2021) Available at: https://www.sadarbitrazowy.org.pl/pl-PL (Access 11.07.2023).

Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej w Warszawie (2021) Available at: https://sakig.pl/ (Access 11.07.2023).

Sąd Polubowny ds. Domen (2021) Polska Izba Informatyki i Telekomunikacji. Available at: https://www.piit.org.pl/sad-polubowny (Access 11.07.2023).

Sobczak, E. (2017) „Społeczny rozwój mediacji", *Zeszyty Naukowe Politechniki Częstochowskiej. Zarządzanie*. Vol. 2, pp. 167–175. DOI: https://doi.org/10.17512/znpcz.2017.1.2.15.

Stürner, M., Gascón Inchausti, F. and Caponi, R. (eds.) (2015) *The Role of Consumer ADR in the Administration of Justice: New Trends in Access to Justice under EU Directive 2013/11*. Munich: Otto Schmidt/De Gruyter European Law Publishers. DOI: https://doi.org/10.1515/9783866536098.

The Arbitration Institute of the Stockholm Chamber of Commerce (2020) Available at: https://sccinstitute.com/ (Access 11.07.2023).

The International Commercial Arbitration Court (2021) Available at: http://mkas.tpprf.ru (Access 11.07.2023).

The London Court of International Arbitration (LCIA) (2021) Available at: https://www.lcia.org/ (Access 11.07.2023).

Townsley, B. (ed.) (2016) *Understanding justice an enquiry into interpreting in civil justice and mediation*. London: Middlesex University.

Ultima Ratio (2019) *W Polsce działają już 4 szybkie e-sądy arbitrażowe. Naukowcy: Moc prawna wyroków taka sama, jak sądów państwowych.* Available at: https://ultimaratio.pl/w-polsce-dzialaja-juz-4-szybkie-e-sady-arbitrazowe-naukowcy-moc-prawna-wyrokow-taka-sama-jak-sadow-panstwowych (Access 11.07.2023).

Van Dyck, T. et al. (2011) *Cross-border alternative dispute resolution in the European Union. Publications Office of the European Union*. Luxembourg.

Vienna International Arbitral Centre (2023) Available at: https://www.viac.eu/en/arbitration (Access 11.07.2023).

Żaczkiewicz-Zborska, K. (2021) *Obowiązkowa mediacja – to dobry krok, ale można zrobić kilka innych* (www document). Available at: https://www.prawo.pl/prawnicy-sady/obowiazkowa-mediacja-to-dobry-krok,507690.html (Access 11.07.2023).

Zagórska, K. (2013) *Mediacje transgraniczne w sprawach rodzinnych* in Tabernacka, M. (ed.) *Mediacje ponad podziałami. Prawnicza i Ekonomiczna Biblioteka Cyfrowa*. Wrocław, pp. 103–115.

Zemke-Górecka, A., Mendrek, A. and Rogula, C. (2021) *Mediacja w praktyce mediatora i pełnomocnika*. Warszawa: Wolters Kluwer.

Zurich Chamber of Commerce (2020) *Zür. Handelskamm*. Available at: https://www.zhk.ch (Access 11.07.2023).

DOI: 10.33067/SE.3.2023.10

Zane Šime⋆

Morocco and Tunisia on the Shores of *Mare Nostrum*: Positive Differentiation Across the Mediterranean and Segmentation in the European Union Research Policy

Abstract

The European Research Area and Framework Programme 7 represents a conducive means for positive differentiation beyond the borders of the EU. The article aims to identify the ERA's differentiated integration and segmentation swatches by concentrating on the closely-tied neighbouring countries of Morocco and Tunisia. The thematic distinction of the Mediterranean represents positive differentiation that surpasses EU territory. It occurs based on the thematic priorities co-decided by key EU institutions and articulated by the European Commission in annual work programmes. Segmentation in research across the Mediterranean area is a centrally-steered process incentivised by the European Commission through open calls for project applications. Process tracing allows for even more nuanced thematic steering patterns to be explored. A content analysis of open calls with a specific focus on the annual work programmes demonstrates the important role played by the fact that Morocco and Tunisia correspond to the country category of "(African) Mediterranean Partner Countries". This geographical position offers preferential treatment to participate in several project applications explicitly inviting geographical focus on the Mediterranean area and/or partnerships with a Mediterranean membership.

Keywords: Differentiated Integration, Segmentation, Mediterranean, Framework Programme 7, European Research Area

⋆ **Zane Šime** – Norwegian University of Science and Technology, e-mail: zane.sime@ntnu.no, ORCID ID: 0000-0002-4690-3243.

Introduction

The ERA's role in offering access to research-intense solutions to various challenges encountered by the European neighbourhood remains understudied. This topic invites more scholarly attention, especially in light of the approximations of what "an autonomous EU superpower" might entail in terms of the full instrumentation at its disposal for action (Riddervold, Newsome, 2018, p. 509). The Framework Programmes (FPs) of the European Union (EU) play an essential role in putting the ERA in motion, including offering participation options to the neighbourhood within the European research cooperation.

The focus is on the programming of specific EU funds allocated to two key Mediterranean countries, namely, Morocco and Tunisia. These are historical, front-running countries of the European Southern Neighbourhood (ESN) (Costa, 2010, p. 150; Gstöhl, Phinnemore, 2019, p. 4; Özlem, 2019, p. 123). Morocco and Tunisia enjoy a political dialogue with the EU, combined with various modalities of engagement in the EU policies that have a pronounced integrationist dynamic (Reptová, 2022, p. 575). Both Southern neighbours are the leading Arab countries in research and development investments (Campbell, 2014, pp. 31–32).

This article answers the following research question: How do differentiated integration and segmentation in research cooperation help achieve the overarching goals of the ESN and the ERA? The article aims to identify the ERA's differentiated integration and segmentation patterns by focusing on Morocco and Tunisia as deeply-interwoven, neighbouring countries. This aim is pursued by concentrating on the role of the Directorate-General for Research and Innovation (DG RTD) of the European Commission in steering segmentation through issuing guidelines for thematic and international partnership priorities. Identifying these centrally-steered conditions for research partnerships helps one to understand better the factors which shape the research landscape and institutional strategic actorhood of applicants.

The European Neighbourhood Policy is a flagship initiative of the Union's external action (Reptová, 2022, p. 565). Through the extensive export of its acquis communautaire and incentives toward political and economic reforms, the EU strives to bring together and transform its neighbours as well as promote stability, prosperity, and resilience in its nearby geographic areas (Bradford, 2020, pp. 70, 87; Reptová, 2022, p. 569).

The ERA was launched in 2000 to establish an integrated research area open to the world where researchers, scientific expertise, and technological solutions could seamlessly circulate to benefit the Union's competitiveness

and excellence (Olechnicka, Ploszaj, Celińska-Janowicz, 2019, p. 139). This unified space for research is achieved by the EU Member States and associated countries, such as the ones situated in the neighbourhood, aligning their modes of engagement according to mutually-agreed rules, regulations, and collaboration plans.

Some recent findings invite one to pay more attention to nuances, namely, how personal motivation or some systemic factors might generate specific, geographically-confined mobility and collaborative patterns within the overall ERA space (Schäfer, 2021). These are promising areas for studying differentiated integration and segmentation in this single market for research and what impact those dynamics bring into the context of the overarching goals of the ERA. Differentiated integration refers to closer interactions through institutions and policies with different commitments among the participating entities. Segmentation alludes to "variation in how problems and solutions are framed and understood within the same political order", thus leading to the formation of multiple sub-groups within that same order (Lord, 2019, p. 243; Onderco, Portela, 2023, p. 157). The term "segments" refers to functional constellations of various entities within certain policy domains which sustain a patterned reproduction of routines.

The article tests the following hoop test hypothesis: The participation of Morocco-and-Tunisia-based institutions in FP-funded projects is not based on a recommendation expressed in open calls for project applications to include entities from the ESN in the consortium. This hypothesis is tested by explaining outcome process tracing in order to open the black box of the decision-making that shapes the networked structure of the ERA. The importance of this hypothesis lies in its full acknowledgement of the potentially notable role of other explanations for the inclusion of Morocco-and-Tunisia-based institutions in FP-funded projects that are not tested in this article. The counterfactual that remains outside this paper is the potential existence of strong, lasting ties among researchers across diverse networks that enable swift consortium-building (Wagner, Whetsell, Mukherjee, 2019). In such a manner, this paper displays initial caution against attributing a decisive role to the European Commission as an integration entrepreneur. Such reservations against the role of the European Commission is counterbalanced by the role of expert networks and collegial ties in fostering consortiums supported by EU funding. Overall, the purpose of this research is to specify the role of the European Commission in fostering research ties between the EU and the ESN.

The analysis focuses on the open calls inviting project applications for the Framework Programme 7 (FP7). It explores whether the

recommendations enshrined in the open calls of projects implemented throughout 2014–2017 are an incentive to include Morocco-and- Tunisia-based entities in project consortiums in the post-volatile phase after the Arab uprisings (Lecocq, 2021, p. 2). It helps to clarify which types of incentives facilitate the incorporation of Morocco-and-Tunisia-based entities in project consortiums. The selected time frame and 2014, in particular, coincide with the envisaged completion stage of building the ERA (Garben, 2018, p. 1303).

Volatilities brought about by the Arab Spring and the country-specific echoes witnessed over the past years across the ESN have proven that generalisations are challenging (Rieker, Riddervold, 2021). Therefore, this article should be considered one step towards filling the gap in existing research on diverse dynamics revolving around the ERA. This analytic task is accomplished by exploring the ESN countries with the closest links to the EU. The focus on the programming of research funding leads one towards an examination of "the sub-systemic level (...) where much of the everyday governing of the EU takes place" (Peterson, 2001, p. 295). Attention is paid to the processes outside the confines of national expert meetings.

The selected approach helps to go beyond the disparities of opinions among EU Member States about the developments in the European neighbourhood and the most appropriate responses (Amadio Viceré, 2021, p. 11). Instead, the focus is on the supranationally-steered processes for forming multi-stakeholder partnerships for tailored-research cooperation purposes. This article is consistent with invitations "to consider differentiated integration as a genuine sub-field of European Studies" (Leruth, Gänzle, Trondal, 2019, p. 1014). A preliminary indication is sought of what might be the DG RTD's role of the European Commission in steering certain differentionist developments and segmentation via priorities set for the allocation of EU funding for research-intensive projects. This article contributes to the growing literature of differentiation studies focusing on the underexamined differentiation dynamics in the research domain.

The analysis should be viewed in the context of the overarching goals set out in the decision concerning the studied FP7. It is open to third countries and international organisations (EU, 2006b, p. 2). Moreover, it prioritises the European neighbourhood and several thematic domains: "actions aiming at reinforcing the research capacities of candidate countries as well as neighbourhood countries and cooperative activities targeted at developing and emerging countries, focusing on their particular needs in fields such as health – including research into neglected diseases –

agriculture, fisheries and the environment, and implemented in financial conditions adapted to their capacities" (EU, 2006a, p. 10). What is of interest in this research project is where the thematic priorities tied to the ESN are featured and the patterns of this thematic presence, if any. These nuances should help one to understand which preconditions set by the European Commission have guided the patterns of project partnerships formed by successful applicants.

The next part of this article elaborates on the theoretical and conceptual underpinnings of differentiated integration and segmentation. The third part outlines the chosen methodological approach and steps of process tracing. The fourth part presents key empirical findings of the content analysis of open calls on how and with which thematic propensity differentiation and segmentation are in-built into the steering of the consortiums and the ERA. The fifth part concludes that a more nuanced study of differentiation and segmentation is crucial for a more refined understanding of the ERA's networked patterns and steering measures.

Research Cooperation in the Context of the Differentiation Studies

Differentiated Integration and Positive External Differentiation

The conceptualisation of differentiation and differentiated integration commenced around the mid-1990s, resulting in at least thirty models (Bellamy, 2019, p. 177; Gänzle, Leruth, Trondal, 2021, p. 689). This emerging field of scholarly enquiry proved salient because, just a few years ago, it was observed that "only six Member States participate in all EU policies" (de Witte, 2018, p. 493). However, it would be a rather one-sided perspective to analyse differentiation and differentiated integration solely in a state-centric manner. Differentiation and differentiated integration manifest in the EU policy domains in uneven and diverse ways (Siddi, Karjalainen, Jokela, 2021, p. 6). Differentiation should be distinguished from differentiated integration, including the often-challenging dissimilarity between cooperation and integration.

Differentiation is a framework term. It refers to "both (differentiated) integration and disintegration" (Gänzle et al., 2021, p. 689). Differentiation is not a static phenomenon (Van den Bogaert, Borger, 2017, p. 234). Its patterns change across time periods. In this article, the study of differentiation focuses on differentiated integration. Furthermore, this study is time-bound and extended in two directions beyond the EU

Member States. Firstly, by incorporating the "external differentiation" dimension, this article understands differentiated integration as reaching far beyond this specific Union membership (Leruth et al., 2019, p. 1013). It conforms with differentiated integration being understood as "a process of coming together, albeit through institutions and policies which differ in terms of which Member States participate and with which commitments" (Lord, 2020, p. 243). The rules set out by the EU are not applied uniformly by all Member States (Telle, Badulescu, Fernandes, 2021, p. 1), as well as ENP countries and many countries across the world. These differences leave an imprint on the steering measures of supranationally-international partnerships and the viability of including certain entities in consortiums.

Differentiated integration is also defined as "an incongruence between *the territorial extension of* EU membership and EU rule validity" (Leuffen, Schuessler, Gómez Díaz, 2020, p. 1). This is where the blurred boundaries between EU membership and other countries come into play. The accessibility of the EU initiatives of specific policy domains to a range of entities located across the globe has already received an appraisal of the EU acting in "a (form of unwilling) hegemon" (Fossum et al., 2020, p. 2). With its rich literature on Europe-specific and international dynamics put in motion by the ERA, the research domain proves this as an empirically promising area for studying positive differentiation.

The so-called "low politics" areas, such as research (Schimmelfennig, Winzen, 2014, p. 363), just as the traditionally more high-profile portfolios of trade (Coremans, 2020; Coremans, Meissner, 2018; Garcia-Duran, Eliasson, Costa, 2020), do not escape political instrumentalisation towards non-Member States and entities located therein (Kaddous, 2019, p. 70; Leese, 2018; Vukasovic, Stensaker, 2018, p. 358). Functional heterogeneity is found in the EU's approach to economic and social policy issues (Patrin, 2021). However, more nuanced analyses than the referenced, concise remarks about the EU instrumentalisation of research towards Switzerland and the patchwork of functions of the European Commission in economic governance would help to build a more comprehensive picture of these dynamics and the overall role of research policy frameworks and funding measures to enable differentiated integration.

Higher education is one of the sectors that, with the Maastricht Treaty (Gornitzka, 2018, p. 242; Walakira, Wright, 2017, p. 10), has become "crucial to advancing and thickening integration" (Robertson et al., 2012, pp. 26–27). Consequently, the political instrumentalisation of the research domain for supranationally defined purposes is not surprising. Research is an intrinsic yet understudied part of institutional re-legitimation and

de-legitimation, prone to politicisation (De Bièvre et al., 2020, p. 241). This article offers one building block to commence the filling of this gap in related literature.

Secondly, in this article, differentiated integration incorporates so-called "positive differentiation". The term stands for a choice of "some Member States belonging to the core of the Union" to "decide to accelerate the pace of integration without penalising other Member States or hindering the integration process" (Gänzle, Leruth, Trondal, 2020, p. 245). In this article, the "positive differentiation" is not restricted solely to the EU Member States. The accessibility of various instruments supporting the ERA to entities located in non-Member States is a conducive area for study.

This article detaches the EU from its geographic borders by incorporating external and positive differentiation into the overall conceptual lens chosen for the research design. Such an approach allows for the analysing of differentiated integration as a governance construct that weaves diverse and ever-denser multilateral and integrationist interlinks across various countries and institutions. In stark contrast to the study of Eurosceptical opt-outs and temporary exclusion or exemption of new Member States (Schimmelfennig, Winzen, 2014), this article explores differentiated integration by focusing on positive external differentiation and segmentation. The integration of the front-running ESN countries is supranationally steered through specific programming and administrative means. Therefore, this article looks at ESN countries as intrinsic parts or positively differentiated entities of the overall policy framework structure of the ERA.

Segmentation

Segmentation is a crucial element of differentiation studies. A segment is debated as a characteristic of a policy domain or "functional realm" (Fossum, 2020, p. 41). "The existence of an *institutionalised coordination* body is a key feature of covert integration and integration through segmented orders" (Eckert, 2022, p. 23). This article combines segment with (the second generation of) multi-level administration (Benz, Corcaci, Doser, 2016; Trondal, 2020). Multi-level administration seeks to explain the "political organi[s]ation of the European administrative system" (Trondal, Bauer, 2017, p. 83). Multi-level administration refers to bureaucracies as "open systems that interact with their administrative counterparts from other levels of government in a multi-level executive system" (Gornitzka, Holst, 2015, p. 6). It sets conducive grounds for studying what supranationally

defined research directions and recommended partnership constellations incentivise multilateral multi-stakeholder partnerships to come together and contribute to a supranationally-approved project plan irrespective of their place of origin and the type of each consortium member.

Based on its expertise, the European Commission engages in a wide range of policy areas blurring the clear-cut distinction between communitarised and non-communitarised policies (Chou, Riddervold, 2015; Riddervold, 2010, 2011, 2016; Riddervold, Rosén, 2016; Riddervold, Trondal, 2017). The ERA and FPs contribute to such murkiness by funding multi-stakeholder partnerships assembled with a supranationally relevant purpose and a joint plan of activities covering myriad policy domains and thematic specialisations without a clear-cut distinction between communitarised and non-communitarised ones.

The thematic and administrative constellations defined in FP documentation are taken in this study as promising yet understudied empirical material that provides fresh insights into the supranational routines which contribute to specific segmentation dynamics. Likewise, this study contributes to the decades-long examination of the recent history of Community policies linking the Mediterranean coasts (De Witte, 1990).

A more nuanced exploration of diverse dynamics revolving around ERA is vital for a thorough understanding of the EU characteristics of "*scienti[s]ation* of politics and *politi-ci[s]ation* knowledge" (Gornitzka, Holst, 2015, p. 2). Similarly to bureaucratic structures but more loosely and temporarily (Christensen, 2015, p. 17), the ERA and other framework initiatives weave and employ collaborative research and pooled expertise in multiple ways. The ERA steering entities might encourage specific differentiated integration and segmentation dynamics as opposed to other alternatives. Taking that into consideration, it is understandable why FPs have been criticised for being "bureaucratic", "political steering", and "pork-barrel politics" (Persson, 2018, p. 415). FPs do not serve only purely scientific purposes.

Segmentation, "understood as a division into reliable segments for cooperation", has been suggested for the Eastern Partnership (Blidaru, 2020, p. 4). More empirical insights from Eastern and Southern neighbourhoods would help elaborate the segmentation role in more specific terms.

Materials and Methods

Process tracing is conducive to exploring causality (Beach, Pedersen, 2013, p. 3). Concerning the process tracing parlance, this study joins the

collective scholarly attempt to open the black box of the decision process (Gläser, Laudel, 2019). This attempt is performed with a hoop test hypothesis involving a particular, but not unique, prediction. Overall, the hoop test is a cautious attempt. A failure of a hoop test reduces confidence in the hypothesised mechanism, whereas confirmation does not clarify that the inference is undeniably accurate (Beach, Pedersen, 2013, p. 102). The specific hoop test modelled for this research design aims to offer a glimpse into which factors play a role in decision-making when forming and defining a consortium composition of a project application.

"High-quality qualitative research is marked by a thick description, and rich complexity of findings rather than deductive precision" (Vaismoradi, Snelgrove, 2019). The preliminary grounds for progressing towards a more in-depth description were prepared through data-set observations of projects and a thorough review of the relevant academic and grey literature referenced throughout this article (Šime, 2021). The hoop test captured by this article aims to thicken and coagulate the description and overall findings of a broader research project aimed at exploring implicit EU science diplomacy towards the ESN. During this stage, attention is paid to the content of open calls for project applications on which approved projects were implemented throughout 2014–2017.

Data-set observations of the projects prove that the FP7 Specific Programme "Cooperation": Food, Agriculture and Biotechnology (KBBE) engaged the most significant number of Morocco-and-Tunisia-based entities in project consortiums (Šime, 2023). Therefore, the respective open calls of each implemented project are examined in greater detail to clarify whether the engagement of entities based in the ESN is guided by the top-down process of thematic guidance issued by the European Commission. The European Commission publishes the document packages of all open calls in an open access format. All packages were downloaded from the Participant Portal of the European Commission.

Morocco-based entities were participants of 15 projects funded by the KBBE Specific Programme. Tunisia-based entities were members of 13 projects funded by the KBBE Specific Programme. Eight projects coincide with Morocco-and-Tunisia-based entities participating in the same project. Another overlap among the projects identified for the analysis is the KBBE open calls, on which basis the project applications of respective approved projects were submitted for FP7 funding. Several projects were approved based on the same call. It resulted in an analysis of 11 open calls.

Qualitative content analysis emanates from communication research but has recently experienced an overwhelming receptiveness in educational

research, psychology, and, to a lesser degree, chosen in business and organisation studies (Mayring, 2019; Prasad, 2019; Schreier et al., 2020). The method "is grounded in the importance of context and meaning, as well as the absence of *truth* and other unique attributes of a qualitative approach" (Roller, 2019). Qualitative content analysis is known for its diverse adaptations that stem from the particularities of a research domain where it is applied (Schreier et al., 2020). This diversity has encouraged talk about "qualitative content analyses" in the plural rather than singular (Kuckartz, 2019). Following earlier observations of the absence of a sharp, dividing line between the two (Marvasti, 2019; Schreier, 2013), the research design combines both quantitative and qualitative aspects of content analysis.

The term "category driven qualitative oriented text analysis" corresponds to the chosen research design (Schreier et al., 2019). Inspired by the earlier examples of coding applied in the study of universities (Warshaw, Upton, 2019), the first step is coding the open calls according to key terms associated with the studied geographical area and two selected ESN countries. All calls are screened to compile statistics on the presence of the following terms: "European (or EU) Neighbourhood", "Southern Neighbourhood", "North Africa", "Middle East and North Africa" or "MENA", "Mediterranean", "Morocco", and "Tunisia". These terms are good indicators of a specific contextual background that is considered conducive for incorporating entities from Morocco and Tunisia in project consortiums. It helps one to gain more confidence and trace whether the inclusion of Morocco-and-Tunisia-based entities in the approved project consortiums is based on encouragement expressed by the funding authority or whether other explanations should be considered as potentially more prevalent. Besides the coding of "Morocco" and "Tunisia", each selected term indicates a specific geographic or policy propensity. This geographic denotation helps one to trace back and specify in which context both studied countries are mentioned in the documents.

The intermediary step is the quantification of data (Vaismoradi, Snelgrove, 2019). This step allows for an exploration of the overall focus of the geographical patterns recommended by the funding authority. For the interpretation, the quantification is complemented with the relevant passages' excerpts to make more nuanced estimations in which broader context the ESN and, particularly, Morocco and Tunisia, are mentioned. This is where the strength of the qualitative content analysis plays out. It "is a method that reduces data, using categories that abstract from individual passages" (Schreier, 2013, p. 15).

Results and Discussion

Many projects implemented in the aftermath of the Arab Spring were selected based on open calls issued throughout the uprisings. The devised research design does not allow for the making of any claims about whether the open calls were tailored as immediate responses to the volatilities or not. This is another blank space where more research could reap highly relevant results which would allow for a more nuanced understanding of the programming of the EU funding and how geopolitical volatilities have impacted differentiated integration and segmentation patterns in research policy throughout the years.

The work programmes of 2010 and 2011 provide the most encouraging wording for focusing on the Mediterranean. The most resourceful passages for coding were descriptions of specific projects. Those are the passages of the annual programmes that offer the most references to the coded terms, with a clear majority of references to the Mediterranean instead of the other coded terms. The overwhelming prevalence of references to the Mediterranean is the link between the EU and two ESN countries – Morocco and Tunisia. Several project descriptions feature the Mediterranean in their titles, which is unequivocal about the geographic focus of the research projects. Other references to the Mediterranean justify the chosen topic for a suggested project as being relevant to the EU as a geographical unit and beneficial for a broader geographic scope and adjacent areas, thereby enhancing the international range of the research findings.

Comparatively fewer references to the "European (or EU) neighbourhood" or "neighbouring countries" prove that the Mediterranean link is the most conducive context for the involvement of Morocco-and-Tunisia-based entities in the FP7 consortiums. The sea connects not only in a geographical sense, but also research-wise. The statistics are, however, sporadic even when references to these two countries are brought into the picture. The most widespread mention included in the work programme of 2011 is "(African) Mediterranean Partner Countries" along with countries that have established research cooperation agreements with the EU. Therefore, the involvement of Morocco-and-Tunisia-based entities in project consortiums are encouraged both as Mediterranean countries and, to a lesser extent, as countries with which the EU has an established science and technology cooperation agreement. The geopolitical context is absent in the research policy and wording chosen by the funding authority to justify recommended collaborative guidance. "African Mediterranean Partner Countries" are usually distinguished from African, Caribbean, and

Pacific (ACP) countries. This distinction is present across the examined open call packages, including the FP7-AFRICA-2010.

The article set out to investigate the hoop test of the participation of Morocco-and-Tunisia-based institutions in FP-funded projects. It was hypothesised that such involvement is not based on a recommendation expressed in the open calls for project applications to include in the consortium entities from the ESN.

Based on the aforementioned empirical findings, the prediction captured in the hoop test is correct in the sense that it is not the policy context of the ESN that proves to be the most salient for the engagement of Morocco-and-Tunisia-based entities in the projects funded by the FP7 KBBE Specific Programme. Instead, the guidelines for submitting projects focused on the Mediterranean and recommendations to consider involving "(African) Mediterranean Partner Countries" feature most in the open calls. This nuance has proven to be a suitable basis for grant awards.

These are noteworthy findings that contradict the general guidance concerning FP7 to prioritise the neighbourhood referred to in the introduction of this article. Keeping the focus on the European supranational entities as the selected multi-level administration level of this study, one potential explanation is that a specific programme of the FP7 is an implementation arm with a limited scope of policy coverage. A content analysis of KBBE shows that the ENP, and ESN in particular, is neither prominently nor explicitly featured in this policy range. Primarily, KBBE attempts to address specific issues and invites a focus on a limited geographic scope to ensure that the project application captures targeted interventions with tailored deliverables.

The findings bring geography into the study of supranationally-steered, positive external differentiation and segmentation. Systematic selection bias during the policy-making, planning, and programming phases may occur in response to issue saliency in a specific location. These results caution against broad generalisations. The findings obtained about particular countries in a study of one policy or programming instrument may not necessarily prove relevant in another. The rationale for close research cooperation with Morocco and Tunisia in the ERA setting financially supported by the FP7 should not be considered valid in other policy and programming contexts. FP7 is one form of EU assistance offered to establish and steer expert networks. The participation of Morocco and Tunisia in other expert networks could be guided by other considerations, functional reasoning and unique traits than those identified in the FP7 open calls.

The European Neighbourhood Instrument serves as an illustrative example. The ENP, ESN and the European Neighbourhood Instrument

might be considered an entirely separate domain of EU engagement with both ESN front-running countries with less preoccupation with research intensity and more attention paid to immediate assistance provision. By and large, the European Neighbourhood Instrument does not fund research projects. MobiDoc project is an outstanding exception, and was implemented in Tunisia to provide stipends to PhD candidates co-funded by a company where the student develops a thesis. The National Agency for Promoting Scientific Research managed the project (Délégation de l'UE en Tunisie, 2022; Hadj-Alouane, 2022).

To look even more broadly, a successful hoop test does not provide definite proof that, solely based on the thematic steering encouraged by the European Commission, Morocco-and-Tunisia-based entities have been involved in the consortiums funded by the FP7 KBBE. Other factors might also feed into a comprehensive explanation of why specific entities from these countries were selected for consortium membership. The exploration of such things requires other research techniques. However, the overwhelming prevalence of references to the Mediterranean in the recommended project descriptions (along with, to a lesser degree, the general thematic outlines) have an undeniable role to play. This hoop test strengthens confidence in the influential position of the European Commission in shaping the initial dynamics for multilateral partnerships putting in motion ERA through FP7 projects.

FP7 open calls show that, in the contemporary setting, strong actors might not be pushing only for integration (Rye, 2020, p. 207). Positive external differentiation is manifested in the form of specific, top-down defined thematic orientation and recommended constellations of partnerships. FP open calls are a segmenting measure that deserves a more nuanced examination through other research methods.

As mentioned earlier, differentiation comes in multiple forms. Besides those already examined in the differentiation studies, science and technological development policy deserves more attention. The guidance enshrined in the open calls to address Mediterranean issues and involve "(African) Mediterranean Partner Countries" proves that external and positive differentiation has a considerable footprint in the research domain. Depending on the specific research domain, there might be some distinctively unique reasons and characteristics for differentiated integration. In the case of FP-funded projects, the European Commission has a crucial role in putting specific collaborative and integrationist developments in motion instead of others.

The thematic distinction of the Mediterranean is a clear example of when positive differentiation that surpasses the EU borders occurs due

to the thematic priorities co-decided by the key EU institutions and articulated by the European Commission in the annual work programmes. It trickles down to the project calls and implementation of successful project applications. The qualitative content analysis findings demonstrate that positive differentiation of selected ESN countries in the ERA results from thematic incentives in-built by the central EU institutions in open calls. The EU encourages and provides clear guidance through specific open calls to foster project consortiums across the Mediterranean or to address issues the Mediterranean area faces. The policy-guided instrumentalisation of the FP7 towards studied non-member states is a positive, not a penalising one. It fosters engagement, not exclusion.

Additionally, although the ESN proved not to have a prominent nor visible role in setting a conducive context for the involvement of Morocco-and-Tunisia-based entities in KBBE-funded project consortiums, it does not mean that the issues addressed by the selected consortiums had no relevance in the context of the ESN's goals. Tackling pressing issues linked to the Mediterranean in such domains as irrigation-based water saving solutions, the assessment of natural and human-made pressures, wind energy, breeding efficiency in fruit trees, fisheries management, and aquaculture have an immediate or interconnected role in building more well-being, sustainability, and improved governance across the ESN. Thus, not stating the ESN as a defining factor for the incorporation of entities from two selected countries in the open calls does not mean that these projects have no salience in the broader context of cumulative and complementary efforts invested in helping the ESN to become a more stable, resilient, and prosperous area with close ties to the Union.

Conclusions

Morocco and Tunisia are encouraged to be involved in project consortiums because they are located within and face issues characteristic of the Mediterranean area. Both countries correspond to the encouraged partnering with what is geographically defined in the documents as "African Mediterranean Partner Countries". Although FP7 open calls do not prioritise explicit support to the ESN, positive external differentiation and segmentation in research cooperation enabled by the FP7 KBBE Specific Programme address issues relevant to the Mediterranean area. Morocco and Tunisia are among the countries recommended for FP7 project partnerships, thus extending the integrationist dynamics captured by the ERA beyond the EU Member States.

The findings show that research cooperation helps achieve the overarching goals of the ESN and the ERA through supranationally-defined, thematic propensity and consortium composition that successful applications for the FP7 KBBE funding must respect. The examined open calls of the FP7 KBBE Specific Programme display specific traits of instrumentalisation of research cooperation for ESN. This instrumentalisation is thematically tailored to tackle some pressing issues faced by the sea and the Mediterranean shores. Thus, it corresponds to the goals of the ESN to advance toward a less volatile, better governed, and more prosperous neighbourhood. Likewise, the intention is for these solutions to be co-developed and applied in a coordinated manner. Therefore, the incentives in-built in the open calls serve, inter alia, the primary integrationist goals of the single research space captured by the ERA. Additionally, the calls steer towards an extension of this unified area of talent and excellence flows to include "African Mediterranean Partner Countries" or states geographically located nearest to the Union.

The hoop test was successful, but not because of the assumptions enshrined in the hypothesis. The assumption was that the participation of Morocco-and-Tunisia-based institutions in the FP-funded projects is not based on a recommendation expressed in the open calls for project applications to include in the consortium entities from the ESN. Consequently, the hoop test passing during this research project strengthens the confidence that it is not the ESN policy context that is the most salient for the active incorporation of Morocco-and-Tunisia-based entities in the projects funded by the FP7 KBBE Specific Programme. Instead, the status of being an "African Mediterranean Partner Country" plays a crucial role. Being geographically situated and specialised in Mediterranean research is what the funding authority encourages the most.

The distinction between references to the ESN and the Mediterranean is important because each of these politically-salient geographic areas refers to a slightly different country grouping. The ESN does not refer solely to the Mediterranean littoral countries; it covers several countries in the Middle East as well.

The research domain proves to be very promising for studying external differentiation along with positive differentiation that displays differentiated integration incentives. The ERA and FP7, in particular, are conducive to positive integration beyond EU borders. The Mediterranean setting has benefited from a supranationally-favourable climate that has translated into a specific support structure for projects. The Mediterranean factor is explicitly and systematically integrated into the thematic propensity of the FP7 KBBE calls for partnerships and research diffusion.

Segmentation linking the Mediterranean shores via research is a centrally and top-down steered process, not an ad hoc or accidental occurrence, and is far from an unintended consequence. The Mediterranean area is a clear example of the EU's segmented order. In this segmented constellation, research-intensive solutions to the pressing (environmental, technological, and know-how) challenges are systematically encouraged to be co-developed, or that research findings be diffused among broader expert circles across the Mediterranean. Being Mediterranean counts more in terms of the eligibility of Morocco-and-Tunisia-based institutions interested in participating in the FP7 KBBE projects than any other statuses towards the EU. The bilateral science and technology cooperation agreements established with the EU, Morocco, and Tunisia have a lesser salience than the geographical factor of being Southern Mediterranean.

Because of the article's focus on work programmes and thematic calls, drawing more definite conclusions or detailed assumptions about the track record of the thematic incentives presented by the European Commission as being potentially prone to generating epistemic dependence or segmented epistocracy across supported project consortiums and beneficiaries proves challenging. This would require a more qualitative, in-depth examination of the consortium composition, geographic dispersion, and interactions among consortium members.

Further study using another methodological approach, such as expert interviews, would be worth considering in order to obtain even more insight into which considerations guided the European Commission to choose to frame the analysed documents with a propensity towards the Mediterranean positioning rather than the ESN framework. It would add a new dimension to the studied mechanism.

Bearing in mind that differentiation is not static, this study captures a time-bound snapshot of incentive structures for incorporating Morocco-and-Tunisia-based entities into the European research-intensive consortiums. It cannot be ruled out that other periods may reveal different logics and supranationally defined argumentation for incorporating Morocco-and-Tunisia-based entities in the FPs' frameworks.

References

Amadio Viceré, M.G. (2021) *Informal Groupings in EU Foreign Policy: A Sustainable Arrangement? (European Policy Analysis No. 2epa)*. Stockholm: Swedish Institute for European Policy Studies (SIEPS). DOI: https://doi.org/10.1080/13523260.2022.2144372.

Beach, D. and Pedersen, R.B. (2013) *Process Tracing Methods – Foundation and Guidelines*. Ann Arbor: The University of Michigan Press.

Bellamy, R. (2019) *A Republican Europe of States: Cosmopolitanism, Intergovernmnentalism and Democracy in the EU*. Cambridge: Cambridge University Press. DOI: https://doi.org/10.1017/9781139136303.

Benz, A., Corcaci, A. and Doser, J.W. (2016) "Unravelling multilevel administration. Patterns and dynamics of administrative co-ordination in European governance", *Journal of European Public Policy*. Vol. 23(7), pp. 999–1018. DOI: https://doi.org/10.1080/13501763.2016.1162838.

Blidaru, M. (2020) "Time to Reassess the Reliability of the Eastern Partnership: The Need for Segmentation and Micro-Regional Strategies", *ENTER Policy Brief* Series No. 6. EU Foreign Policy Facing New Realities: Perceptions, Contestation, Communication and Relations (CA17119) – COST Action ENTER. Available at: https://foreignpolicynewrealities.eu/publications/cost-action-enter-policy-brief-no-6-december-2020/ (Access 8.08.2023).

Bradford, A. (2020) *The Brussels Effect: How the European Union Rules the World*. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/oso/9780190088583.001.0001.

Campbell, C.A. (2014) *US Science Diplomacy with Arab Countries* in Davis, L.S. and Patman, R.G. (eds.) *Science Diplomacy: New Day or False Dawn?* Singapore: World Scientific Publishing, pp. 27–44. DOI: https://doi.org/10.1142/9789814440073_0002.

Chou, M.H. and Riddervold, M. (2015) "The Unexpected Negotiator at the Table: How the European Commission's Expertise Informs Intergovernmental EU Policies", *Politics and Governance*. Vol. 3(1), pp. 61–72. DOI: https://doi.org/10.17645/pag.v3i1.117.

Christensen, J. (2015) "The Organization of Professional Expertise in the European Commission", *Politics and Governance*. Vol. 3(1), pp. 13–25. DOI: https://doi.org/10.17645/pag.v3i1.77.

Coremans, E. (2020) "Opening up by Closing Off: How Increased Transparency Triggers Informalisation in EU Decision-Making", *Journal of European Public Policy*. Vol. 27(4), pp. 590–611. DOI: https://doi.org/10.1080/13501763.2019.1599043.

Coremans, E. and Meissner, K.L. (2018) "Putting Power Into Practice: Administrative and Political Capacity Building in the European Parliament's Committee for International Trade", *Public Administration*. Vol. 96(3), pp. 561–577. DOI: https://doi.org/10.1111/padm.12400.

Costa, O. (2010) "Convergence on the fringe: The environmental dimension of Euro-Mediterranean cooperation", *Mediterranean Politics*. Vol. 15(2), pp. 149–168. DOI: https://doi.org/10.1080/13629395.2010.485036.

Costa, O. (2019) "The politicization of EU external relations", *Journal of European Public Policy*. Vol. 26(5), pp. 790–802. DOI: https://doi.org/10.1080/13501763.2018.1478878.

De Bièvre, D. et al. (2020) "Editorial: Politicization of EU Trade Policy Across Time and Space", *Politics and Governance*. Vol. 8(1), pp. 239–242. DOI: https://doi.org/10.17645/pag.v8i1.3055.

De Witte, B. (1990) "The Integrated Mediterranean Programmes in the Context of Community Regional Policy", *EUI Working Papers in Law.* No. 8. Florence: European University Institute. Available at: https://cadmus.eui.eu/handle/1814/71 (Access 1.06.2023).

de Witte, F. (2018) "Interdependence and Contestation in European Integration", *European Papers: A Journal on Law and Integration*. Vol. 3(2), pp. 475–509. DOI: https://doi.org/10.15166/2499-8249/244.

Délégation de l'UE en Tunisie (2022) *Développement et consolidation du dispositif MOBIDOC comme instrument de création de valeur au travers de la mobilité des chercheurs vers l'entreprise*. Available at: https://ue-tunisie.org/projet-192-7-11_developpement-et-consolidation-du-dispositif-mobidoc-comme-i.html (Access 8.08.2023).

EU (2006a). Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007–2013). Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006D1982 (Access 1.06.2023).

EU (2006b) Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007–2013). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1906 (Access 1.06.2023).

Fossum, J.E. (2020) *The Institutional Make-up of Europe's Segmented Political Order* in Bátora, J. and Fossum, J.E. (eds.) *Towards a Segmented European Political Order: The European Union's Post-crises Conundrum*. London: Routledge, pp. 22–46. DOI: https://doi.org/10.4324/9781351024341-2.

Fossum, J.E., Garcia Quesada, M. and Zgaga, T. (2020) *The EU's non-members: Key principles, underlying logics and types of affiliation (EU3D Report 1; ARENA Report 1/20). EU Differentiation, Dominance and Democracy (EU3D)*. Oslo: ARENA Centre for European Studies, University of Oslo. Available at: https://www.eu3d.uio.no/publications/eu3d-reports/eu3d-report-1-20.html (Access 8.08.2023).

Gänzle, S., Leruth, B. and Trondal, J. (2020) *Conclusion. Whither differentiated (dis)integration in a "post-Brexit era"?* in Gänzle, S., Leruth, B. and Trondal, J. (eds.) *Differentiated Integration and Disintegration in a Post-Brexit Era*, London: Routledge, pp. 237–248. DOI: https://doi.org/10.4324/9780429026959.

Gänzle, S., Leruth, B. and Trondal, J. (2021) *A Differentiated European Union* in Riddervold, M., Trondal, J. and Newsome, A. (eds.) *Palgrave Handbook of EU Crises*. Cham: Palgrave Macmillan, pp. 687–706. DOI: https://doi.org/10.1007/978-3-030-51791-5.

Garben, S. (2018) "European Higher Education in the Context of Brexit", *European Papers: A Journal on Law and Integration*. Vol. 3(3), pp. 1293–1317. DOI: https://doi.org/10.15166/2499-8249/271.

Garcia-Duran, P., Eliasson, L.J. and Costa, O. (2020) "Managed Globalization 2.0: The European Commission's Response to Trade Politicization", *Politics and Governance*. Vol. 8(1), pp. 290–300. DOI: https://doi.org/10.17645/pag.v8i1.2567.

Gläser, J. and Laudel, G. (2019) "The Discovery of Causal Mechanisms: Extractive Qualitative Content Analysis as a Tool for Process Tracing", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3386.

Gornitzka, Å. (2018) "Organising Soft Governance in Hard Time – The Unlikely Survival of the Open Method of Coordination in EU Education Policy", *European Papers: A Journal on Law and Integration*. Vol. 3(1), pp. 235–255. DOI: https://doi.org/10.15166/2499-8249/211.

Gornitzka, Å. and Holst, C. (2015) "The Expert-Executive Nexus in the EU: An Introduction", *Politics and Governance*. Vol. 3(1), pp. 1–12. https://doi.org/10.17645/pag.v3i1.271.

Gstöhl, S. and Phinnemore, D. (2019) *Introduction. Priviledged partnerships between the European Union and third states* in Gstöhl, S. and Phinnemore, D. (eds.) *The Proliferation of Privileged Partnerships between the European Union and its Neighbours*. Abingdon: Routledge, pp. 1–22. DOI: https://doi.org/10.4324/9780429435744.

Hadj-Alouane, A.B. (2022) *MobiDoc initiative in Tunisia*. Available at: https://pubsonline.informs.org/do/10.1287/orms.2017.04.17/full/ (Access 7.08.2022). DOI: https://doi.org/10.1287/orms.2017.04.17.

Kaddous, C. (2019) *Switzerland and the EU. Current issues and new challenges under the Draft Institutional Framework Agreement* in Gstöhl, S. and Phinnemore, D. (eds.) *The Proliferation of Privileged Partnerships between the European Union and its Neighbours*. Abingdon: Routledge, pp. 68–83. DOI: https://doi.org/10.4324/9780429435744.

Kuckartz, U. (2019) "Qualitative Content Analysis: From Kracauer's Beginnings to Today's Challenges", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3370.

Lecocq, S. (2021) "EU Foreign Policy and Hybrid Actors in the Middle East: Ready For Geopolitical Contestation?" *ENTER Working Paper* Series No. 3. EU Foreign Policy Facing New Realities: Perceptions, Contestation, Communication and Relations (CA17119) – COST Action ENTER. DOI: https://doi.org/10.1080/23340460.2021.1872401.

Leese, M. (2018) "Between a Carrot and a Stick: Science Diplomacy and Access to EU Research Funding", *Global Policy*. Vol. 9(S3), pp. 48–52. DOI: https://doi.org/10.1111/1758-5899.12546.

Leruth, B., Gänzle, S. and Trondal, J. (2019) "Exploring Differentiated Disintegration in a Post-Brexit European Union", *Journal of Common Market Studies*. Vol. 57(5), pp. 1013–1030. DOI: https://doi.org/10.1111/jcms.12869.

Leuffen, D., Schuessler, J. and Gómez Díaz, J. (2020) "Public Support For Differentiated Integration: Individual Liberal Values and Concerns About Member State Discrimination", *Journal of European Public Policy*, pp. 1–20. DOI: https://doi.org/10.1080/13501763.2020.1829005.

Lord, C. (2019) *Integration through differentiation and segmentation. The case of one Member State from 1950 to Brexit (and beyond)* in Bátora, J. and Fossum, J.E. (eds.) *Towards a Segmented European Political Order: The European Union's Post-crises Conundrum*. Taylor & Francis, pp. 243–264. DOI: https://doi.org/10.4324/9781351024341-12.

Marvasti, A.B. (2019) "Qualitative Content Analysis: A Novice's Perspective", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3387.

Mayring, P. (2019) "Qualitative Content Analysis", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3343.

Missirian, A. (2019) "What Drives Migratory Pressure at the Southern EU Borders?". *CEEP Working Paper* Series No. 5. New York: Center for Environmental Economics and Policy. Available at: https://ceep.columbia.edu/sites/default/files/content/papers/n5.pdf (Access 1.06.2023).

Olechnicka, A., Ploszaj, A. and Celińska-Janowicz, D. (2019) *Scientific Collaboration Policy in The Geography of Scientific Collaboration*. Abingdon; New York: Routledge, pp. 133–175. DOI: https://doi.org/10.4324/9781315471938-7.

Onderco, M. and Portela, C. (2023) "External drivers of EU differentiated cooperation: How change in the nuclear nonproliferation regime affects member states alignment", *Contemporary Security Policy*.

Vol. 44(1), pp. 150–175. DOI: https://doi.org/10.1080/13523260.2022.2146336.

Özlem, T. (2019) *The EU-Turkey customs union. Shortcomings and prospects for modernisation* in Gstöhl, S. and Phinnemore, D. (eds.) *The Proliferation of Privileged Partnerships between the European Union and its Neighbours*. Abingdon: Routledge, pp. 121–138. DOI: https://doi.org/10.4324/9780429435744.

Patrin, M. (2021) "The European Commission Between Institutional Unity and Functional Diversification: The Case of Economic Governance", *European Papers: A Journal on Law and Integration*. Vol. 6(1), pp. 269–292. Available at: https://www.europeanpapers.eu/sites/default/files/EP_eJ_2021_1.pdf (Access 1.06.2023).

Persson, B. (2018) "Interests, Ideas and Legacies of the Past: Analysing the Positions and Strategies of Swedish Policy Actors in the Establishment of the European Research Council", *European Educational Research Journal*. Vol. 17(3), pp. 404–420. DOI: https://doi.org/10.1177/1474904117719142.

Peterson, J. (2001) "The choice for EU theorists: Establishing a common framework for analysis", *European Journal of Political Research*. Vol. 39, pp. 289–318. DOI: https://doi.org/10.1111/1475-6765.00578.

Prasad, B.D. (2019) "Qualitative Content Analysis: Why is it Still a Path Less Taken?", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3392.

Reptová, Z. (2022) *European Neighbourhood Policy: Differentiated integration beyond the EU's Eastern and Southern borders* in Leruth, B., Gänzle, S. and Trondal, J. (eds.) *The Routledge Handbook of Differentiation in the European Union*. Routledge, pp. 565–580. DOI: https://doi.org/10.4324/9780429054136.

Riddervold, M. (2010) "A Matter of Principle? EU Foreign Policy in the International Labour Organization", *Journal of European Public Policy*. Vol. 17(4), pp. 581–598. DOI: https://doi.org/10.1080/13501761003673401.

Riddervold, M. (2011) "From Reason-Giving to Collective Action: Argument-Based Learning and European Integration", *Cooperation and Conflict*. Vol. 46(4), pp. 563–580. DOI: https://doi.org/10.1177/0010836711422493.

Riddervold, M. (2016) "(Not) in the Hands of the Member States: How the European Commission Influences EU Security and Defence Policies", *Journal of Common Market Studies*. Vol. 54(2), pp. 353–369. DOI: https://doi.org/10.1111/jcms.12288.

Riddervold, M. and Newsome, A. (2018) "Transatlantic relations in times of uncertainty: crises and EU-US relations", *Journal of European*

Integration. Vol. 40(5), pp. 505–521. DOI: https://doi.org/10.1080/07036337.2018.1488839.

Riddervold, M. and Rosén, G. (2016) "Trick and treat: how the Commission and the European Parliament exert influence in EU foreign and security policies", *Journal of European Integration*. Vol. 38(6), pp. 687–702. DOI: https://doi.org/10.1080/07036337.2016.1178737.

Riddervold, M. and Trondal, J. (2017) "Integrating Nascent Organisations. On the Settlement of the European External Action Service", *Journal of European Integration*. Vol. 39(1), pp. 33–47. DOI: https://doi.org/10.1080/07036337.2016.1241246.

Rieker, P. and Riddervold, M. (2021) "Not so unique after all? Urgency and norms in EU foreign and security policy", *Journal of European Integration*, pp. 1–15. DOI: https://doi.org/10.1080/07036337.2021.1977293.

Robertson, S. et al. (2012) "Globalisation and Regionalisation in Higher Education: Toward a New Conceptual Framework" *Working Papers on University Reform* No. 20. Aarhus: Department of Education, University of Aarhus. Available at: https://pure.au.dk/portal/en/publications/globalisation-and-regionalisation-in-higher-education(ec493a1c-7aae-49b4-b5e4-c7bb61b59e86).html (Access 1.06.2023). DOI: https://doi.org/10.1080/14767724.2012.677708.

Roller, M.R. (2019) "A Quality Approach to Qualitative Content Analysis: Similarities and Differences Compared to Other Qualitative Methods", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3385.

Rye, L. (2020) "The Legitimacy of the EU in Historical Perspective: History of a Never-Ending Quest", *European Papers: A Journal on Law and Integration*. Vol. 5(1), pp. 191–207. DOI: https://doi.org/10.15166/2499-8249/377.

Schäfer, G. (2021) "Horizontal Europeanisation among mobile doctoral candidates in the context of the European Union and the European Research Area", *European Journal of Education*. Vol. 56(2), pp. 279–291. DOI: https://doi.org/10.1111/ejed.12444.

Schimmelfennig, F. and Winzen, T. (2014) "Instrumental and Constitutional Differentiation in the European Union", *Journal of Common Market Studies*. Vol. 52(2), pp. 354–370. DOI: https://doi.org/10.1111/jcms.12103.

Schreier, M. (2013) *Qualitative Content Analysis* in Flick, U. (ed.) *The SAGE Handbook of Qualitative Data Analysis*. London: SAGE Publications Ltd, pp. 170–183. DOI: https://doi.org/10.4135/9781446282243.n12.

Schreier, M. et al. (2020) "Qualitative content analysis: Disciplinary perspectives and relationships between methods – introduction

to the FQS Special Issue *Qualitative Content Analysis II*". *Forum: Qualitative Social Research*. Vol. 21(1). DOI: https://doi.org/10.17169/fqs-21.1.3454.

Schreier, M. et al. (2019) "Qualitative Content Analysis: Conceptualizations and Challenges in Research Practice – Introduction to the FQS Special Issue *Qualitative Content Analysis I*". *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3393.

Siddi, M., Karjalainen, T. and Jokela, J. (2021) "Differentiation and the European Union's Foreign and Security Policy". *EU IDEA Research Papers* No. 9. EU Integration and Differentiation for Effectiveness and Accountability (EU IDEA). DOI: https://doi.org/10.3030/822622.

Šime, Z. (2021) "Mediterranean Lasagne of Migration Governance: What is the Way Forward for the Regions in Governance the Euromestic Sphere? An EU-Centric Perspective". *UNU-CRIS Working Paper* No. 2. Bruges: United Nations University Institute on Comparative Regional Integration Studies. DOI: https://doi.org/10.1007/978-1-4020-5951-3_10.

Šime, Z. (2023, forthcoming). "Participation of Morocco and Tunisia in the European Research Area: Research-Intense Collaborative Patterns Across the European Southern Neighbourhood", *European Integration Studies*. Vol. 17.

Spichtinger, D. (2021) Europe's Science Diplomacy Needs More Carrot, Less Stick. Research Professional News. Available at: https://www.researchprofessionalnews.com/rr-news-europe-views-of-europe-2021-8-europe-s-science-diplomacy-needs-more-carrot-less-stick/ (Access 8.08.2023).

Telle, S., Badulescu, C. and Fernandes, D. (2021) "Differentiated Integration in the EU – What Do the Member States *Think* About It?". *EUI Working Papers* No. 50. Florence: Robert Schuman Centre for Advanced Studies, European University Institute. DOI: https://doi.org/10.2139/ssrn.3838761.

Trondal, J. (2020) "Public Administration and the Study of Political Order: Towards a Framework for Analysis", *Politics and Governance*. Vol. 8(4), pp. 120–130. DOI: https://doi.org/10.17645/pag.v8i4.3231.

Trondal, J. and Bauer, M.W. (2017) "Conceptualizing the European multilevel administrative order: Capturing variation in the European administrative system", *European Political Science Review*. Vol. 9(1), pp. 73–94. DOI: https://doi.org/10.1017/S1755773915000223.

Vaismoradi, M. and Snelgrove, S. (2019) "Theme in Qualitative Content Analysis and Thematic Analysis", *Forum: Qualitative Social Research*. Vol. 20(3). DOI: https://doi.org/10.17169/fqs-20.3.3376.

Van den Bogaert, S. and Borger, V. (2017) *Differentiated integration in EMU* in De Witte, B., Ott, A. and Vos, E. (eds.) *Between Flexibility and Disintegration: The Trajectory of Differentiation in EU Law*. Cheltenham; Northampton: Edward Elgar, pp. 209–236. DOI: https://doi.org/10.4337/9781783475896.

Vukasovic, M. and Stensaker, B. (2018) "University Alliances in the Europe of Knowledge: Positions, Agendas and Practices in Policy Processes", *European Educational Research Journal*. Vol. 17(3), pp. 349–364. DOI: https://doi.org/10.1177/1474904117724572.

Walakira, L.K. and Wright, S. (2017) "The Mobile Academic: A Survey of Mobility Among Marie Skłodowska-Curie Doctoral Fellows". *Working Papers on University Reform No. 25*. Aarhus: Danish School of Education, Aarhus University. Available at: http://eurodoc.net/sites/default/files/attachments/2017/202/asurveyofmobilityamongmariecuriephdfellows2017.pdf (Access 1.06.2023).

Warshaw, J.B. and Upton, S. (2019) *Capturing Hybrid Institutional Logics in Higher Education: Qualitative Document Analysis as Methodological Approach* in Huisman, J. and Tight, M. (eds.) *Theory and Method in Higher Education Research*. Bingley: Emerald Publishing Limited, pp. 67–84. DOI: https://doi.org/10.1108/s2056-375220180000004006.

Biographical Notes

Jeronim Dorotić – Dr Dorotić currently holds a postdoctoral position within the Department of Sociology at the Catholic University of Croatia. He received a PhD in European Studies in 2019 at the J.J. Strossmayer University of Osijek (and also holds a BSc in Hospitality and Service Management from the Rochester Institute of Technology Croatia; is a university specialist in European Studies at the Faculty of Political Sciences at the University of Zagreb; and also holds an MA on Analyzing Europe (European Studies) from the Faculty of Arts and Social Sciences, University of Maastricht). His research interests include EU public policies (e.g., the EU's cultural, landscape, and island policies), and European identity, local cultural policies, well-being, and sustainable development.

Sylwia K. Mazur – Dr Mazur is a researcher at the Research Center for the Future of Law at the Catholic University of Portugal. She holds a Ph.D. in European Union Law. She also holds a Master of Law in International Law and B.S. in Journalism and Social Communication. She has graduated from different programs, including: International Business & Trade Summer Law Program at the Catholic University of America; "Europe in the World" Global Governance Training at the European University Institute, the Odysseus Network Summer School, and is a European Academy of Diplomacy Kościuszko Foundation's scholarship recipient (University of Michigan).

Filip Tereszkiewicz – Ph.D., is an Assistant Professor at the Institute of Political Science and Administration at University of Opole. His research interests are the European Union's foreign and security policy.

Adam A. Ambroziak – Ph.D. (dr hab), SGH Professor at the SGH Warsaw School of Economics specialising in the EU internal market policy, state aid policy, cohesion policy, common commercial policy, industrial policy, and in using EU funds. Dr Ambroziak is an expert in the decision-making process in the European Union and in EU lobbying; Head of Postgraduate Programme in State Aid, Head of Postgraduate Programme in Administration and Management, and is the author of over 150 scientific books, chapters, and science journals published by prominent international publishers, including Springer, Routledge,

Taylor&Francis Group, and has written analyses drafted for the Polish administration and international organisations on the EU economic policy, state aid policy, and on the EU's internal market. He is actively involved in Poland's EU association, accession and membership; a lecturer and trainer in European economic integration and in European lobbying, and is also actively involved in accession negotiations and in the adjustment of the Polish legal system and economy to the provisions of the Europe Agreement. He lectures at the Warsaw School of Economics, the Centre for Europe at the University of Warsaw, the University of Gdańsk, the National School of Public Administration in Poland, and at the Polish Institute of International Affairs and is also a visiting researcher and professor at the University of Glasgow and University of Economics in Bratislava. For more, see: www.adamambroziak.eu.

Jakub Kociubiński – LLM, PhD, DSc, University Professor at the Faculty of Law, Administration and Economics, University of Wrocław. His research interest focuses on the European Union competition law with a particular emphasis on State aid rules and transport regulations as well as the Belt and Road Initiative. He is the recipient of numerous research grants, and most recently he became the principal researcher in a project titled "Adaptation of the European Union Law of State aid to the Long Term Economic Consequences of the COVID-19 Pandemic" (OPUS-22) funded by the National Science Centre (2022–2024). He has also received multiple international recognitions, most recently in the I-CEE Global Forum Internationalization of Companies from Emerging Economies held on 28.08.2022 in Beijing for a paper (co-authored with Gavin Rae from Koźmiński University) titled "The Operational and Regulatory Challenges of Routing Freight by Rail from China to the European Union in the Light of Recent Developments. The Case of the Łódź Rail Logistics Hub in Poland".

Aleksandra Borowicz – Assistant Professor at the Department of International Economy and Economic Development at the Faculty of Economics at the University of Gdansk. She specialises in international economics, with a focus on international trade, foreign direct investment, and the economics of European integration. Dr Borowicz has experience in both applying for and implementing projects co-financed by the European Union, and is a member of the Team Europe network at the European Commission in Poland. She is president of the PECSA (Polish European Community Studies Association), and also holds a position at the editorial boards of two journals Review of European Affairs published by PECSA

and European Integration Studies published by Kaunas University of Technology.

Joanna Czerepko – Assistant Professor at the Department of Transportation Market at the Faculty of Economics at the University of Gdansk. Dr Czerepko has business experience in that she was previously a specialist in the consulting sector involved in EU projects. She specialises in economics, with an emphasis on consumption habits and sustainability.

Liga Brikena – Ph.D. candidate and researcher at Riga Stradins University, and actively participates in Jean Monnet Modules and Horizon Europe research project implementation. She received her MBA in finance from Riga Business School, along with an academic and professional Master's degrees in Law. Parallel to her academic activities, she acts as a strategic investor in private business projects.

Tomasz Grodzicki – Assistant Professor at the Department of Economic Policy and Regional Studies, Faculty of Economic Sciences and Management, Nicolaus Copernicus University in Toruń. He holds a Ph.D. in Economics and Finance. His primary scientific interests include regional economics, innovation, environmental, and EU economic policies.

Stanisław Lipiec – lawyer, legal sociologist, and political scientist. His research interests include the European Union, the EU law enforcement and EU law in action; human rights and the judiciary; and the methodology and philosophy of law. Doctoral thesis on the cross-border provision of legal services in the European Union. In addition, expert of the European Commission and of governmental and non-governmental institutions; permanent court mediator.

Zane Šime – an Affiliated Researcher at the Norwegian University of Science and Technology (NTNU) focusing on the European Union's (EU) science diplomacy towards the Southern Neighbourhood.

CENTRE
FOR EUROPE
UNIVERSITY
OF WARSAW

Publications of the Centre for Europe Publishing Programme

Scientific journals

- "Studia Europejskie – Studies in European Affairs": 1–4/1997, 1–4/1998, 1–4/1999, 1–4/2000, 1–4/2001, 1–4/2002, 1–4/2003, 1–4/2004, 1–4/2005, 1–4/2006, 1–4/2007, 1–4/2008, 1–4/2009, 1–4/2010, 1–4/2011, 1–4/2012, 1–4/2013, 1–4/2014, 1–4/2015, 1–4/2016, 1–4/2017, 1–4/2018, 1–4/2019, 1–4/2020, 1–4/2021, 1–4/2022, 1/2023, 2/2023.
- "Yearbook of Polish European Studies": 1/1997, 2/1998, 3/1999, 4/2000, 5/2001, 6/2002, 7/2003, 8/2004, 9/2005, 10/2006, 11/2007–2008, 12/2009, 13/2010, 14/2011, 15/2012, 16/2013, 17/2014, 18/2015, 19/2016, 20/2017.

Books

- *Balkan Ambitions and Polish Inspirations: Experiences, Problems and Challenges*, eds. A. Adamczyk, G. Ilik, K. Zajączkowski, Warsaw 2022.
- J. Wiatr, P. Kozłowski, *O socjologii w Polsce Ludowej, Rozmów jedenaście (About Sociology in People's Poland. Eleven Conversations)*, Warszawa 2022.
- K. Zajączkowski, *Misje cywilne i operacje wojskowe w Unii Europejskiej. W perspektywie wybranych teorii Stosunków Międzynarodowych i Integracji Europejskiej* (*Civil missions and military operations in the European Union. In the perspective of selected thearies of International Relations and European Integration*), Warszawa 2019.
- O. Barburska, *Polityka wschodnia Unii Europejskiej jako część składowa polityki zagranicznej UE* (*Eastern Policy of the European Union as a Component of Foreign Policy EU*), Warszawa 2018.
- W. Czapliński, A. Serzysko, *Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych w Unii Europejskiej* (*Cooperation in the Field of Justice and Internal Affairs in the European Union*), Warszawa 2017.
- M. Rakusa-Suszczewski, *Cień radykalizmu. Pojęcie radykalizmu w świetle teorii ruchów społecznych (A shadow of radicalism. The notion of radicalism in the light of the theory of social movements)*, Warszawa 2016.
- A. Dziewulska, *Pokój po konflikcie: Bośnia, Afganista, Irak. Wnioski dla strategii bezpieczeństwa UE (Peace after conflict: Bosnia, Afghanistan, Iraq. Conclusions for the EU security strategy)*, Warszawa 2016.
- D. Milczarek, O. Barburska, *Past and Present of European Integration. Poland's Perspective,* Warsaw 2015.

- *European Union on the Global Scene: United or Irrelevant?*, ed. B. Góralczyk, Warsaw 2015.
- *Essays on Global Safety Governance: Challenges and Solutions*, ed. Patrycja Dąbrowska-Kłosińska, Warsaw 2015.
- *The European Union and Poland. Problems and Achivements*, eds. A. Adamczyk, P. Dubel, Warsaw 2015.
- O. Barburska, D. Milczarek, *Polityka wschodnia Unii Europejskiej: Porażka czy sukces?*, Warszawa 2014.
- *Unia Europejska jako aktor na scenie globalnej, Razem czy osobno?*, ed. B. Góralczyk, Warszawa 2014.
- *Poland and Turkey in Europe – Social, Economic and Political Experiences and Challenges*, eds. A. Adamczyk, P. Dubel, Warsaw 2014.
- *Introduction to European Studies, A New Approach to Uniting Europe*, eds. D. Milczarek, A. Adamczyk, K. Zajączkowski, Warsaw 2013.
- O. Barburska, D. Milczarek, *Historia integracji europejskiej w zarysie*, Warszawa 2013.
- *Co po postindustrializmie?*, eds. K. Wielecki, S. Sowiński, Warszawa 2013.
- A. Harasimowicz, *Bezpieczeństwo Polski 1918–2004. Granice, System międzynarodowy, Siła własna*, Warszawa 2013.
- *Europeisation of political rights: Voter Advice Application and migrant mobilization in 2011 UK elections*, eds. A. Dziewulska, A.M. Ostrowska, Warsaw 2012.
- *Practicioners' advice on EU project management*, ed. A. Dziewulska, Warsaw 2012.
- *New neighbours-on the diversity of migrants' political involvement*, eds. A. Dziewulska, A.M. Ostrowska, Warsaw 2012.
- *Poland in the European Union: Adjustment and Modernisation*, eds. A. Adamczyk, K. Zajączkowski, Warsaw–Lviv 2012.
- *Sieci informacyjne Unii Europejskiej w Polsce*, ed. M. Grabowska, Warszawa 2012.
- *Central Europe. Two Decades After*, ed. R. Riedel, Warsaw 2010.
- *Przestępczość gospodarcza. Problemy współpracy międzynarodowej*, ed. H. Machińska, Warszawa 2008.
- *„Inny" człowiek w „innym" społeczeństwie? Europejskie dyskursy*, eds. P. Mazurkiewicz, K. Wielecki, Warszawa 2008.
- *Poland in the European Union: First Experiences. Selected Political, Legal and Social Aspect*, eds. D. Milczarek, O. Barburska, Warsaw 2008.
- *Eastern Policy of the European Union: Role of Poland, Case of Ukraine*, eds. A.Z. Nowak, D. Milczarek, B. Hud', J. Borkowski, Warsaw 2008.
- *Kryzys postindustrialny: Interpretacje, prognozy. Perspektywa europejska*, eds. P. Mazurkiewicz, K. Wielecki, Warszawa 2007.

- *Rola Polski w kształtowaniu polityki wschodniej Unii Europejskiej na przykładzie Ukrainy*, ed. J. Borkowski, Warszawa 2006.
- D. Milczarek, *Unia Europejska we współczesnym świecie*, Warszawa 2005.
- *Regionalizm, polityka regionalna i Fundusze Strukturalne w Unii Europejskiej*, eds. A. Adamczyk, J. Borkowski, Warszawa 2005.
- *Fundusze kohezyjne i możliwości ich absorpcji w Polsce* (materiały konferencyjne), Warszawa 2004.
- *Globalization, International Business and European Integration*, eds. A.Z. Nowak, J.W. Steagall, M.N. Baliamoune, Warsaw–Jacksonville 2004.
- K. Wielecki, *Podmiotowość w dobie kryzysu post industrializmu. Między indywidualizmem a kolektywizmem*, Warszawa 2003.
- *On the road to the European Union. Applicant countries' perspective*, eds. D. Milczarek, A.Z. Nowak, Warsaw 2003.
- D. Milczarek, *Pozycja i rola Unii Europejskiej w stosunkach międzynarodowych. Wybrane aspekty teoretyczne*, Warszawa 2003.
- Globalization, *European Integration and...?*, eds. A.Z. Nowak, J.W. Steagall, Warsaw–Jacksonville 2002.
- *Suwerenność i integracja europejska*, eds. W. Czapliński, I. Lipowicz, T. Skoczny, M. Wyrzykowski, Warszawa 1999.
- I. Pawlas, H. Tendera-Właszczuk, *Poland's economy competitiveness with respect to the integration with the European Union*, Warsaw 1999.
- *Wybrane problemy i obszary dostosowania prawa polskiego do prawa Unii Europejskiej*, eds. P. Saganek, T. Skoczny, Warszawa 1999.
- *Subsydiarność*, ed. D. Milczarek, wyd. drugie, Warszawa 1998.
- E. Skotnicka-Illasiewicz, *Powrót czy droga w nieznane? Europejskie dylematy Polaków*, wyd. drugie, Warszawa 1997.
- *Le francais en Pologne. Mythes et réalités*, eds. J. Boutet, K. Wróblewska-Pawlak, Warszawa 1996.

Series „Studia nad integracją europejską"
(redakcja serii: P. Jasiński, T. Skoczny)
- *Elektroenergetyka (Electricity Supply Industry)*, Warszawa 1996.
- *Gazownictwo (Gas Supply Industry)*, Warszawa 1996.
- *Telekomunikacja (Telecommunications)*, Warszawa 1997.

Series „Dokumentacja akcesyjna"
(redakcja serii: T. Skoczny)
- Tom 1. *Dokumenty dotyczące przystąpienia do Wspólnot Europejskich Danii, Irlandii i Wielkiej Brytanii oraz Grecji (Documents Concerning the Accession to the European Communities of Denmark, Ireland, Great Britain and Greece)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.

- Tom 2. *Dokumenty dotyczące przystąpienia do Wspólnot Europejskich Hiszpanii i Portugalii (Documents Concerning the Accession to the European Communities of Spain and Portugal)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.
- Tom 3. *Dokumenty dotyczące przystąpienia do Unii Europejskiej Austrii, Finlandii i Szwecji (Documents Concerning the Accession to the European Communities of Austria, Finland and Sweden)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.
- Tom 4. *Rozszerzenie Unii Europejskiej na Wschód (Enlargement of the European Union to the East)*, Volume editor Bogdan Góralczyk, Warszawa 1999.
- Tom 5. *Przygotowania Polski do członkostwa w Unii Europejskiej (Poland's Preparation to Membership in the European Union)*, Volume editor Jan Borkowski, Warszawa 1999.

Series „Raporty z badań"

- *Prawne i ekonomiczne aspekty połączeń między sieciami telekomunikacyjnymi (Legal and Economic Aspects of Connections Between Telecommunications Networks)*, (kier. zespołu Tadeusz Skoczny).
  - Raport I. *Cellular Telephony and Connections Between Networks in the European Union*, Piotr Jasiński, Tadeusz Skoczny.
  - Raport II. *Ekonomiczne aspekty połączeń między sieciami w warunkach gospodarki rynkowej (Economic Aspects of Connections Between Networks under Conditions of Market Economy)*, Piotr Jasiński, Tadeusz Skoczny.
- *Liberalizacja łączności międzystrefowej w Polsce (The Liberalisation of Toll Connections Between Area Zones in Poland)*, Piotr Jasiński, Tadeusz Skoczny.
- *Raport zawierający ocenę stopnia adaptacji prawa polskiego do prawa wspólnotowego (Report on Harmonisation of Polish Law with the Community Law)*, (kier. zespołu Tadeusz Skoczny).

"Textbooks and Manuals" series

- *Practicioners' advice on EU project management*, ed. Agata Dziewulska, Warsaw 2012.

Warunki prenumeraty
kwartalnika naukowego „Studia Europejskie – Studies in European Affairs”

Zamówienia na prenumeratę prosimy składać e-mailem na adres:

sekretariat@aspra.pl, oficyna@aspra.pl

Prenumerata będzie odnawiana automatycznie na następny rok,
chyba że zleceniodawca prześle rezygnację na piśmie.

Wpłat na konto bankowe prosimy dokonywać koniecznie
z dopiskiem **Wydawnictwa.**

W 2024 r. cena netto czasopisma wynosi:

	cena pojed. numeru	cena w prenumeracie
„Studia Europejskie – Studies in European Affairs”; ISSN 1428-149X; e-ISSN 2719-3780	90 zł	70 zł

Do ceny egzemplarza należy doliczyć koszt przesyłki pocztowej.

Printing House:
Oficyna Wydawnicza ASPRA-JR
e-mail: sekretariat@aspra.pl
www.aspra.pl

„Studia Europejskie – Studies in European Affairs”
http://www.journalse.com

Cena 30 zł (+5% VAT)