On the Way to the Hungarian EU Presidency

Edited by
Tibor Navracsics – Laura Schmidt – Balázs Tárnok

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Opportunities and Challenges for the Hungarian EU Presidency in 2024 in the Field of EU Policies

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Tibor Navracsics – Laura Schmidt – Balázs Tárnok

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Foreword

After serving in the role in 2011 – and after the ensuing interval of over 13 years – in July 2024, Hungary will again take on a noble yet demanding task: for half a year, our country will assume the presidency of the Council of the European Union. It is no exaggeration to state that, in the period of more than a decade that has elapsed since our last mandate, we have witnessed events that have had a momentous impact not only on European integration but on the entire world. Over the last few years, we have survived a pandemic, have faced the horrors of a war unfolding in our proximity, and witnessed the emergence of an energy crisis unprecedented in scale. Even taken on their own, each of these events presented the European continent with a formidable challenge; as a cumulative whole, they have placed a greater burden than ever on the shoulders of the European Union's institutions and its member states.

The rotating presidency of the Council has always played an important role in handling current challenges. The presiding member state has the opportunity, for example, to set the Council's agenda and priorities, fine-tune its policies, and by chairing sessions, can bring the diverging interests of nations closer together. The Hungarian presidency, however, will not only reflect on the difficulties to be overcome, but also on reforming the EU's institutions to better address them. Accordingly, the strategic goals and policy guidelines set during this time will have a great impact on the entire following budgetary cycle.

Given all of the foregoing, it is clear that, while holding the rotating presidency has always set an important task for the nation assuming the role, Hungary will be facing an especially imposing set of challenges and tasks, given the current circumstances.

The University of Public Service is playing an important role in the preparations for Hungary's 2024 EU presidency. The university's Europe Strategy Research Institute will be publishing several collections of studies, thus contributing to raising awareness about academic research in connection with the presidency. In addition, due to its unique teaching portfolio, the university will provide specialised training for the diplomats and delegates who will be implementing Hungary's presidency. This book aims to contribute to these preparations, and to help ensure that our country successfully fulfils its mandate to hold the presidency of the European Council.

This book is the fruit of a three-year interdisciplinary research project which sought to make a scholarly study of the main policy issues relevant to the period of the Hungarian presidency, thus assisting in the preparations for the latter. Initiated and completed by the Europe Strategy Research Institute of the University of Public Service, this volume brings together experts who not only have unparalleled theoretical knowledge, but also practical experience in the day-to-day application of policies. The book deliberately endeavours to change perspectives by reviewing, on the one hand, overarching systemic phenomena, while also offering "snapshots" of the most pressing current challenges. By reviewing such heterogeneous and crucial issues as the Russian–Ukrainian conflict, regional policies, the protection of minorities, the rule of law, family policies, digitalisation, population ageing or the decade-long transformation of the community of nations, the

book's ambitions extend far beyond transmitting mere factual knowledge. It also offers readers a "behind the scenes" perspective that allows them to explore and understand the emerging academic and political conflict zones that underlie the decision-making processes.

The pieces in this monograph have been situated in the policy environment at issue, and thus explore how that policy background may influence the agenda of the Hungarian presidency and in certain cases the authors even offer recommendations in this respect. This volume responds to an important need, namely that of reflecting on the challenges of both the present and the future through the prism of cumulative integration-related experience, and does so in clear and accessible language, following a logical progression and offering scholarly insights that allows all of us to view these issues in a new light. It is for this reason that I can confidently assure our readers – whether they are politicians, scholars or members of the interested public studying the past in order to understand the present and foretell the future – that they have chosen the best possible material with which to pursue this undertaking.

Gergely Deli
Rector of the University of Public Service

Tibor Navracsics

Cohesion Policy

The aim of cohesion policy in the European Union is to create economic and social cohesion and reduce disparities in regional development. Due to economic developments and the enlargement of the Union, this task has now become a community-level objective, moving from intergovernmental cooperation to community-level cooperation. However, the uneven dynamics of regional development and the slower capacity of the bloc to respond to crises show that the European Union still has some way to go in this area in the future. The present paper traces the evolution of this policy. It describes the main stages in the history of cohesion policy and demonstrates how reducing regional disparities in development has become a community priority. It also examines the achievements of a policy that has been in operation for several decades and highlights the main challenges in this field. The Hungarian Presidency in 2024 can play an important role in addressing these challenges and shaping new directions for development.

A brief history of the policy

Although it was an important aspect of the creation of the common market from the very beginning for the founding fathers of European integration, the 1957 Treaty of Rome only minimally addressed the objective of reducing regional disparities. In the preamble of the Treaty, the signatories pledged to reduce disparities in development between regions and to reduce the development gap for less developed regions. Article 2 of the Treaty entrusted the future European Economic Community with the task of stimulating the harmonious development of economic activity across the continent and promoting steady and balanced expansion.[1]

While the objective was shared by all, the emergence of the policy at community level was hampered by the fact that the criteria and policy framework were completely new in post-war Europe. In earlier periods, regional development issues had rarely been a specific issue on the policy-making agenda. Traditionally, the problem of regions was largely a part of economic policy, as one of its sub-questions. It was regarded as a problem that market mechanisms would be able to correct, without state intervention. It was only with the rise of the idea of the interventionist state that it became clear that the government could also be responsible for helping regions that are lagging behind, to help them to catch up. This is linked to the development – in the post-war period – of a policy framework that soon made the territorial dimension of government policy meaningful at community level.

It is thus reasonable to state that regional policy was in its infancy in the 1950s. The *Cassa per il Mezzogiorno* in Italy was the first dedicated cohesion fund to attract

[1] Manzella–Mendez 2009: 5.

much attention and capital in Europe. It had a credible effect on the policy development which was slowly emerging in other western European countries, as it was included as an objective in the Treaty of Rome establishing the European Economic Community, although it did not become a community policy for some time.

Member States during this period were determined to keep regional policy within national competence and therefore only entertained the possibility of harmonising policies, not of creating Europe-wide priorities and objectives.[2] For instance, the central objective of regional development in post-WWII France was to counterbalance the predominance of Paris, an approach which played a major role in the development and growth of regional policy. To this end, a ministry was set up and the so-called DATAR system was created in 1963 to coordinate the territorial development activities of the various ministries.[3]

Economic problems at the turn of the 1950s and 1960s, including the coal crisis, created the need for an increasingly tangible community-led solution. The first steps in this direction were taken at the conference on regional economies organised by the Commission in 1961 and in the first Commission communication on regional policy in 1965.[4]

The next step was the creation of the Directorate-General for Regional Policy within the Commission in 1968.[5] At the turn of the 1960s and 1970s, the reform of agricultural policy once again drew attention to the regional cross-section of problems. In this vein, at the 1972 Paris summit, the Heads of State and Government of the Member States committed themselves to tackling regional problems. It was then that the idea of setting up the European Regional Development Fund, the first Community regional policy institution, was born.[6]

The first wave of enlargement in 1973 brought three new Member States – Denmark, the United Kingdom and Ireland – to the European Community, and the need to tackle regional disparities became even more acute. As a sign of this, the *Report on an Enlarged Europe* published that year – colloquially known as the Thomson Report after the first British Commissioner, George Thomson – made it clear that reducing disparities between regions was of paramount importance, because no community could survive if it was marked by significant differences in development from within.[7]

As a result of this realisation, and after lengthy negotiations, the Council decided in March 1975 to create the European Regional Development Fund (ERDF).[8] Increasingly strong cooperation in the second half of the 1970s and the first half of the 1980s gradually shifted the focus of regional policy away from strictly intergovernmental cooperation towards an ever-stronger Community-level approach.[9] The growing importance of the

[2] Manzella–Mendez 2009: 5.
[3] Faludi 2006: 671.
[4] Manzella–Mendez 2009: 6.
[5] Manzella–Mendez 2009: 7.
[6] Manzella–Mendez 2009: 8.
[7] Manzella–Mendez 2009: 9.
[8] Bourne 2007: 293.
[9] Manzella–Mendez 2009: 12.

policy is best illustrated by the fact that Jacques Delors, the new President of the European Commission, in his 1985 progress report, identified the growing regional disparities within the European Community as one of the most important problems of European integration. Following the accession of Portugal and Spain to the community, the gap in development between the regions made his words even more relevant.[10]

The realisation that the single internal market programme required regional disparities to be tackled at Community level was translated into action in the late 1980s. It was then that the Single Act of 1986 established the legal basis for community regional policy, allowing regional policy to formally enter the ranks of community policies.[11] Regional policy was introduced into the Economic and Social Cohesion chapter of the Single Act, with the task of ensuring overall coherent development. The three Structural Funds – the European Regional Development Fund, the European Agricultural Fund and the European Social Fund – were set up to serve this objective, and in February 1988 the Heads of State and Government agreed that it was necessary to develop a new regional policy.[12] 1985–1995 was the period when regional policy was developed on a community level. It was under the presidency of Jacques Delors, that the French dominance of policy, both in terms of staff and methods, was established, which determined the development of policy in general throughout Europe for decades.[13]

Following a decision of February 1988, a new regional policy system was gradually established in the second half of the year, based on five pillars. The first, the coordination pillar, required that the three separate funds for regional development – the European Regional Development Fund, the European Social Fund and the European Agricultural Fund for Rural Development – act in a harmonised way with regards to the development objectives of regional policy. The principle of concentration led to the prioritisation of the main objectives on a community-level and of community regional policy. The pillar for programming promoted systemic, multi-annual development programmes, as opposed to ad hoc interventions, and provided community support regarding their design. The principle of partnership required cooperation between central, regional and local entities in the planning and implementation of programmes. The principle of additionality stipulates that community funding cannot replace national funding.[14] The 1988 reforms clearly pointed in the direction of regional policy becoming part of the institutional architecture of the emerging European political system. The reform of the structural funds in that period made the principle of cohesion one of the most important principles of EU policies.[15]

Although the reform of regional policy in 1988 placed it on a completely new footing, the subsequent steps to reform the policy in the following years, although not as important in scope and depth, also proved decisive. The 1993 and 1999 reforms were more of

[10] Manzella–Mendez 2009: 13.
[11] Manzella–Mendez 2009: 14.
[12] Manzella–Mendez 2009: 14.
[13] Faludi 2006: 672.
[14] Bourne 2007: 298.
[15] Farole et al. 2011: 1090.

a fine-tuning exercise.[16] The importance of the 1993 reform lies in the fact that the Maastricht Treaty identified economic and social cohesion as one of the key objectives of European integration. To achieve this, the Cohesion Fund was set up to support infrastructure development in the less developed countries of the South, notably in Greece, Ireland, Portugal and Spain, to help them meet the convergence criteria for Economic and Monetary Union.[17] The Maastricht Treaty also introduced the Commission's obligation to produce a so-called Cohesion Report every three years, which assesses the EU's cohesion performance and may also provide proposals for policy reform.[18]

The 1993 reform was followed by the 1999 reform. This prepared the ground for the 2000–2006 programming period and was intended to respond to the problems that had arisen in the meantime. For example, it was at this time that tackling unemployment emerged as a priority, partly as a result of the introduction of a separate chapter on employment as laid down in the 1997 Treaty of Amsterdam.[19] Another reform followed in preparation for the 2007–2013 programming period. In this regard it is crucial to note the impact of the enlargement of the EU to the East, with ten countries joining the European Union in 2004 and two more in 2006 – Bulgaria and Romania.[20] The primary objective of this reform, adopted in July 2006, was to help the Lisbon Strategy to be implemented alongside integrating the newly acceded Member States.[21] Following these changes in 2006, the then seven-year financial cycle provided a stable framework for cohesion policy in the longer term. Thus, after several years of preparation, the latest reform took place in 2013.[22] However, the changes made at that time only adapted the instruments of cohesion policy to the needs and objectives of the new financial programming period, without leading to fundamental changes in the functioning of the policy.

While the spectacular development of the policy appears to be a clear success story to the outside observer, in reality the effectiveness of cohesion policy has been a source of great controversy from the outset. Many analysts dispute whether the interventions have actually altered the growth trajectories that the regions would have followed under purely market conditions.[23] Especially since the 1980s, it has been argued that despite the European Union's significant efforts to promote convergence between Member States, disparities within Member States have in fact considerably increased. This is particularly true when comparing the development of rural and metropolitan areas. The data shows that the main beneficiaries from EU regional policy, and of other market-based investment decisions, are metropolitan and agglomeration areas.[24]

This disparity is made clear in EU documents. The European Commission's eighth Cohesion Report identifies one of the greatest challenges facing cohesion policy today

16 Manzella–Mendez 2009: 15.
17 Bourne 2007: 295.
18 Manzella–Mendez 2009: 16.
19 Manzella–Mendez 2009: 16.
20 Manzella–Mendez 2009: 18.
21 Manzella–Mendez 2009: 19.
22 Bachtler et al. 2017: 1.
23 Farole et al. 2011: 1090.
24 Farole et al. 2011: 1091.

as the need for development policy to find ways of making rural areas more dynamic in directions that have not yet been explored.[25] This does not mean, of course, that the European Union's cohesion policy is a failure. However, a review of the lessons of recent years will greatly facilitate the identification of the objectives of the Hungarian Presidency for cohesion policy.

The achievements of EU cohesion policy

One of the innovations of the Maastricht Treaty concerning cohesion policy is the obligation for the European Commission to produce a cohesion report every three years. These cohesion reports aim to present the achievements of the cohesion policy and to set the agenda for the next three years by identifying the main challenges Member States are facing and to find the appropriate instruments to address them.

The European Commission published its eighth Cohesion Report in February 2022, entitled *Cohesion in Europe towards 2050.*[26] This document was undoubtedly published in one of the most difficult environments experienced to date. Whereas in the past, successfully effecting cohesion policy has generally been challenged principally by successive waves of enlargements, on this occasion it was the two-year-long coronavirus epidemic and its economic and social consequences which set the framework for cohesion policy and the direction it should take in the near future.

Despite these challenges, the report concludes that overall, territorial disparities within the European Union have decreased. The main drivers of territorial convergence have been the regions of Central and Eastern Europe, which have been steadily catching up with the rest of the European Union since 2001. Generally speaking, an analysis of the internal structure of the European Union shows that metropolitan regions in capitals are performing better than other regions. As an illustration of this, between 2001 and 2019, real GDP per capita grew faster in metropolitan regions than in the rest of the EU.[27]

The Commission's report also notes that the pandemic hit EU countries at a time when many of them were still recovering from the 2008 economic crisis. This is reflected in the data, which shows that while employment in Europe has improved in the last three years, regional disparities are still greater than before 2008. Nevertheless, a decrease of over 17 million people at risk of poverty and social exclusion between 2012 and 2019, mainly due to a clear rise in living standards in the eastern Member States of the EU, represents a major step forward in terms of social cohesion.[28] Looking at economic forecasts for 2023, GDP per capita is projected to be 2.6% higher in less developed regions due to the support provided under cohesion policy between 2014 and 2020.[29]

[25] European Commission 2022.
[26] European Commission 2022.
[27] European Commission 2022: 4.
[28] European Commission 2022: 7.
[29] European Commission 2022: 8.

Catching-up is the result of aggregated investments in different regions, either in a coordinated way or as a result of measures taken in separate policy sectors. The most notable policy areas for catching-up are investments in infrastructure, skills and innovation. However, while there are grounds for optimism about the pace of catching-up, this optimism is clearly limited by the fact that the overall progress is mainly concentrated in regions with more educated populations with the capacity to absorb innovation, while development in some less innovative regions – despite some progress – seem to be stagnating. Therefore, for all its successes, EU cohesion policy is struggling with the problem that the more dynamic rate of progress in certain regions is not being passed on to other, neighbouring but less well-developed regions, and cannot boost their convergence.

The challenges of cohesion policy

The policy challenges for the upcoming years, some of which are strategic, can be broadly divided into two categories, stemming from the programme of the Commission chaired by Ursula von der Leyen, who took office on 1 December 2019.[30] The five-year work plan is essentially built around two technological developments, known as the green transition and the digital transition. Environmentally friendly and sustainable energy production and use, decreasing the pace of climate change and establishing a development policy in supporting the digital transition are thus among the plan's key objectives.

It is clear from the Commission's Cohesion Report that there is a strong correlation between the level of cohesion within the EU and the development of environmental infrastructure. The quality of the digital infrastructure has a major impact on the chances of a region to catch up and progress, as well as affecting the opportunities for social mobility of certain communities. It is no coincidence that, according to the Cohesion Report, the real dynamics of catching-up are to be found in metropolitan areas. This is where the critical level of infrastructure in both quantity and quality that enables tangible development has been built.

The construction of the infrastructure to enable the green transition has a similar regional and social weight. Sustainable, environmentally friendly, independent energy production and energy supply is not only important to strengthen the autonomous economic potential of a region but can also be an important factor for growth. This is particularly true during this time of the Russian–Ukrainian war, when the energy dependence of certain countries and regions, including their dependence on energy suppliers is a key factor affecting economic growth.

However, it is very important to bear in mind when considering cohesion policy that it is not only about infrastructure development in a general sense. The dilemma identified by the Cohesion Report should help to frame the policy of the future. A solution must be found to the problem of the areas which are dynamically catching up being almost exclusively metropolitan regions. In other words, the task of cohesion policy is not only

[30] European Commission 2019.

to encourage and effectively implement infrastructure development, but also to extend the spatial impact of development to rural areas and small towns.

There is good reason to believe that, as well as accelerating catching-up in metropolitan areas the implementation of the green and digital transitions at the highest possible level, would also increase the rate of catching-up of other types of regions. Cohesion policy in the coming period should therefore prioritise and enforce territorial equality and equilibrium when implementing infrastructure development programmes.

The realisation of this priority is made more difficult by the fact that infrastructure development is a national competence. As a result, it may be coordination rather than a single set of instruments for development policy which has a role to play in the execution of future cohesion policy.

Another set of challenges for cohesion policy in the coming period are the emerging issues Europe is facing today. The worrying demographic situation on the continent is addressed in the Cohesion Report, which highlights the responsibility of cohesion policy in relation to the depopulation of parts of the European Union. Migration of population to central cities and regions of the European Union has always been a natural consequence of the completion of the single internal market and the free movement of labour.

At the same time, not only did the processes following the enlargement of the bloc to the East reinforce existing trends, but the opening of the labour market in Western Europe also posed new qualitative challenges for the catching-up and development of regions in Central Eastern Europe. In some countries, the outflow of young and skilled workers has reached levels as high as a quarter or more of the country's total population.[31] Even for the most affected new Member States, the scale of emigration is not evenly balanced across territories, which means that the most disadvantaged regions of the worst affected countries have experienced a dramatic decline in population.

The demographic challenge therefore involves not only the problems of a declining general population due to a declining birth rate, which is common on the continent, but also the need to improve the survival chances of the particularly depopulating regions of Northern, Southern, Central and Eastern Europe. In this respect, the Cohesion Report is clear: the more remote a region is from the centre of the European Union and the more rural its settlement structure, the greater the demographic challenges it faces.

At the same time, the demographic problem features on the agenda of decision-makers not only as an internal structural imbalance, but also as a problem for social integration and externality in the form of immigration. This has been particularly prominent since 2015, when successive waves of mass migration reached the southern and eastern borders of the European Union. The admission and care of hundreds of thousands of people fleeing from the Middle East and Africa, for economic or security reasons, put extraordinary pressure largely only on border regions in the first months. Soon, however, all the regions of the European Union were confronted with the short- and long-term problems caused by mass immigration. The problem of addressing the reception and care of refugees was soon followed by the need to tackle the issues of their social integration.

[31] O'Neill 2022.

From the outset, the European Commission has supported Member States in their efforts to promote the integration of immigrants. The future agenda of cohesion policy also emphasises the development and financing of policies to integrate immigrants into society and contribute to the economic regeneration of areas facing labour shortages as a result of demographic changes.

One specific type of migration crisis affecting the European Union is the recent refugee crisis which has been triggered by Russian aggression against Ukraine and which poses a major challenge for the future of cohesion policy. The war that broke out at the end of February 2022 displaced millions of people in a matter of days, placing enormous pressure on the EU's eastern borders and border regions.

During the migration crisis, Member States have been hit by a flood of refugees. However, the tasks of reception and care were quickly replaced by support for the social integration of earlier arrivals. Learning from the previous migration crisis, this time the European Commission sought to help Member States in need as quickly as possible by rapidly reallocating resources and mobilising existing instruments.

A long-term solution to the problem, however, requires an approach and a toolbox that goes beyond ad hoc solutions. Consequently, flexibility is likely to feature more prominently in the future in cohesion policy. One important question for the future success of the policy is the extent to which the Commission can complement the still rather rigid funding system, which is currently based on mid-term programmes, with instruments that allow for rapid-response assistance.

Given the inadequate EU response to these challenges so far, it is clear that one of the most important structural challenges for cohesion policy is to ensure flexibility. The requirement for flexibility is an important challenge for the future of the policy in two ways. On the one hand, it is important to support interventions in crisis situations that require a timely response, and this requires that reallocating resources between programmes and priorities be as free as possible.

The requirement for flexibility is seen by many as a refutation of one of the fundamental principles of cohesion policy, the principle of programming. Since its inception, cohesion policy has consistently sought to favour institutionalised development, with a focus on multi-annual programmes rather than ad hoc, crisis-managing interventions. While programming can be a highly effective medium- and long-term approach to the internal development of individual Member States and regions, the increasingly uncertain international environment and the recent spate of crises has prioritised flexibility.

It is unlikely that policy developments in the coming years will lead to either programming or the requirement for flexibility becoming the exclusive approach. Finding the right and effective balance between the two principles may be the secret to the success of the future of the policy. Programming plays a very important role in shaping territorial and social developments and guaranteeing their stability, at least in the medium term. Flexibility is a way of supporting the need for rapid action in the wake of a crisis. Efforts in recent years by Member States have clearly called for more flexibility without compromising the principle of programming.

Another interpretation of the principle of flexibility seeks to answer the dilemma of cohesion policy, which has faced the EU for decades. As the eighth Cohesion Report points out, while relatively less developed regions are catching up in the European Union, the process dynamics are more significant in urban or metropolitan areas, while rural areas benefit less from catching up. It seems, therefore, that the instruments and forms of intervention of cohesion policy serve certain types of regions well but are of little help to others.

The challenge for the period ahead is therefore to ensure that cohesion policy develops a flexible and nuanced set of tools and methods for intervention which support the various different types of regions while providing options that take their specific needs into account. Within the European Union, we can distinguish between regions with different characteristics, requiring different types of intervention. These include:[32]

- metropolitan regions in the core territory of the European Union
- metropolitan regions in peripheral or less developed territories of the European Union
- regions linked to metropolitan regions
- peripheral regions with relatively large populations and metropolitan centres
- rural and peripheral regions with low population density

This list indicates that the current policy of allocating resources to all regions on the basis of the same intervention criteria cannot be maintained in the future, given the new challenges and the constraints of the process of catching up. The long-term challenge for cohesion policy is therefore to develop the logic of a flexible system of instruments and interventions.

What can be expected during the Hungarian Presidency in the field of cohesion policy?

The Hungarian Presidency will start in July 2024, less than a month after the European Parliament elections, where the agenda will largely be determined by the reshuffling of the EU institutions. This will be the time when the new European Parliament and European Commission is formed, the new President of the Commission is presented, and the new President of the European Council is elected. These major institutional changes are likely to allow for only less ambitious policy plans to be implemented. The new Commission traditionally takes office on the 1st of November – possibly 1st of December – which also means that the outgoing Commission, which will be a partner during the first part of the Presidency, will no longer be interested in policy innovation. The incoming Commission will thus not yet have sufficient political strength and experience to take substantive policy action before the end of the year.

[32] Farole et al. 2011: 1101.

These circumstances, however, do not, of course, make it superfluous to set policy priorities for the Hungarian Presidency. All the challenges listed in the previous chapter will be on the agenda of cohesion policy in the second half of 2024. The implementation of regional policy programmes connected to the green and digital transitions, including their evaluation, will be as much a part of the discussions during the semester as proposals for dealing with demographic issues or migration.

Beyond the general tasks facing it, cohesion policy may well also be an important item on the agenda during the Hungarian Presidency. The European Commission's eighth Cohesion Report was due in 2021, and although its publication has been postponed to 2022, the Commission still expects the ninth Cohesion Report to be published in 2024, three years after its originally planned publication. This means that the Hungarian Presidency will fall within the period of the finalisation or publication of the ninth Cohesion Report.

Given the policy-shaping impact of the cohesion reports, the timing provides the Hungarian Presidency with a major opportunity to shape the future of cohesion policy. Through policy events, in cooperation with the Commission and Member States, the Hungarian Presidency can provide added value in this area. As it is likely that the major challenges of cohesion policy, which have already been outlined, will all be included in the report, the Hungarian Presidency should also be prepared to formulate its own views on each of these challenges and to make them heard in the upcoming debates.

The Hungarian Presidency can be a period of summarising and serve as a new beginning for the EU's institutional cycle. With the right preparation, this unique period offers a major opportunity to shape the future of EU policies in the initial preparatory phase of the 2028–2034 budget cycle. This is particularly true for cohesion policy, which in many aspects faces fundamental challenges and, in whose success, Hungary has a fundamental interest.

While it is not realistic to expect that the publication of the ninth Cohesion Report will provide the European Union with solutions to all the challenges facing cohesion policy, the search for solutions and the preparation of the cohesion report itself can provide important lessons and innovations for this particular area of policy. If at least partly accomplished during the preparation period for the Hungarian Presidency or during the Presidency itself, it could also – if successful – enhance Hungary's prestige. In addition, perhaps we can also find solutions to the difficult dilemmas of Hungarian territorial policy by drawing on European experience. All in all, we are looking forward to a game with a positive ending, for which the winners will be not only Hungary, the Member States of the European Union and the EU institutions themselves, but also the European Commission.

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Réka Varga

The Russian–Ukrainian War, the International World Order and the Role of the EU

Russia violated the most basic rule of international law, the prohibition of aggression, by attacking Ukraine. Russia's legal arguments for attacking Ukraine are not acceptable under international law. These arguments are, however, not new: similar legal arguments had already been used in other occasions, including by other states. At the same time, the war in Ukraine is an unprecedented violation of international law, which has fundamentally shaken the existing world order – the cornerstone of which is the prohibition of aggression, and in the creation of which the Soviet Union also participated. International law works well if its framework is clear, if it does not fall victim to arbitrarily broad interpretation, and if the compromise behind those rules still functions. Unfortunately, we have already seen several situations where these conditions were not met. The EU and its Member States have a stake in the survival of the existing international world order. On some issues, the EU has exhibited particularly strong cooperation and activity, while on other questions there are strong fault lines within the Union. What role the EU can play in resolving the conflict and preserving the existing international legal order remains a question.

Introduction

The Russian–Ukrainian war is evoking our darkest fears: a war in Europe which has a fundamental influence on us, either directly or indirectly. In addition to the loss of our feeling of security, another important and even more frightening feature is that it raises fundamental questions regarding the existing international legal order, at a time when clear frameworks are more important than ever.

It should be noted that war can be discussed and analysed from many perspectives. The analyst's assessment is influenced by their own field of expertise, experiences and impressions. For the author of these thoughts, war is not just a horrible but distant event that can be imagined based on photos or videos. If one has seen war up close and spoken to victims and their family members one has a more direct impression through individual stories of what war means to people, families, parents, children and society. Based on such experience, one forms an idea of the humanitarian consequences for individuals and communities. What does war mean to a family whose family member has been declared missing, who may rationally know that their loved one has died but for whom, since the body is not there, burial, which is absolutely necessary to process the grief, is impossible? What does war mean to an amputee child injured by an unexploded ordnance and to their family? What does this war mean for everyone, for every society involved? Communities are traumatised by war, and it takes at least a generation, or even more, for them to recover. At the same time, the reactions of states to war are fundamentally not humanitarian in nature. They are influenced by political, economic, security and

other factors, and when considering these, the perspectives of the victims are often not sufficiently represented. This is reality, but at the same time it is important to emphasise that war is not an abstract problem: behind it lies real suffering, lost or ruined human lives and trauma spanning generations. In addition to the objective legal questions related to war, subjective feelings and humanitarian aspects of war cannot be ignored: wars are inherently bad, including this one, and it would be best to end a war as soon as possible. Unfortunately, however, the situation is not that simple.

When it comes to the analysis of the Russian–Ukrainian conflict, many questions spring to mind and far fewer answers. Before 24 February 2022, most people did not honestly believe that a full-scale attack on Ukraine would happen; from the point of view of an international lawyer, the prohibition of armed violence seemed such a fundamental principle of international law and the international legal order today that no one thought that any superpower or great power would dare to break this rule so blatantly and so directly.

In the present study, the Russian–Ukrainian conflict and the ensuing questions will be discussed as they relate to international law and the international legal order, before finally focusing on what room for manoeuvre the European Union has in this situation.

The existing international legal order

A peculiarity of international law is that due to the sovereignty of states,[1] without its prior consent, nothing may be imposed on any state by any other power. Consequently, an international court can only act against a state if it has given its consent in advance,[2] and international organisations only have as much competence as the states have voluntarily given it, that is, as much as they transferred from their sovereignty.

The United Nations (hereinafter: UN), as a global international organisation, is partly based on the experience of its predecessor, the League of Nations, and partly on the negotiations between Churchill, Roosevelt and Stalin that already began during World War II. The aforementioned three great powers and China took part in the development of the basic principles and operating system of the UN and in establishing the competence of the General Assembly and the Security Council (hereinafter: SC).

Thus, after 1945, after experiencing the cataclysm caused by World War II and the terrible devastation of the nuclear bomb, the legal order – that we have known ever since, and in which we feel relatively safe, especially as a small state – was created with the establishment of the UN.[3] The devastating damage caused by World War II and

[1] UN Charter Article 2, paragraph 1: "The Organization is based on the principle of the sovereign equality of all its Members."

[2] Concerning jurisdiction see, e.g. Statute of the International Court Article 36, Rome Statute Article 12.

[3] The Charter of the United Nations was adopted in San Francisco on 26 June 1945. The Charter entered into force on 24 October. In Hungary it was promulgated by Act I of 1956 on Enacting the Charter of the United Nations. It had 51 members at the time of its establishment, and with the 144 members who joined later, today it has 193 Member States.

the deployment of the atomic bomb made it clear that war, as a way of settling disputes between states, can lead to the destruction of the entire world and that consequently interstate relations must be put on a different foundation. The general prohibition of the use of force did not exist in international law before 1945, and thus the initiation of war had not previously been prohibited by a general rule.[4] In 1945, the prohibition of the use of force was a huge innovation and formed the basis of the new world order. This is a so-called *jus cogens* norm, i.e. a norm requiring unconditional application,[5] which cannot be undermined, which no norm can contradict and which is therefore binding on everyone, under all circumstances. Only two exceptions were accepted: the use of force in self-defence, and in cases where the Security Council authorises the use of force to maintain international peace and security.

With the establishment of the UN, an organisation was created to serve as the main platform for dialogue between states, with the aim of maintaining international peace and security. Within the UN, the Security Council was authorised to adopt measures to maintain international peace and security. It is the only body of the UN and the only body in the international world order that can make a binding decision including, where appropriate, an authorisation for armed intervention.[6] As a result, while the UN has not become a global superpower, it is the only supranational body that can decide to use this kind of coercive tool. The five permanent members of the SC – USA, France, China, Russia and the United Kingdom – reflect the balance of power after World War II. In addition to the five permanent members, the SC has ten non-permanent, periodically re-elected members,[7] who make their decisions by majority. The true weight of the five permanent members is embedded in the veto: the SC can make a binding decision only if none of the permanent members of the Council raises a veto.[8] In this way, the most powerful tool of the UN lies in the hands of the five permanent members.

There are several measures that the Security Council can take to maintain international peace and security. After determining the existence of "any threat to the peace, breach of the peace, or act of aggression",[9] it can make recommendations or decide on harsher measures. These harsher tools fall into two types: measures not involving the use of armed force, and actions involving the use of armed force. Among the former are sanctions, which may involve the restriction or termination of economic or diplomatic relations, or any other means that may be suitable to enforce its decisions, by the Security Council calling on Member States to apply such measures.[10]

If the Security Council finds that these measures are inadequate, it can ultimately, as an *ultima ratio,* decide in favour of armed intervention to maintain international peace

[4] Kajtár 2018: 13.
[5] Kajtár 2018: 3.
[6] Henderson–Lubell 2013: 379–380.
[7] UN Charter, Article 23, paragraphs 1–2.
[8] UN Charter Article 27.
[9] UN Charter Article 39.
[10] UN Charter Article 41.

and security[11] by authorising voluntarily applying states or military organisations to carry out such intervention. This is therefore the strongest measure of the Security Council, and thus of the UN as a whole.

The prohibition of violence is therefore the basis of the existing international legal order. The other basic principles laid down in the UN Charter are inherently interrelated with the prohibition of the use of force and the principle of sovereignty. Thus, the obligation to settle disputes peacefully follows from the prohibition of the use of force, and the prohibition of interference in internal affairs is based on the principle of sovereignty.

In spite of this order, the prohibition on the use of force has been violated several times since 1945. In these cases, the aggressor state tried to disguise its act in a legal garb and use various arguments to present its act as legitimate. The arguments were usually related to an expanded interpretation of self-defence, in part because the existence or non-existence of the Security Council's authorisation can usually be determined objectively.

In the case of attacks on Iraq, Syria and Georgia, the attacker state invoked self-defence, framing the situation as pre-emptive self-defence.[12] However, beyond the legal evaluation and its obvious unfoundedness, there is significance in the fact that the attacking state tried to make its action legally acceptable, thus arguing for the legitimacy of its attack within the framework of the existing international legal order.[13] This shows that states believe in the validity of the legal order and think within its framework, even if they violate it.

In these cases, the reaction of the international community varied, and in general it can be argued that they were partly shaped by the corresponding self-interests of the states.

In 2003, the Iraqi operation launched by the USA and its partners, for example, clearly violated the prohibition of the use of force, although the reaction of the international community to it was mixed and not particularly strong.[14] The U.S. invoked pre-emptive self-defence, referring to weapons of mass destruction allegedly possessed by Saddam Hussein. The argument also indicated that previous SC resolutions, such as the resolution adopted in 1990 regarding the situation in Kuwait,[15] authorised the attack launched in 2002. There were two problems with the argument: a legal one and a factual one.

Pre-emptive self-defence is not included in the UN Charter. According to the Charter, in the event of an attack on a state, the attacked state has the right of self-defence. According to some, mainly Anglo-Saxon writers, this exception to the prohibition of the use of force may include the so-called pre-emptive self-defence, although only in the case of an imminent, known attack, if there is no other way to avoid the attack and the response is proportionate to the threat.[16] There is considerable debate about the legality of

[11] UN Charter Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

[12] Chinkin–Kaldor 2017: 130.

[13] Murphy 2005: 701–702.

[14] Sapiro 2003: 602.

[15] Security Council resolution 678 (1990).

[16] Schmitt 2003: 547–548.

pre-emptive self-defence in the international legal literature, and it cannot be concluded that it is generally accepted.

Regarding the existence of weapons of mass destruction, which was the basis of the argument for the Security Council resolution by the USA, a parliamentary enquiry in the United Kingdom[17] revealed that the attack on Iraq was launched despite the fact that there was no evidence that Iraq actually possessed weapons of mass destruction. The case caused a serious stir in the U.K.

The bombing of Belgrade in 1999 raised similar questions about the legitimacy of the use of force. NATO forces bombed Belgrade despite not having authorisation from the Security Council. At the same time, NATO referred to the fact that since Security Council resolution 1199 stated that the situation in Kosovo posed a threat to international peace and security, the military alliance had the appropriate legal basis for possible intervention.[18] On the other hand, NATO referred to the humanitarian situation in Kosovo, and thus to the necessity and legitimacy of humanitarian intervention. Humanitarian intervention is not generally accepted in international law, and although several states have indicated its acceptability since 1999, it is still controversial. In 1999, however, it was certainly not considered a legal basis for the use of force. Consequently, it can be stated that the bombing of Belgrade in 1999 did not comply with international law and constituted an act of aggression.[19]

The fact that the moral justification for the bombing was accepted by many states does not change its legal assessment. What is particularly interesting about the case is that three Security Council permanent members, namely the USA, the United Kingdom and France, also took part in the bombing. Although an initiative was put before the Council to authorise the use of force, such a draft resolution was not submitted in the end due to the expected Russian and Chinese veto. On the other hand, three states, namely India, China and Russia would have initiated the condemnation of the NATO bombing by the Security Council, but due to the expected American, French and British veto, a draft did not come before the Security Council.[20] Consequently, a real stalemate developed: due to the different positions of the permanent members of the Security Council, neither a resolution authorising the use of armed force nor one condemning its use could have been passed. From the point of view of international law it could be argued that this could mean that, on the one hand, there was no consensus on the authorisation to use force, and on the other hand, although the Security Council did not condemn the violence, three enormous states, accounting for half of the world's population, although not through a Security Council resolution, still condemned the bombing, thus partially answering the question on the general acceptance of humanitarian intervention, or rather the lack of its acceptance.

[17] See the *Chilcot enquiry* in House of Commons 2016; MacAskill 2016.
[18] Schwabach 1999: 408.
[19] Schwabach 1999: 405–418.
[20] Schwabach 1999: 405–418.

Russia has also used the protection of its 'own' population as a reason for armed intervention. In case of South Ossetia and Abkhazia, the protection of Russian citizens was the official reason for the armed intervention against the territory of Georgia in 2008. However, this rationale was very weak, since it was based on the 'passportisation' of the Russian-speaking population, which Russia consistently pursued. It is worth noting that similarly, in the eastern Ukrainian territories,[21] Putin announced in 2019, days after Zelensky was elected president, that he would make it easier to obtain a Russian passport in the separatist-controlled territories of eastern Ukraine.[22] The same thing happened in 2014 on the Crimean Peninsula, where Russia issued Russian passports to the Russian-speaking population living there.[23]

The other argument used by Russia, which also arose in the present Ukrainian conflict, was that the Georgian authorities were carrying out ethnic cleansing in South Ossetia and Abkhazia, and that Russian forces should intervene as quasi-peacekeepers.[24] Citing this reason is particularly bizarre after Russia did not accept the argument of humanitarian intervention to justify the bombing of Belgrade. It is also worth noting that peacekeeping operations can only be carried out with the consent of the state concerned, which in this case would have meant the consent of Georgia. At the beginning of the conflict, the independence of South Ossetia and Abkhazia was not recognised, even by Russia, so the argument differs from the case of the Eastern Ukrainian "states", where Putin started by recognising the two entities as states, and then referred to intervention by invitation.

As can be seen, in case of Ukraine, Russia's arguments were eerily similar to the arguments it and other states had previously used. On the one hand, Russia claimed that it is participating in a peacekeeping mission for the regions of eastern Ukraine at the request of the newly recognised "states", while on the other hand it cited the protection of Russian-speaking citizens, and claimed that Ukraine is committing genocide against the population living there.[25] If we try to translate these arguments into the language of international law, the notions of collective self-defence, self-defence and humanitarian intervention may arise.

Given the above, the Russian arguments for attacking Ukraine are actually not surprising. Russia's aggression against Ukraine began in 2014, when it invaded the Crimean Peninsula. It was an international armed conflict that continues to this day, and it is legally merged into the events of February 2022.[26] The occupation of Crimea is considered an international armed conflict despite the fact that it actually took place without active combat.[27] In connection with the conflicts in Donetsk and Luhansk starting in 2014, Russia

[21] In eastern Ukraine, 650,000 Russian passports have already been issued in the separatist-controlled areas of eastern Ukraine by the spring of 2021 (Dickinson 2021).
[22] BBC News 2019.
[23] Dickinson 2021.
[24] Borgen 2008.
[25] Green et al. 2022: 21–25.
[26] Green et al. 2022: 7.
[27] Qualifying the event, see Grant 2015: 87–89.

has denied its involvement all along, a claim strongly questioned by many.[28] The entry of Russian forces into the eastern Ukrainian regions on 22 February does not change the situation legally, nor does the invasion of the entire territory of Ukraine on 24 February. Naturally, in terms of the volume of the aggression, it is obviously a big change.

According to the principle of collective self-defence, a state exercising self-defence based on Article 51 of the UN Charter may ask another state for help. From Russia's perspective, this would be the Donetsk People's Republic and the Luhansk People's Republic, if these entities were indeed states in the sense of international law. However, considering that their declaration of independence is in no way compatible with international law, consequently they are not states, so the principle of collective self-defence cannot be applied.[29] Self-defence could be applied if Russia had been attacked. The alleged genocide committed against the Russian-speaking population cannot be a basis for self-defence either. Similarly, humanitarian intervention cannot serve as a legal basis, partly because the principle was not uniformly accepted by the international community, and partly because the atrocities committed in the eastern Ukrainian territories could not provide a basis for it. Based on all of this, it can be stated that Russia has been committing aggression against Ukraine since 2014, of which the events of February 2022 are a continuation. However, the severity of the military action that began in February far exceeds that employed in the previous events.

Interests and values

It is thus clear that the prohibition of violence, the interpretation of self-defence and collective self-defence, the content of the right to self-determination, the acceptance of humanitarian intervention, and even the interpretation of Security Council resolutions have all been the subject of political interpretation by states on several occasions. There is nothing surprising in this, since states frequently try to shape the legal framework according to their own interests. The arguments presented by Russia to justify its aggression were not new either: similar arguments had already been used by Russia and other states. However, the Russian attack in February 2022 reached frightening proportions both in terms of volume and message: it was an attack on the entire territory of a sovereign state in a brutal military action.

The Russian attack and the arguments of the Russian Government for it raise two points. First, such a violation of international law raises the question of whether the world order established in 1945 can be considered valid. Given that the party concerned is a permanent member of the Security Council which actively participated in the creation of the current world order, and considering the scale and effects of the attack on Ukraine, it could be asked whether the attack on Ukraine means that Russia does not consider the current world order valid, and thus the underlying political compromise has broken down?

[28] Demirjian 2015.
[29] Green et al. 2022: 18.

On the other hand, Russia tried to support its action with international legal arguments, which may indicate that it is still thinking within the framework of international law. The current conflict is thus also important because of these questions, and it has a large impact on the international legal framework of the coming years, and thus on the future relations between states. The issue is mostly considered regarding the prohibition of the use of violence as a cogent norm. This rule has been violated several times, but not to this extent. Although the rule requires unconditional application, if states violate it, it may lose its binding force.[30] That is why it is extremely important how other states react.

On 2 March 2022, 141 Member States voted in favour of a General Assembly resolution that deplores the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter and condemns it. Only five states voted against and thirty-five abstained.[31] Although the resolution is not legally binding, it is a clear sign of the evaluation of the international community of the situation. The General Assembly thought similarly with respect to the annexation of the four Ukrainian regions to Russia. In the resolution, according to 143 states, the arbitrary annexation of the four Ukrainian regions did not comply with the right to self-determination, and thus was not compatible with international law.[32]

Looking ahead, and in order to strengthen the framework provided by international law, it is important how states react to certain acts. Their reactions show to what extent they allow the frameworks to be stretched, which can, in turn, have an impact on the development of the rules. Especially in cases where the interpretation of international law can leave room for manoeuvre, the practice of states and their views on what they consider legal obligation can have a law-modifying and developing effect. The prohibition of the use of force is a norm that cannot be changed, but the notions of pre-emptive self-defence and humanitarian intervention are areas where the opinions of states can have an impact on the development and shaping of the law. Similarly, the exact framework of the right to self-determination is constantly evolving, therefore appropriate reactions to infringements can be an important tool to prevent these frameworks from being further loosened.

Regarding the prohibition of the use of force, the reaction of the international community could be simple, since it is a cogent norm, therefore it cannot be subject to change. However, if the Russian action initiates an avalanche of abuses and encourages other states to violate this rule, a situation may arise where the will of the states no longer stands behind the norms, which might lead to their erosion. This would be a dangerous trend, as it would change the entire framework that provides relative security first and foremost to small states. Therefore, the reaction to and the outcome of the Russian aggression is especially significant. Is it a case of one state massively violating this rule, but the international community continuing within the existing framework? Or does this entail the changing of the current framework? Likewise, what effect will it have on international institutions? The essence of the UN is that it includes all states. Russia left

[30] Green 2011: 237–241.
[31] General Assembly resolution A/RES/ES-11/1.
[32] General Assembly resolution A/ES-11/L.5.

the Council of Europe (hereinafter: CoE), and in parallel the CoE expelled Russia. It was suggested by some, mainly Western writers, that Russia should be similarly excluded from the UN. On the one hand, this is not possible due to the provisions of the Charter, as any amendment ultimately requires the consent of the permanent members.[33] On the other hand, it must also be taken into account that the UN has been a forum for contact and dialogue throughout the war.

The question was also raised several times about the actual significance of the UN if it is powerless in situations like this. Binding decisions of the Security Council can be vetoed by any of its permanent members. The use of the veto has been criticised on numerous occasions, but there is little hope of changing the regulations. The UN Charter cannot be amended without the agreement of the Security Council, nor can a binding decision be made without the five permanent members of the Council. It is also not possible to exclude a member (especially a permanent member) without the agreement of the Security Council.[34] Even if all of these were legally possible, it would again be a political question whether it would be rational to exclude and break off dialogue with a major political actor which has nuclear weapons.

Any attempt to provide a solution to this legal situation is doomed to failure. It was created in this way in 1945 for a reason. The permanent members are all nuclear powers. Launching a coercive operation against any of them without their consent would be a huge risk. The UN may therefore be powerless in this situation, but it is still a forum where dialogue and diplomatic relations take place. Moreover, the accusation of inaction can be attributed more to the Security Council than to other aspects of the UN, since other bodies, for example the UN General Assembly or the Human Rights Council reacted quickly to the events. In the latter, Russia's membership was suspended,[35] and a commission was established to investigate violations.[36] The General Assembly adopted two important resolutions with respect to the conflict. The General Assembly's role is important also because this is the forum where all states, the entire international community, appears, and so its decisions are not region-constrained. It is in the General Assembly where it is most visible how states evaluate an event globally, and not only from the prism of Western countries or other country groups. Developing countries are in the majority in the General Assembly; therefore, an array of viewpoints becomes apparent. From an African point of view, millions are at risk of dying of hunger because of this conflict, so for them the primary danger is not the security threat, but the skyrocketing energy prices, the food shortage, and the gradual deterioration of the economic situation and supply chains already affected by Covid. Amina J. Mohammed, the Deputy Secretary General of the United Nations,[37] and also the Secretary General of the United Nations have both

[33] UN Charter Article 108.
[34] MacLeod 2022.
[35] General Assembly resolution ES-11/3.
[36] The UN Human Rights Council launched an investigation into the crimes committed in Ukraine, see United Nations: A/77/533: Independent International Commission of Inquiry on Ukraine – Note by the Secretary-General, 18 October 2022.
[37] United Nations 2022a.

repeatedly warned that many millions of people will suffer from hunger in addition to the ones already in need due to the current conflict, even if the grain deliveries have begun.[38] This conflict, therefore, also has serious spillover effects, which require serious discussion in the multilateral fora.

The European Union as the main player in the settlement of the conflict?

Whether and to what extent the European Union will be able to play a major role in the settlement of the situation depends partially on who we consider to be direct or indirect participants to the conflict. There are different views on this. It seems certain that there will be no settlement without the United States. The EU and several Member States have tried to present themselves as key actors from the beginning of the conflict. Several states have offered to mediate and provide a venue for negotiations between the Russian and Ukrainian parties.[39]

In any case, it is certain that due to its proximity to the EU, especially for states situated in the East, this is a particularly sensitive conflict. At the same time, there are huge fault lines within the EU as to how it should handle this conflict, and whether it is even possible to take common EU action. There are many reasons for the divergent views, ranging from historical to demographic and geographic reasons. Concerning the actions of the EU, it can be concluded that there is joint action, but at the same time there are very large divergences within the EU among the Member States.

Condemning aggression and holding the perpetrators accountable is a common cause. The Union has been very active in this field. The European Council expressed strong opinions in several communications: it condemned the aggression and called on Russia to withdraw its troops from the internationally recognised borders of Ukraine. It assured the International Criminal Court and the Ukrainian Prosecutor General's Office of its support and encouraged the Member States to take steps towards ensuring accountability. All the EU Member States were among those that initiated proceedings before the International Criminal Court.[40]

A network was created with the support of the European Union's Agency for Criminal Justice Cooperation (hereinafter: Eurojust) to help Member States cooperate in their accountability efforts. Several EU Member States joined the so-called Joint Investigation Team (hereinafter: JIT), which investigates the most serious war crimes together with the Ukrainian authorities.[41] The International Criminal Court also joined the JIT, thus creating a complex network of cooperation. For Eurojust to assist prosecutions as effectively as possible, on 30 May 2022, an amendment to the previous EU regulation was adopted, which allows Eurojust to fully coordinate investigations that have already

[38] United Nations 2022b.
[39] Eurotopics 2022.
[40] 43 states referred Ukraine's situation to the International Criminal Court.
[41] It was established on 25 March 2022 with the participation of the Ukrainian, Polish and Lithuanian judicial authorities, after which four more EU Member States joined it.

been launched, by giving it the competence to store and analyse the collected evidence.[42] Consequently, on behalf of the European Union, very uniform and decisive action has been taken on the issue of accountability. This reinforces the relevant rules and the aim of 'no impunity' for international crimes. However, analysing earlier practice concerning accountability,[43] state courts, especially in respect of crimes for which they do not have 'normal' jurisdiction, but act on the basis of universal jurisdiction,[44] take many aspects into account when deciding on initiating proceedings. Such aspects include political, legal and diplomatic considerations.[45]

On the other hand, there is no consensus within the EU on the issue of sanctions related to Russia, and the positions on this seem to be increasingly diverging. When the sanctions packages were adopted, it became clear that Member States took different positions resulting from their difference in their dependence from Russian energy, the availability and financing possibilities of alternative resources, their geographical circumstances and other aspects. These positions seem not to have converged but instead to be moving further and further apart.[46]

Overall, it is in the interest of the EU and its Member States to maintain the current world order. International law-based relations are typically favourable for smaller states. Although, from a global point of view, certain European states can be considered important economic factors, they are not classified as great powers in the traditional sense. The EU, from a global point of view, does not represent a level of cooperation that would make it constitute a great power on its own. However, the EU traditionally tries to make its voice heard on international legal issues. Given that two of the Security Council's five permanent members are European states, European interests may feature in its decisions, but the United Kingdom's close relationship with the United States is another aspect. In the General Assembly, however, the EU and the European states are not considered to be determining powers, so they have less influence.

Conclusion

Opinions are divided on the usefulness of the sanctions introduced by the EU. Together with the U.S. sanctions, they can have an effect, and it is also worth considering that the EU is the only international organisation that has imposed sanctions on Russia. The EU's action in the field of accountability is also unprecedented. It seems that although the EU is trying to appear both economically and legally as a potential influencing actor

[42] Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022.
[43] Varga 2014: 160.
[44] In case of certain international crimes (war crimes, crimes against humanity, genocide), international law requires universal jurisdiction. Based on this, a state may or is obliged to initiate proceedings that would not have jurisdiction on either a territorial or personal basis (see e.g. For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field Article 49 (Geneva Convention I).
[45] Kress 2006: 572.
[46] Melander–Siebold 2022.

towards the conflict, it is still unclear what role it can play in its resolution. The impact of the Russian–Ukrainian conflict on the international legal order is not yet clear. This legal order was formed without the EU's involvement, and although both the EU and its Member States have a fundamental interest in the restoration of the present legal order, it is still uncertain what role it can play in achieving this.

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Tünde Fűrész – Balázs Péter Molnár

Addressing Europe's Demographic Challenges by Supporting Families Instead of Encouraging Migration

Two decades after Hungary's accession to the European Union, it will hold the presidency of the Council of the European Union for the second time. The demographic challenges facing Europe have intensified significantly since the first Hungarian presidency in 2011. Our country is taking over the baton at a time when no EU country is giving birth to enough children for population replacement. The trend until now has been that the desire to have children is declining in the formerly leading Western and Northern European countries, while in the countries of Central and Eastern Europe this desire keeps growing, at the highest rate in Hungary. In global comparison, population loss will mean a continuous decrease in the relevance of the European Union and its ability to enforce its interests. Yet the issue of population does not receive the necessary attention in European public thinking. Just as it did in 2011, during its first presidency, Hungary will again focus on encouraging the birth of European children in 2024. This objective is in line with the opinion of the European population, for whom the family is of paramount importance, and which thus requires support, and who believe that population loss should be tackled by strengthening families and not by encouraging inward migration.[1]

The family policy aspects of the first Hungarian Presidency of the Council of the European Union (2011)

Hungary's first EU presidency focused on the impact of the reconciliation of work and family life on demographic dynamics.[2] In view of the high importance of the issue, during its presidency, Hungary devoted an entire week of events to the topic, organising the *Europe for Families, Families for Europe – Population Issues and Policies Awareness Week* between 28 March and 2 April 2011 in Budapest.

In addition to public events, EU representatives from academia, politics and civil society discussed current issues of family policy and the best practices of individual Member States and family organisations at international conferences and at an informal meeting of European family ministers. At the end of the series of events, a festival entitled *Family Fiesta with Europe* was held, treating families to varied children's activities and cultural events.

The informal meeting of the EU ministers responsible for demography and family affairs was opened in Gödöllő by the Hungarian Prime Minister, Viktor Orbán, who emphasised in his speech that: "Children multiply the power of parents, the power of

[1] The original article was translated into English by Kriszta Kállay-Kisbán (Mária Kopp Institute for Demography and Families).

[2] Kormány.hu 2010.

the family, and the generation of children multiplies the power of a nation, a country and an entire civilization."[3] On 1 April 2011, the Declaration of the family ministers of the Presidency Trio Member States and Poland on the impacts of the reconciliation of work and family life on demographic dynamics was signed.[4] At a meeting in June 2011, the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) adopted the Council's conclusion entitled *Reconciliation of Work and Family Life in the Context of Demographic Change,* in which it welcomed the Gödöllő meeting and confirmed the need to address demographic challenges by improving the coordination of work and family life, since the lack of this prevents the children wished for from being born into European families.[5]

While it is an important principle of the EU that family policy-making falls within the competence of the Member States, it is a major achievement of the thematic week that the participants reached a consensus that, at an EU level, increased attention should be paid to the issues of population and families, as changing the prevailing attitudes to demographic and family issues is essential in order to maintain the competitiveness of the European Union and to preserve its economic and social system. In an exploratory opinion issued at the request of the Hungarian Presidency, the European Economic and Social Committee also reached this conclusion, and drew attention in its proposals to the importance of the exchange of practices supporting family formation between European Member States.[6] In order to strengthen this positive process, the Hungarian Presidency proposed that the European Union designate 2014 as the European Year of Families.

Despite the fact that the demographic situation of the European Union has further deteriorated in the decade since the first Hungarian presidency and that since 2015, its Member States are facing their biggest migration crisis to date, the issue of population and the survival of Europe has still not received adequate emphasis on the agenda of the EU institutions. Although from 2006–2013, at the initiative of the European Union, the European Demographic Forum took place four times, since 2013 the European Commission has not organised the event once. Despite the recommendations of European family organisations and broad social and political support, the reconciliation of work and family life did not become the theme of the European Year 2014. At the same time, the appointment of Dubravka Šuica as Vice-President of the European Commission for Democracy and Demography can be seen as a first step in the right direction.

While the issue of families and population was not considered a priority on the European stage, Hungary and Central Europe became the flag-bearers and primary advocates of family-friendly policies and addressing the issues faced by families. The declared goal of family-friendly government is to unite the actors who wish to act for families and to form an international pro-family alliance. Hungary has hosted the Budapest Demography Summit four times to date. During these events, at the highest

[3] Orbán 2011.
[4] Council of the European Union 2011a.
[5] Council of the European Union 2011b.
[6] Opinion of the European Economic and Social Committee on 'The Role of Family Policy in Relation to Demographic Change with a View to Sharing Best Practices among Member States' (exploratory opinion).

level, heads of state and government, church and non-governmental leaders, ministers, researchers, Academia, economic actors and journalists committed themselves to the cause of families. This high-level series of events shows that those concerned with demographic decline are not alone, and allows us to exchange ideas, learn best practices, help solve challenges and share our experiences and achievements. The second Hungarian Presidency, which runs from July to the end of December 2024, can thus take as one of its key priorities the goal of improving the population situation in the European Union by strengthening European families and promoting the desire to have children.

Overview

Europe is currently experiencing a period of demographic winter, with none of the populations of EU Member States producing enough children for population replacement. The number of births is decreasing: in 2021, a total of 4 million 66 thousand live births were registered in the European Union,[7] which is 392 thousand fewer than in 2011, a drop of almost 9%. As applied to Europe, the term 'the old continent' refers more and more to an ageing continent where fewer and fewer children are being born. The proportion of Europeans in the world's population is steadily decreasing: in 1960, 20% of the world's population was European, whereas today it is only 10%, and by 2070 it is expected to be only 6%.[8] In parallel, the EU accounted for 31% of world GDP in 2004 and for only 17.7% in 2021.[9]

As population decline is accompanied by a significant decline in economic performance, the EU is steadily losing ground in the face of increasingly fierce global competition. It is estimated that by 2050, six of the world's seven largest economies will be developing countries, led by China and India. Germany will be only in 9th place and the U.K. in 10th place. Two other G7 members, France and Italy, will drop out of the top 10 and 20 strongest economies, respectively.[10]

It is clear that, in addition to the desirability of population replacement, it is also an economic necessity to promote the birth of European children. In addition to the shortage of well-qualified workers in the short term, the sustainability of the social security and health insurance systems of each country is also a question in the medium term. According to Eurostat population data, in 1960, there were an average of three young persons (0–14 years old) for every person aged 65 years or more, while it is predicted that by 2060, there will only be two young people for every person aged 65 years or more.[11] For this reason, demographic trends, especially the evolution of birth rates, have a significance far beyond the demographic situation of individual countries. Therefore, an ageing Europe will need more European children to be born, as caring for inactive

[7] Eurostat 2023a.
[8] European Commission 2020.
[9] World Bank 2021.
[10] PwC 2021.
[11] Eurostat 2011.

elderly people is already a major challenge in the medium term. At the same time, the older generation, after decades of hard work, rightly expects to be recognised and valued by society, and not regarded as a sustainability problem.

Most developed economies suffer from significant labour shortages, especially in knowledge-intensive jobs. However, the decision-makers of the European mainstream do not typically include promoting the birth of European children among the solutions to this problem. Instead, they focus on migration, and as this solves their need for skilled labour in their high-tech economies in only a fraction of cases, the 'brain drain' from the Member States that have joined since 2004 is increasing, which could significantly weaken the economic opportunities of the sending country.[12]

The relationship between fertility and migration

The EU data from the decade between 2010 and 2020 show that the desire to have children has increased permanently in countries that wanted to reduce their population decline not by facilitating migration, but by supporting the birth of their own children and strengthening families. The average fertility rate in the EU Member States has fallen by 2.5%.[13] In Hungary, however, the fertility rate increased the most, by a quarter. Perhaps the significance of this positive change is better expressed by the fact that 150,000 more Hungarian children were born in the country in the last decade than if the willingness to have children had remained at the 2010 level. In the previous 10 years, fertility decreased in 19 Member States and increased in 8. Among the Member States following a liberal migration policy, the increase was significant only in Germany, while among the Member States rejecting migration and helping their own families to prosper, in addition to Hungary, in its Visegrád partners the Czech Republic and Slovakia, as well as Latvia and Romania, a substantial increase can also be observed. On the other hand, the desire to have children also decreased significantly in the leading migration destination countries such as France, Sweden, Belgium and the Netherlands.[14]

It is also worth examining the impact of migration inflows on Europe's social fabric. Pál Demény, a Hungarian demographer who has spent a significant part of his career in the United States, does not agree that mass immigration can solve Europe's demographic problems: "Mass immigration as a solution is an illusion – a temporary remedy that leaves bigger problems behind. Moreover, and above all, for Europe, relying on such a solution – replacing domestic births with immigrants – is a continuing excuse not to face the problem of fertility deficits."[15]

[12] Fűrész–Molnár 2020: 3–11.
[13] Eurostat 2023b.
[14] Eurostat 2023b.
[15] Demény 2016: 366.

In the European Union as a whole, only 5% of births could be linked to people from other Member States. However, the birth rate of non-EU arrivals is much higher, at 16%, with approximately one in six newborns coming from a foreign, non-European migrant background. In the 14 'old' member states, this ratio is as high as 20%, while in the 13 new members, it is only 3%.[16]

According to Eurostat data, in 2019 the countries with the highest proportions of non-EU nationals – excluding the outlier Luxembourg with 66% – were Cyprus (38%), Austria (34%), Belgium (33%), Sweden (31%), Malta (30%) and Germany (30%),[17] which reveals that Member States with larger populations are also affected. The proportion is somewhat lower, however, at about a quarter of foreign mothers in Spain (28%), Ireland (26%), France (25%) and Italy (23%). In addition, one in five newborns are being born to a mother born abroad in the Netherlands (21%), Greece (21%), Denmark (21%) and Portugal (20%).[18]

In the newly acceded Member States, only the Slovenian and Croatian figures of around 10% (traceable to the Yugoslav past) are worth mentioning, while in all the other recently acceded countries values below 5% can be measured. In Central and Eastern European countries, the overwhelming majority of births, about 95–96%, are from the native population, so these Member States are not characterised by the kind of ethnically, culturally and religiously heterogeneous population towards which the West is increasingly moving.[19]

For every hundred women aged 20–39 from outside the EU, there are one and a half times more live births in the 'old' member states of Western Europe than for women from the native population. The corresponding data for Member States which acceded after 2004 are only minimally different. If the 2019 live birth rates, taking into account the mother's origin, are applied to the total fertility rates, it becomes clear that the majority of the total fertility rates of countries in Western Europe can no longer be attributed to their native populations.[20] Even with the 'help' of migration, which causes significant social transformation and tensions, these countries are unable to maintain their population balance and slow down population decline, since their fertility rates are decreasing despite large-scale migration. In Sweden, which had a fertility rate of 2 in 2010, the value had decreased to 1.67 by 2020, to 1.63 in Ireland and to 1.83 in France.[21] On the other hand, in the more traditional Visegrád countries, whose demographic policies are not based on migration, a continuous increase in the fertility rate can be observed.[22]

[16] Eurostat 2022.
[17] Eurostat 2019.
[18] Eurostat 2019.
[19] Eurostat 2019.
[20] Eurostat 2021.
[21] Eurostat 2023b.
[22] Novák–Fűrész 2021.

European families or migration

The Századvég Foundation and the Mária Kopp Institute for Demography and Families have been examining the attitudes of European citizens towards families within the framework of the Project Europe for the past three years. In addition to the 27 EU Member States, the representative study they produced covers the U.K., Norway and Switzerland, where it examines opinions on the most important public issues affecting our continent, such as families, demography and migration.[23]

As part of the research, Europeans were also asked about their views on the relationship between migration, family support and demography. When asked, "Should your country rely on internal resources and support local families instead of migration?" more than two-thirds of European respondents agreed in all three years they were questioned, while nearly a fifth of respondents agreed with supporting migration in 2020 and a quarter in 2021 and 2022. The values of the former socialist countries and the V4 countries were 10 and 8 percentage points higher, respectively, than the two-thirds recorded in the EU as a whole. Romanians and Hungarians were the most pro-family with 88% and 87% expressing support, respectively. Respondents from Luxembourg (42%) and Sweden (31%) see migration as the best solution. In twenty-two of the thirty countries studied, a two-thirds majority expressed views in support of local families and not migration.

The research also addressed the question of how to tackle the demographic situation in Europe. Respondents were asked about their view of the statement "the problem of population decline should not be solved by migration but by increasing the number of children to be born". The proportion of those who agree with the increase in the number of children born increased by one percentage point each year and stood at 59% in 2022, as did the proportion of those who prefer migration (27%). This question also had the highest proportion of non-answers. A significant result is that twice as many Europeans would remedy the problem of population decline by encouraging the birth of children than by migration. The corresponding figures of the former socialist countries and the V4 countries on this question are also 12 and 9 percentage points higher than the EU average, respectively. While Ireland was the only country with a higher preference for migration, Hungarians (87%) and Lithuanians (84%) were the most in favour of promoting internal population growth. Migration was most strongly supported by respondents in Ireland (39%) and the United Kingdom (38%). It should be noted that in fifteen European countries supporting increasing the birth rate enjoys the backing of a two-thirds of the respondents. It is also a good indication of the political sensitivity of the topic that in seven Western and Northern European countries, nearly a quarter of the respondents did not respond to the question.

This representative study involving 30,000 citizens clearly demonstrates that, if they are questioned about their views, a large majority of Europeans expect the decision-makers to support families and help the birth of their children instead of constantly promoting migration as the only solution to population decline.

[23] Századvég 2021.

Intra-EU mobility

In addition to external migration processes to EU countries, it is also important to highlight the issue of internal mobility between Member States. Free movement of persons and free labour mobility is a fundamental right which is one of the four freedoms of the European Union. One of the most important achievements of the European Union is to ensure equal treatment for mobile EU citizens, workers and students. This non-discrimination also extends to family benefits for mobile EU citizens, which are guaranteed by the Treaty and a number of pieces of secondary EU legislation.[24] At the same time, it is important to keep the idea of equal treatment and the right to it on the agenda during our EU Presidency, stressing that we have recently been confronted with initiatives aimed at undermining this right. An example is the initiative aimed at the indexation of family benefits, which started with the Brexit process and was later explicitly embodied in some national legislation.[25] Indexation consists of reducing the family benefits that a Member State has to pay to an employee if their children live in another Member State where the standard of living is lower.

Indexation itself has faced strong opposition, with the Court of Justice of the European Union having stated in principle that indexation is based on the criterion of the children's place of residence in another member state when determining the amount of family allowances. This affects migrant workers to a greater extent, and therefore constitutes indirect discrimination based on nationality.[26]

Although indexation has been settled at the level of law, we should not forget about those tens of thousands of families whose benefits have been reduced overnight by indexation. They have thus experienced that their children are not treated equally to children living in another Member State. We have to do everything to safeguard the equal treatment that for decades we thought was unshakable, and which we suddenly notice has had a hole punched in it, meaning that in practice it negatively affected thousands of children, the vast majority of them in Central and Eastern Europe.

The comprehensive measures taken by each sending Member State to help families, their improved economic situation, wage levels and the processes that negatively affect the public security and social conditions of the host Western and Northern European countries have all contributed to the fact that in recent years more and more mobile workers have returned to Hungary and other Central and Eastern European Member States, thus improving the economic opportunities of the region. Recent statistics show that in 2020, 4,000 more people returned to Hungary than went to work abroad, while among the returnees there is a significant proportion of young people who are just about to

[24] Articles 18 and 45 of the Consolidated version of the Treaty on European Union; Articles 4 and 67 of the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the Coordination of Social Security Systems; Article 7 of the Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on Freedom of Movement for Workers within the Union.

[25] Gellérné Lukács 2019: 179–193.

[26] Judgement of the Court of Justice in the case C-328/20 of the European Commission vs. Republic of Austria. 103.

start their own family, who want to raise their children in a safe, family-friendly country. Similar trends can be observed in most Central and Eastern European countries.[27]

More children – a greener future

In order to preserve our continent as a European one, it is essential that Europeans' desire to have children is met in full. Research shows that European citizens still wish to have more than two children on average, so if the fertility gap in Europe could be reduced, the continent could improve its demographic situation considerably by using its own resources.[28]

However, many young people may be confused by today's fashionable opinions that blame childbearing or having a large family for climate change. As a result, they may abandon their childbearing plans or opt to have fewer children. It is important to note that protecting our environment and the ecosystem is our common responsibility. Families are at the forefront of this, as they want to pass on a liveable planet to their children and grandchildren. The ecological footprint of families is, in fact, significantly smaller than that of those without children. From the relevant research of KINCS, it is clear that the overwhelming majority of parents raise their children in an environmentally conscious way, and reject the statement that it is not worth giving birth to a child due to the ecological crisis.[29]

Conclusion

In line with Professor Pál Demény's belief that "migration policy can temporarily alleviate age distortion in the short term, but probably only at the cost of radically transforming the cultural and ethnic composition of the host society",[30] we propose a completely new approach in Europe as the theme of the second Hungarian EU presidency, an approach which is already proven in Hungary. Tackling demographic problems by helping families rather than encouraging migration would resonate well with the real needs of the European population, as we have seen that two-thirds of Europeans would support families and encourage childbearing, not migration, as the mainstream policy did in the previous decade. For the citizens of Central, Eastern and Southern Europe, the most important value is the family, as more than nine out of ten people affirmed.[31] This should not be forgotten on the European stage either.

[27] Gyeney 2020: 1074–1184.
[28] Századvég – Project Europe Research 2020, 2021, 2022; KINCS 2019: 10.
[29] KINCS 2020; KINCS 2021.
[30] Demény 2016: 219.
[31] Kiss-Kozma 2022.

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Balázs Tárnok

Opportunities and Challenges for the Hungarian EU Presidency in 2024 in the Field of Protection of National Minorities

The protection of the rights of national minorities and the promotion of their interests in the international sphere, and more specifically in the European Union, is a general priority of the Hungarian foreign policy. In recent decades, Hungarian governments submitted proposals to the different EU institutions on several occasions urging for the protection of national minorities at the EU level. What are the biggest challenges and opportunities for the Hungarian Government in promoting this issue in the course of their presidency of the Council of the European Union in 2024? What are the legal and political factors that may shape the room for manoeuvre of Budapest in this respect? What realistic expectations should the Hungarian Government set for the protection of the rights and interests of national minorities in the EU?

Introduction

The protection of national minorities is one of the cornerstones of Hungarian foreign and EU policy. In recent decades, Hungarian governments have submitted proposals to the different EU institutions several times urging for the protection of national minorities at the EU level. In July 2024, Hungary will take over the presidency of the Council of the European Union for six months. This study aims to examine what realistic aspirations the Hungarian Government should set in terms of promoting the protection of the rights of national minorities at the EU level within the framework of its 2024 presidential program.

The first part of the paper provides an overview of the legal and political framework for the protection of national minorities in the EU. It will briefly analyse the primary legal framework of the EU in this regard, highlighting the provisions that can form a legal basis for further legal acts by the EU with the aim of protecting national minorities. It will also provide an insight into how the different EU institutions and member states view the possibility of developing the EU legal framework in this area. The second part of the paper will investigate the legal and political factors that may determine the latitude of Budapest in promoting the EU-level protection of national minorities in the course of the EU presidency. In addition to the factors limiting Hungary's room for manoeuvre, I will identify opportunities for the Hungarian Government to put the protection of national minorities on the agenda of the EU.

The protection of national minorities within the EU

Legal framework

The most important point of reference for the protection of national minorities under EU law is Article 2 of the Treaty on the European Union (TEU), according to which "the Union is founded on the values of respect for […] human rights, including the rights of persons belonging to minorities". Under this article, the respect for the rights of persons belonging to minorities – which includes national minorities – is one of the EU's fundamental values. This value shall have the same weight as the other values listed by the same article, such as human dignity, freedom, democracy or the rule of law. At the same time, this status as a fundamental value does not imply new competences for the EU for the protection of minorities, since the rights of minorities fall outside the scope of the EU as listed in Articles 3–6 of the Treaty on the Functioning of the European Union (TFEU). The protection of national minorities is therefore considered a competence of the member states. Opponents of the EU-level protection of (national) minorities also argue that if the member states had wanted to waive their competence for the protection of minorities, they would have clearly provided for it in the Treaties.

This is partly the reason why there is no single secondary EU legal act that would provide legal guarantees for the protection of national minorities. EU law does, however, contain legal provisions that can be invoked to protect national minorities (according to Gabriel Toggenburg, more than 50 EU legislative acts refer to national minorities).[1] Even so, no EU legal act specifically aims to preserve the identity of national minorities. Nevertheless, the Treaties provide an opportunity to adopt legal acts for the protection of national minorities.[2]

In case T-391/17, Romania vs. Commission, on the registration of the *Minority Safe-Pack Initiative* (MSPI), the General Court stated that nothing should prevent the European Commission "from submitting proposals for specific acts which, as in the present case, are deemed to supplement EU action in the areas for which it is competent in order to ensure respect for the values set out in Article 2 TEU and the rich cultural and linguistic diversity laid down in the fourth subparagraph of Article 3(3) TEU".[3] Therefore, the European Commission may submit a legislative proposal aimed at increasing the protection of persons belonging to national and linguistic minorities within the EU competences. By specifying this, the General Court provided an important basis of reference for possible minority rights-related EU legislation.

The problem of the lack of secondary legal acts on the protection of national minorities is made particularly controversial by the fact that, although the EU requires candidate states "respect for and protection of minorities" based on the Copenhagen criteria, it does not establish any guarantees for the protection of minorities in relation to its own

[1] Toggenburg 2018: 362–391.
[2] Toggenburg 2012: 85; Toggenburg 2018: 389.
[3] Judgment in Case T-391/17, Romania vs. European Commission. 56.

member states. As a consequence, the protection of minorities within the Union is much less assured than in candidate states outside the Union, which is not at all compatible with the EU's fundamental values under Article 2 of the TEU. In the words of Bruno de Witte, for the EU, "concern for minorities is primarily an export product and not one for domestic consumption".[4] The most striking example of this controversial legal situation is Lithuania, where the legal act on minorities, adopted during Euro-Atlantic integration, was repealed in 2010.[5]

Another cornerstone of the current EU legal framework for the protection of national minorities is the prohibition of discrimination. Article 21 of the Charter of Fundamental Rights of the EU stipulates that discrimination against a person based on them belonging to a national minority is prohibited. However, the provisions of the Charter are addressed to the institutions and bodies of the Union and to the member states only when they are implementing Union law. Therefore, the Charter cannot be applied to the situations that most affect minorities, i.e. to violations or deprivations of their rights in the member states because these actions on the part of the member states are not about implementing EU law but instead fall within the scope of national law and competence. In addition, Article 19 of the TFEU generally provides an opportunity to combat discrimination based on protected characteristics, including 'ethnic origin'. However, it is questionable whether this article can be called upon to protect national minorities, as it only prohibits discrimination based on ethnic origin and does not provide for national minorities. The primary sources of EU law refer to ethnic origin and belonging to a national minority separately, which implies that the two are not the same. According to the Fundamental Rights Agency of the EU, Article 19 of the TFEU does not apply to discrimination based on belonging to national minorities.[6] However, there are also contradictory positions on this in the professional literature.[7]

A possible legal basis for EU minority protection is the respect for the EU's cultural diversity. Under Article 3(3) of the TEU, the EU "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced". In terms of the protection of national minorities, the most important dimensions of cultural and linguistic diversity are culture and language use. Pursuant to Article 167(1) of the TFEU, the EU "shall contribute to the flowering of the cultures of the member states, while respecting their national and regional diversity". At the same time, it should be noted that none of these areas fall under the exclusive competence of the Union, they are only supportive competences. As for the issue of minority language rights, EU documents more often refer to supporting regional or minority languages and cultures than to supporting minority groups itself. The protected value is not the right of persons belonging to the minority, given that in some member states these do not even

[4] De Witte 2000: 3.
[5] Manzinger 2019: 124–125.
[6] FRA 2010.
[7] Toggenburg 2006: 1–27; de Witte 2000: 19; Varga 2014: 140.

exist, but the minority languages as part of the European cultural heritage, as it is in the European Charter for Regional or Minority Languages of the Council of Europe.[8]

Political landscape

The legal framework described above, according to Ulrike Barten, it is a "first sign of possible schizophrenia. The EU claims to be based on the respect of minority rights; however, it has no competences to protect or further the respect of minority rights".[9] However, since nearly every tenth EU citizen identifies as belonging to a national minority (according to the pre-Brexit estimate, more than 50 million people),[10] the political weight of the issue is not negligible.

Bearing in mind that the biggest gap in the EU protection of national minorities is a (non-existent) secondary EU legal act aimed at the protection of national minorities, the political approach of the EU institutions that play a role in the ordinary legislative procedure should be examined, these being the two co-legislators, the European Parliament and the Council of the European Union, and the European Commission that is exclusively authorised to initiate the legislative procedure.

In recent decades, the *European Parliament* (EP) adopted numerous resolutions urging the development of EU legal framework for the protection of national minorities. These resolutions, however, are of political rather than legal relevance, since they have no binding force either for the European Commission or for the member states. Of the resolutions on this topic adopted by the European Parliament two should be highlighted, both from 2018. Firstly, the resolution on protection and non-discrimination with regard to minorities in the EU member states, which states that the EU has a responsibility to protect and promote the rights of minorities.[11] In the resolution, the European Parliament emphasises that there is a strong link between minority rights and the principle of the rule of law, and since Article 2 of the TEU expressly mentions the rights of persons belonging to minorities, these rights deserve to be accorded the same treatment as the other rights enshrined in the Treaties. The other relevant resolution is the one on minimum standards for minorities in the EU.[12] In this document the European Parliament proposed a comprehensive EU protection mechanism and called on the European Commission to draw up a common framework of EU minimum standards for the protection of minorities, consisting of a Commission recommendation and a legislative proposal for a directive, including clear benchmarks and sanctions. Even though the Parliament specifically called on the Commission to adopt the missing secondary legal act for the protection of national minorities, the Commission did not respond.[13]

[8] Kardos 2007: 124.
[9] Barten 2016: 107.
[10] Federal Union of European Nationalities s. a.
[11] European Parliament 2018a.
[12] European Parliament 2018b.
[13] Manzinger 2020: 7–30.

The other co-legislator, the *Council of the European Union* (Council), made up of representatives of the member states governments, has never included the issue of the protection of national minorities on its agenda (partly because the European Commission has never submitted a proposal for such an EU legal act). Furthermore, member states approach the protection of traditional minorities very differently; the scale ranges from assimilation policies to special constitutional guarantees for individuals belonging to national minority groups. On one side of this scale, as examples of best practices, we can place the Scandinavian countries, especially Finland, as well as Austria and Hungary, while on the other side we can place France or Greece as the worst examples in the EU. The former recognise numerous national minorities and provide them with various levels of self-determination, while the latter do not even recognise the existence of national minorities living in their territory, and therefore reject the concept of minority rights.[14] In addition, Bulgaria and Greece regard the minorities living on their territory as a danger and a national security risk,[15] while in Estonia and Latvia, a significant number of Russian-speaking people, who were brought in during the Soviet occupation, do not have Estonian or Latvian citizenship.[16] Among the EU member states, only Luxembourg, Malta, Portugal and Ireland do not have an appreciable number of citizens belonging to national minorities, while a significant number of national minorities live in the other 23 member states.[17]

However, the main reason for the lack of an EU guarantee system for the protection of national minorities, at least from a legal point of view, is that the *European Commission* has never put the protection of national minorities on its agenda, even though numerous minority protection organisations and the European Parliament in its resolutions have repeatedly called for it. For this reason, in the past few years the national minorities' advocacy activities have increasingly been directed at the European Commission. The European Citizens' Initiative (ECI) as a tool of the EU's participatory democracy provided a special opportunity for this. In the past ten years two initiatives were launched that directly or indirectly aimed to improve the EU's legal framework on the protection of national minorities.[18] An example of the latter is the initiative on national minority regions which collected the necessary number of signatures to proceed, but whose institutional review has not yet started since the organisers have not yet submitted the successful ECI to the European Commission. The other ECI is the *Minority SafePack Initiative* (MSPI), which also collected the necessary number of signatures. MSPI is a milestone in history of EU minority protection because citizens were able to force the Commission to put the protection of national minorities on the agenda for the first time. Although the European Commission rejected the package of proposals in its entirety in

[14] Vogel 2001.
[15] Manzinger–Vincze 2017: 15–16.
[16] Manzinger 2019: 119–120.
[17] Vogel 2001: 63.
[18] Tárnok 2020.

January 2021 without adopting a single proposal,[19] the MSPI made a solid case for EU minority protection and created strong political legitimacy for the issue.

Limitations and opportunities of the Hungarian EU presidency

The Hungarian Government's room for manoeuvre regarding the improvement of the protection of national minorities within EU law and politics in the course of its EU presidential term will be influenced by many factors, both positively and negatively.

Limitation – Presidency trio

One of the significant limitations of the Hungarian Presidency in promoting the idea of EU-level protection of national minorities are the approaches of the other two members of the presidency trio, Spain and Belgium, to the matter. Belgium and Spain cannot be considered supporters of EU-level and international minority rights protection. Belgium, for example, despite signing the Framework Convention for the Protection of National Minorities did not ratify it,[20] and did not sign the European Charter for Regional or Minority Languages.[21] Spain does not support EU-level minority protection either because of internal political concerns, including the independence movements in the country, such the Catalan and Basque movements.[22]

The presidency programs of the different member states are typically aligned with the program of the presidency trio, which is developed jointly by the three respective member states. This does not mean that it is not possible to put topics on the EU agenda that are not fully supported by the other two states, but it limits their chances. The submission and adoption of a legislative or strategic proposal usually does not take place within six months, which is why the successive presidencies are dependent on each other for the success of their respective proposals. Therefore, agreement between the trio members regarding the specific topics to be addressed is necessary to successfully complete the negotiation processes.

From this perspective, it is also relevant that after Budapest Warsaw will take over the rotating presidency. Although the political relationship between Hungary and Poland is very close on many points, the protection of national minorities is not an issue in which there is harmony between the two governments. The Polish political leadership is, rather, against EU-level minority protection, and in contrast to Budapest – but similarly to Slovakia, Romania, Greece and other member states rejecting EU national minority protection – it interprets the proposals made in relation to the EU protection of national

19 Tárnok 2021.
20 Council of Europe s. a.a.
21 Council of Europe s. a.b.
22 Tóth 2014.

minorities as a stealthy effort to unlawfully expand EU competences. A good example of this is that the representatives of the Polish ruling party, Law and Justice (PiS), all abstained during the vote on the European Parliament resolution supporting the MSPI on increasing the protection of national minorities in the EU (see later).

Limitation – Lack of EU competences

As explained above, the EU does not have competence in the area of the protection of national minorities, which is the biggest limitation of any EU action in this field. At the same time, the protection of the rights of persons belonging to minorities is one of the core values of the EU, which compensates for the limitation arising from the lack of competence in terms of action to protect national minorities.

According to an opinion of the Commission of European Communities from 2003, moreover, the scope of Article 7 is not confined to areas covered by EU law. "This means that the Union could act not only in the event of a breach of common values in this limited field but also in the event of a breach in an area where the member states act autonomously."[23] This interpretation raises serious political questions, since it may also mean that EU institutions can initiate procedures of a much more political than legal nature against member states in areas falling under the exclusive competence of the member states. On the other hand, this interpretation also leaves open the possibility for EU institutions to increase their activities in the field of protection of the rights of persons belonging to national minorities and thus to enforce the value as enshrined by Article 2 of the TEU. Taking into consideration the political realities, however, this scenario is unlikely to materialise for the time being, as the EU institutions generally refrain from holding member states accountable for the protection of national minorities.[24]

In addition to the legal aspects, the lack of EU competences also has political relevance. The protection of national minorities at EU level is opposed by many member states, especially Romania and Slovakia, on the grounds that it would result in a stealthy and illegal expansion of EU competences.[25] In recent years, the Government of Hungary has itself actively spoken out against the unlawful extension of EU powers. Thus, if Hungary was to come up with proposals concerning the scope of competences in the field of the protection of national minorities, several member states could accuse the Hungarian Government of supporting the stealthy expansion of competences, which could narrow down Hungary's room for manoeuvre in other political areas.

[23] Commission of European Communities 2003.
[24] Vizi 2013: 59–62.
[25] See, for example, the arguments submitted by Romania and Slovakia in the court proceedings at the Court of Justice of the EU in the cases on the registration of the MSPI and the ECI on national minority regions.

Limitation and opportunity – Protection of minorities as a progressive and/or conservative goal

Another possible limitation on the scope of action of the Hungarian presidency of the EU, but also a possible opportunity, is the particular characteristic of the protection of national minorities that it can be seen as being part of both the conservative and progressive agenda. This partly stems from the fact that the rights of national minorities have both an individual and a community-based collective dimension. The purpose of the individual dimension of national minority rights is to ensure equal treatment for individuals belonging to the minority and the majority by providing them with certain rights through which they can enjoy individual freedom (this approach is fully in line with the individual human rights approach). However, national minority rights also have a collective dimension that aims to protect the group itself in order to maintain the specificity of the minority group, and thus to preserve the values that national minorities represent in the society of the territorial state (this approach goes beyond the human rights perspective, since the concept of human rights is based on individual rights and cannot encompass the community segment).[26]

Accordingly, the progressive approach to the protection of national minorities is based on the freedom and dignity of the individuals belonging to the minority group. The EU, under Article 2 of the TEU, defines respect for the rights of persons belonging to minorities as a fundamental value of the EU. As articulated above, 'minorities' under Article 2 shall be interpreted broadly; various different types of minorities are the subject of this provision, including national minorities. These different minority communities obviously struggle with different challenges, but they are united by the fact that the individuals belonging to these groups require special attention in order to ensure that these individuals are not disadvantaged compared to the members of the majority due to their characteristics, those that define the minority group. Additional values of the EU as enshrined in Article 2 of the TEU, such as equality, non-discrimination, tolerance and solidarity, further strengthen this interpretation.

The conservative approach to the protection of national minorities, however, responds to the community dimension of minority rights, that is, to the objective of preserving the characteristics of the minority as a group: the characteristics that are fundamental to preserve its national, linguistic, cultural or religious identity. Regional cultures and national characteristics, including the characteristics of national minorities, enrich Europe, while the language, culture and other elements shaping the identity of national minorities are part of the common European heritage. It is not only the different nations that make Europe truly diverse, but also the languages, cultures and traditions of its national minorities. In this approach, the protection of national minorities and the promotion of the preservation of their identity clearly coincide with conservative objectives.

In practice, however, the European conservative political parties are frequently the biggest obstacles to the EU-level protection of national minorities. A good example

[26] Tárnok 2022: 14–21.

for this is the adoption of the resolution on the MSPI in the European Parliament on 17 December 2020, and more specifically the results of the vote. The plenary of the EP adopted the resolution with a large majority; 524 yes, 67 no and 103 abstentions.[27] An analysis of the vote results shows that of the group of the Socialists and Democrats (S&D) and Renew Europe only the Romanian, from the Greens/European Free Alliance only the Spanish, and from the Left (GUE/NGL) only the French representatives voted against the proposal or abstained, while the vast majority of members of these party groups voted in favour of it. The situation was similar in the European People's Party (EPP), where Romanian, Bulgarian, French, Slovak and Czech representatives voted against the proposal or abstained but otherwise the group supported the resolution. The representatives of the political groups Identity and Democracy (I&D) and European Conservatives and Reformists (ECR), however, voted against the MSPI, or abstained during the vote. Among these opponents of the MSPI, and thus of the development of the EU-level protection of national minorities, we find the Polish governing party, Law and Justice (PiS), the Brothers of Italy (Fratelli d'Italia), the Spanish VOX, the French National Rally (RN) led by Marine Le Pen and the German Alternative for Germany (AfD). Of the large European conservative parties only the representatives of the Italian Lega, led by Matteo Salvini, voted in favour of the proposal, and of course the representatives of the Hungarian Fidesz and Christian Democratic People's Party.[28]

This illustrates that while at the European level the left-wing, progressive and centrist political parties, with a few exceptions, supported the proposal aimed at increasing the protection of national minorities, the overwhelming majority of right-wing and conservative parties, with a few exceptions, definitively opposed it.

Opportunity – Political legitimacy created by the Minority SafePack Initiative

From the perspective of the Hungarian presidency, in order to promote the EU-level protection of national minorities, the political legitimacy gained by the MSPI in recent years may be seen as an opportunity. Although the European Commission rejected the package in its entirety on 14 January 2021, without presenting a single legislative proposal or any other action plan,[29] the initiative cannot be considered a complete failure due to the legal options still available to challenge this decision and the political support the organisers have managed to demonstrate in the past few years.

As regards the legal options, on 24 March 2021, the organisers of the MSPI challenged the European Commission's communication at the General Court of the EU requesting the annulment of the Commission's decision. The General Court in its judgment on 9 November 2022, rejected the application upholding the decision of the European

[27] European Parliament 2020.
[28] Minutes of Proceedings. Result of Roll-call Votes – Annex. European Parliament, 17 December 2020.
[29] European Commission 2021.

Commission.[30] The Court concluded that the steps already taken by the EU and other international organisations, such as the Council of Europe, to emphasise the importance of regional or minority languages and to promote cultural and linguistic diversity in the EU, are sufficient to achieve the objectives of the initiative. The organisers, however, took the decision to bring an appeal before the Court of Justice against the decision of the General Court.[31] Therefore, the legal path is still open to the organisers.

As to the political status of the MSPI, in addition to the supporting signatures of more than one million EU citizens, the political legitimacy of the initiative is also demonstrated by the fact that many member state parliaments and governments, as well as the European Parliament, have assured their support for the package. On 17 December 2020, the European Parliament adopted a resolution supporting the MSPI with a large majority (524 in favour, 67 against and 103 abstentions).[32] In the document, the EP supported all the elements of the package and called on the European Commission to present legislative proposals in accordance with the ECI. The organisers and the Federal Union of European Nationalities (FUEN), which coordinates the EU-level campaign of the ECI, have also made remarkable advocacy efforts in recent years in order to gain this broad political support. Besides the European Parliament, several EU member state and regional parliaments also adopted supportive resolutions, such as the German Bundestag (in an unanimously adopted decision), the Hungarian Parliament and the Dutch upper house. This political support can be used as important points of reference for later advocacy, including for the Hungarian presidency, to demonstrate not only the legitimate demands of national minorities, but also the political support behind the proposal in the EU.

Moreover, an ECI rejected by the European Commission can also contribute to the achievement of its goals. Regardless of the Commission's decision, if an ECI managed to successfully thematise its goals in the European Union, it can exert political pressure on decision-makers and thus eventually achieve its objectives. In the case of the *Stop Vivisection* ECI,[33] for example, although the European Commission refused to submit a proposal for a legislative act, the initiative generated both a lively political debate and scientific discourse, including at the European level, and the organisers managed to secure wide media coverage for the initiative, which eventually contributed to promoting animal welfare and protection in the EU.[34] Furthermore, if the European Commission has refused to submit a legislative proposal once, in accordance with an ECI, that not necessarily means that the proposal is buried forever because the Commission may want to take the initiative up again years after rejecting it. This happened in the case of the *Right2Water* ECI.[35] The European Commission initially rejected the initiative,

[30] Judgment of the General Court of 9 November 2022 in Case T-158/21, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' vs. European Commission.
[31] Federal Union of European Nationalities 2023.
[32] European Parliament 2020.
[33] European Union 2012a.
[34] Menache 2016: 386.
[35] European Union 2012b.

as happened with the MSPI, but six years later it submitted a legislative proposal in the scope of the initiative, also referring to the will of EU citizens demonstrated in the course of the signature collection. This scenario is not completely excluded in the case of the protection of national minorities and the MSPI.

Opportunity – The example of the European Roma Strategy

Adopting the European Roma Strategy, as an example of a good practice, might also be seen as an opportunity for the Hungarian presidency to promote the protection of national minorities. During the previous Hungarian presidency, on 19 May 2011, the Council approved the European Commission's communication entitled *An EU Framework for National Roma Integration Strategies up to 2020,*[36] in which the Commission encourages member states to comprehensively promote the social and economic integration of the Roma minority. As a continuation of this communication, the Commission adopted the EU Roma strategy on 7 October 2020.[37] This document defines EU-level objectives, as well as target values and minimum commitments for all member states, which may be supplemented by additional national efforts and EU support depending on national conditions and the number of Roma people living in the territory of each member state. Based on the Roma strategy, the Council finally adopted a recommendation in March 2021.[38] Although neither the EU Roma strategy nor the subsequent Council recommendation is legally binding, it can be considered a step forward from a political point of view, as it provides an overview of the challenges faced by the Roma on a daily basis and offers solutions to address these challenges.

A document similar to the EU Roma strategy would be an important step in order to draw the attention of the EU to the challenges of national minorities in Europe. If the EU truly wants to upheld its fundamental value under Article 2 of the TEU, namely to ensure respect for the rights of persons belonging to minorities, the EU institutions and member states must not turn a blind eye to the concerns affecting almost 10% of the Union. However, unlike the Roma strategy, the central element of the strategy for national minorities should be a guarantee system for the preservation of cultural and linguistic diversity, the sustainability of regional languages and cultures, the preservation of the national, linguistic, religious and cultural characteristics of traditional European regions, and the preservation of the identity of national minorities.

[36] European Commission 2011.
[37] European Commission 2020.
[38] Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation.

Conclusion

The EU legal framework for the protection of national minorities is weak, but this should not necessarily be the case. Although a comprehensive solution would be the amendment of the Treaties, for political reasons the elevation of the protection of national minorities to the scope of competences of the EU cannot be considered a viable proposition at the moment. Despite this, even within the currently applicable legal framework of the EU, and specifically the Treaties, it should be possible to adopt EU legal acts that ensure actual progress and provide protection to national minorities. However, the European Commission has so far refrained from initiating such legislation, as was seen in the rejection of the MSPI. In addition, several member states categorically reject the promotion of minority protection at the EU level. At the same time, other member states and the European Parliament have also firmly stood up for the need for EU-level protection of national minorities, which represents an opportunity to continue the political discourse.

The two other members of the 2023–2024 EU presidency trio, Belgium and Spain, are not likely to help, and may even actively hinder the Hungarian Government's efforts to promote the protection of national minorities within the framework of the presidency program. In addition, the limits of EU powers significantly limit the Hungarian presidency's scope for effective action. Moreover, if the Hungarian Government attempts to go too far in this matter, it may also incur the disapproval of its partners who also represent a sovereigntist position, and on whom it would otherwise rely on other issues during the rotating presidency.

Moreover, in May 2024 European Parliament elections will be held in the EU member states, as a result of which the new European Parliament is expected to be formed at the beginning of July, and a new European Commission is expected to be elected and to enter office in the autumn of 2024 (after the 2019 EP elections, the new Commission led by Ursula von der Leyen took office on 1 December 2019). Therefore, there will be a change of institutional cycle in the European Union at the time of the Hungarian presidency which may cause additional difficulties in the implementation of the Hungarian presidency's priorities.

In light of all this, there is little chance that the Hungarian presidency will be able to achieve such a resounding success in the protection of national minorities at the EU level that it could result in the adoption of a binding legal act in the short term. In this regard, the Hungarian presidency is hindered by legal and political constraints. Despite this, the Hungarian Government, as a European advocate for the protection of national minorities and because of its responsibility towards Hungarians across the border, cannot omit the topic from its presidency program. As such, a realistic objective may be to put forward a soft proposal using the good practices of the adoption of the EU Roma strategy. Even though this document could not in the short term provide effective legal protection for national minorities, it would be an important stepping stone in the decades-long process that will eventually lead to the establishment of an EU-level guarantee system for the protection of national minorities.

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Réka Zsuzsánna Máthé

When Do Sanctions Work? The Cases against the Soviet Union and Russia

The purpose of imposing economic sanctions is to respond to a violation of international law or a deviation from the rules adopted by the international system. According to theories of public choice, interest groups influence political decision-making in order to derive benefits from the political process. Targeted sanctions (smart sanctions) focusing on policy makers are supposed to increase the costs to policy makers and reduce the damage that country level embargoes would inflict on the general public. However, targeted sanctions do not always achieve their expected policy outcomes, which raises questions about the design and effectiveness of targeted sanctions. The aim of this paper is to examine the factors that make targeted sanctions more effective. The study analyses data from the Global Sanctions Database (GSDB) and pays particular attention to sanctions imposed by members of the international community, including the European Union, against the Soviet Union and Russia. The conclusions drawn from the literature and the historical examples suggest that sanctions against Russia have only, at best, slowed down its actions. The main factors causing this are: lack of a strong opposition, the relative value of economic loss versus perceived or real political values, and the economic and political interests of third parties.

Introduction

The role of economic power as a diplomatic tool and as part of soft power has been known since ancient times. Throughout history, many countries have introduced several measures as a way to fill the gap between ineffective diplomatic declarations and military intervention. Most unilateral sanctions have been introduced by the USA, making it the largest sender country.[1] However, the power of the USA and of its unilateral sanctions seems to be strongly decreasing – sanction resistance has been developing as countries are doing their best to circumvent U.S. and Western sanctions, particularly the financial ones.[2]

The sanctions against Russia introduced in 2022 by the international community are very comprehensive and public opinion in the West has been led to hope that the measures will eventually lead to the end of Russia's military intervention. The following article will focus on sanctions, with a special focus on the measures introduced against the Soviet Union and the Russian Federation. After introducing the main concepts of the sanction literature, this chapter will present the debate on the effectiveness and success of sanctions as viewed by policymakers and by academics. Next, it will closely examine cases of sanctions being introduced against the Soviet Union and the Russian Federation.

[1] Jentleson 2021: 12.
[2] Demarais 2022.

While past events do not necessarily determine how the current situation will play out, analysing such historical examples can teach important lessons on how and when sanctions against Russia might be more effective and successful.

The literature of sanctions often refers to the *target country,* even if the measures introduced in recent decades did not affect entire countries but instead the political regime of a given country, a given organisation or a group operating within a given country. Today, most of the sanctions single out specific persons, businesses and other organisations within the target countries. Terrorist groups (such as ISIS, al-Qaeda), criminal organisations and drug rings are also singled out for sanctions within some countries.

Countries not directly sending or enduring sanctions are called third parties and they play a crucial role in the international arena. Jentleson identifies four categories of third parties: those which are economically motivated to trade with the target country; rivals of the sending country (which are thus politically motivated to cooperate with the destination country); neighbouring states with unclear borders; and non-state actors who profit from sanction violations.[3] Third parties are most likely to cooperate with the sending state if the sanctions predominantly serve their own interests, otherwise they are more likely to become allies of the target country. Third parties' economic interests might be minimal, such as avoiding the trade loss associated with joining the sanctions. In other cases, more complex factors can come into play, such as breaking into markets abandoned by the sending country. Aside from commercial pursuits there might be political reasons why certain countries do not wish to participate in multilateral sanction regimes. A third party's political interest might be a perceived defender role from a geopolitical point of view (the role of the Soviets in the case of Castro's Cuba, against American sanctions).[4] Similarly, it could be a rivalry with the sender state that might encourage a third party to reject multilateral sanctions.

It is important to distinguish between the concepts of economic sanctions and trade wars. It is generally agreed that the main goal of economic sanctions is to force the target country's government into changing its political behaviour, or at least, to modify or limit it. To achieve its goal, sender countries try to reduce the economic well-being of a target country by suppressing international trade. In contrast, a trade war occurs when a state threatens to inflict economic damage or imposes measures to force the target country to accept trade terms more favourable to the coercive state.[5] The following study focuses on economic measures that have a political goal aimed at another state.

Economic sanctions have been used frequently throughout history, but they only became a common tool of international relations in the 20th century. They started to be used regularly by the League of Nations, and later by the United Nations (UN). In the beginning, the UN played a key role in the development of country-based sanctions, which were designed to force a country to meet a political objective by restricting its trade and

[3] Jentleson 2021: 13.
[4] Jentleson 2021: 16.
[5] Pape 1997: 93–94.

business relations. Such countries included Cuba, Iran, Libya, North Korea, Syria and Vietnam. Comprehensive sanctions were introduced against these states which sought to prevent all trade relations. Taking into account the rather limited success of such sanctions and the subsequent humanitarian disasters they caused, at the suggestion of Kofi Annan, the UN introduced targeted sanctions in the 1990s.[6] Targeted sanctions, or "smart sanctions" aim to impose extremely high costs only on certain groups – individuals, businesses, non-state actors, other organisations – while limiting collateral damage to the civilian population. Thus, the sanctions imposed do not cause humanitarian disasters and are considered more ethical. The idea is that the costs of these sanctions may induce the target group to abandon their activities or pressure the regime to change its policy.

Like targeted sanctions, sectoral sanctions aim to protect the civilian population from the harmful effects of sanctions. These measures target important parts of the economy, and includes arms embargoes, or energy sanctions, such as an oil-producing export embargo (e.g. boycotting Iranian oil). Different types of targeted and sectoral sanctions can be distinguished. One of the most frequently used tools is trade sanctions, i.e. embargoes of exports to target countries and boycotts of imports. This is followed by financial sanctions, which involve financial transactions and/or investment in the destination country being restricted or prohibited, and assets in the sending country's financial system being frozen. Foreign aid (economic or military) is limited or eliminated and the travel of individuals from the destination country to the sending state(s) is restricted or prohibited. Finally, the sanctions introduced in the field of sports and culture are of more symbolic value. In these cases, athletes and artists from the target country are banned from international championships and competitions.

Discussing the goals of sanctions, several authors have emphasised that the aim of sanctions is not merely a *change in the behaviour* of the target country. Barber believes that sanctions have three ambitions.[7] While the primary objective is to change the behaviour of the target country, the secondary objective is to increase the *internal popularity* of the sending state. A third objective is to strengthen the norms of behaviour accepted in the international system. In other words, sanctions have a significant symbolic value, and in addition to foreign policy successes, imposing sanctions can bring internal political benefits. This echoes Lindsay's opinion, who lists five different reasons why states apply sanctions. In addition to changing the policy of the target country, he identifies the goals of removing the regime, deterring other actors from similar behaviour, and sending domestic and international signals.[8]

Richard Friman divided sanctions into three different types based on their goals. According to him, one purpose of sanctions may be to force or change a certain behaviour. The second type of sanctions are those whose goal is to limit certain prohibited activities. In this case, the sending countries wish to limit access to basic resources, such as funds, weapons, or other critical items. According to the logic of the measure, the increased

[6] Annan 1997.
[7] Barber 1979: 367–384.
[8] Lindsay 1986: 153–173.

costs due to the sanctions will force a change in the strategy of the target state. Finally, according to the author, the third group of sanctions includes symbolic actions that aim to strengthen international standards.

Applying the above criteria, Friman analysed 62 multilateral sanctions introduced by the UN over a period of 22 years. The research shows that in the examined cases, targeted sanctions were more effective in *signalling or limiting* than in forcing an actual change in behaviour. Change of behaviour happened in only about 10% of the cases. In contrast, sanctions effectively limited the behaviour almost three times more often, in 28% of the cases. In 27% of the cases, they effectively sent signals to the target audience.[9] The UN agrees with these findings in general, but at the same time it still considers its own measures to be *overall successful*.[10] In other words, the UN's most successful measures are effective only in 28% of the cases. Given this humble success rate, the question arises as to how *effective* the various sanctions are in general and, if so, what their success depends on.

Success of sanctions according to policy makers and scholars

There seems to be a consensus in the literature regarding the low rate of success of sanctions. At the same time, governments, international organisations, and experts have different interpretations of the *purpose of sanctions,* and thus different assessments of the effectiveness of these measures. The first part of this subsection presents the viewpoint of governments and international organisations, while the second half of the section reviews the most significant academic literature on this topic.

The United States has imposed the most unilateral sanctions, so its institutional knowledge and experience is worth considering. In a 2019 report, the U.S. Government Accountability Office (GAO) mentions that the effectiveness of sanctions is mostly assessed in economic terms, more specifically in terms of the slowdown of the target country's economy. However, the report states that the Office does not assess the extent to which the measures contribute to the achievement of broader U.S. foreign policy goals, *since sanctions are often a single element of a broader strategy,* making it extremely difficult to assess the effectiveness of the instrument.[11]

The report also states that most measures are effective when they are supported by an international organisation, such as the UN, and when the targeted countries have been dependent on the United States, for example through close trade or military ties. In other words, if a target country experiences an economic slowdown, the sanctions are considered effective, *even if the target country has not changed its behaviour at all* or the U.S. has not achieved its foreign policy objectives. The economic slowdown is more

[9] Friman 2015.
[10] United Nations 2022.
[11] United States Government Accountability Office 2019: 12.

pronounced if the sanctions become multilateral and if the target country is economically or militarily dependent.

The UN's evaluation of the effectiveness of sanctions is even more vague. They point out that there is no consensus regarding the success of such a measure even when an actor changes its actions. Using the example of the Balkans war, they point out that the sanctions imposed were unlikely to have contributed to the conclusion of the Dayton Peace Agreement, since it was in fact the *military action* that produced the result. Moreover, they consider that in this case sanctions were neither necessary nor sufficient to stop the war.[12] The authors cite a thorough empirical study of a total of 100 different cases, which found that only 14 applications of sanctions were successful. In the vast majority of the few successful cases, the target country's state system was based on a multi-party system, while the unsuccessful cases were recorded in countries with authoritarian regimes.[13] Since most UN sanctions are directed against authoritarian regimes, the authors themselves do not expect much from the measures in terms of effectiveness.

An evaluation by the United Nations University's Public Policy Research Institute seeks to analyse the legitimacy and effectiveness of UN action. The authors point out that the flawed mechanisms around sanctions listing have been eliminated: the names of individuals mistakenly listed on UN sanctioned lists can now be corrected or removed. However, the report does not address what can be considered a successful sanction, or what metrics can be used to measure its effectiveness. In other words, the paper considers that sanctions are effective since only those persons, organisations or entities that have been prosecuted are actually placed on the list.[14]

Similarly, the European Union does not identify what it considers to be successful sanctions. Most recently, it has stated merely that sanctions against Russia during 2022 are "working".[15] At the time of writing this article, the EU had adopted a number of sanction packages targeting nearly 1,200 individuals and 100 entities in Russia, as well as a significant number of sectors of the Russian economy.[16] The EU adopted the sanctions in close cooperation with the G7 members and is supported by several international partners. The High Representative of the European Union for Foreign Affairs and Security states that the effectiveness of the measures is enhanced by the fact that more than 40 other countries, including traditionally neutral countries, have adopted the same measures, or introduced similar ones against Russia. He stresses the role of broad international cooperation in ensuring their effectiveness. Borell points out that the sanctions have made it extremely difficult for Russia to access advanced technology products. However, Russia imports more than 45% of these from the United States, 21% from China and barely under 11% from the EU. Borell expects that in the medium term, Russia's industry will start to decline because of the sectoral and financial sanctions, and that its economy will slow

[12] Mack–Khan 2000: 282.
[13] Nossal 1999: 129–149.
[14] Cockayne et al. 2018: 18–19.
[15] Borell 2022.
[16] Council of the European Union 2023.

down as a result – but only in the medium term. He acknowledges that President Putin's considerations are not economic but based on political voluntarism. That is, the High Representative does not expect the economic impact of sanctions to lead to a change of behaviour on the part of the policy makers.

Instead, he hopes that the economic slowdown and technological dependence will make the regime unsustainable. According to the High Representative "Europe must show strategic patience". While realising that the economic impact of sanctions will not change the Russian leader's behaviour, he considers the violation of the international rules-based world order to be unacceptable. In other words, the leaders of the EU do not consider sanctions a useful tool to force a change in the behaviour of the target country, or at least to influence it significantly. It is much more a signal to draw the attention of the target country to international standards.

Summing up, the sanctions imposed by the U.S., the UN and the EU policymakers are most effective when their primary aim *is not to change the behaviour* of the target country. In almost a third of the cases, they succeed when the measures are aimed at slowing down the economy or restricting a behaviour. The proportion is similar, but slightly better, for *raising awareness of international standards,* i.e. – sending a signal to the target country or to third parties. When changing the behaviour of the target countries, the issuing countries themselves are less confident about the results of sanctions. As we have seen, there is no clearly identifiable criteria for the *success of sanctions.* A "success" from a political point of view can be defined as a case where the target country changes its behaviour *to some degree* to be more in line with the political expectations communicated by the sender. Obviously, there are significant differences on the minimal level of degree of changing the behaviour which makes the concept of "political success" highly debatable.

The literature attempts to define the concept of successful sanctions. Van Bergeijk does not distinguish between political and economic goals, instead he refers in the first case to success, and in the second to effectiveness.[17] Cortright and Lopez differentiate the political and the economic successes.[18] Chantal de Jonge Oudraat lists economic and political aspects of the effectiveness of sanctions.[19] Unfortunately, these differences are not clear in all studies, which makes it difficult to compare the results of the various studies.

Several empirical studies consider that economic sanctions are not effective.[20] However, most experts agree that the effectiveness of sanctions (whether political success or economic effectiveness) is difficult to assess as they are often part of other foreign policy instruments. Additionally, other states' actions make the effectiveness of a given sanction difficult to measure. Moreover, external effects, such as economic shocks can trigger positive or negative impacts, making it even more difficult to assess the usefulness of the measure. For example, Csicsmann's study on EU sanctions examines their effect on

[17] Van Bergeijk 1994: 23.

[18] Cortright–Lopez 2000: 3.

[19] De Jonge Oudraat 2010: 105–128.

[20] See Hufbauer et al. 1990; Hufbauer–Oegg 2007; Pape 1997: 90–136; Allen 2005: 117–138; Whang et al. 2013: 65–81; Grauvogel – Von Soest 2014: 635–653.

Russia following the annexation of Crimea in 2014. He stresses that Russia's economic slowdown was caused by the fall in world oil prices and not necessarily by the sanctions imposed by the EU.[21]

Economic analysts often measure the loss of income caused by sectoral sanctions or the slowdown in GDP growth rates. Based on these, conclusions regarding the success or effectiveness of a sanction are drawn. However, these measures do not consider the wider political context. This approach was described by Galtung in 1967 as the theory of naïve economic warfare. The naïve theory states that the sender hopes that trade sanctions will impose costs on the target country at a rate that will inevitably cause political destabilisation.[22] Galtung draws attention to the fact that sanctions do not always have this effect and indeed they can sometimes even reinforce political integration, so that the desired political destabilisation may never occur.[23] An empirical study on the case of the suspension of gas supplies between Russia and Ukraine in 2006 found similar results. In the hope of destabilising the Western-oriented government, Russia cut off the gas supplies to Ukraine. The Russian measure actually led to a significant increase in the popularity of anti-Russian political forces among the Ukrainian population.[24]

Galtung's naïve theory is nuanced by Doxey's analysis of the sanctions imposed on South Africa and Rhodesia.[25] Doxey conducts a cost-benefit analysis from the point of view of the elites in the target countries. She concludes that the sanctions caused less harm than the losses that would have been incurred if the elites had given up their way of life and changed their behaviour to meet the demands of the sender countries. Looking at a historical case, the study points out that there are cases where enduring the effects of sanctions is less damaging to political elites than changing the sanctioned behaviour.

One of the most comprehensive studies of the economic effectiveness of sanctions was carried out by Hufbauer and his colleagues. In their analysis, they use economic measures such as the declining value of exports and imports of the target country, the ratio of income lost to GDP and GDP per capita. The results of their study show that just 35% of economic sanctions are effective.[26] In other words, the social mechanism put forward as the naïve theory by Galtung works in only a few cases.

Researchers clarifying the naïve theory have considered variables that may play a role in political disintegration. Kaempfer and Lowenberg point out that economic sanctions lead to fragmentation when the target country has a multi-party system, and the opposition is able to facilitate a political change.[27] Marinov's research shows that in some cases, sanctions increase the chances that political leaders will lose power – but that this is more likely in democratic regimes. In a very thorough and precise analysis, he considers the target country's political system, institutional structure and wealth per

[21] Csicsmann 2021: 84.
[22] Galtung 1967: 378–416.
[23] Galtung 1967: 389.
[24] Seitz–Zazzaro 2020: 817–843.
[25] Doxey 1972: 527–550.
[26] Hufbauer et al. 1990.
[27] Kaempfer–Lowenberg 1999: 37–58.

capita. He does not, however, take into account the role of third parties that may have an interest in supporting the regime of the target country.[28] All these are in line with the scepticism of the UN analysts who are unconvinced by the effectiveness of such measures when applied against authoritarian regimes.

Moreover, the political destabilisation caused by sanctions can pose serious risks, which is relatively rarely discussed is the literature. Csicsmann considers the measures against Iran to have been effective, since the country's oil exports have fallen significantly. In addition, the author notes that averting the emergence of weak, collapsed or failed states also counts as part of the success. Since economic sanctions have not led to the collapse of the political leadership in Iran, resulting in a rogue state, the measure can be regarded as successful.[29]

Portela examines unilaterally imposed sanctions by the European Union in terms of their attainment of policy objectives and sets five criteria for their evaluation: the economic decline of the target country, the stability of the regime, the coherence of sanctions policies, the support of the international community for the EU's targeted policies, and the extent to which EU sanctions have contributed to the known outcome.[30] Her qualitative research provides rich detail on each case, examining the same variables. The study concludes that the most effective EU sanctions are the suspension of aid to African, Caribbean and Pacific states, along with the restrictive measures taken under the Common Foreign and Security Policy against certain third states that are strategically vulnerable or not protected by a great power. Lastly, she classifies as successful the sanctions against states *interested in the economic benefits of cooperation with the EU and the associated increase in their international prestige.* In other words, Portela's study suggests that economic sanctions are effective when they are imposed by a stronger state with which the target state has a certain dependency.

Giumelli analyses sanctions as a foreign policy tool of the EU. He argues that sanctions can be effective not only if they change the behaviour of the target country, but also if they *modify it or limit it in some way.* The book points out that analysts have mostly sought to examine the impact of sanctions through *case studies,* but that it is extremely difficult to assess it in isolation from other foreign policy instruments as well as the wider global context. It stresses the importance of conducting a comprehensive study that examines the most significant trends. The book lists the sanctions imposed by the EU but does not examine all cases and it does not provide a clear answer as to whether these sanctions were effective or successful. In fact, the author is not really concerned by this problem – the central theme of the book is the EU's *global action,* and it focuses on how and when the EU has used this coercive tool. Not surprisingly, he concludes that sanctions are *an effective foreign policy* tool of the EU, mainly because they have *enabled the EU to act as a global actor.*[31]

[28] Marinov 2005: 564–576.
[29] Csicsmann 2021: 80.
[30] Portela 2012.
[31] Giumelli 2016.

In conclusion, the definition of the objectives of sanctions varies widely, making it a challenging task to assess their success and effectiveness. Examining a large number of cases, we find that in less than a third of instances has the target country changed its behaviour. A slightly higher success rate is found when the measure was aimed *at limiting a behaviour* and somewhat more success when the objective was only *signalling.* Several studies agree that multilateral measures are the most successful, or when the target country is economically or militarily subordinate to the issuing state. Equally important is that the target country has a multi-party system and a strong opposition capable of governing. In the rest of the cases, sanctions can only be effective in a sporadic manner.

Sanctions against the Soviet Union and Russia

The application of sectoral and targeted sanctions has increased dramatically in recent decades, while their effectiveness has remained highly controversial. This may suggest that policymakers might introduce sanctions for domestic policy purposes and to signal breaches against international order rather than with the explicit aim of changing the behaviour of the target country. This seems particularly true in case of sanctions against the Soviet Union and later Russia. Unsurprisingly, the topic came to the attention of researchers after 2014, when a number of studies were published on the effectiveness of sanctions against Russia.

Viktor Szép's study from 2015 examines the efficacy of EU sanctions against Russia. The author argues that even though the sanctions did not change Russia's foreign policy decisions on Ukraine, they deterred further aggression. In addition, the EU has achieved another important success – it has gained international recognition, as Member States have acted in unity in response to this issue.[32] The author is cautious in that he does not evaluate the effectiveness of sanctions per se, but in the light of NATO's steadily reinforced military capacity in the Eastern European region. Today, in the light of Russia's recent aggression, the extent to which the EU's action deterred Russia from further aggression is questionable.

Similarly, Simond de Galbert's book assesses the events one year after the de facto annexation of Crimea and the imposition of international sanctions. The author estimates that the combination of world oil prices, flawed local economic policies and sanctions may have caused an almost 3% drop in the value of Russia's gross domestic product between 2014 and 2015. He notes that despite the economic slowdown, the Russian President's popularity has not declined. He goes on to estimate the value of lost exports from European states, which he puts at a loss of $30 billion in a year, significantly more than the amount the United States loses from lost Russian exports.[33] This is confirmed by a report from the U.S. Congressional Research Service, which, while not quantifying the losses to U.S. firms from international sanctions or Russian retaliatory sanctions,

[32] Szép 2015: 191–203.
[33] De Galbert 2015.

repeatedly stresses that Russia is not a key trading partner for the U.S. and that lost markets will be relatively easy to replace.[34]

Crozet and Hintz analyse Russian and European trade losses over a slightly longer period of time, with a more abundant data set and complex quantification. Their results show that the Russian Federation's losses reached USD 53 billion, or 7.4% of total exports estimated from 2014 until the end of 2015. However, Western countries hit by Russian retaliatory sanctions also suffered losses of USD 42 billion, which equals 0.3% of their total exports. It is interesting that most of the losses were from products that were not directly targeted by Russian sanctions and that Russian consumer preferences did not change. Rather, the change was caused by an increase in the risks associated with international transactions with Russia.[35]

The more time passes after a sanction is imposed, the more accurately its economic and political impact can be assessed. Thus, Kirkham's analysis of the impact of sanctions on Russia and Iran, published in 2022, focuses on the Russian and Iranian institutional and economic systems.[36] The study found that the sanctions had hit the target countries and caused major economic problems and trade disruption, but were politically ineffective in mobilising the population for regime change. Moreover, despite some short-term economic difficulties, the impact of the sanctions has been paradoxical: the target countries have managed to adapt to external pressures, develop internal self-defence mechanisms, mobilise domestic resources and restructure the distribution of income and wealth. The two target countries became more self-sufficient, less democratic and adopted a more aggressive stance towards the West. If the Minsk agreements are interpreted as a political success of the West, at the time of writing this article – the winter of 2022 – there is no question that at best it is only a temporary success. After half a year of armed conflict, Russia has de facto annexed the Ukrainian regions of Donetsk, Luhansk, Zaporizhzhya and Kherson, using extremely strong anti-Western slogans.[37] It seems that Kirkham's estimations are correct: Russia has emerged from the struggles caused by the 2014 sanctions with a stronger domestic political position. It is questionable whether the sanctions of 2022 will cause enough economic damage to destabilise the Russian political regime.

To answer this question, it is worth examining the sanctions imposed on Russia and its predecessor, the Soviet Union and assessing their effectiveness. The dissolution of the Soviet Union brought new institutional structures and political actors, although the political culture of the Russian Federation did not change significantly. Therefore, it is adequate to analyse the cases against both the Soviet Union and the Russian Federation.

I will analyse the list of previous sanctions mentioned in the Global Sanctions Database (GSDB). The GSDB (2021) covers 1,101 publicly traceable multilateral and bilateral sanctions cases from 1950 to 2019.[38] The database classifies sanctions according to

[34] Nelson 2015.
[35] Crozet–Hinz 2020: 97–146.
[36] Kirkham 2022.
[37] Reuters 2022.
[38] Kirikakha et al. 2021: 62–106.

three important dimensions. First, by the type(s) of sanction(s) considered (commercial, financial, travel, etc.), second, by the communicated primary policy objective(s) of the sanction(s). These are divided into separate categories (e.g. policy change, war prevention, human rights, etc.). Thirdly, the sanctions are categorised based on the degree of perceived success of each identified sanction, ranging from unsuccessful to total success.[39] The GSDB is publicly available and open for consultation.

The database contains a total of 21 sanctions against the Soviet Union and Russia between 1962 and 2014. These were imposed in nine different years – in reaction to various events, several of which were condemned collectively by the international community. Accordingly, in 1991, four different sanctions were imposed on Russia by the United States, the United Kingdom, Japan and the European Economic Community separately. Similarly, for 2014, the database counts ten cases of sanctions imposed by different countries. Since those sanctions are still in force, and have not prevented Russia from starting a new war against Ukraine, they are not the subject of this analysis.

Taking into account Giumelli's observation that the effectiveness of sanctions cannot be assessed completely in a single case study, I will examine *all sanctions* against the Soviet Union and Russia listed in the database. The relevant contents of the database are summarised in Table 1. The data marked in the GSDB reflect the problems documented in the literature: the success of each sanction is assessed as successful or not *on its own,* without taking into account other foreign policy instruments, international actors, collateral damage and the role of third parties – simply depending on whether the conflict which triggered the sanction was resolved or not.

Based on these, the sanctions imposed by Lithuania in 1990 cannot be considered successful. Firstly, on 18 April 1990 an economic sanction was imposed in response to Gorbachev's order to prevent Lithuania's attempts to gain independence. The Russian Government stopped the supply of oil and other raw materials to Lithuania, on which Lithuania was totally dependent. The economic sanctions immediately had a severe impact, but the Lithuanians insisted on their independence. Due to the shortage of raw materials, Lithuanian factories and plants shut down, preventing many of the materials the Russians needed from getting back to Moscow. For example, the Lithuanians used to supply petrol to the Kaliningrad region and parts of Belarus, made black boxes for aircraft and petrol pumps for car factories throughout the former Soviet Union. Moscow's targeted economic sanctions made the production of these products impossible and left the Soviets without supplies.[40] In other words, the database (probably erroneously) recorded the collateral damage of economic sanctions imposed by Moscow as sanctions imposed by Lithuania. In April 1990, the international environment was still very cautious, so negotiations were encouraged between the Russian and Lithuanian parties, who eventually reached an agreement. In this case it was not Lithuanian "sanctions" that forced the target country to change its behaviour.

[39] Felbermayr et al. 2020.

[40] Platūkytė 2020.

Similarly, the sanctions imposed by Georgia are considered by the database to have been "successful". The military offense against Georgia has indeed ended and Georgia did suspend its previously imposed sanctions in 2011. However, it is unquestionable *that it was not Georgia's sanctions* which changed Russia's foreign policy strategy.

Table 1: Sanctions contained in Global Sanctions Database against the Soviet Union and the Russian Federation

Sender	Start	End	Commercial	Comment	Communicated primary goal	Outcome
NATO	1962	1966	Yes	0	prevent war	unsuccessful
USA	1978	1987	Yes	0	other, human rights	*total success,* unsuccessful
USA	1980	1981	Yes	other	policy change	unsuccessful
USA, EEC	1981	1983	Yes	traveling	policy change	*total success*
Lithuania	1990	1990	Yes	0	territorial conflict, policy change	*total success,* unsuccessful
EEC	1991	1991	No	financial	policy change	unsuccessful
Japan	1991	1991	No	financial	policy change	unsuccessful
UK	1991	1991	No	financial	policy change	unsuccessful
USA	1991	1991	No	financial	democracy	*total success*
Ukraine	1993	1996	Yes	military	policy change	negotiated settlement
Georgia	2008	2011	No	other	end war	*total success*

Source: Compiled by the author based on Global Sanctions Database

The 1962 NATO trade ban is an interesting case. During the Cold War, in the 1950s, the Soviet Union discovered oil reserves in the Ural–Volga region. The new oil reserves increased the amount of oil exported by the Soviet Union, especially to Western European countries. Soviet production rose from 5.2% to 26.4%, and the oil was exported to Western European countries. The prices offered by the Soviet Union were significantly lower than the international market price. In 1957 a barrel of Soviet oil was selling for $2.06 on the international market while, in contrast, Middle Eastern oil cost $2.79 and Venezuelan oil cost $2.92. Moreover, the Soviets further reduced prices to Western European countries, selling oil for as little as $1 a barrel. To transport the oil, the Soviets created a massive pipeline system project, which caused serious concern in the United States. The U.S. feared that the Soviets would use the oil to weaken the West, more precisely its economy and military. To transport the oil and build the pipeline system, the Soviets needed large quantities of steel pipes of a large diameter as well as a variety of other equipment, which they had to import from the West. To prevent the project, in 1961 the U.S. delegation proposed to NATO a comprehensive embargo on large-diameter pipes. The U.S. succeeded in getting NATO member states to regard the construction of the steel pipe system as a matter of national security, and NATO imposed an export ban on steel pipes in 1962. Considering its own economic interests, Germany rejected an embargo on *steel gas pipes* of the same size and continued to supply them to the Soviets. After a year's delay, the Soviets were able to build the Druzhba pipeline, through which they transported oil for decades.

Relatively little information is available about the sanctions imposed by the U.S. on the Soviet Union in 1978 and lasting until 1987. According to the RAND Corporation, the U.S. imposed a ban on the export of equipment used in oil and gas drilling, which was not lifted until January 1987. The decision to end the sanctions was justified on the grounds that *similar equipment had become widely available on international markets* and the sanction was no longer having an impact.[41] In other words, third parties were unwilling to cooperate for their economic and political interests, so the U.S. sanctions were at best short-lived.

The U.S. sanctions imposed in 1980, although unsuccessful, are worth detailing. The Soviet Union invaded Afghanistan in 1979 and in response the U.S. imposed a series of sanctions. Under the leadership of then President Jimmy Carter, the U.S. boycotted the Soviet Union's participation in the 1980 Olympics and introduced a ban on grain exports. The grain embargo severely damaged U.S. producers, for whom the Soviet Union was still a very important export market. Using this tension, presidential candidate Reagan campaigned on the idea of lifting the embargo, which he did after winning the elections.

In the meantime, the Soviet Union had seized the opportunity to import grain more cheaply from South America, particularly from Argentina, and to explore the agricultural potential of Ukraine. The loss of the Soviet market forced the U.S. to substantially increase its exports to Spain, Italy, Colombia and Japan, which had previously bought grain mainly from Argentina. The *world grain market was thus reorganised* and remained so for decades after the embargo was lifted.[42] In other words, the primary objective of the sanctions imposed for attacking Afghanistan – to stop the aggression – was not achieved. In the short term, U.S. producers suffered heavy losses and it is assumed that Jimmy Carter lost his presidency because of it. However, in the long term, the U.S. gained new markets, defining its leadership for decades.

It is not surprising that the "successful" sanctions imposed by the U.S. in 1981 are linked again to the new energy export planned by the Soviets, more specifically the Yamal gas pipeline.[43] The Soviets presented their plans for this pipeline shortly after the invasion of Afghanistan, with the aim of exporting cheap Soviet gas to Western Europe. The European negotiators were Ruhrgas and Gaz de France, with whom negotiations began in 1980. The Reagan Administration was concerned about the Soviets' renewed progress, fearing that their European allies would become militarily and economically vulnerable due to their dependence on Soviet energy supplies.[44] The pretext for the imposition of sanctions was Poland's declaration of martial law in 1981 and the Soviet involvement in supporting it. In 1981, the U.S. banned the sale of U.S. technology to the Soviets for the construction of the pipeline, and several Western European countries initially acceded to its request.[45] Later, however, Western European countries considered that the Soviets'

41 Becker 1987: 12.
42 Matlock 1981.
43 Perlow 1983: 253.
44 Vicari 2016.
45 The EUR-Lex website provides the official and most comprehensive access to EU legal documents. In 1981, 130 documents were created (including questions and comments) that are related in some way to the

dependence on Western technology was extremely heavy, thus the Soviets would not be able to take advantage of their position. Consequently, they did not comply with President Reagan's request and decided to protect their own economic interests. In 1982, the U.S. President himself ended the sanctions, as it had achieved its goal of *signalling the international community's* concern about the developments in Poland. Similarly to the Druzhba pipeline, the Yamal gas pipeline was built after a few years' delay. If it is accepted that the sanctions' goal was to signal such concern, this measure can indeed be considered a success.

The GSDB contains information on several financial sanctions imposed on the then Soviet Union in 1991. The senders were the European Economic Community, the United States of America, the United Kingdom and Japan. These were intended to restrain or punish the Soviet regime for its efforts to act against its member states' attempts to win independence. Of these measures, only the American one is recorded by the database as a success – the impact of U.S. foreign policy and of this particular sanction on the collapse of the Soviet Union is important, but it cannot be singled out.

Finally, the success of sanctions imposed by Ukraine in 1993 is again debatable. The database records a ban on arms exports, but the event was the adoption of the multilateral political declaration contained in the Budapest Memorandum. This guaranteed the territorial integrity and political independence of Ukraine, Belarus and Kazakhstan. The OSCE declaration was signed by Russia, the U.S. and the U.K., and later endorsed by China and France. In return for these guarantees, between 1994 and 1996 Ukraine dismantled the world's third largest nuclear arsenal, which it had inherited from the Soviet Union after its dissolution. This case hardly seems to count as a clear 'success' of the sanctions.

In sum, of all sanctions in the database marked as 'successful' against the Soviets or Russians, *not even one* has been able to stop the ambitions of the target country, at best, it has been *slowed down.* The measures were much more effective in terms of their secondary objective, which was *to protect the interests of the sending country or to signal violations of international norms.* Finally, it appears that the U.S. has systematically used sanctions as a tool to carve out a niche market for itself in the medium to long term and thus to strengthen its economic and political ties.

All this suggests that sectoral sanctions were not able to change Russia's behaviour once in the past decades. The latest EU sanctions were introduced in the hope that the costs borne by Russian interest groups would be too high to maintain the current regime. This optimistic assumption is contradicted by a few facts: first, President Putin's popularity has not changed significantly in recent months. According to the Levada Centre, a non-Moscow-based think tank, 72% of the population supported President Putin's actions in September 2022. This ratio is down from the 83% measured in March and August 2022. It is likely that the decline was caused by the introduction of partial mobilisation, which could have led up to 100,000 conscripts leaving Russia in a few

Soviet embargo of technology or other types. Of these, nine legal acts were created (see European Union 1981).

weeks.[46] At the same time, taking into account the period before the war against Ukraine, it can be seen that in January 2022 only 69% supported the president, and in August 2021 the president's popularity was even lower, at 64%.[47]

Additionally, according to data from the Levada Centre, President Putin's popularity ranged between 60 and 80% between 2000 and 2022. This extremely high approval rating has attracted the attention of researchers. In an empirical study, Frye et al. examined the extent to which polls on the president's popularity are biased. Their results confirm the extremely high popularity documented in the opinion polls.[48]

President Putin's increased popularity after the attack on Ukraine can be explained by the fact that Putin regularly tries to compensate for domestic failures with foreign policy successes.[49] Another study comes to the same conclusion, pointing out that President Putin's foreign military operations are most successful at home when framed by Moscow as the defence of groups belonging to the Russian nation or the reconquest of ancient Russian territory.[50] For example, the de facto annexation of Crimea indeed boosted the president's popularity at the time. As we have seen from the empirical studies presented earlier, in spite of the sanctions, Russia was able to become more independent, reform its institutions and change the distribution of wealth so that its overall losses were less than the damage caused by the sanctions.

The war against Ukraine which started in February 2022 was followed by the imposition of the most comprehensive sanctions to date by the international community. These include both financial and sectoral sanctions, mostly blocking the import of Western technology while seizing assets and restricting the free movement of many individuals. However, historical examples suggest that financial and sectoral sanctions have not been successful in affecting the behaviour of Russia. This is partly because the cost of maintaining sanctions was too high for previous sending states, and they were subsequently lifted in various ways. On the other hand, third parties were less willing to cooperate with the sender country, so the target country managed to obtain the necessary products from other markets. An important aspect in the case of Soviet Union and Russia is that it has never had a strong, effective opposition that could have gained political traction due to the sanctions.

Conclusions

Throughout history, economic sanctions have been a common feature of political disputes. The second half of the twentieth century was determined by the Cold War, with the United States and the Soviet Union as its main protagonists. The sanctions imposed as a result of this rivalry often revolved around the third party, Western Europe.

[46] Al Jazeera 2022.
[47] Levada Center 2022.
[48] Frye et al. 2017: 1–15.
[49] Beliakova 2019.
[50] Ingimundarson 2022.

Sanctions against Russia have been mostly linked to the export of energy resources to Western Europe. The U.S. has sought to prevent the construction of oil and gas pipelines, and several sanctions were imposed on the Soviets to end its export projects. Third parties, i.e. Western European states, have mostly cooperated with the U.S. and imposed partial embargoes. However, the sanctions imposed on the Soviets proved to be counter to their own economic interests, which led Western Europe to relax or lift the sanctions.

Western European countries have so far mostly been able to find a balance between the two great powers. While they bought cheap energy from the Soviets, they did not have to fear abuse from it, as Western technology was often indispensable to the Soviets. At the same time, they had a very close military and security cooperation with the U.S. The fact that the Western European states bought energy from the U.S.'s rival reduced the influence the U.S. could exercise over them. Currently it seems that the Russian–Ukrainian war since 2022 has put an end to this era. Most EU countries will stop buying Russian coal and oil from 2023 onwards, and at the time of writing this article an embargo on Russian gas is also on the agenda.

The sanctions imposed by the EU, as Josep Borell has described them, are unlikely to achieve their goal of weakening Russia's political power, even in the medium term. On the one hand, as seen with the examples of South Africa and Rhodesia, sanctions on individuals are not always able to impose costs that are serious enough to lead to a change in behaviour. Moreover, as several studies have shown, sanctions typically do not work against authoritarian regimes. It is debatable whether Russia is really an authoritarian state, but the opposition is extremely weak. Moreover, the Russian president has enjoyed high popularity over the last 20 years. His military operations, when framed as defensive warfare, usually boost his popularity. The sanctions imposed in 2014 made Russia more independent, as the country managed to reorganise its internal markets while it saw increased anti-Western sentiment.[51] The European sanctions imposed in 2022 are framed by the Russian political leadership as part of the West's anti-Russian and "imperialist" ambitions, while the aggression is presented as a legitimate and defensive war. After the partial mobilisation in September 2022, the Russian president's popularity declined significantly, but it *was still higher than before the war began.* Considering these facts, it is more likely that the sanctions introduced by the EU will strengthen Russian political integration than weaken it.

The losses resulting from the embargo on energy and materials required for technological development are indeed significant.[52] Nevertheless, Russia might be able to make up much of these losses over time by exporting to third-party markets – even if this means building new pipelines. As we have seen from historical examples, in most cases, third parties ended up looking after their own economic interests. In this situation, China, India and Brazil, as the second, third and seventh largest importers of energy in the world, could become Russia's key partners. It is noteworthy that these countries

[51] Kirkham 2022.

[52] Gross–Seddon 2022.

abstained from the vote on the Russia case put to the UN Security Council at the end of September.[53] The resolution condemned the referendums held in four Ukrainian provinces and called on all countries not to recognise Moscow's intention to annex new territories from Ukraine.

The EU sanctions on the Russian energy sector and the damage to pipelines could be seen as the latest episodes in a geopolitical rivalry that has been going on for decades. The United States has been concerned by a possible loss of influence in the European market for more than six decades. It has repeatedly sought to prevent its competitor from exporting energy to it. In an increasingly competitive international economy,[54] the United States' interest is to serve the European Union's energy market. Following the imposition of sanctions, EU Member States could support the economies of the United States (Exxon Mobile, Chevron Corporation), the United Kingdom (BP), Norway and Algeria, which are the largest exporters of LNG oil and gas. Meanwhile, Russia provides its cheaper product to third parties such as India and China,[55] at a price below the market rate, increasing the competitiveness of the Asian countries. Both China and India are highly motivated to access cheaper Russian raw materials, since in certain ways they are rivals of the sending countries, thus motivating them to cooperate with Russia.

It seems that the European Union is unable or unwilling to continue balancing between the two competing powers. The coal and oil embargoes will certainly remain for the time being and currently it is questionable whether gas will be subject to sanctions. Cheap Russian energy has given the EU a certain competitive advantage, which soon might be lost. In the past, the risk of an embargo on Western technology could avert possible abuses by Russia. However, the EU currently has few tools at its disposal to counter possible abuses by its current energy trading partners. It would be in the EU's vital interest to base its industry and its domestic energy needs on domestic energy sources, and not be critically exposed to either one or the other of the major energy exporting powers.

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[53] Cedê 2022.
[54] Bloomberg News 2022.
[55] Lin et al. 2022.

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Vivien Kalas

Europe's Choice: Which Direction Can Integration Go after the Conference on the Future of Europe?

At the Conference on the Future of Europe organised in 2021–2022, participants put forward a number of proposals for reforming the way the European Union works. In addition to closer cooperation in policy areas, reforming the functioning of the institutions would enhance the Community dimension. All of these proposals would require the support of all Member States, but nations are currently significantly divided over the future of the EU. This paper examines three proposals for reform to illustrate the debates that have been raging between nations for decades, to show why the unanimous will of Heads of State or of Governments is essential for such major changes, and to explore the future of European cooperation in the light of the proposals.

Introduction

The need for reform of the European Union (EU) was voiced in 2017 by Emmanuel Macron, then French presidential candidate. Two years later, in an appeal to the people of Europe, he called for a renewal of the EU, and stated his desire that citizens be involved in the process. Macron also proposed a Conference on the Future of Europe (CoFoE),[1] an idea taken up in 2019 by Commission President-designate Ursula von der Leyen and formally made an EU event after her election.

At the end of the Conference, which took place from May 2021 to May 2022, its participants formulated a number of proposals for reforms at both policy and institutional level.[2] Most of these recommendations could be implemented within the EU under the current legal framework, but there are also some that would require a change in the existing Treaties.

This paper is structured around three proposals for reform, which do not necessarily require treaty change, but which would give a new direction to European integration. These are the extension of qualified majority voting (QMV) to new policy areas, the extension of the powers of the European Parliament (EP), and an increase in the direct legitimacy of the President of the European Commission (EC). Their implementation would strengthen the Community dimension and create a more federal European Union.

The study consists of four major sections. In the first part, I will deal with the Conference on the Future of Europe, describing its functioning, structure and participants, providing a brief description of the process of changing the EU Treaty. In the third part, I will cover the three areas for reform described above. I will examine how they have

[1] Macron 2019.
[2] Conference on the Future of Europe 2022.

changed over recent decades and the debates that have taken place between Member States on them. I will also describe the concrete proposals that have been made on these issues at the CoFoE and the differences between Heads of State or Government on these issues. Finally, I will address the question of the significance of these issues for the future of European integration.

Conference on the Future of Europe

The Conference on the Future of Europe started on 9 May 2021, a symbolic date that has been celebrated by the Member States as Europe Day since 1985 (9 May was chosen as Europe Day by the Member States to commemorate the anniversary of the Schuman Plan, which was presented on 9 May 1950 by French Foreign Minister Robert Schuman and is now seen as the first step towards European integration). The organisers wanted the event to both democratise and renew the European Union, and to give all stakeholders the opportunity to contribute to a joint process of reflection. Representatives from supranational levels, civil society, interest groups, citizens and politicians representing national interests came together to discuss the future of Europe. The Conference's rules, its themes – which covered all EU policies – and structure were set out in a joint declaration signed by the Presidents of the three EU institutions: the Council, the European Parliament and the European Commission.[3]

The debate on the future of the Union took place at four levels, while the Conference's structure was bottom-up. At the first, the lowest level, anyone could express their views either through the official website, by posting comments or by participating in national or regional citizens' panels. The second level was the four European Citizens' Panels, each of which was attended by two hundred randomly selected citizens. Their task was to make recommendations on policy areas. These proposals and the ideas from the first level were discussed at the Conference Plenary. At the plenary session, 449 people were involved in the discussions. One hundred and eight representatives from the EP, fifty-four from the Council (two from each nation) and three from the Commission were present. National parliaments were also allowed to delegate four politicians per Member State, making a total of one hundred and eight, along with one hundred and eight civil society representatives. The latter included eighty people from each of the European Citizens' Panels, one person from each country (twenty-seven in total) from the national citizens' panels, and the President of the European Youth Forum. The Conference Plenary also included twelve representatives of the social partners and eight representatives of civil society organisations, eighteen delegates each from the European Economic and Social Committee and from the Committee of the Regions, together with six people representing local authorities and another six representing regional authorities. When international issues were discussed, the High Representative of the Union for Foreign Affairs and

[3] European Union 2021a.

Security Policy was also present.[4] Their role was not only to discuss the ideas proposed at the lower levels, but also to adopt the final report by consensus.

The fourth and highest level was the CoFoE's Joint Presidency, made up of the Presidents of the European Parliament, the European Commission and the Heads of State or Government of the Member State holding the rotating presidency of the EU Council. Over a one-year period this meant the leaders of Portugal, Slovenia and then France. The Presidency was assisted by an Executive Board and a Common Secretariat, to which the three EU institutions delegated seven–seven members.

Although treaty change was not among the official objectives of the Conference on the Future of Europe, several of the reform proposals could only be implemented if Member States changed the framework for their cooperation.

Treaty change in the European Union

In the EU at present, there are two ways for nations to amend treaties. They can change all parts of the Treaties by using the ordinary revision procedure and, since the entry into force of the Lisbon Treaty in 2009, they also have the option of using the simplified revision procedure. Under the latter, politicians can change passages in the law relating to the EU's internal policies and activities, but cannot make major reforms such as extending the powers of the European Parliament.[5] For this reason, my study will only describe the ordinary procedure.

The revision of the Treaties can be proposed by national governments, the EP and the European Commission. The decision to launch the revision process is taken by a simple majority of the European Council (EUCO), after consulting the EP and the EC, and by consulting the European Central Bank when monetary issues arise. Proposals for changes are discussed by the nations in an Intergovernmental Conference (IGC) and the new legislation adopted must be ratified by each state in accordance with its own constitutional requirements before it can enter into force.[6]

The most important actors in the IGCs are the Heads of State or Government, who are the only ones with veto and voting rights in the negotiations, and the adoption of the new treaty also requires the unanimous support of the political leaders. Moreover, political leaders of member state governments are the only ones designated in Community law as participants in Intergovernmental Conferences.[7] In practice, however, an EU Commissioner and politicians from the European Parliament and the General Secretariat of the Council are also present at discussions.[8]

Negotiations at the IGCs take place at three levels. At the official level, civil servants discuss legal and technical issues with one member from each of the two largest political

[4] European Union 2021b: 7.
[5] Consolidated version of the Treaty on European Union 2012: Article 48 (6).
[6] Consolidated version of the Treaty on European Union 2012: Article 48.
[7] Consolidated version of the Treaty on European Union 2012: Article 48 (3).
[8] Christiansen 2002: 33–53; Slapin 2011.

groups in the EP. Foreign ministers meet at the ministerial level with the President of the European Parliament also being present at the beginning of their meetings.[9] At the top level, the members of the European Council – i.e. the Heads of State or Government – discuss the most sensitive political issues, but these are often only 5% of the total agenda.[10] If an agreement is reached, the ratification process can start once the new document has been signed.

In the history of European integration since 1950 eleven Intergovernmental Conferences have taken place. Political leaders first met in 1950–1951, resulting in the Treaty of Paris, which established the European Coal and Steel Community. In 1956–1957, they agreed on the treaties establishing the European Economic Community and the European Atomic Energy Community. The Merger Treaty (1965), the Treaty of Luxembourg and Brussels Treaty (the Budgetary Treaties) (1969–1970 and 1975) and the Single European Act (1985–1986) were also adopted in the framework of an IGC, just as the Treaty on European Union (1990–1991),[11] the Treaties of Amsterdam (1996–1997) and Nice (2000), and the Constitutional Treaty (2003–2004) were decided by the Heads of State or Government at an Intergovernmental Conference. The last IGC was held in 2007, following the signing of Lisbon Treaty in the Portuguese capital.

Institutional reform proposals at the Conference on the Future of Europe

Due to the CoFoE, several long-standing issues have been brought back to the fore in the EU. These include the extension of qualified majority voting, the role of the European Parliament and the enhancement of the legitimacy of the European Commission. The proposals of this Conference would strengthen the Community dimension in these areas, but the final decision is left to the Member States. The key question is therefore whether the supporters of a Europe of Nations or a federal Europe will be able to get their way.

Reforming the decision-making procedure

In EU law-making, the most politically sensitive issues affecting national sovereignty – such as foreign and security policy, the enlargement of the EU and the multi-annual financial framework – require unanimity in the Council of the European Union, which brings together ministers from the Member States. In most policy areas, however, qualified majority voting – now known as double majority voting – is sufficient. This means that at least 55% of the Member States, which must also represent at least 65% of the EU's population, must vote in favour of a proposal for legislation. The double

[9] Christiansen 2002: 33–53.
[10] Stubb 2002: 21.
[11] During this period, two IGCs were held in parallel, one on Economic and Monetary Union and the other on Political Union.

majority principle has been in force since 2014, before which time the votes of each state were weighted differently, then the proportions needed for the required majority were determined. Moreover, until 2017, Member States could also request that the procedure be conducted under the pre-2014 system.[12]

Majority voting has always been part of European politics, with the national leaders already enshrining it in the Paris Treaty. Their aim was to make Community legislation more effective. Until the 1970s, however, this was less common in practice, with Member States seeking unanimous support on all policy issues. The Luxembourg Compromise in 1966, which ended the 'Empty Chair Crisis' that had lasted for six months,[13] also led to a reduction in the majority principle, with European leaders agreeing that Member States could use their veto in cases of alleged harm to their national interest, even in areas subject to the majority rule.[14]

The issue of how votes should be counted and the scope of the issues involved was a recurring theme among politicians, either in interviews, statements or in European-level negotiations. Consequently, they were also discussed on the occasion of major reforms, typically at Intergovernmental Conferences. Looking at the positions taken on each issue, it can be seen that, overall, Italy, Belgium and Finland have been the main supporters of the extension of the majority principle at past IGCs, while France and the United Kingdom have been among the most defensive of their sovereignty. However, the need to abolish the unanimity requirement in an increasing number of areas to ensure more effective cooperation was agreed by all Member States, with divisions emerging on specific policies.

The most debated issues at the Intergovernmental Conferences were social and employment policy, foreign and security policy and taxation. In the area of social and employment policy, the introduction of qualified majority voting was supported by Belgium, Luxembourg, Italy and Finland, among others, in the treaty change processes. This was argued for at the 1990–1991 and 1996–1997 IGCs,[15] and it was also advocated in Nice in 2000 and at the 2003–2004 IGC. There have also been examples of countries changing their views on this issue over time. Denmark was still in favour of unanimity at the Intergovernmental Conference preparing the Maastricht Treaty, but in 2000 it was on the opposite side. Ireland also took a different position in 2000 from that of 1990–1991, but after the rejection, they supported the use of QMV.[16]

There have been, however, nations that consistently rejected the application of majority voting system in social and employment policy. These included the United Kingdom, which expressed its opposition to it at Maastricht and at the Intergovernmental Conference on the Treaty establishing a Constitution for Europe, and the Spanish, who also argued

[12] Arató–Koller 2015.

[13] In the second half of 1965, French President Charles de Gaulle, seeing national sovereignty threatened, withheld his ministers from EU Council meetings, slowing down the functioning of the Community.

[14] Magnette–Nicolaïdis 2004: 69–92.

[15] Mazzucelli 2012: 147–179; Moravcsik–Nicolaïdis 1999: 59–85; Lehtonen 2009.

[16] Mazzucelli 2012: 147–179; Lehtonen 2009.

against it on several occasions.[17] In addition, Portugal and Greece (1990–1991),[18] as well as Germany (1996–1997), also preferred to retain unanimous voting.[19]

The member countries were also divided in their opinions on how to decide on foreign and security policy. The introduction of majority rule was supported by the Germans (1996–1997 and 2003–2004),[20] the Belgians and the Finns (2003–2004),[21] but was rejected, for example, by France (1996–1997),[22] Ireland (at the Amsterdam and 2003–2004 IGCs) and the United Kingdom (2003–2004).[23]

Ireland and the United Kingdom were the most insistent on maintaining unanimity on tax decisions, although Sweden, Spain and Denmark, for example, also took the same position. By contrast, Belgium, Germany and Italy would have welcomed the use of majority voting.[24]

The differences between the viewpoints of the Heads of State or Government were also evident at the Conference on the Future of Europe. While unanimity is still needed on some issues related to social policy, this topic was less prominent in the preparations for the CoFoE, with the main focus directed on foreign and security policy and tax policy. Those in favour of introducing a double majority, such as Belgium, Latvia, Italy and Germany, aim at faster, more efficient decision-making and closer cooperation, while the governments on the other side, such as those of Hungary, Greece and Ireland, wish to maintain the possibility of a veto, emphasising different national characteristics and the need to take account of diversity.[25] The outcome of the Conference could provide a good reference for political leaders who want to strengthen the Community dimension, as participants would abolish unanimity voting not only in connection with these two policies, but also in all areas except enlargement policy and changes to the EU's core values.[26]

The extension of the powers of the European Parliament

The institution of the European Parliament (formerly known as the Common Assembly), dating back to the Treaty of Paris, which created the European Coal and Steel Community, has come a long way since its creation. Its importance increased as the Member States sought to reduce the democratic deficit in the Community. This term was first defined by the EP in 1988. The democratic deficit, as they put it, was the result of the transfer of powers to the Community level from national parliaments, which had direct powers, to

17 Mazzucelli 2012: 147–179; Beach 2012: 217–243; Lehtonen 2009.
18 Mazzucelli 2012: 147–179.
19 Moravcsik–Nicolaïdis 1999: 59–85.
20 Moravcsik–Nicolaïdis 1999: 59–85; Lehtonen 2009.
21 Lehtonen 2009; Laursen 2010: 182–196.
22 Moravcsik–Nicolaïdis 1999: 59–85.
23 Lehtonen 2009; Girvin 2010: 126–143.
24 Lehtonen 2009; Laursen 2010: 182–196.
25 European Parliament 2021.
26 Conference on the Future of Europe 2022: 83.

a body not elected by citizens.[27] The existence of a democratic deficit in the functioning of the European Union is evidenced by the increase in executive power and the parallel decrease in national legislative control, while the European Parliament has only limited influence in policy-making. A further problem is the low turnout in EP elections and the national nature of these elections, where citizens vote on domestic rather than European issues. Moreover, Community decision-making is complex and citizens have no meaningful say in it.[28]

There was a desire on the part of the member states to make the community more democratic, and one of the results of this was the EP becoming stronger and more involved in decision making. The institution was established as the Common Assembly, by the Treaty of Paris, which came into force in 1952, and its members were delegated by the nations. It has been called the European Parliament since 1962, but only later, in 1986, was it enshrined in Community law. Since 1979, MEPs have been elected by the citizens of the bloc, but despite its direct legitimacy, the EP remained only a consultative body until 1986. Its importance in European politics first increased with the Single European Act, when two new procedures were introduced by the Member States: the cooperation procedure and the assent procedure. In most areas, the former was used, where the EP could vote on the Council's position, but any rejection could be overruled by a unanimous vote of the body of ministers of the Member States. On more important matters, such as the accession of new Member States, the rules for the election of the EP, or the operation of the Structural Funds, the assent procedure was used, with the European Parliament playing a greater role. In these cases, the decisions had to be taken with the agreement of the institution, and the EP had a veto on the vote, but could not change the original proposal.

The Maastricht Treaty further increased the powers of MEPs by introducing the co-decision procedure, making the European Parliament a co-legislator. This method has been known as the ordinary legislative procedure since 2009, following the entry into force of the Lisbon Treaty. It had already been used in the 1990s in many policy areas and now covers more than 80 areas. Thanks to the reform, the EP can now not only veto but also amend legislation.[29] At the same time, the institution has also played an increasing role in the election of the European Commission.

Despite the fact that all the Member States eventually agreed to strengthen the EP at the time of each treaty change, they had to work to make their positions converge from initially distant points during the Intergovernmental Conferences. Even when the Single European Act was being drafted, some countries such as France, the United Kingdom and Denmark were opposed to the European Parliament having more influence in the legislative process,[30] and these same countries did not initially support the introduction of the co-decision procedure at Maastricht. On the other hand, the traditional supporters of

[27] Navracsics 1998: 47–70.
[28] Follesdal–Hix 2006: 533–562.
[29] Bíró-Nagy 2019: 99–123.
[30] Moravcsik 1991: 19–56.

an increased role for the EP included Germany, Italy, the Netherlands and Belgium,[31] and at the IGC on Political Union in 1990–1991, the German Government would have granted the institution not only co-legislative status but also the right of legislative initiative.[32]

Today, the European Parliament still has limited room for manoeuvre, despite the constant extension of its powers. The ordinary legislative procedure does not cover all areas, and only the European Commission can initiate legislation, while the European Council is not bound by the EP's proposal for the President of the Commission. Although the results of the Conference on the Future of Europe include a proposal to remedy these shortcomings, the EP and the supporters of strengthening the Community dimension face a difficult task, as fourteen of the EU's twenty-seven Member States, including Hungary, have expressed their opposition to reforms of this scale.[33]

Increasing the legitimacy of the European Commission

The goal of increasing the legitimacy of the European Commission, on the one hand, stems from the shortcomings in the democratic legitimacy of the EU and on the other hand, it is also a way of strengthening the supranational level, in line with the hope of advocates of a more federal Europe.

The Commission is one of the most important institutions of the European Union. Currently made up of twenty-seven EU Commissioners, one from each Member State, it represents the Community's interests, enforces the treaties and EU laws. Moreover, if a Member State breaks the rules, the Commission can take it to the Court of Justice of the European Union. The EC is also responsible for implementing the Community budget and it is the Commission that has the exclusive right of legislative initiative.[34] Despite its importance, the institution and its members have only indirect legitimacy and the citizens have no direct say in their election. Political leaders have sought to improve this by gradually increasing the role of the EP, which has been directly elected since 1979, when the new Commission took office. The Maastricht Treaty stipulated that the European Parliament had to approve the whole body before it was set up, but it had only a consultative role in the selection of the President of the EC.[35] Since the entry into force of the Treaty of Amsterdam until 2009, the appointment of the President of the Commission has had to be approved by MEPs, and with the Lisbon Treaty, the EP was given a veto. Today, the twenty-seven commissioners, including the President of the EC, are nominated by national governments. The President, the commissioner-designates and then the College as a whole are voted on by the European Parliament and its committees, which can accept or reject them, but which still have no right of proposal or nomination.

[31] Corbett 1992: 271–298.
[32] Mazzucelli 2012: 147–179.
[33] Zsíros 2022.
[34] Consolidated version of the Treaty on European Union 2012: Article 17.
[35] Treaty on European Union 1992: Article 158.

This could be changed by the *Spitzenkandidat* system, the idea of which goes back to 1999, when members of the Christian Democratic Union of Germany (CDU), which is part of the European People’s Party (EPP), objected to the fact that the results of the European Parliament elections had no influence on the Commission President.[36] The Lisbon Treaty has partly remedied this problem by stipulating that the European Council must, by qualified majority, nominate the candidate proposed for the President’s post, taking into account the results of the EP elections. This provided a good reference point for the European parties, which from 2014 onwards, as the EPP had already done since 2009 – nominated a top candidate, who was later destined to head the Commission, as part of their preparation for the elections. In practice, however, the Lisbon Treaty does not automatically mean the nomination of party list leaders. Although the European Council nominated Jean-Claude Juncker in 2014 as President of the European Commission on such a basis, in 2019 the majority of Member States backed away from the idea of the S*pitzenkandidat* system and nominated Ursula von de Leyen.

The EU Member States have remained divided on whether to let the nomination of the President of the European Commission, one of the EU’s most important institutions, slip through their fingers. While some nations, such as Austria and Germany, are committed to using the S*pitzenkandidat* system to make the EU more democratic, several Heads of State or Government – including the V4 countries, France, Bulgaria, Lithuania and Sweden – have argued to keep the selection process within their own competence.[37] The views expressed at the Conference on the Future of Europe could provide further grounds for debate, thanks to the participants calling for a greater say for citizens in the election of the President of the European Commission, either through direct election of the President or by consolidating the S*pitzenkandidat* system.[38]

Where next: Europe of Nations or United States of Europe?

For more than seven decades now, since the beginning of European integration, there has been a debate among politicians and social scientists about the direction in which the common European project is or should be heading. This question becomes particularly important at Intergovernmental Conferences. Although it was not intended to lead to treaty change, the Conference on the Future of Europe was no different in this regard. Each of the three themes discussed in the study has an impact on the future direction of integration, and it is therefore not without interest to know which path the Heads of State or Government choose to take in these areas.

By using qualified majority voting, Member States have accepted that decisions on certain policy issues can be taken against their national interest. However, the requirement for unanimous support on politically sensitive issues has remained in place until now.

[36] Navracsics 2020: 7–28.
[37] Ålander et al. 2021: 1–7.
[38] Conference on the Future of Europe 2022.

By maintaining this, nations can continue to ensure the protection of their national sovereignty and interests. The extension of qualified majority rule, however, strengthens the Community dimension, and a country will no longer be able to block a decision that is not to its advantage.

The transfer of powers to a supranational institution always entails the surrender of part of national sovereignty. This is also the case with the European Parliament. By giving it an increasingly important role in law-making, Member States have contributed to the fact that the Council may be forced to compromise on certain issues, and that the interests of the EP must be taken into account, alongside the alignment of national interests. This has led to a strengthening of the Community dimension. The status quo would not give Member States more room for manoeuvre, nor would it give the European Parliament more influence in policy-making. On the other hand, if more powers are transferred, the supranational level would be strengthened and the national level would be weakened, leading to deeper integration and a more united European Union.

In the choice of the President of the European Commission another key issue is whether the Heads of State or Government want to nominate the first person of one of the EU's most important institutions themselves, thus having some influence on the direction taken in the next five years, or whether they will willingly surrender this power. In the latter case, the national level is again weakened and both the *Spitzenkandidat* system and the direct election of the President imply a more politically active role for the Commission, moving away from a purely executive function.

Therefore, whatever the Member States decide, their choice will also determine whether the European Union should become more federal. This opens another chapter in the debate between the so-called sovereignists and federalists. As historical examples illustrate, there are two major camps of EU Member States: those which support a Europe of strong nations and those which want a more united Union. It is no different today, with the nations opposing deepening integration – Hungary, Poland – and those in favour of it – Germany and France, for example – being divided not only by concrete reform ideas but also by a theoretical and ideological divide. To move forward, this needs to be resolved, but this does not seem feasible in the short term. Consequently, addressing the implications of the Conference on the Future of Europe and the new directions for integration will certainly be a priority for many Presidencies, including the Hungarian Presidency in 2024.

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Ákos Bence Gát

Perspectives of the European Rule of Law Debate – Is There a Place for Appeasement?

This study examines the impact of EU policy regarding the rule of law on the present and future of political unity within the European Union. The central question is whether the current political fault lines will remain with us for the foreseeable future and continue to widen, or whether there are possible ways out of the current divisive EU debate on the rule of law. The analysis evaluates more than a decade of EU political debate related to the matter of the rule of law and outlines possible scenarios for the future.

Introduction

Since the early 2010s, certain political and institutional actors in the European Union have been increasingly critical of the policies of some of its Member States. Initially, criticisms were levelled at measures taken by the Hungarian Government, while later the EU started to question the existence of the rule of law in Hungary in general and later in other Member States, notably Poland. More than a decade after the emergence of these debates on the rule of law, it is important to analyse what can be expected in the future. Can the controversies surrounding the rule of law continue to be an integral part of the EU's political and institutional agenda, or can we expect a shift towards 'reconciliation'?

To explore the answers and possible future scenarios, this paper first reviews how EU policy on the rule of law has been institutionalised. It then explores some reasons why the rule of law debate might persist in the coming years. Finally, it will also outline some possible alternative scenarios that could lead to an easing of the controversy.

The trend: An ever-broader policy on the rule of law

The 2010s saw the emergence of a new EU policy built around the notion of the rule of law in the European Union, whereby the EU institutions have successively put in place instruments to bring Member States under ever wider scrutiny.[1]

The first such instrument was set up by the Commission in 2014 and was called the new EU framework to strengthen the rule of law (the rule of law framework).[2] The rule of law framework is the Commission's existing instrument, based on the analogy of the procedural structure known from infringement procedures. As in the infringement procedure, the rule of law framework organises a structured dialogue between the Member

[1] Gát 2021a: 9–10.
[2] European Commission 2014.

State concerned and the European Commission. However, there are significant differences between the rule of law framework and the infringement procedure as regards the possible outcomes if no agreement is reached between the Commission and the Member State during the phase of the dialogue. For infringement procedures, the dialogue phase is followed by the dispute coming before the Court of Justice of the European Union, whereas in the rule of law framework, this judicial phase is completely missing. This also leads to significant differences in the sanctions that can be imposed. If infringement procedures are initiated, the Court of Justice can condemn the Member State, order it to change its national legislation or practice in line with the Commission's expectations and impose financial sanctions (in lump sum and/or daily penalty payment form). No similar legal sanction can be applied in the rule of law framework, in the absence of which the Commission can only exert pressure by threatening to initiate one of the procedures under Article 7 TEU against the Member State concerned.

This first pioneering rule of law mechanism raised legal problems from the outset. On 27 May 2014, the Legal Service of the Council of the European Union warned of the illegality of the rule of law framework in a clear and precise legal opinion it issued, stating that the Commission had neither the legal basis nor the power to establish it.[3]

Following the creation of the Commission's rule of law framework, in 2014 the Council established the so-called Annual Rule of Law Dialogue, which was intended as a more modest instrument than the Commission's rule of law procedure, and more respectful of Member States' sovereignty. The Council announced in a communication on 16 December 2014 that it would organise a political dialogue between member states every year to promote and defend the rule of law. It stressed that "this dialogue will be based on the principles of objectivity, non-discrimination and equal treatment of all Member States". It also stated that this mechanism "will be without prejudice to the principle of conferred competences, as well as the respect of national identities of Member States inherent in their fundamental political and constitutional structures, […] and their essential State functions". The Council has thus shown that it does not wish to remove the rule of law topic completely from the European political agenda, but has also indicated that the European Union's scrutiny of the rule of law in relation to the Member States must be kept within strict limits, by limiting it to an intergovernmental dialogue which respects the competences, equality and sovereignty of the Member States.

Over the years, the Council's Rule of Law Dialogue has undergone a major transformation. In the beginning, for example during the 2015 Rule of Law Dialogue, Member States did not examine the situation of the rule of law in specific EU countries, but had a general exchange of views on a selected topic related to the rule of law.[4] From the second half of 2020, however, at the initiative of the German Presidency, the main rule of law developments of Member States, identified as an additional component to the general dialogue, started to be discussed in the General Affairs Council (GAC).[5]

[3] Council of the European Union 2014.
[4] Council of the European Union 2016.
[5] Wahl 2020.

Following the Commission and the Council, the European Parliament also put forward its own proposal for an instrument through which the EU could monitor Member States in the name of the rule of law. Similarly to the Commission's rule of law framework, the Parliament also proposed an investigation procedure outside Article 7 TEU, which would have been used prior to the application of this article.[6] However, unlike the Commission's rule of law framework, the so-called EU mechanism on democracy, the rule of law and fundamental rights suggested by the EP in its resolution of 25 October 2016 was not intended to be used only in specific instances when a Member State would threaten the rule of law. Instead, the EP envisaged regular, annual monitoring of all Member States. The EP resolution envisaged the EP and the various NGOs and civil society organisations playing a much more prominent role in the mechanism than they do in the Commission's rule of law framework. Depending on the findings of the mechanism, the EP envisaged a number of possible outcomes, including the possibility of triggering Article 7.

The Parliament's proposal would have required a legislative initiative by the Commission in order to be implemented. The Commission, however, refused to provide one. In a formal communication on 17 January 2017, the Commission questioned the necessity and feasibility of the mechanism proposed by the Parliament, stating that "some elements of the proposed approach, for instance, the central role attributed to an independent expert panel in the proposed pact, also raise serious questions of legality, institutional legitimacy and accountability".[7]

The Commission later reconsidered its initial rejection of an annual monitoring system and in 2019 decided to set up an annual rule of law reporting system similar to the one proposed by the Parliament. The first annual rule of law report was published in September 2020, in which the Commission assessed each member state individually on four pre-defined criteria, namely the judicial system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances.[8]

Although the annual reporting system is quite similar to the Parliament's proposal, it would be premature to conclude that the Commission has met the European Parliament's requirements by introducing it. There are substantial differences between the system of the annual rule of law mechanism as previously proposed by the Parliament and the Commission's annual reporting system on the rule of law. While the Parliament's 2016 proposal sought to give a significant role to the Parliament itself and to a so-called independent expert panel, these features are absent from the Commission's annual rule of law reporting system. This shows that the Commission wished to retain its room for manoeuvre in the assessment of the rule of law in the Member States and did not want to give up this leverage to the advantage of other bodies and in particular the European Parliament. The partly critical EP resolution adopted on 7 October 2020, one week after the publication of the Commission's first annual rule of law report, demonstrated that

[6] European Parliament 2016.
[7] European Commission 2017.
[8] European Commission 2020.

the Parliament remains at loggerheads with the Commission on this issue.[9] Despite Parliament's criticisms, the Commission has published its annual Rule of Law Report since 2020, and it is now an established element of the EU's rule of law toolbox.

Another tool of EU policy on the rule of law is the rule of law conditionality regulation, which allows the Council to withdraw EU funds from member states based on a proposal from the Commission. On 2 May 2018, the European Commission presented a proposal for a Regulation "on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States" as part of the Union's Multiannual Financial Framework (MFF) package from 2021 to 2027.[10] It was on the basis of this proposal that, after significant amendment, the Regulation "on a general regime of conditionality for the protection of the Union budget" (hereinafter the conditionality regulation or the regulation), published in the Official Journal of the European Union on 16 December 2020, was adopted.[11] Unusually, the Regulation was accompanied by "interpretative provisions" that were included in the conclusions of the European Council of 16 December 2020. The highly controversial nature of the text adopted is also reflected by the fact that Hungary and Poland subsequently sought its annulment before the Court of Justice. Although the Court of Justice dismissed the Polish and Hungarian actions in its judgment of 16 February 2022,[12] the extensive legal and political controversy surrounding the creation and application of the Regulation has made it one of the most controversial pieces of legislation in the history of the European Union to date.

The problem lies in the ambiguous reading of the regulation. It is not clear whether budget conditionality is a new, sanctioning instrument of the broader policy on the rule of law or an instrument designed to protect the EU budget.

The conditionality regulation, if it is conceived as a sanctioning instrument, complements the existing instruments of EU policy on the rule of law. According to this logic, the EU institutions were able to formulate criticisms and related claims against individual Member States through the previously established rule of law instruments, but could only enforce them through political pressure. The effectiveness of this kind of pressure was limited, which is why the proposed conditionality regulation was adopted, which now allows also for financial pressure to be applied to Member States.

If, however, conditionality regulation is conceived of as a budget protection mechanism, it does not relate to the previous rule of law mechanisms, but is instead a means of protecting the EU budget and a way of remedying possible damage to it. In order to be activated, it is necessary to establish which Member State has committed a breach of the rule of law which affects the EU budget. It is not sufficient to establish that there are problems of the rule of law in general in the Member State concerned, but it is necessary to demonstrate which anomalies in the rule of law are causing damage to the EU budget.

[9] European Parliament 2020.

[10] European Commission 2018.

[11] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

[12] Judgment of the Court of Justice of the European Union (Full Court) of 16 February 2022 in Case C-156/21, Hungary vs. European Parliament, Council of the European Union.

No sanction can be applied without a link being established with a damage caused to the budget. This means that the purpose of conditionality regulation, in this case, is not to exert financial pressure for various political purposes, but to sanction breaches of the EU budget.

In essence, the controversy over the conditionality regulation stems from the intermingling of the two approaches.[13] This phenomenon can be explained by the fact that introducing a new instrument linking EU policy on the rule of law to direct financial sanctions would have faced legal problems and it was therefore introduced by a roundabout route, invoking another legal basis, notably the protection of the EU budget. This conclusion can also be confirmed by the fact that, although the arguments for the validity of the regulation have been based on the protection of the budget in proceedings before the Court of Justice, in everyday political debates politicians make it clear that they see the regulation as a sanctioning instrument against Member States who allegedly violate the rule of law. The conditionality mechanism has also been identified in academic analyses as a key element of the EU's rule of law toolbox, with some authors explicitly concluding that the conditionality procedure is the most effective instrument to enforce the rule of law.[14] The European Parliament kept the Commission under constant pressure throughout 2021, calling for the immediate application of the Regulation to Hungary and Poland. However, the Commission only launched proceedings against Hungary under the Regulation in 2022, awaiting the outcome of the ECJ ruling and, not least, the Hungarian parliamentary elections.

This suggests that, although the EU's rule of law toolbox is not coherent and bears the hallmarks of competition between EU institutions, the EU's policy on the rule of law has become increasingly extensive in the 2010s. EU debates on the rule of law, which were initially ad hoc political debates on various topical policy issues, have now become institutionalised and take the form of an ever-broader policy on the rule of law. The above trend towards institutionalisation clearly favours the survival of the EU's policy on the rule of law and suggests that it has become a permanent element of the EU's political and institutional agenda. Since 2017 and 2018, Article 7 procedures have been ongoing against Poland and Hungary, which means that the Council has to deal with the rule of law question on a recurrent basis, and in this way, it also helps to keep the rule of law topic on the institutional agenda.

This trend is also reinforced by the increasing number of references to the rule of law in the case law of the European Court of Justice since the second half of the 2010s.[15] In recent years, the Court has delivered a number of judgments in favour of the Commission in disputes between the Commission and individual Member States on the rule of law.[16] The extensive use of references to the rule of law in EU lawsuits has raised doubts even

[13] On the two opposite interpretation of the conditionality regulation see in addition Mavrouli 2022: 281.

[14] Bárd et al. 2022.

[15] Gát 2021a: 161–211.

[16] Judgment of the Court of Justice of the European Union (Grand Chamber) of 25 July 2018 in Case C-216/18 PPU, LM; Judgment of the Court of Justice of the European Union (Grand Chamber) of 24 June 2019 in Case C-619/18, European Commission vs. Republic of Poland; Judgment of the Court of Justice

in the minds of authors who usually support the EU in its competence struggles with the Member States and in rule of law disputes. There is a risk that the ECJ could abusively use the notion of the rule of law to support its decisions and reject, without advancing concrete counter-arguments, those legal arguments which could challenge its reasoning.[17]

Notwithstanding existing trends of EU policy on the rule of law, institutions and public policies can be transformed if there is political will to do so. In the following sections, I will therefore examine what other factors might influence the persistence or de-intensification of the rule of law debate.

Frozen divisions: Deeper fault lines in the background of EU policy on the rule of law

The deeper theoretical and ideological fault lines behind rule of law debates are intensifying rather than fading away, which increases the likelihood of the persistence of EU policy on the rule of law.

One such fault line is the opposition between the supporters of the idea of a federal Europe and the supporters of a Europe of Nations. Although the EU Treaty enshrines the objective of an ever-closer union (Article 1 TEU), the Treaty makes it clear that the European Union is founded on the principle of conferral, which means that the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties (Articles 4 to 5 TEU). It also stipulates that the European Union shall respect the national identities of the Member States, inherent in their fundamental political and constitutional structures (Article 4 TEU).

Supranational institutions interested in reinforcing the federalist features of the European Union, as well as politicians who follow a federalist ideology, can use the policy on the rule of law as a tool to alter the current division of powers between the Union and the Member States without amending the Treaties and to take away, in practice, powers from the Member States. As the legal order of all EU countries is based on fundamental rights and the rule of law, all national policy measures can be directly or indirectly traced back to a fundamental right or rule of law issue. It is sufficient to make a superficial link between a national policy measure and the rule of law to make the EU's rule of law toolbox politically applicable against a given national policy measure. As a result, in practice the European Union can not only intervene on issues where it has formal competence, but can also, without limitation, initiate a debate on any policy in a Member State – including on constitutional or family policy issues.[18] Through its

of the European Union (Grand Chamber) of 19 November 2019 in joined Cases C-585/18, C-624/18 and C-625/18.

[17] Kochenov 2020: 5–6. For previous scientific literature on the risk of an abusive use of the term "rule of law" see Varga Zs. 2019; Mathieu 2018.

[18] See the EU debates around the adoption of the Fundamental Law in the early 2010s, or more recently the debates around Act LXXIX of 2021 on tougher action against paedophile criminals and amending certain laws to protect children.

institutionalised rule of law toolbox, the EU can request a change of national policy according to its own criteria.

In this way, policy on the rule of law is linked to EU federalism, and as the latter grows in intensity, so does the policy on the rule of law become an increasingly widely used instrument. Current trends suggest that federalism is becoming increasingly strong in the European Union. The European Union, based on equality and mutual respect between Member States, is increasingly out of balance. The EU institutional system, which was originally intended to ensure peaceful cooperation between Member States, is increasingly giving way to the ideological objective of a federal superstate that would bring European countries under broad central control.

One example of the everyday political presence of the idea of federalism is the existence of the Spinelli Group, composed of MEPs whose mission is to fight nationalism and intergovernmentalism, and to create a federal Europe.[19] The Conference on the Future of Europe, which took place from 10 March 2021 to 9 May 2022, also demonstrated the strong presence of federalist tendencies.[20] The structure of the conference, the questions put to European citizens and the drafting of its conclusions clearly indicate the presence of a significant lobby trying to push the EU towards federalism. The conclusions of the conference include proposals on topics such as the abolition of unanimity in EU decision-making, the further development of rule of law instruments, the direct election of the President of the European Commission, and the introduction of transnational lists in European Parliament elections.[21] Another sign that federalism has strong political support can be found in the official program of the German Government adopted at the end of 2021, which foresees the transformation of the European Union into a federal state.[22] Overall, it can be concluded that the presence of a pronounced divide between proponents of a federal Europe and supporters of a Europe of Nations is conducive to the persistence of the rule of law debate.

Another constant driving force of EU policy on the rule of law is the conflict between the social-liberal left and the conservative right. The EU's policy on the rule of law was clearly initiated and developed by the European Left, which placed the inherent constitutional notion of the rule of law at the centre of daily political battles.[23] By systematically formulating rule of law accusations against the right-wing conservative governments of Hungary and later of Poland, it managed to stigmatise them and thereby create an asymmetrical situation in its favour.

In the European rule of law debates the two opposing political sides do not stand on an equal footing. Due to their inherent structures, such debates favour the left-wing side which has hence been able to shape the Union's policy on the rule of law, and which usually places such debates on the European Union's agenda. This side is on the offensive, while the conservative side starts from a defensive and tactically much less favourable

[19] The Spinelli Group in the European Parliament 2020.
[20] Conference on the Future of Europe 2022.
[21] Conference on the Future of Europe 2022.
[22] Kiss J. 2021.
[23] Gát 2021a: 213–222.

position. While the left-wing, by developing policy on the rule of law, is free to attack at any time, the energy of the group forced to defend itself, typically the conservative side, is consumed by responding to the allegations raised against it. Because of the positive cognitive and constitutional connotations of the expression "rule of law" in these debates, only the "supporters of the rule of law", i.e. the left-wing, are seen to be fighting for a "noble cause" against "guilty" conservative forces. In this interpretative framework, right-wing formations systematically accused of breaching the rule of law are hardly able to take on their political rivals.

Step by step, the European left has succeeded in institutionalising the debate on the rule of law and making it a dominant issue in European party politics in the 2010s. The practical success of this tactic is demonstrated by the fact that, by conducting the rule of law debates over Hungary and its ruling Fidesz party, it has succeeded first in dividing and then, with Fidesz leaving, in weakening the Group of the European People's Party (EPP) which lost a number of its MEPs. Although the EPP has managed to escape the grip of the left by breaking away from Fidesz, the remaining right-wing groups in the European Parliament will continue to be accused of pursuing anti-rule of law policies. The conflict between the left and the right is unlikely to disappear in the coming years, and is likely to intensify as the European elections approach. Taking all this into consideration, the rule of law debate is unlikely to die down in this respect either.

The third major fault line is the conflict between liberal and democratic principles, which is also linked to the rule of law debate. Both the democratic and liberal principles are important guiding principles for modern constitutional states, but they are also principles that are necessarily contradictory by their very nature. While "democracy" refers to the source of legitimacy, "liberalism" refers to the way power is organised. Democracy means that the source of political power is the people, who exercise their power through their elected representatives. The idea of democracy presupposes the full capacity of the people, and thus of the political majority representing the people, to act. However, if democratic power were not limited, the people, or more precisely the majority representing them, could do anything. Therefore, liberalism, as an idea that corrects democracy, imposes limits on the freedom of action of the political majority, and thus of the people, in order to avoid abuses of power. On the one hand, it separates the branches of power and creates a system in which each branch controls the other, since, as Montesquieu wrote, "only power can set limits to power".[24] On the other hand, as a further constraint on democracy, it requires political power to respect the fundamental freedoms of individuals. Liberalism is thus a restrictive, corrective principle of democracy. Consequently, giving excessive importance to the liberal principle may even lead to the weakening of democracy, since the will of the people may not prevail after a while because of the overreaching institutional checks built into the system.[25]

This dilemma is also at the heart of the debate on the rule of law. In many cases, in proceedings against Hungary, the EU institutions question the decisions taken by the

[24] Montesquieu 2000.
[25] Mathieu 2018: 111.

Hungarian parliamentary or sometimes a constitutional majority on the basis of the democratic principle, invoking the rule of law and fundamental rights, i.e. the liberal principle. The European Union speaks out against democratically validated decisions taken by Member States in the name of liberalism and clearly favours the latter aspect. This can be perceived in the European Parliament's resolution of 10 March 2011, in which it warned against "the risk of the tyranny of the majority" in relation to Hungary.[26] This is also reflected by the fact that, in the early 2010s, in the debate between the Hungarian Constitutional Assembly and the Constitutional Court on the content of the Constitution, the EU favoured the Constitutional Court as an independent institution, over the will of the majority. This also explains why the Sargentini Report led the European Parliament to launch the Article 7 procedure against Hungary in 2018, a few months after its parliamentary elections, and why Commission President Ursula von der Leyen announced two days after the 2022 parliamentary elections that the rule of law conditionality regulation would be applied to Hungary.[27] The above examples suggest that the rule of law procedures can be used to act against democratically made decisions and as a retaliation against popular will that decides in the "wrong" direction. So far, there has been no sign of any challenge to the omnipotence of the liberal principle in the EU, which will inevitably lead to further conflicts with democratic decision-making in the Member States. This is also likely to contribute to the continuation of the debate on the rule of law.

If the persistence of deeper internal divisions in the European Union does not have a positive impact on the future of the rule of law disputes between the Union and specific Member States, it remains to be seen whether other factors could lead to an easing of the situation.

Scenarios for appeasement and their realities

Since it can be concluded from what was argued above that the policy on the rule of law is primarily driven by politicians and political institutions, in this last section I will examine what political changes could possibly lead to a de-escalation or closure of the rule of law debate.

If political changes were to take place in Europe that would bring the EU institutions and the leadership of the countries usually targeted by accusations of breaching the rule of law into political alignment, the rule of law debate could be resolved in a short period of time.

This could hypothetically happen in three possible circumstances. Firstly, it might occur if the right-wing conservative side were to win a majority in the European arena in the European Parliament elections, or if the political composition of the European Council and the Council were to change towards such a majority in the various national elections, this would also force the European Commission to change its policy. Secondly, if the

[26] European Parliament 2011.
[27] Judi 2022.

political leadership of the countries that have been criticised were to change as a result of national elections and the countries that today belong to the conservative camp were to adopt a left-liberal political stance that is in line with the EU institutions. Thirdly, if there were to be an unexpected turn of events that would override the rule of law debate, or at least significantly push it down the political and institutional priority list.

As far as the balance of power at the European political level is concerned, the European Parliament elections are due in 2024, which represents the next opportunity for the conservatives to gain a majority in the European Parliament. With the departure of the Hungarian Fidesz party from the EPP Group on 3 March 2021, a major process of transformation was set in motion in the pan-European party political arena, the outcome of which cannot yet be predicted. The question is whether Fidesz can mediate the unification of the ECR and ID groups in the right-wing and whether such a grouping will be able to win at least a relative majority in the 2024–2029 term. Even if such a scenario were to occur, it is unlikely to have an immediate impact on the European institutions socialised within the framework of a political majority of a different orientation.

In terms of the political orientation of the Member States, as mentioned above, the German legislative elections of 2021 have further reinforced the federalist tendency of the EU that has given additional impulse to its current policy on the rule of law. The French presidential elections of 2022 saw a move towards continuity with the re-election of President Macron for a five-year term, even if the subsequent legislative elections saw the right-wing National Rally party achieve a historic victory. In the Hungarian political arena, there is also continuity, with Fidesz–KDNP again winning a two-thirds majority in the parliamentary elections in 2022. The composition of the Hungarian political scene has not evolved in a way that is favourable to the Brussels mainstream, so this cannot lead to the end of the existing European disputes either. Meanwhile, in some countries of the EU, a shift to the right could be seen at the end of 2022, with the right winning the most votes in Sweden and Italy. This phenomenon, although it has slightly nuanced the political balance of power in Europe, does not yet represent a radical change. A key issue for the future will be the outcome of the 2023 legislative elections in Poland, as this country has found itself, along with Hungary, at the centre of European rule of law criticism.

As for possible unexpected developments that could have an impact on the rule of law debate, potentially overriding the original fault lines, the Russian–Ukrainian war which started in February 2022 is an example of how such unexpected developments can occur at any moment. We might instinctively think that the war in Ukraine, which has put a real, fundamental problem on the European political agenda, might draw the attention of European policy-makers away from ideological debates. The external threat to the EU can be sobering and can contribute to ending internal divisions. Even if political disagreements do not disappear, they can be rendered less significant by a more tangible problem. The war crisis can strengthen the Union's internal cohesion, bring Member States and EU institutions together in times of trouble, and finally refocus them on what unites European countries rather than on what divides them. It would seem logical if the rule of law disputes with Poland and Hungary were to lose intensity, given that the two

countries bordering Ukraine are particularly vulnerable to the war. Other authors have also suggested, albeit with a negative tone, that the war could lead to a relaxation of the EU institutions' criticisms of Hungary and Poland and that the rule of law debate could be pushed into the background.[28]

The example of Poland has shown, at least for a short period, that a positive shift can be achieved not only in principle but also in practice. Poland adopted a tough stance towards Russia, which was in line with the position of the European mainstream. This phenomenon had an impact on the general European perception of Poland and placed the rule of law debate in parenthesis, at least for a short time. This was reflected by the fact that the European Commission adopted on 1 June 2022 the National Recovery Plan of Poland. This step was necessary for the country to receive its share of the Recovery and Resilience Facility (RRF) fund, created to help national economies recover from the economic crisis caused by the Covid-19 pandemic.[29] However, the picture is nuanced by the fact that critical voices from the College of Commissioners and experts emerged soon after the agreement[30] and the amount due to Poland has still not been disbursed. In fact, not only politicians but also some experts from academia are continuing to lobby for the withdrawal of the money due to Hungary and Poland from the RRF.[31]

In the case of Hungary, the war has not diverted the debate on the rule of law from its usual course. Citing its specific economic and geopolitical situation, the Government of Hungary has not followed the European mainstream's political position on the war. The Hungarian Government is critical of the economic sanctions imposed on Russia because it considers that this policy causes extreme economic difficulties in Europe. Instead, it prefers to promote peace rather than entering into a logic of Europe winning the war at all costs. In relation to Hungary, the softening of rule of law criticism seen in Poland has thus not been felt. However, it is also worth noting that Hungary, as a country bordering Ukraine, has been at the forefront in welcoming Ukrainian refugees and helping the victims of war. This could have resulted in a positive shift in the country's image, or at least the additional burden of caring for refugees could have created a political and moral obligation for the European institutions not to consider cutting off EU funding to Hungary in this situation.

However, the humanitarian aid and pro-peace stance has for now been lost in the noise of the strident war rhetoric against Russia. In the present conflict, the European Union, unusually for its tradition, is not attaching importance to the humanitarian aspects of the war and the promotion of peace negotiations, but is behaving instead as a quasi-belligerent. In this set-up, the very fact that Hungary does not wish to support the rhetoric of war is already provoking resentment. Instead of dying down, the debate on the rule of law is burning ever brighter. For example, the European Parliament's resolution of 15 September 2022 on the state of the rule of law in Hungary now includes

[28] Bárd et al. 2021: 39–43.
[29] European Commission 2022.
[30] Bayer 2022; Bárd–Kochenov 2021: 43.
[31] See Alemanno et al. 2021.

the country's position in the Council on the Russia–Ukraine war in the list of rule of law charges against Hungary.[32]

Although, in a time of crisis affecting all the countries of the Union, the strengthening of internal cohesion might seem to be a logical consequence, experience shows that this logic does not necessarily apply in the European Union. The Community was hit by two major crises in the last decade, neither of which diminished the vehemence of the EU's political debates.

The migration crisis that erupted in 2015 did not lead to EU unity, but instead brought to the forefront the ideological differences within the EU. Since then, the conflict between the proponents of a Federal Europe on the one hand, who largely believe in allowing and promoting migration and a multicultural society, and those wishing to maintain a Europe based on strong Member States and according importance to national identity on the other hand, has become even more visible.

The crisis caused by the Covid-19 pandemic that hit the world, including Europe, in 2020 has not reduced the intensity of political battles within the EU either. It is this experience that is perhaps the main cause for pessimism. During the migration crisis, opinions were divided on the extent to which immigration posed a threat to Europe, and indeed this issue was essentially at the heart of the debate. Therefore, by its very nature, the advent of this crisis increased, rather than reduced, divisions within the Union. The Covid-19 pandemic, however, put Europe under a different kind of pressure, one that could justifiably be expected to bring the Member States together. In this situation, there was no question that the virus posed a serious threat to all countries, as the disease does not discriminate according to nationality, political ideology or geopolitical location.

The common exposure to the coronavirus could have been expected to have increased political solidarity within the European Union, but this logic did not apply. When all countries were in trouble and extraordinary measures were imposed across Europe, the EU political pressure on Hungary and Poland increased rather than decreased. While EU decision-making was temporarily blocked, some EU politicians spent their time attacking the measures introduced in Hungary and Poland to tackle the pandemic.[33] This was particularly striking in the European Parliament, where many MEPs seemed to use directing heavy criticism against Hungary as a way of showing their importance and remaining at the centre of media interest even during the European Parliament's temporary shutdown when legislative work was suspended. The EP's majority launched a political offensive against the Hungarian Covid-19 emergency law with unprecedented speed.

All this leads to the conclusion that, while it can never be ruled out that extraordinary events might override EU political priorities and that, in some cases, the rule of law debate may lose intensity as priorities shift, there is no sign of a major change in the political scene in the near future that could lead to a cooling of the debate.

[32] European Parliament 2022.

[33] Gát 2021b: 347.

Conclusion

Since the beginning of the 2010s, the rule of law debate has been on the European political agenda with increasing intensity. What started as ad hoc debates have become institutionalised over the years. Today, the European Union has a wide range of 'rule of law' instruments at its disposal, through which it can exert increasing pressure on Member States. Key elements of this toolbox are the Commission's rule of law framework which was later supplemented by its annual rule of law report. It also includes the Council's Annual Rule of Law Dialogue and the European Parliament's initiatives on the annual rule of law monitoring system, which have not yet entered into force but which are already influencing policy on the rule of law. Finally, there is the controversial rule of law conditionality regulation, through which EU funds can be withdrawn from Member States. The institutionalised instruments of the policy on the rule of law are in themselves conducive to making the rule of law debate a permanent part of the institutional and political life of the Union. The deeper internal European political fault lines underlying the policy on the rule of law also foretell the persistence of a situation of conflict between the EU institutions and certain Member States. The dichotomy between federalism and national sovereignty, the eternal political opposition between conservatives and liberals, as well as the competition between the democratic principle and the liberal principle are constant drivers of European politics and are also closely linked to the rule of law debate and are likely to continue feeding future debates. A political shift in European politics, which could override or even eliminate the current rule of law debates, cannot be completely ruled out. In this respect, however, after taking into account a number of realistic possible influencing factors, I have concluded in this study that, on the basis of current political trends, no substantive change is yet in the offing.

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Bernadett Petri

EU Institutions in the Crosshairs: Rule of Law or Power Play?

The acceleration of the power dynamics between the institutions of the European Union is a phenomenon that is still developing and will become even more significant in the next few years. Part of this can be linked to the debate on the rule of law between the EU institutions and the Member States, which has now become a political product, in which the institutions and Member States concerned are involved with varying degrees of intensity, and of which Hungary and Poland in particular have become the main targets. In the context of the forthcoming Hungarian EU Presidency, this trend may become of particular importance, and it is therefore crucial to analyse and interpret the evolution of the power dynamics between the EU institutions. An essential part of this analysis is a recent trend that may bring a transformation of the way rule of law is regarded: the emergence of rule of law control concerning the activities of the EU institutions is becoming more and more intense, with increasing focus on the conformity of institutional acts with the EU Treaties and on the fulfilment of legal obligations by the EU institutions themselves. From a political point of view, the phenomenon has so far been largely peripheral, with the main messages of the 'mainstream' – or at least those who consider themselves as such – parties not being critical of the institutions, although these political groups, which are part of the mainstream European public life, are themselves not exempt from rule of law monitoring either.

The rule of law criteria for the EU institutions

The rule of law must underpin the functioning of all the institutions of the European Union. This requirement can be interpreted as meaning that the institutions must act in accordance with the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which were adopted voluntarily and democratically by the Member States. According to the Treaties, the purpose of the institutions is that:

"The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions" [Article 13(1) TEU]. Another criterion of the rule of law which is applicable to the institutions is that, according to the same provision, "each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation" [Article 13(2) TEU].

European integration started out as a purely economic integration and, accordingly, neither the EU institutions nor the Member States considered it necessary for the founding Treaties to contain principles and provisions to safeguard the rule of law. The emergence of the rule of law criteria was brought about by the desire to strengthen political integration.

Accordingly, the Maastricht Treaty created a political union which now operates with the rule of law as both a legal and a political concept.[1]

From a case law perspective, the decision of the Court of Justice of the European Union (Court of Justice, CJEU) in the Les Verts case provides a basis for an important definition of the rule of law in EU institutional practice.[2] According to the Court's judgment, the Union is a "[…] community based on the rule of law in so far as neither the Member States nor the institutions are exempt from verification of the conformity of their acts with the Treaty". In practical terms, this judgment defines the provisions of the Treaties as a basic constitutional charter for the EU institutions. Regarding the concept of the rule of law, the Court of Justice of the European Union offers no further definition, however.

This is where the reference to the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights) becomes relevant. The Charter is the basic document on the conditions related to the rule of law for the EU institutions. Article 51 of the Charter of Fundamental Rights states that "the provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law". Prior to the entry into force of the Charter and its incorporation into the Treaties, there was no provision in the Treaties that set out in detail the fundamental rights and rule of law criteria to be respected by the Member States when applying European institutions and Union law. The Charter is therefore a relatively new instrument, since it was proclaimed on 7 December 2000, at the same time as the Treaty of Nice, in accordance with the conclusions of the Cologne European Council of 1999, although at that time it was still an interinstitutional agreement, and therefore at a lower level in the EU's hierarchy of sources of law than the Treaties. It was only with the entry into force of the Lisbon Treaty in 2009 that the Charter of Fundamental Rights was elevated to the level of the EU Treaties.[3] From the perspective of the history of integration, the European Union and its institutions have lagged far behind the Member States for decades in detailing the conditions for the rule of law, while the constitutional structures of the Member States have precisely defined the conditions for the legitimate functioning of their public bodies. It should be noted that today's concept of the rule of law is a political ideal that goes beyond its criteria and beyond the formal and the substantive forms of the rule of law.[4] However, the report of the Venice Commission of the Council of Europe, which was adopted to define the substantive elements of the rule of law, outlines, in a way that is also relevant to the EU institutions, that the conceptual elements of the rule of law are: the rule of law, legality, the requirement of legal certainty, the prohibition of arbitrariness, the right of access to an independent judiciary, the protection of human rights, the prohibition of discrimination and the principle of equality before the law.[5]

1 Téglási 2014: 154.
2 Judgment of the Court of 23 April 1986 in Case 294/83.
3 Téglási 2014: 156.
4 Győrfi–Jakab 2009: 156.
5 Venice Commission 2010.

The EU's institutional system has long resisted 'superseding' control mechanisms. Despite the fact that in substantive legal terms the legal standards applicable to EU institutions cover a very wide range of norms, monitoring of the compliance of EU institutions with the rule of law is still in its infancy. However, considering the fact that the issue of the responsibility of EU institutions for the rule of law has been taboo for decades, the recent precedents that have emerged certainly represent a breakthrough.

Interinstitutional dynamics and the principle of institutional balance

For the sake of completeness of interpretation, we cannot ignore the aforementioned interinstitutional power dynamics that characterise the approach to the rule of law issue. First of all, the Lisbon Treaty can be considered, from this perspective, as having brought about a rearrangement of the balance of power between the European institutions.[6] In this context, the various EU institutions, in particular the European Parliament and the European Commission, have seized every opportunity to use the new rules, interpreting them according to their own objectives, to gain as much political leeway and power as possible, both vis-à-vis each other and vis-à-vis the Member States. The principle of institutional balance is of paramount importance for integration as an integral part of the rule of law conditionality of the EU institutions.

The principle of institutional balance is not explicitly enshrined in written primary law, with the Court of Justice of the European Union having the responsibility for developing it.[7] The so-called institutional triangle is at the heart of EU decision-making, and the EU's institutional triangle system is thus based on both the sharing and the combination of power.[8] The roots of this principle can be traced back to the earliest period of EU integration, specifically to the Meroni judgment, in which the Court of Justice referred for the first time to the "balance of powers which characterises the Community's institutional structure" as a guarantor principle. The norm currently in force is the provision of Article 13(2) TEU, which refers accordingly to the obligation of the EU institutions to cooperate, as mentioned above. In this sense, this means that the EU institutions must comply with the rules governing their competences, but in a teleological sense it also means that it is up to the institutions themselves to reveal the true content of the rules governing their competences, interpreted in a way that is appropriate to the situation, thereby ensuring that the Union functions properly and with the necessary efficiency. This interpretation in itself provides sufficient room for manoeuvre to allow the dynamics of power-sharing between the institutions to take effect.

Experience has shown that the rule of law approach towards Member States has provided an excellent platform for waging the political struggle for competences in the

[6] "The Court of Justice of the European Union, one of the EU institutions, has had one of the strongest influences on the history of integration through its judicial law-making" (Arató et al. 2020: 51).

[7] Mohay 2012: 27.

[8] Trócsányi–Sulyok 2020: 226–235.

past and that, similarly, the interinstitutionally oriented debate on the rule of law could provide an excellent opportunity for a reordering of power within the EU organisational system in the coming years.

Interinstitutional litigation – A path to accountability for the rule of law

Litigation between the EU institutions is not common, but it is not unique in the practice of the European Court of Justice. To give just a few examples of interinstitutional disputes: In the spring of 2021, the European Parliament brought an action of failure to act against the European Commission (case C-137/21), as part of the "usual comitology battle" between the two institutions, this time on visa reciprocity. The Parliament argued that the Commission should have adopted a delegated act under a valid and existing legal instrument in respect of third countries imposing a visa requirement on nationals of EU Member States, but that the Commission had failed to do so.[9] The reasoning behind the case is that Bulgarian, Croatian, Cypriot and Romanian citizens are still required to hold visas to enter the United States, even though U.S. citizens are not required to do so when visiting an EU country.

In 2018, there was a specific case (T-156/18), that was not purely interinstitutional, but which had an institutional policy dimension, when the leader of the European Conservatives, Ryszard Legutko, a politician from the Polish Law and Justice Party, and another member of his party, Tomasz Piotr Poręba, brought a lawsuit for failure to act against the European Parliament, because, in their view, the Parliament had failed to forward to the Council of the European Union a written question which they considered to be in breach of the European Parliament's Rules of Procedure (Rules of Procedure). The General Court dismissed the action as inadmissible, arguing that the failure to forward a parliamentary question cannot be regarded as an act that can be challenged by way of action for failure to act.[10]

Article 265 TFEU stipulates that when the European Parliament, the European Council, the Council, the Commission or the European Central Bank fails to act in breach of the Treaties, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to initiate an infringement procedure. To be admissible, the institution concerned must be given two months' notice to act, followed by two months for the institution concerned to take the action affected by the failure to act voluntarily, after which a further two months may be allowed for legal proceedings.

Therefore, for an EU institution to be found to have failed to act, it must be under an obligation under the EU Treaties. However, the practice of the CJEU is controversial as to whether it constitutes a failure to act if an EU institution takes a position in the

[9] Action brought on 4 March 2021 in Case C-137/21, European Parliament vs. European Commission.

[10] Order of the General Court of 8 March 2019 in Case T-156/18, Ryszard Legutko and Tomasz Piotr Poręba vs. European Parliament.

pre-action procedure when requested to do so, but still refuses to take the action in question. At least, this is the position taken by the Court in its previous case law. In Dumez vs. Commission (Case T-126/95),[11] the applicant sought to have the Commission bring infringement proceedings against Greece in respect of the public procurement for the new Athens airport. According to the Court of Justice, private parties do not have the right to challenge a decision of the Commission refusing to initiate infringement proceedings in a particular case. However, it is also true that the Court interpreted this provision in this way in relation to private parties and not in relation to an EU institution. The picture is somewhat more nuanced in the CJEU's opinion in Pioneer Hi-Bred (T-164/10),[12] according to which the inapplicability of an action for failure to act does not preclude the EU institution from being unclear in its response to a failure to act notice as to whether or not it accepts the act to which it has been invited.

Another decision, also in an interinstitutional case, differs from the general practice of the CJEU. In this case, the Court of Justice interpreted the rules to mean that the mere fact of replying to a failure to act does not absolve the EU institutions from liability. According to the judgment in Comitology (Case 302/87), where the European Parliament brought action against the Council of the European Communities, the refusal to act, however clearly expressed, does not in itself constitute an act of omission.[13]

It can thus be seen that the EU institutions have been the target of actions for failure to act in the past, but this is the first time that the European Council and the European Commission have been held liable not only for the unlawful failure to act but also for the resulting breach of the principles of the rule of law in the context of the application of the conditionality regulation.[14]

Chapter One of the rule of law conditionality case: European Parliament vs. Council

Following the European Council meeting of 10–11 December 2020, the outcome of the EU's agreement on the budget and the recovery fund was hailed as a victory for all parties concerned. A superficial observer might have been under the illusion that the European Union was actually operating according to a policy of compromise above all else. However, as the American poet and diplomat James Russell Lowell put it, "Compromise makes a good umbrella, but a poor roof": regulation regarding the infamous rule of law conditionality had been surrounded by tension for weeks before the formal agreement.

[11] Order of the General Court of 13 November 1995 in Case T-126/95, Dumez vs. European Commission.
[12] Judgment of the General Court of 26 September 2013 in Case T-164/10, Pioneer Hi-Bred International Inc. vs. European Commission.
[13] Judgment of the Court of 27 September 1988 in Case 302/87, European Parliament vs. Council of the European Communities.
[14] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

In addition to the budgetary instruments, the European Council adopted a political agreement which, among other things, foresaw that EU governments could challenge the rule of law regulation attached to the budget before the European Court of Justice. Under the agreement reached at the December 2020 summit of heads of state and government, the European Commission agreed to work with member states to develop a methodology for implementing the rule of law mechanism, but if the regulation is challenged in the Court of Justice – which Hungary and Poland duly did on 11 March 2021 – the procedural rules will only be finalised once the case is closed. According to the text of the agreement, the Commission will not propose any measures before the methodology has been finalised.[15] The agreement was published in the form of Council conclusions, one of the features of which is that they have no legal binding force and no normative effect under the Treaties. The Council normally uses these documents to express its political position on a subject related to the EU's field of activity, and these conclusions therefore tend to be primarily political commitments or positions.

The European Parliament found the agreement unacceptable from the outset, however. A few days after the agreement and before the December plenary, i.e. before the debates and votes on the draft regulation, the subject was already on the agenda of the joint meeting of the BUDG-CONT (Budget and Budgetary Control) committees of the European Parliament on 14 December 2020. In a closed session, the European Parliament's Legal Service answered oral questions on the subject, including several accusations from MEPs that the Council does not respect the rule of law when it adopts conclusions that go against the substance of a regulation. During the debate, the Legal Service confirmed that, according to the case law of the Court of Justice, the conclusions of the European Council can in no way override the provisions of an EU regulation – since, in accordance with Article 15(1) TEU, the European Council does not exercise a legislative function and the framework for the applicability of the conditionality regulation is contained in the regulation itself.[16]

At the request of the EP's Committee on Constitutional Affairs (AFCO), the Parliament's Legal Service examined the options and concluded that the CJEU would not consider the action for annulment of the Council conclusions to be admissible. On the one hand, an action for annulment under Article 263 TFEU could be brought against any measure adopted by the institutions, whatever its nature. The Council conclusions therefore fulfil the criteria for being open to challenge. However, according to the Legal Service, the judgment of 21 June 2018 in Case C-5/16 Poland vs. European Parliament and Council is relevant in this respect, where the CJEU held that in a case where the Parliament and the Council act as co-legislators, they are not at all obliged to follow the conclusions of the European Council.[17] On this basis, therefore, the Council conclusions do not contain

[15] European Commission 2022.

[16] "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions" [TEU Article 15 (1)].

[17] Judgment of the Court of Justice of 21 June 2018 in Case C-5/16, Poland vs. European Parliament and Council.

provisions for the Parliament and, consequently, the CJEU would presumably not consider the conclusions to be open to challenge by the EP. In its opinion, the Legal Service took it for granted that Hungary would challenge the Regulation on the conditionality of the rule of law and, in this respect, urged the EP to concentrate its efforts on defending the position of the EU institutions in the challenge to the Regulation with the Council, rather than on challenging the Council conclusions. The opinion also contained a veiled reference to the Commission, which, according to the resolution, is under no obligation to comply with the Council conclusions, even if it wishes immediately to apply the rule of law conditionality regulation against any Member State.

Following this negative legal opinion, the European Parliament, foregoing the possibility of taking legal action against the Council, reverted to its own toolbox of political and then legal pressure, with the Commission now in its sights.

Chapter Two of the rule of law conditionality case: European Parliament vs. Commission

In its motions for resolutions in March[18] and June[19] 2021, the European Parliament consequently called on the Commission to apply the Regulation on the rule of law conditionality of EU funds against Hungary and Poland without delay. In the absence of any substantive response from the "guardian of the treaties" to these calls, Parliament President David Maria Sassoli wrote to Ursula von der Leyen at the end of the summer calling on her to take the necessary steps and raising the prospect of bringing an action for failure to act against the Commission.

In her letter of reply, the Commission President argued that the conditions for applying sanctions to the two Member States were not clear. She also stressed that she was free to choose from the range of rule of law instruments at her disposal and that it was therefore up to her to decide what action she considered to be effective in this case, and that it was not necessarily this Regulation that would be applied.

In response, the EP launched the necessary internal procedures to prepare for legal action in early autumn. The normal procedure, under the Rules of Procedure, is for the Parliament's Legal Service to prepare an opinion on the chances of success of the case and to appoint a rapporteur to draft a proposal for a case, which is then voted on in committee. The Legal Service is traditionally cautious about the Parliament's litigation initiatives and seeks to identify all possible risks of litigation, but the rapporteur, German Green Party politician Sergey Lagodinsky, argued that the Commission was violating the rule of law by not applying the existing regulation and that the EU institution should be brought to heel as soon as possible.

The Committee on Legal Affairs therefore supported the action and the then President of the European Parliament, David Maria Sassoli, brought an action on behalf of the

[18] European Parliament 2021a.
[19] European Parliament 2021b.

Parliament against the Commission before the European Court of Justice, as recommended by the Committee on Legal Affairs (JURI). However, following the judgment of the Court of Justice of the European Union of 16 February 2022 (C-156/21) rejecting the actions brought by Hungary and Poland in the case and the announcement by the President of the Commission on 5 April 2022 that the Regulation would apply to Hungary, the political groups in the European Parliament decided – behind closed doors – to withdraw the action in May 2022.[20]

Interinstitutional storm over approval of Polish recovery plan

Thus, while the case of the conditionality regulation detailed above put the EU institutions concerned in the crosshairs of the rule of law debate because of a failure to act, the same situation arose in the case of the Polish Recovery and Resilience Plan (RRP) as a result of actually taking a measure, namely the approval of the RRP.

At the end of May 2022, the Polish Sejm adopted the draft legislation to abolish the Disciplinary Chamber of the Polish Supreme Court, as called for by the EU institutions, and which allowed the €35.4 billion Polish Recovery Plan to be approved by Brussels. A few weeks later, in mid-June, the necessary formal decision was taken by the Council of the European Union.[21] The approval came despite the European Parliament's criticism of the Commission's endorsement of the Polish Government's plan, both in plenary and in a separate resolution.[22] MEPs stressed that the implementation of European Court of Justice judgments and the primacy of EU law cannot be treated as a bargaining chip and that the Commission is in breach of the rule of law, despite the EU institution making it clear that the Polish Government must meet several milestones to comply with EU law before Poland can receive any payments.

Even though no disbursement has been made to Poland since then, the approval of the Polish recovery plan is a major source of political and interinstitutional tension both inside and outside the institutions. On 28 August 2022, effectively repeating and further elaborating on the reasoning of the European Parliament's June decision, four European judges' associations, the Association of European Administrative Judges (AEAJ), the European Association of Judges (EAJ), Rechters voor Rechters (Judges for Judges) and the European Judges for Democracy and Freedom (MEDEL), brought an action against the Council decision approving the Polish recovery plan, seeking its annulment.[23] The main argument of the action is that the Council's decision does not restore the independence of the Polish judiciary and ignores previous rulings of the Court of Justice of the EU, and therefore violates the rule of law. The legal arguments were developed by The Good

[20] Judgment of the Court of Justice of 16 February 2022 in Case C-156/21, Hungary vs. European Parliament and the Council of the European Union.
[21] Council of the EU 2022.
[22] European Parliament 2022b.
[23] The Good Lobby 2022.

Lobby Profs, a group of legal academics including well-known law professors who were also involved in the drafting of the basic idea of the rule of law conditionality regulation.

In the authors' view, the milestones set by the Commission and the payments made conditional on them circumvent a number of European Court of Justice rules on the independence of the Polish judicial system. The milestones call for a reform of the disciplinary system for judges, the establishment of a new body to replace the chamber, and a review of the cases of judges affected by decisions of the disciplinary chamber. According to the organisations bringing the action, the decisions of the Disciplinary Board should necessarily be null and void, and the cases of Polish judges subject to disciplinary measures should not be reviewed, but these judges should simply be reinstated to their previous positions with immediate effect, as required by previous rulings of the European Court of Justice. The Commission and the Council must not deviate from this and must not be content with anything less. They consider that the contested Polish RRP decision in fact gives legal effect to the decisions of the Polish Disciplinary Chamber, which was established in breach of EU law, based on the Court's ruling, and whose decisions are therefore null and void.

The central claim of the action, and the most important argument from an integration point of view, is that the judgments of the European Court of Justice in infringement proceedings are binding not only on the Member States addressed but also on the EU institutions themselves, the bodies of the Union. As a consequence, ignoring these judgments violates the rule of law and the duty of loyalty between the institutions. Reference is also made to the Bosman case (C-415/93),[24] which is of particular sporting historical importance, in which the Court of Justice ruled, in a case concerning the transfer of a Belgian footballer, Bosman, that the EU institutions cannot authorise or approve practices which are contrary to the Treaties. As regards the milestones imposed as conditions for payment, the action alleges that these milestones not only circumvent the binding decisions of the Court of Justice, but that the Commission and the Council acted without express competence in determining them. Consequently, both institutions have infringed a system of conditions of the rule of law which has hitherto been imposed on the institutions of the European Union and not on the bodies of the Union, but only on the Member States.

The case could become one of the most important cases in recent decades, but the merits of the arguments presented will first have to be decided by the European Court of Justice in a procedural ruling on whether the action is admissible. An important point in this respect is that, since the applicants are judicial associations, i.e. private parties in a procedural sense, they must satisfy the Plaumann test and demonstrate their direct involvement and interest in the case.[25] In the Plaumann case, the German Government asked the Commission to authorise the suspension of customs duties on the import of

[24] Judgment of the Court of Justice of 15 December 1995 in Case C-415/93, Union royale belge des sociétés de football association and others vs. Bosman and others.

[25] Judgment of the Court of 15 July 1963 in Case C-25/62, Plaumann & Co. vs. Commission of the European Economic Community.

mandarins. In its decision to the German Government, the Commission rejected the request, but a mandarin importer, Plaumann, challenged the validity of the decision. The ECJ ruled that persons who are not addressees of a decision can be regarded as individually concerned only if they are affected by it by reason of a characteristic peculiar to them or if there are circumstances which distinguish them, like the addressee, from all other persons. This is a rather strict set of criteria, although the Court's practice has become increasingly lenient in recent decades, particularly in environmental cases. The judges' organisations bringing the above action demonstrated their compliance with the Plaumann test, in particular by having among their members Polish judges who are subject to the Polish disciplinary measures in question.

If the European Court of Justice upholds the action brought by the judicial organisations, it will have a number of legal consequences for the present situation. Among other things, a situation of lis pendens will be created with regard to the Council decision approving the recovery plan, and although actions brought before the Court of Justice of the European Union do not have suspensive effect, the Court may order a stay of execution of the contested act if it considers it necessary in the circumstances (Article 278 TFEU). As a consequence, Poland would have no chance of receiving any payment from the recovery fund until a decision is taken. As regards the merits of the action, it is possible in a formal sense, but in reality, it is difficult to imagine that the ECJ would provide a ruling that would be contradictory and prejudicial to itself.

Institutional appointments and objections to the rule of law

When, in February 2018, the European Commission accelerated the appointment of President Jean-Claude Juncker's Chief of Staff, Martin Selmayr, as Secretary General of the institution to such an extent that the decision was taken in a single college meeting, bypassing the usual selection procedures, the European Parliament called it a coup d'état in the debate and later called on Selmayr to resign in a resolution of 13 December 2018.[26] In a report of 11 February 2019, the European Ombudsman, Emily O'Reilly, identified four irregularities in the procedure. She argued that the European Commission had artificially created a sense of urgency in filling the post of Secretary General, thus justifying the failure to advertise the post.[27] She argued that the rules had been manipulated to make the procedure appear fair and equitable, while in reality the exceptional procedure for urgency was only used to secure Selmayr's appointment. However, the Ombudsman did not call on the European Commission to reverse the decision. The legal basis for the European Ombudsman is Article 228 of the Treaty on the Functioning of the European Union and Article 43 of the Charter of Fundamental Rights of the European Union. This EU institution, created by the Treaty of Maastricht, aims to improve the protection of citizens and natural or legal persons residing or having their registered office in

[26] European Parliament 2018.
[27] European Ombudsman 2018.

a Member State against maladministration in the activities of the EU institutions, bodies, offices and agencies, thereby enhancing the openness and democratic accountability of the decision-making and administration of the Community institutions. Given that the European Ombudsman's mandate is intrinsically linked to holding the EU institutions to account for their democratic functioning and compliance with the rule of law, his role could, accordingly, be significantly enhanced.

In this context, it is particularly surprising that, in the summer of 2022, the three largest political groups in the European Parliament, similarly to the Commission case, made a secret deal in total disregard of procedures, which resulted in the appointment on 12 September 2022 of Roberta Metsola, former Chief of Staff to the President of the European Parliament, Alessandro Chiocchetti,[28] as Secretary General of the European Parliament with effect from 1 January 2023. In return, the other political groups, not party to the agreement, were rewarded with other senior posts, including the creation of an entirely new Directorate-General. To complete the picture, when Transparency International EU carried out a detailed study on the integrity and ethics systems of the EU institutions a few months ago,[29] the European Parliament was the only one of the three major EU institutions to refuse to cooperate. In response to this decision, The Good Lobby Profs, which had been working in the background to the Polish restoration case, turned to the European Ombudsman and formally requested an inquiry into the case in view of the rule of law concerns raised regarding the specific case.[30]

The winner of institutional rivalry: The European Commission

The role of the Court of Justice of the European Union in EU integration is exceptional. First, in the current situation of the European Union, the benefits of economic integration are driving national governments to adopt the Court's expansive interpretations of the Treaties, with the result that the Court's interpretation of the Treaties and the case law based on it, which is the de facto supreme normative level of the European Union, is becoming the engine of EU integration and is leading to the expansion of EU powers.[31]

Secondly, there is also the important issue of the so-called revolving door phenomenon,[32] in the form of the exchange of staff between the permanent and the rotating apparatus of judges and advocates-general of the Court of Justice. This does not allow for an equality between the EU institutions, in particular between the European Commission and the Member States.

Finally, the consequences of what appears to be the emergence of a rule of law monitoring régime – a power struggle – of the procedures, decision-making and general activities of the three major EU institutions – the European Parliament, the European

[28] European Parliament 2022a.
[29] Transparency International EU 2021.
[30] Van Hulten 2022.
[31] Pokol 2019.
[32] Szegedi 2018: 78–94.

Council and the European Commission – are of little threat to the Court of Justice of the European Union. The CJEU is one of the most powerful international courts in the world. In many respects, its workings are still not known to the outside world, nor is it possible to find out much from the public documents available. The investigations carried out so far have been based on data and information provided by the Court's management and administration, and the judges who have served and are serving in it are bound by the Code of Conduct on secrecy, while the European Parliament, among others, has expressed numerous criticisms regarding its transparency and access to its documents.

In the meantime, even the large Member States have criticised its activities in a number of ways, albeit ones that have no real impact. For example, the French National Assembly's objection,[33] published in November 2019, that French economic operators consider that the General Court and the Court of Justice do not exercise any meaningful control over the EU administration in competition matters. Also in this vein is the opinion of the President of the German Federal Supreme Finance Court (Bundesfinanzhof) that certain decisions of the CJEU disrupt the fiscal and tax order of the German State by reopening cases that were closed years ago and violate legal certainty,[34] or even the dispute between the Court of Justice and the Italian Constitutional Court on the issue of the limitation period for VAT, Taricco-I (C-105/14)[35] and Taricco-II (C-42/17)[36] and the reaction of the Italian Constitutional Court (115/2018).[37]

In the context outlined above, it is of particular importance that the rivalry in the field of the rule of law, and in particular the case concerning the conditionality of the Polish recovery plan, provides an excellent opportunity to enhance the Court's standing and reputation among the EU institutions, to the extent that it would have primacy in matters of the rule of law. As the action claims, any EU institution would only be entitled to hold Member States to account for compliance with the rule of law criteria within the framework defined and as interpreted by the Court of Justice, and EU institutions could only accept compliance with these criteria if it met the requirements interpreted by the Court. This goes far beyond the protection of fundamental rights, since the regulation on the rule of law and the mechanisms attached to it provide the Court of Justice with indirect powers to protect the EU budget and to take measures against Member States to that end.

Interpreting the resulting shift of power between the EU institutions and adapting to a new balance will be a particularly challenging task for the upcoming Hungarian Presidency of the European Union.

[33] Report from the French National Assembly's Committee on European Affairs.
[34] Max Planck Institute 2022.
[35] Judgment of the Court of Justice of 8 September 2015 in Case C-105/14.
[36] Judgment of the Court of Justice of 5 December 2017 in Case C-42/17.
[37] Judgment 115/2018 of the Italian Constitutional Court of 10 April 2018.

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Strategic Dilemmas Related to Critical Raw Materials as the Engine of Digital Transition – The Power Relations of Brussels and the Beijing Effect

This study analyses digital policy, an important field for Hungary, as a member state holding the consecutive presidency of the Council of the European Union in the second half of 2024. The analysis draws particular attention to the imbalance in the global value chain of critical raw materials that represents a great challenge from the point of view of strategic sovereignty, but whose sustainability is essential for digital development. The study examines the major political tests of strength taking place along the Beijing–Brussels–Washington axis, comparing the Chinese dominance of raw material supply with the ever-growing European trends in raw material demand. In addition, the study examines EU legal acts and the Critical Raw Materials Strategy of the great powers using a case study methodology, by considering the question: What degree of exposure does the European Union have towards China in the procurement of critical raw materials, and what should the Union do in the future to strengthen its strategic sovereignty? The study concludes that 1. the development of digital technologies is highly dependent on critical raw materials; 2. the green and digital transition will drastically increase the demand for certain raw materials by 2050 at the European level; 3. the supply of many critical raw materials is highly concentrated, with 98% of Europe's imports of rare earth elements coming from China, an excessive dependence on a quasi-monopoly country which makes Europe vulnerable. Finally, 4. to reduce the latter trend, it is important to strengthen strategic partnerships and to find alternative raw materials, by stimulating innovative research.

Introduction

The present volume explores the policy areas that may represent the defining aspirations of the European Union in the second half of 2024. This study examines some of the queries arising around digital policy, which should be addressed by the Hungarian presidency of the Council of the European Union in 2024. While writing this study, the program of the EU Council presidency trio, consisting of France, the Czech Republic and Sweden, including the priorities of the Czech presidency, formed the basis of the digital policy discourse in the Union, together with the codification debates surrounding the legislative drafts presented by the European Commission. Regarding the latter, it is important to note, from the point of view of the Hungarian presidency in 2024, that the draft Artificial Intelligence Act (AI Act) submitted on 21 April 2021 is expected to be adopted in the second half of 2024. The strategic importance of the EU's digital policy is indisputable in this period, since the countries holding the presidency play a decisive role in the adoption of the draft legislation and can hinder, modify, or even speed up the adoption process.

It is therefore important to pursue a discourse on digital policy which also considers the current Council presidency, especially when this area is reflected in its major policies, due to which increasing resilience and strengthening Europe's strategic sovereignty become a basic condition for digital development. The relevance of strategic thinking is indicated by a statement made by Ursula von der Leyen, at the Strategic Forum held in Bled at the end of August 2022, in connection with the need for critical raw materials for digitalisation, noting that China dominates the market, and therefore that building strategic autonomy and diversifying partnerships is a priority in EU policy.[1] With the green and digital transition, the demand for raw materials increases, as, for example, lithium is needed for batteries, silicon for chips, and rare earth metals for the magnets that drive electric vehicles and wind turbines. The President of the Commission predicted that by 2030 the demand for raw materials for all these applications could double, and there could be a 40% increase in the annual demand for lithium between 2020–2025, with the mining and processing market also being dominated by China. Moreover, ten of the thirty critical raw materials come from China. All of this may foreshadow the development of a dependency similar to the reliance on Russian gas and oil, which causes intense political debates and economic exposure in Europe. The President of the Commission confirmed this in the State of the Union Speech held in the European Parliament on 14 September 2022. Von der Leyen's statement stressed the need to take rapid action, while at the same time she announced that the Commission would present its draft proposal on Critical Raw Materials to strengthen strategic autonomy in the first quarter of 2023.

When examining global dependency relations, the social and economic aspects underlying politics should also be borne in mind. Since the beginning of 2020, the world's struggle to tackle the Covid-19 epidemic has determined economic processes to this day, not to mention the Russian–Ukrainian conflict that broke out in early 2022. Discussing digital policy and within it the supply chain of critical raw materials is inevitable in connection with the EU presidency, since with the intensification of economic tensions, the competition in strategic sectors evolves, as can be seen in the study. Moreover, analysing the World Mineral Statistics also indicates that extreme shocks, such as pandemics or war, reduced global production of critical raw materials by two-thirds by 2020 compared to the levels of 2019.[2]

It is therefore understandable that interest is growing globally in how individual countries can secure the supply chain of critical minerals necessary for the high technology and energy transition. Above all, governments are trying to avoid falling into the same dependency trap that happened in connection with oil and gas in the twentieth century. The comparison is not accidental, as we are facing a similar trend that predicts an explosive increase in the demand for critical raw materials in the coming decades. In the EU, the United States, the United Kingdom and other Western countries, the

[1] European Commission 2022a.
[2] Idoine et al. 2022.

creation of strategies and the development of policies responding to new challenges have begun. Both the private and public sectors are looking for new commercial opportunities in this area, opening up questions of recycling, research, processing and financing, with an increasing emphasis on diversified partnerships through multilateral diplomacy.

In addition to clarifying the concept of critical raw materials, in order to understand the ever-increasing demand for them, this study places the development of European digital policy in a broader geopolitical context, and evaluates the first two years of the European Digital Decade. After an overview of the codification and strategic processes, the global power relations system of the supply chains of critical raw materials necessary for digital development will be discussed, focusing on comparing the Brussels effect and the Beijing effect, which are two key examples of efforts to strengthen strategic autonomy. After a multi-faceted examination of sovereignty, the future of the Chinese-dominated critical raw material extraction industry will finally be addressed, i.e. initiatives aimed at resolving the exposure caused by the quasi-monopoly situation facing Europe will be discussed that can be traced in strategies and multilateral partnerships.

Europe's digital decade

The coronavirus epidemic and the war raging in Ukraine both drew heightened attention to the opportunities offered by digital development, accelerating its evolutionary process. Perhaps it is not too bold to say that during the pandemic, digitalisation can be considered to have emerged as the winner among European Union policies. In addition to its many positive effects, the dangers inherent in the digital space were also identified, which strengthened the codification ambitions of the institutions of the European Union and the member states aimed at creating a safe legal environment for users.

The EC president, elected as head of the European Commission in 2019, announced the European Digital Decade at the beginning of 2020 as one of her first tasks, and to achieve it she defined a series of digital development goals and ordered the necessary legal and financial instruments for their implementation. After that, the codification processes accelerated, resulting in the creation of rules providing protection in the digital space, the precursor of which was the General Data Protection Regulation (GDPR) in 2018. Since digitalisation is an area that develops almost uncontrollably quickly, it represents a major challenge for both national and EU legislators to ensure that the rules are sufficiently flexible, yet detailed. The rules, in addition to protecting their subjects, must be value-based, and it could even be considered the motto of Europe's Digital Decade that the EU wants to guarantee the same rights and obligations in the online space that its citizens enjoy offline. To achieve this, the values of transparency, reliability, predictability and human-centeredness are established as the key expectations when defining the ethical framework of digital technology. The expectation of the citizens is also expressed towards the legislators based on the 2021 Eurobarometer survey, since the

82% of respondents agree with the European Commission's intention to define digital rights and principles.[3]

It is often claimed that digital development brought a technological revolution in the second decade of the twenty-first century. It is inherent in revolutions, as with the industrial revolution two centuries ago, that in times of rapid development, the protection of people can only be ensured by prudent and proactive governance. The challenges of providing the desired protection in the digital space can also be compared to the example of the introduction of road transport. With forward-looking planning, the goal is to eliminate accidents before they occur, so it is necessary to introduce improvements corresponding to seat belts, airbags and other mechanical protective functions in the usage of digital devices. Continuing the analogy, similar to the rules defined for safe road traffic, frameworks of limits and principles to be applied in technological development must also be created. It is also necessary to place great emphasis on prevention in the digital space, because the violation of rights can often occur without the victim's knowledge, such as in cases of illegal data management, unfair digital market competition, or when technological developments are based on purely economic interests.

During the creation of the new digital regulatory framework, the pandemic turned out to be a driving force for the legislators. Of course, to claim that without the pandemic in 2020 digital policy would not have undergone a large-scale and progressive development would be an exaggeration, since the preparations were already in full swing in the years before that, and the scientific, social and political intentions had been formulated. In 2020, as a result of the common will and global competition, decisions were made to accelerate the development of the digital ecosystem and ensure the operation of the safe European Digital Single Market for citizens, transparent and financially supported for businesses and member states. On 19 February 2020, the Commission announced the Digital Europe Programme and the European Digital Strategy, to define the next steps in building a digital regulatory framework to lay the foundation for European innovation networks. In addition to the digital single market, the aim of the European digital regulatory framework is to reduce technological dependence, which has mainly emerged in relation to the United States and China. In 2020, the most significant digital policy initiatives at the EU level are the White Paper on Artificial Intelligence, the European Electronic Personal Identification System, the Digital Education Action Plan, the draft legislation on Data Governance, and the legislative packages on Digital Services and Digital Markets. The purpose of the drafts on Digital Services and Digital Markets is to regulate data platforms and the e-economy in such a way as to guarantee the security of digital information management for the creator of the data, and at the same time to create fair competition for service providers operating on the digital market. The latter also aims to eliminate the market abuses outlined in the chapter on the Beijing effect on the European market. In order to protect the cyberspace, the Cybersecurity Strategy was

[3] Eurobarometer 2021.

also revised and a new strategy was announced in 2019, in which the creation of trust and security in the digital decade was given the main role.[4]

The digital codification processes that started in 2020 escalated further in 2021, making it clear that the EU institutions agree on the importance of regulating the digital space. The interinstitutional debates focus on consumer protection, building trust in technology, developing fair market mechanisms, creating digital connections and ensuring Europe's digital sovereignty. The importance of the latter is also reflected by the fact that the digital capacity of the European Union is surpassed by the United States and China, so Europe's opportunities to build and maintain its economic and political power will decrease in the digital future. The indicator measuring the development of the European Digital Economy and Society in 2021 also made it clear that in order to catch up and be competitive, the digital sovereignty of the continent and enhanced cooperation between the member states of the European Union are essential, since the European states alone, due to their size, are not able to compete with the aforementioned superpowers.[5] Strengthening Europe's digital sovereignty therefore also increases the global economic position of the member states.

The discussion of European digital ambitions has been a theme of many EU summits, and at the request of the Council, it has culminated in the creation of the Digital Compass strategy put forward by the Commission, which lays down the milestones of Europe's Digital Decade until 2030, emphasising the importance of building transatlantic strategic relations.[6] Although the compass does not directly address the raw material needs of digitalisation, it favours building partnerships to reduce exposure to China. In 2021, the Commission also launched the Artificial Intelligence legislative proposal that, as previously mentioned, is of particular importance from the point of view of the Hungarian presidency. Needless to say, the new legislative proposal on digital identity was added to the list of initiatives in 2021, and due to the global chip shortage since 2020, the European draft legislation on chips was presented on 8 February 2022. The EU aims to be a leader in the design and manufacture of next-generation microchips using transistors as small as 2 nanometers or smaller. The idea is ambitious, but it does not resolve the critical shortage of raw materials and the dependency situation. Ursula von der Leyen's 2022 SOTEU speech is important from the point of view of this study, as the President of the Commission announced that the draft legislation on Critical Raw Materials will be presented that also supports Europe's efforts to become the first climate-neutral continent, in addition to the intention to regulate the stable operation of supply chains and the provision of access to raw materials.

Since securing supply chains cannot be achieved by diversifying trade alone, a holistic approach is needed that can be fostered through the strategic use of critical raw materials and by building a network of European agencies, creating a more flexible supply chain while being focused on the whole process. It is an aggravating circumstance that Europe

[4] Pató 2022: 44–48.
[5] European Commission 2022b.
[6] Pató 2021.

only has very small reserves of critical raw materials, so strategic reserves must be accumulated to smooth out market instability so that EU countries can share the benefits equally. The EU sees increased investment in recycling as key to ensuring the future supply necessary for the continent's needs.

From 1 January 2022, France took over the rotating presidency of the Council of the European Union from Slovenia, with digital priorities remaining at the top of the agenda, just as they were in the first half of 2021 for the Portuguese presidency, with the goal of strengthening Europe's role in the digital world economy. France, the Czech Republic and Sweden currently make up the presidency trio, which will be followed by the Spanish–Belgian–Hungarian trio starting in the second half of 2023. The program of the current trio focuses on creating the foundations of the European data sharing culture by strengthening European digital sovereignty, by creating common data spaces (European Health Data Space), and at the same time, seeking to reduce risks by developing the digital rule book.

The purpose of this study is not to examine the digital priorities of individual presidential programs. However, it is clear from the past that the issue of digital legislation will continue to be emphasised in the future and that strategic sovereignty is a pivotal point of the European agenda, so the Digital Decade of Europe also imposes obligations on the next presidencies.

European digital sovereignty

The previous section described how the European Union is trying to take the lead in terms of digital codification. In a technological market dominated by China and the United States, the EU had one option, it had to pursue legal competition to enable it to differentiate itself from its competitors in the international space, and even influence global value chains and market operations through legislation. The EU's role as a digital principle leader also determines its digital sovereignty strategy, but it must strive not to apply excessive protectionism and not to isolate Europe behind the bastions of law.

The lessons of market competition show that it is not possible to gain a large global advantage in strategic sectors by mere codification, so it is worth highlighting two other possibilities for building sovereignty in addition to legislation, namely strengthening the internal market with financial incentives and building strategic partnerships outside Europe. Building widespread economic relations in European digital technologies relieves the pressure of dependency, thus strengthening sovereignty. If the reform of legislation and the system of subsidies is considered to be an active approach to strengthening sovereignty, building external partnerships can be regarded as a passive way of building sovereignty, since the EU wishes to strengthen its strategic position by easing its dependency system.

Definition of critical raw materials

The draft legislation on critical raw materials will clarify which materials are considered critical. The definition of this category is constantly changing, because the supply chain, the dynamics and demand, as well as the strategic importance of individual raw materials can all vary, even as a result of geopolitical changes. According to the practice of the EU so far, critical raw materials are interpreted as those minerals that are of significant industrial and technological importance, but are of limited availability. The list of such materials, which has been changed from time to time since 2011, is maintained by the European Commission. Currently, thirty key minerals have been identified, including lithium, cobalt, platinum, tungsten and rare earth elements, for which demand is expected to skyrocket in the coming years.[7] The list of critical raw materials was expanded to thirty in 2020, compared to 2011 when it contained only fourteen elements. Interestingly, the 2020 list includes bauxite, lithium, titanium and strontium for the first time, as its authors warn that demand for lithium in the EU is forecast to quadruple by 2050, while demand for rare earths will increase fivefold by 2030.[8] The list is evolving, which does not mean it can only expand, as, for example, while helium remains a concern in terms of supply concentration, it was removed from the 2020 critical raw material list due to its declining economic importance. In the future, it is also possible that helium or nickel will return to the list of critical raw materials.

Table 1: The European Commission's list of Critical Raw Materials in 2020

2020 Critical Raw Materials (news as compared to 2017 in bold)		
Antimony	Hafnium	Phosphorus
Baryte	Heavy Rare Earth Elements	Scandium
Beryllium	Light Rare Earth Elements	Silicon metal
Bismuth	Indium	Tantalum
Borate	Magnesium	Tungsten
Cobalt	Natural Graphite	Vanadium
Coking Coal	Natural Rubber	Bauxite
Fluorspar	Niobium	Lithium
Gallium	Platinum Group Metals	Titanium
Germanium	Phoshate rock	Strontium

Source: European Commission 2020a

The demand for critical raw materials is on the rise in Europe's Digital Decade, mainly because achieving climate neutrality goals is becoming increasingly important for governments and businesses.[9] In European digital policy, the term twin transition, i.e. green and digital transition, often appears as it is frequently claimed that a green transition cannot be achieved without digitalisation.

7 European Commission 2020a.

8 McGuiness–Ogrin 2021.

9 United Nations Economic Commission for Europe s. a.

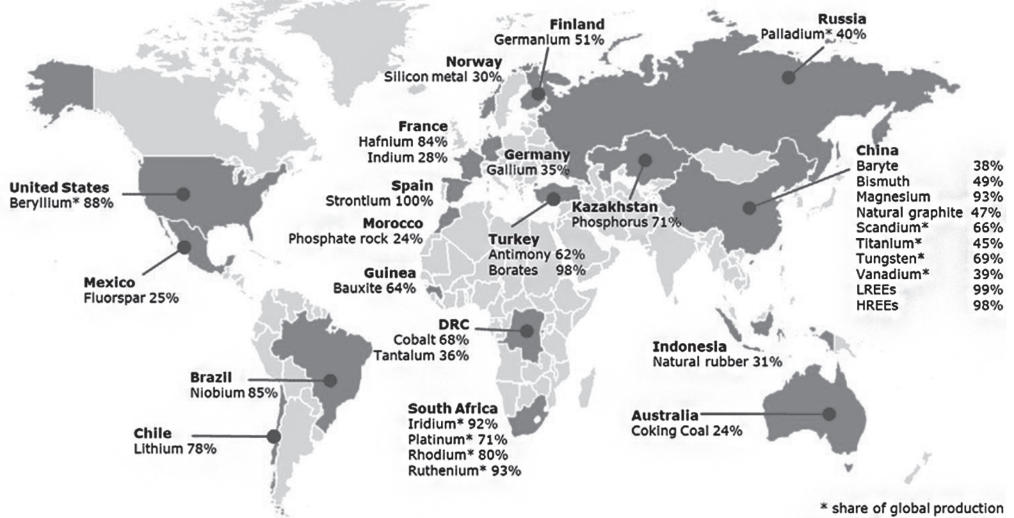

Figure 1: Largest suppliers of CRMs to the EU
Source: European Commission 2022

There are several reasons for the increased demand for critical raw materials. On the one hand, these minerals are indispensable in the production process of chips, electronic products, wind turbines, solar panels and electric vehicle batteries. On the other hand, the shift away from fossil fuels drives markets towards cleaner energy sources and is thus a key element in the green transition. However, the supply chain of critical raw materials faces many challenges because their extraction is clustered in observable hotspots around the globe. According to the World Bank, global demand for critical raw materials is expected to increase by 500% by 2050, resulting in sharp price increases and heightened supply risks in the short term.[10]

In addition to the European Union's definition of critical raw materials, the U.K.'s Critical Raw Materials Strategy, adopted in 2022, is also worth examining.[11] While modern economies rely on countless raw materials according to the British Strategy, certain substances can be declared critical raw materials based on their supply and demand, their substitutability, their necessity and their level of security of supply. As risk factors increase, ensuring a supply of these raw materials can become critical. The risk level of the raw material can be increased by the rapid growth of demand, the high concentration of supply chains in certain countries, or large fluctuations in prices. Many of these critical minerals are produced in relatively small quantities or as companion metals, cannot be substituted in their application, and have low recycling potential. While the European Union has revised its list of critical raw materials three times since 2011, the U.K. has committed to an annual review in its 2022 strategy, which is carried

[10] Hund 2020.
[11] HM Government 2022.

out at the Critical Minerals Intelligence Centre, run by the British Geological Survey. The British Strategy exceeded the current rules of the European Union, even though it is less difficult to create strategy and legislation at the national level, and it has become clear that the United Kingdom has recognised the new market challenges and is trying to gain a strategic advantage through planned market operations.

Critical raw materials in the global geopolitical space

The three focal points of the digitally polarised world and global competition that are the subjects of investigation of this study include the European Union, China and the United States. The latter's advantage on the world market is mainly due to its economic strength and innovativeness. As an example of technological development, it is worth highlighting the field of artificial intelligence, as the European digital transformation monitor showed in 2018 that 70% of the global economic impact of artificial intelligence will be concentrated in the United States and China.[12] This trend will determine the rate of development of all technologies in the geopolitical space. Due to the rate of technological development, a market-stimulating environment, and the current level of expertise, the fastest GDP growth was predicted to occur in the United States in the next few years, but by 2030, China is expected to catch up. Although the economy is booming, the regulatory environment lags far behind the level of maturity of its technological capability. The United States also wishes to regain its former strength in the field of rare earth minerals, and the U.S. Department of Defense is providing funding for the reopening and expansion of the old Mountain Pass mine in California, clearly with national security considerations in mind.

As noted earlier, the European Union wishes to become the leader in artificial intelligence regulation, but since 2017, China has also followed a progressive strategy.[13] The Far Eastern country has set itself the goal of becoming a world leader in artificial intelligence by 2030. China is shaping transnational data management by providing digital infrastructure to emerging markets. The dominant explanation for this phenomenon is digital authoritarianism, whereby China exports not only its technology, but also its values and governance system to the host states. As a result of the Beijing effect, China's influence in data management is increasing far beyond its borders, as the governments of emerging countries adopt the digital infrastructures built in China and China's data management approach to digital development. In developing countries, the main drivers of the "digital silk road" are Chinese technology companies that provide telecommunications and e-commerce services around the world. The data sovereignty of these developing states is illusory, since they are unable to fully control the flow of information with the large-scale imports of Chinese infrastructure, while the limited development of

[12] European Commission 2018.
[13] China Aerospace Study Institute 2017.

their internal legal system and political stability further intensifies this dependence.[14] The Brussels effect manifests itself in the international operation of the market sector, when in their global activities, companies tend to standardise towards EU regulation. Individual EU legislation sets limits for technology companies on the European market and increases their expenses, to which they react in various ways. One possibility is that some companies withdraw from Europe due to the less favourable market environment, while another is that two prototypes (one conforming to European standards and one designed for non-European markets) are produced for the same product which doubles the cost of differentiation. In accordance with the Brussels effect, it may also happen that large technology companies integrate certain elements of EU regulation into their internal regulatory processes, thus European standards exert their influence around the world through the market sector.[15]

Not only companies, but also individual political forces can cooperate in fine-tuning the rules worldwide. A good example of this is the creation of the EU–US Trade and Technology Council, that serves as a forum for coordination between the two continents. The Council is also needed in order to moderate market fluctuations, by striving for the stability of the economy in technological development. The economic effects of digitalisation are well illustrated by the fact that the United States intends to shape global data management with the tools of international economic law.

The deposits of rare commodities are of strategic importance to China, where mining, processing and manufacturing technology are available.[16] China uses several means to maintain its quasi-monopoly position on the market of rare earth materials, as shown by the recent scandal in which the Chinese Government was linked to an online disinformation campaign that was launched to discourage Western investors and which was not accidental. The fake news campaign, according to a report by the cybersecurity company Mandiant, was launched by the Dragonbridge company against the Western company engaged in the mining of Lynas and other rare earths in Australia.[17]

Just as the pandemic drew attention to the role of the digital space, the Russian–Ukrainian war underlined the issue of energy dependence. Since the outbreak of the pandemic, digital development has become a fixture on the European political agenda. Although the energy crisis and green transition were already talking points earlier, with the outbreak of the war the discourse became livelier. As a result of the war the digital raw materials necessary for transformation have been receiving more attention than formerly. As the British Geological Survey shows, since 2008, during the global economic crisis, China was ahead of its competitors, while digital and green technologies were becoming more widespread.[18] In the last decade, the concept of critical raw materials appeared at the level of policies, since recently, during the fourth industrial revolution, the

[14] Erie–Streinz 2021: 4.
[15] Bradford 2020: 232.
[16] IEA 2021.
[17] Cook 2022.
[18] Timeline of the development of the significance of critical raw materials in the global economy (BGS s. a.).

demand for raw materials for technological devices and for achieving carbon-neutrality has started to grow rapidly.[19]

Partly thanks to China's breakthrough in 2008, the country is Europe's main importer of critical raw materials. The European Union currently imports ten different critical raw materials exclusively from China, with Chinese imports accounting for 98% of European rare earth element imports.[20]

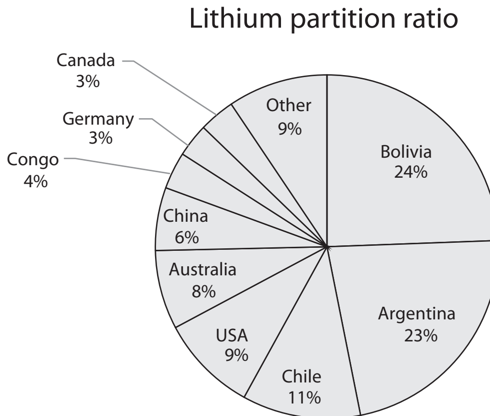

Figure 2: Distribution of lithium deposits on the world map based on data from the U.S. Geological Survey
Source: Gonzalez 2021

Of the critical raw materials defined in the previous section, lithium, which serves as the material for batteries, has become as important in the twenty-first century as oil was in the twentieth. The rise in the price of this raw material also shows its increasing role, as in the last two years the price of lithium carbonate has tripled. Beyond the Atlantic Ocean, there are large reserves waiting to be introduced into the world economy, but their extraction is also a strategic, technological and political issue. Bolivia has the world's largest lithium deposit, lying under a salt field of several thousand square metres.[21] Its extraction can only be realised with foreign technological expertise, so several large German companies have signed contracts with the Bolivian Government. However, the invasion of European companies for the purpose of extraction caused a heated debate among the indigenous people, so the Bolivian Government withdrew from the agreement and now intends to create sustainable jobs for the indigenous people in lithium mining.[22] Strategic partnership agreements to secure the supply chain of critical raw materials must bear in mind the lessons of history, so guarantees against exploitation and "raw material colonialism" are necessary.

[19] BGS s. a.
[20] Idoine et al. 2022.
[21] Hancock et al. 2017: 551–560.
[22] Jamasmie 2019.

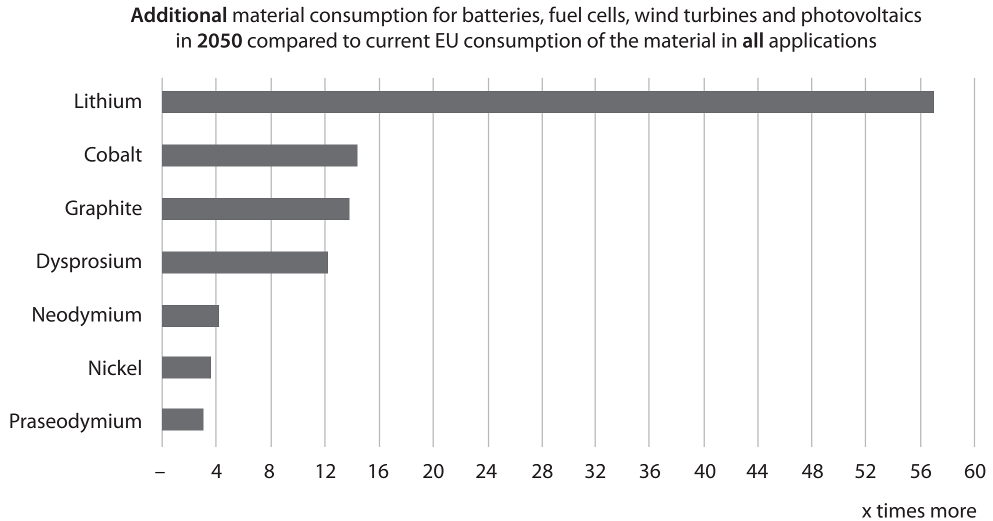

Figure 3: Expected increase in demand for critical raw materials until 2050
Source: European Commission 2020

Demand for the critical minerals that are essential for clean energy and other technologies is projected to expand significantly in the coming decades. Transparent, open, predictable, secure and sustainable supply chains for critical raw materials are vital to deploying these technologies at the speed and scale needed to effectively combat climate change. Digital development may result in a new dependency, as we are currently experiencing in the energy market. The intentions of the Beijing effect and the Brussels effect are different, while the former seeks to expand digital authoritarianism, the legislation of the European Union aims to differentiate markets and strengthen strategic partnerships.

A vision of how we can strengthen Europe's sovereignty and resilience

In a 2021 study, the International Energy Agency warned of an impending supply challenge in connection with the materials most needed to fight climate change. The global competition to secure raw materials will become even more pronounced if economies such as the EU accelerate the energy transition currently being considered in response to the war in Ukraine. Meanwhile, the problems of Europe's existing metal production must also be addressed. Refining is energy-intensive, and as a result of the high energy costs, silicon, zinc and aluminium production have come under pressure, with 10% of the aluminium industry temporarily closed, and 40% of the zinc industry shut down. According to the IEA study, there is theoretical potential for new domestic mines to cover 5–55% of Europe's needs by 2030, with lithium and rare earth projects already

underway.[23] It is also exciting to reflect on the question of how the critical raw material deposits within Europe in the Baltic States, the Czech Republic and Serbia will be valued in the future, and how this will redraw the geopolitical map of Europe.

On 28 June 2022, the European Union signed a cooperation agreement with Norway to coordinate strategic value chains and the extraction of raw materials. According to Geological Survey data, the northern bedrock covers the raw material needs of the green energy transition. Norway has the largest graphite mining area in Northwest Europe, while Sweden is also important in the extraction of rare earths. The Swedish presidency in the first half of 2023 can help to increase cooperation in the field of critical raw materials to an advanced level. In the program of the French–Czech–Swedish presidency trio adopted in December 2021, raw materials are also discussed, although it focuses more on the electricity and gas markets.[24]

Without a strategic approach to the development of European primary and secondary raw material capacities, Europe cannot implement the green and digital transition, nor will its technological leadership and flexibility develop, so it is necessary to prepare the draft legislation on critical raw materials by the first quarter of 2023.[25] As previously noted, the pandemic accelerated the process of digital development, while the war highlighted the risks of security of supply of critical raw materials and the insufficiency of diversification. In the global competitive environment, the EU aims to ensure a stable supply, increase its strategic autonomy and reduce its dependence on imports.

The advantage of China, which plays a leading role in strategic sectors, seems invincible when individual states try to overcome it by individual acts through bilateral diplomacy. Only the establishment of longer-term strategic partnerships, which span several states, can make the global system of relations more balanced and reduce their dependence.

In the previously mentioned *Dragonbridge vs. Lynas* case, the United States Department of Defense awarded a contract to build an industrial facility to process heavy rare earth elements in Texas to reduce dependence in the area of strategic raw materials. The Dragonbridge company created hundreds of social media accounts through which it falsely drew attention to the health and environmental hazards of the proposed development. The example illustrates that China also uses the tools of disinformation in order to maintain its strategic advantage, even while it maintains an unfair market competition and neutralises its potential rivals. Following the American example, a similar influence campaign may also be conducted in Europe, as the European Union tries to extract part of its needs within its own region in order to reduce imports of Chinese raw materials.

One of the ways to reduce dependence on China is to build partnerships, so the EU formed the European Raw Materials Alliance (ERMA) in 2020 in order to increase investment and develop innovative technologies. ERMA's members include actors from the corporate, civil, governmental and scientific sectors. The formation of the ERMA

[23] IEA 2021.
[24] Council of the European Union 2021.
[25] Breton 2022.

was announced on 3 September 2020 at the same time as the Action Plan for Building Resilience with Critical Raw Materials[26] and the publication of the 2020 Critical Raw Materials List.[27] The Action Plan examines current and future challenges and proposes actions to reduce Europe's dependence on raw materials from outside Europe, to diversify supply from primary and secondary sources, and to improve resource efficiency and circularity, while promoting responsible sourcing worldwide. The Action Plan on Critical Raw Materials aims to create flexible value chains for the EU's industrial ecosystems, to reduce dependence on primary critical raw materials through the circular use of resources, sustainable products and innovation, to strengthen the domestic procurement of raw materials in the EU, and affect international trade to diversify procurement from third countries by adjusting distortions. To achieve these goals, it ordered ten actions, and as a first step it set up ERMA. Furthermore, it has initiated cooperation with the scientific sphere and financed research on the possibilities of sustainable mining activities and the substitution of critical raw materials. One point of the action plan which deserves particular attention proposes the establishment of international strategic partnerships in order to ensure a diversified supply. A pilot partnership has been started with Canada which will then be extended to Africa and the EU neighbourhood from 2021.

Critical raw materials are vital to high-tech applications in the automotive, renewable energy, defence and aerospace industries. Ensuring a sustainable supply of CRMs is essential for Europe's transition to a green, digital and circular economy. Currently, coal-powered Chinese and Indonesian metals production plays a dominant role in refining metals and rare earth elements found in magnets used in wind turbines and electric batteries. Meanwhile, the EU relies on Russia for aluminium, nickel and copper supplies, which caused problems for the industry when the war broke out. It is thus essential to review Europe's domestic supply and demand, refining and recycling capabilities, and build partnerships with Ukraine, Serbia and Canada, among others, to reduce dependence on China and Russia.

On 22 September 2022, the Minerals Security Partnership (MSP) was concluded in New York, a multilateral initiative whose members (Australia, Canada, Finland, France, Japan, the Republic of Korea, Norway, Sweden, the United Kingdom, United States and the European Union) have pledged to work together to strengthen critical raw material supply chains for the transition to clean energy technologies. A further goal of the partnership is to produce, process and recycle critical minerals in a way that helps countries realise the full economic development potential of their resources. To achieve these goals, MSP attracts public and private investment, initiates the creation of joint projects, increases transparency and promotes high environmental, social and governance (ESG) standards in critical minerals supply chains.

In addition to their economic role, critical raw materials also have a national security significance that goes beyond military capabilities, since another state can use control over resources to assert its own political interests. Critical minerals, semiconductors and

[26] European Commission 2020b.
[27] Bobba et al. 2020.

data are the oil, steel and electricity of the twenty-first century.[28] In the same way that the Covid-19 epidemic spurred digital development, the challenge of responding to the Russian–Ukrainian war has boosted the building of critical raw material partnerships to a similar extent. On the one hand, we have experienced what happens when the energy supply chains are interrupted. In 2022, we felt how vulnerable a state is if its range of importers of basic products is not diversified. On the other hand, the tensions that increase with energy uncertainty can accelerate the transition to renewable energy sources and escalate the demand for certain raw materials. Global events have caused disruptions in the supply chain and price fluctuations for critical raw materials, that can be eliminated in the short term, but whose longer-term effects should not be forgotten. When building strategic partnerships, more attention is now paid to the assessment of risks inherent in global supply chains, as well as to product awareness and increasing the importance of knowing the place of origin and traceability of products.

Summary

In the United States, after Joe Biden was elected president, he decreed that critical raw material supply chains have to be reviewed, and in the United Kingdom, the first critical raw materials strategy was adopted in 2022. It is clear that a broad effort to build global resilience has begun, as the major powers seek to ensure the smooth running of their supply chains, and hope to gain a competitive advantage, although the latter will only be understood in the perspective of the next decade.

This study has highlighted the uncertainty of the supply chains of critical raw materials that are essential for the green and digital transition, which is becoming a strategic sovereignty issue for Europe due to technological development. As the European Commission will present the draft legislation on critical raw materials in the first quarter of 2023, the tasks of the Spanish–Belgian–Hungarian Council presidency trio will be to examine the draft, to create strategies that ensure the raw material needs of forward-looking technologies, to conclude partnerships outside of Europe and to mitigate exposure from China while alleviating incoming technological and energy pressure from Russia. Since rapid development requires rapid action, it is conceivable that in the second half of 2024, during the Hungarian presidency, we may enter the final negotiation stage of the draft legislation on critical raw materials, so Hungarian strategic thinking will become of paramount importance in the area of maintaining the sovereignty of not only Hungary, but also the European Union.

A shortcoming of this study is that it did not fully present the critical raw materials flowing into Europe using an economic methodology. Although this was not the goal, since we focussed on exploring the possibilities of strengthening strategic sovereignty, a future analysis could provide a more detailed description of the thirty critical raw

[28] Spoken by Lord Sedwill, former National Security Adviser to the British Government, on 23 November 2021, in Geneva, at the UN Climate Change Conference (COP26).

material importer countries, and compare the import and export of critical raw materials between the European Union and the rest of the world. A more detailed investigation could also reveal the degree of dependence on raw materials in numbers. Nevertheless, the conclusion can be established with absolute certainty that efforts should be made to end the Chinese dependency relationship in terms of raw materials in order to strengthen European sovereignty.

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Bettina Tóth

Will the European Green Deal Finally Get the Green Light?

In 2019, the European Union set the goal of the continent becoming carbon neutral by 2050, which will be achieved by adopting a number of measures. The European Green Deal is closely linked to the Paris Agreement (2015), signed by more than 190 countries, which aims to avoid extreme climate change by keeping the global average temperature below 1.5°C. This requires, among other things, reducing greenhouse gas emissions from all sectors by increasing energy efficiency and independence, building a circular economy and preserving biodiversity, and therefore a combined reform of environment, climate and energy policies are needed. The coronavirus pandemic starting in 2020, as well as representing a daunting challenge has also provided an opportunity to transform the European and even the global economy in a greener way. The Russia–Ukraine war in February 2022 has woken Europe up to the urgent need to increase the resilience of its energy sector, for example through the substitution of fossil fuels by alternative/renewable energy sources. The question now is whether European policy makers, and indeed European societies will be able to seize the opportunity offered by external factors.

Introduction

The complex process of climate change has affected the world for decades, although its spectacular consequences have only begun to become visible to the everyday person in recent years. While the climate has always been subject to changes, the present consequences are due to the increased human greenhouse gas (GHG) emissions. The widespread use of the term global warming is an indication of the extent of the phenomenon, as there is no part of the world today where climate change is not having an impact. Since the beginning of the 2000s, the world has been experiencing a period of extreme weather, even if the form it takes and the geographical location varies: most African countries are experiencing increasing droughts year after year,[1] while elsewhere it is extreme rainfall which causes major damage disasters. These contradictory phenomena are also occurring in Asian countries and throughout Europe. In many European countries, 2021 was a year of floods, with a high number of forest fires and a record-breaking heat wave (Sicily – 48.8°C),[2] while in 2022, the onset of intense heat waves caused an unprecedented drought across much of the continent.[3] These impacts and consequences have alerted European policy makers to the urgent need to take action to mitigate weather anomalies by reducing greenhouse gas emissions and to stop further damage from climate change where it is possible.

[1] Marsai 2022.
[2] Fillon 2022.
[3] Copernicus 2022.

In 2015, the European Environment Agency named the European Union as the world's third largest carbon emitter,[4] which – among other drivers such as the Paris Agreement (2015) – has accelerated action on climate protection. This paper reviews the EU's climate policy efforts on the path towards European carbon neutrality, taking into considering the assessment of the situation in the Member States, the implications of the Russia–Ukraine war and the projected priorities for the Hungarian Presidency in the field of green action. The study does not go into detail on each of the segments of environmental protection, such as measures specifically aimed at reducing biodiversity loss or developing a circular economy.

Milestones for a green Europe

The issues of climate change mitigation and the drive for a sustainable environment date back to the last century, both on national and international platforms. Initially addressed in various fora of the United Nations (Brundtland Commission: Our Common Future, 1987; Rio Conference, 1992; UNFCCC: Kyoto Protocol, 1997), green issues have been steadily appearing in regional and local decision-making, influenced by international discourse and conventions. The Paris Agreement, signed in 2015 by all the European states, is a milestone in the European Community's efforts to green the transition, with the EU committing to a minimum 40% reduction in greenhouse gas emissions by 2030 compared to 1990 levels. In doing so, the signatories have committed to a headline target of keeping the global average temperature change well below 2°C, along with taking further measures to reduce the global average to 1.5°C.[5] Related to this and the earlier provisions at Community level, the European Commission – led by Ursula von der Leyen, who took office in 2019 – has prepared the *European Green Deal* framework document, which provides the basis for policy-making to achieve the targets (see section *Key elements of the European Green Deal*).

Early activities

The seeds of European green thinking were sown in the early 1990s with the first report of the Intergovernmental Panel on Climate Change, which gave a new impetus to the EU climate policy discourse in all decision-making bodies. Although environmental action had already been on the Community's agenda since the 1970s, through various programmes and grants – e.g. The Birds Directive, the ACE Rule for clean technology and the promotion of nature conservation etc. – these were not as significant as the initiatives launched after 1990.

[4] European Environment Agency 2015.

[5] Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change.

First, targets were set for 2000: Member State leaders agreed to stabilise the GHG emissions of the Community at 1990 levels by the turn of the century. In the absence of a coordinated policy at the time, the aim was to meet the ten-year target by focusing on three areas: reducing GHG emissions, promoting renewable energy and improving energy efficiency.[6] In the years that followed, programmes focusing on all three segments (e.g. SAVE, ALTENER) were agreed by Member States, targets were progressively increased and monitoring mechanisms were put in place to facilitate verification. However, achieving emission reductions also required mobilising huge resources because of the need to reform the European economies. The European Union's funding instrument for the environment and climate action *(LIFE)* was set up in May 1992, with an initial budget of ECU 400 million,[7] which was gradually increased in stages. Launched thirty years ago, LIFE encompasses more than 5,500 projects aimed at achieving a circular economy, promoting clean energy and preserving biodiversity, with an increased budget of nearly €5.5 billion for the 2021–2027 budget period.[8] Another example of programmes that prioritise reducing emissions is the EU Ecolabel,[9] which has been in existence for 30 years and which has certified more than 83,000 products and services designed and produced to high environmental standards.

Another pillar of European climate policy is the Kyoto Protocol, which was endorsed by all members of the international community in December 1997 and whose market-based mechanisms were implemented by the European Union with the introduction of the EU Emissions Trading System (ETS) in 2005. Its basic idea is to reduce GHG levels for large emitters (industries, airlines and power plants) by setting an emission quota for companies. If they exceed this quota, they are obliged to pay (or they can buy additional allowances). However, if they do not exceed or remain below the cap, they will be able to sell their remaining allowances. For a long period, the mechanism was not a great success and did not bring much change. It has been successful in reducing emissions in recent years, however, (bringing a record 11.4% reduction between 2019 and 2020, although this can also be explained by the shutdowns generated by the coronavirus epidemic),[10] as the additional cost has an incentive effect on market participants.

Before 2010, further discussions were held between the heads of state or government of the 27 EU member states to agree on the so-called 20-20-20 by 2020. This goal called for a 20% reduction in GHG emissions, a 20% share of renewables in final energy consumption and a 20% saving in final energy consumption by 2020. To implement this, in 2008 the European Commission launched the Climate and Energy Package, which set out a series of policy elements (e.g. reform of the ETS) to help achieve the targets.[11]

[6] Prahl et al. 2014.

[7] The European Currency Unit, the predecessor of the euro, was the currency of the European Community and then of the European Union from 1979 to 1999.

[8] LIFE Programme 2022.

[9] Sustain Europe 2022.

[10] European Environment Agency 2022.

[11] Peña–Rodríguez 2019: 477–486.

As weather anomalies have become more frequent, the 2010s have seen an increasing number of discourses, packages, initiatives or programmes aimed at climate protection and decarbonisation goals. One of the more ambitious of these projects is the *Roadmap for Moving to a Competitive Low Carbon Economy in 2050*[12] from 2011, which called for an 80–95% reduction in greenhouse gas emission by 2050. Another is the Environmental Action Programme, which has in fact been in existence since the 1970s and is the eighth programme on the environmental policy agenda since May 2022.[13] Also worth mentioning in this regard is the Europe 2020 Strategy, which sets out to achieve smart, sustainable and inclusive growth.[14] In addition to these programmes, a number of other climate-related action plans have been published over the last thirty years, with an increased focus on the topic in the last ten years. The *European Green Deal,* launched by the European Commission in 2019, is among the highest level policy elements to promote emission reductions, in which the European Union has shifted its agenda from reducing GHG emissions to eliminating net emissions altogether.

Key elements of the European Green Deal

One of Ursula von der Leyen's first tasks after taking office was to publish the *European Green Deal (EGD*)[15] proposal, which had earlier formed a key part of her campaign. At the time, President von der Leyen described the proposal as "Europe's man on the moon moment", while admitting that "we don't have all the answers yet, the journey is just beginning".[16] The journey started with ambitious plans, as the proposal included an action plan and a roadmap for a "new growth strategy for a sustainable, cleaner, safer and healthier EU economy".[17] The main elements of the roadmap are climate neutrality, i.e. the elimination of net zero greenhouse gas emissions (i.e. only as much greenhouse gas emission from human activities as the earth can absorb) by 2050 (increasing the pledged reduction in emissions from 40% to 55% by 2030), the transition to a circular economy and the restoration of biodiversity. The action proposals cover all policy areas, including sustainable industry and mobility, climate action and energy and resource efficient construction and modernisation. The proposal also addresses the need for the European Union to act as a global leader in the fight to reverse climate change and provides for local involvement through the creation of a European Climate Pact, a forum for European citizens, organisations, businesses and communities. In addition, the Commission has

[12] European Commission 2019.

[13] Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030.

[14] Fogyasztóvédelem 2015.

[15] The term *Green Deal* refers to the *New Deal* programme announced during the administration of U.S. President Franklin Delano Roosevelt, which aimed to create a recovery from the recession following the Great Depression.

[16] Lory–Mc Mahon 2019.

[17] European Commission 2019.

subsequently proposed EU climate legislation[18] to make the EGD and climate neutrality by 2050 an obligation for Member States.

While the green transition did not have to start from scratch at the end of 2019 (the European Commission presented the proposal on 11 December 2019 and the heads of state or government of the member states adopted it a day later), as there was already a wide-ranging debate on climate protection and a well-developed legislative framework in the Community, it is still true that research and development in this field and new investment plans needed a lot more support. Significant resources have therefore been allocated to the green transformation: currently, one third (€600 billion) of the seven-year EU budget and of the Next Generation EU (which is a temporary recovery instrument to help repair the immediate economic and social damage brought about by the coronavirus pandemic) is dedicated to financing the EGD objectives. Special mention should also be made of the Just Transition Mechanism, established under the EGD, which targets regions where the transition to a climate-neutral economy is starting from a disadvantaged position. As this situation affects many regions of the EU, €100 billion will be mobilised over the 2021–2027 budget period to mitigate the socio-economic impacts of the transition. The just transition will be financed from three main sources: nearly €100 billion from the Just Transition Fund and other funds, €45 billion from InvestEU and €25–30 billion from the European Investment Bank's lending facility.[19]

Whether they are called strategies, targets, programmes or action plans, the point is that significant proposals to achieve climate neutrality by 2050 have been put forward in the last three years. First and foremost among them is the "Fit for 55!" package, which includes an increase in emissions reductions from the previous target of 40% to 55% by 2030. This ambitious target was accompanied by clear milestones: proposals to reform the emissions trading scheme, increase the use of renewable energy from 32% to 40%, introduce a carbon tax and end the sale of cars with internal combustion engines from 2035 onwards.[20] Efforts to transition towards relying on renewable energy are also helped by the addition of the so-called taxonomy regulation (see below), which emphasise that nuclear energy and natural gas should be considered sustainable energy sources, although this has been a source of much debate among member states.[21] In addition, the Commission has developed a number of other proposals for action to protect ecosystems and human life, as harmful activities have a negative indirect or even direct impact on human life, such as the "Zero Pollution Action Plan" (2021) aimed at achieving zero pollution for air, water and soil, which deals with the reduction and eventual elimination of plastic waste and pesticides. This key element of the plan was supplemented in October 2022 by a new element: if a country is proven to be in breach of EU air quality rules and

[18] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law').
[19] EU Funding Overview s. a.
[20] Wilson 2022.
[21] Navracsics 2022.

EU citizens suffer health damage as a result, they will be entitled to compensation.[22] It should also be noted that, while the detailed path to achieving the standards set is left to national authorities, the Commission can use the infringement procedure if the requirements are not being properly met,[23] for example if a member state does not make access to a sewage disposal and treatment network available to all.[24]

The coronavirus pandemic has made the EU's member states (and the world) aware of the vulnerability of the global system and the need to increase resilience. The Russia–Ukraine war has reinforced this in the relation to Europe's exposure to Russian energy sources, which was already known, but the questions of "what" and "how much" have distracted attention from the questions of "what from" and "how". Energy policy has not been separated from green policy, although the energy crisis and decarbonisation are now even more intertwined. After 24 February, the two policies needed to be established on a new basis, which the Commission has done with the publication of the REPowerEU plan for energy diversification and sustainability. The plan, with a budget of around €300 billion, is designed to help member states to move away from Russian fossil fuels before 2030. The programme has four pillars: energy diversification, early transition to green energy, energy savings and support for smart investments. Hence, in addition to encouraging the use of renewable energy sources instead of fossil fuels (the previous target of 40% is to be raised to 45%), and besides building energy efficiency, they also want to employ an economic recovery mechanism.[25]

The range of options for action is quite broad, so it is up to the member states to make the most of it according to their own capacities. With eight years to go before the first target date and 28 years to go before the second, EU countries are still underperforming. This is partly due to successive crises, but also due to a lack of commitment to the EGD on the part of member states. Although some countries have been at the forefront of the green transition because of their favourable geopolitical position (the latter having been rather valorised by the war), their practices are difficult to adapt to other countries.

Results so far

There is evidence that GHG emissions have been on a downward trend over the last few years, with the EU27 emissions rate of almost 80% in 2017 (compared to 1990 levels) falling to 66.7% in 2020.[26] However, industrial shutdowns across Europe due to the coronavirus pandemic may have contributed to this, so data from the years after 2021 will certainly be more relevant to how the EU27 is performing in terms of emissions. Examining the individual performance of the Member States, only 11 countries have below

[22] European Commission 2022a.
[23] Euractiv 2022.
[24] European Commission 2022b.
[25] European Commission 2022c.
[26] Eurostat s. a.

average emissions, so 11 of the 27 EU Member States are most likely to achieve a 55% reduction by 2030 based on data from 2020.

Table 1: Greenhouse gas emissions and renewable energy use in the EU27 plus Iceland and Norway as a percentage, 2020

Country	GHG emissions, compared to 1990 % (2020)	Share of renewables in the energy mix % (2020)
EU27	66.7	22.09
Belgium	75.2	13
Bulgaria	*49.3*	23.319
Czech Republic	*66.4*	17.303
Denmark	*57.5*	31.681
Germany	*57.1*	19.312
Estonia	*34.8*	30.069
Ireland	106.8	16.160
Greece	69.6	21.749
Spain	94.9	21.22
France	73.2	19.109
Croatia	71.8	31.023
Italy	67.7	20.359
Cyprus	147.6	16.879
Latvia	81.6	42.132
Lithuania	*35*	26.773
Luxembourg	78.1	11.699
Hungary	*61.1*	13.850
Malta	83.2	10.714
Netherlands	75.6	13.999
Austria	109.1	36.545
Poland	79.9	16.102
Portugal	85.5	33.982
Romania	*34.6*	24.478
Slovenia	78	25
Slovakia	*44.7*	17.345
Finland	*53.4*	43.802
Sweden	*20.6*	60.124
Iceland	105.3	83.725
Norway	71	77.358

Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Share_of_energy_from_renewable_sources,_2021_(%25_of_gross_final_energy_consumption).png; https://ec.europa.eu/eurostat/databrowser/view/env_air_gge/default/table?lang=en

As shown in the table below, the share of renewables in the energy mix is even less likely to lead to the 2030 target of at least 40% being met (if only energy produced in the EU is taken as a basis [42% of the EU's energy], renewable energy accounts for 40.8%). Three Member States (Latvia, Finland and Sweden) already met this share in 2020, but only five (Denmark, Estonia, Croatia, Austria and Portugal) were above 30% for

renewables.[27] This means that 19 countries still have a lot of investments and reforms to make to maintain European unity by 2030.

On the last day of 2021, the European Commission presented to member states a delegated act supplementing the EU Taxonomy Regulation,[28] which states that natural gas and nuclear energy can contribute to the decarbonisation of the EU economy and to the shift of member states towards renewable energy sources, i.e. that these energy sources should be included in the EU taxonomy list. The Commission's proposal is not intended to give specific guidance to EU countries on which alternatives they can use to make the green transition and to develop their energy mix – as this remains a national decision – but to provide a broad framework to help them achieve their climate targets as smoothly as possible. Under the revised taxonomy regulation, such investments will also be supported in the future, provided that strict regulations (e.g. proper storage of radioactive waste) are respected by operators. Focusing on nuclear energy, climate neutrality and diversification efforts seem to be more achievable for only 13 of the EU Member States (12 in fact, because Germany, even if it puts two of its last three plants on emergency standby because of the war, will abandon nuclear power in a year at the latest),[29] while considering all the European countries, 18 out of 44 have nuclear power plants. Nevertheless, this number could increase, as Poland and the Netherlands start energy production in their power plants in the near future, while several countries are planning to expand their capacity.[30] However, a study by the Hungarian Energiaklub found that "among the countries without nuclear reactors, the countries of Northern Europe, the Balkans and Southern Europe with significant hydro, wind or even geothermal energy resources are over-represented […]", meaning that more EU countries could be closer to the climate targets if all are considered together. One of the best examples outside the EU is Iceland, which has no nuclear power plants and is building its energy system using geothermal energy; it is no coincidence that the share of renewables in the energy mix in that country is over 80%. Norway is in a similar position, with hydroelectricity from its rivers enabling it to achieve a significant 77% of renewable energy use. Latvia, which also lacks nuclear power plants, boasts a figure of over 40%.

However, there are also many counterexamples where neither renewable nor locally produced energy has a high share of energy generation for geographical and financial reasons, and where nuclear energy is also not produced in the country. Examples of this include Malta, with a fundamentally high GHG emission (83.2%) and an import dependency of 97.6%. The other island country, Cyprus, has much higher emissions (as electricity is produced from oil instead of natural gas) and a similar import dependency, while Luxembourg is also of this type, although it has lower emissions.[31]

While the above examples provide only a limited picture of the relationship between renewable and fossil energies, nuclear energy and GHG emissions, they do demonstrate

27 Eurostat 2021.
28 European Commission 2022d.
29 Conolly 2022.
30 Major 2022.
31 Major 2022.

that if a country's geographical/geopolitical situation is not suitable for the mass production of renewable energies and if it does not have nuclear power plants, it will incur a rather higher environmental burden from energy production.

In the shadow of war

The Russia–Ukraine war has further highlighted the energy dependence of EU member states, (largely) on Russian energy sources. A number of summaries, infographics and studies were produced in the first half of 2022, covering everything from the aggregation of dependencies to the origin of the energy consumed.[32] Eurostat data shows that the EU's energy dependency ratio in 2020 was 57.5%, while some member states had ratios significantly below or above the norm. The most energy-dependent country was Malta at 93.5%, while Luxembourg and Cyprus also had values above 90%. Estonia is at the bottom of the scale with a dependency ratio of just 10.5%. Fourteen countries are below the EU average, including Hungary, France, Sweden and the Czech Republic. The graph also shows that Germany needs to import over 60% of its energy to be Europe's economic leader.

The war highlights not only the problem of dependency, but also a lack of energy diversification. It is not only the share of renewables that needs to be increased, as not all member states have the same geographical features. More attention should therefore also be paid to broadening the sources of energy supply of each country. In 2020, of the three fossil fuels imported 54% were coal while 43% of natural gas came from the Russian Federation (45% in 2021). However, the outlook is better for oil: 71% of this energy source is purchased elsewhere, depending on its country of origin.[33]

These figures highlight the achievability of the targets set in the European Green Deal: if member states do not change their energy consumption culture, they could miss not only the 2030 target, but also the 2050 target. There is no better time to diversify to alternative energy sources such as liquefied natural gas, green hydrogen, nuclear, biomass or, of course, conventional renewables, as well as to connect with new economic partners. The member states holding the Presidency of the Council of the European Union can play a major role in this.

It is up to the decision-makers

For the first half of 2022, the EU presidency was held by France, which focused its six months on ambitious (green) goals e.g. carbon tax, battery sustainability, mirror clauses.[34] At the outbreak of war, these objectives were completely eclipsed by crisis

[32] European Council 2022b.
[33] European Council 2022a.
[34] Élysée 2021.

management tasks. Moreover, by prioritising energy issues, although the two segments are almost inseparable, the environmental aspect was somewhat forgotten, for example with decisions extending the lifetime of coal-fired power plants or bringing them back into operation.[35] Member states must first and foremost build up reserves for the colder months, which is inconceivable in the short term with renewables: installing new systems is time- and resource-intensive, and energy storage is weather- and storage-capacity-dependent.

The incoming EU Presidencies will therefore have a responsibility to help Member States to overcome the energy crisis, for example by supporting Commission proposals and allocating resources, including through the 10-point package of proposals developed by the International Energy Agency, which, in addition to recommending a broadening of the scope and content of procurement, encourages energy-efficient building renovation and maximising energy production from bio and nuclear energy.[36]

Energy and green policy will certainly play a cardinal role on the agenda of the Hungarian Presidency, which will start in the second half of 2024, because even if the crisis management period is over by then, economic reconstruction will still be on the agenda for years to come. Hungary, as a permanent member of the group of countries in favour of nuclear energy, can move forward with the mandate provided by the extended taxonomy regulation (and with the support of France) to "promote" nuclear power plants, thus opening the negotiations to greater financial support. In addition, the extension of the LIFE programmes, i.e. projects under the Just Transition, which are also operating in Hungary, could also be on the agenda, as many areas, especially in the Central and Eastern European regions, still have a pre-communist attitude to industrialisation. An example of this in Hungary is the second largest producer in the electricity system, the Mátra Coal Power Plant, where the war has led to an increase in lignite production, which had been gradually scaled down earlier.[37] This increased the environmental damage caused by the plant, pushing Hungary even further away from meeting the 2050 target. It is imperative that energy policy-making in the future focuses on long-term effects rather than on the current short-term and same old quick fixes, since if increased EU funds to promote renewable energy are made available to member states, these countries will be better prepared when future crises hit. Therefore, in its crisis management and reconstruction efforts, Hungary must take a decisive stance in favour of renewables, rather than restoring the last coal-fired power plant in operation and extending its operating life. The large area occupied by the plant could even serve as a basis for the creation of an industrial park based on renewable energy, with particular attention to the preservation of employment.

However, it must also be recognised that cooperation, information sharing and R&D collaboration between countries is an essential element of reconstruction. For Hungary, for example, Iceland can set an example of how to exploit geothermal energy, as Hungary

[35] Spiesz 2022.

[36] International Energy Agency 2022.

[37] A Kormány 1452/2022. (IX. 19.) Korm. határozata az MVM Mátra Energia Zártkörűen Működő Részvénytársaság lignitalapú termelése fokozásához szükséges intézkedésekről [Government Resolution 1452/2022 (IX.19.) on measures necessary to increase the lignite-based production of the MVM Mátra Energia Zártkörűen Működő Részvénytársaság].

is also rich in this energy source, although previous developments have in many cases not been successful in the long term. Furthermore, EU-funded projects that bring European countries closer together economically (such as the REPowerEU plan, a contract for a new gas pipeline between Bulgaria and Greece)[38] could also take Europe into a future based on energy diversification, resilience and zero emissions. The coronavirus outbreak and the Russia–Ukraine war have created opportunities and motivation for Europe to finally get serious about the green transition. Now it is up to the will of decision-makers to seize this opportunity and take united European action not only at national political level but also at societal level. In any case, the watchword for the future will certainly be adaptation: member states, companies, individuals, in fact everyone, will have to learn from past behaviour and establish closer relationships, because the future of reconstruction will be determined by close cooperation with each other, sometimes without self-interest.

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[38] European Commission 2022e.

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Áron James Miszlivetz

Compass and Sextant: New Perspectives in the EU's Defence Policy

The European Union is currently facing unprecedented security challenges. The migration crisis in the south and Russia's war in the east are testing the EU's ability to respond. In recent years, several initiatives have placed the EU's common defence policy on the Member States' agenda. From the Permanent Structured Cooperation to the Strategic Compass, the EU has various new options at its disposal, but are they sufficient to deal with a conventional military conflict? The forthcoming second Hungarian Presidency in the second half of 2024 will be taking up the baton in a more uncertain and unpredictable international and European context than usual. The continent's security depends on the concrete responses of the Council of Heads of State and Government and the European Commission in a fragile security situation. The current situation highlights the need for a new type of security policy that focuses on human security rather than a traditional militarily approach.

Introduction

The European Union is currently at a crossroads as regards its own defence and security. Its identity is shaped not only by external threats, but also by internal policies and political will, which have intensified since 2010 due to an increasingly rapidly changing, uncertain and globalised world, as well as ever-increasing technological progress and cross-border international economic networks. Hungary, which will hold the rotating presidency of the Council of the European Union in the second half of 2024, will need to develop the Union's strategic priorities in a political, economic and defence context that is quite different from that of its presidency in 2011. External security threats will also test the future Spanish–Belgian–Hungarian trio presidency in general. The following paper attempts to provide an overview of the possible Hungarian priorities in the current security environment for the EU's neighbourhood. To what extent can the Hungarian Presidency build on the EU's previously adopted and established defence priorities? In what ways could it respond more effectively to the threats surrounding the European Union during its Presidency? The "compass" in the title is meant to represent the strategic direction the EU is taking, while the sextant as a "two-mirror protractor" symbolises the relative position of the EU and the security threats it is facing – as well as its responses to them. The study will analyse the priorities of the Central and Eastern European countries from a security and defence policy perspective in 2014 and beyond, which may help the Hungarian presidency in 2024 to develop more effective policies. The sui generis position of the European Union, as opposed to NATO as a traditional military actor, implies a different approach. This is most evident in the complex multi-level and multi-stakeholder decision-making process and with the emergence of institutional

and EU interests alongside nation state interests. This can only be credibly represented through coherent and tangible political will and policy coordination. Ultimately, the strength (and weakness) of the European Union is its capacity for integration, which goes beyond traditional intergovernmental arrangements and uses a hybrid intergovernmental and supranational mechanism. In the final analysis, what lessons can the European Union and the forthcoming Hungarian Presidency for 2024 draw from the radically changed security environment and the responses to it?

Ring of friends or ring of fire?

Since 2010, the European Union has faced new security challenges that are increasing both in range and intensity, such as the war in Georgia, the illegal annexation of Crimea in 2014, the migration crisis in the Middle East (2015), and Russia's war against Ukraine in 2022, the first major military conflict in Europe since World War II. According to Bergmann and Müller,[1] the EU has been slow and hesitant to learn how to act independently in crisis situations and has therefore been slow to respond to armed conflicts. Moreover, the EU is starting from a serious disadvantage, as NATO has been able to shape its own defence policy since the Cold War while the EU, as an economic peace project, has found it very difficult to adapt to world events and often seems unable to catch up with the present. The priorities of the incoming Slovak Presidency in 2016 included tackling the migration crisis while for European defence it stressed the importance of technological development, the response to hybrid threats and the contribution of small and medium-sized enterprises to strengthening the EU defence industry.[2] This is in line with the European External Action Service's Global Strategy[3] published in the same year which calls for autonomous EU action in alliance with non-NATO countries such as states in the Western Balkans, and certain Eastern European and Central Asian countries. In addition to the defence interests of member states, there has been a growing need for security and defence cooperation and joint action at the European and EU level, although the "successful" Brexit referendum in the same year fundamentally shook the EU institutional system, which experienced the end of the British special relationship first as a shock and later as a political relief. Nevertheless, British intelligence and the role of the British armed forces in EU missions were in a sense indispensable.

In recent decades, two main European trends have shaped the continent's defence policy: a sovereign British position on the one hand and a Franco–German axis that has moved closer or further apart, representing the engine of EU integration, on the other. The leading role of the United States through NATO[4] and the geographically remote conflicts in Syria, Crimea and Afghanistan put the European Union in a comfortable

[1] Bergmann–Müller 2021: 1669–1687.
[2] Council of the European Union 2016.
[3] European External Action Service 2016.
[4] Archick–Gallis 2005.

position and weakened the bloc's capacity for international advocacy and for taking action to bolster its defence. Examples of this are the lack of a common approach to the external border controls related to the migration crisis and its ambivalent and indecisive policy towards China and that country's increasing influence on European economies. Since 2014, the EU's Neighbourhood Policy has been gradually defined by the crisis hotspots in the Western Balkans, Ukraine and the Mediterranean. For Hungary, too, the Moscow–Istanbul–Berlin power axis has become a historical and geopolitical point of reference.[5] In this triangle, there is a need for an interregional defence alliance, which would also be of geopolitical importance for the EU. An attempt at this began in 2018 with the establishment of the Permanent Structured Cooperation (PESCO) under the Bulgarian Presidency.[6] This initiative gained its legitimacy from the fact that although participation in enhanced cooperation is not binding for all EU member states, twenty-five EU countries, including Hungary, are involved in this defence cooperation. After decades of failed initiatives, for the first time in the history of the Union, the members of the European Council have seriously committed to the joint development of their own defence capabilities and industries, which can be given greater legitimacy through joint decision-making.

The EU beyond NATO: Cooperation or parallel realities?

The European Union was initially set up as an economic peace project, but in international relations, soft power, which mediates economic interests and cultural values, often proves inadequate. A show of force does not necessarily mean actually using force against someone, since the mere existence of military (for defence purposes), political or economic power can be an important signal and deterrent for international adversaries. The North Atlantic Treaty Organization (NATO) was initially used as a deterrent force, until the election of former U.S. President Donald Trump in 2016, when he announced his 'America First' policy.[7] In doing so, the U.S. weakened its own international commitments and those of its European allies, in a turning point in NATO's history that cast an ominous shadow on the Euro-Atlantic organisation. It also brought the need for and potential of an EU defence policy to the fore, as the Romanian and then Croatian presidencies in 2019 continued to think within the framework of the Common Security and Defence Policy.[8]

The EU–NATO framework for cooperation has so far produced few tangible results, as the EU–NATO Joint Communications show. Romania[9] and Croatia[10] have focused their Presidency programs on the EU's common defence capabilities and defence industries.

[5] Orbán 2018.
[6] Council of the European Union 2018.
[7] Kaufman 2017: 251–266.
[8] Council of the European Union 2020a.
[9] Council of the European Union 2019.
[10] Council of the European Union 2020b.

As a result, there are now 60 joint projects under PESCO, almost a third of which will be completed by the middle of the decade. In addition to the ambivalence of EU–NATO relations (over issues such as who is responsible for what), 21 EU member states participate in NATO, which can create parallel structures and procedures that can weaken the EU's joint decision-making process and interests. For this reason, the EU has also sought to strengthen its strategic autonomy, which means not only the ability to be self-sufficient in energy supply or food security, but also to possess an autonomous defence industry and technology that reduces the EU's value chain exposure and trade vulnerability. The underlying Strategic Guidelines, adopted by the European Council on 24 March 2022, set a new direction for EU defence policy. In the Central and Eastern European region, the Romanian and Croatian Presidencies in 2019 have also increasingly focused on developing a new defence agenda, developing defence industries and capabilities, clarifying EU–NATO relations and identifying common ground. The Seventh EU–NATO Progress Report, adopted this summer, and the program of the Czech presidency already show a significant overlap, which could prove important for Hungary and the next trio presidency in strengthening the European pillar of defence. Strengthening the overlap between the two organisations could be considered in less sensitive areas such as resilience, defence against hybrid and cyber threats, or research, development and innovation. While the EU–NATO relationship needs to be strengthened and clarified, there is still a need for greater autonomy, as those EU member states that are also NATO members contribute only 50% of the North Atlantic Treaty Organization's budget. There are three factors that could make the European Union's defence policy more valuable to NATO. First, France, which supports strategic autonomy, called the organisation "brain dead" before the Russo–Ukrainian war due to the unpredictability of U.S. foreign policy, which paradoxically is the largest source of support to the organisation. Here, a common EU defence commitment would provide member states with more security. The question is to what extent do European and American interests and crisis management proposals coincide, whether regarding China or Russia? Taking Europe's alliance with the United States for granted, despite changes in U.S. domestic politics and the international order, has fostered an attitude in Brussels that is more focused on day-to-day policy implementation and less on defining Europe's collective interests. In addition, the current Biden Administration has also continued an "America First" approach by other means, such as the Inflation Reduction Act, which places European (defence) companies at competitive disadvantage.

Given the geopolitical situation, the EU and its member states have a different attitude to a possible armed conflict near the Schengen borders than an overseas superpower like the U.S. The differences in political, economic and social interests (and values) are also reflected in bilateral negotiations, as evinced by both the failed Privacy Shield and the Transatlantic Trade and Investment Partnership in 2014. Second, the role of the United States in the world has been called into question not only for moral reasons, such as in the manner of its withdrawal from Afghanistan, but also political ones, such as the domestic crisis that has torn apart American society, coming to surface during the Trump Administration, as has the standing of the United Kingdom following the

Brexit referendum. The two countries, which account for 27% of NATO's budget, have pursued separate policies in recent years, while the EU's strategic autonomy in the field of defence could clearly be more unified. Third, the entry of Sweden and Finland into NATO – hopefully this year – will also represent a strengthening of the Europe's common defence. Russia's invasion of Ukraine has also demonstrated the need for an independent European defence policy, but how does this fit in with Hungary's priorities for the 2024 Presidency?

The Strategic Compass and the priorities of Hungarian defence policy

In the second half of 2024, Hungary will take over the rotating Council presidency for the second time, in a completely new political and economic context to the last one. In addition to the European Parliament elections, there will also be a change in the institutional cycle of the EU's executive body, the European Commission. The Hungarian Presidency will need to coordinate closely with the outgoing and incoming EU institutional leadership, as well as address the prospect of post-war reconstruction and strengthen the EU's economic and defence base. The Strategic Compass is the first EU document to provide a comprehensive assessment of the situation and proposes new solutions and objectives for the next decade.[11] It aims at major organisational and operational reforms in four areas. How does this relate to the priorities of Hungarian defence policy, which will also play an important role during the Hungarian Presidency?

Under the heading "Action", the aim is to strengthen the continuously developing civil-military cooperation, both in terms of faster decision-making, the capability of deploying a 5,000-strong rapid reaction force and the enhancement of command and military mobility.[12] Decision-making would be accelerated on the basis of Article 44 TEU and on constructive abstention. The former states that "the Council may entrust the execution of a mission to a group of Member States willing to participate in the mission and having the capabilities required to undertake it", in which case the Council may take decisions on major issues affecting the mission. This would allow a voluntary coalition of Member States to act with EU approval. Second, constructive abstention, which allows a member state to abstain in case of unanimity without blocking an EU action, could speed up decision-making to allow a rapid response to a conflict on the EU's borders. On the one hand, it is in the vital interest of the EU that the Member States act as a single EU bloc, as this leads to a stronger Europe. On the other hand, it is in the vital interest of the member states to act as one, as co-operating as an EU bloc also strengthens the power of the member states compared to them acting alone. More emphasis should be placed on the quality of decisions rather than on quantity and speed, while avoiding a situation where important decisions are taken by larger countries at the expense of the competitiveness and political scope for action of smaller member states. The EU needs

[11] European External Action Service 2022.
[12] European External Action Service 2022: 25.

a complex institutional renewal and new decision-making processes in order to compete with the great powers.

Hungary's *Zrínyi 2026* armed forces development program and a Hungarian-led PESCO project under EUROSIM,[13] both projects designed to strengthen the capabilities of the European Union while enhancing cooperation between Member States, are important contributions to the EU's defence and security system, which could reach operational capability by the middle of the decade. Domestic defence priorities (modernisation of equipment, capability development, establishing a local defence industry) and defence procurement (interoperability) are also linked to the EU's long-term objectives in several different ways. Emerging cyber threats, disinformation, unconventional hybrid warfare (such as at the Belarus–Poland border or in the Russia–Ukraine war) and the global climate crisis require new approaches that go beyond traditional military doctrines. Civil-military cooperation should be based on the Swiss army knife principle, where the EU can deploy units with adaptable, rapidly changing and specialised capabilities in the military, humanitarian, IT, health and other fields in a multidimensional, complex crisis management framework. As the "single set of forces" principle has to be taken into account for all member states, the conventional military force and the European wing of NATO should be complemented by an EU crisis management unit or units, which are capable of rapidly stabilising a crisis situation while acting upon political authority. Due to its geographical location, Hungary also plays a central role in the region, not only in terms of energy, but also in terms of mobility and infrastructure. The EU also supports civil-military mobility projects, whether by road, rail or air, as it improves connectivity and logistics between member states through the Connecting Europe Facility. The Strategic Compass therefore defines not only a set of instruments and objectives, but also the threats to which an effective common response must be addressed.

Known players, unknown threats

The Strategic Compass identifies threats that will pose even greater challenges to the European Union's ability to act both in the present and in the near future. War, armed annexation, terrorism and extremism, irregular migration as a means of blackmail, deep-fakes, drones and cyber warfare represent a new mix of unknown threats which may have an increasingly uncertain and unpredictable effect on European societies. As a counterbalance, the EU, as a shaper of its own political system, must act with more determination at the international level. The trio presidency program, which brings together the priorities of three successive presidencies, should emphasise the Community's defence policy not only at the local and international level, but also at the regional level. The forthcoming Spanish–Belgian–Hungarian Presidency can thus bring new opportunities for cooperation in the coming period. In terms of tangible results to bolster internal cohesion and security, the European Union could set up defence councils or

[13] PESCO 2019.

districts with a specific mandate at the regional level on a rotating basis, which would coordinate and consult on immediate and future threats with a mandate from the Council and submit them to the European Council for approval in the form of joint proposals. As a precursor to this, Commission President Ursula von der Leyen, proposed in a speech last year to set up a permanent defence forum that would include senior political and military leaders.[14] This would be a great step towards situational awareness, since there is often a perception that the EU is not aware of the challenges it is facing and responds to them too late or inappropriately – or both.

Russia is currently considered to pose the most serious challenge to the European Union and to the international order since its illegal annexation of Crimea in 2014 and especially since the start of the ongoing Russia–Ukraine war in 2022. The post-war migration crisis, with its potential for blackmail, has also raised the stakes of the crisis that directly affect the EU to a new level, while external disinformation campaigns have become increasingly problematic over the past decade, weakening social cohesion. The European Union has slowly but surely built up procedures, legislation and physical systems, but these need to be constantly adapted to today's challenges. NATO's Strategic Report 2030 identifies the same challenges as the EU, but within the framework of a traditional military doctrine, whereas the Strategic Compass can be integrated into the EU's multifaceted economic, social and political toolbox, which can offer more diverse and flexible solutions that can be better optimised to a crisis situation. For example, the EU's sanctions policy has a negative long-term impact on those against whom it is imposed, while the negative effects on those who impose it is still debated and its complex side effects are difficult to calculate precisely, although Viktor Szép has addressed the economic costs of sanctions in several of his studies.[15] Overall, in the face of known and unknown threats, the trio presidency of 2023–2024, including Hungary, will have to find responses that can protect both Community and societal interests. Societies can lead the way in creating a functioning and innovative hybrid defence policy, where civil-military cooperation can offer new ways of conflict resolution.

Towards a pan-European defence umbrella

While it is true that NATO's role has been enhanced by the ongoing war in the East, the European Union as a sui generis actor has changed even more drastically since the Russian invasion. By the humanitarian aid offered, a jointly implemented sanctions policy and the provision of defence equipment, the EU has opened a new chapter in its history. It is no longer possible to focus exclusively on the military dimension of security. For the countries of Central and Eastern Europe, the conflict has not only heightened their sense of threat, but also caused an economic – and social – shock due to the geographical proximity of the conflict. The unilateral expansion of NATO in recent

[14] European Commission 2021.
[15] Szép 2019: 863–865.

decades, asynchronous with the enlargement of the EU, has also created an environment in which a pan-European defence umbrella is more difficult to conceive of. Nevertheless, the EU's security and defence policy is by definition Community-based, which means that it is an "open door policy" for non-EU members in Europe seeking alliances. Moreover, European unification can only be fully achieved if the larger member states take into account the economic, social and security interests of the smaller members of the economic bloc on the EU's periphery. Failure to do so could result in a continuous wave of crises emanating from the EU's periphery and its neighbourhood.

The strength of the European Union lies in its ability to redefine security, including defence through the Strategic Compass, with a greater emphasis on civil-military cooperation and the development of specialised capabilities, focusing on basic human needs. The EU Strategic Compass could also be a good point of reference for further reflection on human security,[16] not only serving to strengthen interstate military relations, but also having implications for cooperation between individuals and different social groups, with a clear shift of emphasis towards both subsidiarity and the Community level. The Union's strategy must respond to new challenges such as environmental and climatic factors that destroy housing and health, the protection of human rights, including the right to well-being, the security of households and human communities, pandemics, civil wars and other existential threats caused by the growing technological divide. These issues go beyond traditional interpretations and fall outside the classical notion of security, and therefore require a new set of tools to interpret them. The migratory challenges at the EU's southern borders or Russia's decade-long (self)marginalisation, must be understood in a more uncertain international and European context, since the security of the European Union cannot exist without the security of its southern or eastern neighbours.

The countries neighbouring the EU must be offered concrete and tangible cooperation as a prelude to membership, going beyond general political declarations and setting technical conditions for them to meet. The European Political Community in October offered a common direction that can address the challenges of the age, whether they be physical or digital, with shared political will and strategic vision. Strategic thinking must also address the current Russian aggression and illegal territorial annexation. On the EU side, this is the result of decades without institutional dialogue and in the absence of alternatives; on the Russian side, it is the result of anachronistic power ambitions and unresolved historical traumas. In the context of creating a defence union and, more broadly, a European security umbrella, civil-military cooperation is key, alongside regular political dialogue. In the coming decades, Europe will have to find its own way to consolidate its regional and international role. An important starting point is the recently adopted Strategic Compass, to which several Presidency documents make indirect reference. Ultimately, the European Union must work towards a strong and sustainable defence cooperation architecture, in which the Hungarian Presidency, due in 2024, can play an important role by representing the region.

[16] Miszlivetz 1997: 205–215.

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Laura Schmidt

Using Restorative Methods during Conflicts of War

The methods of restorative justice are used to repair the harm caused during crimes and to resolve conflicts with the active involvement of both victims and perpetrators. Restorative methods have also been applied to armed conflicts, either in cases where the goal is to settle a long-standing conflict, or where the aim is to mitigate the consequences and damages of a war that has already ended. The purpose of this study is to examine, by presenting some good practices, what restorative methods could be used to handle the conflicts of the ongoing Russian–Ukrainian war, by analysing some military conflicts that have occurred in history during which restorative methods were used, such as the conflicts in Papua New Guinea, the Democratic Republic of the Congo, South Africa or Northern Ireland.

Introduction

Defining the concept of restorative justice still raises many issues among professionals. The definition formulated by Tony Marshall is perhaps the most widely accepted one: "Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future".[1] One of the goals of restorative justice is to reduce the number of conflicts and, as it applies to criminals, to prevent them from recidivism.

However, experience shows that a large proportion of society is not familiar with restorative methods and does not understand what exactly they are. All of this is particularly worrying in light of the fact that one of the pillars of restorative methods is for the community to be an active participant in the process, so it is important that as many people as possible know about and are able to apply these methods when dealing with different types of conflicts. More people are likely to be familiar with the concept of mediation, either in civil law in connection with child custody during a divorce, or in cases of criminal proceedings. In Hungary, mediation is synonymous with the mediation process used by government agencies in misdemeanour and criminal cases, and is conducted by specially trained probation officers – mediators, and all of this can be classified under the umbrella of restorative methods.

In some cases, these methods can be applied not only in connection with a crime or an act affecting a small community, but also in connection with conflicts affecting entire societies.

The ongoing Russian–Ukrainian war raises the question of whether restorative methods have a role in resolving these conflicts. The purpose of this study is to present

[1] Marshall 1998: 5.

good practices, describe how and with what success restorative methods have been used during or after wars and how this knowledge can be applied to armed conflicts currently taking place in the world.

What can we learn from history about dealing with conflicts of war restoratively?

Papua New Guinea

A civil war took place in Bougainville, a province of Papua New Guinea, between 1988 and 1997.[2] The conflict broke out over the ownership of certain geographical areas and because of the desire for independence. Several thousand people died during the conflict and the traces of this traumatic period could still be felt in the community years after its end. In 1997, two peace negotiations took place, followed by the signing of the Lincoln Agreement, which enabled further conciliatory discussions to be held over the years. Bougainville's new justice system incorporated elements of restorative methods into the justice process. Between 1997 and 2003, a reconciliation mission took place, in which both military personnel and civilian, unarmed women and men from several countries of the world (Australia, Fiji, New Zealand and Vanuatu) took part. The United Nations (UN) maintained only one office and a few people in the area. One of the tasks of the peacekeepers was to monitor whether the government and the indigenous people were actually observing the ceasefire, while the other task was to conduct peace circles. According to the literature, the peace circle used in the region corresponds to a "deeper" version of the restorative conferences of the Western world, since the face-to-face meetings are preceded by lengthy preparation and negotiation. The peace circle method was applicable to a wide range of crimes (from theft to sexual crimes and murder). The custom was for the perpetrator to approach the victim and make some kind of reparation (which could not only be financial reparation, it could even be bringing some food), and in these events the direct and sometimes indirect community also participated, not only the parties involved. What is unusual compared to the practice in Hungary, for example, is that in Bougainville the reparation is agreed upon before the meeting, it is not discussed or negotiated during the personal meeting.

According to the literature, civil wars can be regarded as three-tier structures consisting of the victim, the perpetrator and the community. Table 1 shows this at the macro, meso and micro levels. At the micro level, the victims are individuals and families; the perpetrator or oppressor appears in the form of local fighters/individual opportunists or criminals, while the village or clan takes the role of the community. At the meso level, a targeted group or minority is identified as the victim, while militias, armed movements and criminal gangs are the perpetrators or oppressors, and the entire nation or society is represented by the community level. At the macro level, the victim takes the form of

[2] Reddy 2008: 117–130.

the traumatised society and the collapsed state, the state regime/warlords/structures can be observed in the role of the perpetrator/oppressor and the international and regional neighbours are understood as the community.

Table 1: Victim, perpetrator and community as a three-step construction at the macro, meso and micro levels

Victim	Perpetrator/oppressor	Community
Traumatised society/collapsed state	State regimes/warlords/structures	International and regional neighbours
Targeted group/minority	Militias/armed movements/criminal gangs	Nation/society
Individual/family	Local fighters/individual opportunists/ criminals	Village/clan

Source: Reddy 2008: 125

Democratic Republic of the Congo

The use of child soldiers by the armed forces has been a phenomenon observed in the Democratic Republic of the Congo since 1996.[3] This is a very complex phenomenon, since these children can be considered both victims and perpetrators at the same time, as victims of violence, but also perpetrators of violence. According to a report, 2,816 children were freed from various armed groups in Congo in 2010.[4] The use of restorative methods is mentioned in official documents as a possible way to reintegrate child soldiers. The study written by Jean C. Kiyala draws attention to the fact that, according to his observations, there are not enough professionals in the country who are qualified to apply restorative methods, so one of the goals of his research was to educate the local people about restorative justice and its practical application.

During the study, researchers used peace circles, which involve not only the victim and the perpetrator, but also the whole community in the process (in Hungary, the process of peace circles has also been used in some cases, and Borbála Fellegi and Dóra Szegő published a manual to help with the facilitations which is available free of charge in English for professionals).[5] The researchers interviewed 121 people who had served as child soldiers at one time and conducted six focus groups with their participation.

Based on the interviews, they found that those child soldiers who successfully escaped from an armed group usually find it very difficult to reintegrate into their community, because the community does not look favourably on their return, and many prefer to join another armed group rather than stay in their home in this isolated state. They are often approached by the group from which they escaped, and if they are not killed, they are taken back to the group, but some may voluntarily rejoin in return for basic food or

[3] Kiyala 2015: 99–122.
[4] Kiyala 2015: 99–122.
[5] Fellegi–Szegő 2013.

to acquire money through looting and in the course of assaults. During the research, 1,165 people from the community, including child soldiers, completed questionnaires, the results of which revealed that they consider restorative methods to be a good way to reintegrate children, although it is also clear that the community wants to hold children accountable and punish them. Respondents agreed that the better the justice system works, the less inclined children will be to join armed groups. Restorative methods can help children take responsibility for their actions in a safe environment that is accepted by the community. During peace circles, children can discuss, not only with the community, but also with their families, the difficulties surrounding their return, their impact on their lives and the lives of others, as well as their needs and tasks for the future.

South Africa

As the governments of the various countries in southern Africa began to transform into democratic institutions in the past decades, national reconciliation processes were initiated, which aimed to restore the damage caused by human rights abuses and discrimination caused by deep-rooted political, ethnic and social differences.[6] The study written by Christopher J. Colvin discusses the South African Reconciliation Project (SARP), which aims to map the restorative processes of five countries (South Africa, Malawi, Mozambique, Republic of Namibia and Zimbabwe) in the early 2000s with the aim of showing how the political and community characteristics of different countries influenced these initiatives. One of the most significant of these initiatives was the creation of the Truth and Reconciliation Commission in South Africa, whose tasks are to identify the perpetrators and victims of serious human rights violations committed between 1960 and 1994, to hold the perpetrators accountable and to map out the reparation options for the victims.

Based on the study, although victim protection and the services available to victims are very limited in the observed countries, a lot of attention was specifically paid to mapping the possibilities of the soldiers' reintegration into society, both in terms of their families and the local community. The results of the study suggest that reconciliation processes do not achieve the goal of the victims regaining some kind of control during the process and being able to meaningfully participate and lead the processes, which is an important part of restorative methods. According to the author, this can be traced back to the political divisions and the class differences that are still present.[7] The results also show that the best model would be for restorative processes to involve various different domains (legal, financial, health, institutional, etc.) and at different levels (individual, community and

6 Colvin 2007: 322–337.
7 Colvin 2007: 332.

national). It is also extremely important that the initiators and implementers of restorative programs take into account the local culture, since any process will only work well if it can be well integrated into the local system, paying special attention to local characteristics. It also involves taking into account the ways in which people in that culture typically cope with trauma and hardship.

Northern Ireland

The paramilitary forces formed during the conflicts in Northern Ireland and the values that form the basis of the justice system represented by them, the customs formed on the basis of them, and the identity differences created along these lines have all been integrated into the culture of the country.[8] The republicans saw the national police force as an illegal police body, so independent, paramilitary organisations were formed to perform police duties, which used violence in their communities and tried to maintain order with their own methods. On the other hand, the loyalist paramilitary forces primarily presented the lack of resources of the national police as a problem, which stemmed from the fact that although they recognised the police, they perceived that the police's resources were completely exhausted by the terrorist acts committed by the Irish Republican Army, which therefore did not deal with minor crimes, so the loyalist paramilitary forces had to fill this gap.

Instead of these paramilitary forces, various community restorative projects were created, which offered an alternative community justice method in order to give the community the opportunity to deal with conflicts non-violently. Non-violent, voluntary and inclusive restorative justice based on conversations stands in stark contrast to the use of force and repression by paramilitary forces that focus on punishment. In 1998, with the signing of the Belfast Agreement, the use of restorative processes rose to a political level, and the attitude towards conflicts seemed to be changing. However, there were many sceptics of community restorative projects who doubted the voluntariness of the process, as the leaders of the programs were in several cases members of paramilitary groups.[9] In response to these concerns, the government (Northern Ireland Office) began to centrally accredit the projects and conduct research into them, and as a result, many sceptics' confidence in the processes increased.[10] In addition, it cannot be ignored that, according to researchers, these ex-paramilitary group members were able to achieve the involvement of people in the restorative processes (primarily with the help of conversations based on shared experiences) who could not have been addressed by an outsider.

[8] Ashe 2009: 298–314.
[9] Ashe 2009: 301.
[10] Ashe 2009: 302.

How could the experience gathered on the applicability of restorative methods be applied when dealing with the Russian–Ukrainian conflict?

While the Russian–Ukrainian conflict has been ongoing since 2014, it escalated significantly when Russia launched an invasion of Ukraine on 24 February 2022.[11] A military conflict of this scale has not been seen in Europe since World War II, so unsurprisingly all the developments related to this conflict have suddenly become the focus of the news.

The International Criminal Court (ICC) has jurisdiction over war crimes and crimes against humanity that take place in Ukraine, but the crime of aggression itself is not counted among them, so we have not yet seen any legal action against Vladimir Putin's actions in the international sphere.[12]

It may be worth asking, however, how the restorative methods used in previous armed conflicts could be applied to the Russian–Ukrainian conflict?

To address these international armed conflicts, it is important to explore the possibilities of using certain methods with a restorative approach, especially methods that can involve members of the affected communities in the processes (such as the method of peace circles), since these affect not only a single perpetrator and a victim, but entire communities. Of course, the active participation and openness of the communities to these processes is essential for this. According to John Braithwaite, the only solution is for the Russian population to try to resolve the conflict through restorative diplomacy, because external coercion can achieve the opposite of the hoped-for results.[13] According to Braithwaite, the dialogue must start from within the community before any external party intervenes. Braithwaite's other suggestion for starting a dialogue and thus for a restorative handling of the conflict is to give space to citizen journalism. One of the cornerstones of restorative methods is that participants are given the opportunity to tell their stories, but often professional journalists do not have access to places where there is the greatest need to share stories. Citizen journalism could be a solution to this problem. Also, it is worth considering that everything may have turned out differently if Ukraine had had the opportunity to pay more attention to prevention and early restorative interventions. Around 2006 (years before the outbreak of the conflict in eastern Ukraine), the author attended an event in Moscow to promote restorative justice in Russia and Ukraine. Years later, when the conflict started, an initiative was launched on the Russian side so that the parties involved in the event would try to find a common path, but the Russian leadership did not support the program and the initiative ended prematurely.

The examples discussed above included situations where civilian, outside facilitators helped the processes and situations where the facilitators were active participants in the conflict. Both methods have their advantages and disadvantages, since a civilian person can bring in completely new aspects and has no emotional attachment to the situation and the outcome, while a person who was an active participant may have a strong attachment

[11] Chowdhurry et al. 2022.

[12] Sands 2022.

[13] Braithwaite 2022: 137–147.

to the situation. At the same time, if the facilitators are part of the affected community, there is a greater chance that they will see the complexity of the situation and respond sensitively to its specific details with the methodology applied. In both cases, it is essential that the facilitators are professionally trained. It is also important to mention that local culture and peculiarities must be taken into account in every case, and a single method should not be imposed on every case, as restorative justice allows and requires flexibility. The historical examples cited also show that it is important to intervene at different levels (individual, community and national level) and not only in one, but in several areas (e.g. legal, health and institutional fields).

Conclusion

During armed conflicts, it is important to remember that restorative justice, although it can contribute in part, is not the same as peacemaking.[14] One of the biggest challenges facing it is that the conflict found at the micro level (between individuals) cannot be separated from the historical, political and social context found at the macro level, but only by taking these into account can we deal with the conflict between individuals.[15]

The method of restorative justice is also noted for its flexibility, since all crimes and conflicts are different, and these methods allow the process to adapt to different situations.

Peacekeeping is a complex process, which throughout history has primarily been the task of soldiers. However, these soldiers are not sent to fight, nor can they even act threateningly, so it is fundamentally questionable why we entrust soldiers with this task. There is not enough research to determine whether restorative justice can be useful in all cases during civil wars and other armed conflicts, but the application of the good practices listed in the study may be a useful approach when dealing with a conflict affecting a society.

Of course, nothing will bring back the dead and undo the traumas of war. The goal of restorative methods, instead, is to bring communities together, to restore relationships and thus repair the damage caused by war as much as possible, and to start a kind of conversation that may lead to a better future. There will always be crimes and wars, but it matters greatly how we react to these conflict situations, because if we can help one person, then participating in any process is already worth it.

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The volume is a publication of the Europe Strategy Research Institute of the Ludovika University of Public Service, the purpose of which is to provide an insight into the most important policy issues in relation to the opportunities and challenges expected to arise in the course of the Hungarian EU presidency in the second half of 2024.

The book contains 12 studies that touch on cohesion policy, the effects of the Russian–Ukrainian war, the Hungarian family policy, the protection of national minorities, the EU sanctions applied against Russia, the conference on the future of Europe, the rule of law proceedings against Hungary, the digital sovereignty, the EU defence policy, the European green transition and restorative justice.

The volume aims to make the role of the rotating presidency of the Council of the European Union more understandable and to provide insight into the processes taking place in different policy areas, thus helping to understand the expected priorities and tasks of the Hungarian presidency.

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