

**Goran Ilik**

# Towards an Avant-Garde Europe. Current Status and Future Perspectives

**Anthology**

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**Goran Ilik**

# **Towards an Avant-Garde Europe. Current Status and Future Perspectives**

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# JOURNAL *of* LIBERTY *and* INTERNATIONAL AFFAIRS

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**“TOWARDS AN AVANT-GARDE EUROPE:  
CURRENT STATUS AND FUTURE  
PERSPECTIVES”**

*Edited by Goran Ilik*

# About

***Journal of Liberty and International Affairs** is a triannual (3 issues per year), international, open-access and peer-reviewed journal devoted to the study of liberty and international affairs, published by the Institute for Research and European Studies - Bitola. A group of scholars are responsible for the launching of this journal. The primary intention is to offer academic and public debate on liberty and international affairs in all their aspects, taking into account the following topics: Individual liberty; Libertarianism; Classical / Neoclassical liberalism; Objectivism; Capitalism; Social liberalism; Statism; Anarchism; Minarchism; Democracy; Political anthropology; International relations and diplomacy; Public and private international law; Geopolitics; Nationalism; Multilateralism; Ideology; Politics and religion; Neo-Ottomanism; Neo-Sovietism; Yugosphere; Propaganda; Regional cooperation; European federalism; EU law and politics; European economic governance; EU foreign and security policy; Competitive federalism; Comparative constitutional law; Human rights and freedoms; Gender studies; Emerging powers (BRICS; Russia; China; India etc.); Transatlantic relations and other related topics, that contribute to the understanding of liberty and international affairs from different angles. It is important to emphasize, that this journal devotes special attention to Europe / EU as a crucial factor in the contemporary international affairs. Also, the journal editorial team encourages the submissions that treat Balkan issues, especially the attitude of the Balkan countries towards the European integration, and their place within the new international context.*

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Indexing

Abstracting

## **FINALITÉ POLITIQUE OR JUST A STEP FORWARD: THE LISBON TREATY AND THE IDENTITY OF THE EUROPEAN UNION AS A GLOBAL ACTOR**

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### *Abstract*

*This article is a qualitative analysis of the Lisbon Treaty and its institutional and political implications for the international political identity of the European Union as a global actor. The Lisbon Treaty makes an institutional-political effort for integration of the European foreign policy capacities, followed by installation of the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy institutions. This Treaty also constitutes the single legal personality of the EU which differs for the EU on the international political scene in relation to others. With the integration of the EU's foreign policy capacities and the fusion of the (former) three pillars, the Lisbon Treaty makes some sort of rationalization of the institutions in terms of providing efficient and simplified decision-making, suitable for implementing a coherent foreign policy. Thus, considering the prerogatives and credentials of aforementioned institutions, regarding their contribution to the international political identity of the EU and its decision-making, we conclude that the Lisbon Treaty does not represent a finalité politique of the EU integration process, but just a step towards its achievement.*

*Key words: CFSP; EU international political identity; The Lisbon Treaty*

## INTRODUCTION

The Lisbon Treaty is the last implemented constitutive treaty of the European Union (EU; the Union). Its normative and political intention arises from the necessity to consolidate the democratic deficit and the crisis of the EU's political / international political identity, after the failure of the Treaty to establish a Constitution for Europe. This situation opened many questions concerning how the European Union will be further developed and whether it will be able to constitute as a political union (federation in particular) with an international political identity as a global actor. Considering this, the present article aims to explore the Lisbon Treaty stipulations within the Common Foreign and Security Policy (CFSP), and the Treaty's capacity for establishing the EU's international political identity. In this sense, the main intention of this article is to determine whether the provisions of the Lisbon Treaty within the CFSP are *finalité politique* or just a step towards establishing the EU's international political identity. Otherwise, this article is a qualitative analysis of the Lisbon Treaty and its institutional and political implications for the EU's identity as a global actor. This research uses the content analysis method, seeking to answer the following research question: what is the place of the Lisbon Treaty within the integration process with regards to the identity of the European Union as a global actor?

## DEFINING INTERNATIONAL POLITICAL IDENTITY

The difficulties of defining the international political identity of the European Union (EU) come not only from the complexity of its specific nature, but also from the complexity and specificity of this term. Identity in general implies the existence of autonomy, distinctiveness and divergence of one political entity in relation to another or other homogenous and heterogeneous political entities / actors. In addition, the theorist Heinrich Schneider argues, "anyone in search of her or his identity will pose the question: 'Who am I?' With regard to collective identity the questions are: 'Who are we? Where do we come from? Where do we go? What do we expect? What will expect us?' But these questions really serve to clarify another, more fundamental one: Why and how can we (or must we) talk in the first person plural?" (Jansen 1999, 34). Namely, the politics of identity refers to a set of ideas and values in one political community, used to induce a *state of cohesion* and *solidarity* as precondition for building a political / international political identity. Concerning the Union, its role in the "international system has always been a central part of the European integration process and continuous efforts have been made to enhance the effectiveness and efficiency of the Union's external action" (Wessels and Bopp 2008, 1), directed towards the establishment of the EU's international political identity as a global actor. Thus, "the provisions for CFSP and, increasingly also the Common Security and Defence Policy (CSDP), can be regarded as the cornerstone of the Lisbon Treaty" (Wessels and Bopp 2008). Accordingly, the former British politician Malcolm Rifkind, adds: "consultation and co - operation [within the EU] are now instinctive (...) Thus, the foreign policy cooperation between EU Member States could be interpreted as the beginnings of a learning process where the actors involved increasingly perceive themselves as a 'We'" (Aggestam 1999). Considering that, the EU "does not yet have the single coherent world vision, the deep - rooted instincts of a national foreign policy."

That is not to the discredit of the European Union. But it is one more reason why we should see [the CFSP] as a complement to our national foreign policies, an increasingly robust complement, but not a replacement” (Aggestam, 1999). Consequently, Prof. Radovan Vukadinovic and Prof. Lidiya Cehulic emphasized that:

[International political identity of the EU is] a set of governmental policies that politically harmonized by the Member States, create international political position of the [Union] or its international political identity in the *role* of distinctive and unique international political *entity* [actor] on the international political scene (Vukadinovic and Cehulic 2005, 118).

This definition significantly connects the EU’s international political identity with the *role* of the EU on the international political scene as an *actor*. Consequently, Prof. Vukadinovic projects the *actorness* of the EU through its international activity, rather than its institutional appearance. Concerning the actorness, the theorists Charlotte Bretherton and John Vogler, stipulate four basic requirements of this phenomenon, as follows:

1. Shared commitment to a set of overarching values,
2. Domestic legitimization of decision processes and priorities relating to external policy,
3. The ability to identify priorities and formulate policies – captured by the concepts of consistency and coherency, where:
  - a. Consistency indicates the degree of congruence between the external policies of the Member states and of the EU
  - b. Coherence refers to the level of internal coordination of EU policies, and
4. The availability of and the capacity to utilize policy instruments – diplomacy, negotiation, economic tools and military means (Bretherton and Vogler 1999, 30).

Concerning the Lisbon Treaty, it prescribed the *axiological (value) framework of the EU*, which requires the Union and the Member States to affirm and to respect its values. Starting from that, the axiological framework of the European Union generally encompasses freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law. In that context, Article 21 of the Lisbon Treaty proclaims that:

The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (The Lisbon Treaty 2010, 28).

Through the promotion of these values, the Union determines its course in the direction of developing and building partnerships with third countries and other international, regional or global organizations. The Union therefore initiates itself as a major promoter of multilateralism, of course in accordance with the principles of international justice within the historical process of promotion, prevention and protection of the fundamental values of humanity, such as democracy, human rights and freedom, human

dignity, and global peace. The Union also, in accordance with Article 21(2) of the Lisbon Treaty, draws its missionary and proactive international role, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity; (b) consolidate and support democracy, the rule of law, human rights and the principles of international law; (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter (...) promote an international system based on stronger multilateral cooperation and good global governance (The Lisbon Treaty 2010, 28-29).

Despite the axiological framework of the EU, coherence appears as a key issue regarding the establishment of international political identity, and thus, the capacity of actorness. In that sense, the theorists Joseph Jupille and James A. Caporaso claims that coherence determines whether or not an entity is an actor, because “[t]o be an actor implies a *minimal level of cohesion*” (Keisala 2004, 84). In that context, we must emphasize that only the states and other forms of political unions similar to them (federation or confederation), naturally possess the coherence understood *in stricto sensu*. Based on this view, the EU actorness is quite problematic to define, as the EU often (incoherently) reflects the political views of its Member States, and thus sometimes appearing as an international organization, and while other times as a state. In order to define more accurately the phenomenon of cohesion, the theorists Joseph Jupille and James A. Caporaso noted four different dimensions.

The first dimension is *value cohesion*, which owns inclusive and integrative function, and which “refers to the similarity and compatibility of basic goals” (Keisala 2004, 84). As the second dimension, Jupille and Caporaso noted *tactical cohesion*, which appears in conditions of disharmonious political views of the Member States within the EU “if goals are different but can be made to fit one another” (Keisala 2004). The third dimension is *procedural cohesion*, which “implies some consensus on rules and procedures used to process those issues where conflict arises and, thus, agreement on basic rules by which policies are made” (Keisala 2004). The fourth dimension is *output cohesion*, which refers to the situation where the Member States of the EU succeed in formulating policies regardless of the level of substantive or procedural agreement (Keisala 2004). The latter dimension directly implies the ability to articulate foreign policy, which is to provide a unique appearance in the international relations of the particular entity - the EU in this case. Similarly, the significance of this dimension emphasizes the inability of the EU to achieve consistent articulation of a single foreign policy, because of the different political views and preferences of its Member States in certain situations and under certain circumstances.

On that basis, we conclude another dimension of coherence, the *coherence of preferences*, directly connected with the ability of the Union (and the Member States) to establish a *common foreign policy* based on *setting up transcendental objectives and goals*. This dimension refers to where, when and how to act, primarily taking into account the *EU interests as a whole*, not in fragmentary pieces. Consequently, the EU leaders must work together, in order “to increase [the EU] cohesiveness (...) [And thus to] provide the EU with a distinctive [international political] identity” (Grajauskas 2011). In that favour, the Lisbon Treaty installed the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy (the “High Representative”), in order to

provide a minimum opportunity for enhancing the coherence, and thus, to invest in the building of the EU's international political identity. Both institutions need to synchronize the Member States political views in order to bring them in line with the interests and the views of the European Union as a whole. As in the previous treaties, the Lisbon Treaty stresses the mutual commitment of Member States to support the EU's foreign and security policy "actively and unreservedly in a spirit of loyalty and mutual solidarity" and to "refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness" (Wessels and Bopp 2008, 12), thus "specifying the general assurance of mutual cooperation and fulfilment of treaty obligations" (Wessels and Bopp 2008).

### **INSTITUTIONAL AND POLITICAL DETERMINATIONS**

With the implementation of the Lisbon Treaty, the EU obliged itself to become a more democratic and transparent, more efficient, and more just (taking into account rights and values, freedom, solidarity and security) and to establish itself as an actor on the global stage with its own distinct and authentic international political identity (The Treaty at a glance 2009). In that context, this Treaty provides adequate institutional and political determinations, as follows:

1. A new President of the European Council with fixed mandate, projected to maintain the political stability and continuity of the EU;
2. A new High Representative for the Union in Foreign Affairs and Security Policy Vice-President of the Commission will increase the impact, coherence and visibility of the EU's external action;
3. A new European External Action Service will provide back up and support to the High Representative;
4. A single legal personality for the Union will strengthen the Union's negotiating power, making it more effective on the world stage and a more visible partner for third countries and international organisations; and
5. Progress in European Security and Defence Policy will preserve special decision-making arrangements but also pave the way towards reinforced cooperation amongst a smaller group of Member States (The Treaty at a glance 2009).

By installing the institution of the "President of the European Council", a fixed independent and individual body with a mandate of at least two and a half years and representative prerogatives in conducting the foreign policy have been finally institutionalized. This institution has extraordinary significance in foreign policy and the representation of the EU in international relations. Regarding that, the European Council (EC) as an institution aims to "identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications" (The Lisbon Treaty 2010, 32).

Accordingly, Article 15(5) of the Lisbon Treaty stipulates that: "the European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure" (The Lisbon Treaty 2010, 23). In that regard, the President of the European Council:

1. shall chair the European Council and drive forward its work;
2. shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
3. shall endeavour to facilitate cohesion and consensus within the European Council;
4. shall present a report to the European Parliament after each of the meetings of the European Council (The Lisbon Treaty 2010).

The functioning of this institution aims at providing not only a harmonious and coordinated definition of the strategic and general political guidelines of the EU, but also aims at stimulating effectuation of a coherent and representative implementation of common international political activities within the EU. Within its framework, the President of the European Council simultaneously appears as a President of the European Council as well as of a kind of spokesperson of the Union in international relations. In that context, there are two diametrically opposed viewpoints, where the first one treats the President of the European Council as an institution with its coordinating and representative functions, while the other treats him as a strong representative of the Union in international relations, in the role of a “President of Europe”. The latter viewpoint is particularly characteristic of European federalists and their efforts for transforming the EU into a political union, i.e. into a democratic federation. In addition, the President of the European Council is responsible for submitting a regular report of his work to the European Parliament and for consulting with the President of the European Commission. The necessity for cooperation with the President of Commission is anticipated because the European Commission is obliged by Article 17(1) to “promote the general interest of the Union and take appropriate initiatives to that end” (The Lisbon Treaty 2010, 25).

This inter-institutional cooperation emerges as an inherent consequence of the need for a coherent, consistent and organized action within the CFSP framework. In addition, Article 15(6) stipulates that the President of the European Council “shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy” (The Lisbon Treaty 2010, 23). According to the Treaty, the High Representative is in charge of organizing and coordinating the work of the Union as regards the CFSP and representing the Union in international relations. This institution is created by fusion of the previous institutions: European Commissioner for External Relations and Neighbourhood Policy and High Representative for Foreign and Security Policy of the EU. The purpose of this fusion and rationalization is the fulfilment of the institutional - political conditions for creating an effective EU Ministry of Foreign Affairs and a single common representation of the Union in international relations. Otherwise, what can be said for this institution is that it is a nominally reformed counterpart of the former Minister for Foreign Affairs of the EU, provided by the “failed” European Constitution. In this respect, the European Council “acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy” as is stated in Article 18(1) of the Lisbon Treaty (The Lisbon Treaty 2010, 26). The significance of this institution is tremendous because the High Representative of the Union

is also responsible for conducting the CFSP as well as the Common Security and Defence Policy. Also, the Treaty has fused the function of the High Representative with that of the Commissioner for External Relations. A solid and monolithic coordination and organization of the international political activities of the Union is to be provided through this fusion of institutions and functions. In that context, the High Representative is predicted to preside with the Foreign Affairs Council, and also to take over the role of one of the Vice-presidents of the European Commission, as an institution responsible for setting the general political direction and the international political representativeness of the EU. In that respect, the High Representative is obliged to promote and ensure consensus among the Member States of the Union, and at the same time to include the different political interests of the Member States in creating the CFSP. With that in mind, the High Representative will need to make efforts for ensuring consistency in the international political activities of the Union, since he is the one who is responsible “within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action” (The Lisbon Treaty 2010, 27). By the effectuation of the Lisbon Treaty, the High Representative is enabled to be “pervasive” in the overall work of its institutions in the field of foreign policy. Or, as provided by the Treaty: “the High Representative shall conduct the Union’s common foreign and security policy. He shall contribute by his proposals to the development of that policy (...) the same shall apply to the common security and defence policy” (The Lisbon Treaty 2010, 26). In that sense, the High Representative is authorized to perform a representative function, or as is stated in the Article 27(2):

The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union’s behalf and shall express the Union’s position in international organisations and at international conferences (The Lisbon Treaty 2010, 32).

According to that, the High Representative is responsible both for coordinating the international political activities of the Member States on the international political scene and for representing the EU in international relations. Through this provision of the Lisbon Treaty, the institution of the High Representative is even more geared towards intensifying the coherence of the Union in its international political activities. In that context, an interesting novelty stipulated in this Treaty, by which the position and the role of the High Representative have been reinforced, is the instalment of the European External Action Service (EEAS) as a kind of Ministry of Foreign Affairs. This service is intended to reinforce the functionality and efficiency of the High Representative in terms of expertise and competence in performance of tasks. It is planned to initiate the organization and the functioning of the EEAS by a decision of the European Council. It is provided for the Council to adopt such a decision, but “the Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission” (The Lisbon Treaty 2010, 32). It is also stipulated, in Article 27(3) that: “the [EEAS] shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States” (The Lisbon Treaty 2010).

In that context, the High Representative will coordinate the diplomatic missions of the Member States of the Union and their delegations in third countries, as well as provide stimulation of the enhanced cooperation among the Member States in the interest of effectuating the common international political activities on the international political scene. From the essence of the stipulated provision one can elicit the “hybrid” (CEPS *et al.* 2007) nature of the EEAS, as semi-supranational and semi-intergovernmental agency *sui generis*, whose more detailed organization will depend on the decision made by the Council. Together with that, the Lisbon Treaty as another innovation has established the European Defence Agency (EDA), which has an identical, hybrid nature like the EEAS. The European Defence Agency has been established “by a joint action of the Council of Ministers for Foreign Affairs of the Union in 2004 for the first time” (Wessels and Bopp 2008, 29). According to that, it has been stipulated in Article 42(3) that this Agency is going to work in favour of “defence capabilities development, research, acquisition and armaments” (The Lisbon Treaty 2010, 38), as an area that in the future should be developed within the framework of the Union. In that context, Article 42(3) stipulates that the EDA shall identify operational requirements of the Union and, for this purpose, it shall:

[P]romote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities (The Lisbon Treaty 2010).

Thus, the tasks of the EDA are stipulated in Article 45(1) of the Lisbon Treaty, in which it is provided that by its constitution the EDA shall have as its task to:

1. contribute to identifying the Member States’ military capability objectives and evaluating observance of the capability commitments given by the Member States;
2. promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
3. propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
4. support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
5. contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure (The Lisbon Treaty 2010, 40).

In accordance with these provisions, efforts have been made for creating an institution that will possess the capacity to perform mobilization of the (national) military resources of the Member States as well as of the Union, if it has its own autonomous military assets. Decisions concerning the CFSP and CSDP will be made unanimously by the Council, on a proposal of the High Representative or on the initiative of a Member State

of the Union. According to that, efforts are made through the Lisbon Treaty for “imposing” the leading role of the High Representative in this area as well, as an essential connection between the EDA and the European Council, as a basis for providing a solid and institutional communication between them.

Namely, what is especially important in the security and defence area of the Union is the position and the role of the Council, as an important authority and political supervisor of the work of the EDA. The EDA is planned to be an agency available to all Member States that are willing to be part of it. In that context, the Council will make a decision for defining its statute and the operational rules for its functioning by a qualified majority. Such a decision must be previously based on the effectiveness of the Member States participation in the activities of the Agency. For this purpose special working groups will be formed that will be responsible for enabling the joint operations of the Member States as well as their effectiveness in creating the joint projects of the Union in the security and defence arena.

In addition, the Lisbon Treaty plans other flexible mechanisms for Member States’ participation in this area. That is, the establishment of a Permanent Structured Cooperation (PSC) as a flexible mechanism for co-opted participation of the Member States in the Union area of defence, according to their military readiness to participate in such a structure. In general, “these flexibility provisions for the area of CFSP foreseen in the Lisbon Treaty are more transparent both for participating and non-participating members so that the creation” (Wessels and Bopp 2008, 27) of a “‘directoire’ of the big three” (Hill 2006, 1-7) might be avoided. The opportunities for creating a European mechanism for defence, dominated and orchestrated by the military-political and economically powerful Member States of the Union will be reduced through the installation of such cooperation. According to Article 46(1) of the Lisbon Treaty, it is stipulated that:

[T]hose Member States which wish to participate in the permanent structured cooperation [and] which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy (The Lisbon Treaty 2010, 40).

In this regard, the Council is going to adopt such proposals for creating the PSC and determine a list of participating states, whose role will be proactive in such cooperation. Within that framework, each Member State willing to join the PSC in some of its advanced phases will be obliged to inform the Council and the High Representative to that effect. Admission to the PSC will be determined by a Council Decision, adopted by a qualified majority and consent of the High Representative of the Union. The Lisbon Treaty also regulates the right of vote of the Member States within the PSC framework. According to Article 46(4): “Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote” (The Lisbon Treaty 2010, 41). Similarly, the obligation of the Member States, in case of a military threat from a third party, is clearly stated. In that regard, Article 42(7) stipulated that: “if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power”

(The Lisbon Treaty 2010, 39). In fulfilling their obligations, the Member States undertake to respect the appropriate procedure under *the solidarity clause* by this Treaty.

Namely, Article 43(2) states that the Council:

shall adopt decisions relating to the [particular] tasks [such as peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the UN Charter] defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks (The Lisbon Treaty 2010, 39).

Those Member States, in cooperation with the High Representative, will agree on the organization and the conditions for fulfilling the tasks. At the same time, the “Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State” (The Lisbon Treaty 2010, 40). In that direction, those Member States:

shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task [such as peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter]. In such cases, the Council shall adopt the necessary decisions (The Lisbon Treaty 2010, 40).

Within the framework of accomplishing the aforementioned tasks, the High Representative is re-emerging again as a leading actor, following the recommendations given by the European Council. Accordingly, the High Representative has the authority for coordinating the implementation of the policies in this area. In addition to that, the identification of the legal personality of the Union has been finally made by the Lisbon Treaty, which is a step towards transforming it into a single international legal entity, with its own specifics and autonomous international political identity. It is about a quality (characteristic) that helps the Union to appear as a party at the conclusion of international treaties with third countries, and thus to collectively enter or withdraw from membership in other international organizations or structures, as a single legal and political partner.

In that context, the former High Representative, Javier Solana would emphasize that “the EU’s acquisition of legal personality was ‘not a minor issue’, but that it was ‘important politically more than legally’” (Foreign Policy Aspects of the Lisbon Treaty 2008, 33). Concerning the legal personality of the EU acquired with the Lisbon Treaty, Solana also stressed that “it would be easier for third countries to understand the EU without the complication of dealing with, and sometimes signing agreements with, different entities” (Foreign Policy Aspects of the Lisbon Treaty 2008, 33). In addition, a single legal personality for the Union will enable the EU to speak and take action as a single and distinct entity on the international political scene. Therefore, the importance of the Lisbon Treaty as an *initial step* in the integration process of the Union can be concluded through the installation of both the institution of the President of the European Council and the

institution of the High Representative, authorized to provide the external coherence and to foster solidarity within the EU. Thus, this type of coherence “is somewhat strengthened.

The Lisbon Treaty indeed made some efforts in order to enhance efficiency and effectiveness of single institutions, especially by the establishment of the High Representative and the full-time presidency of the European Council” (Wessels and Bopp 2008, 28).

## INTEGRATION STAGES

In its institutional and political development, the EU has gone through three major integration stages. Each of them is transparently shown on the integration cascade (ladder), also known as “ratchet fusion process” (Wessels and Bopp 2008, 6). Otherwise, with locating the Lisbon Treaty’s place within the European integration process in mind, we have upgraded this “ratchet fusion” with the dashed arrow, presented in Figure 1.

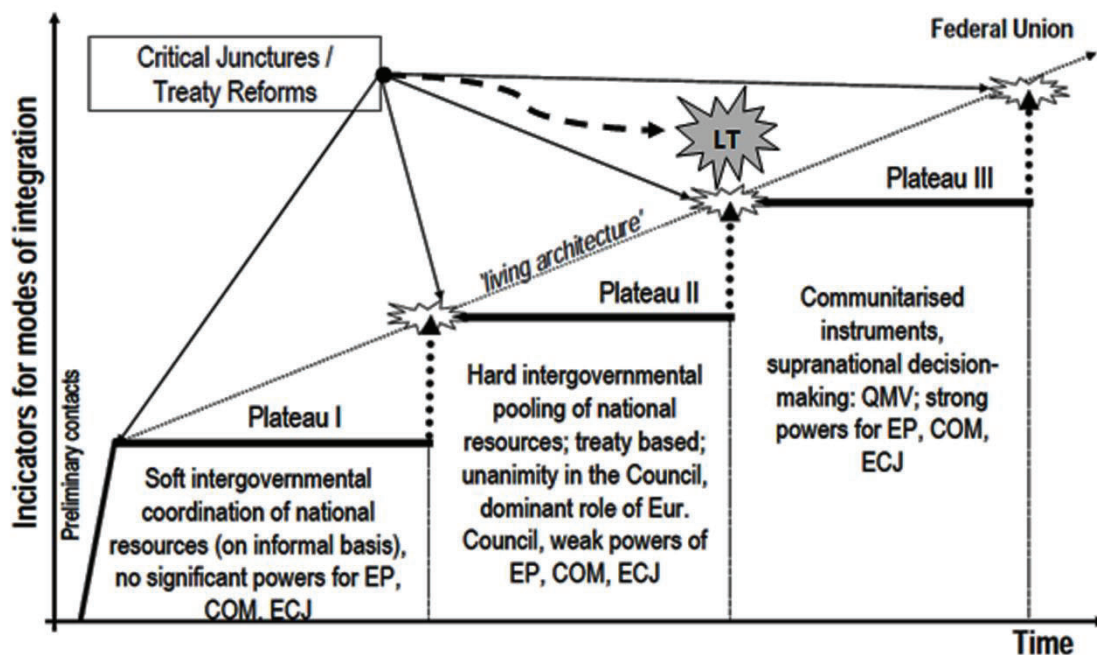


Figure 1: “Ratchet fusion”(Source: Wessels and Bopp 2008, 6)

Stages shown on the cascade are directly derived from the legitimization basis of the EU, which covers the constitutive treaties that condition its foundation and its institutional and political development. This article treats the Lisbon Treaty as the current legitimization basis of the EU. Taking into account the “ratchet fusion process”, this would mean that the CFSP stipulations of the Lisbon Treaty have provided for:

A major step upward towards the ‘next plateau’ of an ‘integration ladder’, representing a gradual move towards a system with clear supranational elements. This would also mean that the often-claimed coherence of the Union’s external action and its capability to act have been enhanced towards

a stronger and more coherent international actor with a strengthened identity in the international system and more capabilities to act while internal efficiency and transparency have been enhanced (Wessels and Bopp 2008, 4).

*The first stage (plateau I)* covers the primordial political integration of the EU member states (then Community) as a basis for creating coherence in their political activities, for the purpose of defining and establishing the European international political identity. This stage, generated by initiating and formalizing the European political cooperation (starting with the report from Luxembourg, to the Single European Act), undoubtedly leads to certain progress in terms of political communication and closer political cooperation among the EU member states. The significance of such political cooperation effectuates a relatively flexible, non-obligatory and voluntary “system” of interstate decision making, in the sphere of foreign policy and the ability of the European Community / the Union for a coherent creation of international political actions. According to that, the development of the “initial awareness” of the Member States for the importance and the necessity of intensive political communication concerning the questions from the international political area can be seen as the greatest benefit of this stage. Moreover, all of that was aimed toward Europe’s starting to speak with one voice, instead of speaking in a choir of voices, as was stipulated in the Declaration for European Identity and the Luxembourg Report.

*The second stage (plateau II)*, began by establishing the institutional - political architecture of the Union through the Maastricht Treaty and up to the Treaty of Nice. This stage is characterized by the final integration of the “political cooperation” within the structures of EU, the installation of the three-pillar system, and commitment for further development of the Common Foreign and Security Policy, as well as the strengthening of intergovernmental decision-making within the area of international activities of the EU. This stage is characterized by existence of the predominant intergovernmentalism in decision-making process, democratic deficit, military underdevelopment, institutional non-transparency, strengthening of the bureaucracy, “eurocracy” etc.

*The third stage (plateau III)*, represented on the integration ladder as a stage of *finalité politique*, has still not been reached from this perspective, despite the Union “efforts” to achieve final institutional and political establishment of its international political identity as a global actor. This stage involves a final political unification of the Union, in which it should be transformed into a political union of a federal type. Within it, the Union will have to be able to generate institutional and political architecture, compatible with supranational and communitarian concepts (or the “Community method”), as well as political expansion and strengthening of the authorities and prerogatives of its institutions, with stressed authority (power) in terms of foreign policy. All this implies a change in the decision-making process, from a system of unanimity to a (qualified) majority system, or another flexible decision-making process concerning the CFSP.

In that context, we believe that it is important to emphasize that the European federalists see extending and fostering as much as possible the *Community method* in various areas of the Union’s activities as the only method for increasing coherence within the EU, and as an efficient tool for incremental building of a European democratic federation. Namely, the Community method implies “pooling of national sovereignty in

certain defined respects and the empowerment of supranational institutions to advance and give effect to joint solutions to shared problems” (Duff 2011, 2-16). Thus, the Community method should not be confused with the *Monnet method*, which descriptively speaking represents a method of “integration by stealth” (Majone 2009, 13). The theorist Giandomenico Majone used the “label ‘crypto-federalism’ to denote a type of federalist revisionism, characterized by this roundabout approach to the political integration of Europe” (Majone 2009, 72). This approach (of which Jean Monnet is a central figure) is highly different from the orthodox (Hamiltonian) federalist worldview, mainly recognizable through the work of the prominent European federalist Altiero Spinelli. In fact, Monnet used the expression “‘United States of Europe’ more as a tribute to the USA, a country he knew well and loved, than as a definite ideological commitment” (Majone 2009, 73). This method, according to Giandomenico Majone “consists in pursuing political integration, not by frankly political means, but under the guise of economic integration” (Majone 2009), and it primarily represents a product of “quasi-constitutional principles derived from the founding treaties and from neofunctionalism” (Majone 2009).

Unlike the neofunctionalism, the *federalist* concept requires the adoption of a European constitution as the ultimate democratic asset for establishing a European democratic federation. The establishment of such a European *democratic* federation, according to the federalists, will be pursued through a *gradual reform* of the existing constitutive treaty, such as the Lisbon Treaty, or as MEP Andrew Duff stressed, “it is obvious that the new European federal constitution will be based largely on the existing EU treaties” (Duff 2011, 5). This means that the specific nature of the Union will continue to exist, but in *enhanced* and modified form, which in the future should serve as the legitimization basis for its further political / international political modelling. However, with the “fall” of the European constitution, the Union was forced to start thinking in an *alternate direction*, in order to find a solution for overcoming the “post-constitutional” crisis and thus to intervene in the process of establishing an international political identity as a global actor. Consequently, the Lisbon Treaty in its essence represents a quasi-federal act, because of its confusing, complex and vague content, and also its partly constitutional determination, which is done through a “compromise” with the protagonists and opponents of the European federalism, seeking to satisfy both sides, and thus to constitute a *distinctive type of federalism without a federation*. Or, as the famous author Zbigniew Brzezinski says: “at best, the European political union would have grown into something less than the United States of Europe, and something more than the European Union as a corporation” (Brzezinski 2001, 21).

## FEATURES OF THE LISBON TREATY

Based on the research question: what is the place of the Lisbon Treaty within the integration process with regards to the identity of the European Union as a global actor?, we can conclude that the Lisbon Treaty takes a specific, crucial, alternate and at the same time an *initial place* in the third phase of the previous presented integration cascade. Taking into account its institutional and political architecture as a complex descendant of the European constitution, it openly started to recede regarding the question of creating a political union (federation in particular). Therefore, it can be concluded that the Lisbon Treaty does not constitute the identity of the Union as a global actor, but only initiated it.

The CFSP provisions of the Lisbon Treaty “can thus not be qualified as a ‘saut constitutionnel’ in a ‘supranational’ direction” (Wessels and Bopp 2008, 29), but “as a major step forward towards the establishment of a growing and strengthened global identity of the EU which – despite the complexity of the treaty provisions – has strengthened its international identity as an actor (...)” (Wessels and Bopp 2008, 5). In that sense, the Lisbon Treaty provisions “can be interpreted as demonstrating an ever-refined type of ‘rationalised intergovernmentalism’” (Wessels 2001, 204), “whereby the heads of state and government grant limited roles to the EP and the Commission but stick to unanimity in the Council and the central role of the European Council” (Wessels and Bopp 2008, 4).

Furthermore, characteristic of the Lisbon Treaty within the CFSP are indeed the key political institutions provided by it, i.e. the President of the European Council and the High Representative, as well as the commitments for creating a defence mechanism with a specific, *sui generis* nature (embodied in the PSC and the EDA). By the installation of these institutions, this Treaty strives to enable Europe to speak with one voice and with one mouth in international affairs as a precondition for its establishment as a global actor. However, this attempt has been reduced through “diarchy” or “intrinsic dualism” (Wessels and Bopp 2008, 29), because both institutions, as the President of the European Council and the High Representative, have been assigned responsibility for representing the Union in international relations (Figure 2.).



**Figure 2: “Diarchy”** (Source: My own depiction referring to data collected from the Lisbon Treaty)

Alongside that, the role of the High Representative is significantly intensified in terms of affirmation and promotion of the fundamental values of the Union, inside and outside of it in relations with other international actors. At the same time, its role as arbitrator and mediator in the process of decision-making in CFSP (and CDSP) has been strengthened. In that context, the High Representative is responsible for “accelerating” the procedure for harmonization and synchronization of the political views of the Member States on one hand, and thus to ensure coherence within the CFSP and the EU’s

representation in international affairs. In line with the provisions of the Treaty, the High Representative inherits the most difficult role in organizing and coordinating the Member States, in order to persuade them to stand united in the name of the European vision and interests, and thus together to ensure the establishment of an international political identity of the Union. In this regard, the High Representative “will play a role that is not yet clearly defined. S/he could behave as an actor representing the overall interests of the Union and controlling national foreign policies without any ties to national institutions” (Wessels and Bopp 2008, 14).

## CONCLUSION

The Lisbon Treaty takes a specific, crucial and at the same time initial position on the integration cascade. Speaking to its institutional-political architecture, as a complex “descendant” of the “failed” European constitution, the Lisbon Treaty openly started to recede regarding the question of transforming the EU into a political union (federation or confederation) as *finalité politique* of European integration and the question of making efforts for constituting the identity of the EU as a global actor. Based on that, it can be concluded that the international political identity of the Union can only be initiated by the Lisbon Treaty and cannot be constituted by it, because this Treaty is not a constitution. The initiation of an international political identity of the EU stems from the provisions of the Treaty for institutionalization of the institutions such as the President of the European Council and the High Representative, authorized to provide the external coherence and to foster solidarity within the EU. In accordance with the Treaty, these institutions acquire powers and responsibilities that ensure continuous functioning in terms of creating the strategic directions of the EU in the area of CFSP and of course powers in terms of harmonization of the contradicted international political views of the Member States. The principle of unanimous decision-making within the CFSP largely appears as a dominant obstacle for constituting an international political identity, which is one more reason for preventing the realization of the ultimate goal of the European integration – a unified and federal Europe.

Moreover, the Lisbon Treaty is a legal and political document, only responsible for initiating and strengthening the EU’s international political identity, because it is not a constitution for its content, but a document, which in accordance to the principles of unanimity and intergovernmentalism, regulates and coordinates the relations among the Member States of the EU. Therefore, it can be said with certainty that this Treaty as a document does not legitimize the phase of *finalité politique*, but rather only represents an alternative legal and political document that makes a step forward, towards the process of constituting an international political identity of the EU as a global actor. In the future, this Treaty must also serve as a legitimization basis for institutional and political upgrading of the Union towards its supranationalization. Because only as a political union (federation or confederation at least) will the EU be able to establish its international political identity as a functional global actor.



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## THE NEW CHALLENGES VS. OLD FORMULAS: WHAT WOULD MAKE THE EUROPEAN UNION A GREATER GLOBAL PLAYER?

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### *Abstract*

*The purpose of this article is to analyse the main determinants that can affect the functioning of the European Union as one of the key global players in the contemporary world. Being a unique and highly specific international actor, the EU is a major power in terms of economic potential and the attractiveness of its social and cultural model, but it is also a dwarf in the sphere of foreign and security policy. This considerably diminishes its capabilities as an effective global actor. These weaknesses can be divided into two categories: (1) external problems resulting from the current international situation; (2) difficulties related to the internal situation of the Union. One of the main deficiencies is the inconsistency of the EU's external policy. This policy comprises a relatively well-developed economic component as well as the foreign and security policy, which is plagued with numerous flaws. Reducing their impact would greatly strengthen the EU as a global player, but this would require (in accordance with the concept of "avant-garde Europe") greater communitisation of this policy – which is what this text advocates.*

*Key words: EU as a global player; external policy of the EU; avant-garde Europe*

### THE UNIQUENESS AND SPECIFICITY OF THE EU AS A GLOBAL PLAYER

The European Union is a very important global player, even though its capabilities in different spheres vary: they are markedly smaller in the field of foreign and security policy but definitely considerable in the area of economy or in terms of cultural influence and attractiveness of its social model. This is proven by, among others, the fact that the aggregated potential of the EU Member States' economies still generates the largest share of the total world GDP that is some 20 per cent (which will change only after Brexit has been finalised).

Furthermore, European culture is known and valued on the global scale, and the territory of the European Union is the destination of huge migration flows from various continents (the list of the EU's various achievements is much longer).

The EU's general position in the world is also shown by the fact that it plays a number of important international roles. Generally speaking, they are based on the adoption of a specific catalogue of fundamental rights – which can be described as so-called European values – by the EU as its normative basis (Barburska 2016a). While this name and the catalogue itself have never been officially announced, it can still be established that they include political and ideological norms as well as norms concerning the specific European model of socio-economic development. They are founded on respect for freedom, democracy, human rights and the rule of law, civil freedoms and social solidarity. As regards the sphere of the EU's foreign policy, this catalogue further includes the promotion of searching for peaceful solutions to international problems and a clear preference for conducting dialogue, developing cooperation and providing development assistance.

As a result of adopting this particular normative attitude, the European Union acts as a soft power in international relations (Nye 1990). This means that it influences its external environment primarily through political, legal and economic instruments, through its “force of attraction”, taking advantage of the attractiveness of the European civilisation. It is able to play this role of “attractor” thanks to its interesting cultural potential, a system of values that is commonly accepted throughout the world and a foreign policy based on the aforementioned “European values”. In this context, the concept of soft power can constitute the conceptual basis for other theories that treat the EU in a similar way. This concerns primarily the concepts of civilian power (Duchêne 1972), normative power (Manners 2009), transformative power (Leonard 2005), as well as a number of derivative theories, like market power (Damro 2012). As implied by their names, they emphasise different aspects of the EU's soft power, but the key aspect that they all share is the assumption that the EU is trying to influence international relations in order to consolidate democracy and peace. All this makes the European Union different from other global players and thus largely determines its uniqueness (Smith 2001).

At the same time, this is not the only characteristic that distinguishes the EU from its fellow global actors; other characteristics include its unique internal structure, its goals, principles and mechanisms, as well as its very special status in international relations. As these characteristics directly impact the European Union's position and role as a global player, it is necessary to briefly present its specificity and uniqueness.

First of all, European integration is a pioneering undertaking on the global scale. Benefiting from the original historical heritage of the European civilisation the European Union constitutes the only example in human history of a so deeply integrated international community based on its own ideological and political principles. Furthermore, the EU exhibits traits that, while not all being unique or special, give rise to a new quality and make the Union a unique political entity.

The Union's uniqueness primarily concerns the depth and scale of integration. No other international organisation has managed to develop internal integration processes of that magnitude, both in terms of the depth of the solutions adopted (as proved by, among others, the Community's exclusive competence in some areas) and the scale of the integration activities.

Gradually expanding, integration spread – albeit with varying intensity – to virtually all spheres of life: economy, politics, social and cultural issues, defence, etc. The same is true of the organisational form and the institutional and legal solutions: no integration community in the world has achieved a similar degree of institutional advancement.

At the same time, one of the most important characteristics of the European Union is the indeterminacy of the EU phenomenon. It remains subject to constant transformations and is much rather an ongoing process than an achieved structure. As vividly described by Jacques Delors, at that time the President of the European Commission, the Union is an unidentified political object. This creates difficulties not only for political practice but also for scientific analysis, as shown by the fact that no one is able to provide a complete and universally applicable definition of the EU!

This is connected with yet another characteristic feature of the European Union. The EU is a heterogeneous structure in institutional, legal and functional terms and should rather be treated as a collective category. It not only includes the community-level structure but also the Member States, which naturally significantly contribute to its functioning, but at the same time implements their own internal and external policies. This, in turn, gives rise to yet another complication: the EU's governance system, which involves a division of competences between the community level and the national level. Generally speaking, the EU's competences are based on the delegation of some competences by the Member States to the community level.

What complicates the operation of this uniquely developed structure even more, is that from the conceptual perspective it is based on the principles of different models of integration, the most important among them including federalism (also referred to as the community method) and confederalism (intergovernmental cooperation). To put it simply, we could say that federalism advocates intensifying and deepening the processes of European integration, which means that it strives towards the establishment of supranational institutions having greater competences than states. Confederalism, in turn, essentially limits integration to cooperation between states that retain their sovereign competences (in accordance with the principle of “a Europe of homelands”).

As we can see, the two models are based on different principles and have different objectives. Fortunately for the European integration, the two models have always formed a sort of syncretic mixture, effectively applied in practice. However, basing both theoretical reflection and political practice on those different principles could give rise to various ideological disputes or even political crises. Two classic examples of this are the “empty seat crisis” of 1965 (caused by France, which wanted to prevent the increase of the Communities' competences) and the repercussions of the famous speech given by the German Minister for Foreign Affairs Joschka Fischer in 2000, which included the proposal to adopt more federalist solutions in the functioning of the EU.

Disputes on this issue are a very good example of the tensions emerging within the European Union. On the one hand, they exist between the Member States, which essentially try to retain as much sovereignty as possible, and EU bodies, which strive to consolidate their position. On the other hand, there is a rivalry on the national level, among the Member States, each of them attempting to secure its own national interests and create a power balance within the Union that would suit its own needs.

The differences between the national interests are especially pronounced in crisis situations (for example, in the context of the present refugee crisis, Brexit or the conflict in Ukraine), which makes it more difficult to maintain coherence of the Union as a whole.

The situation is made even more difficult by yet another major structural characteristic of the European Union, namely the fact that it is hard to clearly define its international status due to the unique nature and specificity of the EU. It is neither a classical state, nor a classical international organisation; instead, it is somewhere between these categories. As a result, the European Union's position in the contemporary world is quite peculiar. Generally speaking, it can be described as a socio-economic giant, with huge economic potential and an attractive model of social and cultural development. At the same time, however, the Union is a dwarf in terms of foreign and security policy.

### **WEAKNESSES OF THE EU AS A GLOBAL PLAYER**

Before we present certain recommendations that could change this unfavourable situation, we first need to establish a diagnosis and point out the main sources of the weaknesses of the European Union as a global player. These weaknesses are the product of the influence of several factors that can be grouped into two main categories:

1. external problems affecting the EU, that is those arising in the Union's international environment;
2. problems within the EU itself and concerning such issues as its structure, the functioning mechanisms, the special nature of its foreign policy, etc.

#### ***External problems arising in the EU's international environment***

The significance of the external factors influencing the EU's position as a global player stems from the rising importance of the entire sphere of the Union's relations with the rest of the world. This manifests itself not only through the considerable role of the economic and trade exchange with foreign countries, which largely determines the condition of the EU Member States' economies. It is also evidenced by the increasing weight attached to issues related to foreign and security policy, as well as by the obvious weaknesses of the Union, which in many cases simply does not have the political and military capability necessary to influence key international events. Shortly speaking, European integration does not take place in an international vacuum. What we are dealing with here is a certain dialectic feedback loop: although the European Union is a powerful actor capable of exerting considerable influence on the events in the global arena, at the same time it is very strongly influenced by its international environment.

How can we then characterise the main problems in this area? This is obviously a very difficult task, we can therefore address only some selected issues. Let us thus start by pointing out that one of the fundamental characteristics of contemporary international relations is that the world is undergoing rapid, far-reaching and sometimes even revolutionary changes as a result of the influence of many diverse factors (political, economic, cultural, military, etc.). They significantly modify the status quo, and in many cases completely upset it. This is true of virtually all the spheres of life and also concerns phenomena and processes that have had huge influence on the world for a very long time

now, such as globalisation. In other words, the world is currently at a turning point, and its future shape is only in the process of forming, so far remaining a great unknown – as is usually the case with periods of historic change.

One of the signs of this change, directly affecting the EU's strategic situation, is the instability of the current global distribution of power. It turns out that even a fundamental change, such as the fall of the Soviet Union and the entire communist system in Europe, as well as the ensuing dominant role of the United States (and the West in general), has failed to shape a lasting new international order.

While in the 1990s some voices heralded an era that would petrify this monopolist position – as did Francis Fukuyama, presenting his thesis on the “end of history” (Fukuyama 1992) – these theses were definitely premature. As a matter of fact, the changes that are currently taking place in the global distribution of power seem to be heading towards the weakening of the West (as understood by Samuel Huntington)<sup>1</sup> and the rise of other global actors.

The emergence of such changes is largely determined by another important process taking place on the global scale, namely the obvious crisis – or even, as claimed by some, the collapse – of the socio-political and economic order based on liberal democracy and free market. At the turn of the centuries, this model, adopted in highly developed Western societies, became the dominant solution in the world. Moreover, it has been deemed the most optimal in economic terms and the most desirable in political and ideological terms. Its symbol was the Washington Consensus, while some examples of application include adopting ultraliberal principles as the basis for the development of the American and British economies under President Reagan and Prime Minister Thatcher.

The results of the domination of this model, however, turned out to be far from clearly positive: while considerably increasing overall economic effectiveness (in terms of growing GDP or the supply of new goods and services), at the same time it increased all manner of inequalities, both within individual societies and between countries and regions. This way, taking advantage of and simultaneously exacerbating globalisation, the model brought about many unfavourable socio-economic changes and eventually political tensions as well. Among the most adamant critics of system anomalies of this type are the so-called alter-globalists, such as Noam Chomsky (Chomsky 1999) and Naomi Klein (Klein 1999). They stigmatise the pathologies resulting from the uncontrolled course of globalisation and especially from the excessive growth of the power of large corporations.

These problems are highlighted by many other researchers as well, for example by Thomas Piketty, who criticises the phenomenon of consolidation and reproduction of the power of great capital (Piketty 2014). While feudalising its structure, it is becoming not only increasingly concentrated but also increasingly more hereditary. This facilitates the emergence and exacerbation of huge social inequalities and various pathologies, such as the wealthy avoiding paying taxes. Branko Milanovic, in turn, asked the all-important question of whether income inequalities of this magnitude would threaten the sustainability of Western democracy (Milanovic 2016). This is because the phenomenon entails a very dangerous development as it undermines the position of the middle class, which is the main guarantor of stability in highly developed Western societies.

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<sup>1</sup> In S. Huntington's approach, the West comprises Europe except Russia, Ukraine, Romania and Greece, North America except Mexico, as well as Australia and a part of Oceania (Huntington 1996).

The middle class is not only losing jobs because of cheap labour in developing countries or computerisation of many professions. What is most important is that it is losing its social status, which allowed it to play a very significant political role (this trend is very vividly exemplified by the fact that the entire middle class in the US has as much wealth as just 5% of the wealthiest Americans). Many members of the middle class have joined the ranks of the new and increasingly numerous social classes called the precariat, formed by people (often young and educated) who do not have permanent jobs and stability in life. At the same time, a new upper class has emerged at the other extreme, formed by people who benefit to a huge extent from the liberal economic boom and especially people involved with the financial circles, whose significance and wealth have immensely increased.

This gives rise to a new social structure, which researchers are only attempting to describe. One of them is Herbert Kitschelt, who distinguishes new social layers not by applying the traditional criteria of class but according to the type of work performed. He introduces a distinction between workers performing jobs that do not require significant qualifications and professions performed by specialists (Beramendi *et al.* 2015). In the political sphere, the emergence of such a new social structure entails the risk of severe perturbations. Increasing inequalities combined with relative worsening of the living conditions of broad social layers creates a considerable potential for social frustration, which finds an outlet in increasingly frequent and numerous manifestations of anti-democratic radicalism. These are witnessed all over the Western world and in some other areas as well, and the Member States of the European Union are not an exception.

In the European Union, radicalisms take various forms: leftist, as it is the case with the Greek Syriza and the Spanish Podemos; but also rightist, as is the case with nationalist groups such as the Hungarian Jobbik, the French National Front and the British UKIP. Their political goals can be very diverse as well, from overthrowing the existing system and elites to vehemently opposing the inflow of migrants. Most often, however, what they share in common is the dislike of or even hostility towards the European Union – which can have serious consequences. The combined influence of these factors contributed to the success of anti-EU forces in the United Kingdom, causing Brexit and consequently a crisis of a magnitude previously unheard of in the history of European integration. What is even worse, however, is that it is not at all unlikely that we will soon be dealing with a similar scenario in other Member States. All this fuels unsettling tendencies towards criticising the very idea of European integration, ignoring everything but one's own narrowly perceived national interest or simply towards a renaissance of nationalisms in government policies, which can already be observed in a number of EU Member States, such as Poland and Hungary.

As we can see, the European Union is by all means affected by the consequences of the crisis of the socio-economic and political model based on the Washington Consensus, and its impact involves much more than just the effect on its internal situation. The crisis undermines the EU's position as a global player, weakening not only the entire Western world (of which the EU is a very important part), but also the Union itself. More and more often one can hear opinions that the attractiveness of the "European way of life" (which the EU has been proudly promoting for many years) seems to be decreasing in many ways, even though it still keeps attracting crowds of desperate immigrants. Although the European Union remains an economic power, also in this sphere we are witnessing the effects of the ongoing economic crisis in the euro area (*vide* the still unresolved problems

of Greece). Furthermore, it is beyond doubt that the divorce with the United Kingdom will considerably weaken this position. According to Andrzej Lubowski, “Europe is moving forward at a snail’s pace or is even moving backwards”. Additionally, he quotes an even more negative assessment formulated by his mentor, Zbigniew Brzezinski, who wrote that the Union, feeling smug, is behaving as if its overriding political goal was to create the most luxurious old people’s home in the world (Lubowski 2013, 28).

What is most important, however, is the relative (because it is not necessary the same in objective terms) weakening of the European Union’s position and role in the world caused by a shift in the overall global distribution of power. As Branko Milanovic rather bluntly put it, the uniqueness of the European peninsula is about to end. This has been happening already for some time, but about a decade ago the process became especially pronounced, bringing about constant growth of significance of the so-called emerging powers, and China in particular. The mechanism of this change in the international order has involved, among others, the adoption by the new powers of selected elements of the Washington Consensus, but only those from the sphere of economy, namely most (although not all) principles and instruments of the free market.

The new powers (especially China) have further complemented and enriched these elements by their own, unique solutions, such as greater role of the state, enforcing high social discipline, low labour costs, etc. What has been explicitly rejected, in turn, are the principles and norms related to liberal democracy, as well as other “flaws of the depraved West” such as hedonism, consumerism or excessive individualism coupled with atrophy of community thinking. In addition, the West has been accused of strongly imposing bad socio-economic solutions on other countries in order to hamper their development. Criticism of this kind is voiced especially strongly by the Korean economist Ha-Joon Chang, who accuses highly developed Western countries of making significant efforts to impose free trade (which could undermine the competitiveness of non-Western countries) while they themselves had for a long time implemented a policy of far-reaching protectionism (Chang 2007).

This model of economic and social development – alternative to the Western one – has begun to achieve considerable success, which in some spheres was even spectacular (for example, as regards GDP growth and improving the living standard of large masses of population). As a result, the new model has even been promoted as exemplary, being referred to as the Beijing Consensus. Moreover, some started referring to the present century as the “Age of Asia”, with special emphasis on the leading role of China. This position is based on facts as the economic focal point of the contemporary world has indeed shifted from the Atlantic to the Pacific.<sup>2</sup> One of the signs of China’s rising power is that since 2013 it has strongly supported the concept of the so-called New Silk Road, which is an attempt to create not only a new format of economic cooperation but also a new model of international relations as an alternative to Western integration structures, such as the European Union.

Theses about Chinese domination are voiced by so many politicians, commentators and researchers that it is essentially hard to find someone who would oppose them. There are so many that we shall therefore stick to the authors who have already been mentioned,

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<sup>2</sup> At the same time, we need to remember that apart from China and India, the BRICS group includes emerging powers from other continents than Asia: Russia, Brazil and the somehow prematurely “tacked on” South Africa.

such as Thomas Piketty and Branko Milanovic (for the latter the growth of China's power simply implies a return to the situation of a couple centuries ago). Furthermore, we should also mention some staunch proponents of the concept of emerging Chinese supremacy: in Poland these include Bogdan Góralczyk (Góralczyk 2010), and some of those well-known in the international arena are the British journalist Gideon Rachman (Rachman 2016) and the Singaporean political scientist Kishore Mahbubani (Mahbubani 2008). The latter is at the same time a very vocal critic of the West, especially of what he sees as a selfish and two-faced policy of the European Union towards its foreign partners.

A more comprehensive assessment of the consequences of the new international order for the EU's position in the world, not necessarily only negative ones, shall be performed later in the text; here we shall therefore only point out some other factors that affect this position and result from the emergence of new serious challenges in the Union's international environment. This is to emphasise the fact that the phenomena briefly outlined above, concerning the lack of stability and the collapse of the Washington Consensus, are starting to threaten the entire capitalist system. One of the factors that limit its effectiveness is the increasingly difficult access to certain basic sources of socio-economic development, in this case primarily natural resources, such as mineral and energy resources, water and clean air.

Moreover, this involves growing problems with broadly defined environmental protection. They concern not only the well-known and spectacular struggle with climate warming but also a number of other, not always sufficiently appreciated issues, such as protecting biodiversity and preserving tropical rainforests. Regardless of all the possible controversies concerning the changes taking place in man's natural environment, they are an objectively existing challenge to all actors on the global stage, including, of course, the European Union. In this specific sphere the EU has been showing commendable initiative and commitment, implementing ambitious environmental standards and consistently promoting them in the international arena. The efforts of the Union have not always yielded positive results, however, as evidenced by the fiascos of a number of consecutive global environmental summits, which failed mostly due to the major powers' stalling tactics. As the Polish researcher Roman Kuźniar bluntly put it, in this sphere "Chinese nationalism and American egoism have together got the upper hand over the offer of Europe that would have served the interests of the entire world" (Kuźniar 2016, 172). As a matter of fact, however, this situation reveals the diplomatic weakness of the European Union, which is unable to successfully push its position through.

Another key global phenomenon that affects the position of the European Union as a global actor is the fact that the general civilisational development of mankind has accelerated so much. The main reason behind this is the scientific and technological revolution, which has far-reaching and all-important consequences in the sphere of information science and electronics as well as, more broadly, in terms of the influence science has on our everyday lives. This impact has always been significant (albeit it varied considerably across history), but the recent decades have seen a true revolution in this regard. In accordance with Joseph A. Schumpeter's theory of business cycles (which began in 1785 with the First Industrial Revolution), the present (fifth) cycle brought accelerated technological development on a scale unheard of in past history (Schumpeter 1983).

What certainly stands out among the many manifestations of these fundamental changes is the Internet and various derived technologies. Their emergence and unprecedented development – in symbiosis with the processes of globalisation – radically changed virtually all the spheres of human life. They affect not only the material aspects of life such as the economy, management systems, ways of conducting scientific research, etc., but also have a huge impact on various aspects of social, cultural and even political life. New forms of communication and broadcasting have changed the nature of the ties and contacts between humans, the way people perceive the world and obtain knowledge and information, the forms of employment, etc.

This spurred some researchers to put forward theses about the onset of an information (and at the same time anti-systemic) revolution. One of them is Jeremy Rifkin, who predicts the end of the *homo economicus* era and the emergence of a world of what he refers to as “collaborative commons”, namely a global system based on an information structure shared by all users that will revolutionise production (a radical cost reduction) and solve the main problems that plague modern societies (Rifkin 2014). Even if such theses might seem utopian at this point, we are already witnessing the emergence of new forms of business activity based on the above principles; these include the business model applied by companies such as Uber, as well as the introduction of the “blockchain”, a publically available digital register that revolutionises the rules governing the conclusion of agreements transferring property rights (Tapscott 2016).

New technologies have also stimulated the changes with regard to social structures. On the one hand, they facilitate the development of identities and formulation of requests by all members of the society, including the new precariat (especially among young people). On the other hand, they contribute to the crisis of traditional forms of political participation. The existence of this phenomenon is evidenced by such factors as noticeable decrease in significance of classical political parties and the rise of spontaneous, less formalised and usually short-lived grass-root structures. This is also related to the growth of negative phenomena: first of all, decreasing interest in public issues and the increasing importance of populists, who aim the “people’s anger” at broadly defined elites and bandy demagogic slogans about.

At the same time, we are witnessing progressing phenomena of fragmentation of public life due to rising individualistic (or even egoistic) attitudes on the scale of entire societies, as well as gradual disappearance of thinking focused on the good of the community. Problems of this kind are highlighted by many authors, including such eminent researchers as Zygmunt Bauman (Bauman 2000) and Alain Touraine. According to Touraine, the atrophy of public institutions (which are becoming reduced to centres providing services to the public) and growing individualisation eventually lead to disappearance of societies as we know them (Touraine 2013). This process is accompanied by tabloidization or even primitivisation of political life, which causes its quality to decrease dramatically – as evidenced by the embarrassing level of the presidential campaign in the United States and the campaign that preceded the referendum in the United Kingdom in 2016.

These processes are taking place virtually all over the world; this is of course also true of the European Union, where these processes create development-related opportunities (e.g., the use of new technologies to stimulate economic growth), as well as challenges or even threats. The latter primarily concern specific aspects of social and

political life on both the Community and the national levels. What seems to be one of the most serious problems is the decreasing quality of political life, which results not only in the emergence of anti-democratic trends – often aimed against the very idea of European integration – but also in the lack of credible and effective leadership.

Current political leaders are evidently unable to deal with all the challenges and threats facing the European Union, including those that stem from its international environment. This obviously considerably weakens the EU's position as a global player from which other international actors rightly expect consistent decisions and actions, backed by a consistent message sent by the Union as a whole. The difficulties in this regard are evidenced by, for instance, the fact that EU decision-makers do not present clear views as regards even such extremely important economic and trade agreements negotiated by the European Union as TTIP (with the US) and CETA (with Canada). The effects of this are bizarre sometimes, such as in October 2016, when the signing of the already negotiated CETA was halted for a while because of opposition voiced at a low national level – by the regional government of the Belgian region of Wallonia (sic!).

Apart from various determinants concerning the development of the general situation in the world, the position of the European Union as a global player is affected by other international factors as well, the most important ones being those linked to various crisis-related phenomena. This mainly concerns the migration crisis caused by the inflow to Europe of more than a million of refugees from Africa, the Middle East and Asia in 2015 alone. The refugee crisis is a problem the Union and its Member States have to deal with on their own; the same is true, however, of the consequences of other crises that, while international in nature, affect Europe especially strongly: the unresolved global economic crisis that started in 2008 or the growing military tensions in the EU's immediate neighbourhood: in the Middle East and Ukraine (Adamczyk 2015; Barburska, Zajączkowski 2015). From a broader perspective, among the most important challenges that the European Union is currently facing and that are closely related to its position as a global player, we should mention the issue that is of fundamental significance to every participant of international relations, namely the need to ensure broadly defined security. As regards strictly military security, the EU is currently not facing any direct threat, but there are cases of tensions rising to dangerous levels in its immediate neighbourhood, as evidenced by the aforementioned armed conflicts in Syria and in eastern Ukraine. A reaction to such conflicts would require greater consistency and, even more importantly, joint action by all the members of the Union as well as greater dedication on their part to the strengthening of EU's military capacity.

The course of the 2011 international military intervention in Libya was among many examples of the EU's weakness in this regard, which undermines its global player status. While two EU powers, the United Kingdom and France, took part in it, the operation as a whole was conducted by NATO and not by the European Union, which once again proved completely impotent. The contemporary understanding of the category of security, however, includes a much broader array of issues. It is not limited to military security but also takes into account other elements, such as the need to guarantee energy security. This is a very important issue for the European Union given that most energy resources it consumes are imported from abroad. Another important matter concerns the aforementioned environmental problems, which, if unsolved, will have increasing negative impact on economic development and living standards in EU countries.

Yet another threat, and an increasingly urgent one at that, is the struggle against international terrorism and organised crime because they directly threaten the security of certain Member States (especially France and Germany, recently). How the EU manages to solve the problems of broadly defined security will largely determine not only its future, but also its role in the global arena.

### ***Problems concerning the EU itself***

The problems that contribute to the weakening of the European Union's position as a global player and result from the situation within the Union itself form a very broad complex of issues (just as do those of international nature). For that reason we can deal only with selected ones. Those that seem the most important are the weaknesses resulting from improper functioning of the system of regulating and managing the broad sphere of the EU's relations with the external world. To better present them, it is first necessary to briefly analyse the principles, goals and mechanisms governing this sphere.

In most general terms, it includes the European Union's relations with third countries, their groupings, international organisations, etc. The scope of this sphere has been undergoing constant changes over the years, which involved a gradual increase in the number of issues, their growing complexity and interdependence. The system of links between the EU and the other participants in international relations is becoming increasingly complex and covers a multitude of diverse spheres of life: politics, economy, social and cultural issues, defence (to mention only the most important ones). Faced with the need to regulate this broad sphere of relations with the external world, the European Union (and earlier the European Communities) created a series of rules and principles, established specific institutions and introduced procedures, which all make up a complex category that can be referred to as the EU's external policy. It resembles the classical foreign policy conducted by states in terms of its objective scope and functions, but at the same time it exhibits its own special characteristics, as one would expect of an entity as unique as the Union.

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

Despite the said problems, we can still say that the Union's external policy has two main components: an economic one and a political/military one (Barburska 2016b; Adamczyk 2016; Jørgensen *et al.* 2015). The first one concerns the economic relations with foreign countries in the form of the Common Commercial Policy, along with development assistance and humanitarian aid, and the second one concern foreign and security policy proper in the form of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

The factors that hinder the implementation of the EU's external policy include the fact that its two components do not share their underlying philosophy: economic issues fall mainly within the competences of EU institutions (the community method), while in

foreign and security policy issues it is the Member States that have the final say (intergovernmental cooperation). Consequently, the external policy is, in a sense, a conglomeration including elements of policies conducted on the EU level and of national foreign policies.

It is only natural that this state of affairs gives rise to tensions and conflicts in various spheres and dimensions (Zajączkowski 2014). Examples of this are plenty, such as the ongoing strong controversies related to the migration crisis. These controversies have both a political and an ideological dimension, which only raises the gravity of the crisis because it affects “many areas of key significance for the existence of the common integration space: from axiology and the understanding of human rights to the functioning of the Schengen rules” (Płóciennik 2016, 13). Just as it is the case with the internal functioning of the European Union, also in the sphere of the Union’s external policy disputes may arise between EU bodies and the Member States, between different EU institutions, as well as between individual Member States, leading to more or less serious tensions or even crises. One of the main reasons behind this is that the EU’s external policy has not supplanted the foreign policies of the individual Member States. What is more, while agreeing to the emergence of this policy, the Member States largely seek to take advantage of it to consolidate their own political and economic positions in relations with third countries. The situation is made even worse by the crisis the EU has been going through and the increasingly stronger striving of the individual Member States to protect their own interests.

All this results in general ineffectiveness of the EU’s external policy. In functional terms, its main flaw seems to be the lack of consistency in political as well as institutional and legal terms. The Treaty of Lisbon represented an attempt to provide solutions to this deficiency. It introduced “Part Five: The Union’s External Action” to the Treaty on the Functioning of the European Union (TFEU), which consolidates the previous resolutions regulating the EU’s relations with foreign countries in terms of external economic relations. At the same time, the Treaty on European Union (TEU) confirmed the significance of the rules of consistency, complementarity and coordination in external policy; of particular importance in this context is Article 21(3), according to which “[t]he Union shall ensure consistency between the different areas of its external action and between these and its other policies” (Consolidated version 2012). Unfortunately, the significance of these provisions is diminished by the fact that the political and defence component of the external policy, that is the CFSP and the CSDP, is still treated as a separate issue – the relevant provisions were placed in Title V TEU (Articles 23–46) and not in TFEU, where the other external policies of the EU are addressed.

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

This is especially true of the political and defence component of the Union’s external policy, that is the foreign and defence policy. In this case we are often dealing

with, as Nicole Gnesotto put it, examples of an actual “national obsession”: whenever the European Union “touches upon [...] diplomacy and the use of military force, states immediately start to cling to their national prerogatives” (Gnesotto 2012, 80).

While the very fact that the CFSP and the CSDP were established can already be considered a success, these policies obviously suffer from many flaws. What seems to be the biggest problem is the lack of an efficient decision-making centre on the Union level, one that would initiate, execute, coordinate and supervise undertakings in all areas covered by this policy.

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

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

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

Another example of adopting institutional solutions that are not very effective is the establishment of the European External Action Service (EEAS), which is the long-advocated EU diplomatic service. It is composed of both EU officials and diplomats from the Member States, and it is headed by the High Representative.

The functioning of the Service suffers, however, from competition-related problems as it has not been given competences in the field of external trade, development and enlargement policy, which remain with the European Commission. Those who criticise the adopted solutions stress that there is no clear division of tasks between these institutions, which could lead to considerable divergences and thus prevent the EU from being successful in the international arena (Zajączkowski 2013, 653-654).

Due to all the structural, legal and institutional deficiencies, other flaws in the Union's foreign and security policy emerge. These include, among others, the vague and inconsistent formulation of the main goals and tasks. Even the adoption of the programme document titled the European Security Strategy (ESS) in 2003 failed to remedy this. While the ESS indeed contained a number of justified theses and requests, overall it was considered incomplete, lacking a broader vision and failing to address the fundamental question: "How could military measures help Europe in achieving political goals?" (Lindley-French 2005, 51).

Yet another problem is the highly insufficient funding the Union's foreign and security policy receives. Although the funds allocated to this aim have been systematically growing, they still constitute around a mere 4 per cent of what is spent on the entire external policy of the EU (which, in turn, has been receiving in consecutive multiannual financial frameworks the lowest funding among all the main budget items). This is further linked to an even more serious problem, namely the lack of sufficient expenditure on military goals and improper use of the available funds by a vast majority of the Member States. They spend only some 1.5 per cent of the GDP (compared to the United States' 4.5%) for this purpose, and only a few among them (e.g., the United Kingdom and Poland) try to reach the 2 per cent GDP mark recommended by NATO. What is more, however, "the funds are spent irrationally, often anachronistically, on the national level and without any preliminary consultation among the Member States" (Gnesotto 2012, 76).

Consequently, the European Union does not have a well-developed autonomous military potential at its disposal, although it should be a key element of its foreign and security policy. We shall not delve into historical deliberations on the attempts to build such a potential (Milczarek 2013). It is sufficient to note that the implementation of the ambitious initiative of establishing a rapid reaction force, initiated in 1999, has not yielded any greater success. The only relative success was the achievement of readiness to launch civilian and military missions abroad in 2003. In total, the EU has so far executed 17 such missions, mainly civilian ones, in Europe, Africa and Asia, and there is a similar number of ongoing missions. All these are, however, only ad-hoc solutions and in most cases only complementary to the operations conducted by the UN and NATO or regional organisations, such as the African Union. Thus, it is still long before EU intervention forces will be able to independently conduct major operations abroad. What is more, there is also the risk that, as Julian Lindley-French rather sarcastically put it, such operations will become "an end in themselves, a means of proving that the Union is capable of mustering a military force, regardless of whether it will actually prove globally useful" (Lindley-French 2005, 57).

Generally speaking, the weaknesses of the European Union's foreign and security policy discussed above seem to have one thing in common: the lack of political will of European decision-makers to introduce the necessary changes. This is especially true of the governments of the Member States, which evidently do not want to give up their traditional, sovereign rights in the sphere of foreign policy.

On the Union level, in turn, there is obviously not enough determination to change this state of affairs. Thus the following question arises: How can the European Union change this highly unsatisfactory situation, which makes it difficult for the Union to act as an effective global player?

### **HOW CAN THE EU BE A MAJOR GLOBAL PLAYER?**

The most straightforward answer to this question is that all or at least the most significant among the deficiencies described above should be remedied. Since the problems concern both the sphere of the European Union's relations with the rest of the world and the internal conditions within the Union itself, this issue should be addressed while taking into account the division into these two spheres. As regards the relations with the Union's international environment, it needs to be stressed that it will be very difficult to successfully implement any possible remedial actions in this sphere, simply because of the nature, characteristics and complexity of the subject matter; most of the aforementioned external determinants are objective factors, very difficult or even impossible for the EU to influence. The key problem of the changes taking place in the international balance of power is a good example of this. As one of the two major elements of the Western world (the other one being the United States), the European Union can of course contribute to increasing or diminishing the West's potential, but its capabilities in this regard are rather limited because there are global processes and phenomena that the EU cannot influence in any decisive way, such as globalisation and its various economic and social consequences. This, however, does not necessarily imply solely negative consequences for the Union since we should remember that the weakening of the Western countries' position is only relative. Their true significance (including the position of the EU) depends therefore on the actual power of the other major global actors, especially the "emerging powers". And the trends are by far not clear in this regard: virtually all members of BRICS are currently struggling with serious problems that will certainly affect their future position in the world.

China, who is the most important member of this group, and at the same time the most serious pretender to the status of a global power, is facing considerable challenges involving, among others, the need to change the course of the country's economic, trade and social policies. They should no longer be based on the extensive development model based on mass exports but rather shift towards intensive development taking advantage of domestic resources. Failing to adjust to these requirements (as well as other challenges, such as the growing political aspirations of the Chinese middle class) could cause the economy to collapse and lead to dangerous social and political upheavals, which could all effectively weaken the country's position in the world. The other members of BRICS are not in a better situation. India keeps struggling with the huge social and economic diversity of its society, which leads, among others, to extreme poverty of large masses of population, as well as with considerable problems in the sphere of energy and communication infrastructure.

After years of an impressive economic boom and successes in eliminating social disparities, Brazil has been struck by a serious economic and political crisis. Russia, in turn, as a country highly dependent on the prices of energy carriers and subjected to international sanctions because of its aggressive foreign policy, is plunging deeper and deeper into recession and socio-political stagnation. Also South Africa is suffering from permanent economic and socio-political difficulties.

All this shows that the various problems the European Union is struggling with affect many other countries as well. It is probably not much of a consolation to the Union, but this means that many of its problems are not its fault alone. The situation is similar with regards to another fundamental problem as well – the crisis of the development model based on liberal democracy and free market economy. In this case, the EU is also unable to prevent the crisis on its own, but it can take certain preventive or remedial measures within the framework of its internal policies. What seems to be the most important factor in this context, however, is the fact that the collapse of the liberal free market model used so far is connected with a fundamental ontological transformation taking place on the global scale, namely the general lack of paradigms governing political, social and economic life.

The current ideological and scientific discourse is lacking comprehensive and commonly accepted concepts that would facilitate the analysis and understanding of contemporary international relations. As a result, there are no clear, common visions and no effective, practical recipes for ensuring that the development of the situation in the world is beneficial for everyone. As a matter of fact, there has been a plethora of ideas in this regard, concerning various more or less important elements of the global situation. What is needed, however, are not individual ideas or proposals – the main problem is that there is no single or at least dominant and consistent vision of the contemporary world.

In other words, the world has lost the compass that used to tell it which way it should be heading. Sticking to metaphors, we could describe the current global “market of ideas” as a huge supermarket where consumers – that is all participants in international relations – choose the products that suit them the most from the offers of competing producers, but where neither is attractive enough to prevail over the others. One of the reasons for this, as Zygmunt Bauman aptly observed, is that we have lost control over the world that we ourselves have created. What is more, we are not even aware of the historic significance of the phenomena and processes we are witnessing. At the same time, we are surrendering to what Bauman calls “retrotopia”, that is “retro utopia”, which means naive idealisation of the past, fear of the future and disappearance of positive associations with the notion of progress. Alain Touraine, in turn, is convinced that we are in the very middle of a process of disrupting the continuity of social development and deep transformation, which means that we need a new paradigm that will allow us to see the emerging new world.

Of course, the problem of the missing compass concerns not only the European Union but all participants in international relations. The lack of a commonly accepted paradigm makes it difficult for each one of them to formulate a clear vision of their relations with the external world; this is especially true of the most powerful ones, playing the role of global actors. In the case of the European Union, however, there is an additional problem resulting from the fact that the Union is a unique, *sui generis* integration entity. This is especially true of the Union’s external policy, which is the main instrument allowing the EU to be a global player.

As has already been mentioned, this policy is suffering from a series of flaws and shortcomings that severely limit the EU's possibilities of effectively acting in the international arena. What can be done to eliminate or at least limit the deficiencies falling in the sphere of determinants stemming from within the Union itself? Once again, the simplest solution would be to remove the shortcomings, which would improve the overall effectiveness of the entire external policy of the EU.

This, in turn, would imply better functioning of all its constituent parts, including especially its political and military component in the form of the CFSP and the CSDP. In contrast to the economic and trade component (whose functioning does not give any serious reasons for concern), the EU foreign policy requires reducing or removing the main political, institutional and legal barriers that hamper its development. Although the list of barriers is long, remedial actions are indeed undertaken with regard to some of them.

For example, we should note that despite the quite justified criticism of their activity, the establishment of the office of High Representative of the Union for Foreign Affairs and Security Policy and the EU's diplomatic service was undeniably a step forward compared with the previous state of affairs. (One of canonical historical anecdotes tells of the complaints of the American Secretary of State Henry Kissinger, who was very irritated by the lack of one common "phone number of Europe" that would be useful in the event of an urgent need for mutual consultation between the transatlantic allies). We should also remember that the Treaty of Lisbon introduced important new solutions, formally giving the EU legal personality under international law or even introducing certain elements of military alliance in the form of a clause obligating the Member States to provide assistance in the event of an armed aggression against one of them (under Article 42(7) TEU).

EU decision-makers are also becoming increasingly aware of the need to develop a more consistent strategy for the Union in the area of its relations with the rest of the world, as evidenced by the European Security Strategy, among others. While the Strategy certainly deserves criticism, it also contains the following statement: "Greater coherence is needed not only among EU instruments but also embracing the external activities of the individual Member States" (*A secure Europe* 2003, 13). Furthermore, it seems that the provisions of the new Global Strategy for the EU's Foreign and Security Policy, proposed in 2016 but not yet formally adopted, are heading in the right direction. Already the very title of the strategy: *Shared Vision, Common Action: A Stronger Europe* indicates that emphasis has been placed on increasing the consistency of the foreign and security policy activities. Moreover, while the document confirms the peaceful and conciliatory nature of this policy ("The European Union has always prided itself on its soft power"), it also underlines that having only soft power as the foundation "does not do justice to an evolving reality". As a result, "for Europe, soft and hard power go hand in hand", which indeed seems to signify better understanding of the challenges of the modern times (*Shared Vision* 2016, 4).

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

leaders in this industry on the global scale). Among the various undertakings in this regard, some noteworthy examples include the initiative of the European Commission to establish a special European Defence Research Fund by 2020.

As regards autonomous armed forces, in turn, the EU has at least initiated the process of forming some of its elements. Starting from 2004, the so called Battle Groups were being formed, which were supposed to be able to rapidly react to crisis situations. Combined with various earlier undertakings (such as the Eurocorps and other joint European units) this already forms a certain military infrastructure. While still far from the ambitious aims and plans, it does exist. This is even truer of the deployment of military mission outside the European Union: in order to streamline this type of activity, a special mechanism of joint funding under the name “Athena” has been introduced. At the same time, one should also bear in mind that foreign EU missions are large undertakings, involving military and civilian personnel of as much as several dozen thousand (sic!) as well as large quantities of equipment and considerable funds. Thus, the EU has important logistic capabilities in this regard, which already reflects well on it – even if, as previously mentioned, these operations are not entirely independent and do not always yield the desired political results.

All these more or less significant remedial activities cannot, however, remove the most serious flaw of the EU’s foreign policy, namely the lack of political will to implement a deep policy reform. This, in turn, is a direct consequence of the general principle that governs this sphere of the Union’s international activity, namely the domination of the model based on intergovernmental cooperation. It is understandable why the Member States are so fiercely clinging to this model – one of the main reasons is that they are anxious to transfer to supranational bodies competences in such sensitive areas as determining their own diplomacy and having their own armed forces, which are traditionally considered crucial for a state to retain sovereignty. This does not change the fact that in the contemporary world – globalised and full of interdependences – the notion of sovereignty is shifting from its classical meaning as no international actors, not even the most powerful global players, remain fully independent.

### **WHERE IS EUROPE HEADING TO?**

The above assessment is, naturally, also true of the European Union. The domination of the Member States in the Union’s foreign and security policy in the form of intergovernmental cooperation sanctioned in the Treaties and implemented in practice does not suit the challenges the European Union is facing in the early 21<sup>st</sup> century. Although this domination enjoys continuous strong political and ideological support (among politicians, commentators and researchers alike), the main argument against is very simple: it is ineffective. Not only scientific analyses but also – perhaps most importantly – political practice show that the present model of EU’s foreign policy does not fulfil the tasks and goals it should. The proponents of retaining the existing solutions should consider the following question: If these solutions are so good, why are their results so bad?

As has been highlighted earlier, a considerable increase in the effectiveness of the Union’s foreign and security policy is a prerequisite of strengthening the entire external policy of the EU, its two components being the economic one and the political/military one. Consequently, whether the European Union will be able to effectively play the role of a

global actor or not, largely depends on improvements in external policy. In order to achieve an improvement, however, far-reaching changes are needed to prevent the situation from worsening and to provide new remedial impulses.

One of the remedial measures that should be taken into account is the adoption of the concept that is the pivot of the deliberations in this book. We are talking of course about the title idea of “avant-garde Europe”.

It is based on the broad concept of “Core Europe”, according to which in the future the European Union should function according to a division into a core and an orbit (periphery). Such views are related to many other more or less diverse concepts, such as the “centre of gravity”, *directoire*, multi-speed Europe, circles of integration, etc. The concept of “avant-garde Europe” has been presented and analysed from various angles in other chapters of the book, it is therefore not necessary to describe it here in detail as well.

What is necessary, however, is to reflect on how the concept can be applied with regard to the foreign and defence policy of the European Union. In most general terms, it is about letting those Member States that want to cooperate to take steps to strengthen the capabilities and, even more importantly, the effectiveness of the CFSP and the CSDP while not minding their other partners and not being held back by them. In legal terms, this process is made possible by the principles of enhanced cooperation, enshrined in Article 20 TEU, which allows for a diversification of the pace of deepening integration within the EU between smaller groups of Member States (at least nine states per group), which may create new forms of cooperation between them. At the same time, it needs to be pointed out that theoretically, the principle of enhanced cooperation can be applied in two ways, in accordance with the principles of the major integration models. The first way is through the application of intergovernmental cooperation mechanisms; and the second one is through deepening integration processes in accordance with the community method.

As the author tried to demonstrate in the above deliberations, the use of intergovernmental cooperation within the framework of the EU’s foreign and security policy seems to encounter systemic barriers that prevent it from achieving significant results. This does not mean that such solutions are not being considered. For example, when in September 2016, after Brexit had been announced, the largest countries of the “remaining” EU – Germany, France, Italy and Spain – put forward a proposal of deepening military cooperation between them (which is very much in accordance with the idea of “avant-garde Europe”) Italian ministers spoke of a “defensive Schengen”, that is of concluding a relevant intergovernmental agreement.

At the same time, however, this proposal provided an opportunity for a clearly more pro-community concept to be crystallised. The governments of the said Member States proposed the establishment of a European Defence and Security Union, and President of the European Commission Jean-Claude Juncker stressed on several occasions the need to create a “European army”. Accomplishing these plans would be possible through, among others, launching the mechanism of “permanent structured cooperation” (PESCO), involving the use of the principle of enhanced cooperation – after all, its main goals are “to further the objectives of the Union, protect its interests and reinforce its integration process” (Article 20 TEU). Another example is the proposal put forward in 2016 to establish a new institution on the supranational level, namely permanent operational headquarters that would command all military operations undertaken by the EU (EU Operational Headquarters, OHQ).

It would increase the overall effectiveness of the Union's foreign missions, but it would also objectively force decidedly deeper military cooperation between the partners involved in them.

As we can see, the second way of implementing the concept of "avant-garde Europe" through the use of the community method, should include forms of cooperation between the Member States that would involve granting greater competences to supranational institutions, extending the scope of application of EU law, expanding common procedures and regulation mechanisms, etc. In other words, as regards the European Union's foreign and security policy, it is simply about greater communitisation – which is the key issue in the context of these deliberations.

Communitisation of this policy is not a new concept in the history of European integration. When we look at the entire history of the European Union's existence, we can clearly see that despite controversies and open opposition the foreign and security policy has indeed been evolving in this particular direction – albeit very slowly and one small step at a time. One of the many signs of this process was the establishment of the said offices of High Representative for Common Foreign and Security Policy and High Representative of the Union for Foreign Affairs and Security Policy together with the Union's diplomatic service. Regardless of all their political and competence-related limitations, these High Representatives were tasked with looking after the interest of the Union as a whole.

At the same time, we need to remember that there are strong tendencies negating the need for communitisation of the EU's foreign policy. As has already been mentioned, a significant share of politicians, commentators and researchers advocate the development of the confederative model based on intergovernmental cooperation and negate the utility of community solutions. The same is true of Polish researchers, some of whom have for years expressed the view that the most desirable model is the intergovernmental one with strong leadership because the community model would not have sufficient political and social legitimacy for the EU to play a significant international role (Kuźniar 2002, 29). On the other hand, numerous voices support the enhancement of European integration in the sphere of foreign policy. In the Polish academia, one of the researchers supporting this view is Dariusz Milczarek. According to him, the federalist model, in other words greater communitisation, "seems to be more useful", while continuing with the intergovernmental model "would only consolidate the present, unsatisfactory state of affairs" (Milczarek 2005, 151).

What is the most important from the point of view of this paper is that the proposal of actual communitisation of the EU's foreign and security policy seems to be one of the key elements of the "avant-garde Europe" concept. While not always directly referred to by the proponents of this concept, the idea of creating strong federal mechanisms and structures is clearly present. The views of the advocates of "avant-garde Europe" are the subject of extensive analyses presented elsewhere in this book, it is therefore sufficient here to give only selected examples. For instance, according to the idea of Great Europe formulated by Jacques Delors, there would be a federation of states where the countries belonging to the avant-garde would have their own governing bodies. Joschka Fischer, in turn, openly claims that the functioning of this avant-garde is to eventually lead to the establishment of a European federation.

When evaluating the above concepts, we need to take into account the fact that the proposal of greater communitisation of the Union's foreign and security policy might, on the one hand, be a political-science assessment, taking into account primarily the criterion of effectiveness. The dominant model so far, based on intergovernmental cooperation, is obviously not working; a different proposal should therefore be made (although we have to honestly admit that there is no guarantee that the federalist model would be fully effective either). On the other hand, however, the idea of communitisation has obvious political and ideological connotations and has to result from broader determinants, concerning the present and future model of the functioning of the European Union as a whole.

This is a separate and very broad issue, hence we can only stress that the future shape of the Union's foreign and security policy will actually depend directly on the key debate concerning the future of European integration processes. At the same time, it seems that contrary to the views of those who negate the gravity of this dispute, what will remain the key element of this debate is the clash of the two fundamental integration models: federalism and confederalism. This is because the European Union is currently facing the need to make a historic choice: whether to keep developing its supranational structures and strengthen community competences in all spheres, including foreign and security policy (which implies the adoption of the community model) or to retain the present mixed model, largely dependent on intergovernmental cooperation. The future of the European Union, including its ability to perform the role of an effective global player, depends on this very choice.

At the same time, it needs to be stressed that the choice of the development model for the EU is in fact strictly political or ideological. There is no good and/or bad solution. The adoption of a specific model depends on the political and ideological preferences of the EU decision-makers and societies, who take into account various arguments, some more rational, some less so, and differently understood national interests.

This does not change the fact that the choice should be made as soon as possible, all the more so because the Treaty of Lisbon has not provided a definitive solution to the historic dilemma: more communitisation or more intergovernmentality? The visions that represent these two options still keep clashing, and prominent EU politicians become involved in the dispute. For example, Guy Verhofstadt believes that too many decisions are made on the intergovernmental level and that the Member States use their veto right too often. He further believes that a new European Union is needed because the one we have now has an institutional problem: "it is not a union but a confederation of nation states" (Przyszłość UE 2016). On the other hand, President of the European Council Donald Tusk stated that 'Europe without nation states' is just a utopia and pointed out that decision-makers got obsessed with "the idea of instant and total integration", failing to notice that ordinary EU citizens did not share this enthusiasm (Speech 2016).

At the same time, it needs to be emphasised that there are many politicians and researchers who do not become involved in the dispute and instead put forward alternative proposals. There have been a great many of those, and some of them differ from the traditional solutions proposed in the past. For example, some researchers advocate shifting the main focus of integration from state and supranational institutions to the local government level, including especially the great European metropolises. The proponents of this concept include Jan Zielonka (Zielonka 2006), as well as – in broader terms – Benjamin Barber, who believes cities to be the only efficiently functioning institutions in

the world (Barber 2013). Among other proposals, we should mention the concept of “differentiated integration”, which is based on the principle of enhanced cooperation within the EU. As its name suggests, the concept advocates greater differentiation and dispersion of integration activity so as to better adapt them to specific conditions. Jan Techau described this as follows: “some needs point toward more integration, but others perhaps point toward less” (Techau 2016). Other researchers who support similar solutions include Simon Hix, who believes that the Union should be transformed into a “decentralised federation”, where groups of Member States with similar interests would conclude agreements between themselves and create their own structures (*Przyszłość Europy* 2016). A group of researchers recently proposed yet another idea related to the general principles of “avant-garde Europe”. They proposed the creation of what they refer to as a Continental Partnership, namely a structure that would formally organise the European Union’s cooperation with its neighbours: the countries that will leave or might leave it (the United Kingdom and maybe other Member States) or those that are not really likely to ever join the EU, such as Turkey or Ukraine (Pisani-Ferry *et al.* 2016).

Considering all these determinants, we now need to ask the key question: What future awaits the European Union’s foreign and security policy and, consequently, its capabilities of acting as an effective global player? Of course, in matters such as this it is hard to provide any clear predictions, even more so as the forecasts vary considerably in this regard: from disaster scenarios that predict a more or less imminent collapse to the optimistic forecasts that assume the EU could be playing an important or even leading role in the future world order.

The pessimistic scenarios seem rather unlikely, but indeed many researchers are sceptical of the EU’s future as a participant in international relations. Zbigniew Brzeziński, for instance, believes that a vision of Europe as a political and military heavyweight player is becoming increasingly illusory (Brzeziński 2012). On the other hand, optimistic prognoses can be based on rational premises because they arise from the empirically proven historical regularity concerning the inevitability of great power transition. In the current circumstances, this implies the need to have the currently dominant United States (whose position is to gradually diminish) replaced by another global power. Theses of the imminent downfall of the United States have been put forward for many years by scholars such as Emmanuel Todd (Todd 2002) and Immanuel Wallerstein (Wallerstein 2003). They were often accompanied by predictions of the European Union possibly taking over the dominant position in the world; in Poland such a thesis was put forward by Dariusz Milczarek, among others (Milczarek 2005, 131-144). While still quite numerous a couple of years ago, such predictions now seem increasingly more utopian, and if there is talk of power transition, it is usually China that is expected to replace the United States as the hegemon.

As has already been mentioned in the discussion of the global determinants of European Union’s international position, much will depend on the development of a new balance of power in the contemporary world. Contrary to the gloomy scenarios that are currently in fashion, the new international order does not necessarily need to lead to the weakening or even fall of the Western world. Already a hundred years ago Oswald Spengler warned that the Western world was ending, basing his prediction on the concepts of development and fall of great civilisations (Spengler 2001).

Later, many researchers voiced similar theses as well, including John N. Gray (Gray 1998), Niall Ferguson (Ferguson 2011), Ian Morris (Morris 2010), Fareed Zakaria (Zakaria 2008) and the aforementioned Benjamin Barber. Meanwhile, it turns out that so far – to allude to the famous quote by Mark Twain – the reports of the West's death have been greatly exaggerated.

Objective facts show that the West retains its advantage over the rest of the world – and this is true both when we treat it as a great civilisation and as a specific economic, social and political system constituting the foundation of contemporary capitalism. From a purely macroeconomic perspective, we need not forget that highly developed Western countries still generate approximately the half of the global GDP; furthermore, the West has a dominant share in the development of innovative technologies that will determine future development of mankind. Contrary to the gloomy forecasts, the United States as the main Western power is not about to fall, even though it certainly is experiencing a multifaceted crisis, one sign of which was the election of the highly controversial Donald Trump to the office of US President. What is more, there are still prognoses, as those formulated by George Friedman, according to which only this century will really be the “Age of America” (Friedman 2009).

At the same time, while the West's main competitors from the BRICS group do achieve some economic successes, they are also struggling with many serious problems that could at some point threaten their international position and, even more importantly, interfere with their socio-economic development. Gideon Rachman aptly observed that even if China overtakes the United States in macroeconomic terms, the key fact will remain unchanged: the average American will still have a better living standard than the average Chinese. Today, it is hard to find viable alternatives to liberal democracy (despite all its flaws) or the Western lifestyle and cultural model, including especially popular culture.

The list of the various advantages is long. Niall Ferguson, for example, lists an entire catalogue, including more effective institutions in the West, the principle of competition, property rights, the functioning of science and a specific work ethic.

The Nobel Prize winner Edmund Phelps, while criticising Western countries for the disappearance of economic dynamism, still points out that their development was and still remains to a large extent based on the so-called modern values: the spirit of entrepreneurship, the willingness to take risks, the desire for change, etc. – in other words, on a high level of innovation, which is not always found among the characteristics of the societies and economies of the “emerging powers” (Phelps 2013). These values largely determine the vitality of the Western capitalist system. What is more, we also need to remember that many of its flaws are immanent and thus cannot be simply purged from the system (but we should, of course, try to limit their negative effects). According to the Hungarian economist János Kornai, these immanent flaws include the quasi-permanent state of economic imbalance, which does not necessarily have to be a bad thing in itself. Furthermore, he believes that a sober perception of the inherent flaws of capitalism can be reconciled with practical thinking about proper solutions and reforms (Kornai 2014).

We should also not give into pessimism as regards the problems with the functioning of the Western model of liberal democracy and society – the Bulgarian political scientist Ivan Krastev believes the present crisis of democracy does not result from any immanent characteristics of that system; on the contrary, it is the consequence of a success of democracy.

We are indeed witnessing a dramatically decreasing confidence in public institutions, but at the same time, after a number of revolutions in the last five decades, the system is capable of mending and improving itself (Krastev 2013). Furthermore, there are some optimistic assessments as regards social issues as well: despite the persistence of phenomena related to the individualisation of the social life, Alain Touraine believes that they can lead to the emergence of a new type of personality.

The “new man” would not be an egoistic individualist but an empowered individual aware of his/her dignity; one of the role models for this new man could be the ethos of the Polish Solidarity movement of the 1980s. Given all the above, it would be not only premature but clearly unfounded to write off the entire Western world.


Still, the West should not be naively self-satisfied. If we recognise the thesis that every great civilisation must inevitably fall into decline, we have to admit that they apply to the Western civilisation as well. This would also mean significant transformations in the global distribution of power, the course of which could be quite violent. While the past historical experience shows that in most cases such changes are accompanied by wars, this is not necessarily a rule set in stone. Presently, the most realistic and the most welcomed visions of the future seem to be those that predict a gradual transition to a new, multipolar structure of international relations, in which the political, economic and military potentials will be evenly divided between a number of centres, with no clear dominance of the West or other centres of global power.

In other words, a new global order is emerging, one in which the declining Western world will no longer hold the dominant position but the other “pretenders to the throne” do not have sufficient capabilities and resources to take full power. This kind of vision has been presented by scholars such as Edmund Phelps as well as Andrzej Lubowski, who stresses the significance of various non-economic factors that influence the present and future development of the world. According to Lubowski, it is for this reason that formulating forecasts concerning future global domination of the “emerging powers” and the inevitable decline of the West merely on the basis of extrapolation of the current trends is simply too rash.

It seems, therefore, that it would be a great success for the European Union if it manages to preserve, at least for some time, the model of the international order that emerged roughly at the turn of the centuries and was to be based on the triumvirate of the United States, Europe and East Asia. Is this model, however, still in existence and can it be maintained? From the point of view of the European Union, the deficiencies and flaws of the Union as a whole and of its external policy in particular – especially the foreign and security policy – that have been discussed earlier could constitute a major barrier.

Despite all the efforts made in this regard, the European Union still has no strategic vision of what Europe is to become in the future. Its foreign policy is lacking clearly defined goals and well considered actions to achieve them. Given all this, our concerns about the future of the EU as a strong, active global player are justified. The multifaceted crisis it is going through facilitates the emergence of anti-democratic and anti-EU sentiments as well as national egoisms, which are highly dangerous especially in the sphere of foreign policy. What is even worse, however, the implementation of the proposal of greater communitisation of this policy that has been presented above – which would also make it more effective – is threatened by other risks as well.

One of the most serious ones among them could be structural characteristics that are inherent in the Union's mechanisms and institutions dealing with the relations with the rest of the world and that limit the effectiveness of the EU's activity in the international arena.

Despite all these problems, however, we should not lose hope that in the future the European Union will have the important position in the global arena that it deserves. We should also hope that Brendan Simms's sarcastic remarks about the EU will not come true: he asked whether Europeans would shirk the contemporary challenges and emphasised that if they do, "history will judge the European Union as a costly juvenile prank of an old and grumpy continent" (Simms 2015, 594). It is not in the interest of all Europeans to maintain a situation where the most powerful integration community in the world remains an economic and cultural giant but a political and military dwarf. 

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## NEW FORMS OF COLLECTIVE IDENTITY IN EUROPE

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### *Abstract*

*This article suggests an answer to the question of national identity and belonging to nation-states in an avant-garde Europe. In other words, it examines: what might the avant-garde of national identity in Europe in the XXI century be; will nationalities and simple belonging to nation-states be sufficient for Europeans; what is the vitality and the potential of pan-European identity to fill the gaps of national identity; and how the two strains of belonging relate to each other. The central argument is built around the idea of the clash between neonationalism and postnationalism in the form of pan-Europeanism, in which new forms of collective identity in Europe are emerging.*

*Key words: Collective identity; nationalism; national belonging; European nations; postnationalism; neonationalism; pan-Europeanism*

## INTRODUCTION

There is not a piece of inhabited land on our Earth today that is not under the claims of a nation-state. Being born without a nationality is rare case and a precondition of a deprived troublesome life. Our identification and self-realization is penetrated by the sense of belonging to a motherland, to a certain community, to a nation. Nationality is a feature on our passports, a permit to travel or an obstacle to such; it is the language that we speak, the history that we were taught, the holidays that we celebrate; it is all the familiar things that we first learnt in our lives and became so used to. Nationality is an extension to the belonging of a nuclear family, of kinship, of a hometown, of a region, of a group. We are nationals of a nation-state or nation-states. Globalization has challenged national belonging by opening borders, extensive mobility, increased travelling, faster and more accessible communication and transport than ever, free trade, mass media, new technologies, and an almost constant connection to the World Wide Web. The appearance of more and more transnational families, expats, refugees, freelancers and global nomads, migrants of various

kinds and people who simply do not have a permanent address, permanent location or anything permanent at all has contributed to the creation of multicultural societies with a flexible sense of belonging. The universalization of cultural patterns and the emergence of so-called global culture started to transform the means of belonging, but do not seem to have overcome the importance of nationality and the relevance of national identity. On the contrary, belonging to nation-states has even been revived in response to the globalization and we are witnessing the rise of nationalisms and nation-ness in Europe. Thus, postnationalism does not seem to be a non-nationalism, but rather a brand new form of nationalism, which is in a process of reinvention and reinforcement.

This article explores the transformation of national belonging in a postnational Europe. Its main argument is that at the beginning of the XXI century we are witnessing a clash between the idea of pan-Europeanism and the various forms of neonationalism in European states. This as such is not an isolated European phenomenon, but rather a part of a global trend present in other countries and regions, among which are the United States, Turkey, China, India, Russia, the Middle Eastern countries, etc. with their own specificities. The nation-building processes in Europe from the XIX and the XX centuries, which led to the formation of the European nation-states as we know them now, may look similar to the present neonationalism, but there are essential differences between them in their driving forces and the surrounding environment. On the other hand, the idea of pan-Europeanism has started losing popularity, being perceived as an antonym and a threat to the sovereignty of nation-states. Thus, the notion of national identity and the mere belonging to nation-states from the XX century is not sufficient to correspond with the reality of the 21<sup>st</sup> century. The collective identity of people is going through a transformation and new forms of group belonging are being created in Europe. The main question addressed here is what belonging to nation-states would mean in such a case, and what its alternative would be in an avant-garde Europe.

This article is divided in three sections, exploring first the idea of pan-Europeanism and the challenges that globalization and the liberal order have presented to the Westphalian system. In the second section, the emergence of neonationalism and its narratives in the European context are discussed together with the rise of the right-wing parties, populism, and protectionism. The subject of the third section is the clash between these two opposing ideas, which are leading to new forms of national belonging in the XXI century in Europe.

The main drive behind this article is to demonstrate that the notion of nation-ness or the nationalist discourse has reappeared as a vibrant and live factor of the political rhetoric of the 21<sup>st</sup> century. I have chosen the case of Europe for such an analysis because of its particularity and exceptionality. There is no other region in the world that has decided to transfer so much national sovereignty to a supranational structure such as the European Union. The concurrent development of the national and European sense of belonging to a rather bigger notion is unique in this regard as well as the mentalities, attitudes, societal structure, and identities in contemporary Europe. Furthermore, the versatility of this “multinational” population, the richness of its unique historic experiences, and the almost miraculous way in which it is kept together make it even more challenging and inspiring for analysis. Hence, what it means to belong in Europe today remains an immense open question, to which this article will provide an insight for the composition of the big picture.

## THE CHALLENGES OF GLOBALIZATION TO THE WESTPHALIAN SYSTEM

*“A nation is a soul, a spiritual principle”.*

**Ernest Renan**

### *Nation-building processes in Europe*

Belonging to a nation-state and being a part of a nation is a result of the process of national identity building, which is linked to collective memory from the past and the specifics of present conditions of one's participation in the community. The Westphalian system of international relations refers to the Peace of Westphalia, signed in 1648, which put an end to the Thirty Years War between the major European states. The Westphalian principle is the concept of sovereignty of the state, which makes the states the main actors of the international system and presumes non-interference in other states domestic affairs.

First, I would like to provide a very brief historic background on the foundation of the nation-state and the link between the changes in the actor self-identification and the changes in the structure of the international system, which are interdependent in the actor-structure paradigm. We can identify at least three fundamental changes in the process of collective self-identification that have changed the international system – the transition of sovereignty from God in the Middle Ages (feudal era) to the King in the Renaissance (early-modern state), and then to the people after the French Revolution and the Enlightenment with the formation of the nation-state (modern state). The sovereign is tightly linked to the collective identity of the group, since sovereignty is the source of legitimacy of the power and the ones in power choose the collective memory (what is to be remembered and glorified or grieved for and what is to be forgotten) of the group. As Jan-Werner Müller argues, collective memory and collective identity are mutually constitutive (Müller 2002). Thus, it could be argued that the collective identity construction, based on the collective memory of the group, is a top-down process driven and managed by the political elites, as the case of the use of national identity belonging in Europe. However, the instrumentalist idea of the political elite managing the collective identity of the group is not shared by some scholars in the field, such as Ernest Renan, Pierre Nora, etc.

Ernest Renan provides one of the first and most influential definitions of the “nation” in 1882, stating that nations are “cultural entities willed into existence by the daily plebiscite of believing communities” (Renan 1882, 1). He also adds that a nation is “a large-scale solidarity, constituted by the feeling of the sacrifices that one has made in the past and of those that one is prepared to make in the future”. Even in this early definition of a nation, we can distinguish the temporal characteristics of past, present and future and their interconnectedness in the creation of a nation.

Renan identifies two elements that merge into one in the construction of the nation – one from the past and one from the present. “One is the possession in common of a rich legacy of memories; the other is present-day consent, the desire to live together, the will to perpetuate the value of the heritage that one has received in an undivided form” (Renan 1882, 10). These two characteristics of common past and present consent of it could be found in almost any definition of a nation.

Another important feature of Renan's thinking about the nation is the "spiritual principle", according to which a nation is "the outcome of the profound complications of history; it is a spiritual family not a group determined by the shape of the earth" (Renan 1882, p.9). The so-called "spiritual principle" plays an important role in the understanding of a nation as an entity with distinguished characteristics and identity on its own and not just a mere sum of the individual identities of the people who form the nation. With the assumption that the nation is a separate being, we accept that there is a process of national identity going on driven according to the structure of the governance of the nation and the context, in which it exists.

Renan's influence can be observed in the work of other scholars on the subject. It is important to mention the contribution of Maurice Halbwachs to the debate, which initially developed the concept of collective memory (Halbwachs 1950). Collective memory, especially in the form of national memory, becomes central in the thinking of other scholars about national identity. In addition to the national memory aspect, Pierre Nora argues that once the traditional modes of transmission of the past (such as the various institutional channels) are released to the public domain, we can have emancipatory versions of the past (Nora 1996). That means that the content of the national memory becomes dependent on its interpretation by the present. This is a rather constructivist approach, which was also taken by Benedict Anderson, who provides an anthropological definition of the nation, as he describes it himself. A nation is "an imagined political community - and imagined as both inherently limited and sovereign", according to him. The "nation is always conceived as a deep, horizontal comradeship" (Anderson 1983, 5-7). This imaginary quality of the nation and its "sheer constructedness" Jan-Werner Müller finds in the collective memory.

Here we can also add the contribution of the Russian historian Natalia Narochitskaya, who defines the nation as a "successively living entity bound by spirit, world-view and common perceptions of good and evil, and historic emotions" (Narochitskaya, 1996). This definition is not too far away from Renan's description of the nation, including the temporal dimensions of past and present, together with a constructivist vision of the "common perceptions", tying the living entity together.

Another vision of the nation can be found in the thinking that lies behind ethnic nationalism, which focuses most of all on the value and appreciation of the ethnic past. It derives from the Romantic tradition, according to which a people are seen as mystical collective entity; it has its own fate and soul. This definition is not so distant from Renan's description, who also points out the "soul" feature of the nation. The link between past and present is extrapolated in absolute terms by ethnic nationalism, in which the nation is naturally given as timeless phenomena. The term of "ethnic nationalism" is used by Anthony Smith, who perceives it as a non-Western concept, opposed to the Western view of nationalism. In the argument of Smith the so-called "ethnie" plays an important role in the comprehension of the nation and its boundaries (Smith 2001). In the ideological discourse discussed by Smith, a nation is "a felt and lived community, a category of behavior as much as imagination, and it is one that requires of the members certain kinds of action" (Smith 2001, 10). He also takes into account the fact that the definitions of the "nation" range from those that stress "objective" factors such as language, religion and customs, territory and institutions, creating the demos, to those that emphasize purely "subjective" factors, such as attitudes, perceptions and sentiments, building up the ethnos. While the objective factors seem to treat the subject from a more realistic approach and the

subjective ones seem to belong to the constructivist school of thought, an accurate definition of a nation should span the whole “objective-subjective” spectrum, including both the *demos* and the *ethnos* in the definition of a nation. Therefore, Smith precisely argues that the nations are “felt and lived communities whose members share a homeland and a culture” (Smith 2001, 12). The central point of Anthony Smith’s understanding of the nation lies in the connection between the present and the past and the role that the present plays in the creation of the past. He distinguishes four schools of thought with different approaches to the past-present linkage – nationalists, perennialists (primordialists), modernists and post-modernists.

The first two groups see the past as a solid construct that provides the present with content to justify the nation, while the latter two groups see the past through the lens of the present as something vague and open to interpretations according to the needs of the present. For nationalists the nation is part of the natural order and the only task of the present is to remind of the glorious past that needs to be recreated. The perennialists (or primordialists) share a similar view that the identity of a nation is unchanging. However, they do not see the nation as part of the natural order, but rather the ethnic foundation that can be used to build a nation. For modernists the process of nation-building is a modern phenomenon, which does not necessarily require ethnic heritages; therefore, the past is rather more irrelevant than the genuine source of the national identity.

Post-modernists have rethought this idea. They recognize that the nation is a product of modern culture, but the liberal use of the elements of the past makes up the imagined political community called “nation”, so the past is still relevant. For them the past is the reflection of the present.

None of these paradigms seems to be sufficient to explain the complexity of nation formation; therefore, we should instead use a holistic approach to explain the process of nation-building and national identity in Europe. Anthony Smith also acknowledges this fact and suggests that all four schools of thought play a vital role in the explanation of nation-building. Smith challenges the assumption that nations are purely modern and that the limit within which they can expand is defined by the ethnic heritage (*ethnie*), which is built of “more permanent cultural attributes” like memory, myth, symbols and values (Smith 1998, 134). In the relationship between the ethnic past and the nationalist present there should be selection criteria for what is to be remembered and how. The criteria are defined and executed by the locus of power within the nation. This is also part of the reasons why collective identities are not solid and permanent, but rather subject to change over time.

Miroslav Hroch provides a more pragmatic definition of the nation as “a large social group integrated not by one, but by a combination of several kinds of objective relationships (economic, political, linguistic, cultural, religious, geographical, historical), and their subjective reflection in collective consciousness” (Hroch 1996, 79). In contrast to the ethnic nationalists, he does not see the nation as an “eternal category”, but rather as “the product of a long and complicated process of historical development” (Hroch 1996, 79).

In the interplay of the objective-subjective elements of the nation, he shares the same point of view as other scholars such as Anthony Smith. However, Hroch’s perception of the nation goes in different direction with regard to the three irreplaceable characteristics of the nation:

(1) a ‘memory’ of some common past, treated as a ‘destiny’ of the group - or at least of its core constituents; (2) a density of linguistic or cultural ties enabling a higher degree of social communication within the group than beyond it; (3) a conception of the equality of all members of the group organized as a civil society (Hroch 1996, 78-97).

Therefore, one might argue that his understanding of the nation is closer to the post-modernist school of thought, in which the natural foundation of unity of the nation comes from the common past, but does not end there. It is not a static concept, but a process, in which the social communication within the group determines the present organization of the group or as in the case of Hroch – the equality of all members.

All of those definitions of the nation have their flaws and could be a subject of critique for various reasons. For example, the critique may come for combining the conditions for the emergence of the nation with the outcomes in one definition, as Anthony Smith has been criticized for by liberal nationalists, such as Yael Tamir (Tamir 1993). Therefore, it is important to take into consideration the contribution of all the different schools of thought in the search for the most accurate definition of the nation, which is undoubtedly linked with the concept of nationalism.

My understanding of the “nation” in the case of Europe is closer to the post-modernist one in the way post-modernists see the role of the present in dealing with the past, but I also agree with Anthony Smith that the use of the ethnic past is not unlimited and the nation has certain margins to fit in, beyond which it cannot expand. The most important specificity about the nation as a group to which certain individuals have developed a sense of belonging is the organizational structure of the nation-state that makes its existence possible. With the change of the organizational structure of the society, the essence of the group and the sense of belonging also change.

### ***Pan-Europeanism and postnationalism***

*“We live in a globalizing world. That means that all of us, consciously or not, depend on each other. Whatever we do or refrain from doing affects the lives of people who live in places we’ll never visit.”*

**Zygmunt Bauman**

Jacques Delors’ idea for avant-garde Europe or “Great Europe” would provide members with “an area of shared values lived out in the diversity of our cultures and our traditions” (Pusca 2004, 131). Such a statement builds upon the notion of European identity, which is still being constructed among the nations of the European Union, but which is facing more challenges deriving from the numerous internal and external crises confounding the Union today. I share the view that European identity and national identity are not interchangeable, but rather supplementary concepts, or at least they are such for now. Even though the focus of this article is the role and the future of national identity of Europeans within the European Union, its relation with European identity comes naturally and cannot be avoided.

Pan-Europeanism deals with the idea that European nations are part of a common European nation and there is a European culture composed of the different European cultures. The existence of the European Union as a supranational governmental structure further supports the idea of a common European identity among European nations. The process of European identity building would have probably gone flawlessly and merged the various national identities of European countries in a common pan-European identity, if the permissive consensus of European integration did not start breaking as has been happening over the last decade. The West has comfortably operated under the presumption that the liberal order that was established and spread across Europe after the end of the Cold War will see no end. Recent developments in the political life of the Old Continent have proven it wrong.

The processes of globalization have not skipped Europe in bringing various challenges to its course of development. During the last two decades of 20<sup>th</sup> century, the forces of globalization and interdependence led to international integration, and the erosion of Westphalian sovereignty. The European Union is the most explicit example of such integration. The critique derives from the Westphalian notion of the nation-state as a principal actor of the international system perceived as axiomatically given (Camilleri and Falk 1992). Transferring sovereignty from the national level to the supranational level has transformed the societal and political structure in Europe in a sui generis type of organization. Both the national identity with a certain nation and the European identity as a broader form of collectivity co-exist on the Old Continent and make it impossible to delimitate the various forms of collective identity.

Here comes the notion of postnationalism or non-nationalism, which describes the view that the national identity and nationalism are losing its importance. Globalization, interdependence and universalization of cultural patterns are fostering the alternative of nationalism, which is postnationalism. Even though the concepts are not necessarily mutually exclusive, they are opposite in their essence. The same factors that contribute to the overcoming of the nation-state and the demolition of the Westphalian system are also seen as a challenge to the creation of the so-called global society and the new world order beyond nations. The same political, economic and cultural processes fostering the argument that the world is so interconnected and globalized that nations and nation-states no longer have a place in it are strengthening the rise of a new wave of nationalism in Europe. The nation-state and the collective identity around it are the central question of both lines of thought: postnationalism and neonationalism. Both coexist and fragment the societies in Europe.

## NATIONALISM, NEONATIONALISM AND THE RISE OF POPULISM IN EUROPE

*“Nationalism as we know it is the result of  
a form of state-sponsored branding.”*

**Bryant McGill**

Nationalism may be discussed from many different points of view – as the initial drive for nationalist movements in the process of nation-building in Europe, according to the study of Miroslav Hroch, or as the strong affiliation to the nation, as nation-ness, as an ideology, belief, sentiment or individual identification with the nation, depending on the perspective. There are also various interpretations of the causes of nationalism, described below according to the understanding of Anthony Smith.

One of the most important scholars on the subject of nationalism is Ernest Gellner. According to Gellner's understanding, nationalism is “primarily a political principle, which holds that the political and the national unit should be congruent” (Gellner 1981, 1).

Nationalism may be seen as both a sentiment and a movement, where the nationalist movement is initiated by national sentiment. He shares the modernist view that nationalism is a modern phenomenon, which appeared in order to accommodate the needs of the modern times or as functionalists may argue its shape serves its function. For him nationalism is a necessity for the ones in power to maintain the control over the population and therefore over the resources and their maintenance. A standardized cultural pattern is required to create the “we-feeling” and to secure the legitimacy of the power. Gellner sees nationalism as such a standardized cultural pattern emanating from the changes caused by the industrialization; the political and the national unit should be congruent for this purpose. His understanding of nationalism has been highly criticized mainly by his former student Anthony Smith due to the misread relationship between nationalism and industrialization. In a final debate with his former student, Gellner summarized his understanding of the nation and nationalism, underlining once again the importance of a common culture in which one feels incorporated and accepted and the membership in this community makes him part of the nation:

The world as it is now is one where people have no stable position or structure. They are members of ephemeral professional bureaucracies which are not deeply internalized and which are temporary. They are members of increasingly loose family associations. What really matters is their incorporation and their mastery of high culture; I mean a literate codified culture which permits context-free communication. Their membership of such a community and their acceptability in it is a nation (Gellner 1996, 367-368).

Anthony Smith presents the other side in this debate on nationalism (Smith 2001, 5). He provides the main usages of the term “nationalism”, among which are: 1) “a process of formation, or growth, of nations”; 2) “a sentiment or consciousness of belonging to the nation”; 3) “a language and symbolism of the nation”; 4) “a social and political movement

on behalf of the nation”; 5) “a doctrine and/or ideology of the nation, both general and particular. He recognizes that the formation of a nation is an ongoing process, which means that the content of the nationalism may change with the change of the political regime. Therefore, the term “nationalism” in the case of this article will be used as language and symbolism with a top-down approach, coming from the political elite, which is a subject to change. According to Smith, “the language or discourse of nationalism cannot be considered separately” from symbolism since they are both closely tied to the ideologies of nationalism. For him the distinctive language form of nationalism includes characteristics of the core ideology: “the symbolism of the nation has assumed a life of its own, one that is based on global comparisons and a drive for national salience and parity in a visual and semantic ‘world of nations’” (Smith 2001, 8). Smith identifies three generic goals of nationalism: “national autonomy, national unity and national identity”. Accordingly, he defines nationalism as “an ideological movement for attaining and maintaining autonomy, unity and identity for a population which some of its members deem to constitute an actual or potential “nation” (Smith 2001, 9). After all, as Smith argues, “nationalism is an ideology that places the nation at the center of its concerns and seeks to promote its well-being”, that is why defining the concept of a nation first is of crucial importance for this text.

The way Smith sees the nation as pre-determined by the ethnic past, but at the same time built on a specific selection of this past, which is in accordance with the needs of the present and justifies modern positions, suggests that nationalism is a process which is really taking place in the present, whose boundaries lie in the past. This vision of nationalism is not too far away from the one of Miroslav Hroch. Hroch has worked mainly on nation-formation and national movements in Central and Eastern Europe, but his contribution to the theoretical clarification of the notion of nationalism is significant. He distinguishes national sentiment from the national movement, arguing that for a national movement to start there should be organized endeavors of the dominant ethnic community based on national sentiment to build the nation. I share his understanding of nationalism in this article, but would add the remark that sufficient leadership is needed not only for the initial creation of the nation, but also for its maintenance over time, as it is in the case with the European identity. Hroch identifies three chronological stages in the process of nation-creation and calls them phase A, phase B, and phase C.

In phase A, the foundation of the national identity is researched by activists, whose aim is to raise awareness, which leads to phase B and the patriotic agitation calling for awakening of the national consciousness. Only in phase C does this become a mass movement through which a full social structure could come into existence. These stages describe only the initial push of nationalism in the creation of the nation, but it is important to recognize the role of the so-called activists, who lead the process.

I would argue that once the nation is formed, the ones in power maintain the control of the nationalist discourse. Here come the complications of the term “nationalism”, because with the fully-established social structure, the left-wing divide appears in the political sphere and nationalism splits into different kinds of nationalism – ethnic nationalism, liberal nationalism, socialist nationalism, ultranationalism (authoritarian), etc.

For further understanding of the notion of nationalism and that of neonationalism in particular, it is important to mention the work of John Breuilly, who argues that nationalism refers to “political movements seeking or exercising state power and justifying such actions

with nationalist arguments” (Breuilly 1985, 3). He sees nationalism as a form of politics, which takes the meaning of the term further than the one suggested by Miroslav Hroch, in which nationalism seems to complete its function with the creation of the nation-state. Breuilly explores the functions of nationalism in politics and provides three basic assumptions upon which the nationalist argument is used as a political doctrine: “(1) there exists a nation with an explicit and peculiar character; (2) the interests and values of this nation take priority over all other interests and values; (3) the nation must be as independent as possible. This usually requires at least the attainment of political sovereignty” (Breuilly 1985, 3). He argues that the nationalist argument in politics is usually used by the opposition and could pursue secession or unity with another state according to the principle of self-determination. This argument holds true in the case of Europe today with the rise of anti-establishment movements and populist parties across the European countries. Benedict Anderson describes nationalism as the “awakening of nations to self-consciousness” (Anderson 1983, 5-7). His understanding on that matter is also highly relevant for the goals pursued in this article. He uses the term “sub-nationalism” for the nationalist movements within the borders of the so-called “old nations” and disagrees with the “long prophesied” “end of the era of nationalism”, since the “nation-ness is [still] the most universally legitimate value in the political life of our time” (Anderson 1983, 3). This is opposed to the ideas, proposed by globalism and scholars like Francis Fukuyama in “The End of History and the Last Man”. Francis Fukuyama’s book, published in 1992, arguing that with the collapse of the Soviet Union, the world had reached the so-called “end of history”, when the capitalist democratic model would spread around the world, is highly contested and criticized. Francis Fukuyama, who saw the “end of history” in the fall of the bipolar system of the Cold War, provided a very simplistic explanation of the word. Even though the nation-state system is being challenged from within and without, through the process of globalization, the nation-states are still the main actors in world politics. An opposite trend of reviving nationalism or the so-called neonationalism could be observed as an attempt to withstand the challenges of globalization.

In relation to this, Anderson identifies three paradoxes related to nationalism: “the objective modernity of nations to the historian’s eye vs. their subjective antiquity in the eyes of nationalists”; “the formal universality of nationality as a socio-cultural concept (...) vs. the irremediable particularity of its concrete manifestations”; “the political power of nationalisms vs. their philosophical poverty and even incoherence” (Anderson 1983, 14-19). These contrasting pairs show the many faces nationalism can obtain and the explicit need for clarification of the term. My understanding of nationalism is linked to the national identity and is close to Alexander Wendt’s definition of nationalism, which is “a sense of societal collective identity based on cultural, linguistic, or ethnic ties” (Wendt 1994, 384-396). Therefore, by nationalism or neonationalism in the case of this article, I refer to the process of reaffirmation of the nation and the source of legitimacy from the common ethnic past through selected events of national trauma and national glory, symbols, traditions, beliefs and cultural patterns to explain and justify present actions of the political elite. The clarification of the notion of nationalism is important with regard of the national identity and its transformation in Europe.

The concept of neonationalism or new nationalism is also linked to the rise of right-wing parties in Europe, anti-establishment movements, anti-globalism, protectionism, opposition to immigration and Euroscepticism.

Recent political developments in the European scene signal that the neonationalistic discourse is gaining more and more supporters. Mark Movsesian describes 2016 as the year, in which “nationalist resistance to global liberalism turned out to be the most influential force in Western politics” (Movsesian 2016, 1). Evidence for that is found in the Brexit vote in the UK, the Eurosceptic rhetoric of politicians such as Nigel Farage and Boris Johnson, Marine Le Pen in France, Viktor Orban in Hungary, Geert Wilders in The Netherlands and Norbert Hofer in Austria etc. The upcoming elections in the major European states and the real possibility of nationalistic parties winning the elections are giving vitality and hope to the neonationalist alternative of Europe. In this sense, Europe is not an isolated case, but part of a global trend that one might argue has officially been marked with the election of Donald Trump as the 45<sup>th</sup> President of the US. The clash between this new wave of nationalism and the forces of postnationalism is going to shape the debate of the future and the forms of collective identity and national belonging in Europe.

## NEW FORMS OF NATIONAL BELONGING IN EUROPE

*“Like all other postulated identities, ‘humanity’ as an identity embracing all other identities can ultimately rely solely on the dedication of its postulated adherents.”*

**Zygmunt Bauman**

### *National identity and liquid modernity*

National identity is a type of collective identity, tightly linked with the collective memory and history of the nation as well as the organizational structure in which its boundaries exist such as the nation-state. In the case of Europe in the XXI century with the change of the organizational structure, the transfer of sovereignty from national to supranational European level and the various challenges of globalization, national identity is no longer a solid construct, but rather a liquid one (Bauman 2000) with blurred bounds, loose bonds, and diverse layers of belonging. In order to understand the transition in the way people develop their multi-layer collective identities in the XXI century in Europe, it is worth reviewing what national identity used to contain as a solid concept.

National identity is “the organization principle that nationally conscious individuals use to organize their history” as argued by Jan-Werner Müller (2002, 21). It “allows them to place events into a national narrative, which functions as a matrix of meaning” (Müller 2002, 21). As he states, collective identity and collective memory are mutually substitutive or in a “circular relationship”. Hence, three points from the work of Jan-Werner Müller are significant for the purpose of this article. First, Müller makes an important distinction between collective or national memory and mass individual memory. He argues that national memory is qualitative, meaning that particularly selected events are memorized and forgotten, while individual memory is quantitative – it deals with facts and numbers.

Although national identity involves the individual choice to identify with the nation, the content of national identity is constructed with common efforts through a top-down approach. Therefore, the single individual does not choose what to include in the national narrative, but can only accept what has already been chosen from the collective memory of the nation to be glorified or grieved for.

The second point of Müller's argument is the relationship between memories and the present, which is of particular importance today more than at any time before. He argues that the institutionalization of collective memory provides the opportunity for memory to become the base of legitimacy of the present political power. This hides the risk of transforming the memory into a norm and treating it in absolute terms to justify certain foreign or domestic policy. The rise of absolute moral claims makes national identity non-negotiable, which is opposed to Jeffrey Olick, Thomas Berger and other scholars' vision that collective memory is always the result of continuous and ongoing intellectual and political negotiations (Olick, Vinitzky-Seroussi and Levy 2011). National identity is not a solid bloc of meaning, given once and for all, but is constructed in the public discourse and is a subject of reinterpretation and change. The present defines the role of the past as argued by post-modernists.

Third point of Müller's contribution is concerned with the nexus power-memory, which is the center-point of his argument. He mentions the role of "high politics" in the use of collective memory for the construction of national identity. "High politics" is understood by him as "presidential speeches and other symbolic gestures by national representatives" (Müller 2002, 21). As also argued by Timothy Snyder, there is a political sovereignty over memory (Snyder 2002). Through "high politics" memory is included in a specific matrix of meaning, which can change with the change of the political regime or even with the change of just one political leader to another one. The role of political leaders in the reconfiguration of collective memory to serve a certain narrative of identification, or their claim to be responsible for the past in order to use it as an argument for present actions, is of particular interest for the transformation of national belonging in Europe. As Michael Ignatieff has pointed out, societies and nations are not like individuals, but their leaders can have an enormous impact on the mysterious process by which individuals come to terms with the painfulness of their societies' past (Ignatieff 2003).

The narrative of collective memory began with the work of Emile Durkheim (1912), although the term itself was coined later by his student Maurice Halbwachs (1952). Durkheim argues that to preserve the community united and coherent, some common experiences and continuity with the past are required. It stresses once again the importance of the past in the present narrative. In contrast with Müller, who separates individual memory from collective memory, Halbwachs (1992) places the individual memory in the context of social structures and institutions, which is another approach to the construction of collective memory. He claims that memory is constructed by the group and transmitted through the remembering of the individuals. Even though the group is an essential part of collective memory construction, it is not sufficient without the leadership of the elites, who guide the process. His argument develops in this direction by taking into consideration the reconstruction of the past according to the needs of the present by the leaders of the group.

Further development of the role of the present in defining the past comes from John Bodnar (1993), who argues that collective memory is selected according to the needs of the present and the needs of the anticipated future.

These temporal dimensions add an important aspect of the understanding of the versatility of collective memory in the national identity discourse. It also speaks for the fact that national identity construction needs direction from the top, somebody to guide the process with a vision of the anticipated future.

Another important aspect of the selectivity of collective memory is also collective forgetting. Pierre Nora (Nora 1996) calls it “collective amnesia”, when certain events are deliberately chosen to be forgotten. This makes the collective memory invented and is in the same line of thoughts with Benedict Anderson’s “imagined community” (Anderson 1983). Ernest Renan also considers the chosen forgetting. Moreover, he argues: “where national memories are concerned, grieves are of more value than triumphs, for they impose duties, and require a common effort.” (Renan 1992, 10). This tendency may be observed throughout history in many nationalist projects of different countries and in the case of Europe as well.

With regard to European identity construction, Rodney Bruce Hall (1999) adds some relevant insights to the essence of collective identity and its formation. He presents in a historical perspective the link between individual identity, collective identity and the legitimating principle according to the source of sovereignty in the three periods that were distinguished at the beginning of this article, or, as he calls them “dynastic-sovereign”, “territorial-sovereign” and “national-sovereign”. Of particular interest to this article are collective identity and its legitimating principle in the nation-state system, which is claimed to be the “national self-determination” and what would come after it. He argues that institutions develop according to the legitimating principle and thus institutional collective action is justified through the collective identity. However, collective identity is in correlation with the events happening in the present as much as with the ones that happened in the past: “the collective identity is subject to change by forces and events that are both endogenous and exogenous to domestic society” (Hall 1999, 34).

Hence, the public authority should not only pursue its goals in the domestic and international arena, but also should react accordingly to the changes in the social order. This statement recognizes that national identity construction is not only a top-down process, but could also have a bottom-up effect for as long as the changes in society are taken into consideration by the authority and are addressed accordingly.

National identity as a solid concept is to be understood as the collective identification or sense of belonging to the nation, based on collective memory and closely related to the legitimating principle according to which it is constructed, interpreted, and enforced. The process of national identity building from the XIX and the XX century, as well as the struggle for identity of the XXI century could be approached through the lens of constructivism. “It’s all relative”, as Albert Einstein said.

To explain the lubricity of the contemporary world, in which frames and boundaries are no longer predictable, Zygmunt Bauman coined the term “liquid modernity”. “Communities come in many colours and sizes, but if plotted on the Weberian axis stretching from ‘light cloak’ to ‘iron cage’, they all come remarkably close to the first pole.” (Bauman 2000, 173). Nationalists often perceive Bauman as an enemy of the country, but in my view in his ideas about the flux stage of belonging in the world of the XXI century he is more critical toward it than not. The question of identity in the era of “liquid modernity” is a versatile one with the potential of transforming not only the course of the group to which one belongs, but the entire experience of being a human.

Europeans today face this very same question of identification with their nation or nations (in many cases), the nation-state that they were born in, the nation-state they grew up in, the nation-states of their parents, the nation-states in which they have lived or are living, Europe with all its faces and peculiarities, and possibly the entire human race. The new sense of belonging does not respect solid shapes, entire exclusion of the “other” and sometimes even question its very existence.

### ***Constructivism and flexible belonging***

Some might argue that nationalism is a form of constructivism since it relies on a specific perception of the world, shared by a group of people, i.e. the nation, and this perception is different for every nation. Benedict Anderson (1983) argues for the classification of nationality together with more open concepts such as kinship and religion than with more ideological ones such as liberalism or fascism. From one side, this allows for the notion of nationality (which is directly linked to national identity) to be interpreted according to perceptions of the group, attaching different meanings to it. But from the other side, it conceals the risk of turning the nationality into a vague and abstract concept, which could be problematic. However, the possibility of different variations in the content that national identity holds is undeniable.

The notion of nationality in Anderson’s rhetoric is merged with all the cognate terms around the “nation”. He contends that “nation, nationality, nationalism – all have proved notoriously difficult to define, let alone to analyze”, therefore one should not try to draw clear boundaries between them and analyze them separately from each other, but rather in their context of meaning. As Anderson indicates, “nationality, or, as one might prefer to put it in view of that world’s multiple significations, nation-ness, as well as nationalism, are cultural artifacts of a particular kind” (Guibernau and Rex 1997, 56). So to understand them we shall not address them out of context, but rather analyze them together.

A constructivist approach would allow us to explain the complexity of such abstract and multifunctional concepts as nationalism, nationality and the national identity. Paul James poses the question “how can the nation be experienced as a concrete, gut-felt relation to common souls and a shared landscape, and nevertheless be based upon abstract connections to largely unknown strangers and unvisited places?” (James 1996, XII). James designates the term “nation of strangers” and argues that the connectedness comes through abstracting mediations such as mass communications. Those abstracting mediations are of particular importance in relation to the challenges that globalization has imposed to national belonging.

In constructivist thinking may also be found Alexander Wendt, who worked on the issue of collective identity building. As he states, “the collective action problem dominates world politics” (Wendt 1994, 384-396), therefore collective identities matter and a proper approach toward their formation and manifestation are of crucial importance for understanding the perception of nations about themselves and others. Wendt explains the construction of state identity in the international system as coherently linked with the formation of the national identity of the nation-state. He distinguishes two types of identity – corporate and social – and argues that “corporate identity refers to the intrinsic, self-organizing qualities that constitute actor individually” (Wendt 1994, 384-396), according to which state individuality is open to negotiation.

On the other hand, social identities are seen as “sets of meanings that an actor attributes to itself while taking the perspective of others” (Wendt 1994, 384-396). In contrast with corporate identity, social identities have “both individual and social structural properties” (Wendt 1994, 384-396), which enable the actors to define themselves and their position in the social structure in the same time. The self-identification of a state in the international system is of crucial importance to the type of national identity that is proclaimed within this state and this particular link is essential for the case of Europe and the European Union.

Wendt acknowledges that this link is not externally given and “state identities and interests are in important part constructed by these social structures, rather than given exogenously to the system by human nature or domestic politics” (Wendt 1994, 384-396). The way European leaders perceive Europe and the member states in the international arena is directly reflected in the domestic arena and vice versa. This speaks for the construction of identity in both directions – internationally and domestically – and brings the process closer to the theory of two-level games of Robert Putnam (1988). Identity construction is linked between the two levels and when the structure of the international system changes, for example, it requires internal adjustment, as is happening with the European Union. The perception of Wendt of the nation, national identity and nationalism and of constructivism in general is distant from the primordial view. He argues that “states are not structurally or exogenously given but constructed by historically contingent interactions” (Wendt 1994, 384-396). According to him, identification is a process or “a continuum from negative to positive – from conceiving the other as anathema to the self to conceiving it as an extension of the self” (Wendt 1994, 384-396). Thus, being a process it means that there are no fixed and solid identities, but that they change and transform over time. This brings us back to the main argument of the article.

Collective identities, regardless of their belonging to a nation or to a smaller or larger group, are constructed and imagined through an identity building process. The same way national identity was built in Europe regarding the nation-state, a new form of collective identity could emerge due to a structural change or other cause. The clash between postnationalism with the denial of the relevance of the nation and neonationalism with its further reaffirmation is creating a kind of hybrid collective identity in the Old Continent. Europeans have started living in some form of different dimensions in terms of their identity struggling with the constant need of proving their belonging. These new flexible belongings to diverse sentiments and selective identities have marked the way Europeans perceive themselves and the world in the XXI century.

## CONCLUSION


Nations “are not eternal. They had a beginning and they will have an end. And they will probably be replaced by a European confederation” (Renan 1996, 41-55), argues the French historian Ernest Renan. In history, we can identify at least three fundamental changes in the process of collective self-identification that are lined with a change of the international system: (1) the belonging of sovereignty to God in the Middle ages (feudal era); (2) its transition to the King in the Renaissance (early-modern state); (3) and then the shift to the people after the French Revolution and the Enlightenment with the formation of the nation-state. The sovereign is tightly linked to the collective identity of the group, since sovereignty is the source of legitimacy of power and the ones in power choose the collective memory (what is to be remembered and glorified or grieved for and what is to be forgotten) of the group. As Jan-Werner Müller argues, collective memory and collective identity are mutually constitutive. What would be the next transition in the sovereignty that will change the collective identity of people in Europe? The so-called deepening of European integration, with more competences pulled up from the national level and handed to the European level, has the potential to become such a landmark in the group identification of people in Europe. But will it be a landmark?

Through this article, I hope to have contributed to the debate of postnationalism and neonationalism in the European Union. My understanding of the “nation” in the case of collective identity in Europe is closer to the postmodernist one in the way postmodernists see the role of the present in dealing with the past. However, I also agree with Anthony Smith that the use of the ethnic past is not unlimited and the nation has certain margins, beyond which it cannot expand. The view of Ernest Renan, that nations have a beginning and an end, is also very much relevant in the case of Europe, but it simplifies to a certain extent the intertwining of the national and the supranational level of belonging. Therefore, an important particularity of the nation is the organizational structure of the nation-state that makes its existence possible. What happens with nations when a new organizational structure is introduced is a very relevant question for Europe.

The sense of belonging to nation-states in Europe in the XXI century could be studied from several different points of view and the topic itself could trigger the curiosity for further analysis than the perspective provided here. But my goal is not to exhaust the complexity of the subject in its entirety, rather to elucidate a new vision of the substance of nationalism, or nation-ness, as it applies to the European case.

The revival of the collective identity of the nation has become a distinctive feature of European societies and politics in the beginning of the XXI century. Through this article I have examined what national identity and belonging to nation-states would mean in an avant-garde Europe, or what the avant-garde of national identity in Europe might be. Nationalities and simple belonging to nation-states are not sufficient for Europeans in the XXI century, but the idea of pan-European identity does not seem to be filling the gaps of national identity either. What will mark the new types of belonging in Europe is the clash between the two ideas of collective identity in regard to the nation: one, trying to eradicate it as an out-of-fashion concept – postnationalism, and the other, trying to revive it and give it a new meaning – neonationalism. Neither is sufficiently relevant to defeat the other, but in their co-existence lay the new forms of collective belonging in Europe in the XXI century.

Think about Giuseppe Bjorn, born in 1988 in Berlin to an Italian mother from Sicily and a Swedish father from Malmo, raised in the north of France, studying in England and Poland through an Erasmus exchange, currently living in Vienna, married to a Serbian girl. Where does he belong?

Now think about Giuseppe's grandfather – Marco Portelli – born and raised in Sicily, never leaving the island, marrying to a woman from Milano, having as neighbors on one side a Libyan family and a German-Lithuanian couple on the other, working in his coffee shop with tourists from everywhere in the world every day. Where does he belong? Both share the same temporal margins at least partially and a similar geographical region, but their axis of belonging is rotates different centers and at the same time around similar sentiments. These are the new forms of belonging in the XXI century. 

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## ROLE OF THE JUDICIARY IN SHAPING FEDERATIONS: CASES OF THE SUPREME COURT IN THE UNITED STATES OF AMERICA AND THE COURT OF JUSTICE IN THE EUROPEAN UNION

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### *Abstract*

*The author of this article uses the comparative method in describing how judicial bodies through their case law shaped and modeled the federal structures of government in the cases of the United States and the European Union. Through initially laying out the theoretical explanations of the significance of constitutional (judicial) review in federal structures, and elaborating on the powers and position of the Supreme Court in the United States and the Court of Justice in the European Union, he seeks to show how these bodies influenced, in similar ways, some of the key features of these two federal organizations.*

*Key words: EU; USA; Federalism; Supreme Court; Court of Justice; constitutional review; implied power*

### **FEDERALISM AND THE ROLE OF THE JUDICIARY**

Federalism is a form of division of political power that supplements the traditional horizontal separation of government functions - between the legislative, executive and judicial branches - with a vertical dimension: lower levels of government should not derive their power and legitimacy from higher levels but be founded independently on the people's will. Federalism represents a system of power sharing between various units of government so that two or more levels of government have formal authority over the same area and people. These different levels of government- a central government and smaller regional governments, usually called states or provinces- are given substantial responsibilities and powers. Therefore, federalism is in its nature an element of constitutionalism, as it introduces a vertical control mechanism. Unlike division of power between the legislative and executive which is functional, federalism is a territorial method of dividing power (Marković 2011, 365).

Also, unlike unitary states, where sovereignty manifests itself through mechanisms of political control performed by the central government towards the subnational units of local government, in federal states one can speak of legal sovereignty, which rests in the constitutional judiciary that enjoys the power of constitutional (or judicial) review of legal and executive acts of both the federal government and the federal units. Following this line of thought, it is clear that the federal constitutional courts (or, supreme courts) have the competence of delimiting powers between various levels of government, as well as to be the final arbiter of whether the behavior of federal units is within the legally confined space of activity. As opposed to unitary states where there can be no conflict of power, since the central government has full sovereignty, in federal states conflict of powers is resolved for the benefit of the level of government which acts within its competences (Marković 2011, 362-363). In this regard, unlike unitary states, which can exist without a codified constitution, federal states desperately need one (Jovanović 1936, 286). In a way, the institution of constitutional judiciary has merged in time with the concept of the federal structure of government (Marković 2011, 363).

The significance of the judiciary in federations possesses yet another dimension. As federations rest on the division of powers and responsibilities between various levels of government, federal constitutions have the task of securing this vertical layer of government. This is why federal constitutions usually contain particularly difficult mechanisms for constitutional reform. Having this in mind, it can be argued that one of the hallmarks of federal constitutions is exactly constitutional supremacy, i.e. that all government authority is rooted and derives from the constitutional document, and that this principle of constitutionality needs to be respected. The importance of judiciary is seen through the necessity of having an independent and impartial judiciary which would interpret the Constitution. Therefore, there is a powerful role to be played by supreme and constitutional courts in all federations. Building on this, informal constitutional changes through judicial review can stand on the same footing as formal constitutional amendments. The courts, having found themselves in such a position, do not stop at only interpreting the constitutions; rather, they seek, through their judgments, to adapt the constitutional text to the changing circumstances, and to resolve pressing intergovernmental conflicts (Burgess 2006, 159).

### ***Judicial Review***

Remarks exist that judicial review emerged in the English common law, and the *Dr. Bohnam's Case*, where Edward Coke, the Chief Justice of the Court of Common Pleas, ruled that the Acts of Parliament are controlled by common law. Likewise, another great British legal mind, William Blackstone, used the adjective 'unconstitutional' to refer to "egregious transgressions of the public trust (...) that they justified a revolutionary response" (Holms 2012, 17). Nevertheless, judicial review is nowadays regarded as an American product, as it is, in its fullest sense, associated with the emergence of the first written constitutions, which is not the case with the English non-codified Constitution (Hejvud 2004, 568). Because of this, Charles Evans Hughes, a Supreme Court Justice, wrote in 1966 that the Supreme Court is "distinctly American in conception and function, and owes little to prior judicial institutions." (Bureau of International Information Programs, 22).

Judicial review, or constitutional review, presents a part of the broader category of constitutional justice or constitutional adjudication, which covers all the functions a constitutional, or supreme, court performs in ensuring the pursuance to the Constitution (Frosini 2008, 184). Usually, a distinction can be made between two modes of judicial review: a decentralized (diffused) and a centralized (concentrated) model.

The decentralized model came to being in the United States, and the Supreme Court, alongside the federal and state judicial structures, is the prototype of this kind of judicial review. Here, review of constitutionality of statutes and other acts (be they federal or state) is performed not just by the Supreme Court, but by the entire judiciary, including the lower courts, which hence makes the system decentralized. Likewise, review is connected to a concrete dispute between parties, i.e. there is an actual controversy between real adversaries. Thus, judicial review in this system is performed *in concreto* (Frosini 2008, 186-187).

The centralized model is also called the concentrated, European or Kelsenian model, in honor of Hans Kelsen, the theoretical originator of this model. In this system, review cannot be performed by ordinary courts, but by a specialized body placed outside of the judiciary, which rules on the constitutionality of laws *ab abstracto*, without an actual controversy being taken before this body (Frosini 2008, 187). This quasi-judicial body, often called a constitutional court, is seen as a negative legislature, as its task is to annul legislation deemed unconstitutional (Hague and Horrup 2014, 339). Most of European states have opted for the latter model, including Eastern European states which went on the path of instituting democratic governance after the collapse of communism. At the same time, with the creation of the European Communities and, later on, the European Union, with its own judicial system headed by the Court of Justice, there are opinions that the two modes of judicial review have begun to converge, and that, in the context of Union law, the system of judicial review in Europe has begun increasingly to adopt the features of the American counterpart. Namely, through the empowerment of lower national courts to *disapply* national statutes and other acts which are not in compliance with Union norms, the review system was decentralized, enabling citizens to initiate the control of constitutionality of legislation and other acts even before courts of ordinary jurisdiction, and not necessary the constitutional court (Chen and Maduro 2013, 127). Moreover, this system is decentralized as there is no relationship of hierarchy between the ECJ and national courts- rather between them a relation of cooperation is evident. Even though national courts are obligated to implement Union law in accordance with the interpretation given by the ECJ, nevertheless the ECJ itself cannot overturn or reverse judgment made by national courts (Stanivuković 2009, 21).

## **THE UNITED STATES OF AMERICA: A LONG STANDING LIBERAL DEMOCRATIC FEDERATION**

The current political system of the United States was created by the United States Constitution adopted during the Constitutional Convention in 1787 (known back then as the Federal Convention). The previous confederal government created by the Articles of Confederation and Perpetual Union (hereinafter: the Articles) proved to be ineffective and incapable of resolving the pressing needs of the founding generation. Therefore, one of the greatest challenges was how to create a government that would transform this confederal democratic structure into a system of national governance while preserving the democratic foundation (Kincaid 2010, 121). Even though the mandate of this Convention was to amend the Articles, the delegates adopted a whole new document which wiped out the loose confederal system of government, and instituted a potentially strong national government with significant powers. The new document sought not only to establish new government, but also to create a new nation: unlike the Articles that started off with the words “We, the undersigned States (...)”, the preamble to the Constitution laid basis for the American nation to be born with the words: “We, the people of the United States (...)”. Three of the framers - Alexander Hamilton, James Madison and John Jay - in promoting the new Constitution argued that the confederacy had historically proven to be an impotent form of government and that it was “the cause of incurable disorder and imbecility” (Hamilton, Jay and Madison 2012, 41). The adequate remedy for this situation would be an “energetic government” by which he (Hamilton) meant the “augmentation of federal authority” at the expense of the current state of government. In order to fully condemn existing confederal principles as irretrievably deficient both Hamilton and Madison, in the Federalists papers, conducted an extensive survey of earlier confederative experiences and showed why they acquired the reputation of being weak, anarchic and highly unstable (Burgess 2006, 59).

This new system was formed on the principles of republicanism (as opposition to monarchy), federalism (as a form of division of powers between the national government and state governments) and separation of powers. Even though the term “separation of powers” is not expressly mentioned in the Constitution, in the language of the first three Articles it is clear that this kind of system is laid down. James Madison, the principle writer of the Constitution, in Federalist No. 51 states that, although authority has the same origin - in the American people - in order to disable mob rule and oppression of the majority, a system in which authority is divided between different agencies with possibilities of mutual checks and balances was necessary (Bianco and Canon 2013, 540). Federalism also came to being as a consequence of the framers’ fear of tyranny of the majority. Federalism’s feature as an additional form of division of power was seen through the possibility of balancing different, territorially organized interests. Thus, the introduction of federal structure of government had the aim of perfecting the American democracy and to direct the decision making process towards achieving the common good (Kovačević 2013, 69-71). As the American Constitution was, in James Madison’s words, a Charter of power granted by liberty (Ayn Rand Institute), it was necessary to limit and control this power through vertical and horizontal lines of checks and balances. Today, the American Constitution is the oldest living constitution in the world. At the same time it has not changed much in more than two hundred years. The framers of the Constitution envisaged a specific mechanism of modifying the Constitution- the amendment technique. But, given the

complexity of adopting such amendments only 27 in total have been passed so far, 17 since 1791 and the entry into force of the Bill of Rights, which contains the first ten Amendments. However, as Jefferson noted, the Constitution belongs to the living, not to the dead, and should be rightly referred to as a living document, as it is constantly being tested and altered.

The Constitution changes not only through formal amendments, but also through informal processes. While formal amendments change the letter of the Constitution, informal processes change the unwritten body of tradition, practice and procedure related to the Constitution (Edwards, Wattenberg and Lineberry 2014, 57). The fact that the provisions of the Constitution were quite general and, indeed, vague, offered an opportunity for them to be interpreted in accordance with the *spirit of time*, and to adapt to changing political and social customs and values (Bianco and Canon 2013, 46-47). The longevity of the Constitution was, in particular, secured through the case law of the Supreme Court of the United States, and its judgments often proved to be more important for the development of the American constitutional law and the American constitutional system, than the statutes adopted by Congress, or by the federal states.

### *The Supreme Court of the United States*

The framers anticipated an anti-majoritarian role for the Courts, but they did not expect it to be politically powerful. Hamilton wrote in Federalist 78 that the Supreme Court would be the least dangerous branch of government. He went on to describe how the judicial branch, unlike the other two branches, cannot have such a strong influence on the whole of the society. He argues this because it “must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments” (Hamilton, Jay and Madison 2012, 402). On the other hand, he insisted that the judiciary is also an important check in the government system- judicial independence serves for the protection against the “occasional ill humors in the society” (Magleby, Light and Nemacheck 2014, 62).

The Constitution is vague about the structure of the federal court system, specifying only that there should only be a Supreme Court, and the discretion is left to the Congress to establish lower federal courts of general jurisdiction. Apart from explicitly mentioning the Supreme Court, the Constitution also stipulates its original jurisdiction - cases relating to ambassadors, public ministers and consuls, and controversies where a state is a party. However, even here the Supreme Court is not required to hear all cases. On the other hand, Article III authorizes Congress to determine Supreme Court’s appellate jurisdiction. A party wishing to have its case reviewed by the Supreme Court is required to file a petition for a *writ of certiorari* with the Court. The Supreme Court grants writs only when there are special and important reasons for doing so, and if four or more Justices on the Court are in favor of granting a petition, a writ is issued and the case is accepted. The Court’s docket is thus controlled and the justices can devote themselves to cases that deserve attention (Schubert 2012, 149).

One of the most prominent features of the Supreme Court (and, in fact, the entire judicial system in the country) is the power of the Court not only to interpret laws, but also to declare them invalid if in conflict with the higher law - the Constitution. The power to invalidate laws, known as judicial review, is not spelled out explicitly in the Constitution, but is a right asserted by the Supreme Court since the early XIX century. However, the

Constitution lacked an explicit provision stipulating the Supreme Court's power of judicial review. The framers were divided on the issue: on the one hand, Hamilton stressed the courts should have the "duty (...) to declare all acts contrary to the manifest tenor of the Constitution void", and that "whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former" (Hamilton, Jay and Madison 2012, 405); on the other hand, many other framers opposed this idea, including Thomas Jefferson, claiming that the power of judicial review might institute a despotic oligarchy (Hague and Horrup 2014, 338). It was the landmark case *Marbury v Madison*, 5 US 137 (1803) when the Supreme Court asserted for itself the power of judicial review. In its unanimous decision the Court stated that the Judiciary Act, adopted by Congress in 1791, was unconstitutional as it was in collision with the Constitution. More precisely, section 13 of this statute gave jurisdiction to the Supreme Court which was not prescribed by Article III of the Constitution. Chief Justice John Marshall, writing for the majority opinion, stated eloquently in this decision that "it is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply". In other words, the argument was that the Constitution is the fundamental and paramount law of the nation and that any act of the legislature, repugnant to the Constitution, is void (Janda, Berry and Goldman 2008, 425). Referring back to Charles Evans Hughes, it is precisely because of this that "the Constitution is what the judges say it is". Over time, opinions have arisen that the Supreme Court has established itself as the most important federal institution in the United States, and that, through its competence of constitutional interpretation, it has become a 'covert legislator'" (Avramović and Stanimirović 2006, 267), or even a "permanent constitutional convention" (Vasović 2008, 203). In essence, the Supreme Court could not be called merely a guardian of the Constitution, but in some respects even its master (Jovičić 2006, 114). As Tocqueville wrote in *Democracy in America*: "I am not aware that any nation of the globe has hitherto organized a judicial power on the principle now adopted by the Americans" (Tocqueville, 116) in that "a more imposing judicial power was never constituted by any people" (Tocqueville, 171).

## **THE EUROPEAN UNION: AN INCOMPLETE QUASI FEDERAL ORGANISATION**

Unlike the United States, the EU is not a full-fledged political union. At the same time it is more than a simple international organization created between sovereign nations as a regime of international law. It is endowed with the three standard branches typical of government- a legislative body, an executive, and a judiciary. Especially since the Single European Act, decision making is not based on unanimity rule, but on various forms of majority voting (even though unanimity voting is still present in some important policy fields, such as foreign relations). The decisions of the Court of Justice (ECJ) are directly applicable to individual citizens and legal persons (Padoa-Schioppa 1995, 156). Contemporary European states differ from those that founded the US, in diversity of language, in historical experience, and in political culture. They have been independent for a long time, and some have been around for thousands of years, which lead them to having deeply rooted structures of society, culture and governance. However, they do face essential needs which individual government cannot satisfy separately, but need to be confronted by a common government (Pinder 2010, 251).

The idea of European integration, i.e. the unification of European states in some form of statehood, can be traced to the Enlightenment Period and such authors as Émeric Crucé, Immanuel Kant, Sent Simon, etc. (Košutić, Rakić and Milisavljević 2012, 13). These ideas reached their peak in the XX century, and the aftermath of the Second World War created the conditions for such ideas to be brought to life and to gain existence in Europe's political arena. As the Declaration of Independence is the foundation of the United States, the origin of the European Union can be found in the Schumann Declaration of 1950. This document, named after the French Minister of Foreign Affairs Robert Schuman, but authored by Jean Monnet, a French civil servant, called for the creation of a supranational authority over coal and steel production in Germany and France, with the possibility of other countries joining. But, it did not end there. It also explained that through such a plan, *de facto* solidarity and economic development should be achieved as first steps in the process of creating a European federation. According to the Schuman Plan, Europe would not be built in a day, nor constructed according to a federal blueprint. The European edifice would be constructed slowly, assembled brick by brick: "the pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe. This proposal will lead to the realization of the first concrete foundation of a European federation indispensable for the preservation of peace." (The Schuman Declaration 1950).

Since the fifties, European integration has made astonishing progress, as the European Communities in time became the European Union, with a higher degree of unification both in the economic sphere (the creation of the Monetary union, and coordination in many economic policies) and the political sphere (cooperation in foreign policy and transferring many interior policies to the European level). The EU has traveled quite far towards a federal democracy, with the division of powers between the Union and the Member States. Member States were unable to create a complete federation as the American colonies did in 1789 with the adoption of the US Constitution. Instead, the European federative structure proceeded through a process of continuous accumulation of elements of federal institutions and powers (Pinder 2010, 267).

As it was, and is, intrinsically dynamic in nature, the EU was not created by a single constitutional act, rather it is a process in which the attribution of government functions to a supranational level has been gradual and marked by constant efforts to strike a balance between the preservation of national prerogatives and the need to efficient community level action (Padoa-Schioppa 1995, 156).

The allocation of competences in the EU is the result of deliberate choices by the Member States. Each step of the development of the EU, since its creation in the 1950s, the relinquishment of elements of national sovereignty has been assessed on the basis of common values and on grounds of efficiency in the exercise of government (Padoa-Schioppa 1995, 157). Following the Maastricht Treaty the EU has even been characterized as a “pre-federal entity” (Pelkmans 1995, 166). Even though the institutional configuration in the Union is far from a super state, nevertheless this construction is of a *sui generis* nature. It merges states, which remain sovereign, but agree to pool their sovereignty in certain areas- sometimes in a more federal way, such as in many federal states, but in other cases through traditional intergovernmental cooperation (Piris 1994). Thus, it is possible to describe the EU as a classic example of federalism without a federation, which means that the origins, formation and subsequent evolution and in its institutional framework expanding policy output it had always been the repository of federal ideas, influences and strategies without actually transforming itself into a form of federation. In this sense, the EU remains an intellectual puzzle because and a conceptual enigma. Its metamorphosis into a federal organization has been slow, piecemeal and incremental (Burgess 2006, 226). All in all, today it is easier to view the EU more as a union of constitutional law, than a union of international law. In other words, the Union resembles a federation more than an international organization, even that with extensive supranational elements (Prélot 2002, 235).

### ***The Court of Justice of the European Union***

The first Founding Treaty - the Treaty establishing the European Coal and Steel Community - provided not only for the executive High Authority, but also for a Court of Justice, a Common Assembly, and a Council of Ministers. Article 31 of the Treaty, which is still present in the Founding Treaties (present day Article 19 of the Treaty on the European Union), stipulated that the ECJ shall ensure that in the interpretation and application of this Treaty the law is observed, thus providing basis for the future paramount case law which would shape the Union. As time goes by, EU’s primary or constitutional law ceases to be what is prescribed by the Founding Treaties, and is more and more comprised of the ECJ’s case law, and this is exactly what has moved the EU’s legal system from a traditional international agreement closer to a kind of a national federal structure (Mišćević 2012, 278). For this reason, the ECJ is considered more than an influential international court - rather it represents the most prominent example of a judicial contribution to the emergence of a transnational political order (Hague and Horrup 2014, 341). The ECJ is, in this sense, distinct compared to all other kinds of international judicial bodies: unlike international courts, the ECJ can adjudicate cases not only where states appear as parties, but also legal and natural persons; likewise, in order for the ECJ to adjudicate a case and render a judgment there is no requirement for state compliance; thirdly, ECJ’s judgment have a great impact on national courts, which have to act in

accordance with the ECJ's decisions and implement them in the cases before them (Mišćević 2012, 279). Due to these differences, the ECJ is often seen as the element which contributes to the supranational nature of the Union the most (Račić 1995, 109).

According to the present day Treaties, the ECJ enjoys jurisdiction in three main areas: firstly, it hears cases brought against a member state due to failure to comply with EU law, known as infringement proceedings; secondly, the ECJ has the power of judicial review over acts adopted by EU institutions, due to lack of competence, or infringement of a Treaty obligation; lastly, the ECJ can issue preliminary rulings according to the preliminary reference procedure, which is initiated by national courts in order to obtain an interpretation of some aspect or norm of EU law (Hix and Høyland 2011, 82). Exactly the preliminary reference procedure was the most significant canal for development of EU law and the constitutionalization of the Union system (Hix and Høyland 2001, 83). This was the basic judicial mechanism for the full application of the direct effect principle. *Prima facie*, the role of the ECJ here is limited as the dispute is not resolved with the judgment rendered by it. The reference given by the ECJ is only a phase within the dispute, and happens as the national court suspends the procedure in order to refer a question or questions, pertaining to the case at hand, to the ECJ, due to its significance to the Union law.

Therefore, the ECJ cannot apply the relevant norm to the concrete case. However, preliminary reference decisions the ECJ issues cannot be appealed nor discarded by the national court. Thus, the preliminary reference procedure secures the ECJ's role as the leading and only interpreter of EU law. Furthermore, it establishes an open canal of communication between the ECJ and national courts, in which the ECJ gains for itself supremacy towards the national courts. Such mechanisms enable the ECJ to create uniformity in interpreting and applying EU law in all of its Member States (Novičić 2013, 26-27). In such a way, "individuals became the guardians of the legal integrity of Community law within Europe similar to the way individuals in the United States have been the principal actors in ensuring the vindication of the Bill of Rights and other federal law" (Vajler 2002, 41). Even though the ECJ was the instance that created the principles of Union law, such as supremacy and implied powers, which moved the EU closer to the regulation that exists within federal states, nevertheless the role of national courts in this process cannot be pushed aside. Namely, if there was no willingness on the part of national courts to accept the principles "suggested" by the ECJ, they would produce no effect in national legal system of Member States. In essence, this "collaboration" between the ECJ and national courts had a crucial effect on the constitutionalization of the Founding Treaties and the Union law in general (Kovačević 2013, 197-198).

## **SUPREMACY OF THE FEDERAL LEGAL ORDER**

The supremacy of the written constitution is given among the key features of a federal state. A federation is thus defined as a state in which a superior constitutional order towers over a multitude of lower constitutional orders (Prélot 2002, 235). The federation is an autonomous legal entity, different from the compound states. They are also subordinated to the federal government, which remains sovereign (Jovanović 1936, 284-287). The supremacy of the federal constitution is thus an essential feature of the federal organization, exactly due to the existence of constitutional distribution of powers between two or more levels of government. Therefore, constitutions of most federations acknowledge this

supremacy - if not explicitly, at least implicitly. The supremacy principle is precisely the source from which the importance of judicial review in federations stems from (Watts 1996, 91). However, in both of these cases- the EU and the US, the highest judicial bodies and their judgment not only benefited from the supreme position of the federal order, but were instrumental in establishing and confirming this principle.

The American federalism is based upon several principles, outlined in the Constitution. Among them is the “supremacy clause” which stipulates superiority of the federal Constitution and legislation over state laws. The “supremacy clause” is to be found in Article VI, Section 2, and reads as following: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land” (Constitution of the United States of America, Article VI, Section 2). Despite the fact that the supremacy of the federal legal system was expressly stated in the Constitution, the question of legal and political supremacy arose in the United States in a landmark case - *McCulloch v Maryland*, 17 US 316 (1819). In this case the Supreme Court declared state taxation of the national bank in Maryland unconstitutional. The Court argued that even though the national government is limited in its powers, it is supreme in those areas where right have been transferred to it.

Therefore, Maryland cannot tax the national bank, even though the power of taxation is divided between national and state governments. If it would be allowed, it would enable the states to tax all other federal instruments, which was clearly not the intent of the framers of the Constitution: “The power to tax involves the power to destroy... If the right of the States to tax the means employed by the general government be conceded, the declaration that the Constitution (...) shall be supreme law of the land, is empty and unmeaning declamation” (Ducat 2009, 106-111). Moreover, the Court turned to the essence of the federal government, and the nature of the association created by the 13 colonies in 1787: “the Government of the Union (...) is, emphatically and truly, a government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.” (*McCulloch v Maryland*, 17 US 316). With this judgment the Supreme Court “set down the classic statement of the doctrine of national authority. The argument he advanced was not new; its main outlines had been endlessly debated since the first Congress. But Marshall deserves the credit for stamping it with the die of his memorable rhetoric and converting it from a political theory into the master doctrine of American constitutional law” (McCloskey and Levinson 1994).

Unlike the US Constitution, the Founding Treaties of the EU did not contain a “supremacy clause”, nor is there such a provision in the Founding Treaties nowadays. The only time the supremacy clause was proposed to be codified in the Treaties was with the Treaty on the establishment of the Constitution for Europe. Still, there were some articles in the Treaty that were of indirect importance for creating a basis of supremacy of EU law, e.g. the general principle of loyalty and sincere cooperation between Member States, which was formulated in Article 4 of the Treaty of Rome (Knežević-Predić and Radivojević 2009, 153) – present day Article 5 of the Treaty on the European Union. Similarly to the establishment of the principle of direct effect, which was nowhere mentioned in the Treaties, but emerged from the *Van Gend en Loos*, 26-62, [1963], E.C.R., judgment, supremacy of EU law was also inaugurated by the Court in a case from 1964- *Costa v E.N.E.L*, Case 6-64, [1964], E.C.R. The ECJ asserted that “by creating a Community of

unlimited duration, having its own institutions, its own personality, and its own legal capacity (...) the Member States have limited their sovereign rights, albeit within limited field and have thus created a body of law which binds both their nationals and themselves". Therefore, the Court concluded that it is impossible "for the states (...) to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity". The principle of supremacy was clarified by the ECJ in subsequent case law. In *Internationale Handelsgesellschaft*, Case 11-70, [1970], E.C.R. the Court emphasized that "the law stemming from the Treaty (...) cannot (...) be overridden by rules of national law, however framed" so that "the validity of a Community measure (...) cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure". This meant that the legal status of the conflicting national measure was not relevant in determining whether EU law should take precedence, so that not even constitutional law of a member state could be invoked to challenge the supremacy of this supranational legal order (Craig and de Búrca 2011, 260). Developing the concept further on, the ECJ in the *Simmenthal*, Case 106-77, [1978], E.C.R. judgment further explained that EU law render inapplicable any conflicting national norm, but also prevented the adoption of new national measures which would be conflicting with EU law. In other words, the EU applied no matter if the conflicting national norm was passed prior to the EU measure, or after it (Craig and de Búrca 2011, 260).

## IMPLIED POWERS

Another important judicial tool in shaping the federal models in the US and the EU was the doctrine of implied powers. The reason for the initiation of this doctrine was internal conflict of powers between the central (or supranational) government and the constitutive units. Even though certain differences do exist in the case laws of the respective judicial bodies, in terms of different reasons and agendas the Courts possessed, nevertheless the outcome in both cases was the establishment of a binding version of federalism (Hodun 2015, 10-11).

In the US Congress' powers were limited to the powers enumerated in Article I, Section 8 of the US Constitution. However, the last clause of this Section left a vague possibility for extending these powers: Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof". This clause, known as the "necessary and proper clause" was the constitutional embodiment of the doctrine of implied powers and its textual justification (Hodun 2015, 61). Judicial opinions on this clause changed over time, and influenced the different types of American federalism - from dual to cooperative and new federalism. However, the judgment in *McCulloch v. Maryland*, 17 US 316 (1819), remains key in understanding the notion of implied powers in American constitutionalism. *McCulloch* was a milestone in discussions about federal powers in the US, but also a milestone in the American case law system (Hodun 2015, 61-62). The Supreme Court argued that powers of the federal government cannot be limited to those enumerated in Article I Section 8, but have to be viewed in the context of the goals of the federal government set out in the preamble and the "elastic clause". Even though the Constitution

does say anywhere that there is a power of Congress to establish national banks, this power can be deduced from Congress' powers to levy taxes, to borrow money and wage war. Therefore, the Supreme Court declared the act of Congress establishing a national bank constitutional (Ducat 2009, 107-108). The Court declared the following: "let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional".

Or, as Hamilton envisaged in his opinion on the constitutionality of the Bank: "That every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the essential ends of political society" (Hamilton's Opinion as to the Constitutionality of the Bank 1791).

In the EU's case, the doctrine of implied powers originally emerged with regard to external powers of the EU. It was the situations in which the Union enjoyed certain internal competences, while the correspondent external powers in the same fields being absent, that the ECJ started filling up the blank spots through the newly invented concept of implied powers. This doctrine was inaugurated in the famous *ERTA*, 22/70 [1971] E.C.R. judgment, where the ECJ ruled that once a common policy on the part of the EU comes into force, it makes possible for the EU to acquire external powers on the issue. An internal power given to the EU entails that the EU can assume external competences corresponding to the former (Hodun 2015, 145-150). Due to the importance of the *ERTA* judgment, implied powers of the Union were usually connected to its external activities. However, over the course of the previous decades, the ECJ was also active in applying the doctrine to many other Union policies, including migration and criminal law (Hodun 2015, 212-226). Despite the potential neglect of internal implied powers, this doctrine was indispensable for the future development of the EU. Joseph Weiler argues that the doctrine of implied powers in the case of the Community during the seventies took a radically new form. He calls this process "mutation" which is connected not only with the concept of implied powers, but also with the changes in the strict construction of the principles of enumerated powers in the Union system (Vajler 2002, 61, 66).

## **HUMAN RIGHTS AND FREEDOMS**

Human rights and freedoms are historically and theoretically connected to the process of constitution making, since one of their primary objectives is to protect rights and freedoms through controlling and limiting state power. Being an instrument of diffusing and controlling power is the crux of human rights and freedoms, on one hand, and federalism, on the other. In the US the historical trend was for democratic reforms to erode federalism by enhancing national powers. In other words, the expansion on individuals' rights often shrank states' rights (Kincaid 2010, 219). Even though the Supreme Court was sometimes on the losing side of history (*Plessy v. Ferguson* could serve as a prime example), nevertheless the Court was and still is instrumental in defending, securing and expanding the corps of constitutional rights and freedoms. The European Communities, on the other hand, lacked provisions pertaining to human rights protection, and it was not until the ECJ and its judgments from the late 1960s and early 1970s that the first rules on

fundamental rights were created on the supranational level. The extensive body of quasi-constitutional law that was provided to the EU by the ECJ through its jurisprudence was significantly done through adding and developing mechanisms of protection of fundamental rights throughout Union law. In such a way the ECJ declared that the respect for fundamental rights was included among the general fundamental principles of the Union legal order (Borchardt, 2010, 24-26).

The original text of the Constitution of the United States did not contain a Bill of Rights. It was thought by the proponents of the federal government, at the time of the adoption of the Constitution, that since most of the thirteen states had already adopted their own Bill of Rights, that there was no need for such a federal document. Some of them even thought that the adoption of a federal Bill of Rights would be unnecessary on the grounds that the powers of the national government were already limited. Alexander Hamilton went so far as to argue that a Bill of Rights would even be dangerous (Ginsberg 2013, 57-59).

However, the lack of Bill of Rights was a focal point of criticism of the Constitution during the ratification process, and, therefore, immediately after the start of the first Congress' session, ten amendments were adopted to the Constitution which guaranteed certain rights and liberties to citizens. These first ten amendments were called Bill of Rights. Their limitation is seen in the fact that they applied only with regard to the activities of the federal government, and not the states.


The basis for the extension of application of the Bill of Rights towards the states was laid with the adoption of the XIV Amendment. Through this amendment the Supreme Court made most of the provisions of the Bill of Rights applicable to states through a process known as the incorporation doctrine. Namely, the XIV Amendment is addressed directly to the states, and it was contended that the due process clause of this Amendment limits states in the same way the provisions of the Bill of Rights limits the national government. However, it was not until 1925 that the Court accepted to take such a path. Consequently, in *Gitlow v. New York* case, 268 US 652 (1925), it was asserted for the first time that the rights and freedoms of the Bill of Rights (in this case, the I Amendment) applied to the states as well, i.e. that states are also prohibited from infringing upon the right to free speech and freedom of the press. Since the 1920s the incorporation process was accelerated, with the result of most of the rights and freedoms being extended as limitations to state activities. The last such incorporation occurred in 2010, when the Supreme Court set forth that the right to bear arms of the II Amendment applied to states, in the *McDonald v. Chicago*, 561 US 742 (2010), case (Magleby, Light and Nemacheck 2014, 50). The Supreme Court was also active in contending, through the XIV Amendment, other rights, not explicitly stated in the Constitution, both against the states and the federal government. It has introduced categories of persons ineligible for the death penalty, such as mentally handicapped persons and minors; and it has also protected other categories of people from state abridging their rights, such is the case with the LGBT population (Stefanović 2015, 73-83).

The European Communities were created as economic associations, as they had the goals of establishing a customs union and a common market. Therefore, the Founding Treaties did not contain explicit provisions regarding human rights and freedoms, apart from those inextricably connected with economic and entrepreneur activity, such as the right to establishment. However, with the inauguration of the principles of direct effect and supremacy of EU law, it became possible for a norm of EU law, not in any way relating to

human rights, to take precedence over a national constitutional norm protecting a certain right or freedom (Stefanović 2014, 25). Therefore, it became necessary to introduce this branch of legal protection within the Union. Since 1969 and the *Stauder*, Case 29-69, [1969], E.C.R., judgment, the ECJ became very active in securing human rights protection.

As the EU, all the way to the Maastricht Treaty, lacked a explicit provision referring to the sources of rights and freedoms in the Union law and their protection, the ECJ in *Internationale Handelsgesellschaft* in 1970 and *Nold*, Case 4-73, [1974], E.C.R., outlined that the Union provides protection in accordance with the common constitutional traditions of Member States, and international agreements on the matter, that members states have acceded to. Over the decades, the ECJ was adamant in developing its human rights law. As it was not a human rights court, it often followed the decisions of the European Court of Human Rights, even though deviations in case law did exist. Recently the ECJ again produced decisions on human rights that affected the relationship between the EU and Member States: In 2013 it decided in *Melloni* that Member States were to be precluded from deploying different standards of human rights protection, in those areas already standardized on the EU level. Likewise, the ECJ sought to defend its human rights system in the Union through declaring in Opinion 2/13 that the Draft Agreement on the Accession of the EU to the European Convention on Human Rights is not in compliance with the Union legal system (Stefanović 2016a, 29-31). The ECJ elevated human rights to the level of basic constitutional principles, which can even have precedence compared to what is outlined in the Founding Treaties, and even basic principles of international law (Stefanović 2016b, 114-115).

## CONCLUSION

As the role of constitutional judiciary and its function of judicial, or constitutional, review, is inextricably linked to the nature of federalism and the structure of the federal state, it is of no surprise to what extent constitutional and supreme courts are able to shape the appearance and features of the federal state. The comparison between the Supreme Court in the US and the Court of Justice of the EU and their case law concerning relevant issues, only proves that parallels could be drawn even between courts of different procedures, competences and enforcement mechanisms, and that exist and operate in different settings- one in a established federal state, and the other in a supranational, *sui generis* organization. Nevertheless, the logic in which they adjudicated cases pertaining to some important characteristics of federal government was the same, or extensively similar, as well as the effect their case law had on shaping of the institutional setting they were placed in. Therefore, the present day appearance of these two entities would not be the same if it were not for these two judicial bodies, nor is it conceivable that they would truthfully develop in the way they historically did, if it were not for their case law. 

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## REFUGEE CRISIS IN EUROPE: THE CASE STUDIES OF SWEDEN AND SLOVAKIA

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### *Abstract*

*Europe as a continent has throughout its history been one of the most popular destinations for migrants and foreigners who have viewed the Old continent as a place of better social and economic possibilities. However, recently most European states and its publics have not been so willing to accept the refugees fleeing the wars and violence. For instance, there have been only a few countries such as Sweden and Germany which have openly welcomed the migrants over the past years. On the other hand, some EU states such as Slovakia have openly rejected to accept the refugees just because they do not want the Brussels to impose immigration policies on them or because they simply do not want Muslims or non-Europeans in their communities. The migrant crisis has thus become a real litmus test for the EU coherence and unity. Thus, in this paper I study the cases of Sweden and Slovakia in terms of their immigration policies since they have applied completely different responses towards the migrants. Through this comparative study I hope that it will be much clearer whether the last migrant crisis can be an end to a united Europe in a global world or is this just one of the several crises the EU has faced throughout its history. Probably the biggest problem in this sense is that only a few EU states have proved their democratic and humanistic matureness to accommodate the migrants and accept them as equal citizens.*

*Key words: EU; migrant crisis; refugees; unity; solidarity*

## INTRODUCTION

Although over previous few years the migration has been viewed by most countries in Europe as a burden, the truth is that it represents both an opportunity and a challenge. While well-managed migration may contribute to multicultural exchange and economic progress in destination countries, its mismanagement may put threaten social cohesion, democracy and security as well. However, the biggest problem is when the county does not have a will and readiness to make efforts to help those people fleeing wars and violence.

The recent migrant crisis in Europe openly has proven that the Member States of the European Union (EU) are not yet completely prepared to move beyond their particularistic and national interests in order to help those vulnerable people. Better to say, a solid legal foundation for harmonized immigration and asylum policies was sorely lacking, as the EU Member States had insisted on preserving much of their autonomy in this area (Lehne 2016). The migrant crisis has indeed to a large extent demonstrated all shortcomings and pitfalls of the supranational community European states have tried to build throughout last seven decades. Immigration is indeed a prominent economic, legal, social and political issue all across Europe as well as in most of the developed and industrialised world since it can affect different aspect of social and political life.

For most European countries, large scale immigration is a more recent phenomenon than for countries such as Australia, the US, or Canada. This time Europe is facing the largest migration of people since World War II. Also, immigration to Europe is very heterogeneous since different European countries have immigrant populations that are very different in terms of ethnicity, origin, and educational attainment. That's why they have implemented diverse set of policies in order to approach the migrant question and subsequently to integrate those people into new societies. Recently nothing so manifestly can portray a real face of Europe as the migrant crisis has done. As Lehne claims, this was also reflected in Germany, where western Germany's initial Willkommenskultur, or welcoming culture, clashed with a sceptical attitude in the regions of former East Germany (2016).

Since the very beginning of 2014, approximately 800,000 people have arrived at European Union borders through irregular channels, fleeing conflict and violence at home or in search of better life opportunities. Although the European continent has been attractive to foreigners and especially to foreign workers over the last decades, this last migration surge is becoming the largest and most challenging that Europe has faced since the Second World War. The European politicians at some point have understood that the migrant problem can only be solved through joint action and transnational policies. Thus, the EU states have tried to agree on common refugee protection regime in order to harmoniously meet the challenge. The European refugee regime has rested on a set of Republican principles that trump the self-interest of the domestic majority (Lavenex and Wagner 2007). The newest European policies have aimed at demonstrating some sort of solidarity towards the migrants and refugees. This post-national straightjacket was sustained after 1989, even in the face of so-called welfare nationalism (Karolewski and Suszycki 2013), by the notion that the EU's economic advantages came with certain duties attached. Some European countries have viewed the migrants as a valuable economic opportunity which can help in economic progress of European societies.

However, to what extent and has such an approach succeeded in practice? The recent migrant crisis has showed that vast majority of the EU states primarily focus on economic and political interests rather than on solidarity and united approach to the international affairs. What's more, several Member States have officially rejected common EU response regarding the acceptance of the migrants fleeing to Europe from the war-torn regions such as Syria, Afghanistan and Iraq. Indeed, the EU's joint effort to become a "migration state", one able to embrace cross-border labour and migrants has become tough and strenuous (Hollifield 2004). The biggest problem in the EU is that some countries support the idea of united response of the Union only in order to achieve their national

interests undermining their supranational commitments. Only a few of them have showed sincere commitment to supranational causes and an idea of solidarity with others.

That is why it is of fundamental importance to especially study such rare cases which manifest humanistic approach to resolving global problems. Such immigration policies of the EU Member States surely have demonstrated serious lack of solidarity and united approach to this complex issue. That's why it is of crucial importance to explore the very issue of immigration policies of the EU Member States to comprehend to what extent they are indeed ready or not to welcome the people seeking shelter and help. By analysing the EU policies with regards to migrants it can be easier to understand to what extent not only European but also the societies and countries in other parts of the world are likely to welcome those "strangers" into their communities. The migrant crisis has become a real litmus test for the EU coherence and unity. Also, this is the biggest test for a vision of a borderless Europe and for an idea of a free movement guaranteed under the EU's 30-year-old Schengen Agreement. No doubt that some EU Member States are simply left alone to solve the problems related to migrants. For instance, when pushing for solidarity and homogeneous response from other members, Italy has been ready to resort to brinksmanship, like in the wake of the Arab Spring when it allowed refugees and migrants to move north or more recently with its threats to draw down its own search and rescue exercises in the Mediterranean if no help was forthcoming (Traynor and Hooper, 2011). The case of Italy has become one of the most visible examples of disunited response of European states to the migrant crisis. In the face of a massive inflow of refugees, the EU's Dublin Regulation, which assigns the responsibility for registering and processing asylum applications to the first Schengen country in which refugees arrive, proved unfair and ultimately unsustainable (Lehne 2016).

On the other hand, there have been a few countries such as Sweden and Germany which have welcomed the most of the refugees and migrants coming to Europe over the past two years. They in real terms have showed that cultural and religious diversity can mean richness and not a reason for concern or tensions. What then does such diverse responses in the EU actually show us when it comes to the immigration policies in the EU and why such differences among the Member States exist? Does it mean that there is a need for applying a new integration concept in the Union? Could recent reasoning of the EU Member States regarding the migrant question gradually destroy the very idea of European unification? What does the responses to migrant crisis say about the EU?

In this article we examine the cases of Sweden and Slovakia in terms of their immigration policies since they have applied completely different responses towards the migrants and refugees. When it comes to the immigration policies of its Member States can we talk about the concept of avant-garde Europe? Therefore, in the article we extensively discuss key policy issues in the European context, focusing on the access to citizenship, asylum seeking, border enforcement, amnesties and policies to attract talent but also other vulnerable groups. It is not always easy to understand why the countries reject the migrants when they can be of concrete use and advantage to their communities. As Brzezinski claims, migration is based on a country's 'absolute advantage', with high-wage states holding the advantage, and sending countries gaining from the political incorporation of their nationals there (Brzezinski 1997). They actually bring skills, entrepreneurial expertise and capacities that may help address the labour market and income gaps that many EU states face as their populations age and birth rates decline (Bodewig 2015). However, the

biggest problem in this sense is that only a few EU states have proved their democratic and humanistic matureness to accommodate the migrants and accept them as equals.

Has the migrant crisis become a crisis of the more united EU? Will the future of the EU be built on the scheme of core or avant-garde Europe? The research results will hopefully show that EU states such as Slovakia have openly rejected to accept the refugees just because they do not want the Brussels to impose immigration policies on them or because they simply do not want Muslims or non-Europeans in their community. If the second one proves true then the study could prove that actually the EU as a supranational community has completely failed as it could not transform its Member States to become more democratic, inclusive and open communities. In other words, the migrant crisis is all about the very nature of the EU and its identity and future ambitions.

Also, the influence of the nationalistic or far right parties at the power on the migrant issue should never be neglected. Thus, the implicit point of comparison is of course to European countries with their apparently fixed national identities. That is, the EU states have unwittingly played along. They have, for instance, ignored their own citizens' history of mobility despite the fact that the emigration of their populations was the logical corollary to the settler states' emergence (Favell 2009, 168). At the first place the mere concept of the "migrant crisis" has demonstrated the nature of the problem of the EU. As Merritt argues:

The "migrant crisis" has revealed a topsy-turvy world of prejudices, cope with the flow of conflict refugees and others who are simply seeking a better life is shaming, yet at its root is a European mindset that sees immigration as a danger instead of welcoming it as an opportunity (2015, 1).

The worst thing is that in several EU states there have been obvious xenophobic tendencies against the people who are coming from other communities. It is not only about migrants and refugees but also the hatred is directed towards the mobile EU citizens. That is, even mobile EU citizens are now treated like workers from outside the bloc, and face hostility and protectionism (Ghimis *et al.* 2014). Are the differences between the South and North of the EU too persistent as well? As Angenendt and Parkes argue, Southerners stand accused of squandering northerners' financial and operational resources with their lax policies, northerners of demanding that southerners implement northern-style policies without sufficient respect for local circumstances (Angenendt and Parkes 2010). Or, is it all about "the West" vs. "the Rest" as Samuel Huntington puts it (Huntington 1993). Has the Eurocentric paradigm been so persistent among the European for so long?

Even before the current situation, EU states could not completely agree on the mechanisms to manage large-scale international migration which some of them have viewed as a threat to the sovereignty of their national and regional borders and to European identity, whatever it means. Most Member States have reacted accordingly, tightening controls on irregular access to their territories and, in some cases, on legal channels (Hagen-Zanker and Mallett 2015). As a result, such measures massively increased restrictions but still have not been effective in preventing the influx of refugees and other migrants. They simply have tried to find any available means to reach Europe exposing themselves to serious physical risks. That's why it is necessary to examine the statements and words of politicians in the EU states in order to understand how they affected the very social approaches to the migrants. And this very examination can be done through discourse analysis.

## DISCOURSE ANALYSIS

In this article the discourse analysis is used a tool to interpret and study the correlation of migrant crisis and the core premises of a nature of the EU. The aim of discourse analysis is to show the ontological and epistemological premises which are embedded in language, and which allows a statement to be understood as rational or interpreted as a meaningful and usable unit. Discourse analysis investigates whether – in statements or texts - it is possible to establish any regularity in the objects which are discussed; the subjects designated as actors; the causal relations claimed to exist between objects (*explanans*) and subjects (*explanandum*); but also the expected outcome of subjects trying to influence objects; the goal of their action; and finally the time dimension by which these relations are framed (Pedersen 2009). Also, discourse analysis is the study of rationality and how it is expressed in a particular historical context, in this case the EU. Discourse analysis is part of the constructivist or social constructivist approach within the social sciences. It assumes that basic assumptions with regard to being, self and the world are constructed by individuals living in a historical and cultural context which is to a large extent produced and reproduced by their speech acts. Discourse is thus “an institutionalized way of talking that regulates and reinforces action and thereby exerts power” (Wodak and Meyer 2009).

Also, the study of language cannot promote the exhaustive picture of how are the migration policies formed and applied, but it can surely enrich the classical institutional analysis in political science and contribute to the more extensive understanding of social and political problems. Discourse analysis is thus based on the assumption that “to talk” means “to act” and words (discourses) have a strong performative effect on social reality (Austin 1975). In this study, I use Buonfino’s conceptualization of securitization of migration discourses. Buonfino argues that “immigration as a threat and a security concern has become the hegemonic discourse type in government policy” (2004, 24). Thus, issues of solidarity, ethics and human rights become less important than a mere idea of security.

Buonfino argues also that “the nature of the immigration debate has become even more politicized at the European Union level as it reflects and magnifies the problems and concerns that nation states have already internally confronted” (2004, 24). One of the main reasons for this are disunited approaches in terms of intergovernmental dialogue and cooperation that should be the basis of EU migration policy because that would be probably the dream of its founding fathers. Lahav argues that migration policy of the EU is based on intergovernmental approach and on the principle of the “lowest common denominator” (2004), which means that only those measures are put into practice on which all of the strong nation states can agree. And that is not the paradigm of solidarity which has been one of the stepping stones of European democracy and humanism. It is good that Europe still has countries such as Sweden, Germany and Denmark which have in comparison with other EU states wholeheartedly welcomed the migrants and refugees.

## **SWEDEN'S RESPONSE TO MIGRANTS**

Sweden has been one of the European countries which have openly welcomed refugees treating them as its own citizens whose human rights have to be respected. Sweden has demonstrated that democracy goes beyond national borders. Most Swedish citizens openly supported the entry of migrants, although there have been few incidents regarding the refugees. Also, most of the politicians and the media in the Nordic country have welcomed the refugees. As the study done by Berry, Garcia-Blanco and Moore has showed, the Swedish press was the most positive towards refugees and migrants, while coverage in the United Kingdom was the most negative, and the most polarised. Amongst those countries surveyed, Britain's right-wing media was uniquely aggressively in its campaigns against refugees and migrants (2015).

Also, in Germany and Sweden, there was extensive criticism over the unwillingness of other EU members to share the burden of refugee challenge. In Sweden, many newspapers went so far as to directly blame the EU for the deaths of migrants in the Mediterranean (Berry, Garcia-Blanco and Moore 2015). While in some European countries far-right parties completely opposed refugee settlement, in Sweden, an electoral success of the Social Democrats opened the way for democratic treatment of refugees and migrants. It can also be seen how a strong political tradition, such as social democracy in Sweden, impacts the country's response to migrant crisis.

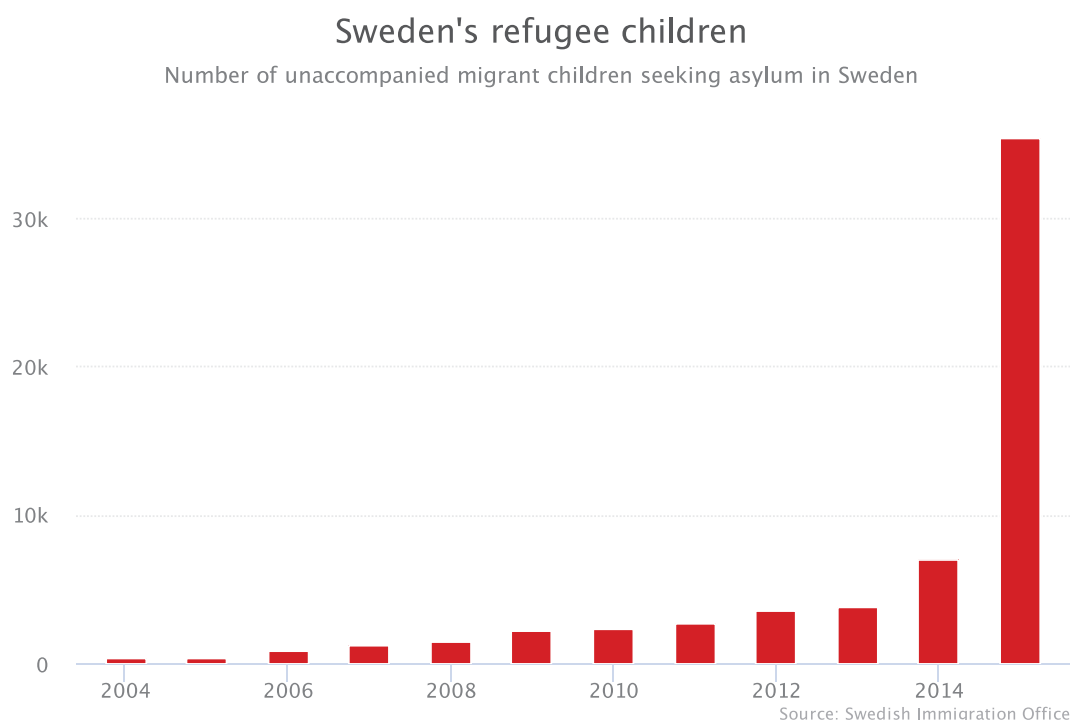
Swedish authorities have over the last four or five decades implemented extensive measures in order to make an integration of migrants smoother. In other words, the Swedish state enacted integration measures more than 30 years before officially proclaiming to shift from immigration to integration policies (Wiesbrock 2011). Thus, in 1965 the first courses in Swedish for immigrants were opened (Dingu-Kyrklund 2007, 6). In 1996, the Swedish authorities officially announced the transition from immigration to an integration policy. Also, on the basis of the government bill "Sweden, the future and diversity – from immigration politics to integration politics" (Sverige, framtiden och mångfalden - från invandrarpolitik till integrationspolitik), a new integration policy was agreed in the Riksdag in 1997 (Wiesbrock 2011).

The central objectives of the new integration policy were equal rights, responsibilities and opportunities for everyone, irrespective of their ethnic and cultural background, social cohesion built on diversity and social development characterised by mutual respect in democratic society. The new policy openly emphasised the existence of rights, duties and opportunities of all members of Swedish society and the importance to combat racism and ethnic discrimination (Wiesbrock 2011). The main objective of the new changes in national legislation was to make smoother and more harmonious the introduction of newly arrived immigrants into working and social life in a new country. The migrants have been now more encouraged to become actively employed. However, as said before, the central Swedish integration model has been based on the principles of equal rights, obligations and opportunities for all, regardless of their ethnic, religious or cultural background (Regeringskansliet 2009, 1). The influx of asylum seekers and refugees to Sweden and other Nordic countries has varied so far depending on the scope of conflicts in other parts of world. Since 2000, fewer asylum seekers have arrived in Denmark and Finland than in Norway, while Sweden stands out with far greater numbers of asylum seekers, also in relation to its population (Djuve 2016).

Over the past four years, Sweden particularly has experienced a significantly higher number of asylum Seekers and migrants. For instance, in 2015 more than 160.000 asylum seekers arrived in Sweden, which is equivalent to twice the number that arrived in the previous peak year of 2014 (Djuve 2016). The other Nordic countries have also experienced dramatic increases in the number of asylum seekers and migrants from 2014 to 2015. Sweden has often openly criticized other European countries because of their selfish stance towards the migrants. For instance, Stefan Löfven, Sweden's prime minister, said very harsh words to some central and eastern European governments for what he termed a selfish approach to the EU's refugee and migrant crisis, saying their attitude was completely unacceptable and incompatible with humane European values (Financial Times, 2015). In an interview with the Financial Times, Löfven said: "I can understand it if you say this crisis is a worry. But to say: 'This isn't my problem, we can't accept Muslims' — no, I don't think this is part of our European values, and I can't understand this kind of attitude." (Financial Times 2015). The Czech Republic, Hungary, Romania and Slovakia have openly said that they are against accepting refugees under a voluntary relocation programme that was backed by a majority of the EU's 28 Member States. Some politicians in these countries have argued that they do not want to accept migrants, specifically Muslim refugees from war-torn regions. However, Löfven, a Social Democrat who leads a minority coalition government, stated that the EU needs to address this crisis together since, in his opinion, just a few countries in Europe can't do it on their own (Financial Times 2015).

Sweden has been especially successful in settling unaccompanied children, what has perhaps been one of the hardest problems facing many European countries since this problem requires more attention than other sort of refugees. Unaccompanied children have indeed become one of the toughest challenges for the European governments. It is very sad that many countries have openly rejected to accept even this category of migrants although children should be treated in a humane and democratic way in every society, especially in Europe which is for many the cradle of democracy and multiculturalism. For years, Sweden has been tremendously successful in integrating young migrants. For instance, as Nelson puts it: "in 2004, it was absorbing about 400 children a year. Five years ago, this had grown to 2,600 — and even then, the system was starting to creak. But this was as nothing, compared to what was to come. Last year, 35,000 unaccompanied children claimed asylum in Sweden — most of who had arrived in the last four months of 2015" (The Telegraph 2016).

**Table 1: Sweden's refugee children (The Telegraph, 2016)**



Furthermore, Sweden has often viewed the migrants coming to this country as a valuable economic asset which can contribute to its economic progress. For instance, the country's employment agency (Arbetsförmedlingen) in December 2016 stated that Sweden requires 64,000 immigrants annually if it wants to prevent labour shortages from hampering economic growth. The agency's director general Mikael Sjöberg argued that a labour shortage will start to hurt Sweden's growth as early as 2017, before becoming an increasing problem thereafter, as employers in the private and public sector struggle to find people with the right skills and qualifications (The Local 2016). As Sweden has been facing decreasing trend of local-born population, in Arbetsförmedlingen they believe that immigration can to a large extent solve the labour shortage. As Johan Bissman from Arbetsförmedlingen argues: "Sweden's birth rate is simply too low. The home-born population is reducing. To continue having the possibility of growing further, labour is needed, and therefore an increased population," (The Local 2016). Thus, Swedish officials see the immigration as a long-term solution for the country's economy.

## SLOVAKIA'S IMMIGRATION POLICIES

Slovakia's experience with integration of migrants is not so long, but since there is a significant number of Roma and Hungarians in the country, integration as a concept has been an issue in Slovakia for decades (Lajčáková 2007). Slovakia has surely been one of the EU states that has been most critical to the idea of refugee settlement in Europe. Slovakia has from the very beginning rejected the EU policy of migrant relocation. What's more, Slovak government took the EU to court to fight a mandatory mechanism for

relocating asylum-seekers. That is, in December 2015 Slovakia filed a lawsuit at the European Court of Justice against the European Union's plan to redistribute 120,000 refugees across all 28 EU Member States. Thus, it can be said that Slovakia openly has rejected the EU humane call for more solidarity with migrants.

Also, anti-Muslim rhetoric of its prime minister, Robert Fico, is known to almost everyone since he several times said that Muslims cannot integrate into a European culture. He warned that refugees will be equally impossible to integrate as Slovakia's Roma population and that Muslims will change the character of their Christian community. Slovakia's Prime Minister has argued that "Islam has no place" in the country just weeks before it took over the presidency of the EU (Independent 2016). Speaking about migration, he told Slovakian news agency TASR: "When I say something now, maybe it will seem strange, but I'm sorry, Islam has no place in Slovakia. I think it is the duty of politicians to talk about these things very clearly and openly. I do not wish there were tens of thousands of Muslims." (Independent 2016). Slovakia officials have said their country will only accept Christians when it takes in Syrian refugees under a EU relocation scheme under which the country was supposed to receive 200 people from camps in Turkey, Italy and Greece under the EU plan to resettle new arrivals. Although the UN's refugee agency (UNHCR) called on countries to take an "inclusive approach" to relocation, the Interior ministry of Slovakia spokesman Ivan Netik said Muslims would not be accepted because they would not feel at home (BBC 2015).

What's more, the predominantly Christian country of Slovakia passed a law in November 2016 that effectively bans Islam as an officially recognized religion, which also blocks Islam from receiving any state subsidies for its schools (CNS News, 2016). Before the controversial law was passed, Slovak National Party Chairman Andrej Danko said, "Islamization starts with a kebab and it's already under way in Bratislava -- let's realize what we can face in 5 to 10 years." (CNS News 2016), adding that Slovak state must do everything so that no mosque is built in the future in that country. According to the new law, a religion must have at least 50,000 members to qualify for state recognition; the previous threshold was 20,000 members. According to Slovakia's latest census, there are 2,000 Muslims and there are "no recognized mosques". Slovakia's population is approximately 5.4 million. As for religion, according to the Slovak Statistical Office, 62.2% of Slovaks are Catholic, 9% Protestant, 3.8% Greek Catholic, 1% Orthodox, and 13.4% atheist. Fico led the campaign for the March election under the slogan "We protect Slovakia", calling migrants "a danger". However, an unintended result of Fico's harsh and undemocratic rhetoric towards the migrants was that the far-right People's Party-Our Slovakia has entered parliament with over 8% of the vote. It is also paradoxical that even the many young people in Slovakia have been against the idea of accepting the migrants to Slovak society. Thus, in Bratislava, the most cosmopolitan among Slovakia's cities, thousands of mostly young people marched through the city last June, chanting "Slovakia for Slovaks" (Galanova 2016). The protests come as a surprise since the country has accepted only a few of the migrants currently fleeing to European continent.

During the 23 years since its independence, only about 58,000 people have sought asylum in Slovakia and a little over 800 have been successful (Galanova 2016). Less than 700 others have received subsidiary protection which means a status for people who do not qualify as refugees. Still, many Slovaks argue that refugees and migrants are one of the most serious challenges for this Eastern Europe country.

For instance, 39.7 percent of Slovaks polled by Polis Slovakia last year considered refugees to be the biggest problem facing the country (Galanova 2016). In another opinion poll, by Focus last December, 70 percent of Slovak citizens said they were worried about migration while most thought refugees and migrants would increase crime and the risk of terrorist attacks. Also, many Slovaks said that their country was poor that could not afford to share its income and jobs with foreigners (Galanova 2016). It is obvious that most of Slovaks who oppose settlement of migrants in their country have such a stance due to security and economic concerns. However, their fears due to cultural and ideological concerns should not be neglected as well.

There even have been several cases when whole villages or neighbourhoods decided to reject the settlement of migrants. For instance, in August 2015 the residents of the Slovakian village of Gabčíkovo voted in a referendum to reject the establishment of a temporary asylum camp to house 500 migrants bound for Austria under an agreement between Bratislava and Vienna (The Local 2015). About 97 percent of voters said yes to the question “Are you against the establishment of a temporary migrant camp in the building of the Slovak Technical University?”. According to Teodor Bodo, the head of the referendum's electoral commission, 2,600 of Gabčíkovo's 4,300 adult residents participated in the vote, while only 102 were in favour of hosting migrants. Local authorities decided to organise the referendum on this question following a petition signed by 3,150 residents of Gabčíkovo. Although the interior ministry warned that the results were not binding in other parts of the country, the mere case manifests general atmosphere following the migrant flows to Europe over the last years. Slovakia has agreed to house 500 migrants who have applied for asylum in Austria, at the end of a bilateral agreement concluded on July 21st in Vienna and designed to reduce pressure on the neighbouring country's capabilities for receiving migrants (The Local 2015).

Many people in Slovakia have viewed migrants as a serious threat to their national and cultural values. Thus, by equating the citizens of a state to specific ethnic group, the state sends the message to other ethnic groups, although indirectly, that they are in an inferior and unequal position. Also, Chudžíková believes that political discourse in Slovakia plays an important role in the response to integration of minority groups. Her research has shown that in Slovakia any requirements of the minorities are understood as a threat for the majority as a nation (Chudžíková 2011, 12).

## **EUROPE (UN)DIVIDED ON THE MIGRANT QUESTION**

The arrival of refugees is not a new social and political phenomenon in Europe since the continent has been the magnet for millions of migrants over the last decades. Europe has been a widely attractive place to the migrants due to its extensive economic opportunities and multiculturalism. Thus, the most recent Syrian refugee crisis has been just one among several crises that have occurred in Europe throughout its history. Other significant massive population displacements took place in Lebanon during the civil war of 1975-1990; in the Balkans - Slovenia, Croatia, Bosnia and Kosovo - during most of the 1990s; in Algeria in the 1990s; in Iraq during three decades from the early 1980s to the late 2000s; and in Libya in spring and summer 2011 (Fargues and Fandrich 2012). It would be wrong to say that European states have not known how to integrate those people into their market and social life.

The biggest difference between these refugee waves is that those people could reach Europe and were more or less welcomed until the end of the 1990s under a variety of statuses, while many refugees fleeing conflicts in the 2000s were rejected at the European borders. Although Europe is often cited as an ideal example of a multicultural community consisting of diverse nations, religions, civilisations and cultures, recently many European countries and its citizens openly have proven that they are not democratically mature enough to accept the refugees into their societies. Probably there have been several reasons why that have happened, but no doubt that Europe as a community has become less open and less welcoming over the past years.

Also, the EU states for decades could not agree on common and stable migration policies in order to share the burden of this problem. As a result, the biggest responsibility over the past years has been on the shoulders of the EU members located on its borders, such as Greece, Italy and Bulgaria. It is indeed worrying that the EU's biggest states have not demonstrated necessary commitment and empathy to share the burden with other states facing the biggest problems regarding the migrant flow. According to the EU agreements, entry-point states bear unilateral responsibility for migrants under the Dublin Regulation. Revised in 2013, this EU law stipulates that asylum seekers must remain in the first European country they arrive at and that country is then responsible for considering migrants' asylum applications. Migrants who travel to other EU countries legally face deportation back to the EU country they originally entered. So, was this in any sense share of burden by developed EU members?

Only two years ago, in May 2015, the EU launched a new extensive and, comparing to previous schemes, a quite fair plan for dealing with the migrants and refugees, the so called redistribution scheme, according to which a number of the arriving asylum seekers should be distributed more fairly across the EU states. The plan indeed has been more humane and quite a justifiable idea which has demonstrated Brussels' willingness and readiness to solve the migrant crisis through joint efforts and supranational paradigm. Most importantly, it has indeed been a remarkable sign of solidarity and sincere dialogue between the EU Member States.

However, when it comes to practical implementation, the proposal has so far been met with harsh criticisms from several EU states which stubbornly claim that taking part in the joint plan should be on voluntary basis. Thus, many EU states have not been ready to cooperate for supranational causes which have been one of the fundamental ideas lying behind the existence of the EU project. Also, the European countries has been deeply divided on the question of refugees and migrants due to, although it varies from country to country, serious economic and financial problems, anti-immigration sentiments, xenophobia, islamophobia, right-leaning political parties, fear of terrorism, or simply a declining sense of solidarity and undividedness. Due to their diverse set of policies towards the migrants, it is of crucial importance for the research on Europe or the EU to shed a new light on the research of the countries' stances to a new humanitarian crisis on the continent. Have the EU states mainly preferred security and stability over the human rights, tolerance and humanitarian causes?

No doubt that during the last few decades, the migrant crisis in Europe has been highly politicized and securitized. That's probably one of the biggest reasons why the EU states are deeply divided on the question of migration. The citizens in many EU states are

very suspicious of the migrants, especially after the latest terrorist attacks in France and Germany. As Buonfino argues: “today, the border between security, terrorism, immigration and social fear has become very thin (...)” (Buonfino 2004, 23). Also, it is to some extent related with the social, political and economic integration of minority communities into the European society. Thus, Sasse and Theilemann claim that “migration and minority policy issues are now at the forefront of the political debate in Europe. Both issues denote a dynamic and rapidly changing set of sensitive political, economic and social questions that affect domestic and international policy-making.” (2005). One of the biggest problems regarding the migrant flows has been that a discourse which views migrants as essentialized “others” has grown, and migrants have usually been perceived as objects that can be managed, and essentialized otherness excludes the potentially shared equality (Filadelfiová *et al.* 2010, 114). As a result, the migrants have over last two decades been perceived by many European states mainly as mere objects rather than as valuable subjects which can enrich European social and cultural milieu.

Another challenge which openly has proven a lack of solidarity among the European states has been almost a complete sense of ignorance of the Western European countries towards the countries and societies in Eastern and South-eastern Europe which have been mostly hit by recent migrant crisis. Has indeed the migration crisis brought EU’s East against West? While the Western countries have not been so ready to welcome the migrants at the very beginning, most of the Central European Member States also openly has resisted Brussels’ efforts to spread burden of migrants and refugees. The approach on migrants the Central European Member States have applied is seriously challenging the very Western European ideals of multiculturalism and humanism and also stoking serious debate within the bloc over the meaning of integration, burden sharing and common democratic values (Troianovski and Feher, 2015). The usual response from the politicians in Central Europe and the Baltic has been that migrants and refugees are Western Europe’s problem and that those people cannot be integrated in the European society since they are socially, culturally and religiously quite different.

Although the European Commission in May 2015 suggested that European countries should treat refugees in a humane and democratic manner, most EU states have not manifested necessary willingness to welcome those people. As it is put in the European Agenda for Migration: “Europe should continue to be a safe haven for those fleeing persecution as well as an attractive destination for the talent and entrepreneurship of students, researchers and workers” (European Commission 2015). However, the EU states’ policies to migrant crisis have been mostly inhumane and even brutal in some sense.

That is, Europe’s response to the crisis in terms of opening its doors to refugees has been slow to start and minimal in numbers (McDonald-Gibson 2014). As Lehne argues in his research:


The EU’s current institutional and legislative arrangements were clearly not up to dealing with the huge influx of migrants, and the crisis laid bare deep divisions among the Member States. Depending on the extent to which the EU can overcome these divisions and improve its policies, the refugee crisis could lead to either more Europe, less Europe, or the emergence of a new core of committed Member States (2016).

In particular, there has been serious polarization across the Member States over how many migrants should the European Union accept, and how will the responsibilities be divided among the Member States in regards to providing migrants with access to healthcare, jobs and education (Gashi 2016). Also, the polarization has been particularly felt in the political sphere due to increasing popularity of extreme or Europhobic political parties over the last decades. That is, the polarization in the political sphere can easily be evidenced through the recent triumph of nationalist parties in national and regional elections across Europe. For instance, in France, the far right National Front has promised a stronger stance against migrants and foreigners in a local level, whereas the winning party in Poland's national elections promised not only anti-migration laws, but also a renegotiation with the EU about welfare, nation state supremacy and even EU's stance towards Russian politics in the region (Swidlicki 2015). Thus, the anti-migration views in many EU states have been an indicator of a rise of political tendencies to increase a power of nation states over the political elites in the Brussels. Still, at this atmosphere of fear and uncertainty there have been valuable democratic and humane voices all across Europe who openly supported an idea of welcoming refugees into European societies. Although they have been only few, they have become genuine representatives and supporters of humanism and multiculturalism in Europe. One of the most prominent examples has surely been Pope Francis who has suggested that migrants and refugees should be see the same democratic treatment in European states as any other citizen. Also, Pope Francis has several times advised the European states to welcome the refugees and migrants. For instance, speaking to the Slovak bishops in November 2015, Pope Francis reminded them that the Church is called to welcome immigrants and help "the other". In his opinion, Europe should view the migrants as an opportunity for dialogue and solidarity and not as a threat. As he said: "at times we perceive threats to less populous nations, but at the same time elements that can offer new opportunities. One opportunity, which has become a sign of the times, is the phenomenon of migration, which demands to be understood and confronted with sensitivity and a sense of justice." (CNA 2015). He openly argued for the interethnic solidarity, especially in hard times. Pope Francis argues that the Church is required to proclaim and bear witness to the welcome of the migrants in a spirit of charity and respect for the dignity of those vulnerable people. Last but not least, it is worth recalling the original mind-set of the European movement after World War II, here delivered in early 1948:

We must proclaim the mission and design of a United Europe, whose moral conception will win the respect and gratitude of mankind and whose physical strength will be such that none will dare molest her tranquil sway (...) I hope to see a Europe where men and women of every country will think of being European as of belonging to their native land, and wherever they go in this wide domain will truly feel "here I am at home (Lessambo, 2010).

Thus, if European states wish to become an ideal normative model to others and thus win the respect and gratitude of mankind it should jointly welcome migrants into their society and keep their borders open as it was over the last three decades.

## CONCLUSION

For most European countries, large scale immigration has been a more recent social, political and economic phenomenon in comparison with countries such as Australia, the US, the UK or Canada. Thus, it is of fundamental importance to study the very responses of the EU states to recent migrant crisis. Probably more important than that is the research of the impact of the massive migrant flows on cohesive body of the European society, if something like that exists at all. Still, it is more than certain that EU countries have applied quite diverse policies and mechanisms to handle the migrant crisis. As it is studied in this article, while for instance Sweden has openly welcomed the migrants, countries such as Slovakia, or Hungary, has rejected to accept them. Given quite different responses to the migrant crisis, can it be said that the migrant challenge is an end to a united and integrated Europe? One of the answers to this question would be that the last migrant crisis will probably not result in disintegration of the EU. It will still be remembered as one of few political, social, legal and economic crises the Union has faced throughout its history. However, it is quite disappointing to see that most of the EU states have responded to the issue of arrival of the migrants in rather undemocratic and inhumane way although the bloc in past decades has been praised widely for its normative power and deep commitment to human rights. Even though it is not about the European Union's existential crisis, the migrant crisis openly manifested that EU as a community is not so coherent, harmonious and internally strong as some scholars have argued. The Europeans are now obviously paying the price for the relentlessly blasé attitude. Given that, we can ask ourselves whether the decades-long integration of the EU have not helped the Europeanization and democratisation of its Member States and, if so, why that happened? Is the EU still far away from sincere supranational paradigm? Europe has offered much to its people, but it never really created a melting pot which is probably its biggest problem. 

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