

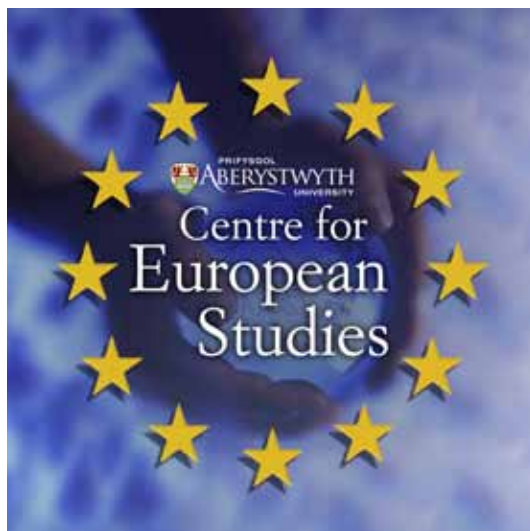
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INTERSTATE

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Special Issue





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Interstate is an exclusively undergraduate-run academic journal, organised under the auspices of the prestigious Department of International Politics at Aberystwyth University. It focuses on issues of international and current affairs, and it aims to allow undergraduates an opportunity to comment on and analyse world affairs.

Interstate provides a space in which students can apply their new skills and pursue their academic interests, while achieving tangible results on paper and online. Our writers and editors work without the pressure of marking, but with the support and critical input of their peers, and the professional

oversight of the Department. *Interstate's* work can be traced through several decades, sporting the earliest works of some of the Department's current lecturers. Today, *Interstate* publishes online twice a year. A link to the former issues can be found on the departmental website.

From the beginning of the current academic year, *Interstate* has also operated a blog, *Interstate in an Instant*. Articles on the blog are published bi-weekly and offer an up-to-date reflection on current affairs, while being written in a freer form and less academic style. The blog also welcomes contributions from guest writers.

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The Department of International Politics is the oldest of its kind in the world. It was founded in 1919 (in the immediate aftermath of World War I) in an attempt to help humanity better understand the reasons for war, conflict and suffering. The Department continues to be centrally concerned with the major questions in global politics: power, conflict,

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From the Managing Editor

This special issue is the outcome of a joint effort of *Interstate – Journal of International Affairs* and the Centre of European Studies, both based at Aberystwyth University. Together, we had set up a writing competition with the title “The European Union - Present Challenges and Future Opportunities” for which the pieces in this issue were written. While compiling this issue, we would like to particularly acknowledge the financial support of the European Commission’s Office in Wales, which has made this publication possible. Authors from various degree levels and disciplines participated, and our biggest thanks go to all of them. From the time of submission, which took less than a month, the pieces are now edited, and went through graphics and printing. Many people have been involved in this process and they deserve many thanks; the central ones are listed on the side.

Much of this editing process fell into the holidays and served to illustrate how truly European this special issue is, not only in its content but also in its making. In fact, as I am typing this, I am sitting cross-legged on the floor of nightly Birmingham International airport, waiting for my flight from my Welsh home to my German one. As my fellow (Polish) travellers, I am keeping myself up with (Italian) coffee and munching on Belgian waffles. And once I will have finished this piece, I will have a (French) baguette for breakfast. Many of the editors also went home, leading to this issue being developed via emails and Facebook, between Britain, Ireland,

Germany, France, Spain, Bulgaria and Norway. All the pieces eventually came back together in Wales, in the offices of our departmental advisors Dr Carl Death and Elaine Lowe, and Ira Bliatka and Dr Elena Korosteleva, from the Centre of European Studies. They provided us with much support throughout. Thank you!

This goes to show that we do not only study Europe, but we **live** it. Thanks to the EU, living, studying and travelling between European countries is relatively easy. Nevertheless, I could do without being stranded in airports over-night - there is room for improvement. The pieces in this issue reflect this sentiment. They provide overviews of contemporary issues such as the Lisbon Treaty. They are concerned with specialist topics, such as the EU’s relation to Russia and the ECJ’s relation to national courts. They consider enlargement and the normative questions it opens. They offer praise, criticism and discuss the ways forward. As such, they are as diverse as the EU itself and the academic discussions surrounding Europe.

And, most importantly, they are an excellent read - even at 4am at Birmingham International. And on this note, I am off to an Italian coffee and a French baguette with my new Polish friends; and I hope you will enjoy reading these pieces as much as we enjoyed editing them.

Yvonne K. Rinkart
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EUROPEAN ENLARGEMENT: A NORMATIVE PERSPECTIVE Benjamin Walton

It was commonplace among academics of the 1970s to share an understanding of the frozen nature of international relations during the Cold War period, and to hold similar assumptions about the fixed character of the nation-state and the importance of direct military power in strengthening the international society.¹ However, the Cold War, which structured many of these assumptions, ended with the collapse of norms across Central Europe rather than through the employment of force.² Therefore, a better understanding of the European Union's (EU) role today might be attained by reflecting on what the revolutions in Eastern Europe tell us about the influence of ideas – in other words the role of normative power. For the purpose of this essay, a norm is 'a principle or standard of correctness that reflects people's expectation of behaviour, is binding upon the members of a group, and serves to regulate action'.³ What I am suggesting here is that the EU represents neither a civilian power of an intergovernmental nature utilising economic tools and international diplomacy, nor a military power of a supranational nature using armed force and international intervention. Rather than being trapped in what William Wallace described as a 'supranational-intergovernmental dichotomy' and forced to conform to one conceptual model or another, the EU is a normative power of an ideational nature characterised by common principles and a willingness to discard notions of 'state' or 'international'.⁴

The concept of normative power is an attempt to move analysis away from the empirical emphasis on the EU's institutions or policies, and towards cognitive processes with both substantive and symbolic components.⁵ Consequently, the notion of 'normative power Europe' is located in discussions of 'ideological' power and the desire to move beyond the debate over state-like features through an understanding of the EU's international identity. Johan Galtung argues that ideological power is 'powerful because the 'power-senders' ideas penetrate and shape the will of the 'power-recipient' through the medium of norms'.⁶ The thesis I purpose, therefore, is that through enlargement and the diffusion of democratic

norms, the EU is able to present and legitimise itself as being more than the sum of its parts. In the post-Cold War era, it is no longer enough for the EU to present itself as "merely" a form of civil or military power. For that reason, EU enlargement is vital to spread and maintain conceptions of "normal" in international relations, giving the EU credibility, power and status.

I intend to reach my conclusion by separating the article into two sections. The first will draw attention to democratic norms as a form of governance, used by the EU to construct and justify its status within the international system, and providing the EU with an identity and a source of normative power. This will be achieved by analysing the notions of liberty, rights and the rule of law; and how these are implemented both domestically and internationally. The second will examine democratic norms as a form of economics, creating and sustaining a liberal market economy and providing the EU with solidarity and cohesion.

NORMS AS A FORM OF GOVERNANCE

Normative values clearly have a historical context to them; peace and liberty were defining features of Western European politics in the immediate post-Second World War period and the norms of democracy, the rule of law and human rights grew later when it was important to distinguish democratic Western Europe from communist Eastern Europe. These became essential features of the transition from communist rule in the immediate post-Cold War period as the Copenhagen criteria demonstrated.⁷ Accordingly, the belief in and adherence to liberal democratic norms are the fundamental principles that constitute the EU. They 'define legitimate statehood and rightful state action in the domestic as well as the international realm'.⁸ The norms are not simply declaratory aims of a system of governance (such as the preamble to republican constitutions), but represent crucial constitutive features of a polity which creates its identity as being more than a state.

It could be upheld that concepts such as democracy, civil society and rights-based political culture, born in Europe and integrated elsewhere, are key to understanding 'from outside ... what is classed as European'.⁹ It is from this identity that the EU is able to establish credibility and status within the international realm. Drawing on critical social theories, one framework has seen the EU as adding a common 'principled' dimension to Europeans' multifaceted identities.¹⁰ This relates closely to the concept of the EU as a 'normative model', possessing little concrete material means of influence, but with significant 'soft power' deriving from the credibility of its identity as a beacon for certain distinctive values and norms.¹¹ Consequently, it is evident that, through enlargement, the EU will influence the discourse of its members and maintain solidarity within its region. Toby King argues that the promotion of norms by the EU has often been constrained by radical differences in the bilateral relations and international interests of its member states.¹² As a consequence, extending the norms to other areas may prove problematic. However, in predicting the diminishing role of states, it is evident that the power the EU possesses in setting standards for upholding liberal democratic norms overshadows national interest.

It may well be maintained that the EU must be an empirical force for the international diffusion of democratic norms, or it will be more or less the victim of power politics run by powers stronger and more cohesive than itself.¹³ Nevertheless, the purpose of enlargement is not to exercise power through force, but to exert power through norms and to convert its standards into international rules by providing incentives to do so. Europe, therefore, is structurally inclined to impose norms on the world system in order to counter its inherent lack of power – in the sense of hard power – and to maintain its status. The EU needs to spread its norms through enlargement and diffusion as to advance its own interest and get the support of the international system. Although questions persist about the ability of the EU to exert any real influence without the backing of military force, others contend that it is precisely such "soft diplomacy" that allows the EU to export its values around the world.¹⁴ Rather than focusing on material capabilities, the EU's real power is ideational – the ability to shape the concept of 'normal' in international relations.¹⁵

In the domestic realm, the liberal principles of social and political order – societal pluralism, the rule of law, as well as democratic political participation – are derived from and justified by EU norms. From a normative prospective, socialisation is the primary mechanism through which inter-subjective structures are transformed into individual preferences and action.¹⁶

As a result of successful socialisation, the values and norms that constitute the EU are internalised by its members. Individual actors become socialised into institutionally defined roles, learn norms and rules associated with these roles, and act appropriately by fulfilling their obligations.¹⁷ The "democratic peace theory", which has its roots in the domestic norms of liberal democratic states, demands that political conflicts be managed and resolved without violence and on the basis of constitutional procedures.¹⁸ When conflicts arise, democratic states know that all actors are committed to these common values and norms which enable them to develop mutual trust and dependable expectations of peaceful behaviour. EU enlargement, therefore, is necessary for implementing these micro-mechanisms, with the intention of establishing credibility and solidarity amongst its member states. Having produced a normative and ethical framework for relations within Europe, the EU could then utilise its normative stance to project its framework externally, constituting a normative power on the world stage with the intention of promoting peaceful coexistence.¹⁹

NORMS AS A FORM OF ECONOMICS

The concept of normative power suggests that not only is the EU constructed on a normative basis, but that this predisposes it to act in a normative way in international relations. Hence, the EU as a normative power has a positive quality to it – that it takes the world as it finds it, with the prevailing social and economic relationships and the institutions into which they are organised, as the given framework for implementing such norms.²⁰ Accordingly, the EU must establish a foundation of liberal economic norms for the management of global economics, and has the task of ensuring that member states do not destabilise international order by challenging these norms. In an economic sense, the EU's actions may be more complex than the normative power framework lets on. Richard Young acknowledges that 'the EU may exercise normative power, but often for instrumental – not value-driven – purposes'. Instead, he finds that norms may simply 'cloak' other motives to 'increase the effectiveness and legitimacy of external policies'.²¹ From this standpoint, the purpose of the EU's normative power is substantively different than expressed in the beginning of this piece, perhaps even calling into question the concept itself. The EU's norms that are expressed, however, coincide with its strong support for democracy as a form of governance, and most notably with its commitment to multilateral institutions within which it seeks to enhance normative standards.²² Additionally, the spreading of liberal democratic norms offers two benefits to its recipients. On the one hand, it

promises them a degree of economic freedom; on the other, it offers the potential for economic prosperity. As a result, enlargement has a potential to enhance the EU's performance legitimacy by means of spreading democratic norms, thereby qualifying for increased support and approval from amongst its citizens and acting to maintain the EU's credibility, power and status.

Within the EU, the scope of any cooperation and integration between member states can only be as wide as the members agree upon. Since the Treaty establishing the European Economic Community of 1957, there has been an understanding between the member states that the Common Market and the Single European Market should be the core of the Union. The main foundations of the market are the "four freedoms" of movement – of goods, persons, services and capital.²³ This was reaffirmed by the Lisbon European Council in March 2000, where it was declared that 'the EU has today set itself a new strategic goal for the next decade; to become the most competitive and dynamic knowledge-based economy in the world'.²⁴ Accordingly, the spreading of economic norms through enlargement makes the EU market bigger and hence more important in the multilateral trading system. In stark contrast to the economic norms, other theories of EU politics include a key role for material interests. Some have claimed that the EU does not find its *raison d'être* in a set of collective normative ideals, but rather it is one whose internal and external relations are firmly anchored in the material interests of its member states.²⁵ By making material interests the default option, it has been suggested that states comply with norms primarily when it will be to their material benefit; compliance lacks compelling purpose otherwise.²⁶ As a result, normative power will exercise greater influence on members' policy positions when material interests are negligible or outweighed by prominent normative concepts. However, the recent growth in transnational flows has created interdependent modern societies which have altered the traditional conception of material based interests.²⁷ As a result, states do not only seek material objectives, but are also inspired by ideological aspirations. Consequently, it is the purpose of enlargement to further implement liberal democratic norms for the purpose of maintaining cohesion and unity among its members.

CONCLUSION

Since the creation of the European Community (EC) – in which Europeans were committed to 'pooling their resources to preserve and strengthen peace and liberty' – the EC/EU has managed to evolve into a hybrid of supranational and international forms of governance which transcends Westphalian norms.²⁸ It is, according to Richard Mansbach, a 'cross-cutting polity which is part

of a strikingly different and more complex picture than traditional models of global politics allow, including less of a distinction between inside and outside the Westphalian state.²⁹ This specific new form of hybridity, the likes of which Mansbach is describing, increasingly emphasises certain norms which are common among its member states, and ultimately act as binding principles upon their actions. The constitution of the EU as a political entity thereafter has largely occurred as an elite-driven, treaty-based legal order.³⁰ It was precisely the combination of the EU as a hybrid polity, its political-legal constitution and the historical context from which it was born that enables the EU to represent itself as a normative power in international relations and formulate its own identity.

The liberal democratic norms of democracy, rule of law, social justice and respect for human rights were first made explicit in the 1973 Copenhagen Declaration on European Identity.³¹ Since then, the norms do not only act to regulate state behaviour but also contribute to shaping actors' identities and interests, transcending the traditional limitations of states and international society. For that reason, states that share the fundamental values of the EU and adhere to its basic norms are regarded as informal community members and are entitled to join. Similarly, it is through the creation of economic norms and market based economies that the EU has been able to establish a foundation for the management of global economics. This will assist the EU in maintaining its normative stance as an inspiration for certain distinctive values and norms. It will also ensure that, through enlargement, the EU will directly influence the discourse of its members – through the creation of market economies – maintaining unity within.

Enlargement, therefore, is necessary for implementing these norms, with the intention of establishing cohesion amongst its member states. Having produced a normative and ethical framework for relations within Europe, the EU can utilise its normative stance to project its framework externally through enlargement, constituting a normative power on the world stage – bestowing the EU with credibility, power and status.

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IS THE EU REACHING THE LIMITS OF ENLARGEMENT? Martha Otwinowski

‘Enlargement will extend Europe’s area of peace, democracy and prosperity’¹

Tony Blair, 2002

Among European states in the aftermath of the Second World War, multilateral cooperation was seen as a long term stabilisation for peace. The European Union (EU), since its establishment in 1957 as the European Coal and Steel Community with six members, saw several enlargement rounds over the subsequent decades, driven by the idea that ever more members mean new markets and therefore increase economic benefit for everyone. The idea of EU enlargement as a means of foreign policy² first found expression in the 1986 accession of Spain and Portugal. With both states just coming out of authoritarian regimes, the then European Community was successful in conditioning them towards political liberalisation and economic development. Accordingly, at the end of the Cold War, the EC again recognized its responsibility towards the former Soviet states of Central and Eastern Europe.⁴ However, since it was also aware of the impact a big Eastern enlargement would have on the EC,⁵ the so called Copenhagen Criteria were established in 1993, a system of clear conditionality on accession. Each applicant who is able to fulfil the conditions of stable democracy,⁶ an economy able to cope with the pressures of the European market, and also has the ability to adapt the *acquis communautaire* into domestic legislation, would have the prospect of EU membership. The current candidates Macedonia, Croatia and Turkey, as well as the applicants Albania, Bosnia and Herzegovina, Serbia, Montenegro, Kosovo and Iceland⁷ are judged, too, by the conditionality stated in Copenhagen. However, the attitude of most present member states towards enlarging the EU further, is anything but enthusiastic. With 27 members now, some claim that the EU cannot “digest” more member states.

This article argues that while there certainly are difficulties for the EU arising from an increasing number

of member states, the EU is not reaching the limits of enlargement. After examining the financial aspect of enlargement as well as its impact on the EU institutions, this article will look at the controversy around the Turkish candidacy. Following that, it will illustrate that immigration has not had the expected impact in the past and it will finally analyse the effectiveness of enlargement as a tool of foreign policy.

IMPACT OF ENLARGEMENTS: FINANCIAL, INSTITUTIONAL AND CULTURAL BURDENS?

The main objection of the “anti-enlargement league” of the present EU members, when it comes to accepting new candidates is unsurprisingly of a financial nature. It is easy to identify that the current applicants, with the exception of Iceland,⁸ are less advanced than the current member states in terms of economic growth.

Turkey, where agriculture still occupies a third of the workforce,¹⁰ would benefit considerably from the Common Agricultural Policy (CAP), the Union’s major budgetary commitment. Calculations of 2004 estimated an additional annual expenditure for the EU at 2.6 billion Euros.¹¹ Further expenses for the EU budget would result from the structural funds the new members would receive. This, in turn, would necessitate raising the contributions that individual member states make towards the budget, which they are unwilling to accept, referring to their own financial straits since the “Credit Crunch”. Therefore, new applicants are increasingly seen as a burden rather than a partner for international cooperation. It remains to be asked ‘what kind of solidarity, in an ever bigger Union, can be achieved?’^{12, 13}

Another problem the EU faces with every enlargement is tedious institutional reforms, where the difficulty of bringing all member states’ interests into accord is all too visible, and tensions become quickly exposed.

Prior to and after the 2004 Eastern enlargement, several attempts to reform the Qualified Majority Voting system (QMV) in the Council of Ministers failed, with each state unwilling to see its own influence diminished. In 2007, when most member states seemed to have reached an agreement on the matter, the Polish Prime Minister at that time, Jaroslaw Kaczynski, seeing that the reform would bring a disadvantage for Poland's comparatively powerful position,¹⁴ publicly attacked Germany, revealing resentments going back as far as to the Second World War. In such a climate, questions are raised as to the depth of mutual trust and genuine partnership among the members of the European Union.

A future accession of Turkey would have an ever bigger impact upon the EU institutions; not only is it the by far the largest current applicant, but it would be the state with the second biggest population, once in the EU. Accordingly, its institutional influence would amount to a considerable 14.5 per cent of the vote in the Council of Ministers,¹⁵ and in the European Parliament some small and medium sized members would have to give up some of their seats to Turkey,¹⁶ therefore weakening their own influence.

Furthermore, there is an underlying controversy behind the prospect of Turkish membership. The European public has expressed itself particularly negatively about this in the past. The vote against the Constitutional Treaty in France and in the Netherlands in 2005 by referenda has to be assessed primarily as a "no" to Turkey.¹⁷ In several member states, political parties,¹⁸ mainly centre-right, have recognised the populist potential of the issue,¹⁹ putting forward a pseudo-argument of cultural incompatibility²⁰ of Turkey with the rest of Europe.

THE IMPACT OF IMMIGRATION FROM NEW TO OLD MEMBER STATES: MYTH AND LESS PROFOUND REALITY

The paranoia of mass immigration is certainly one explanation for the European public's negative attitude in respect to Turkish EU membership or other further enlargements. However, experiences from the past have proven that the expected mass immigrations after several enlargement rounds²¹ have, by and large, failed to materialise. Particularly the phobia of an influx of Eastern European workers severely driving down the wages of the native ones or even totally displacing them from work²² has to be seen, in retrospect, as highly exaggerated. There is 'little evidence'²³ that this happened to any worrying extent at all. Therefore, it is doubtful whether a further enlargement round would be fundamentally different in this respect. In addition, member states are still able to individually regulate the free movement of workers.

When looking at the enlargement round of 2004 as an example, the United Kingdom opened up its market unrestrictedly straight away, while states like Germany and Austria kept theirs protected first, only gradually admitting international workers.²⁴ Therefore, it is certainly not the case that the "old" member states are left helpless in controlling the movement of people.

ENLARGEMENT AS A KEY FOREIGN POLICY TOOL: SUCCESS IS GUARANTEED

One aspect which cannot be stressed enough is the high significance of enlargement serving as a tool of EU foreign policy. Previous enlargement rounds have proven very successful in terms of political and economic stabilisation of the former neighbouring countries of the EC/EU.²⁵ This should come as no surprise: the EU is, whilst negotiating with the applicant countries, in a very powerful position. It establishes the framework surrounding the prospective membership, the rules and the timetable of accession,²⁶ leaving the candidates only the options of compliance or non-compliance. Even in the case of the latter, the EU possesses effective means. In Macedonia,²⁷ where reforms were repeatedly delayed by the national authorities, the EU simply postponed the starting date of accession negotiations until the country had fulfilled fundamental requirements.²⁸ It is self-evidently in the candidate's interest to continue its application process, and consequently, looking at examples from the past, they will eventually comply. Authorities in Romania and Bulgaria had little interest in solving legislative weaknesses and problems of corruption in their countries, but ultimately felt compelled to do so as accession negotiations would not have progressed otherwise.²⁹ In fact, the prospect of membership of the European Union was the direct stimulus for the continuous reforms to improve the overall economic and political situation in Romania and Bulgaria.

A transforming impact can, indeed, also be observed with countries that the EU has officially started membership negotiations with. In terms of preservation of rights of the Serb minority as well as with respect to political liberalisation in general Croatia considerably improved;³⁰ the latter also applies to Turkey.³¹ In that context, Turkish authorities also endeavoured to improve the country's relations with Greece and Iraq, especially with the Kurdish regional government there.³² Indeed, more and more concessions made to the Kurdish minority have been observed over the years.³³ A determination to fight corruption has been announced by all official and prospective candidates.³⁴ The numerous improvements in terms of political liberalisation in the candidate countries, prompted by the motivation to join the EU,

are quite obvious.

The lack of a means of pressure on the side of the the EU is immediately evident with a country like Ukraine, which was granted a Partnership and Cooperation Agreement, but not given the prospect of eventual membership. Judging European influence on the Ukrainian implementation of civil rights or economic development therefore proves extremely difficult. Accordingly, the EU has to accept that while it would like to intensify economic cooperation with Ukraine, the latter - bewildered by the fact that the EU has offered 'very little'³⁵ - turns towards Russia in that respect³⁵, discussing details of a prospective free trade zone.³⁶ Clearly, the most effective way for the Union to turn the situation to its advantage would be to approach Ukraine with more promising offers.

A clear stimulus, especially in terms of economic growth through the EU, can certainly also be observed once membership already has already been granted, as demonstrated by the 2004 enlargement round. Countries struggling to fulfil the Copenhagen requirement of a stable market economy prior to their accession, experienced a rapid growth in their GDP per capita, even exceeding that of the EU15.³⁷ Economic growth resulted in higher wages in those countries which led to the improvement of living standards overall. Certainly, these improvements were also partly borne by resources within the EU budget. However, sceptics arguing on this basis that the EU could not afford supporting new members seem to look exclusively at the short term reduction of EU member states' average GDP that took place after almost every one of the enlargement rounds.³⁸ The general stability in the whole of the EU resulting from every applicant's economic, steady if occasionally slow, progress, exceeds any short-term difficulties for the EU.

The integration of currently neighbouring countries into the EU, beyond the positive economic implications, is furthermore vital in terms of EU security policy, as well as for decisive impact in humanitarian issues. Integrating the countries of the West Balkans into the EU rather than accepting continuing hostilities among them, is certainly much more meaningful. With the lack of EU influence, these conflicts are more likely to continue, possibly even to exacerbate.³⁹ After all, the argument that the EU does not have any financial responsibility for non-member states, and thus is not liable for the instability in the region, would necessitate the Union's support for development projects there. It is not least the Union's commitment to democratic values such as freedom of the individual that precludes the EU's indifference towards insecurity and oppression of people living in its direct neighbourhood.

Building a stable Europe was in fact the very reason for the founding of the EU and should therefore not be given secondary status only after financial considerations of the "old" member states. This commitment necessitates the Union's actions to have strong moral grounding: certainly, an institution like the EU which has the influence and effective means to considerably improve the situation for citizens of states that struggle in some way or another, has to do so. Seeing the numerous benefits the Union presents its members with, a permanent exclusion of the current candidates and applicants would inevitably cause a stagnation of development for those states.

Let us look, for example, at the education sector. Higher education at University level is very much supported by the EU; students who are citizens of one member state are also encouraged to study in another.⁴⁰ The Union furthermore offers various grants and loans in order for students to afford international education.⁴¹ Young people living in non-member states do not receive these benefits and therefore have to depend on financial support from their family. Considering the comparatively low incomes of citizens in the states of the West Balkans for instance,⁴² a lot of them will long not have the means to support their children with something that is taken for granted within the EU. Skilled employees, however, are a crucial factor in the development of every country⁴³ and standing in the way of their education would mean the denial of the very same.

"The enlargement of the European Union to me ... is the fulfilment of a vision ... that is too easily forgotten in times when security and prosperity within Europe are taken for granted."⁴⁴ Even if a shared European identity is utopian, an adjustment of living standards and respect for human rights is not. This goal should be pursued by the European Union which has clearly not reached its limits of enlargement.

CONCLUSION

The challenges posed to the EU through successive enlargement rounds are to be taken seriously. Member states are particularly concerned about the additional expenses enlargements inflict upon them, as well as with diminished influence through institutional adjustments. The Turkish accession has caused public debate, with European citizens concerned about immigration issues. This article has, however, illustrated that the EU possesses effective means to exercise considerable control over immigration. Furthermore, it analysed the Union's success in pursuing enlargement as a way to improve overall stability in Europe. Looking at the indisputable benefits that come from EU membership, the article concludes that many European states which currently

do not have EU membership, remain in need of the very same. Thus, the Union will not have reached the limits of enlargement until its goal of an economically, politically and socially stable Europe for everyone is achieved.

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THE IMPORTANCE OF THE LISBON TREATY IN THE FUTURE GOVERNANCE OF EUROPE, AND THE NECESSITY FOR FURTHER REVISION Ainsley Gilbert

The Treaty of Lisbon¹ has had effects on the workings of the European Union, and has significant implications both for how it functions through its provisions on governance and decision-making and on how the union develops. Lisbon has political implications for the form of the developing union and these are as significant for discussing possible futures for the functioning of the Union as the institutional changes. Despite these changes, Lisbon does not guarantee a future for the European Union, and leaves many criticisms unresolved.

Lisbon was designed to provide a strong foundation for the future of the European Union and had three major aims: 'more efficiency in the decision-making process; more democracy through a greater role for the European Parliament and national parliaments; and increased coherence externally.'² These are the areas most affected by the treaty, and are also the focus of this article's analysis of the treaty's provisions.

The lack of democracy in the European Union prior to the Treaty of Lisbon has been criticised by many, and it is fair to say that the EU was 'closer to a form of enlightened despotism than a genuine democracy.'³ The only directly elected institution, the European Parliament, had little power, and citizens had no way of "getting involved" in the policy making process of the Union other than through its infrequent elections. Decision-making authority rested with the unelected bureaucracy of the Commission and the Council of Ministers (made up of national politicians) rather than with the people of the Union or their representatives. The Treaty sought to solve this "democratic deficit" with a series of measures designed to re-connect the EU with its citizens, and - more importantly with regards to ensuring its future - its citizens with the EU.

The most obvious change to the role of citizens in the EU is the introduction of the "European Citizen's

Initiative" (ECI). This initiative allows citizens to petition the Commission to introduce legislation on a topic that concerns them, so long as it falls within one of the EU's areas of competence. It also allows the organisers to meet the Commission and present their initiative at a public hearing, a useful tool, allowing access to senior Union figures. This initiative requires a petition signed by at least 1 million EU citizens, with further proportional requirements: one quarter of member states must be represented in the final voting share; a minimum number of signatories from each member state, this being the arbitrary figure of 750 multiplied by the number of MEPs the state is allocated.⁴ For example, for an ECI to be valid, at least 7 member states must be represented in the final voting share - and if Germany were one of those represented, at least 74,250 German citizens must sign (99 MEPs multiplied by the arbitrary figure of 750).

The procedure of the initiative is relatively complicated, and does not suit action which individuals or small groups of citizens may wish to undertake concerning issues affecting them. This is partly owing to the complicated rules regarding what information needs to be recorded in various member states, and also the sheer administrative capacity needed to collect one million signatures. Excluded from organising a petition are MEPs, which to an extent prevents the initiative from being used as a tool of political parties. It is rather more accessible to established charities and non-governmental organisations, working across borders to solve problems they have identified, and which have a degree of public support. I would posit that when people sign a petition heading for Brussels, it will actually be the interest group which is associated with it, rather than any citizens - undermining the claim that the ECI increases the possibility for citizens' engagement with the EU institutions.

A successful ECI does not obligate the Commission to introduce new legislation, but it does require a response to it detailing the reasons for its action or inaction. This means that the power of the initiative is checked, however, 'it is clear that ... the political impact of such an initiative will, in practice, force the Commission to engage in serious work'.⁵ Despite this, if political support from institutions is not found, it is likely that the Commission will respond to the initiative – as required- but that the outcome will be “no change”. The initiative overall then is a blunt instrument, which is complicated for citizens to use, and does not effectively connect citizens to the EU. It can work as another channel to impact upon the centre, but does not allow for change without the approval of the Commission, Council and Parliament - which are rather a lot of hurdles to overcome.

The Lisbon Treaty also provides for increased transparency in the institutions of the Union. Article 15 of the 'Treaty on the Functioning of the European Union' (TFEU) states that 'the European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act'.⁶ The ability to observe allows for scrutiny, criticism, and more effective engagement with those taking legislative decisions. The first paragraph of the same article acknowledges this, stating that 'to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible'.⁷

The article allows people to see documents produced anywhere in the European Union, subject to a number of restrictions, especially relating to the European Central Bank (ECB), the European Investment Bank (EIB) and the Court of Justice of the European Union (ECJ). Access to documents helps to develop an interest in an organisation, as people can learn what they actually do, and allows the press to report more easily. The aim here is to create interest in a representative democracy. This can help to bring citizens closer to the EU, assuming the right of access is exercised.

Unfortunately, this right is not often exercised and has been seen to be somewhat limited. In 2010, despite the size of the union, only 6,127 applications were made for documents, and, of these, twelve per cent were refused, twenty three per cent were from academics and therefore unlikely to create public interest, and only a meagre three per cent were from journalists. This does exclude the information published by the EU directly, which is substantial, however, the number of applications is not enough to suggest that the press or public are interested.⁸

The Lisbon Treaty has granted greater powers to the national parliaments, giving them a role in overseeing

the implementation of the work of the Commission, and also giving them the Yellow and Orange Card systems, allowing them to have a significant impact on upcoming EU legislation. This aims at bringing the government of the EU closer to its citizens, as national parliaments are, almost by definition, closer to their people than the Brussels based institutions. There is a great deal more media attention focused on national parliaments, and public interest in their work tends to be keener. They also have a greater ability to obtain opinions from interested parties nationally, important in making policy and creating legislation, which could otherwise unnecessarily restrict enterprise.

The Yellow and Orange Card systems allow several member states' national parliaments, acting together, to challenge legislative proposals on the grounds of non-compliance with the subsidiarity principle, that is, 'the notion that the EU should govern as close as possible to its citizens'.⁹ Member state parliaments are each allocated two votes; one each for the individual assemblies of a bicameral parliament, two for a unicameral parliament. If eighteen of the total possible fifty-four member state parliaments (one third) vote to object then the proposal must be reviewed by the Commission. If twenty-seven votes are used to object then the proposal must be reviewed as per the previous procedure, but if left substantively unchanged when reviewed then the proposal must face votes in the Council and European Parliament. National parliaments also have the right to request the annulment of an act through the European Court of Justice.¹⁰

There are issues with the role of national parliaments after the Lisbon Treaty, and the way they connect citizens to Europe. They are likely only to act on issues which were already controversial, and so already generate interest. They have no way of stopping a proposal which has built up sufficient support within the union's political elite (composed of national governments who, by their very nature, command authority in national parliaments), as this could pass through the review process un-amended. It is likely that some amendments would be made, especially if the Council of Ministers -- accountable to national legislatures -- were involved. Parliaments have only eight weeks to get views on, debate and agree a position on any legislative proposal, an extremely tight timeframe, considering the large volume of other work required from them.¹¹ They are also outside of the union loop and cannot benefit from being based close to the institutions, from which they could obtain information and views more easily. Overall therefore, national parliaments are still unable to provide a good link between the citizenry and the Union, owing to a lack of power, practical problems, and also because their role

in political culture is being reduced in a national context.

The European Parliament has gained significantly more powers within the EU. It has more of a say in decision-making with the expansion of the Co-decision Procedure (renamed as the 'Ordinary Legislative Procedure') to new policy areas. It now has control over the budget, even being able to override the Council. The Parliament has a role too in supervising much of what the Commission does, and "elects" that body's President, as well as the High Representative of the Union for Foreign Affairs and Security Policy (owing to their role as the Commission Vice-President).¹² These increased powers for the European Parliament are good news for the role of representative democracy in the EU. However, the European Parliament is currently only just representative of the citizens of the EU, with turnout at elections being just forty three per cent in 2009.¹³ Constituencies are also very large, with the UK having 72 Seats in the European Parliament, compared to 650 Seats in the House of Commons, for the same 62 million people.¹⁴ Ordinary citizens are therefore a long way from their representatives, and are unlikely to feel any real connection to their MEP or the European Parliament, especially as only a limited amount of time can be spent in their constituencies promoting their work.

The Lisbon Treaty generally improves the democratic structures of the EU. It does not, however, go far enough to force a reorientation of political culture towards the citizens. Therefore, the EU continues to have a legitimacy crisis, and must continue to function with this spectre hovering over it. The lack of democratic legitimacy means that innovative and potentially controversial policies will rarely be introduced by the EU, and this is to the disadvantage of all.¹⁶ The European Union is by no means the only organisation with a democratic deficit; national, regional and local organisations are also suffering this problem. However, a lack of common European identity between member states' citizens compounds this problem into one which could, at some point, erupt into something which leads to questions about its future. A new treaty is needed to reform the democratic functioning of Europe in order to create 'measurable outputs', rather than just continue to tinker with an existing framework, which has proved itself weak.¹⁷

The first aim of the Treaty stated on the European Union's website was not to increase democracy; rather, it was to increase efficiency, as this had been seen as a key problem in the ability of the union to continue to function, particularly owing to the growth of the union, meaning a system designed for 15, or possibly just 6, members was struggling with 27.¹⁹

The Lisbon Treaty simplified the legislative process

significantly, reducing the number of types of acts from fifteen to just five.²⁰ This makes the EU markedly more transparent for its citizens and especially for those to whom the legislation applies. The way in which these acts are created was also improved. The Ordinary Legislative Procedure now applies to almost all legislation, with notable exceptions being the common foreign, security and defence policies. This change means that the EU can now do more, and faster, as more legislation can be adopted, after its first reading, through 'Triologues' between the Council Presidency, the Commission, and Parliamentary Rapporteurs.²¹ However, it still struggles to be efficient when there are more difficult decisions to be made, as there will not be sufficient common ground between the parties of the Triologue to allow for the procedure to be used.

The Lisbon Treaty also created a President for the European Council, whose roles include ensuring 'the preparation and continuity of the work of the European Council', and facilitating 'cohesion and consensus in the European Council'.²² As a result of these roles, there is more effective leadership of the European Council, which will make decision-making more efficient both by not having a change of administration every six months and by having the ability to build up a relationship with, and therefore broker deals between, member states. The role does unfortunately bring instability with its introduction in that 'the differing electoral bases of the presidents of the Council and the Commission seem likely to generate tension', and this would affect the work of the Council and Commission technocracies. The existing rotating presidency, which the treaty failed to replace, will clash with the new High Representative of the Union for Foreign Affairs and Security Policy, as both their roles include representing the EU externally.^{23,24,25}

The number of areas where Qualified Majority Voting (QMV) is used has been extended further, meaning that the objections of a few states are not able to stop progress on an issue, although consensus is still usually sought. The change in the voting allocation system of QMV to one based on population and proportion of member states is also an improvement, as it allows for expansion of the EU without need for re-allocating votes - which were already outliving their usefulness, being complicated and giving disproportionate power to small states. This guarantees that the Council will, if any kind of consensus is reached, be able to play their part in decision-making.

The budgetary procedure used by the European Union was changed by the Lisbon Treaty, and the procedure is now time limited to force action from both the Council and the European Parliament. The joint Conciliation Committee has only twenty-one days to find a compromise position between that of the Council

and that of the Parliament, and this compromise must be approved within fourteen days. This makes the process far more efficient, as does the parliament's ability to override a rejection of the compromise by the Council, meaning that so long as a compromise favoured by the Parliament is drafted, the budget will be approved.²⁶ It carries a risk of budgets being rejected due to a lack of time for negotiation, but possibly only those which would have failed under previous arrangements.

The changes to the decision-making process allow the union to be more efficient and dynamic, and also put it on a stronger footing for dealing with expansion and change, than prior to the Lisbon Treaty. It remains an extremely complex organisation, with a great number of rules and procedures limiting its powers to act. The Eurozone crisis highlights the EU's lack of ability to respond through its normal institutions to difficult policy areas, partly owing to the time it would take to respond, and partly due to the lack of ability to take controversial decisions in a system so full of checks and balances. This is a real threat to the EU's future, and a stronger treaty, or constitution will be needed to give the EU a future which is not as complex and unstable as it remains after Lisbon.

The Lisbon Treaty therefore has had great impact on the functioning of Europe, with the EU becoming more powerful, more democratic and more efficient. However, these changes have not been enough for the EU to become more than what it has been thus far: an organisation too complex, too inefficient and too removed from its citizens to be maintained or act without a constant stream of support from national political elites. The treaty can be seen as a rejection of Europe becoming more, as its creation was a result of the failure of the Constitutional Treaty, which had the ability to transform Europe into something which was stronger. Its changes were seen by European leaders at the European Council in 2007 as providing 'a stable and lasting framework', from which they expected 'no change in the foreseeable future'.²⁷ This cannot be the case as Lisbon does not reform enough to provide a secure future for the EU, on the basis of it alone.

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ON WHY THE EU SHOULD DIE. AND BE RESURRECTED.

Petr Manoušek

To say the recent few years have not been the EU's brightest would certainly be an understatement. There is so much eclecticism, topic deviation and "eurospeak" that one could forget what the EU really stands for. Just the list of its problems and imperfections could take days only to assemble. However, this article firmly states that the greatest present challenge is this: "The EU just won't die." And die it must, in order to then be resurrected in a more appropriate form.

To explain this rather harsh statement, one must first look at the current state of EU integration studies. Scholars have become too interested in every little "mystery" surrounding the organisation and then have entrenched themselves in their rigid explanations. What they have failed to acknowledge in the meantime is the overarching principle of the "return of the state" and the resulting simple yet tremendously important realisation: EU business is still done when there are 27 (ideally, but often much fewer) people sitting around a table, discussing the issue at hand. This might seem like a trivial observation but it appears to be a largely ignored one. Those who have, in a way, followed suit after EU scholars were EU leaders themselves. So much lip-service has been paid to the idea of "one voice for Europe", that the traditional "getting to yes" culture of interstate diplomacy has been lost.

In short, the "art of consensus" in Europe (in the EU as well as in the scholarship) disappeared. At the same time, it is on the rise elsewhere. Both aforementioned groups ignore the fact that the world has been watching them closely and is eager to reproduce the positive results the European integration has indeed provided. Therefore, we can see a rising tide of integration projects in almost every corner of the world. What these lack in institutional structure (vis-à-vis the EU) they compensate for in resolve. Therefore, if the EU wants to survive, it must relearn its lost art of negotiation and rebalance its "united in diversity" motto towards emphasising unity and leaving

diversity aside. In other words, it must die in its present form to be reborn in another, hopefully better one.

The objective here is not primarily to explain or prescribe, but rather to sketch the main points of a promising research agenda. To this goal, this article will broadly follow three paths. First, it will briefly argue for accepting the EU reality – state-centricity with important roles for non-state actors. The second part will claim that the most important aspect of the EU, stemming from state-centricity, is its negotiations. Effectively, states created and joined the EU for cooperation. However, now, there is a lack of cooperation, although it has existed at several points since the EU's inception. The EU's leaders should focus on recreating it. Third, this article will offer its version of where such a consensus – as seen elsewhere – should appear, as this is important for both EU scholars as well as EU leaders themselves to take into account.

THE STATE OF/IN EU INTEGRATION STUDIES

The advent of new integration arrangements has recently challenged EU studies. The criticisms of it are diverse, interdisciplinary (from economists, psychologists and others) as well as introspective (due to its many different paradigms and theoretical standpoints). The *sui-generis* attitude to studying the EU has also been identified as insufficient and exclusive. The calls to change this are numerous.¹

This article does not want to suggest that the study of International Relations should develop something like 'string theory' for the field now, however, it advocates a refocusing on what is really of importance – states. There is no denying the fact that, especially after the advent of financial crisis, states have been on the rise,² at least politically if not so much economically. There is even a prominent group of scholars who would argue they have never really retreated.³ In the words of

Delwaide: ‘States remain the most important – and thus far the only legitimate and legal – decision-makers in an international order which, notwithstanding all the international linkages and institution building, remains essentially ‘anarchic’.⁵ What Delwaide means by anarchy does not equate to the usual association of “chaos” but rather the absence of authority, or something close to “freedom of the will”.

Naturally, there are problems with a state-centric approach. This article does not want to suggest that all theories focused away from states are essentially wrong. They simply describe *different* aspects of EU integration – such as the influence of non-state actors or the possible future development of the EU. These and other areas warrant further research but bearing in mind the fact that non-state actors are in any case connected to states – their legal system (regulations), representation structures, etc. Therefore, even if they definitely try to influence the politics made at the state level they always have to accept the risk of defeat and state’s ultimate right of decision and control over strategic issues. However, state and non-state actors are ‘entwined’.⁶ Moreover, we can speak about “symbiosis” or “synergy” between the two groups that allows advancing non-state actors’ causes when they resonate with national interests. This is best illustrated by Thorhallsson⁷ who argues that small states especially rely on this symbiotic relationship by concentrating on what is crucial for their interests. At the same time they can pledge support to what is important for non-state actors and not themselves. In EU scholarship, the knowledge on state and non-state actors should be complementary rather than mutually exclusive.

THE STATE OF/IN EU NEGOTIATIONS

Having established that states are of paramount importance as the main players in the EU politics today, we should focus on what they actually do: negotiate. It may be hard to admit for some Realists but the sheer scale of cooperation within the EU is largely unexpected by their theory. At the same time, similar patterns have been appearing elsewhere, notably in South America.

‘Negotiations are both required to modify the EU’s institutional framework for decision-making and omnipresent in the Union’s day-to-day decision-making’⁸ and therefore they take place in many different settings and setups. However, which of them matter? Without hesitation everybody will select primarily both the European Council and the Council of the European Union, then the European Commission, and potentially the Court of Justice of the European Union. It is important to note that all are dominated by states – the first directly but the others indirectly: ‘EU member governments delegate to the European Commission and the European

Court of Justice – but not to the European Parliament – for essentially the same transaction-cost reasons that motivate national legislators to delegate powers to ... parliamentary committees ... and courts.’⁹ What results is a natural need to negotiate: ‘decisions require extensive consultation involving private and public actors ... and yet more discussions across the policy-making organs of the Union, and between Europe-level actors and member state representatives in the actual decision-making process.’¹⁰

research. The concept of delegation is important to sketch the research agenda revolving around negotiations. The EU institutions are populated by national representatives who at the same time also have their own agenda whose objective, as Pollack¹ elaborates, is expansion of privileges.¹ Therefore, their “loyalty” is torn and thus constitutes a special case unlike a “regular” international organisation.¹³ Small states especially then try to keep working relationships with EU officials as close as possible to advance their own goals.¹⁴

This leads into the most important factor in this section – people. The image of them negotiating at a table is a fitting one, be it in Brussels or elsewhere (as EU matters are discussed on many occasions, both formally and informally). Therefore, their state of mind and attitudes matter. A contemporary EU scholar might say that their *identities* matter. Although a prime minister would probably not risk an unfavourable outcome for their whole country just, for example, due to personal dislike of another participant, the attitudes leaders have naturally influence them.

What is most important, however, is why these people come to negotiations. At the end of the day, they are what they represent – states. Therefore, national interest is of paramount importance as the people who negotiate do so to advance certain goals, stemming from their national agendas, if only because that is what they were elected or appointed to do. In turn, this dynamic should be taken into account by EU scholars. Their research should ask what the national interest is for EU member states, how governments and citizens shape it, how flexible and susceptible to change it is and others.

Although this article does not want to offer its own solutions, it must acknowledge the biggest problem with the research it proposes. It is rooted in the oldest reality of all – uncertainty. As Booth and Wheeler⁵ see it: ‘Uncertainty is endemic in the condition of human existence because the leaders of groups cannot enter into each other’s minds.’¹ Even scholars cannot know what concrete national interests are. Their challenge is a methodological one, effectively ‘inherent in studying negotiation behaviour: the secrecy surrounding the negotiations; the biases introduced by asking

participants; and the difficulty of inferring from role plays to real-world negotiations.¹ A related problem is that – contrary to what, for example, rational choice scholars would argue – national interests may sometimes be non-negotiable or/and straightforwardly “irrational” for the outside observers. Nevertheless, they are there and uncertainty makes it difficult to discern their exact form and shape.

There is a lesson for leaders, too. Nowadays, there seems to be many diverging opinions on the EU and interests within it. Because of the essential uncertainty, leaders should acknowledge that sometimes “less is more” and concentrate on cooperating where there is visible confluence of national interests, rather than imposing it where there is clearly none. A long lasting minimal solution is better than a bombastic one that will warrant renegotiation in a few years’ time due to even initial lack of support. In short, they should focus on the basics on which general agreement lies.

AREAS FOR COOPERATION

Therefore, this article would like to briefly sketch its own view on these basics, namely, where cooperation should be established and thus what further research should revolve around. This view has two principal advantages. First, instead of emphasising one aspect of integration as most theories do, it wants to remain as interdisciplinary as possible and retain an inclusive rather than exclusive character. Second, such a generalised set of areas can serve to compare and contrast the different regional arrangements in the world. This way, the EU-centricity of integration studies could be diminished and the field could become wider. As we implicitly established above, regional arrangements are about cooperation; they work towards achieving it. We can say that there have been several time periods when the EU reached the level needed for progress and the “confluence of interests” created a favourable constellation. Obviously, it was in the 1950s and early 1960s when the integration actually began and quickly expanded into several areas that conformed to states’ preferences. However, the momentum was then lost. Although the ensuing “paralysis” was not absolute,¹⁸ states returned to their familiar protectionist behaviour rather than the liberal mode the European Community (EC) offered. The 1980s then provided much space for EC cooperation¹⁹ and the drive prevailed until the mid-1990s when it started to slowly fade once again until the general discord experienced now.

These successful moments should be recreated. This does not necessarily mean that the EU should expand either in scope or in geographical terms. However, for the sake of resolving the many problems of today, the level of cooperation and consensus should be achieved

by discussing where states do and do not want to tread – their national interests. These are naturally diverse but, drawing on the insightful framework of Gardini,² they can be grouped into five broad fields where cooperation should take place and which will be very briefly described now. The first area is *relationship with international hegemon(s)*. What visibly marked the European post-war development were the interests of the United States and Soviet Union, which led to a high-stakes game in the region. The US pressured Western Europe to integrate Germany and laid the foundations for containment. In contrast, the Soviet Union preferred a weak Germany and strove to expand (later, at least, lock in) its territorial reach deeper into the continent.²¹ The founding EU states were clear where their loyalty was and cooperated with one and not the other, which has brought obvious benefits (such as peace, as argued by Mearsheimer²²). In general, the relevant basic postures are generally of two types: cooperation (‘bandwagoning’ in the language of alliance theory which is very relevant for arrangement-building) or rivalry (‘balancing’).²³ In the end, states then have to decide on one or a combination of both if they want to build and develop their regional arrangement.

The second area is *relationship with regional power(s)*. As Buzan and Weaver⁴ describe them: ‘regional powers define the polarity of any given RSC’²⁵ such as regional arrangement, for our purposes. Much the same as with international hegemons, these countries cannot be easily ignored and there also must be consensus around whether to include them or not. Additionally, Gardini⁶ also calls these countries ‘paymasters’ which draws on their tendency to pay more of the integration costs than the other members.²⁷ Nowadays, France and Germany are very much the regional powers that shape the EU integration but there tends to be opposition to such prevalence.

Third, *development model to adopt* can be imagined as a certain deal offered to and accepted by states willing to create or join a certain integration arrangement. This idea involves an implicit or explicit agreement on the “path to follow”, which seems obvious at first but can present great problems when consensus on the *right direction* disappears, such as today. It comprises difficult decisions, such as which economic model to choose (today, the problem of protectionism), how to perceive potential enlargement (the questions of a potential membership of Turkey), or simply what sectors and areas to include at the time of creation and which, if any, later (such as foreign policy unification).

The fourth area, which this article adds to the original Gardini framework, is a *normative and cultural dimension*. This is the problematic field of norms and identities which can cause so many problems not only at the negotiating table, but also within domestic affairs

when people cannot identify with what EU stands for. Nowadays, there is little understanding for the EU's supposedly bloated budget and meddling in domestic issues. This is why the EU should also advance in this direction and clearly say what it really stands for, instead of the standard "eurospeak".

The fifth and last area is called *governance and decision-making*. The consensus should explicitly develop on the level of supranationalism the EU member states in this time want to pursue. In a way, this field addresses how the EU wants to solve the most painful collective action problems – fear of defection and a just distribution of gains.²⁸ The style of governance is not a marginal issue: 'Governance and integration appear to have a circular relationship. That is, effective governance may produce greater integration, while at the same time high levels of integration may increase the capacity to govern. These virtuous cycles could, of course, be mirrored by a downward spiral into governance failure and disintegration.'²⁹

CONCLUSION

In sum, this article strove to look at the EU from a realist perspective. What was captured was how the EU actually works, which could derive substantial theoretical understanding that could develop a less EU-centric and less divided integration scholarship. Negotiations were identified as the most prominent activity of states as the most important actors in the EU. These states focus on cooperation in fields they perceive to be relevant to their national interest. According to this article, these areas are essentially five: 1) relationship with international hegemon(s), 2) relationship with regional power(s), 3) development model to adopt, 4) normative and cultural dimension and 5) governance and decision-making. Explicit, or even implicit, consensus in these five areas would help the EU focus on what is important and help it achieve higher effectiveness and coherence. However, in order to do that, the old EU, and especially the old divided ideas about it, must die. And be resurrected.

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WHAT ARE THE BENEFITS AND CHALLENGES OF THE ECONOMIC & MONETARY UNION?

Anastasios Vourexakis

The Economic Monetary Union (EMU) is the end point of an ambitious and historic stage of integrated market changes¹ that not only challenge the structure and foundation of modern-day liberal capitalism, but also offer – where successful – a wealth of opportunity in the goods, labour and service industries of the European Union. A fiscal extension to the principles of the Schengen Agreement² of 1985 offered a financial breakthrough where multiple crises during the mid- and late-1980s offered physical deficit in the sense that unemployment was on the rise and inflation was at a post-war high. This long-winded process required widespread policy integration over a span of 40 years in order to achieve such monetary union, bringing Europe to both political strains at times and a decade of growth and success. What started as a Single Market led to an unseen level of economic cooperation in its second stage, which was then followed by full single currency implementation. It has been seen by many, including the former British Chancellor of the Exchequer and Prime Minister, Gordon Brown, as Europe's greatest political and economic achievement.³ EMU would mean that not only the European Community (EC) would be recognised as a global actor⁴ in financial markets, but that the single currency would have a major international impact as an anchor for exchange rate stability in a 21st Century global market desperate for growth, employment and low levels of inflation.

This exciting and somewhat ambitious project⁵ prides itself globally as a watershed in how union economics and fiscal federalism as a framework operates.⁶ This is the first time in modern history that such a big convergence of monetary policy has taken place and it has come with many successes and advantages for its vibrant and dynamic economies. However, this has come at a cost and, especially since 2008,⁷ a great amount of suffering for some. The aim of this essay is to outline in

economic and political terms the benefits and challenges of the EMU, analyzing its impact on specific states, both domestically and internationally, as well as at an EU and Eurozone levels.

The EMU in Europe has seen consistent and significant progress since its establishment as nothing more than a European Community goal in 1969. The most symbolic of these was its full validity into the international system via the setup of the Exchange Rate Mechanism (ERM) in 1979 through the first stage of the European Monetary System (EMS), and the Maastricht Treaty of 1992/1993. The treaty set down the criteria and final timetabling for a full EMU in Europe by 1999/2002 as already proposed by the 1988 Delors Commission Report.⁸ This process had already begun its first stage on 1 July 1990, when exchange controls in the EEC were abolished, leading to capital movements being completely liberalised throughout the community. This prepared the community and its members' differing economies for the finalised technicalities⁹ of the second and third stages set down in the treaties, the most important of which being the strict convergence criteria explained further on in this essay. The second stage, lasting for over 4 years, began on 1 Jan 1994 with the establishment of the European Monetary Institute, the predecessor to the European Central Bank (ECB). This institute would enforce the original provisions of the ERM, set up ERM II for the states that wished to join the single currency after its adoption and establish the Growth and Stability Pact (GSP), which set down the strict convergence criteria required for full membership to the single currency and entry into stage 3 of the project. Finally, in this second stage came the establishment of the European Central Bank in 1998. Its function was to reduce exchange rate variability and achieve monetary stability in Europe,¹⁰ as well as setting common interest rates and being the lender of last resort to the Eurozone states.¹¹ The third and final stage began

in 1999 with the adoption of the Single Currency through the irrevocable fixing of conversion rates amongst the first wave states (11 out of the 17) of the Eurozone. This meant that most Eurozone member currencies including the strong Deutschmark, the French Franc, Italian Lira, and the weaker Greek Drachma would cease to exist, with the introduction of Euro notes and coinage becoming the norm in the Eurozone.¹²

The economic benefits of the EMU are plentiful, and definitely outweigh the challenges in number. However, the risk factor of the EMU on a general scale is what this piece is trying to assess and the first relevant benefit of the EMU would be its optimistic but also responsible¹³ convergence criteria for full EMU membership. This is seen by many¹⁴ as setting a fantastic example of monetary discipline with penalties of up to 0.5 per cent of members' GDP available to the Commission and the Central Bank for their use against violating states. Whilst this convergence criteria anchors its legitimacy on the integrity of the German Deutschmark as a pre-Euro currency, it only began as a strict guideline. It is only since the economic crisis of 2008 that a revised GSP is being proposed that makes these criterion binding. Under these rules, government debt cannot exceed 60 per cent of gross domestic product (GDP), and a government's current account deficit cannot exceed 3 per cent in any fiscal year. The rigid planning and implementation of this can be interpreted as responsible budget economics.¹⁵ Average nominal interest paid cannot exceed 2 per cent above the average of the top 3 financially performing states; this indicator is also used for price stability, where inflation is limited to 1.5 per cent above average of the top 3.¹⁶ These rules, set down and audited by the ECB make good ground for the second benefit of the EMU.

The European Central Bank, as said before, has a very rigid and ordered system of governance similar to that of the Bundesbank. This means that when it comes to its implementation of the common interest rate and price stability, every provision of the GSP is taken into consideration and the bank works for the benefit of all 17 Eurozone states. This model proved successful in Germany in the 1990s and had similar results in the Euro's first decade.¹⁷ Further success includes the reduction in transaction costs between member states because of the same exchange rate and Rate of Interest (ROI). This, if the UK were to be a member of the EMU, could have saved between £50-100 per annum to its average citizen.¹⁸ This successful thinking is mirrored throughout Europe, with the European Commission suggesting that elimination of transaction costs could boost the GDP of the countries concerned by an average of 0.4 per cent by 2015,¹⁹ and the cost of transporting goods and services within the common market using the

single currency have been significantly lower since 2001. This also allows for a great deal of price transparency for large business from Europe and around the world which, in conjunction with the reduced uncertainty of exchange rates and the increase in Foreign Direct Investment, has allowed for more business to come and invest in Europe. This not only gives the Eurozone states an incentive to compete with each other for a healthier domestic private sector but it also provides an incentive for strengthened intra-EMU trade, meaning states, whilst competing with each other, also trade with each other much more easily. In this respect, the EMU has removed the possibility of devaluation of the single currency, which countries have used in the past, and has increased inflationary pressure. The ECB prides itself in its policy of keeping interest rates low on average. This would cater for an economy capable of expanding rapidly in the global markets because of its flexibility through a lower ROI.

The EMU's economic challenges, however, make for much harder reading, especially since the Eurozone crisis emerged from the ashes of the global downturn.²⁰ Firstly, the Eurozone states have seen a loss of power to choose different short-term inflation vs. unemployment trade-offs to the ECB; this is one of a long string of national sovereignty issues.²¹ In the long-term there is no trade-off between inflation and unemployment, but in the short-term the ECB can choose an interest rate which reduces inflation slowly, giving time for the unemployed to find jobs. This, however, results in the realisation that countries that join the Single Currency will lose the ability to make these choices independently. This also affects member states' autonomy in reacting to sudden economic shocks. This is mostly apparent now in the case of states such as Portugal, Ireland, Italy, Greece and Spain where unemployment is a direct factor of this challenge. A reduction in demand is likely to lead to a reduction in prices, but this in turn means redundancies and businesses filing for administration. The ECB is unlikely to dictate drastic changes to the GSP unless all the states are affected equally. This means that Germany and France would have to suffer the same deep recession as Greece for changes such as an alternation of the 3 per cent deficit threshold.²² Furthermore, the ECB is made up of representatives from all 17 national Central Banks, all with different systems of governance and they are not all as rigid in their auditing of monetary affairs as the ECB is. This has led to decisions coming down to the last few votes on European monetary affairs and, since 2007, has led to the ECB not publishing minutes from committee meetings because of the risk of market destabilisation and loss of confidence in the single currency.²³ This market shake up might also be at further risk because of the impact of a generic ROI in all 17 states. This "one size fits all" policy may work for the stronger economies but the

weaker ones have major problems of the teething stage as can be seen in states such as Greece who is currently having to pay a 17.9 per cent ROI on its standard 10-year bond.²⁴ The ECB's target inflation rate of 2 per cent may also be deemed as too deflationary, adding to the tragic rise of unemployment to numbers of over 20 per cent in states like Spain and Greece.²⁵ The sad reality is that this rigidity may instil a disciplined, sustainable and organised mechanism for the implementation of a full EMU in the European and world markets but some nations require longer to catch up to this programmes many benefits. This, since 2008 has begun to lead to a two-tiered Eurozone within an ever-emerging two-tiered European Union. The strong members would have their own system, and the emerging would run off another, more flexible framework to suit their needs.

The political benefits of the EMU mirror the aspirations and pride of the European dream. The EMU has united Europe,²⁶ but it has also shown to the world how this unity can be achieved.²⁷ The European Union is now recognised as a single, joint source of GDP in calculated global income, scoring 4th place with a 21 per cent share in global nominal GDP.²⁸ There is much more transparency between states not only on the obvious monetary affairs side, but also on the political – with political allegiances becoming ever more strengthened by EU monetary policy.²⁹ States have to work together on common policy regardless of party and ideology affiliations. This shared capitalism through fiscal federalism has proved that political relationships and diplomacy are much more subject to flexibility for the advantage of the wider community than they are for domestic, national interest. The assumption is that in the long-term, this scheme will help all participants. But the challenges of this political and economic union dictate that in order for this plan to be realised in the near future, states have to cede sovereignty and fiscal independence to some extent. Whilst this may be for the good of the common market and the currency in general, historical and cultural icons of European history such as the Drachma have been scrapped entirely, simply to move forward with the implementation of the EMU. When a state goes through financial and asymmetric shock in its economy, it relies on the governance of the ECB to take the necessary course of action. This may sometimes mean leaving the state to weather the storm,³⁰ and this principle has seen various bailouts offered over the past 5 years to states that simply cannot take the rigidity and pressure any longer. In political circles, this has led to increased resentment of the European project; states are willing to participate as much as ever but there is now frustration at the fact that this crisis is lasting so long in some countries as opposed to its current state in others.

To conclude, the EMU has its advantageous benefits as well as its – sometimes crippling – challenges, and it is important to remember that the Euro, as a result of the stages of the EMU such as ERM and the GSP, is still fledgling. It is a young currency and most of the issues concerning the EMU revolve around the flexibility of the ECB in dealing with situations such as the current Eurozone Crisis. Any Eurosceptic could argue that the EMU may damage the national sovereignty and integrity of a national currency, however, denying the astonishing growth in government GDP and foreign investment paired with impressive drops in unemployment from 2000-2009, is difficult.³¹ And this, in many respects, has small influences such as the Athens Olympic Games in 2004 and the Green Energy Directives of 2001 to thank for.³² Countries involved in the EMU are ever-investing in this multilateral venture, its successes could be greater than those seen in its first decade and its progress to date is more than admirable. However, speedy and effective reforms to the structure and workings of the ECB and the GSP are vital after this recession is over in order for the Euro to remain single, sustainable and worthy of international trust and praise, because after such a tumultuous period in its history, it seems to be overcoming the first few hurdles and is on the path to a very successful future in the global markets.

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IN THE ECJ WE TRUST: THE AUTHORITY OF EU LAW IN THE CONTEXT OF CONSTITUTIONAL CONFLICT

Sofiya Kartalova

“In God We Trust” - the motto that inspired a nation built on the paradox ‘out of many, one’ could be construed as the wish for ‘divine goodness and order in the universe’.¹ It entails the full recognition of a supreme power. However, the wording does not convey blind obedience, nor does it suggest a contract between equals. Instead, “trust” is rooted in delegation; it boils down to the investment of confidence. Another aspect here is the acknowledgement of abilities of a higher standard than one’s own. Thus, trust is the source of authority.

The idea of entrusting someone with the power to make a judgment as to right and wrong on one’s behalf is understandably met with apprehension. To an extent, it is justified here as the deity in question is said to be the original paragon of man and is naturally superior, but what if the roles were reversed – the “mortals” crafting a “god” out of their collective images? The hierarchy is jumbled up. Conjuring justice out of this power struggle is a perpetual challenge of the legal order of the EU.

The aim of this piece is to trace the channels of trust down to the genesis of the authority of EU law. The discussion will take place in the context of the constitutional conflict between the ECJ and the national constitutional courts, where trust will be tested and legislative power delimited.

CHALLENGING THE AUTHORITY OF EU LAW - CONSTITUTIONAL CONFLICT

The greatest trial for the authority of EU law, and thus the trust in the ECJ, was identified by Damien Chalmers, Gareth Davies and Giorgio Monti² as the interaction between the ECJ and the national constitutional courts. It may now be useful to examine the three ‘lines of national constitutional resistance’ in the constitutional dialogue that Mathias Kumm identifies – constitutional rights,

Kompetenz-Kompetenz and other specific constitutional provisions.³

The first concern, promulgated mainly by the German constitutional courts, was reflected in the *Solange* jurisprudence, and the rule to date is that the national constitutional courts will not question the constitutional status of EU law as long as the protection of fundamental rights it provides is functionally equivalent to that enshrined in the national. This is expected to radically minimise the chance of an actual confrontation between the courts.⁴ The second factor is the issue of *Kompetenz-Kompetenz*, the roots of which go down to the concepts of subsidiarity and European citizenship. The key question is who possesses the ultimate authority to decide on the scope of the EU competences. Both the national constitutional courts and the ECJ compete for this authority.⁵ And last but not least – concerns regarding specific provisions, such as the problem of granting women access to the armed forces in Germany. Resolution usually is found in treaty ratification - at the cost of potential constitutional amendments, though such conundrums are rare to arise.⁶

This piece will adopt Kumm’s three-limb analysis to look at the response of national constitutional courts: European constitutional sovereignty (ECS), unconditional national constitutional sovereignty (UNCS), and Constitutional Tolerance (ConstT).⁷

To start off, the essence of ECS is in the absolute acceptance of the judicial stance of the ECJ, with functionality being at its root. EU law is seen as the ultimate form of law, dominating even over national constitutions. It is no surprise that the principle enjoys little popularity among Member States. Such a total surrender of power deprives the national judicial

system of the checks and balances a constitutional court provides, leaving it too open and vulnerable.⁸ It is an “all-or-nothing model” of trust, the choice being “all”.

The second option, UNCS, is located at the other end of the spectrum, where upholding the unconditional sovereignty of the national constitutional order is the highest priority. EU law is denied any special status other than that of a form of international law for the sake of national self-determination. However, Chalmers admits that this method is too extreme and neglects to take into account the opinion of the ECJ and the preponderance of members of the EU.⁹ Again, it is also an “all-or-nothing model” of trust, the choice being “nothing”.

What is left is constitutional tolerance – an intermediate principle between the two far ends of the spectrum. Here, recognition of the extraordinary status of EU law is granted, provided that the scope and contents of the authority of EU law is determined by the national constitutional courts. It is widely spread among the Member States – Italy, France, the United Kingdom, Germany, Denmark, Belgium, and Slovenia. The method is mostly dictated by the current practices of the judicial institutions in question.¹ This model of trust is not based on an ultimatum such as “all-or-nothing” models above, but on a realistic appraisal of the necessities of judicial co-operation.

One approach to constitutional conflict is well exemplified by the *Maastricht Judgment*.¹¹ The ruling made it clear that the Maastricht Treaty is compatible with the German Constitution.¹² The *Maastricht* ruling is deemed to be the emblem of UNCS model of EU integration, a more sophisticated and mature manifesto.¹³ Julio-Baquero Cruz identifies a hard and soft interpretation of the judgment. The former entails entrusting the German Constitution with the final authority to decide on the validity and supremacy of EU law, making them wholly dependent on the act of ratification. The latter acknowledges the possibility of relative supremacy (with some exceptional limits) that is rooted in German law. The dialogue between the German Constitutional Court and the ECJ is conditioned by compromise and informal co-operation. According to this design, the linkage between norms and courts is non-hierarchical.¹⁴

The successor of this remarkable ruling is the recent *Lisbon Judgment*¹⁵ of the German Constitutional Court, which ultimately recognises the Lisbon Treaty. One relevant point is that the process of transfer of sovereignty is rooted in the principle of conferral and is thus reversible and subject to internal constraints. The authority of EU law is based on the will of sovereign states and is indirectly derived from national constitutional law. Another argument is that the Member States are the

entities vested with the highest democratic legitimacy in the workings of the EU and should remain in charge of the spheres of ‘democratic formative action’ which must be of ‘substantial political importance’. Obviously, this is a step away from the canon language of indivisible constituent powers and state sovereignty.¹

The German Constitutional Court delved into the reasoning, justifying conferral as the basis for *Kompetenz-Kompetenz*. This principle is the foundation for the gradual expansion of European integration. Thus, the authority of the EU is grounded in the sovereign actions of the Member States which who will have delegated powers to the union of their own free will. This transfer is limited in nature, fixed in scope and has the potential to be revoked. The national systems and the EU have distinct hierarchy of norms. This is not to say they exist isolated from each other - clashes arise where there is an overlap, after all. However, their co-existence is problematic because a stale mate of ‘right against right’ is inevitable unless one of the systems submits to the other. Unfortunately, the *Lisbon Judgment* offers no resolution or announcement of a final winner, it is a mere contestation of the mindset of the competing forces, who simplified - agreed to disagree.¹

Ultimately, in the current environment of legal uncertainty, where the Treaty is silent and the ECJ is wilful, it is left to member states and scholars to decide upon their own preference of the three aforementioned options. Florence Giorgi and Nicolas Triart emphasise a particular form of pluralism. In their world, “through the looking-glass” supremacy is seen as circumstantial and plural. The most valuable part of their contribution to the discussion is the three models of response by the national courts, which will now be discussed in more detail.

Firstly, the ‘assumed resistance’ by the German Constitutional Court is presented. The result is that ‘the pyramid is redrawn’, where, instead of having the German legal order strive to meet the constitutional standards of the union, the EU is expected to rise up to the occasion by upholding the German ideal.⁸ At this stage, one Member State is setting the bar for the entire union by setting the judicial negotiations on familiar domestic grounds. Thus, control is underhandedly slipping away not only from the ECJ, but also indirectly from other Member States, who operate under the presumption that common progress is what is desired by all of the twenty-seven Member States. Perhaps it could be argued that it is for the noble purpose of setting a higher standard, but who is to say the rest of the Member States are prepared to take that drastic leap, instead of taking their time as a group?

The second method is the Spanish experience of ‘declaration of good intentions’. The Spanish Constitutional Court, unlike the German one, was insistent on exhausting every Euro-friendly solution before taking any drastic measures. It succeeded in exploiting an ingenious loophole in ECJ’s judicial reasoning by making a distinction between *supremacy* and *primacy*:

‘Primacy and supremacy are categories which develop in differentiated orders. Primacy, in that of the application of valid norms; supremacy in that of the procedure for the production of rules. Supremacy is based on the superior hierarchical character of a norm and, for this reason, it is the source of validity for inferior norms (. . .) Primacy, in contrast, is not necessarily founded upon a hierarchy but rather on the distinction between the domains of application of different norms, all valid in principle but, however, one or more having the capacity to replace others by virtue of their preferential or dominant application motivated by different reasons (. . .) The supremacy of the Constitution is thus compatible with regimes of application that accord preference to the application of norms of an order different from the national one, provided that the Constitution itself has envisaged this.’²⁰

This innovation of the Spanish Constitutional Court is to be commended as a ‘remarkable attempt to bypass the hierarchical construction’, albeit a ‘partially abortive’ one. The ground for this dismissal is the apparent weakening of primacy, while supremacy becomes the equivalent of absolute primacy.²

A third approach, which is for example used by France, is described as ‘the art of navigation through Scylla and Charybdis’. It basically adopts a customised *Solange* approach, to match the pattern and instruments the ECJ traditionally uses in its doctrines. It is a very delicate and cautious method of circumventing conflict. However, the judicial reasoning is somewhat vague, twisted to fit Euro-expectations while at the same time maintaining national sovereignty.² One cannot but ask if originality, productivity and truthfulness were left behind for the sake of convenience? If so, a misapprehension settles in – one that might cause a vicious circle of stale and outdated judicial ideas.

Another fascinating option in the arsenal of the ECJ may be brought to our attention, that of “constitutional tolerance”,(d which is described by Weiler as follows:

‘Constitutional actors in the Member States accept the European Constitutional discipline not because as a matter of legal doctrine (. . .) They accept it as an autonomous voluntary act endlessly renewed by each instance of subordination (. . .) When acceptance

and subordination is voluntary, it constitutes an act of true liberty and emancipation from collective self-arrogance and constitutional fetishism: a high expression of Constitutional Tolerance.’²⁵

Giuseppe Martinico and Oreste Pollicino point out that the authority of the ECJ does not stand on its own, but depends upon the voluntary compliance of the Member States.²⁶ And so, the ECJ cannot afford to lose the diplomatic battle with these opponents. The ECJ must make use of all of its creativity in finding and exercising self-restraint to keep the constitutional tolerance demonstrated by the Member States intact. What follows is a two-fold strategy employed by the ECJ is pursuing this policy.²

The first-level strategy, named ‘the art of judicial persuasion’, mostly focuses on the interaction with the national judges as well as with the legislative and executive bodies of the Member States, to open up the preliminary ruling dialogue. The constitutional courts had to come up with a safe substitute form of co-operation that would allow the preservation of supranational integration.²

The second-level strategy is that of ‘the constitutional actors of member states as interlocutors’. It is marked by the majoritarian activist approach under the cap of an effect-oriented analysis – the European judges get to choose from an array of possible decisions, to pick the one supported by the majority of Member States.²

Let us examine the tumultuous relationship between the ECJ and the national constitutional courts. The ECJ took the trouble to prepare the terrain well by winning over the national courts and establishing solid jurisprudence in the field of EU law compatibility of national and international levels. Soon, these methods brought about the desired results, such as the ‘mutability’ of the national constitutional courts at the very beginning, drifting towards a more open attitude. However, one thing remains a constant – their refusal to abdicate from their role as the guardians of national identities. An extension of that is the “counter-limits theory” that suggests a strong resistance to the permeation of the monistic philosophy deeply into the national constitutional orders.³

ENFORCING THE AUTHORITY OF EU LAW - THE TRUST VESTED IN THE ECJ

The authority of EU law mainly operates against the backdrop of the complex interactions between the ECJ and the Member States. Karen J. Alter is among the academics fascinated by the ECJ’s mysterious success in keeping the doctrines of supremacy, direct effect and preliminary ruling uncontested by the ‘masters of the treaty’. Their acquiescence, and thus implied acceptance, is quite inexplicable, given the great departure from the

original functions intended for the ECJ in the treaty. Initially, the ECJ was envisioned as an organ with very limited technical functions.³¹ Additionally, this trinity of doctrines can be rightfully regarded as highly controversial in legal and political sense as they are at odds with national legal practices, can potentially subdue national high courts to the ECJ and in effect derogate from national sovereignty.³

Karen J. Alter holds that this astonishing result is in part due to the ECJ's masterful strategising, combined with the limited array of responses available to the Member States. Essentially, her arguments are fitted within the framework of 'doctrinal negotiation' (an alternative to 'legal dialoguing'- a method that lies at the root of constitutional conflict). 'Doctrinal negotiation' boils down to an inherent clash of interests between the parties at the negotiation table and allows for the possibility of a compromise, rather than a perfectly satisfactory outcome. Thus, all parties make some concessions, recognising their innate weaknesses – it was crystal clear to the ECJ that supremacy cannot be absolute and it cannot afford to be accused of abuse of power, while the national governments acknowledged their relative ineptitude to micromanage the judicial process. And so, the national courts ended up complying with the vision promulgated by the ECJ by letting go of substantial legal authority. It all comes down to pinpointing the interests of the actors as the driving forces in this scenario.³ Let us examine the strategy carefully devised by the ECJ. The policy style behind the trinity of doctrines is described in detail by Trevor Hartley as a cautious, but constant, advance.³ Furthermore, 'by narrowly restricting the scope of its reasoning, [the ECJ] manages to avoid almost every question in issue.'³ Stuart Scheingold maintained that 'the ECJ used procedural rules to avoid decisions of substance.'³ At first, the doctrine of supremacy was easily ignored by national governments through the option of non-compliance. Weiler argues that the national courts accepted the new obligation and re-affirmed it through the usage of the preliminary reference procedure, the arena of the debate moved to the legal realm.³ This was further exemplified by the *Lütticke* judgment which led to a period of bolder and more assertive application of the doctrine, to be traced in a string of case-law (*ERTA*, *Cassis de Dijon*, *Factortame* decisions).³ In effect, it is this persistent application of the doctrine that crystallises its substance and results in the perpetuation of the authority of the EU legal order.

The ECJ is the authority that initiates and constructs EU law and as such, this piece argues, its credibility is rightfully doubted. J. H. Weiler and Ulrich R. Haltern reveal that the decisive question in the tentative relationship between the 'masters of the treaties' and the

Court boils down to the performance of the institution, not who has the final say in the delimitation of competences. In other words, can we *trust* the ECJ with the formidable task of being the ultimate arbiter?⁴⁰

Roman Herzog and Lüder Gerken offer a comprehensive, negative account of the ECJ's wayward judicial activism. Its sometimes underhanded attempts to take over Member State competences through case-law invasion arguably are putting off the EU community. The first example they take into consideration is the *Mangold Judgment*. The accusations include a dismissive attitude towards subsidiarity and practical difficulties. Not to mention the vagueness of justifications as well as, shockingly, a direct declaration of the provision as void.⁴¹ Other more recent instances are also brought to light. Ultimately, Herzog and Gerken criticize the ECJ's arrogance and completely discard its suitability as a guardian of the interests of the 'masters of the treaty'. They hold its systematic and purposeful disregard for the will of the legislator, coupled with the shaky and often messy argumentation, only goes to prove its utter disrespect for the boundaries between competence areas.⁴²

However, let us try to start the investigation of the ECJ's character anew, without the automatic assumption that its only goal is a legislative raid. Charles F. Sabel and Oliver Gerstenberg offer a more realistic rendering of the judicial function of the ECJ, inspired by the *Solange* jurisprudence and what Rawls identifies as an 'overlapping consensus'.⁴³ Once again it seems it is a matter of trust between the co-operating actors to first recognise in each other the same set of legal values and then to assign to their partner the guardianship over these. Only then would they feel comfortable to expand the scope of these essentials as they see fit. This perception of the EU constitutional order then evolves into a deliberative polyarchy, whereby, in the absence of an ultimate authoritative decision-maker, disputes are resolved through a dialogue between concurrent entities, each with an appetite for competence. The deliberative element comes from the shared will to renegotiate and engage in a discourse in search for the best legal solution. This amounts to a new brand of constitutionalism beyond the state.⁴⁴ The discussion basically hints at expansion of competences being the result of consultation and negotiation, rather than a self-initiated offensive. Perhaps, on a constitutional plane, judicial activism may not be such an inexcusable breach of trust.

CONCLUSION

The ECJ and the national constitutional courts struggle to maintain the balance in a controversial friend-foe relationship. The top priority should be the preservation of the trust between them. At the end of the day, the

authority of EU law and the smooth running of the EU would be incapacitated without that life-sustaining force. Looking to the future, ridding the legal order of the suppressed tension through judicial co-operation would be an opportunity to ensure a peaceful coexistence in pursuit of common goals, greater than individual interests. It is an exercise of self-knowledge and survival.

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THE RESURGENCE OF RUSSIA AND ITS RELATIONS WITH EUROPE: A TRUE TRANSFORMATION OR A SUPERFICIAL CHANGE? Krzysztof Siczek

The first decade of the twenty-first century was a period of change for Russia. The crisis of the 1990s was/were overcome and its international posture has improved. However, the scope and the stability of the shift are debatable and there is no agreement in the literature over its meaning for European security. On the one hand, it is argued that Russia has become the energy superpower¹ successfully pursuing an independent foreign policy. Dmitri Trenin² has gone so far as to state that Russia has left the West politically. The adherents to this line of reasoning point to the macroeconomic revolution³ of Vladimir Putin's first presidential term. They reject the idea of "petro-state"⁴, stating that the Russian economy is not dependent on the revenues from the export of energy resources. Also, they state that structural problems such as the demographic crisis are manageable.⁵ On the other hand, it is suggested that Russia's partial recuperation has a frail foundation, based on the world market price of oil and gas,⁶ and it can easily be reversed. It is underlined that the new-found wealth is being consumed by the corruption of the ruling elite and that the structural problems, such as an under-developed infrastructure, are being neglected.⁷ In the foreign realm, Russian power is questioned, as the lack of market diversification makes it EU-dependent.⁸ Also, relations between the two - no longer a 'strategic partnership'⁹ - are characterized as a mutually interdependent 'partnership in modernization'.¹⁰

The insights these and other approaches provide in the study of the Russian resurgence will be examined. Firstly, the analysis will focus on domestic developments. The state of the economy, political stability, corruption and the importance of energy resources will be scrutinised. Secondly, the impact on its relationship with Europe will be investigated. For the purpose of this analysis the European Union has been chosen to represent Europe due to its crucial importance on the continent

and the increasingly blurred distinction between itself and Europe. The EU will be analysed as an individual political entity. The examination will concentrate on the issues of human rights and energy security in mutual EU – Russia relations. By way of these arguments it will be maintained that, both in terms of the resurgence of Russia and its impact on relations with Europe, substantial transformations took place, but nonetheless, these processes have not, so far, altered their underlying characteristics. In the domestic sphere, Russia overcame the crises of the 1990s however the "resurgence" is reversible and internally contradictory. Simultaneously, relations between the EU and Russia have been influenced – the latter's relative power has been strengthened, though this has not diminished the importance of either side - illustrated by the fact that their mutual interdependencies continue.

ECONOMIC IMPROVEMENT AND POLITICAL STABILITY

The change of paramount importance in Russia is its improved economic situation. Statistics, whether those prepared by the World Bank, IMF, or the Federal State Statistics Service, all lead to the same conclusions – since 1999 Russia has undergone a 'virtual macroeconomic revolution'.¹¹ The Russian GDP increase rate for 1999, 2000, 2001 and 2002 stood at an impressive 6.4, 10, 5, and 4.3 per cent respectively.¹² In spite of the economic crisis Russia managed to recover high growth rates, with real GDP improving by 4 per cent in 2010 and with predictions of a growth of 4.3 per cent in 2011 and 4.5 per cent in 2012.¹³ Moreover, in 2006 Russian foreign currency reserves reached \$450 billion and were the third-largest in the world.¹⁴ Even more impressive, considering loan-dependency on the West in the 1990s, is the fact that Russia has lowered its debt from 100 per cent of GDP in 1999 to 4 per cent.¹⁵ The above-mentioned

data demonstrates how far-reaching and thorough the economic recovery has been. Russia has clearly rebuilt itself, economically speaking, after the crises of the 1990s.

The second indication of the “resurgence” is political stability. Having been elected president in 1999, Putin quickly won over the hearts of the Russians and has remained the most popular politician since. In a 2011 nationwide survey, Putin received an approval rating of 69 per cent, the lowest since mid-2005.¹⁶ His popularity has not been weakened by the most severe economic problems since the 1930s, or by handing over the presidential post to Dmitri Medvedev.¹⁷ This means that his position has consolidated and is immune to even severe short-term problems. The basis for the stability of support, atypical for a Russia of the 1990s, is the prosperity the Kremlin provides for the Russian population.¹⁸ As real disposable income between 2000 and 2002 rose each year by 8-9 per cent,¹⁹ the general population associates the increase in its well-being with Putin’s presidency. There is a clear “cause and effect” relationship between economic recovery and political stabilization.

Since 1999 Putin has worked to reinforce cohesion within Russia. The subordination of the Duma and media and civil dissent restrictions, amongst other examples,²⁰ led to a situation where ‘all political institutions outside the Kremlin’s centralized authority are weak.’²¹ The handling of the “Yukos affair” demonstrated how the new balance was drafted. The rationale for Khodorkovsky’s imprisonment was political, not economic, as it followed his decision to finance the opposition. The Kremlin interpreted it as a direct challenge.²² The response was robust; he was stripped of his company and given a choice - exile or jail.²³ The option of exile illustrates how the Kremlin’s motivation was not to recover the supposedly stolen roubles, but to paralyse any opposition by denying it financial means. By excluding from politics a man who once provided 2 per cent of world oil, and taking control of the most essential sector of the economy, Putin neutralized the most vital source of opposition under Yeltsin, the oligarchs, and ensured political cohesion. Therefore, since 2000 Russia has achieved a political stability and cohesion, the absence of which was a permanent feature of the previous period.

STRUCTURAL PROBLEMS AND ENERGY DEPENDENCE

However, the situation in many respects either has not improved or has deteriorated. The demographic crisis and military disintegration are two of several vivid examples.²⁴ The previously mentioned “Yukos affair” is also critical in another way. The tax evasion and fraud convictions of its CEO and one of major shareholders, Platon Lebedev, served to validate a culture of corruption

and legal nihilism,²⁵ estimated to cost 2.9 per cent of GDP annually.²⁶ This is not to say that Yukos did not evade regulations or take advantage of tax allowances. A table²⁷ prepared by an analyst demonstrated that the behaviour of the main energy companies was the same – with LUKoil, Sibneft and Yukos all failing to abide by the official 35 per cent and 24 per cent tax rates. Nevertheless, since only Yukos has been penalized, the authorities asserted that the other tax fraud and corruption cases would be acceptable as long as the perpetrators are loyal to the Kremlin. It is worth mentioning that Sibneft was administered by Igor Sechin, a close political ally of Putin.²⁸ Considering this, it is hardly surprising that after ten years of resurgence Russia still finds itself amongst the twenty-five most corrupt world states.²⁹ The achievements brought by the resurgence, the political stability and cohesion, have in themselves contributed to increasing corruption.

Moreover, the renationalisation of the energy sector, initiated by Yukos’ takeover, undermined its economic efficiency, questioning the future production capacity. Although undertaken, as explained by Putin,³⁰ for the furthering of Russian competitiveness, the creation of giant state-owned companies, Gazprom and Rosneft, have had counter-productive effects. The long-term investments have been replaced by short-term interest in immediate profit, especially with Gazprom avoiding developing the new large production fields.³¹ Increased state control and restricted access for foreign investors hindered the possibility of advancing projects which require expertise and managerial skills.³² With Yuri Trutnev, Minister of Natural Resources, publicly underlining the need for investment³³ one can understand the seriousness of the situation when the processes of a “resurgence” are threatening its foundation – energy resources exports. The difficulty is exacerbated by domestic demand growth, estimated at 150 per cent of available production by 2030.³⁴

Furthermore, the well-being of Russia continues to depend on revenues from gas and oil exports.³⁵ The avalanche of money gained following a change in the world carbohydrates market had a positive effect on the whole economy. Non-energy related sectors started to assume a higher profile within the Russian economy,³⁶ however, as the 2008 crisis demonstrated, the process is not complete. When the oil prices fell from \$147 in July to below \$50 in November, the 2009 Russian real GDP contracted by 7.9 per cent.³⁷ Also, Russia had to spend one-third of its impressive foreign currency reserves³⁸ to compensate for the renewed budget deficit. It is estimated³⁹ that should the price of oil fall by over 50 per cent and then stay at that level, reserves would be depleted which in turn would cause forced tax increases. Therefore, as world market prices are out of the Kremlin’s

control,⁴⁰ the very foundation of change is extremely fragile – making the achievements, economic recovery and political stabilization, prone to reversal.

STRONGER RUSSIA

The resurgence has influenced the relations with the EU in two ways. Firstly, in recent years, internal Russian issues (such as the energy sector ring-fencing or artificially low domestic energy prices⁴¹) were effectively removed⁴² from the agenda in its negotiations with the EU. It needs to be noted that the majority of EU member states abandoned their attempts at influencing Russia in criticizing human rights violations⁴³ within its borders. As essentially no political opposition exists in Russia - the majority of the population being indifferent or Putin-friendly - and as the Kremlin is financially independent, (all results of the “resurgence”) the EU lacks leverage or a foothold inside Russia which it can use to advance its policies. Hence, although from time to time one of the European Parliament committees would prepare a report – for example on the situation in Chechnya -⁴⁴ during the Russia-EU summits the issue of human rights is omitted. This is further underscored by the confidence of the Kremlin and its complete lack of interest in its image abroad, which was even described as being lower than that of the USSR.⁴⁵ With all the possible sources of opposition in check, the Kremlin is scarcely concerned with possible consequences of disregarding the EU human rights sensitivity as no one is able to exploit it domestically by criticizing the Kremlin.

Secondly, the “resurgence” provided authorities with additional diplomatic tools, the most valuable being energy resources. Robert Larsson⁴⁶ found that most of the fifty-five energy-cuts or threats thereof occurred when Russia was trying to advance its foreign policy objectives. When the European Commission was actively supporting⁴⁷ the Nabucco project, Russia was not only lobbying for the South Stream located in the same area, but also trying to reach bilateral agreements⁴⁸ with key Nabucco countries that could undermine its viability. A natural gas deal signed with Bulgaria in January 2008 was described by director of the Bulgarian office of the European Council on Foreign Relations, as ‘really undermin[ing] Europe’s attempts to diversify its gas sources.’⁴⁹ When trying to justify contracts of this kind Bulgaria was referring to the lack of common European energy policy,⁵⁰ however, by reaching individual agreements with Russia it itself was preventing the attempts to develop such an approach from having any positive effects. Therefore, using its new diplomatic instruments, Russia has so far been able to hamper EU policy consolidation, channelling its relations to the level of bilateral negotiations with Russia-friendly capitals.

The effectiveness of Kremlin policy is underlined by this and other examples,⁵¹ such as the discriminatory rail tariffs against Estonia, Latvia, Lithuania and Finland.⁵² To summarize, as Putin immunized Russia from EU influence internally and was able to apply a “divide and conquer” strategy using energy, he has strengthened the relative political position of Russia compared with that of the EU.

INTERDEPENDENCIES

However, this “cause and effect” relationship is not straightforward, nor it is context-free. The overall discourse of EU–Russia relations switched to that of EU dependence on Russian energy. However, in absolute terms the former still surpasses⁵³ the latter in almost all indicators of soft and hard power. For example, the EU’s economy is about fifteen times bigger and even with the oil wealth taken into account, Russia’s GDP is only as big as that of Belgium and the Netherlands combined.⁵⁴ The increased importance of energy in the relations between the two works in Russia’s favour, as does the policy cohesion. Nonetheless, the other part of the explanation lies in the enlargement and internal divisions of the EU itself. The 2004 and 2007 enlargements increased the internal EU diversity of interests,⁵⁵ which consequently hinder negotiations on unified policy. With an almost equal division⁵⁶ (4 to 6) in the approach of new member states towards Russia, divided between friendly and critical, together with the list⁵⁷ of countries - both new and old members - which had bilateral disputes with the Kremlin suggests that the divisions in the EU are deep-rooted. Russia has managed to expose them and capitalized on them, however, it was able to do so only because they existed before and had been deepened by the enlargement.

Furthermore, while the preceding years had brought about an increased EU dependence on energy imports from Russia, we simultaneously witnessed the augmentation of Moscow’s dependence on the EU market. Between 2001 and 2008 trade between the two partners tripled, the EU being responsible for 55 per cent of Russian exports and 45 per cent of its imports in 2008 and Russia claiming 11 per cent of the EU imports and 8 per cent of its exports.⁵⁸ It is only right to agree with Sergei Lavrov saying ‘the European Union is our most important economic and political partner.’⁵⁹ Russian dependence on the European market is even stronger in the energy sector as the transaction costs of market diversification are high.⁶⁰ About 80 per cent of Moscow’s energy exports go to the EU.⁶¹ Bearing in mind the extreme importance of these revenues for the Russian economy, the Kremlin cannot give up its current partners. It is possible that in the future the development

of relations with China could provide Russia with an alternative, however, the pipelines between the two are far from being operational and the fluctuations of world market prices threaten the profitability of train or sea transports.⁶² With the resurgence contributing to the withholding of infrastructure investments in this sector, interdependence has been further exacerbated. Therefore, contrary to certain rhetoric⁶³ and in line with common strategic interests,⁶⁴ relations with the EU remain high on the Russian agenda.

CONCLUSION

In this analysis the developments of last decade of Russian history have been analysed. Firstly, making use of statistical data it was demonstrated that the Russian economy recovered after the 1998 crisis. With the Kremlin able to provide prosperity for the Russian population, President Putin managed to gain extraordinary popular support. This allowed him to increase the internal cohesion by crushing political opposition and the takeovers of crucial companies. Secondly, using the examples of corruption and energy sector renationalisation, it was argued that the processes of “resurgence” not only failed to resolve some of Russia’s pressing problems, but they undermined what it was built on – the revenues from energy exports. Statistics from 2008 and 2009 confirmed that Russia still depends on world energy prices which are beyond its control, making, therefore, the “resurgence” fragile and possibly reversible. Thirdly, the examples of Russia successfully eliminating the EU’s influence on its internal processes and its ability to achieve foreign policy objectives using energy power demonstrated how the “resurgence” has influenced EU–Russia relations, strengthening the position of the latter. Lastly, the role of internal EU divisions and trade statistics were analysed arguing that Russia’s position has been strengthened not only as a result of its resurgence but also that the interdependencies between the two continue to make them vital partners. In this article it has been argued that the changes in the Russian domestic situation and in its relations with the EU, although important, have not been fundamental. Russia recovered from the crisis of the 1990s, yet it is not a superpower and its situation is prone to reversal. Concurrently, Russia successfully altered in its favour the balance between itself and the EU. Nonetheless, the two remain indispensable to each other as partners. The study focused on the period of last 10 years, nevertheless, the process is ongoing and new development may invalidate present conclusions. Therefore, continuous analysis is required in order to inform the policy-makers on the possible consequences for European security.

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