

EUROPEAN SECURITY AND STABILITY
IN A COMPLEX GLOBAL ORDER
– THE CASE OF NEIGHBOURHOOD POLICY

EUROPEAN SECURITY AND STABILITY IN A COMPLEX GLOBAL ORDER – THE CASE OF NEIGHBOURHOOD POLICY

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Contents

| | |
|---|-----------|
| Introduction | 7 |
| Part I: The Concept of European Integration and the Role of the EU in the Global Order | 13 |
| Willem Molle <i>European Integration; Past Performance, Present Challenges, Future Action ...</i> | 15 |
| Rafał Riedel <i>Differentiated Integration and the European Union's Neighbourhood</i> | 30 |
| Ewa Latoszek, Agnieszka Kłos <i>The European Union as a Global Partner, with Particular Focus on its Actions for the Least Developed Countries</i> | 38 |
| Aleksandra Szczerba-Zawada <i>The European Union – from the Platform for Economic Cooperation to the System of Human Rights Protection</i> | 50 |
| Part II: The European Neighbourhood Policy: A Need for Evolution or Revolution? | 65 |
| Magdalena Proczek, Ewa Osuch-Rak, Joanna Surafa <i>The European Neighbourhood Instrument as a New Tool for the Implementation of the European Neighbourhood Policy</i> | 67 |
| Tomasz Stępniewski <i>European Union, Ukraine, Russia and the Minsk Ceasefire Negotiations</i> | 83 |
| Wanda Dugiel <i>European Union Neighbourhood Policy and Relations with Russia</i> | 98 |
| Anatoliiy Kruglashov <i>Turbulent Neighbourhood: Ukraine and the EU Relations under Ongoing Pressure</i> | 116 |
| Gaga Gabrichidze <i>Monitoring and Dispute Settlement Mechanisms in the Association Agreements with Georgia, Moldova and Ukraine</i> | 129 |

| | |
|---|-----|
| Part III: EU Trade & Investment Policy: Engine for Growth and Job Creation? | |
| The Economic Effects of New FTAs Generation – How to Assess Their Effects? | 141 |
| Aleksandra Borowicz | |
| <i>Ukraine and the European Union. Trade Benefits Offered by Deeper Integration</i> | 143 |
| Nico Groenendijk | |
| <i>Implementation of DC-FTAs in the EU Eastern Partnership: the Dynamics of Costs and Benefits of Association</i> | 153 |
| Lenka Fojtikova | |
| <i>The Connectedness of the European Union and China through the Multilateral Trade System</i> | 166 |
| Małgorzata Dziembała | |
| <i>Trade and Investment Cooperation between the European Union and Mercosur and Perspectives for its Development</i> | 178 |
| Anna Masłoń-Oracz, Michał Jasiński | |
| <i>EAC – EU Economic Partnership Agreement (EPA) – the Domestic Market Recapturing Strategy – the Rwandese Approach</i> | 192 |
| Andrea Éltető, Katalin Antalóczy | |
| <i>National Trade and FDI Policies in the Era of Global Value Chains – the Example of the Visegrad Countries</i> | 202 |
| Part IV: The EU External Policy at a Crossroads Facing New Challenges and Threats from the East and Mediterranean Region | 217 |
| Olga Barburska | |
| <i>EU External Policy at a Crossroads: Facing New Challenges from the East</i> | 219 |
| Constantinos Koliopoulos | |
| <i>From Imperial Backwater to Strategic Minefield: the Mediterranean and the EU</i> | 235 |
| Artur Adamczyk | |
| <i>Quo Vadis Turkey – Is this the End of European Direction in Turkey's Foreign Policy?</i> | 250 |

Introduction

The variety of presently occurring economic and political processes and phenomena contribute to continuous changes in world economy, affecting its subjective structure and the changes in the relations and co-dependencies between its subjects. Globalisation is undoubtedly one of such processes, as it affects the positions of countries and international organisations within global economy. It is a multidimensional process, connected to the intensification of relations both on the economic grounds, resulting from accelerated flow of goods and services, technologies, capital, workforce, and on the political grounds. The dynamic development of globalisation has been happening under the influence of ICT technologies, facilitating the reduction of the costs of production factors movement and increasing their mobility. The distribution of benefits resultant from this process is disproportional, as it strengthens the position of some countries and regions, at the same time weakening the importance of economic and political centres functioning to date as its leaders. A growing importance of new centres can be observed on the global scene – Asian countries, including China, are coming into strength and affecting the positions of the economic powers to date, such as the European Union and the USA. A complicated pattern of economic and political relations is being formed, and it is necessary to ensure that proper balance is kept. A new global order is being introduced, resultant from these particular relations, the existing connections and interferences occurring among its actors.

Apart from that, the process of globalisation facilitates the intensification of the economic integration processes. The international groups aiming at strengthening their positions in the global economy, as well as their spheres of influence, are implementing new inter-state agreements of economic and political character, thus affecting the global structure of power and co-dependencies, together with the changes occurring within these structures. The European Union must continually take up actions to provide stability and European security in the increasingly more complicated global order. Ensuring stability in the neighbouring regions through the European Neighbourhood Policy is of particular importance. This multithreaded issue was undertaken in the research carried out by Centre of Excellence

at Warsaw School of Economics – CEWSE on European Union's Security and Stability in a new Economic, Social & Geopolitical Settlement and its partners, scientists representing a wide range of scientific centres, including international ones. The research focuses on challenges regarding: uniting or divisive history, transformations of contemporary European countries, European culture, national cultures, innovativeness and creativity of economy, science, migration crisis, refugee crisis, the relations between the EU and the Russian Federation, the crisis in Ukraine, energy security, public security, sustainable growth, social solidarity, demographic changes, Brexit, institutional crisis in the EU, the future of the EU, and more.

As a significant actor in global economic and political relations, the EU holds an important economic position, intensifying the pre-existing relations with third countries, organisations and groupings. It is very active in external contacts, negotiating and forming transatlantic agreements, with Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada as an example. The Transatlantic Trade and Investment Partnership (TTIP), whose intended aim was to create a free trade zone between the biggest players – the EU and the USA – previously under negotiations, has been suspended for the time being. Nevertheless, talks are being held as regards deepening the relations between the EU and MERCOSUR, and creating a free trade zone. The new transatlantic agreements, signed or undergoing negotiations, surpass the traditionally accentuated trade relations, covering also the issues of investment, intellectual property rights, legal regulations and standards, as well as regulating other spheres of socio-economic life, which in turn causes the process of negotiating and finalising such agreements is prolonged and complicated. The EU also intensifies its relations with the dynamically developing African continent, hoping to mark its presence there next to other, for example Chinese, investors.

Another dimension of external economic and political relations are the developing alliances with Asian countries, which constitute another strategic aim of the EU. The EU undergoes transformations from its very beginning, due to both the processes of expanding and deepening. The latest expansion of the EU took place on 1st July 2013, when Croatia became a new Member State. At the same time, the process of deepening mutual relations was advancing. Thus, the structure of the EU is very dynamic. Currently, the EU is facing numerous challenges of economic, political and social character. However the common values which accompanied the establishment of this organisation and which constitute the foundation of its unity should

be supported through realizing agreed-upon operations. Some countries constitute the Eurozone, while other remain outside this hub of enhanced economic co-operation. This creates the so-called “multi-speed” Europe, with diversified economic dimensions, and – as highlighted in the *White Paper on the future of Europe*¹ – the scenarios for further EU development are also diverse. The EU also shapes its external relations in the international arena, economic and political relations with non-member countries on the European continent. Actions are being taken to provide protection and security in the area, which experiences numerous conflicts and crises. After the accession of 10 new countries to the European Union, it was necessary to develop relevant forms of co-operation and relations with the organisation’s neighbouring countries. One of the dimensions of implemented policy is the European Neighbourhood Policy, as the neighbouring countries, as well as those maintaining deepened relations with the EU, have been offered the opportunity to develop co-operation and mutual connections within the areas of politics, security, economy and culture. In its original formula, it put forward a list of priorities to be met by the countries covered by the Policy and which have to be included in the Action Plans for numerous key areas, including political dialogue and reforms, trade, justice system, energy, transport, information society. The neighbouring countries deepen their relations with the EU while respecting mutual values. The financial support for this policy is provided by the *European Neighbourhood Instrument*, the introduction of which is supposed to create the framework conditions for deepening further regional co-operation, at the same time enhancing stability and security in the region². The present publication, as a product of the research carried out, approaches the subject of the EU’s role in providing security and stability in the global order, with particular focus on the Neighbourhood Policy. The hereby publication consists of four thematically integral and interconnected parts.

Part 1, entitled “*The Concept of European Integration and the Role of the EU in the Global Order*”, consists of papers concentrating on the presentation of the effects of the European integration to date and the challenges which the EU is currently facing, the issues related to the system for protection of human rights. The diversification of the integration process is highlighted.

¹ *White Paper on the future of Europe. Reflections and scenarios for the EU27 by 2025*, European Commission COM (2017)2025 of 1 March 2017.

² European Neighbourhood Policy. Strategy Paper, Communication from the Commission, Brussels, 12.5.20014, COM (2004) 373 final.

The importance of the EU as a global partner is also emphasized, indicating the activities dedicated to the least-developed countries.

Part 2, *“The European Neighbourhood Policy: A Need for Evolution or Revolution?”* concentrates around the issues regarding diverse dimensions of integration. It discusses the questions related to the mechanisms of monitoring and solving disputes within the framework of association agreements with Georgia, Moldova and Ukraine. Attention has been paid to threats and opportunities for Europe due to new eastern neighbourhood. Institutional aspects of the transformation of the eastern countries have also been indicated, as well as its financial aspects. This brings about new quality and opportunities in the context of EU cohesion policy, where new subjects have a chance to be sanctioned and obtain certain liberties.

The third part, *“EU Trade & Investment Policy: Engine for Growth and Job Creation?; The Economic Effects of New FTAs Generation – How to Assess Their Effects?”*, concerns the non-trade effects of DC-FTAs. The connections between the EU and China within the framework of multilateral WTO system have been indicated. Trade relations with MERCOSUR, integration processes in Africa have been discussed, with emphasis on the *EAC – EU Economic Partnership Agreement*. The trade and investment policies in the countries of the Visegrad Group have also been discussed. Nowadays, trade relations are growing in importance as compared to the past. Due to lasting, long-term co-operation, a tendency to tighten relations can be observed.

The last, fourth part *“The EU External Policy at a Crossroads Facing New Challenges and Threats from the East and Mediterranean Region”* concentrates on the issues regarding external relations between the EU and the countries of the Mediterranean and Eastern regions. Issues related to the foreign policy of Turkey in the context of its relations with the EU are also raised in this part.

The structure adopted in this publication introduces the reader to a review of the newest issues regarding mostly the external challenges facing the EU and the actions taken in order to overcome them and provide stability. Papers included in the publication reflect their authors' own opinions and it is the authors who take full responsibility for their texts. We would like to express our gratitude to all the people and institutions who, through their expertise and financial support, have contributed to the commencement of the present publication. Hereby, we would like to express our most sincere gratitude to the Jean Monnet Chair of European Union, SGH Warsaw School of Economics, University of Warsaw (Centre for Europe), University of Gdańsk (Research Centre on European Integration),

University of Economics in Katowice, New Vision University, Tbilisi, Faculty of Administration and National Security of the Jacob of Paradies University in Gorzów Wielkopolski, College of Economics and Social Sciences, Warsaw University of Technology, Konrad Adenauer Stiftung, the worldwide networks of the European Community Studies Association (ECSA-World), including Polish European Community Studies Association (PECSA), ECSA Moldova, ECSA Ukraine, ECSA Georgia.

The present publication presents the outcomes of research and is supposed to enable the reader to identify the role of the EU in providing stability and security and shaping effective co-operation not only with the neighbouring countries, on the political and economic platform. It is also supposed to inspire further scientific research.

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Part I

The Concept of European Integration and the Role of the EU in the Global Order

European Integration; Past Performance, Present Challenges, Future Action

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Abstract

In the past 60 years the EU has developed from a project for a customs union into a very highly integrated economic and political union. It has brought lasting peace and unprecedented prosperity to its citizens. Although popular press depicts it as an inefficient organisation, it has a very good record in terms of quality governance. Unfortunately, the public has not been sufficiently accustomed to its development, so there is a lack of trust in the organisation. At the moment the EU is being challenged on many points: migration, security, stability, equity, etc. It can face these challenges in different ways. In this paper we warn against a number of populist approaches that put in danger not only the 'acquis', but even the very values on which the EU has been founded. We describe a number of alternative approaches that can lead to success, on the condition that Member States endow the EU with adequate instruments.

Key words: economic integration, European Union, governance systems, public attitudes, populism, media bias, globalisation, inequality, security, future scenarios

Introduction

This year we celebrate two main European anniversaries. Sixty years ago the Treaty of Rome was signed by the original six founder countries of the EU. The treaty set up a customs union. It laid the foundations for a single EU market not only for goods, but also for services, capital and labour. It provided for common policies, in particular for agriculture and transport. Twenty-five years ago the Treaty of Maastricht was signed. It initialled a process of monetary integration. It codified the European citizenship. It changed the role of the European Parliament from advisor to co-legislator. And last but not least, it opened the EU up for enlargement. In the past

twenty-five years, the treaties have been adapted at several occasions. As a consequence the form, content of the EU have changed beyond recognition. So has the external context.

The objective of this paper is threefold. First we will take stock of its performance. We have thereby to consider that the EU has been developing as an experiment; it could not follow an engineering blueprint. Our second objective is to analyse the major challenges that the EU is confronted with. Indeed, there are forces at work that risk to erode the very foundations on which the EU is vested. Thirdly, we will search for new adequate solutions to the most pressing problems and will identify some major areas where common action is needed.

The structure of this paper is simple; it follows these three objectives.

In the section on the past performance we start by assessing the large progress made in economic integration. Next, we check the way in which the socio-economic governance system of the EU has developed. Thirdly, we assess the ways the European public has been involved in the whole EU construction.

In the section on the present, we make a short inventory of the most urgent challenges the EU is confronted with. We have selected three of the most important ones to analyse somewhat further in order to present adequate remedies to them.

In the section devoted to the future, we discuss different options for action. First we provide arguments to discard populist proposals to unwind integration. Then we explore actions that are needed to build a Europe that not only provides peace and wealth, but also safety, solidarity and equality.

Past

The integration of economies

The EU has realised a very high degree of economic integration among its member countries. The basic choices have been inspired by different strands of thinking (Molle 2006). Some of the academic approaches coincided with the political views of the founding fathers. This was notably the case for functionalism. It was expressed in political terms as follows by Jean Monnet:

‘Europe will not be made in one go; nor in a comprehensive construction, she will be made through concrete realisations that create first a factual solidarity.’

The theory of functionalism has been elaborated for the issues of deepening and of widening.

Deepening. The most obvious advantages of integration come from market integration. For markets to function well a set of common policies (e.g. for competition and external trade) is needed. Market integration has brought benefits to every member country. It has also brought cost in terms of unemployment and scrapping of obsolete capital. However, these could be largely mitigated by aid from the EU Regional and Social Funds.

Integrated markets also need macroeconomic and monetary stability. The EU has drawn the consequences of this fact by setting up an EMU with the euro as centrepiece. The latter is a success; a large majority of people in the countries that have adopted the new currency want to maintain it. However, there are problems with the functioning of the Eurozone. Certain member countries have difficulty to come up to the demands that the EMU puts on their socio-economic policies and on their governance systems. In one case (Greece) this has even brought a Member State down to the level of an 'economic protectorate'. The EU has failed to set up a mechanism to compensate the losers in the game. No need to say that this erodes the support for the EU in both the countries that fell victims and in the countries that do not want to come to the rescue of the former.

Widening. Due to functional links between countries, the emergence of a trade block will change the relative position of non-participants. The wish to share in the benefits of integration will lead to pressure for joining successful integration schemes. For some, obtaining these benefits has come at a considerable cost. This was notably the case for the CEECs that have gone through a painful process of adaptation (Ther 2016). High growth has come at the price of increased inequality between those who have been able to participate in the modern economy and those who could not. Integration is not only about widening, the opposite 'compressing' can also occur when the perceived costs are higher than the perceived benefits. The most obvious case is the Brexit.

The integration of the socio-economic governance system¹

Popular media transmit a simple image of the EU governance system²; it is pictured as horribly complex, ill-inspired and disastrously ineffective. They

¹ This section is based on Molle (2011).

² We understand governance as the exercise of political and administrative authority (including the allocation of institutional and financial resources) to implement effectively sound policies so as to realize stated objectives.

suggest that regulations prescribe consumer goods with ridiculous precision. They report that the EU budget is subject to mismanagement and fraud. They depict the EU coordination system as a pastime for an ever-expanding number of too highly paid bureaucrats. This picture is unlikely to be true, as the passing into each new stage in the development of the elaborate European governance system has been the subject of fierce debates, in which due regard has been given to economic and political arguments and to putting into practice three basic principles³:

Subsidiarity; Is there an unwarranted interference of the EU in national matters? We have checked in how far the arguments for centralisation of competences still hold for the different policies that the EU presently pursues. We have found that there are actually very few fields where the involvement of the EU is not justified by the principle of subsidiarity. This conclusion is corroborated by the fact that governments that have tried to define the things they want to claw back from the EU have found that very few subjects were unduly centralised on the EU level.

Proportionality; Is the EU too intrusive in its use of instruments? We have checked the adequacy of the instrument mix for each of the main policy areas of the EU. The evidence obtained shows that by and large the EU has adopted *adequate methods and instruments* to attack each of these problems. Of course, looking in more detail at the specific situations of each policy one sees that the choice of the (combination of) governance instruments has not only been the result of such a careful normative approach. They also bear the marks of political trade-offs between the interests of private and public sector actors, both on the national and EU level.

Effectiveness; Is the EU action a waste of time and resources? We have checked the degree to which the EU has actually been effective not by the degree of attainment of such far-fetched objectives as full employment, but by checking the realisation of concrete objectives. The evidence shows that the EU has (by and large) adopted effective methods to attack each of the problems for which it had been given competence. If the EU has failed to reach the set targets, this is largely due to the failure of its Member States to empower it with sufficiently strong instruments. A case in point is the protection of the external frontiers against illegal immigration.

This careful assessment of the governance methods for the main EU policy shows that the architecture of the EU governance system respects by

³ The literature distinguishes three other principles; consistency, participation and accountability. We will disregard them here as their inclusion in the analysis does not alter the conclusions.

and large the principles set by the founding fathers and the criteria of good governance developed from various strands of the academic literature. The negative popular image is erroneous.

The integration of the public⁴

The promoters of Europe have at a very early stage understood that the European peoples had to support the whole construction. So, they have sought for ways and means to directly involve the public in European affairs. They have used ideas from three lines of thinking.

The '*German*' strategy⁵ rests on a cultural or historical identity. Elements are a common language, shared values and similar customs. For Europe this strategy is not easy to apply, as the linguistic element is lacking and even the religious heritage is problematic. But symbols are an option and in 1989 the European flag and the European anthem were formally adopted. Shared values were formulated in the Copenhagen criteria for membership in 1993: democracy, rule of law, human rights. European citizenship has been visualised in a European passport. For a subset of Member States, a single currency has been adopted.

The '*Roman*' strategy bases its appeal on the benefits that people derive from a functioning political system. The EU has realised the '*Pax Europeana*'; 70 years of peaceful living together. European citizens can move freely. The European law protects consumers, the environment, etc. Finally, the EU has created a system of solidarity that provides financial support to disadvantaged regions and social groups (Molle 2007, 2015).

Finally, the '*Greek*' strategy rests on a periodic appraisal by the population of representatives who take decisions on its behalf. Right from the start of the EU, parliamentary democracy has been transferred to the European level. Since then the legislative and budgetary powers of the European Parliament have been increased. Its legitimacy has been boosted in 1979 by the introduction of a system of direct elections.

Yet, the three approaches have not resulted in a European public. Even recent measures concerning modern technology (such as a single low price for telephone communication within the EU) have had only a little impact on the appreciation by the general public.

⁴ This section is based on van Middelaar (2013) pages 211–309.

⁵ Mind that this strategy has not only been followed by Germans but also by Italians and to varying degrees by countries breaking away from the Habsburg empire.

The tension between reality and perception

The conclusion of the past section is that the consistent joint effort of academics, businessmen and politicians has resulted in a construction that is essential for peace and wealth and that does function relatively well.

However, the complexity of the institutional structure, the technical character of most problems and the bewildering variety of policy mixes makes the structure difficult to explain to the general public. In the past this did not seem to hinder much the popular support for the EU. But in recent years it has.

There is a striking parallel between the attitude of the general public towards Europe on the one hand and the subjects treated by the most popular pop-songs on the other hand. We illustrate this for three moments in time in the next Box.

Pop-music as an indicator for popular support for Europe

Around the start of the EU one of the most popular songs was a ballad by Pete Seegers 'Where have all the flowers gone'. It illustrated the large support for the peace objective of the European construction.

A generation later, the fall of the Berlin wall opened the perspective of the integration of the countries of Central and Eastern Europe. This got its expression at the Euro Song festival in Zagreb in 1990. Simone from Austria arrived at the 8th place with a song 'Keine Mauern Mehr' (No more walls). The winner was Toto Cotugno from Italy with: 'Insieme 1992' (Together for 1992). He sang (translated in English): 'You and I have the same dream; Together unite, unite Europe.'

Now things are different. In the recent past the word that occurred most frequently in the title of songs has not been peace, not even love but the quite ominous: 'Hold-on'.⁶

For some time the popular press has tended to disregard the essentials of the EU and to concentrate on highlighting incidents, cases of fraud, etc. This negative image is also stimulated by national politicians who blame problems on Europe and claim successes for themselves. So, large segments of the public have the impression that the EU has developed from an

⁶ See website: Billboard.com/articles/columns/chart-beat/1549901/whats-the-most-common-billboard-hot-100-song-title

instrument for wealth and peace into an organisation that impedes on the rightful wishes of the member nations to self-determination.

Yet the majority of the public has not turned its back on the EU, as an assessment of decades of opinion polls show (Debomy 2016). In the EU 27 citizens have maintained a positive judgement as to the membership of their country in the EU; in some countries this sentiment of belonging has even increased. Digging further, it appears that the problem is not so much a fracture between the EU and its citizens, but an increase in the fractures between the peoples of the EU and the segments of society in each member country.

Present

From multiple crises to multiple challenges

Europe has progressed from crisis to crisis. The present situation of the EU still bears the scars of the main two recent crises. The EMU crisis has led to a paralysis of the Eurozone and the split between the North and South of Europe. The immigration crisis has destabilised societal balance and has led to a split between the frontier (Southern) member countries and notably the Eastern countries. These crises have brought to light the shortcomings of both the Maastricht model of monetary integration and the Schengen/Dublin system for migration of people, both dating back to the 1990s. The first lacked a system for response to crises and stabilisation; the second – a safety and security setup in border management. On both points much has been done to repair the shortcomings, but work is still in progress.

The solution of these problems has been hindered by misunderstandings in the public opinion, fed by the popular media. They have had (as often before) an alarmist reaction: suggesting that the crisis would bring the whole EU construction down. In long-established states this mechanism does not operate; crises are never seen by the media as bringing the very existence of the country into question. So, let us leave aside this idea of existential crises and look at the problems as a set of concrete challenges. In this we are in line with the Rome declaration signed by all the main representatives of the EU institutions and EU Member States:

'The European Union is facing unprecedented challenges, both global and domestic: regional conflicts, terrorism, growing migratory pressures, protectionism and social and economic inequalities.'

The EU is determined to address the challenges. In the coming sections we will, for some of the main challenges identified by the Rome declaration, see what the nature of the challenges is in order to better define the EU action necessary to face them⁷.

Immigration, Safety, Security

One of the most important concerns of the European public is the combination of uncontrolled immigration and threats to internal security (terrorism). This concern has been exacerbated by the recent immigration crisis. One needs to make a difference between internal migration of EU citizens and the influx of migrants from third countries. The former is one of the basic features of the European construction. The latter is an arena for conflicting attitudes about the need for collective action and the wish of the Member States to retain hypothetical control.

Due to environmental changes, demographic pressure, armed conflicts and faltering economic development in the countries of a wide Southern and Eastern rim of the EU, the immigration problem will amplify in the coming decades. So, the EU can no longer wait in formulating first and implementing next an adequate set of policies (Pachocka 2015, 2017). These have to range from support to economic development and political stability in the source countries, via common border procedures for refugees to controlled access to the EU of other (economic) migrants.

In this area again we see short-sighted reactions that hinder good assessment by the public of the nature of the problem and of the need for collective action. We give just one example. The perpetrator of a recent attack in Berlin travelled via the Netherlands, Belgium and France, and ended up being shot by the police in Italy. Popular media saw it as justification for abolishing the free movement of people and reintroducing systematic border controls. However, what the story really tells us is that various police forces in Europe did work well together to neutralise the attacker. So, intensified cooperation seems to be a more promising and cost-effective policy.

Social

European citizens consider unemployment and social inequalities as one of their top three concerns. They expect public authorities at all levels (local, national and European) to contribute to a high level of social protection.

⁷ The Commission in the meantime has presented a series of reflection papers on each of these subjects.

They feel that not everyone has had a fair chance to succeed and fear that the next generation will find life more difficult than the present one does. They want to avoid a social catastrophe as it has manifested itself when the worldwide crisis coincided with the internal insufficiencies of the EMU.

In the social field the EU plays a limited but important role. The leading actor in the play is the Member State. In the reflection paper on Social Europe (EC 2017b), the Commission assesses the consequences of a change in the cast. It analyses three options: 1) reduction of the role of the EU to the mere social dimension of free movement; 2) a more important role for the EU, but limited to a subset of member countries, and 3) a deeper social dimension for the EU 27 as a whole.

In the present case there do not seem to be very strong arguments for a much stronger role of the EU. There are certainly advantages to be gained from further EU involvement on many specific points, but these come also at the cost of an upheaval of very long-standing national arbitrages, for instance in social security.

Globalisation and inequality

European integration has been part of a trend towards more openness on the global level. Economists have shown that this double openness has been beneficial to all EU countries. Moreover, it has permitted the catching up of the low income countries in the world, lifting millions out of poverty. For a long period the regional and personal income distribution in most EU countries has become more equal. However, since the crisis the trend has been reversed and regional and personal income inequality has increased (Fernandez-Macias and Vacas-Soriano 2017; Molle 2007–2015).

This is a reason for concern, because there are strong forces at work that will tend to increase income inequality in the future. Piketty (2014: 571) has shown that when the rate of return on capital is greater than the rate of long-term economic growth, there will be an increasing concentration of wealth under the control of an ever smaller minority of people. Milanovic (2016) argues that the recent surge in inequality in the West is mainly due to technology, reinforced by the emergence of plutocracy. An elite has captured politics, has served itself well (through tax and deregulation policies) while neglecting the poor (deficient social and health policies) and hollowing out the middle class. This leads to social and economic instability, threatens democratic societies and puts in jeopardy the values of social justice on which they are based.

So the challenge is to harness globalisation so that it can deliver positive effects for all EU citizens. These positive effects should moreover be distributed more fairly; less inequality is indeed beneficial (OECD 2015). National governments alone cannot bring this about. As a global system is a far-off target, the EU should take its responsibility here by facilitating technology, tax and social policies that can check negative tendencies. The European Commission (2017c) has understood this challenge and has spelled out the set of actions it thinks necessary.

Future

Introduction

All over the past period of the life of the EU, new views about the future of the EU have been formulated. They have often been very controversial. As we indicated in the first section, this diversity in views has not stopped the EU from progressing. On the contrary, choices have been made between alternative proposals and compromises have been found. A good example of this is the formation of the EMU (Brunnenmeijer et al. 2016). Sometimes progress has only been possible by permitting countries that did not want to join into the new project to stay outside (multi-speed Europe).

The same situation prevails now. Again the ideas about the future are widely divergent. On the one hand voices have become loud that plead for unwinding integration. They claim that it has been impossible to make certain choices collectively (e.g. check on immigration), so that it is needed to regain individually the autonomy to act on these matters. On the other hand we find strong pleas for further integration. They recognise that to safeguard the advantages of the present state of integration additional steps have to be taken (e.g. in EMU). Moreover they recognize that in certain fields the need for common action is clear, as doing it alone does not seem feasible (frontier protection).

In the next sections we will discuss in more detail the arguments of each option.

Three 'popular' arguments for disintegration

For many people the future is a threat rather than a challenge, let alone a promise ('Utopia'). Populist politicians exploit this fear and come up with solutions that tend to take three forms:

1. *Nostalgia.* Many disillusioned people have the impression that:

'the future is transformed from the natural habitat of hopes and rightful expectations into the site of nightmares: horrors of losing your job together with its attached social standing, of having your home together with the rest of life's goods and chattels 'repossessed', of helplessly watching your children sliding down the well-being-com-prestige slope and your own laboriously learned and memorised skills stripped of whatever has been left of their market value. Perhaps the road back, to the past, won't miss the chance of turning into a trail of cleansing from the damages committed by futures, whenever they turned into a present?' (Bauman 2017, p. 6, 7).

So the past is seen as the best option: a 'Retrotopia'. It leads to pleas for a return to protectionism, to a yearning for the identity of a strong nation state, to clinging to a hypothetical national sovereignty and a refusal of European integration. But it is an illusion that these old concepts will work well under modern circumstances.

2. *Mistrust leading to Fracasso-mania.* Large segments of the European public have lost confidence in the EU as an organisation. They consider the attempts the EU makes to repair inadequacies and to face new challenges as only leading to half-baked compromises that are not in the peoples' interest. They go for simple solutions and as these turn out to be unrealistic (e.g. in terms of strict control of immigration; or getting rid of the constraint of the SGP), they opt for doing away with the whole system. This attitude has been termed 'Fracasso-mania' (Hirschmann 1981, blz 155–157). In the EU, there are political parties in many countries that are prone to such radical solutions. They range from leaving the euro zone to leaving the EU altogether (Brexit). The challenge is to explain to the public the enormous cost of such radical options and the real advantages of gradual change for the better.⁸

3. *Uneasiness with liberty leading to absolutism.* The European project is based on values. They have been translated in a formal commitment to the triad: liberal democracy, rule of law and respect for human rights. Most people value these very highly; others feel uncomfortable with large personal freedom (Fromm 1942) and the open society (Popper 1945) implies this. To resolve this discomfort they tend to put their faith in monolith and absolutist

⁸ The problem of 'Fracasso-mania' looms even larger on the national level than on the EU level. Here we see that in some countries the dominant party tends to disregard the performances of local and regional authorities, that are governed by another party. As soon as the dominant party takes over these constituencies everything must be changed even at high cost. This means that the basic fundament of plural democracy is constantly in danger.

systems (Revel 1976, 1983) or in a strong man that does away with liberal attitudes by reviving nationalist (and often racist) sentiments (Camus and Lebourg 2017; Kirchick 2017). It is the paradox of tolerance that it permits the development of forces that eventually will destroy it (Weiss 2017). We have to learn the lessons from the past to prevent our democracies slipping into tyranny (Snyder 2017).

Europe must defend and safeguard the values inherent in liberal democracy. It has to make sure that the Copenhagen criteria for accession are complemented with effective protocols for maintaining these values at all times in all member countries. They should avoid letting the internal situation in any EU country slip into Turkish conditions.

Ideas for further integration

Apart from these options for less integration we see many pleas for further integration. They are in general collective answers to each of the *major challenges* that we have illustrated in the previous section. The ideas about the way these challenges have to be faced differ a lot.⁹

However, some people have also tried to take a more general view and formulate more *encompassing perspectives* for the future development of the EU. As an example we take here three proposals coming from politicians that have had major responsibilities for European policymaking. Vedrine (2016) and Fischer (2014) propose to stop the unplanned organic growth of the EU and re-establish Europe on key aspects such as defence, taxation and social security. Fisher suggests to stop thinking of European integration according to the model of the USA and take multi-language confederate Switzerland as a model. This is not at all the view of Verhofstad (2017), who pleads for a clear and bold further integration programme, in which the accent has to be put on the endowment of the EU with a set of new competences. He thereby takes the federalist perspective as the best model for a new EU.

Confronted with such opposing views, what course would the European people want to take? In order to stimulate the discussion and clarify the arguments the Commission has recently presented a set of five *alternative scenarios* (European Commission 2017a). These scenarios range from ‘carrying on’ to ‘doing much more together’. There seems to emerge a consensus for scenario 3: ‘those who want more do more’. This can be read from the Rome declaration:

⁹ See for a kaleidoscope of issues and ideas: Zimmerman and Duer (2017).

'We will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later.'

In practice this is a continuation of the past. Multi-speed has been with us for a long time and is actually accommodated by the treaties. The most visible examples are the Schengen agreement and the EMU; a less visible, but also important example is patents (European Commission 2016).

Determined action; assuming responsibility

The way forward that seems the most practical for the EU is indeed one of collectively finding arrangements that are on the one hand sufficiently constraining to constitute effective solutions to the main challenges, and on the other hand sufficiently flexible so that everyone can be comfortable with them. A few final remarks in this respect.

Europe should dare to cross certain red lines that have up till now stopped the creation of a more just and more effective Europe. An example is taxation; the holy shrine of national sovereignty. It should no longer be possible that a country operating a corporate tax haven wins individually at the cost of the loss of their fair share of a much larger tax receipt to all other member countries.

Moreover, Member States should take their responsibility in endowing the EU with the instruments that are needed to realise the objectives they charge the EU with. So no more Schengen agreement without effective European border control. The EU should actually henceforth refuse to take on tasks without getting the means to execute them successfully.

Finally, a deliberate attempt has to be made to win back the necessary popular support. Ignoring populist attacks and half-hearted acceptance of common decisions by politicians is not enough. Politicians of all member countries have to actively defend the European 'acquis' of the past and a European project for the future.

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Differentiated Integration and the European Union's Neighborhood

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Abstract

This paper addresses the question of how important the various concepts of differentiated integration are for the European Union's neighborhood. In order to do so, the author reconstructs the main elements of the debate on the European Union's differentiation and discusses their potential implications for the neighboring countries, as well as for those which have already become EU members in full. The arguments highlight that the growing diversity inside and outside of the EU may be both an opportunity and a challenge for the states captured within the EU neighborhood policy framework, depending on the nature of the future differentiation. A more inclusive one might represent a window of opportunity for the countries aspiring to some participation in the European integration project but are, at the same time, less likely to be granted a full membership status. At the same time, a more exclusive form of differentiation might result in hindrances in mobility from the (inner or outer) peripheries to the (inner or outer) core. The abovementioned deliberations are presented in the context of Brexit, which is potentially one of the milestones of differentiation. The United Kingdom (if and when) leaving the EU will most probably widen the circles of differentiation and therefore open a new chapter in deliberations on the differentiated integration in Europe.

Key words: European Union, differentiated integration, neighborhood policy, Brexit, EU membership

Introduction

The growing processes of differentiation in the European Union are important from the point of view of the insiders (EU Member States), but also from the point of view of the outsiders (non-members, quasi-

members, former members, associated countries, immediate and extended neighborhood and so on). In both cases the perspective changes together with the widening circles of integration. The formal EU Member States might get marginalized to the extent where their status could resemble the situation of some more advanced associated countries, especially in relative terms, in comparison to the inner core countries. Furthermore, the neighborhood countries, by unilateral opt-ins, may become more integrated in real terms than it could be deducted from their formal non-membership status.

In the case of the EU's neighborhood, the evolving processes of differentiated integration may potentially be bad news for the full EU membership-aspiring states – since the path becomes potentially longer – it may mean many more different phases, statuses, conditions to meet. It may also be good news, since it may bring about a situation which allows for avoiding the dichotomous thinking trap in which one is a member or one is not a member and one needs to carry all the costs (political, economic, trade-related, migration, etc.) connected with the membership or non-membership status (Mohler, Seitz 2012). Finally, it may be a window of opportunity for countries willing to participate in the European integration process but unlikely to be granted full membership status. Brexit will most probably bring also some new solutions in the quasi-membership options that may appear useful for the neighborhood countries in the East and the South.

The widening of the circles of integration will have certain implications for the already existing EU Member States. *Ever looser* instead of *ever closer* union brings about the risk of deeper peripheralisation of some Member States. It is related both to their abilities and preferences towards certain ideas of further integration. It is also dependent on the developments in the EU's core. Some have observed that tendencies towards more exclusivist integration in the inner circles are present in selected Member States (e.g. France) as well as in the supranational institutions in Brussels. Various concepts of differentiated integration answer the tensions both inside and outside of the European Union by delivering flexible solutions. They will distribute the costs and benefits of the European integration in a new and more dynamic way. The difference between members and non-members will become blurred. European states will position themselves in the continuum between deep integration of the inner core and the widest circle of integration outside of the European Union. The European integration project is going to evolve into a *coalition of the willing*.

Differentiated integration in Europe and its potential implications for the EU's neighborhood

Differentiated integration as a scholarly concept developed together with the real-life increase in differentiation (Andersen, Sitter 2006) in the form of opt-outs, exemptions, discriminations, enhanced cooperation, constructive abstention, special clauses, additional protocols, and many other instruments. In the last two decades, differentiation has been the dominant feature of European integration. (Dyson, Sepos 2010). It is argued that approximately half of the EU policies are implemented in different ways (Lord, Leruth 2015). Some Member States opt out (internal differentiation), whereas some non-member states opt in (external differentiation), which results in the need for reconciling heterogeneity inside and outside of the union (Genschel, Jachtenfuchs 2014).

The abovementioned constitutes the essence of differentiation and therefore the differentiated integration can be best understood as an institutional response to the increasing heterogeneity of the Member States' preferences and capacities resulting both from the widening and the deepening of the EU (Leuffen et al. 2013; Schimmelfennig 2014).

The political idea of differentiated integration can be traced back to the famous Tindemans report (1975), whereas as a legal concept it appeared in the Single European Act (1986). Academic debates on the topic find their roots in Dahrendorf's formulation of *Europe a la carte* (1970s.). Already by the 1980s scholars had identified several variations of differentiated integration and the scientific discourse has exploded ever since. From that moment on, many various conceptualizations can be traced in literature, including flexible integration, multi-speed Europe, Europe as an empire, Europe of variable geometries, concentric circles, hemispheres, etc.

Yet differentiated integration is understudied in comparison with the huge amount of literature on integration as a whole. The reason for it may be that it has been limited by an assumption that differentiated integration would erode over time. That Member States (and their neighborhood) would converge over time, the same variously applied policies would find their cohesive end (Lord, Leruth 2015). This assumption was however challenged by the crisis and other developments inside and outside of the EU (Lemke 2014). The new assumption suggests that we are heading towards some more diversified forms of integration. It was John Eric Fossum who claimed that the EU of tomorrow may combine all three of the following: accelerated integration for some, outright disintegration for others and greater differentiation for

the rest (Fossum 2015). The idea that differentiated integration amounts to little more than a process of convergence on similar outcomes at different speeds seems increasingly questionable. Instead we observe a growing consensus among the observers and analysts that differentiated integration is a permanent organizational principle of the EU. The need to manage divisions or disagreements will not simply go away.

In this context, it is noteworthy to mention Brexit, which constitutes an important milestone in the processes of differentiation. A legitimate question here is what consequences Brexit may bring for differentiated Europe. First, potential strengthening of the center – the core of integration, which is Germany without any balancing power (taking into account France's relative status after the economic crisis). Secondly, the EU without Britain also means the EU without *free marketers* – it was the UK (no matter if ruled by the Labor or Conservatives) who brought the liberal component to the European integration project. Less Britain in Europe also means fewer liberal ideas. Thirdly, we have learnt the limits of internal differentiation – as a result, Britain placed itself outside of united Europe. In addition, the British exit potentially widens the circles of differentiated integration. It goes beyond the known schemes of inner and outer core as well as inner and outer peripheries. To the already existing categories of members and non-members, it adds the category of a for member, unknown so far in the European studies. Brexit gave the differentiated integration new impetus and dynamics. Hopefully it was not a turning point, reversing the trend towards disintegration.

The observed increase in differentiation (Wallace, Wallace 1995) came to the limits of carrying the potential for disintegration. Exemptions from the Eurozone and the Schengen area have already been quite prominent examples of differentiation. But undermining one of the four freedoms (free movement of people) attacks one of the fundamentals and questions the very idea of the European integration project. Openly opposing the very core of the Single Market turns the direction of the integration trajectory. The economic theories of international integration inform us that it is not only the free movement of products and services which constitutes the common market. But for its creation and functioning, it is conditional to liberalize also the free movement of the factors of production: the capital and the labor. This is why the four freedoms were treated so far as four inseparable elements of one concept.

The story of European integration can be told as a story of its deepening and widening – these two dynamics found the mechanics of differentiation.

Consequently the progress in integration meant the increase in differentiation over time. Up to a certain point some countries supported the widening of the European Communities (later the European Union) as a “panacea” for the deepening. The interplay between the two dimensions of integration seemed to effectively answer their allergy to the “ever closer union”. The alternative to the “ever closer union” appeared to be not less of an “ever closer union” but more “ever looser union”, which is quite a substantial difference. The trajectory of the European integration project has changed and the threat of disintegration is looming on the horizon. Emerging ideas of differentiated integration are trying to answer this growing threat.

At the preset, the European integration project is not only a game of deepening and widening, but also of differentiation of a new generation. Reluctant Europeans (Gstoehl 2002) like Switzerland or Norway had to find a solution to the risks associated with economic isolation and reached a state of “membership without accession” or “unfinished integration”. After calculating the costs and benefits of membership and non-membership, they decided to gravitate closer and closer to the EU core. We know there is life outside of the EU (in Norwegian, Swiss or Ukrainian variants). Differentiation in Europe has reached such a phase, scale and depth in which it is legitimate to agree to the argument that it is a systematic characteristic of the European integration project as seen in the 21st century. Frank Schimmelfenning, Dirk Leuffen and Berthold Rittberger (2015) wrote even about the system of differentiated integration in which differentiation is an essential and enduring characteristic of the EU.

Even though there is a difference between the EU Neighborhood Policy countries and other countries (with candidate status, associated, belonging to the European Economic Area or Switzerland – framed by the packages of *Bilaterale*) – from the point of view of differentiated integration they can or even should be analyzed together. The different levels and statuses they represent are the essence of differentiated integration concepts. In the end many of the EU neighborhood policy countries seek to become, one day, a member or linked closely with the EU, or the common market at least.

As some skeptical voices say, the enlargement is the only EU foreign policy that really works. And this statement is important from the point of view of EU’s relations with its neighborhood. Despite calling itself a *soft power*, the EU exercises quite a top-down approach when implementing its conditionality policy towards its partners that are under association or enlargement agenda. The conditionality of norms transfer works perfectly well until the country is in the waiting room (not too long however, as the

Turkish example shows). However, once you are invited to the party you do not have to behave too well any more – as the Hungarian or Polish examples show. Until now (2017) the EU does not prove to be effective in advancing or even defending the standards of democracy, the rule of law and human rights standards even at its own territory. It is not only a digression – this remark raises legitimate questions about the efficiency and ethics of democratic conditionality outside and inside of the EU. It is contestable whether you can expect certain standards of democracy from the outsiders, in times when you cannot answer the problem of democratic deficit inside of the EU – understood as the EU as well as individual Member States (Italy, Greece, Hungary, Poland or even Ireland).

Subsequent waves of enlargement (especially embracing the countries outside of the Western cultural hemisphere) taught us a lesson that the association and enlargement agenda is a sufficient framework to keep some states mobilized in their democratization efforts. However, political and economic transition trajectories turn when the accession conditionality disappears. Full membership status demobilizes some Member States' (or their elites') commitment to the shared values and norms to such an extent that they become similar to not only the pre-accession phase, but sometimes even resemble some elements of the pre-transition system.

Conclusions

In the upcoming future we should expect more internal differentiation inside of the EU. This fact combined with the external differentiation in the EU's neighborhood may lead towards a situation in which the clear and thick borderline between members and non-members is blurred. So far, the deepening of EU integration has meant more and more difficult integration effort for the newcomers (more EU legislation to adopt, more standards to adapt to, more changes to undergo). It has also meant the possibility of using various excuses for not granting the full membership status (and its benefits). In today's Europe we observe the departure from dichotomous thinking of a zero-one game. The black and white picture of members and non-members evolves into a much more complicated puzzle.

Today, the benefits of full membership may not be as lucrative as they seemed one or two decades earlier – the EU budget is shrinking and it may get divided into two parts – (Eurozone budget) which means more resources available for the core countries. This may result in the current EU

periphery members becoming even more peripheral (due to the growing Euroscepticism related to diminished attractiveness of EU membership). Certainly the costs-benefits analysis of the full membership scenario will be more complicated (in 2004 or 2007 it seemed a rhetorical question). Various countries (or social groups/interest groups/industries, etc. inside them) may be interested only in some benefits while the costs are not distributed equally either.

A classic example of unequal distribution of the EU membership costs and benefits (or more importantly their perceptions and misperceptions) was the case of the UK. At the same time, the British special case shows the limits of internal differentiation. Brexit may become an impulse for an EU reform, it may also result in various new concepts of quasi-membership solutions that can be useful for other countries of the EU neighborhood. They can potentially be both positive and negative for the neighboring states. More differentiation may lead towards endless status of peripheries or semi-peripheries. However, states that would never be likely to be granted the full membership status could gain some opportunity to participate in the European integration process. In both cases we will experience an *ever looser* instead of *ever closer* union that was prescribed in the treaties.

The same will, most probably, be observed inside of the European Union. The tendency to build exclusivist circles of deeper integration will widen the inner and outer core of the union, as well as its inner and outer peripheries. Wider spectrum of integration will make the countries of the EU's outer periphery much more similar to the EU's neighborhood – especially the countries willing to participate in the integration project in a more advanced manner. The distance between the core and the periphery will not only become longer, but it may also be more difficult to change the status in the system of differentiated integration. Due to more exclusivist circles of integration, it may be available only for a limited number of countries representing specific socio-economic parameters, as well as readiness to participate in the cost-sharing of deeper integration. The balance of costs and benefits of a specific position in the system of differentiated integration will not only vary a lot, but it will also be dynamic and change according to the evolving constellation of the whole system and its surroundings.

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The European Union as a Global Partner, with Particular Focus on its Actions for Least Developed Countries

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Abstract

The European Union (EU) with its Member States provide most of the official development assistance on a global scale. Despite many efforts by international organizations (such as the UN or the EU), the problem of poverty in the world remains unresolved. This paper aims to outline the development policy of the European Union with special focus on activities for the least developed countries. The article presents objectives and legal basis for European Union Development Policy, the European Consensus on Development, which was adopted by the European Commission, the Council and the Parliament on the 20th December 2005 and the European Union External Action Financing Instruments, such as Development Cooperation Instrument, European Investment Plan and European Development Fund.

Key words: sustainable development, development policy, financial instruments

Our World. Our Dignity. Our Future (Europa 2015)
Motto of the European Year of Development.

Introduction

Sustainable development is an idea based around the pursuit of the best economical result while at the same time respecting the natural environment and social development. In this case, the crucial challenges that the world has to face, such as, gender equality, human rights, general safety, fight against poverty, education for all, healthcare and intercultural dialog are

treated holistically. The concept of sustainable development has been introduced in 1987. Since then, it has been regularly reviewed in terms of actions undertaken by international organizations and countries in order to execute the idea in practice. The European Union is actively involved in the implementation of sustainable development in the form of aid programmes and financial instruments. Sustainable development goals, established by UN, have been crucial in the relationship of the European Union with third countries and in setting the tone for exercising the EU cohesion policy, the EU sustainable development policy.

The paper presents objectives and legal basis for European Union Development Policy, the European Consensus on Development, which was adopted by the European Commission, the Council and the Parliament on the 20th December 2005, and the European Union External Action Financing Instruments, such as Development Cooperation Instrument, European Investment Plan and European Development Fund.

Objectives and legal basis for European Union Development Policy

Since the beginning of its existence, the European Union (EU) has worked towards economic development of its partner regions. The essential goal of the development policy of the EU is to decrease poverty, and in the long term to eradicate it completely (Ramet 2017).

EU development policy seeks to foster sustainable development of developing countries, with the primary aim of eradicating poverty. Sustainable development is based on the pursuit to achieve the best possible economic outcome while respecting the environment and social development. This is a very broad concept of development that includes many spheres of human activity. The concept of sustainable development is gaining more and more supporters, and most importantly, is implemented in many countries, especially those with a developed market economy. The concept of sustainable development is based on people as environmental actors, our planet as an area of human influence, a method of action or partnership, because only integrated actions will achieve the goal of this concept, i.e. prosperity and peace in the world (Latoszek 2016: 25–27).

It is a cornerstone of EU relations with the outside world and contributes to the objectives of EU external action – alongside foreign, security and trade policy (and international aspects of other policies like environment,

agriculture and fisheries). Providing over 50% of all global development aid, the EU and its Member States are collectively the world's leading donor. EU action on development is based on the EU treaties and on the 2006 European Consensus on Development, which commits the EU Council, European Parliament and Commission to a common vision. In 2011, the Commission set out a more strategic EU approach to reducing poverty, including a more targeted and concentrated allocation of funding; the Agenda for Change. Since the adoption of the 2030 Agenda for Sustainable Development by the international community at the UN Summit in September 2015, the EU is now working towards a new European Consensus on Development as a new common vision for development policy for the EU and its Member States. The Millennium Development Goals (or MDGs), which expired at the end of 2015, made an enormous contribution to raising public awareness, increasing political will and mobilising resources to end poverty (European Commission 2017a).

The 2030 Agenda for Sustainable Development builds on these successes of the MDGs, but also goes further, incorporating follow-up from the Rio+20 Conference on Sustainable Development and aiming to address poverty eradication together with the economic, social and environmental dimensions of sustainable development. Issues addressed by the MDGs have been integrated into the 2030 Agenda for Sustainable Development. The EU also promotes Policy Coherence for Development, to maximise the developmental impact of other EU policies. The EU is strongly committed to making aid more effective. The European Commission is part of the Steering Committee of the Global Partnership for Effective Development Cooperation (European Commission 2017a). The legal basis of EU cooperation for development policy are established in Article 21(1) of the Treaty of European Union (TEU). The document states the general rights, obligations and guiding principles for EU development cooperation. Additionally, there is article 4(4) and articles 208–211 of the Treaty on the Functioning of the European Union (TFEU). Of essence are also articles 312–316 of TFEU, which define budgetary issues, and Cotonou Agreement with a group of 78 African, Caribbean and Pacific states (ACP), as well as various bilateral association agreements (under Article 217 TFEU) which include specific cooperation agreements (Ramet 2017).

The basis of EU development policy has been strengthened by the Treaty of Lisbon, which establishes that reducing and eradicating poverty is a key objective of EU development policy (European Commission 2014). According to the Treaty of Lisbon, the EU actions on international

forum intend to integrate global economy and include annulment of constraints in trade or provision of assistance for nations, countries and regions affected by natural disasters and man-made catastrophes. The task of the EU development cooperation policy is solving regional and global problems in the sphere of environment, and particularly counteracting climate change. According to the wording of the Treaty, the Union and the Member States coordinate their own development cooperation policies and their programmes of aid should be reciprocally consulted as well as complemented and strengthened. In the long term, such solutions should be contributory to bigger harmonization and effectiveness of the actions taken. The changes introduced by the Treaty of Lisbon should contribute to better the EU aid programming and managing. The most significant amended elements pertaining to development policy with the Treaty include (European Commission's Directorate-General for International Cooperation and Development 2011):

- nomination of the High Representative of the Union for Foreign Affairs and Security Policy, who as the Vice President of the European Commission is responsible for ensuring coherence of the EU external actions and chairs the Foreign Affairs Council;
- establishment of the European External Action Service, which works for the benefit of the High Representative/Vice President of the Commission and the President of the European Council, as well as for the Commission;

new opportunities in the sphere of closer cooperation between the EU Member States and collaborative programming (Latoszek 2015: 124–125).

The New European Consensus on Development

The European Consensus on Development was adopted by the European Commission, the Council and the Parliament on the 20th December 2005. The document is a uniform set of values and principles for cooperation between EU institutions and the Member States. Not only does the European Consensus set the EU vision for development, but also defines the ways for implementation of the development policy. At the end of November 2016, the European Commission presented its proposition of a new European Consensus, which was to be aligned with the UN's Program for Sustainable Development with its main areas being the people, the planet, prosperity, peace and partnership (European Commission 2016 a).

The proposal of the new European Consensus contributes to the achievement of the objectives of the EU external action (as defined by the Treaty of Lisbon). It is also in line with the Global Strategy of EU Foreign and Security Policy (published in June 2016), which sets a vision for European involvement in the world – the aim to build peace and prosperity (European Commission 2016). Action at the national level and sound policy are at the heart of the new European Consensus proposal, reflecting a paradigm shift that emphasizes that the primary responsibility of every country is for its economic and social development. The proposal also discusses new global partnerships for sustainable development that would use political and financial measures (European Commission 2016 a).

The European Consensus on Development is a policy statement that commits the EU to eradicating poverty and building a fairer and more stable world. Made jointly by the European Commission, Parliament and Council, the 2006 European Consensus on Development identifies shared values, goals, principles and commitments which the Commission and EU governments will implement in their development policies. Since the adoption of the 2030 Agenda for Sustainable Development by the international community at the UN Summit in September 2015, the EU is now working towards a new European Consensus on Development as a new common vision for development policy for the EU and its Member States. The Commission proposes aligning the development policy of the Union and its Member States with the 2030 Agenda (The General Assembly 2015), as it is part of the international community's agreed response to new global trends and challenges of globalization. It suggests an ambitious, new, collective European development policy, addressing in an integrated manner the main orientations in the 2030 Agenda: people, planet, prosperity, peace, and partnership. The Commission proposes that the Consensus contributes to the objectives and values of EU external action, as agreed in the Lisbon Treaty. It supports the Global Strategy on the EU's Foreign and Security Policy (EUGS) (Table 1) (European Commission 2017b; Council of the European Union 2016).

The Motto 'Do more, do it better and do it differently' (European Commission 2016) was the basis for the proposal of the new Consensus, because intensified actions were supposed to lead to more systematic integration of development factors, such as gender equality, young people, renewable energy, climate change, investments, migration and mobility. Better action is to concentrate on more coordinated activities between Member States through joint programmes and joint actions using tools such

as budget support or trust funds. The help is supposed to be measured not only from the perspective of contribution, but also from the results achieved. Acting differently is a proposal to merge Official Development Assistance with the mobilization of national resources, private sector investment and sound policies. Another aspect of ‘doing it differently’ is the proposal to introduce international partnerships between countries at different stages of development. In this way, the poorest country in the world would be able to enter innovative partnerships with middle-income countries (European Commission 2016 b).

Table 1. Examples of EU actions under the proposal of the new European Consensus for Development

| | |
|---------------------------------|---|
| Gender Equality | Taking into account the programme of EU action for gender equality 2016–2020, accepting the new Consensus, the EU and its Member States will promote women’s rights more actively in the social and economic areas. The empowerment of women and girls and their protection against violence will be a priority (European Commission 2016 b). |
| Hiring the Youth | By 2030, the number of young people aged 15–24 in the world will increase by 7 per cent. This will primarily be the case in developing regions. By 2035, the labour market in the sub-Saharan region will have to absorb 18 million young workers entering the market. Under the new Consensus, the EU will increase support for young people by promoting quality employment, entrepreneurship, effective education, vocational training and extending access to digital technologies and services (European Commission 2016 b). |
| Energy Needs | Addressing the energy needs of developing countries in an environmentally friendly way is of immense importance. Not only would it help improve living conditions (access to clean water, improved sanitation), but it would also promote inclusive growth. By adopting the new Consensus, the EU wants to address the issue of energy poverty by increasing energy investments with emphasis on renewable energy sources. In this regard, support for Africa will be linked to the activities of the energy union (European Commission 2016 b). |
| European Investment Plan | Investments are one of the key areas in achieving the Sustainable Development Goals. The newly created European Investment Plan (EIP) was created to finance investments in Africa and neighboring EU countries. EIP will contribute EUR 3.35 billion derived from the EU budget and the European Development Fund (EDF). EIP is supposed to support financial instruments that are to utilize EUR 44 billion. In the case of similar contributions by Member States and other partners, the total amount has a potential to reach EUR 88 billion (European Commission 2016 c). |

continued Table 1

| | |
|---------------------------------------|--|
| Mobility and Migration | Migration will become a consolidated aspect of EU foreign policy dialogue. The EU will strengthen partnerships with developing countries in line with the European Migration Program. All tools that address multidimensional aspects of migration will be used to solve issues such as forced migration, irregular migration, human trafficking and border management (European Commission 2016 b). |
| New Partnerships | The EU is committed to building partnerships between the richer developing countries and the least developed countries. Despite continued presence of poverty in richer developing countries, the South-South cooperation with EU involvement will allow for sharing experience, technical assistance and knowledge (European Commission 2016 b). Developmental cooperation between more and less developed countries is an essential element of the Sustainable Development Action Program. |
| Mobilization of National Funds | Public finance at the national level should play the central role in the inclusive development and poverty reduction efforts. The EU will support the mobilization of national resources, more efficient use of public funds and management of public debt. In this respect, tax matters are crucial. The EU supports tax initiative from Addis and the OECD / G20 work on erosion of the tax base and transfer of profits (European Commission 2016 b). |

Source: European Commission. *Proposal for a new European Consensus on Development Our World, our Dignity, our Future*, Strasbourg, 22.11.2016 COM(2016) 740 final, https://ec.europa.eu/europeaid/sites/devco/files/communication-proposal-new-consensus-development-20161122_en.pdf [Accessed: 28.05.2017].

The European Union External Action Financing Instruments

Each of the financial instruments that channel their resources into EU external actions is assigned to a particular thematic or geographical scope (Table 2). The European External Action Service (EEAS) together with a number of services of the European Commission are responsible for their management.

Development Cooperation Instrument

The Development Cooperation Instrument (DCI) covers, through its different programmes, all the developing countries except the countries eligible for the Pre-Accession Instrument. DCI is targeted at 47 countries in Latin America, the Middle East, South Africa and Central, East and South-East Asia. In terms of geographic programmes, it offers EUR

11.8 billion (European Commission 2017 c). Thematic programmes benefit all developing countries (including those covered by the ENPI and the EDF). These programmes add value, complementarity and coherence to the geographical programmes. There are two categories:

- Global public good and challenges: this programme addresses climate change, environment, energy, human development, food security and migration while ensuring coherence with the poverty reduction objective. No less than 27% of this programme is spent on climate change and environment objectives. At least 25% of the programme is used to support social inclusion and human development;
- Civil society organisations and local authorities: this programme provides greater support to civil society and local authorities to encourage them to play a bigger role in development strategies (European Commission 2017 c). The budget allocated under the DCI for the period 2014–2020 is EUR 19.6 billion:
 - EUR 11.8 billion for the geographic programmes,
 - EUR 7 billion for the thematic programmes,
 - EUR 845 million for the Pan-African programme (European Commission 2017 c).

In this context, DCI is divided into five thematic programmes addressing: environmental protection, the role of non-state actors (e.g. NGOs, associations), food safety, migration and social development (European Commission 2017 c). In the DCI set for 2014–2020, the principle of differentiation has been introduced. A total of 16 countries have stopped qualifying for EU subsidies on the basis of their bilateral relations, but may continue to be subject to thematic and regional cooperation. The European Parliament has recognized 5 countries (Cuba, Colombia, Ecuador, Peru and South Africa) as special cases that qualify for bilateral aid on an exceptional basis (Ramet 2017).

European Development Fund

The oldest instrument of EU funding is the European Development Fund (EDF), which was set up in 1957 under the Treaty of Rome. Initially, it served to help the colonies and overseas territories, and after the decolonization process in the early 1960s, Member States decided to continue to support the newly independent states. Over time, development policies have included more and more developing states in Latin America

and Asia. Geographically closer countries were also supported within the framework of the European Neighbourhood Policy (Zajączkowski 2016: 77; Latoszek, Kłos 2016: 77). Currently, the EDF covers cooperation with the AKP and the Overseas Countries and Territories (OCT) (Proczek 2013: 245–246) in the area of economic, social and individual development, as well as territorial integration and cooperation. Resources of EDF are allocated on a continuous basis and partner countries are actively involved in prioritising cooperation and a variety of projects.

Table 2. The EU's External Action Financing Instruments 2014–2020

| Instrument | Focus | Format | Budget |
|---|--|-------------------------|------------------|
| Development Cooperation Instrument (DCI) | Latin America, Asia, Central Asia, Gulf region, South Africa and global thematic support | Geographic and Thematic | EUR 19.7 billion |
| European Neighbourhood Instrument (ENI) | 16 European Neighbourhood countries, Russia (regional and cross-border cooperation) | Geographic | EUR 15.4 billion |
| Instrument for Pre-Accession (IPA) | Balkans and Turkey | Geographic | EUR 11.7 billion |
| Partnership Instrument (PI) | Industrialized countries | Geographic | EUR 955 million |
| Instrument for Greenland | Greenland | Geographic | EUR 184 million |
| European Instrument for Democracy and Human Rights (EIDHR) | Democracy and human rights promotion | Thematic | EUR 1.3 billion |
| Instrument contributing to Stability and Peace (IfSP) | Political stability and peace-building | Thematic | EUR 2.3 billion |
| Instrument for Nuclear Safety Cooperation (INSC) | Nuclear safety | Thematic | EUR 225 million |
| European Development Fund (EDF) | The African, Caribbean and Pacific Group of States (ACP) and Overseas Countries and Territories (OCTs) | Geographic | EUR 29.1 billion |

Source: V. Ramet, *A general survey of development policy*. http://www.europarl.europa.eu/ftu/pdf/en/FTU_6.3.1.pdf [accessed on: 28.05.2017].

The EDF is not part of the EU budget, although at the request of the European Parliament, since 1993 budget has been reserved for it. On the

one hand, inclusion of the EDF into the EU budget would entail increased administrative costs and could jeopardize the arrangements for joint management of development funds between the ACP and the EU and lead to a reduction in the contribution from Member States. On the other hand, incorporation of the EDF into the EU budget would improve the cohesion policy, and the Fund itself, subject to another approval procedure, would have to obtain the consent of the European Parliament, which would enhance its democratic control. The European Parliament is in charge of political control over the EDF programming documents through the Development Committee and the ACP-EU Joint Parliamentary Assembly (Ramet 2017).

The 11th edition of the EDF is in progress right now, programmed for 2014–2020. The first edition took place in 1959. Since the second edition of the EDF in 1964, the edition cycle corresponds to the duration of a partnership contract. The current edition of the EDF is based on the revised Cotonou Agreement (European Commission 2017 d).

The budget of the 11th EDF is set at EUR 30.5 billion (European Commission 2017 d). Over EUR 24 billion will be allocated to national and regional cooperation, over 3 billion for ACP cooperation and over 1 billion for the ACP investment instrument (Ramet 2017). The European Investment Bank will provide additional EUR 2.6 billion, which will take the form of loans financed from own resources of EIB (European Commission 2017 d).

European Investment Plan

In mid-September 2016, the European Commission announced a new development instrument aimed at supporting the development of social and economic infrastructure in Africa and the EU's neighbours. The European Investment Plan (EIP) will have EUR 3.35 billion of contribution from the EU budget and the EDF. Supporting innovative guarantees, EIP is expected to provide EUR 44 billion in investment funds. In the case of similar contributions from Member States and other partners, the total amount has the potential to reach EUR 88 billion. The EIP is expected to contribute to the achievement of sustainable development goals and help in financing development as was decided during the international Addis Ababa conference. EIP will be a way to address the causes of migration (European Commission 2017 d).

The EIP will consist of three main elements. The first one is mobilisation of investment by merging existing investment instruments with new guarantees

under the new European Sustainable Development Fund (ERDF), which will include two investment platforms: one in Africa and one in the EU neighbouring countries. The second element is the increase of technical support for public authorities and businesses in partner countries. Through this they can be better prepared for both project promotion and attracting investments. The third element is improvement to the business environment by acting to eliminate investment barriers and market distortions as well as to fight corruption (European Commission 2017 d).

An additional aspect of the EIP is the EIB's mandate to provide loans to developing countries for a total of EUR 5.3 billion. On the basis of the EU guarantee for 2014–2020, the EIB will lend up to EUR 32.3 billion in total (European Commission 2017 d).

Conclusions

The EU is a global partner – a leading member of international organizations such as the UN, the WTO, and the United Nations' Conference on Trade and Development. What is more, development policy has been at the centre of the EU's foreign policy for a long time. The European Union promotes the agenda in which the needs of the least developed countries of the world are treated with utmost attention. Despite many successes against poverty, the challenges associated with the problem remain unresolved. They require continued efforts, funding and constant consideration on the international level. Above all, still, they require solidarity.

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The European Union – from the Platform for Economic Cooperation to the System of Human Rights Protection¹

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Abstract

The aim of the paper is to trace the development line of EU regulations on human rights protection and their current status. To achieve this, the author analyses EU's most important document on human rights protection – the Charter of Fundamental Rights of the European Union (dogmatic-legal method). The considerations will also include case-law of the Court of Justice of the European Union, which – through its law-shaping decisions in particular cases of the interpretation of EU law on human rights protection – has not only determined the general importance of these norms but in many cases also contributed to the creation of new standards of protection. The research also incorporates a theoretical-legal approach insofar as the doctrine is used to strengthen the laid out argument.

The starting point for this paper is a thesis on the inclusion of human rights protection to the very idea of European integration through the jurisprudence of the Court of Justice of the European Union. The discussion ends with a conclusion on the evolutionary nature of the system of human rights protection, which corresponds with the tendency to deepen the processes of European integration and which has elevated the legal status of individuals, quite often at the expense of the discretion of Member States.

Key words: fundamental rights, the EU, the Charter of the Fundamental Rights, the Court of Justice of the European Union

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Introduction

At the time of its inception in the 1950s this unique project of European integration did not aim to be a political venture. Therefore, neither the European Coal and Steel Community, nor the European Economic Community, nor the European Atomic Energy Community tasked themselves with protecting human rights. Those issues were then covered by another European international organization – the Council of Europe. However, with time, the process of integration not only expanded but also deepened, embracing more and more areas, and, as a consequence, human rights got incorporated into the EU agenda and nowadays they occupy a very prominent spot in that agenda.

Human rights protection is one of the axiological pillars of today's European Union. This is reaffirmed in article 2 of TUE², which states “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. These values are common to Member States in a society based on pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. Human rights activities are also a goal of the European Union both in terms of internal and external policies. As for the former, the aim is to “combat social exclusion and discrimination, and promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child” (article 3(3) TUE). As for the latter, the EU strives to promote its values, such as the respect for human rights, and engages in the “eradication of poverty and the protection of human rights, in particular the rights of the child”.

The aim of this paper is to outline the development of EU human rights protection regulations and their current status. To this end, the author analyses the most significant EU human rights document – the EU Charter of Fundamental Rights³. The considerations also include case-law of the Court of Justice of the European Union, which – through its law-shaping decisions in particular cases of the interpretation of EU law on human rights protection – has not only determined the general importance of these norms, but in many cases also contributed to the creation of new standards of protection.

² Treaty on European Union (consolidated version), OJ C 202, 7.6.2016, pp. 1–46.

³ Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, pp. 389–405.

The (r)evolution of human rights protection in the European Union

Human rights and their protection have accompanied the process of European integration since the very beginning, although in the 1950s and 1960s they were framed in the context of economic integration goals. It is evident from the way they were phrased in the founding treaties and from the then case-law practice of the European Court of Justice. As for primary written law (treaty law), a good example of human rights being deeply rooted in EU law is article 119 of the EEC Treaty, which required each Member State to ensure that, by 31 December 1961, male and female employees were receiving equal pay for equal work. For the purpose of that article, ‘pay’ was defined as the ordinary basic or minimum wage or salary and any other benefits, whether in cash or in kind, which the worker received, directly or indirectly, in respect of their employment from the employer, whilst equal pay without discrimination based on gender meant that remuneration received for the same work at piece rates was to be calculated on the basis of the same unit of measurement and that pay for work at time rates was to be the same for the same job/position. This article expresses a fundamental human right – the right to equal treatment, however, it was not inserted into the Treaty of Rome as part of EU’s competence in protecting human rights, as at that time the EU had no such competence, but rather for economic reasons: to ensure that French goods and services do not suffer a competitive disadvantage in the new European market, as then France was the only one of the original six member countries that had already introduced legislation for equal pay (Maliszewska-Nienartowicz 2015: 23).

The importance of the protection of human rights in EU law was also emphasized on several occasions by the rulings of the Court of Justice of the European Union. In the 1960s, the CJEU recognized that the protection of human rights, referred to in EU legal order as fundamental rights, was one of the general principles of EU law (Stauder, C-29/69), thus giving fundamental rights the status of a supreme source of EU law, i.e. unwritten primary law. Successive treaty reforms brought normative value to human rights protection within the EU system. For example, in its preamble the Single European Act⁴ emphasized that the states participating in the integration processes attached high importance to the fundamental rights – notably freedom, equality and social justice – recognized in their respective constitutions and laws or in signed international agreements.

⁴ Single European Act, OJ EC L 169, 29.6.87, pp. 1–19.

The Maastricht Treaty⁵ introduced the concept of European citizenship, extending the scope where the rights of the individual already existing within EU law were to be applied (e.g. free movement of persons) or putting in place new rights attached to the status of European Union citizen. Then the Treaty of Amsterdam⁶ introduced a competence standard that mandated the Union to undertake legal measures against discrimination based on certain characteristics protected by law. Finally, the constitutionalisation of the protection of human rights in the European Union was completed by the Treaty of Lisbon⁷ (Krzysztofik 2014: 63 et seq.).

Currently, it is article 6 of the Treaty on European Union that plays a crucial role in identifying the place of fundamental rights in the UE legal order. This article, in paragraph 3, emphasizes that “fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”, codifying the Court’s earlier jurisprudence on this subject. Meanwhile, paragraph 1 of said article points to the most important human rights documents in the EU – the Charter of Fundamental Rights, and underlines that “the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties”. Noteworthy, the provisions of the Charter do not in any way extend the powers of the EU defined in the Treaties, but only gather into a single document the existing EU legal provisions regarding fundamental rights, presenting them in the form of general principles. Finally, paragraph 2 of article 6 empowers the EU to accede to one of the most important international documents on human rights, stating the following: “the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

Until the accession of the EU to the European Convention on Human Rights, the EU Charter of Fundamental Rights remains the most important source of human rights protection in the EU legal order.

⁵ Treaty on European Union, OJ C 19, 29.7.1992, pp. 1–10.

⁶ Treaty of Amsterdam, OJ C 340, 10.11.1997, pp. 1–144.

⁷ Treaty of Lisbon, OJ C 306, 17.12.2007, pp. 1–229.

Charter of Fundamental Rights of the European Union – EU constitution of human rights

The Charter of Fundamental Rights of the European Union was signed as a non-binding document by the European Parliament, the Council of Ministers and the European Commission in 2000 at the Nice Summit. As a result of the ratification of the Treaty of Lisbon, the Charter acquired the status of an international agreement equal in rank to the Treaties on which the European Union is founded, therefore gaining the rank of primary law. The Charter reflects the technological, political and social development that the EU Member States underwent since the European Convention on Human Rights came into force in the 1950s. The Charter incorporates both rights not included in the ECHR (access to documents, protection of personal data, the right to good administration, the right to respect for human integrity, prohibition of eugenic practices, prohibition of reproductive cloning of human beings), and those falling within the scope of ECHR rights and freedoms, such as the right to marry, the freedom of association, the right to education and the right to effective legal remedies (Banaszak et al. 2003: 218).

The rights put forward in the Charter are grouped into six chapters entitled respectively: “Dignity” (articles 1–5), “Freedoms” (articles 6–19), “Equality” (articles 20–26), “Solidarity” (articles 27–38), “Citizens’ rights” (articles 39–46) and “Justice” (articles 47–50).

In chapter (title) I the Charter bans the use of death penalty (article 2) and the use of torture or inhuman or degrading treatment or punishment (article 4) and prohibits slavery or servitude (article 5).

Title II, “Freedoms”, guarantees EU citizens the right to respect for their private and family life (article 7), the right to marry and found a family (article 9), the right to freedom of thought, conscience and religion (article 10), the right to education (article 14), the freedom to conduct a business (article 16) and the right to property (article 17).

Chapter “Equality” includes the right of equality before the law (article 20), introduces a non-exhaustive list of characteristics subject to protection against discrimination (article 21), puts in place an obligation to ensure equality between women and men in all areas (article 23), and introduces the protection of the rights of the child (article 24) and the elderly (article 25).

Title IV, “Solidarity”, showcases a catalogue of social rights, such as workers’ rights to information and collective action (articles 27 and 28), protection in the event of unjustified dismissal (article 30), regulations

on social security and social assistance (article 34), access to health care (article 35), environmental protection (article 37) and consumer protection (article 38).

The fifth chapter – “Citizens’ rights” – enlists several rights, such as: the right to good administration (article 41), the right of access to UE documents (article 42), the right to petition the European Parliament (article 44), the right to file a complaint to the European Ombudsman (article 43) and an entitlement to protection by the diplomatic or consular authorities (article 46). Some of the rights listed in this chapter will apply to EU citizens, others – to all persons residing on EU territory or established in its territory.

Title VI of the Charter, “Justice”, grants the right to an effective remedy before a tribunal and to a fair and public hearing within a reasonable time (article 47), guarantees everyone the presumption of innocence and right of defence (article 48), formulates the principles of legality and proportionality of criminal offences and penalties (article 49) and underscores that no one shall be liable to be tried or punished twice in criminal proceedings for the same criminal offence (article 50). This chapter closes the catalogue of fundamental rights of the Charter.

Entities required to observe and respect the provisions of the Charter include institutions, bodies, offices and agencies of the Union as well as its Member States but only to the extent that they exercise EU law (article 51). Some of the rights guaranteed by the Charter may be directly invoked before institutions bound to observe its provisions, while others only to the extent to which these rights are granted under national law (e.g. the right to marry) or under other provisions of EU law or national laws and practice (e.g. right to social benefits and social services) (Wróblewski 2014).

An unquestionable advantage of the EU Charter of Fundamental Rights is its comprehensive nature: human rights existing within the EU system are all gathered in one single document. However, a weakness of the Charter is its mechanism for human rights protection. Unlike the ECHR, it does not establish its own international tribunal to which the individual would have the right to complain. The obligation to deal with claims involving the rights and freedoms of the individual guaranteed by EU laws, including those granted in the Charter, falls mostly on national courts as part of EU judiciary. This means that it is the Polish courts that are obliged to deal with cases where the individual alleges infringement of human rights guaranteed in the Charter on the part of Polish public authorities when the situation required said authorities to observe its provisions (inter alia: Podolska 2014; Kowalik-Bańczyk 2016).

Court of Justice of the European Union – guardian or creator of human rights in the EU?

The Court of Justice of the European Union has from the outset held the view that individuals are subjects of EU law unlike in the case of laws created within typical international organizations. The CJEU began to shape its role as a guardian of human rights within EU law with one of its judgements, where it stated the following:

“The European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals. Independently of the legislation of Member States, community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community” (Van Gend en Loos, C-26/62: point 3).

In that ruling the Court of Justice commenced the creation of links and ties between individuals from Member States and integration structures in the form of rights conferred under EU law. The granting of these rights, whether directly or as a result of interpretation of obligations of Member States or EU institutions, is a very specific feature that distinguishes the EU as an international organization of a particular type – the transnational type.

This incorporation of human rights issues into the integration process, in order to ensure effectiveness, required the Court of Justice to protect the rights conferred to the individual by EU law. The CJEU did so by developing the principle of the primacy of EU law and its direct effect and by recognizing fundamental rights as general principles of Union law. A pragmatic approach – the need to ensure the effectiveness of norms of EU law, including those that confer specific rights and powers to the individual, has led the CJEU to believe that the protection of fundamental rights belongs among general principles of EU law, as it stated in its ruling of case *Stauder* C-29/69.

In its subsequent judgements, the Court of Justice further developed the concept of protection of fundamental rights within EU law. In its ruling in case *Handelsgesellschaft* C-11/70 the Court pointed out that the EU law includes guarantees for protection of fundamental rights, similar

to those existing in Member States, so therefore it did not explicitly refer to fundamental rights within the national law, but rather recognized the common constitutional traditions of Member States as an indirect source of EU law and an inspiration for formulating fundamental rights.

In case *Nold C-4/73*, the Court recalled that fundamental rights are an integral part of the general principles of Union law the observance of which the Court ensures, further clarifying that, in safeguarding these rights, the Court is bound to draw inspiration from the constitutional traditions common to the Member States and cannot uphold measures which are not compatible with the fundamental rights established and guaranteed by the constitutions of these states, and from international treaties for the protection of human rights on which the Member State have collaborated or of which they are signatories. Among said international agreements, the CJEU very often points to the European Convention on Human Rights, which has become a reference point for the formulation of many fundamental rights in EU law.

Navigating between the common constitutional traditions and the international agreements, in particular the ECHR, the Court of Justice had to decide how to approach the issue of standards of protection of fundamental rights in EU law: to what extent was it bound by those protection standards common to Member States, and to what extent by the standards of the Convention? In the end the Court chose its own autonomous standard of protection of fundamental rights, which takes into account the specificity of EU law (Jurczyk 2014: 281 et seq.).

Having played a particularly active role in shaping the concept of fundamental rights, the Court of Justice, in its ruling in case *Hauer C-44/79*, allowed for the possibility of limiting them should it be justified by a legitimate objective provided that that limitation does not infringe the substance of a given right (the principle of proportionality is applied). Therefore, the CJEU recognized that fundamental rights are not absolute and the exercise of said rights could be subject to certain restrictions to the extent justified by the objectives of general interest and insofar as those restrictions do not constitute a disproportionate and intolerable interference with given protected rights, such as to impinge upon the very substance of those rights. At the same time, however, the Court pointed out that certain fundamental rights, such as the right of every person to live or the prohibition of torture and inhuman or degrading treatment or punishment, are not subject to such restrictions as their substance lies in their non-derogable nature (*C-112/00 Schmidberger*). Any other interpretation would impinge upon the very heart

of human rights that is the inalienable human dignity, which the Court of Justice is required to ensure (C-13/94, P v. S).

Fundamental rights, whether as part of the general principles of EU law or codified by the Charter of Fundamental Rights, connect the EU architectural apparatus and Member States with regards to so-called EU cases, i.e. cases tied to EU law. The Court of Justice has repeatedly pointed out (case of Iida, to name one) that, in assessing whether a certain issue falls within the implementation of EU law, it is necessary, among other things, to examine whether the national legislation at issue is intended to implement a provision of EU law, “what the character of that legislation is, and whether it pursues objectives other than those covered by European Union law, even if it is capable of indirectly affecting that law, and also whether there are specific rules of European Union law on the matter or capable of affecting it” (Yoshikazu Iida, C-40/11: point 79). Therefore the states are obliged to respect fundamental rights in a very wide range of cases, even when they act within the framework of exceptions provided by EU law (ERTC-260/89).

The EU human rights protection in practice – case of equality and non-discrimination⁸

One of the most important human rights in European Union legal system is the right to non-discrimination. It is guaranteed by the EU Charter of Fundamental Rights, which in article 20 affirms the equality of all people before the law, while in article 21 it prohibits any discrimination based in particular on grounds of gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The provisions of equality directives detail and particularise the Charter as they prohibit discrimination on grounds of six so-called legally protected characteristics: ethnic or racial origin, religion and belief, gender, age, disability and sexual orientation – in certain particular areas: employment (Directive 2006/54/EC⁹, Directive 2000/78/EC¹⁰), conducting

⁸ See also A. Szczerba-Zawada (2017), ‘The EU Antidiscrimination Law: from Prohibition of Wage Discrimination to the General Principle of Equality’, *The Review of European Affairs*, (1)2: 71–78.

⁹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, pp. 23–36.

¹⁰ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22.

business (Directive 2010/41/EU¹¹), access to goods and services (Directive 2004/113/EC¹²), social security (Directive 9/7/EEC¹³, Directive 2006/54/EC) and education (Directive 2000/43/EC¹⁴) (Table 1).

Table 1. Personal and material scope of application of EU prohibition against discrimination

| Protected characteristics Area of protection | Racial or ethnic origin | Gender | Religion/ Belief | Age | Disability | Sexual orientation |
|---|--------------------------------|---------------|-----------------------------|------------|-------------------|---------------------------|
| Employment | X | X | X | X | X | X |
| Social protection | X | X | | | | |
| Access to goods and services | X | X | | | | |
| Education | X | | | | | |

Sources: Szczerba-Zawada 2017: 75.

The equality directives prohibit direct and indirect discrimination, harassment and instruction to discriminate.

Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the protected grounds (e.g. art. 2 (a) of the directive 2004/113/EC). According to the settled case law of the CJEU the comparability of the situations must be examined, *inter alia*, in light of the object of the national legislation establishing the difference in treatment (Kuso C-614/11, para. 45). In addition, any less favourable treatment of a woman related to pregnancy or maternity leave (within the meaning of Directive 92/85/EEC¹⁵) also constitute direct discrimination even though

¹¹ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010, on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.07.2010, pp. 1–6.

¹² Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, pp. 37–43.

¹³ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ L 6, 10.1.1979, p. 24–25.

¹⁴ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, pp. 37–43.

¹⁵ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 348, 28.11.1992, pp. 1–7.

there is no male candidate – so that no comparator (Dekker C-77/88). In Feryn case (C-54/07) the Court concluded that the existence of direct discrimination is not dependent on the identification of a potentially wronged party who claims to be the victim. The objective of equality would be hard to achieve if the scope of the protection against discrimination was to be limited to only those cases in which an unsuccessful candidate for a post, considering himself to be the victim of direct discrimination, brought legal proceedings against the employer. In such circumstances the fact that an employer publicly declares that it will not recruit employees of a certain characteristic constitutes direct discrimination as it is likely to strongly dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a protected characteristic at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (art. 2 (2)(b) of the directive 2000/78/EC). The concept of indirect discrimination is also – as direct discrimination – based on a comparison, although this time it takes place in a group perspective instead of individual one. As to the differences between these two concepts it is worth noting that as far as the direct discrimination can be justified only in cases explicitly prescribed by law, the indirect discrimination can be justified by legitimate aim if applied measures are appropriate and necessary (i.e. proportional) what makes it more “flexible” to defend against discrimination claims.

Under EU law discrimination includes harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of, or submission to such conduct (art. 2 (2)(a) of the directive 2006/54/EC). Harassment is a situation where an unwanted conduct related to the protected characteristic of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment and sexual harassment – where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

For the purpose of equality directives an instruction to discriminate against persons on the protected grounds also constitutes a forbidden form of discrimination (art. 2 (4) of the directive 2000/43/EC).

Thanks to the case-law of the CJEU discrimination is understood to include discrimination due to association. This type of discrimination occurs when a person is treated less favourably because of his or her association (relations) with someone who possesses one of the protected characteristics, even though she or he does not have the characteristic herself/himself (Karagiorgi 2014: 25). In Court's view presented in Coleman case C-303/06 the principle of equal treatment (in that particular case with respect to disability) applies not only to a particular category of persons but by reference to the protected ground. What is more, a person may face discrimination also because of an assumption about his or her characteristic (e.g. sexual orientation or racial origin) which may or may not be factually correct (Chopin, Germaine 2014: 7).

The essence of the right to equal treatment is to enable each individual to fully develop their potential within the legal framework, depending only on the individual's decisions and not on the subjective preferences of their environment. Such phrasing of the right to equal treatment, arising from a provisions of relevant anti-discrimination directives, allows both EU citizens as well as persons from non-EU countries to rely on said right.

Conclusions

Human rights are an extremely important aspect of the democratic legal system. They protect the individual against the unwarranted interference of public authority in their privacy and demarcate their sphere of freedom, within which the individual at liberty to act and which the individual must not cross as that would constitute an infringement of the rights and freedoms of other individuals. Such an approach to human rights can also be observed in the system of the European Union: once the EU acquired the power to protect human rights, those became separate from the purely economic dimension. Although still strongly linked to economic aspects, human rights have since evolved towards factors that justify the political objective of integration, legitimising a wider scope of the Union's authority. Nowadays, the EU is the second most important European system of human rights protection, alongside the Council of Europe, in which certain rights are granted to both EU citizens and foreigners. Another key actor playing an important role in shaping the rights and freedoms of the individual within the EU is the Court of Justice, although the protection of said rights falls onto national courts. The development of human rights legislation

by the EU is highly beneficial for individuals residing on the territory of its Member States, in particular – their citizens. It strengthens their legal status, guaranteeing citizens additional rights and powers that they would otherwise not have, had it not been for the participation in the integration processes.

The EU's system of human rights protection is characterized by certain specificities. First and foremost, it is largely a result of juridicising human rights norms and standards – the system of protection of fundamental rights within the EU has been predominantly shaped by the jurisdiction of the Court of Justice. Furthermore, its *signum specificum* is the structural inconsistency – rooted both in the ECHR and at the same time in autonomous sources of EU law; and a functional decentralization – at transnational level it is applied by the CJEU, while at national level – by the courts of the Member States (Grzeszczak 2016).

The evolutionary nature of the system of human rights protection fits in with the tendency to deepen the processes of European integration and showcases how the legal status of the individual has been elevated, quite often at the expense of discretion of Member States. (Zawidzka-Łojek 2016). It also underscores the existing development potential, leaving open the question of the final shape that the system might take.

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Part II

The European Neighbourhood Policy: A Need for Evolution or Revolution?

The European Neighbourhood Instrument as a New Tool for the Implementation of the European Neighbourhood Policy

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Abstract

The main purpose of this paper is to present the European Neighbourhood Instrument (ENI) as a new tool for the implementation of the revised European Neighbourhood Policy (ENP) addressing contemporary global challenges. Additionally, the paper aims at showing one of the ENI's recent applications, that is the 2014–2020 Cross-border Cooperation Programme Poland-Belarus-Ukraine. The paper consists of four parts, an introduction and conclusions. Part one describes the idea and objectives of the ENI, part two focuses on the ENI programming, part three discusses the ENI's financial rules and the last one – part four – gives an example of a project financed under the ENI. Analysis and synthesis were applied interchangeably in the research and were based on the official documents of the EU and professional literature on the subject.

The new ENI builds on the achievements of its predecessor – the ENPI, and ensures more effective implementation of the objectives of the ENP mainly thanks to the simplified funding mechanism, shortened programming process, incentive-based approach and a greater emphasis on bilateral action plans agreed by the EU and a partner country that target mutually set political agenda. With a budget of EUR 15.4 billion, it constitutes one of the biggest financial envelopes in the EU budget for external action for the years 2014–2020. Support under the ENI is provided through bilateral, multi-country and cross-border cooperation programmes. The paper illustrates the actual ENI application with regard to the last category of programmes using the example of cooperation with Belarus and Ukraine on the Polish borderline.

Key words: European Neighbourhood Policy, European Neighbourhood Instrument, Union for the Mediterranean, Eastern Partnership, cross-border cooperation

Introduction

Nowadays, the European Union (EU) is facing many challenges in terms of formulating and developing its neighbourhood policy. Numerous long-lasting crises such as the financial and economic crisis, the European migrant crisis, political crises, especially the one caused by the Russian annexation of Crimea in Ukraine and many others, have shown the importance of having a solid policy framework to enhance the EU's strategic role in the global settings.

In view of the above, the neighbourhood policy alongside with its instruments constitutes a key topic and has a high priority in the EU activities for the upcoming years. It is focused on developing satisfactory relationships with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the EU and characterised by close and peaceful relations based on cooperation (Regulation (EU) No. 232/2014). The European Neighbourhood Instrument – the main tool providing funding for converting the policy into specific actions – follows suit.

There are many studies concerning the European Neighbourhood Policy (Wesselink and Boschma 2016; Rieker 2016; Gstöhl and Schunz 2016). However, little attention has been paid so far to the European Neighbourhood Instrument as an instrument of the EU budget. The purpose of this paper is to discuss the role of the European Neighbourhood Instrument as a new tool for the implementation of the revised European Neighbourhood Policy. An additional purpose is to show tangible application of the ENI based on an example of a project funded under this Instrument and to stress its importance for the region it refers to. This paper also aims at investigating the specific characteristics of the Instrument. The nature of the research task is reflected in the construction of this paper, which essentially consists of four parts, an introduction and conclusions. Part one describes the idea and objectives of the ENI; part two focuses on the ENI programming documents; part three discusses the ENI's financial rules and the last one – part four – gives an example of a project financed under the ENI.

Analysis and synthesis were applied interchangeably in research, as the disadvantages of any exclusive choice of either one were recognised. The analysis and synthesis were based on the official documents of the EU and professional literature on the subject. The conceptual apparatus employed in the paper is typical for research in the field of European finance and economics.

In line with the underlying assumptions, this research is a study of particular issues related to the ENI and does not aspire to exhaust the entire complexity of the topic. The research was completed on 31st May 2017.

In the absence of a thorough understanding of the ENP instruments, and especially its major one, that is the ENI, it is impossible to effectively apply relevant neighbourhood policy instruments in order to address interconnected global and European challenges of the EU Neighbourhood.

European Neighbourhood Instrument – the idea and main objectives

The European Neighbourhood Instrument is one of the instruments providing direct support for the European Neighbourhood Policy and turning decisions taken on a political level into actions on the ground. It was established in 2014 as a replacement of the European Neighbourhood and Partnership Instrument (ENPI) in order to build on the achievements of the ENPI and bring more tangible benefits to both the EU and its Neighbourhood partners (Latoszek, Kłos 2015: 80). Effective from 2014 to 2020, the ENI seeks to streamline financial support while focusing on mutually agreed policy objectives, and make programming shorter and more relevant, so that it is more effective (European Commission 2017). When compared with its predecessor, under the ENI, assistance to partners (EU Neighbours portal 2017):

- becomes faster and more flexible through simplification and shortening of the programming process;
- is incentive-based via the more-for-more approach that allows the EU to reward those partners that are genuinely implementing agreed action plans;
- is policy-driven, as partners are obliged to implement action plans based on key policy objectives;
- ensures greater differentiation, so that the EU allocates a greater proportion of funds where aid can have the highest impact;
- aims for mutual accountability, so that it takes greater account of human rights, democracy and good governance when it comes to allocating assistance;
- encourages closer links between the EU and partner countries to enable their citizens to participate in successful EU internal programmes.

It is worth mentioning that the European Neighbourhood Policy was launched in 2004 as a response to the 2004 EU enlargement, which

significantly changed Europe's neighbourhood landscape, with the objective of avoiding further divisions between the EU and its neighbours and instead fostering their mutual stability, security and prosperity (European Commission 2016). The policy reflects the EU's efforts to develop a special relationship with the old Southern and the new Eastern neighbours of the enlarged EU, which is based on economic integration, security and political cooperation. The main aim of the ENP is to establish an area of prosperity and good neighbourliness founded on the values of the Union and characterised by close and peaceful relations based on cooperation, as stipulated in the Treaty on European Union.

As the global challenges became more and more severe, including extremism and terrorism, human rights and international law violations, as well as the migration crisis and the political crisis in Ukraine, there was an urgent need to review the ENP. The new approach introduced in 2015 has been crucial in reshaping and reinvigorating the EU's relations with the ENP partner countries, including through negotiation and adoption of new Partnership Priorities and the ongoing update of Association Agendas, in each case sharpening the focus of relations for the next few years on areas of agreed mutual interest (European Commission 2017). The reviewed ENP is an important instrument to achieve objectives of the Global Strategy (that will guide the EU's external action) in line with Council Conclusions on the Global Strategy of the European Union's Foreign and Security Policy (13202/16 of 17 October 2016). It is also coherent with the Rome Declaration promoting a stronger role of Europe on the global stage and corresponds with the Agenda 2030 for Sustainable Development and its sustainable development goals (European Commission 2017: 4).

As ENI turns European neighbourhood political agenda into actions, it should support the effective implementation of ENP's political initiatives such as the Eastern Partnership, the Partnership for Democracy and Shared Prosperity, as well as the Union for the Mediterranean in the southern neighbourhood. Additionally, it facilitates the implementation of some regional cooperation initiatives, inter alia in the framework of the Northern Dimension policy or the Black Sea Synergy. The ENI is intended for the partner countries and the areas involved in cross-border cooperation. The partner countries covered by the instrument are as follows: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, The Republic of Moldova, Morocco, occupied Palestinian territory (oPt), Syria, Tunisia and Ukraine. The special status of Russia is recognised as well, as Russia can be involved in cross-border cooperation, regional cooperation

with the EU and in relevant multi-country programmes, including in cooperation on education, in particular student exchanges. As mentioned before, the instrument aims at developing a special relationship between the abovementioned countries and the EU which is founded on cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights in accordance with the TEU. The ENI's objectives, scope and modus operandi are specified in Regulation (EU) No. 232/2014 of the European Parliament and of the Council of 11th March 2014 establishing a European Neighbourhood Instrument.

In general, the instrument should comply with the EU's postulate to promote, develop and consolidate the most fundamental values and freedoms of EU citizens. In detail, the main focus of the ENI is on promoting enhanced political cooperation, deep and sustainable democracy, progressive economic integration and a strengthened partnership with societies between the Union and the partner countries and, in particular, the implementation of partnership and cooperation agreements, association agreements or other existing and future agreements, and jointly agreed action plans or equivalent documents. It supports a wide range of actions and initiatives within three main programme categories:

- national programs (bilateral cooperation programmes),
- regional, multi-country cooperation programmes,
- cross-border cooperation,

which will be elaborated on in the next part of this paper.

ENI programming documents

For partner countries that have agreed with the EU Partnership Priorities, Association Agendas, Action Plans or other equivalent documents which provide a sound basis for setting priorities for EU support, a multiannual programming document is adopted in the form of a Single Support Framework. For the remaining partner countries multiannual programming documents take the form of the Strategy Papers & Multiannual Indicative Programmes. This approach applies also to multi-country and Cross-border Cooperation Programmes (European External Action Service 2015a, 2015b). The key programming documents comprise of:

- Neighbourhood Instrument (ENI) Regional East Strategy Paper (2014–2020) and Multiannual Indicative Programme (2014–2017),

- Neighbourhood Instrument (ENI) Regional South Strategy Paper (2014–2020) and Multiannual Indicative Programme (2014–2017),
- Programming of the European Neighbourhood Instrument (ENI)
 - 2014–2020, Programming document for EU support to ENI Cross-Border Cooperation (2014–2020),
- Strategic Priorities 2014–2020 and Multi-annual Indicative Programme 2014–2017 European Neighbourhood-wide measures.

Under the ENI East regional response strategy the major challenges are supposed to be addressed, i.a. democracy and governance shortcomings, economic development through market-based principles, reforms of energy and transport sectors, closer integration with the EU, regional interaction among partner countries and many others. The strategy focuses mainly on (European External Action Service 2014e):

- the Eastern Partnership with its emphasis on closer integration with the EU and further promotion of stability and multilateral confidence building, as confirmed by the 2013 Vilnius Summit Declaration;
- regional cooperation frameworks: Northern Dimension alongside its impact on the implementation of the Baltic Sea Strategy and the Arctic policy of the EU, and Black Sea Synergy;
- energy and transport cooperation in the wider region through the Transport Corridor Europe-Caucasus-Asia (TRACECA) programme and the Interstate Oil and Gas Transportation to Europe (INOGATE) programme.

The Southern Neighbourhood is faced with great challenges that range from the consolidation of democratic transition and good governance combined with rising regional security concerns. The priorities under ENI embrace (European External Action Service 2014f):

- building a partnership for liberty, democracy and security;
- building a partnership for inclusive and sustainable economic development;
- building a partnership between people, support regional and sub-regional institutional cooperation.

The European Neighbourhood-wide measures address the entire Neighbourhood challenges, which offers greater added value and/or efficiency gains when it comes to getting expected results. The main areas concerned are public investment, education and institution-building. Also, the Neighbourhood-wide budget covers the multi-country umbrella support whose objective is to foster reforms through additional allocations to countries showing progress in building deep and sustainable democracy. The

ENI European Neighbourhood-wide programme will pursue the following strategic objectives, which will complement the bilateral and regional programmes (European External Action Service 2014g):

- building a partnership for inclusive and sustainable economic development and integration by means of supporting investments and private sector development through the Neighbourhood Investment Facility;
- building a partnership between people by contributing to Erasmus+ in the Neighbourhood and Russia;
- targeted capacity building for European Neighbourhood countries via adoption of EU norms and standards in the regulatory framework and enhancement of public governance systems (Technical Assistance Information and Exchange: TAIEX) tool and the provision of EU public expertise in good governance.

Cross-border cooperation (CBC) on the external borders of the EU under the ENI builds on CBC under its predecessor, the ENPI. ENI programmes include Cross-border Cooperation programmes addressing cooperation between one or more Member States on the one hand and one or more partner countries and/or Russia on the other hand, taking place along their shared part of the external border of the Union. Three main categories of programmes are established under ENI-CBC: programmes covering a common land border, programmes covering a short sea crossing and programmes covering a sea basin. The individual programmes are based on the eligibility as defined in the ENI regulation and take account of the need to maintain continuity from previous programming periods.

Financial rules of ENI

Resources available under the ENI that in fact constitute external expenditure from the EU budget and – at the same time – one of the priorities of the EU's contemporary economic and social policy (Proczek, Janczak 2009: 67), are offered to partner countries primarily based on the progress made. The progress is mainly assessed in the area of building and consolidating deep and sustainable democracy and implementing agreed political, economic and social reform objectives. The objectives and priorities for Union support, together with indicative allocations, are specified in relevant multiannual programming documents. These documents are, in principle, agreed in cooperation with beneficiaries and in consultation with competent local authorities, civil society organisations and other

stakeholders, and in coordination with Member States and other donors, including International Financial Institutions. The programming is also subject of a Strategic Dialogue with the European Parliament (European External Action Service 2015a). In principle, the support is co-financed by the partner countries and other participating countries through public funds, contributions from the beneficiaries or other sources.

The budget of the ENI for the years 2014–2020 amounts to EUR 15,432,634,000 at current prices. The annual appropriations are authorised by the European Parliament and by the Council within the limits of the multiannual financial framework.

Under ENI, as mentioned above, the support is provided based on:

- bilateral programmes for partner countries,
- multi-country (regional and ENP-wide) programmes,
- cross-border cooperation programmes between Member States and partner countries and Russia.

The bilateral programmes are supposed to address the top priorities such as human rights, good governance and the rule of law, institutional cooperation and capacity development, sustainable and inclusive economic development, support to civil society actors, development of the social sectors, trade and private sector development, agriculture and rural development, sustainable management of natural resource, the energy sector, transport and infrastructure, education and skills development, mobility and migration management, confidence-building and other measures contributing to the prevention and settlement of conflicts. The EU support at the multi-country level covers the same topics which are the most urgent also in the international environment. The cross-border cooperation programmes focus on economic and social development, the environment, public health, safety and security and the mobility of persons, goods and capital.

The bilateral programmes can receive up to 80% of funding from the ENI, multi-country ones – up to 35%, and cross-border cooperation ones – up to 5%. Additionally, the ENI supports, alongside other instruments for financing external action (the Development Cooperation Instrument, the Instrument for Pre-accession Assistance (IPA II) and the Partnership Instrument), actions in respect of learning mobility to or from partner countries, mainly under Erasmus+: the Union programme for education, training, youth and sport and of cooperation and policy dialogue with authorities, institutions and organisations from those countries (Regulation (EU) No. 1288/2013).

Finally, the incentive-based-approach towards funding allocation for each partner country under the ENI is reflected in the two mechanisms (European External Action Service 2015a):

- an 'Umbrella' programme of up to 10% of the ENI budget, to be allocated to partner countries based on their progress in advancing deep and sustainable democracy. Progress in implementing agreed reform objectives contributing to that goal should also be taken into account;
- the possibility to vary multiannual bilateral allocations within the range of no more than 20% of the indicative allocation.

The Indicative Allocation of Funds under the ENI (2014–2020) is presented in Tables 1–4.

Table 1. ENI Regional East Multiannual Indicative Programme

| | |
|---|-----------------------------------|
| Indicative allocation 2014–2020 | EUR 741,000,000 – EUR 906,000,000 |
| Indicative allocation for the 1st period (2014–2017) | EUR 418,000,000 – EUR 511,000,000 |
| Eastern Partnership including Flagship Initiatives | 75% |
| Regional cooperation frameworks | 10% |
| Energy and transport initiatives involving the wider region | 5% |
| Horizontal and sectoral support to regional cooperation | 10% |

Source: European External Action Service 2014a: 13.

Table 2. ENI Regional South Multiannual Indicative Programme

| | |
|--|-----------------------------------|
| Indicative allocation foreseen (2014–2020) | EUR 674,000,000 – EUR 824,000,000 |
| Indicative allocation for the 1st period (2014–2017) | EUR 371,000,000 – EUR 453,000,000 |
| Building a partnership for sustainable and liberty, democracy and security | 20% |
| Building a partnership for inclusive and sustainable economic development | 20% |
| Building a partnership between the people | 25% |
| Support regional and sub-regional institutional cooperation | 15% |
| Complementary support | 20% |

Source: European External Action Service 2014b: 12.

Table 3. Cross-Border Cooperation Programmes under the ENI

| | | | |
|---|------------------------------------|---------------|----------------|
| Indicative total ENI funding for the period 2014–2020 | EUR 489,000,000 – EUR 598,000,000. | | |
| Land border programmes for the period 2014–2020 | ENI (in EUR) | ERDF (in EUR) | TOTAL (in EUR) |
| Kolarctic/Russia | 12,359,045 | 12,359,045 | 24,718,090 |
| Karelia/Russia | 10,750,527 | 10,750,527 | 21,501,054 |
| SE Finland/Russia | 18,073,391 | 18,073,391 | 36,146,782 |
| Estonia/Russia | 8,403,762 | 8,403,762 | 16,807,524 |
| Latvia/Russia | 7,937,514 | 7,937,514 | 15,875,028 |
| Lithuania/Russia | 9,507,615 | 9,507,615 | 19,015,230 |
| Poland/Russia | 24,292,057 | 24,292,057 | 48,584,114 |
| Latvia/Lithuania/Belarus | 37,000,000 | 37,000,000 | 74,000,000 |
| Poland/Belarus/Ukraine | 87,899,652 | 87,899,652 | 175,799,304 |
| Hungary/Slovakia/Romania/Ukraine | 36,976,000 | 36,976,000 | 73,952,000 |
| Romania/Ukraine | 30,000,000 | 30,000,000 | 60,000,000 |
| Romania/Moldova | 40,500,000 | 40,500,000 | 81,000,000 |
| Sea crossing programme | | | |
| Italy/Tunisia | 16,677,410 | 16,677,410 | 33,354,820 |
| Sea basin programmes | | | |
| Baltic Sea Region | 8,800,000 | N/A | 8,800,000 |
| Black Sea | 24,294,121 | 14,744,476 | 39,038,597 |
| Mediterranean | 104,528,906 | 104,528,906 | 209,057,812 |
| Mid-Atlantic | 50,000,000 | 50,000,000 | 100,000,000 |
| Programme Support | 15,000,000 | N/A | 15,000,000 |
| TOTAL | 543,000,000 | 509,650,355 | 1,052,650,355 |

Source: European External Action Service 2014d: Table 1.

**Table 4. Multi-annual Indicative Programme 2014–2020
European Neighbourhood-wide measures**

| | |
|---|---|
| Indicative allocation 2014–2020 | EUR 3,084,000,000 – EUR 3,455,000,000 of which EUR 1,407,000,000 for umbrella support |
| Indicative allocation for the 1st period (2014–2017) | EUR 1,675,000,000 – EUR 1,876,000,000 of which EUR 770,000,000 for umbrella support |
| Building a partnership for inclusive and sustainable economic development and integration | 55% |
| Building a partnership between people: Erasmus+ in the Neighbourhood and Russia | 40% |
| Building capacity for European Neighbourhood countries | 5% |

Source: European External Action Service 2014g: 3.

Poland-Belarus-Ukraine Cross-border Cooperation as an example of an initiative co-financed under the ENI

The 2014–2020 Cross-border Cooperation Programme Poland-Belarus-Ukraine has the budget of EUR 183,000,000 allocated within the EU budget under the ENI and European Regional Development Fund. The Programme covers three countries: Poland (Podlaskie, Lubelskie, Podkarpackie voivodeships and the western part of Mazowieckie voivodeship), Belarus (Brest, Grodno, Minsk and Gomel Oblasts) and Ukraine (Lvivska, Volynska, Zakarpatska, Rivnenska, Ternopilska and Ivano-Frankivska Oblasts) and focuses on four basic strategic objectives (Serwis Programów Europejskiej Współpracy Terytorialnej i Europejskiego instrumentu Sąsiedztwa 2016):

- promotion of local culture and preservation of historical heritage;
- improvement of accessibility to the regions, development of sustainable and climate-proof transport and communication networks and systems;
- common challenges in the field of safety and security;
- promotion of border security management, mobility and migration management.

The biggest part of funds (EUR 55,900,000) will be allocated to transport infrastructure development, which would make the regions covered by the Programme more accessible, while the smallest pool will go to border

management (EUR 33,100,000). The project funding cannot exceed 90% of total project costs.

Large Infrastructure Projects (LIPs) play a crucial role in the Cross-border Cooperation Programme Poland-Belarus-Ukraine. Their budget assumes that at least EUR 2,500,000 is allocated to acquisition of infrastructure. LIPs are selected only through a separate direct procedure which applies exclusively to them. According to this procedure, the funding is granted:

- to bodies with a *de jure* or *de facto* monopoly;
- for actions with specific characteristics that require a particular type of body based on its technical competence, high degree of specialisation or administrative powers.

Following the first principle, an entity (consortium) which – pursuant to any applicable law – has exclusive competence or is the only organisation operating (capable of operating) in the field of activity on a given geographical area, can become a beneficiary of the Programme.

So far only the selection procedure for the LIP funding has been completed. Following this procedure LIPs have been selected and put on the main and reserve lists. The ten main projects which in total will receive EUR 52,070,000 of the EU budget under ENI and ERDF are as follows (Cross-border Cooperation Programme Poland-Belarus-Ukraine 2014–2020 2017):

in Poland:

- expansion of the regional road No. 885 Przemyśl–Hermanowice (6.75 million);
- construction of the infrastructure of the rail border crossing in Siemianówka (5.31 million);
- improvement of accessibility of the border region through rebuilding of the regional road No. 698 with renovation of the bridge on the Toczna river in Łosice (4.59 million);
- expansion of the Korolówka–Włodawa road in the section of approx. 5.00 km in length in total (5.76 million);

in Belarus:

- construction of the relocatable X-ray scanning control system of vehicles at the border checkpoint in Berestovitsa (4.05 million);
- Polish-Belarusian Cross-border safety; strengthening of fire and rescue services capacity (4.06 million);
- improvement of border region road infrastructure, ensuring sustainable access to the border region (modernization and construction of road R-16) (4.6 million);

in Ukraine:

- development of the system of dynamic response to information about crimes and other incidents in Lviv (5.4 million);
- environment improvement in the Shatsk National Natural Park by building sewer systems in rural settlements around Lake Svityaz (5.8 million);
- reducing the risk of a tuberculosis outbreak in the border areas of Ukraine and Poland through construction of a tuberculosis hospital for 60 patients in Wynohradiw and introduction of innovative methods of tuberculosis monitoring, prevention and treatment (5.8 million).

Conclusions

The ENI has replaced the ENPI that operated in the years 2007–2013. The new instrument is supposed to be more effective, and the support offered under it is considered faster, more flexible and accessible. The fact that funding is provided on an incentive basis ensures better implementation of agreed action plans by partners, which in consequence leads to rewarding of the most involved partners. As the aid is mainly based on bilateral action plans, it targets well the political agenda of the EU and a partner country. Owing to that, the EU can allocate more funds where it makes the biggest impact, and by doing so secure greater differentiation in distribution of funds. This instrument takes greater account of human rights, democracy and good governance when it comes to assistance allocation. The above mentioned features encourage development of closer links between the EU and partner countries, which guarantees greater involvement of citizens, especially the youth, in EU internal programmes.

The 2014–2020 ENI has a budget of EUR 15.4 billion. It is one of the biggest financial envelopes, as it constitutes 24% of all EU budget expenditure for external action. Support under the ENI is provided in three ways: through bilateral programmes offering support for one partner country, multi-country programmes addressing challenges common for all or many partner countries, regional and sub-regional cooperation between two or more countries and cross-border cooperation programmes between the Member States and partner countries taking place along their joint part of the external EU border (including Russia), as illustrated with the example of cooperation with Belarus and Ukraine on the Polish borderline. Funds are allocated to 16 partner countries; their forms and amounts differ and depend on, above all, the needs of a given country assessed according

to its population and level of development, involvement of a given country and its progress in implementing the agreed political, economic and social objectives, progress in building deep and sustainable democracy, partnership with the EU to date and the country's ambitions for that partnership, as well as absorption capacity and the potential impact of the EU support. The purpose of the ENI funding is to promote democratic values, observe the principles of the state of law and good governance, promote and facilitate actions supporting sustainable development and market economy in countries that are beneficiaries.

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European Union, Ukraine, Russia and the Minsk Ceasefire Negotiations

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Abstract

The present paper attempts at analyzing the Russo-Ukrainian armed conflict in the light of peace talks conducted by the sides of the conflict and third parties (countries and international organizations, e.g. EU, OSCE) involved in the process. The situation is further complicated by the fact that the peace process has not been completed and war still rages on in south-eastern Ukraine despite the Minsk Agreements having been negotiated. The problem approach towards the issue was embraced. As a consequence, the negotiation process itself was not of chief concern. Primarily, the chapter demonstrates the results of peace talks and indicates critical problems with the implementation of the agreements (Geneva, Minsk 1, and Minsk 2 agreements). Peace talks concerning the Donbas issue can be briefly summarized by the following statement: from Geneva to Minsk and onwards.

Without active involvement of the West, Ukraine will not be able to handle the war with Russia. For this reason, the assistance of the West should be of both long-term and short-term nature. The long-term goal – to support Ukraine in implementing fundamental reforms (the reform of the legal system, the economy, fight against corruption and the oligarchic system, etc.). Achieving this requires that the Ukrainians be given training and expertise, the know-how, to help them in their effort to change the situation in their country. The immediate goal – actions aimed at stabilising the situation and terminating the military operation, provided that Russia is ready to accept federalization and pull its forces out of Ukraine. Ukraine is not capable of regaining control of the territories occupied by pro-Russian separatists without military intervention from the West – and as the West is not ready to provide massive military assistance, we need to realize that Ukraine has no military option to solve the conflict.

Key words: European Union, Eastern Europe, Ukraine, Ukraine's Crisis, Russia, Minsk ceasefire negotiations

Introduction

The present paper attempts at analyzing the Russo-Ukrainian armed conflict in the light of peace talks conducted by the sides of the conflict and third parties (countries and international organizations, e.g. EU, OSCE) involved in the process (for information on the Russo-Ukrainian armed conflict, its determinants, course of events, international impact, see: Menon, Rumer 2015; Pridham 2014: 53–61; Stepniewski 2014: 13–24; Rącz 2015; Grigas 2016; Sakwa 2015; Yekelchuk 2015; Umland 2016; Wilson 2014; Kuzio 2015; Tsygankov 2015: 279–303; Bachmann, Lyubashenko 2014). The situation is further complicated by the fact that the peace process has not been completed and war still rages on in south-eastern Ukraine despite the Minsk Agreements having been negotiated. The problem approach towards the issue was embraced. As a consequence, the negotiation process itself was not of chief concern. Primarily, the chapter demonstrates the results of peace talks and indicates critical problems with the implementation of the agreements (Geneva, Minsk 1, and Minsk 2 agreements). Peace talks concerning the Donbas issue can be briefly summarized by the following statement: from Geneva to Minsk and onwards.

As Sven Biscop rightly observed: “Russia’s annexation of the Crimea and subsequent meddling in Ukraine does not constitute a game-changer. It is just a reminder that at least since the war with Georgia in 2008 Russia has been and still is playing the same game: a ‘game of zones’ aimed at (re)establishing an exclusive sphere of influence. Many of us Europeans had forgotten that, or had pushed it to the back of our minds, preferring to believe that we were not engaged in a zero-sum game in our eastern neighbourhood” (Biscop 2014).

In search of Russo-Ukrainian conflict’s roots: the November 2013 Eastern Partnership Summit in Vilnius

Indirect causes of the Donbas conflict vary. However, one of them (arguably a direct cause) was the events occurring in Ukraine. During the 3rd European Union’s Eastern Partnership Summit in Vilnius, held on 28–29th November 2013, Ukraine was about to sign the Association Agreement which had been negotiated with the European Union, but the then President of Ukraine, Viktor Yanukovich, withdrew from signing it. Georgia and Moldova, however, initialed then their respective Association Agreements with the EU, including a Deep and Comprehensive Free Trade Area (DCFTA). Later, similar Association Agreements were signed by

Georgia and Ukraine during the European Council in Brussels on 27th June, 2014. The Association Agreement between the European Union and Ukraine was signed in two stages: 1) its political part was signed on 21st March 2014; 2) its economic part was signed on 27th June 2014. These two stages were followed by the ratification of the EU – Ukraine Association Agreement by the European Parliament on 16th September 2014. The ratification will be completed if the agreement is ratified by all 28 EU Member States. Unfortunately, in 2016, the Dutch rejected the Association Agreement with Ukraine in a referendum. However, the agreement had been ratified by both houses of the Dutch parliament and came into force, despite the negative result of the referendum.

Goals of the Russian invasion and occupation of Ukrainian Crimea

From the very beginning of the Russian-Ukrainian conflict (a hybrid war) (wider: Hajduk, Stepniewski 2015: 135–151; Stepniewski 2015: 153–166), the aim of Russia was to destabilise the situation in southern and eastern Ukraine in order to disconnect the areas from the country or to turn them into “occupied territories”, or establish a quasi-state in the area (as in the case of Transnistria). While the annexation of Crimea was easy to carry out, the east and south of Ukraine do not seem likely to readily follow the same scenario, though it is not unfeasible. Support for the integration with Russia is considerably smaller in those areas than in Crimea. Russia is using the activities of separatists to provoke Kyiv to further military action and in this way is seeking to unleash a civil war in Ukraine and destabilize the country. All diplomatic efforts possible should be made to prevent an armed conflict – so that the scenario from Georgia, which in 2008 yielded to provocation and lost part of its territory, never repeats. Under the present circumstances, such course of events is highly probable.

The relations between Ukraine and Russia are extremely complex, as they are built on a shared history, religion, language and culture and they should not be gauged with western standards. “The West must understand that, to Russia, Ukraine can never be just a foreign country”, wrote the former US secretary of state, Henry Kissinger, in *The Washington Post*. Ukraine is also an economic partner that Russia would like to incorporate into its proposed Eurasian Union, a customs union due to be formed in January 2015, whose likely members include Kazakhstan, Belarus, and Armenia. Ukraine’s

membership would make the union more popular “by a solid 27 percent,” writes Simon Saradzhyan, a research fellow at Harvard Kennedy School’s Belfer Center (McMahon 2014).

The Geneva agreement on Ukraine

In Geneva, on 17th April 2014, a meeting of the ministers of foreign affairs of Russia, the European Union and the United States occurred. The meeting resulted in a joint declaration on the Ukrainian crisis being signed. Despite the document outlining steps to be taken in order for the conflict to cease, the declaration was general in character. Moreover, the interpretation of measures featured in the declaration was left to the individual parties. The term “all parties” of the conflict was applied, which resulted in difficulties in reaching a common standpoint. A tactical objective Russia strived to achieve at that time was to prevent presidential elections from occurring in Ukraine (these were planned to be held on 25th May 2015). Significantly, the sides of the conflict agreed that the OSCE Special Monitoring Mission was to play a crucial role in the de-escalation of the conflict.

In hindsight, it turned out that the divergent standpoints resulted in the Geneva agreement failing to contribute to the stabilization of eastern Ukraine. For Ukraine, it was important to manifest its interest in the stabilization and resolution of the conflict. Ukraine endeavors that Russia admits to being directly involved in the conflict, and that by signing the agreement it, *de facto*, recognized the new government in Kyiv. On the other hand, for Russia, it was important that the conflict was perceived as an internal conflict of Ukraine, that no mention was made of Russia’s annexation of Crimea in March 2014, and that the agreement did not place any obligations on the Russian Federation.

Minsk 1 and Minsk 2 ceasefire negotiations

Minsk 1. In September 2014 and February 2015, in Minsk, Belarus, the so-called Minsk Agreements (the common term for a package of documents adopted) were negotiated as the main framework for the resolution of the conflict in Ukraine (Shelest, Maksak 2016: 7). In Minsk, on 5th September 2014, members of the so-called trilateral contact group (Ukraine, Russia, the OSCE) and the representatives of the separatists signed a protocol (consisting of 12 brief points) on a ceasefire in eastern Ukraine (Shelest,

Maksak 2016: 7). The agreements, following the earlier one from Geneva, were general in character and did not warrant a lasting ceasefire, thus did not stabilize eastern Ukraine (Table 1 presents Minsk 1 Agreement). Importantly, Minsk 1 was particularly favorable to Russia. At that time, a NATO summit was being held in Newport (Wales), and the EU was preparing to expand sanctions against Russia. Owing to the agreement, Russia was able to blunt the EU and NATO's arguments for introducing stricter sanctions (cf. Sadowski, Wierzbowska-Miazga 2014). Moreover, Russia transformed from an aggressor (official support for separatists) into the side driving for peace and stabilization of Ukraine, a party in peace talks.

Minsk 2. Despite Minsk 1 agreement having been negotiated, the situation was not stabilized and the conflict intensified again. Exchange of fire became more frequent and casualties mounted. The situation demanded the sides to meet yet again to negotiate further. On 12th February 2015 in Minsk, the leaders of Ukraine, Russia, Germany and France succeeded in negotiating an agreement (a 13-point agreement) to resolve the conflict in Ukraine (Donbas). Officially, the document was signed by the so-called contact group – the representatives of Ukraine, Russia, the OSCE and the separatists – and related to the measures taken/to be taken to implement the Minsk agreements of 5th and 19th September 2014 (see: Kardaś, Konończuk 2015). The measures of Minsk 2 agreement are detailed in Table 1 below. When compared with the previous agreement, the current one contains a statement that requires Ukraine to commit to the adoption of a new constitution and the implementation of a law granting special status to “some regions of the Donetsk and Luhansk oblasts” (Kardaś, Konończuk 2015).

Table 1. Minsk Agreements (Minsk 1 of 5 September 2014 and Minsk 2 of 12 February 2015)

| Regulated issue | of 5 September | of 12 February |
|--|---|--|
| Ceasefire | Point 1 immediate bilateral ceasefire | Point 1 immediate and comprehensive ceasefire in individual areas of the Donetsk and Luhansk regions and its strict implementation starting from 15 th February 00:00 hours |
| Withdrawal of heavy equipment | – | Point 2 withdrawal of heavy equipment by both sides at equal distances in order to create a security zone: – minimum 50 km wide for 100 mm and larger caliber artillery systems |

continued Table 1

| Regulated issue | of 5 September | of 12 February |
|--|---|--|
| Withdrawal of heavy equipment (continued) | – | <ul style="list-style-type: none"> – 70 km wide for multiple rocket launcher systems – 140 km wide for Tornado-S, Uragan and Smerch multiple rocket launcher systems and Tochka tactical missile systems (Tochka U) Demarcation line: <ul style="list-style-type: none"> – for Ukrainian troops, according to the actual front line – for military formations operating in territories in Donetsk and Luhansk Oblasts, according to the line set in the memorandum of 19th September 2014 must commence not later than on the second day following the ceasefire and must be completed within 14 days the OSCE will support the withdrawal of the troops with the participation of the Trilateral Contact Group |
| Ceasefire monitoring mechanism | Point 2 ceasefire monitored by the OSCE | Point 3 ceasefire and the withdrawal of troops monitored by the OSCE (using all technical measures available including satellites, UAVs, radar systems etc.) |
| Political system issues | Point 3 decentralization, including passing an act setting a special mode of operation for the local governments in parts of Donetsk and Luhansk Oblasts | Point 11 conducting constitutional reform in Ukraine with the new constitution coming into force by the end of 2015, providing for decentralization as a key element (taking into account the special nature of individual areas of the Donetsk and Luhansk Oblasts, agreed with representatives of these areas), as well as adoption of permanent legislation on the special status of individual areas of the Donetsk and Luhansk Oblasts. adopting permanent legal regulations granting special status to parts of Donetsk and Luhansk Oblasts based <i>inter alia</i> on the following guidelines: <ol style="list-style-type: none"> 1) guarantee of immunity to individuals involved in the developments which took place in individual regions of Donetsk and Luhansk Oblasts 2) right of self-determination as regards language issues |

| Regulated issue | of 5 September | of 12 February |
|--|---|---|
| Political system issues (continued) | | 3) local government's right to participate in nominating heads for prosecution authorities and courts in individual areas of Donetsk and Luhansk Oblasts 4) state support for socio-economic development of individual areas of Donetsk and Luhansk Oblasts 5) central government's support for cross-border co-operation between individual areas of Donetsk and Luhansk Oblasts and regions of the Russian Federation 6) forming local 'people's militia' units under decisions of local government authorities in order to guarantee public order in individual areas of Donetsk and Luhansk Oblasts 7) local governments' right to enter into agreements with the central government concerning economic, cultural and social development of individual areas of Donetsk and Luhansk Oblasts 8) the powers of local council deputies and other officials elected in early elections, appointed by the Verkhovna Rada according to this law, cannot be terminated |
| The Russian-Ukrainian border | Point 4 constant monitoring of the Russian-Ukrainian border by the OSCE, along with setting up a security zone in the frontier regions of Russia and Ukraine | Point 9 the Ukrainian government will begin regaining full control of the state border on the first day after local elections are held, and will end once the political issues have been comprehensively regulated (local elections in individual areas of Luhansk and Donetsk Oblasts; constitutional reform) by the end of 2015, on condition that the provisions concerning the constitutional reform have been met and following consultations and in agreement with representatives of individual areas of Luhansk and Donetsk Oblasts in the framework of the Trilateral Contact Group |
| Hostages and detainees | Point 5 unconditional release of all prisoners of war and individuals who have been illegally detained | Point 6 release and exchange of all prisoners of war and individuals who have been illegally detained according to the rule "all for all"; this process should end within 5 days of the troops' withdrawal |

continued Table 1

| Regulated issue | of 5 September | of 12 February |
|-------------------------|--|---|
| Amnesty acts | Point 6 adopting an act that would prevent prosecution and punishment of individuals involved in the developments seen in individual regions of Donetsk and Luhansk Oblasts | Point 5 amnesty and right of pardon act prohibiting the prosecution and punishment of individuals involved in the events that took place in individual areas of Donetsk and Luhansk Oblasts |
| Dialogue | Point 7 beginning an open dialogue covering the entire nation | – |
| Humanitarian aid | Point 8 taking measure to improve the humanitarian situation in Donbas | Point 7 setting up an international mechanism to guarantee secure access, supplies, storage and distribution of humanitarian aid to those in need |
| Elections | Point 9 holding a snap local election on the grounds of the Ukrainian act setting a special mode of operation for the local governments in parts of Donetsk and Luhansk Oblasts | Point 4 dialogue on the possibilities of holding local elections in compliance with Ukrainian law and an act setting a special mode of operation for the local governments in individual areas of Donetsk and Luhansk Oblasts and dialogue on the future status of these territories on the grounds of the aforementioned act should begin on the first day after the withdrawal of troops the <i>Verkhovna Rada</i> should promptly (within 30 days of signing this agreement) pass a decision indicating the areas to which the special status will be extended on the grounds of the Law on temporary order of local government in some areas of Donetsk and Luhansk Oblasts; demarcation will be based on the line set in the memorandum of 19 th September 2014 |

| Regulated issue | of 5 September | of 12 February |
|-------------------------------------|---|---|
| | | Point 12 on the grounds of the Ukrainian Law on temporary order of local government in some areas of Donetsk and Luhansk Oblasts, issues concerning local elections will be consulted with representatives of individual areas of Donetsk and Luhansk Oblasts; elections will be held in compliance with OSCE standards and will be monitored by the OSCE ODIHR |
| Withdrawal of troops | Point 10 withdrawal of all illegal military formations, military equipment, militants and mercenaries from the Ukrainian territory | Point 10 withdrawal of all foreign military formations, military equipment, militants and mercenaries from the Ukrainian territory under the supervision of the OSCE; disarmament of all illegal groups |
| Reconstruction of Donbas | Point 11 adopting a programme for economic reconstruction of Donbas and bringing back functionality to the region | Point 8 determining the possibilities of a full reconstruction of socio-economic bonds (between Donbas and the rest of Ukraine), including welfare benefits, such as payment of pensions and other payments (takings and incomes, timely payment of all bills for utility services, bringing back into operation the fiscal system within the framework of Ukrainian legal regulations) for this purpose Ukraine undertakes to reconstruct the system for managing the relevant segment of its banking sector in the areas affected by the conflict, and possibly an international mechanism facilitating bank transfers will be introduced |
| Security guarantees | Point 12 guarantee of personal security to all participants of the talks | – |
| The Trilateral Contact Group | – | Point 13 intensification of activity within the group creating working groups for carrying out individual provisions of the Minsk Agreement |

Source: Kardaś, Sz., Konończuk, W. (2015), *Minsk 2 – a fragile truce*, Analyses, 12/02/2015, Warszawa: Ośrodek Studiów Wschodnich, available at: <http://www.osw.waw.pl/en/publikacje/analyses/2015-02-12/minsk-2-a-fragile-truce> [accessed on: 15.07.2017].

Minsk Agreements and Ukraine's reality

As of July 2017 (Map 1), one third of the Donbas region (part of Luhansk and Donetsk regions), or close to 3% of Ukrainian territory, is controlled by the combatants (or terrorists) of the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, not by the Ukraine’s government (Shelest, Maksak June 2016: 6–7).

Map 1. Map of the Minsk Peace Deal

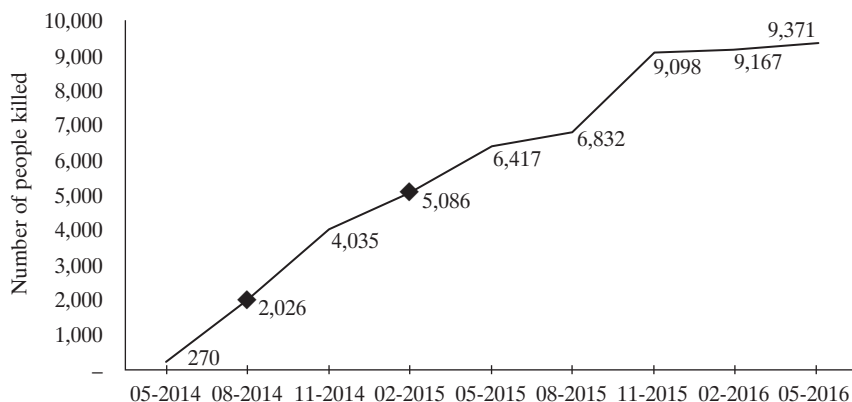


Source: Youngs, R. (2017), *Europe's Eastern Crisis. The Geopolitics of Asymmetry*, Cambridge: University Press, p. 15.

Mikhail Alexseev drew an interesting comparison based on UN data, which clearly shows that despite the Minsk agreements, the Donbas conflict was still taking toll in lives (Figure 1). Mikhail Alexseev states that “UN human rights agencies reported that 4,364 people were killed in the Russia-Ukraine conflict between April and December 2014. Since then, the death toll has continued to climb, however, reaching a casualty count of 9,371 by late May 2016. Most deaths have resulted from offensive operations by Russia-backed separatists. The death toll of about 4,285 for

the period from last February to May is more than four times the annual rate that international relations scholars use to classify armed conflicts as wars” (Alexseev 2016; UN 2015).

Figure 1. Death Toll in Russia-Ukraine Donbas War (UN Data)



Note: Markers show the Minsk 1 and Minsk 2 ceasefire accords.

Source: Alexseev, M. (2016), *The Tale of Three Legitimacies: The Shifting Tone and Enduring Substance of Moscow's Ukraine Policy*, PONARS Eurasia Policy Memo No. 431, June 2016, available at: http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/Pepm431_Alexseev_June2016_8.pdf [accessed on: 15.09.2017].

The fact that EU leaders aspire to stabilize Ukraine and, in order not to intensify the conflict with Russia, embrace the distorted reality that Minsk agreements are followed, is noteworthy. As mentioned above, exchange of fire does take place and we are indeed witnessing a Russo- Ukrainian war in Donbas. Petro Poroshenko, the president of Ukraine, is leading a policy of full loyalty towards the French and German participants of the Norman format talks. Unfortunately, the talks have yet to show significant changes in resolving the Donbas conflict.

Analysts from the Centre for Eastern Studies (OSW) in Warsaw observe that “one year later, the Minsk agreement is dead, as none of its points have been fully implemented. Although fighting on a larger scale has stopped, the full ceasefire and the withdrawal of heavy weapons from the buffer zone never took place. Nor were the political conditions complied with that would have made it possible to reintegrate the Donets Basin, currently under de facto Russian control, with the rest of Ukraine. The two sides have different interpretations of the agreement’s main points. Russia believes that a prerequisite for agreement is the introduction of decentralisation

reforms by Ukraine, which would give special status to part of Donbas, while Ukraine holds the view that the implementation of the document must be accompanied not only by an unconditional and permanent ceasefire, but also by the restoration of control over the entire Ukrainian-Russian border to Kyiv” (Wilk, Olszański, Górecki 2016).

Territorial integrity of Ukraine and the EU sanctions against Russia

The West is deeply divided as to the reaction to the aggressive and violent policy of Russia towards Ukraine. At present, sanctions are the only viable response of the West (the US in particular) to the policy. This does not change the fact that Russian decision makers take sanctions into account. More sanctions imposed on Russia and Russian politicians could weaken the Russian policy (though it is not certain they will do). An information campaign about the impact of the sanctions on the Russian policy is needed (they will be felt medium and long term). Although in 2014–2016 Russia was dealing well with the sanctions, later (in 2017) they will become more perceptible for both the authorities and the society. What is important is that the US has much less at stake when the sanctions are introduced. On the other hand, the EU will lose the most and it is a very divided organisation lacking in solidarity between its Member States. The less agreement there is between the Member States, the stronger and more effective the Russian policy is bound to become. Therefore, both sanctions and solidarity are needed to possibly change the situation. A lot depends on the policy of Germany towards Russia and its capacity to enforce a change of Russian policy (Putin’s policy). Actions of such German politicians as Gerhard Schröder, the former German Chancellor, weaken the position of the EU and undermine the efficiency of its policy towards Russia.

The EU sanctions against Russia should continue unless the solutions for Donbas and Crimea acceptable for Ukraine are found. It should be clarified among the Member States if the EU sanctions imposed on Russia are bound to the solution of the status of both Donbas and Crimea with respect to Ukraine’s territorial integrity. The EU would make a mistake if it agreed to cancel the sanctions against Russia provided that Russia helps with the settlement of the Donbas problem while continuing with its annexation of Crimea.¹

¹ EU sanctions were introduced on 31st July 2014 in response to the escalation of the conflict in eastern Ukraine and Russia’s support for pro-Russian rebels.

The EU could recognise Crimea as part of Russia only if Ukraine does it first. Nevertheless, the EU should consider the option of promoting talks between Russia and Ukraine on resolving technical infrastructural problems of people living in Crimea having in mind that electricity, natural gas and water supply to the peninsula completely depends on Ukraine and its resources, and second, that Russia should compensate both the moral and material loss of Ukrainian nationals and companies in Crimea. The return to usual business-like relations with Russia shall not be possible unless Russia helps to settle both the Donbas and Crimea issues.

The problem is that through its aggressive policy Russia is forfeiting its achievements of the last years in the relations with the West. For two decades, the West has been trying to involve Russia in Europe, now it is striving to exclude it at any cost.

Conclusions

Without an active involvement of the West, Ukraine will not be able to handle the war with Russia. For this reason, the assistance of the West should be of both long-term and short-term nature. The long-term goal – to support Ukraine in implementing fundamental reforms (reform of the legal system, the economy, fight against corruption and the oligarchic system, etc.). Achieving this requires that the Ukrainians be given training and expertise, the know-how, to help them in their effort to change the situation in their country. The immediate goal – actions aimed at stabilising the situation and terminating the military operation, provided that Russia is ready to accept federalization and pull its forces out of Ukraine. Ukraine is not capable of regaining control of the territories occupied by the pro-Russian separatists without military intervention from the West – and as the West is not ready to provide massive military assistance, we need to realize that Ukraine has no military option to solve the conflict.

However, granting a wide autonomy to the territories may raise hopes that they will be given back to Ukraine in the future. Another solution would be – as rightly observed by Alexander Motyl from Rutgers University in “Foreign Affairs” – to surrender the territories occupied by the separatists (i.e., to forego Donbas and other occupied cities), which are like a millstone round Ukraine’s neck. As it is now, Donbas will drag Ukraine down, both in political and economic terms, whereas re-establishing Ukrainian control in the area seems unlikely. Mykola Riabchukis of similar opinion and claims

that as far as Donbas is concerned, “it is a Sovietized region. Politically, I see no prospects for it. And economically it is very backward. It would be best to freeze the conflict going on there. And in the future, inhabitants of Donbas would perhaps want to vote in a referendum for their region to join Ukraine, as Eastern Germans wanted their country to join West Germany” (Riabchuk 2016: 52). The best case scenario, though unfortunately also the most unlikely one, is that Russia, exhausted by the economic sanctions, will abandon its aggressive policy towards Ukraine and this (in the long run) will provide an opportunity for Ukraine to regain control of the territories.

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European Union Neighborhood Policy and Relations with Russia

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Abstract

The aim of the paper is to present prospects for the implementation of the EU's Eastern Neighborhood Policy in the context of a difficult neighborhood with the EU. The paper uses a qualitative and quantitative methodology to investigate the European Union's neighborhood policy objectives before and after the Crimean Crisis. The assumptions of the European neighborhood policy of the EU from the point of view of maintaining economic development and political stability in the South and East regions, in theory, provided a great opportunity for long-term gains from neighboring countries. The implementation of the European Neighborhood Policy assumptions requires the EU to strengthen its economic cooperation with its neighboring countries, particularly Eastern Europe, which are experiencing economic difficulties.

Key words: neighborhood policy, European Union, Russia, sanctions, international trade

Introduction

The essence of the European Neighborhood Policy has changed under the influence of political events of global importance, both in the south and in the east. Some Eastern European countries, for fear of confrontation with Russia, have chosen economic integration with Russia within the Eurasian Economic Community. Russia, which has rejected the European Neighborhood Policy since the very beginning, has ceased to be a crisis partner after the Crimean Union's strategic partner.

The aim of the paper is to present perspectives for maintaining the EU's Eastern Neighborhood Policy in the context of a difficult neighborhood with the EU.

The starting point for the discussion is Section 1, which presents the idea of creating a European neighborhood policy and the source of the failure of this policy. Section 2 discusses the difficulty of EU cooperation with Russia as a result of the sanctions imposed by the EU and selected countries in the world following Russia's violation of Ukraine's territoriality. Section 3 characterizes the use of Russia in foreign trade in energy, which can be a source of sharing interests between Member States and the EU's position on Russia. Section 4 briefly analyzes the EU-Russia trade relations, whose main product is natural gas and crude oil. Section 5 presents the prospects for future European Neighborhood Policy and relations with Russia.

Premises for European Union neighborhood policy and relations with Russia

The European Neighborhood Policy was created in 2004 based on the idea of promoting European values in the countries neighboring the European Union, in particular the rule of law and market economy (European Commission 2004). Morocco, Algeria, Tunisia, Libya, Egypt, Israel, Jordan, Lebanon, Palestine, Syria, the Eastern European states of Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine. The European Neighborhood Policy covered cultural, political and economic differences in its state.

European Union neighborhood policy has been established for several important reasons. Firstly, the implementation of this policy would lead, in line with the Prodi initiative, to creating a "ring of friends" around the European Union (Prodi 2002), implementing political and economic reforms. Neighboring states, in return for promoting European values, could receive development aid from the EU and commercial benefits in the form of increased access to the EU internal market (Nielsen 2013). Secondly, the European Neighborhood Policy was supposed to protect Europe from the emergence of a new iron curtain. The decision to set up the European Neighborhood Policy was taken after the enlargement of the European Union on 1 May 2004 to include ten countries in Central and Eastern Europe. In the face of unfavorable opinions from Western European societies, the European Union, fearing the postulates of successive states, proclaimed the European Neighborhood Policy without a promise of membership of the EU (Hummer 2011). Thirdly, the implementation of the European Neighborhood Policy assumptions was based on the concept

of soft power, which allowed for increased prosperity and stability in the region. The concept of soft power for international relations literature was introduced by Joseph Nye in *Bound and Lead* (Nye 1990). Nye defined the impact on other states by attracting and convincing, without the need to use the coercion tools of other states for specific actions (Nye 2014) by introducing European values such as stability, democracy, the rule of law, market economy, culture.

By implementing the objectives of the European Neighborhood Policy, the European Union has signed a number of Partnership and Cooperation Agreements (PCAs) with many Eastern European countries.

Russia has rejected the possibility of cooperation with the EU under the European Neighborhood Policy. Mutual relationships were governed by the strategic partnership still under the 1997 Partnership and Cooperation Agreement. During the negotiations for the accession of Central and Eastern European countries to the European Union, Russia was seen as a strategic partner. EU Member States wished to involve Russia in creating a European security policy and in the process of globalization based on democratic governance in Russia (Freudenstein 2014). Russia has neglected its participation in the European Neighborhood Policy along with small states from both Eastern Europe and North Africa. Russia, interested in being treated as a strategic partner, continued its cooperation with the EU on the basis of a common strategy adopted in 1999 for Russia (Common Strategy 1999). Russia has committed itself to respecting the principles of democracy, public institutions and the rule of law (Haukkala 2009).

After 2010 there was a radical change in the political situation in North Africa, as well as Eastern Europe. There was a kind of “ring of fire” around the European Union. In North Africa, the outbreak of social revolutions (Arab Spring) in Tunisia and Algeria in 2010, Egypt, Jordan, Yemen and Libya in 2011, and the overthrow of governments as a result of social discontent caused by unemployment, huge scale of poverty and authoritarian rule have changed the political and economic situation in these countries.

In the eastern dimension, in the region of Eastern Europe there was an outbreak of the Euromaidan revolution in Ukraine and the illegal annexation of the Crimea by Russia in 2014. There was an escalation of the armed conflict between Russia-backed Armenia and Azerbaijan. The democratization processes in Georgia weakened, and internal problems related to corruption and separatism in Moldova have been exacerbated. In the context of a difficult neighborhood with Russia, which hinders the introduction of political and economic reforms modeled on EU solutions,

the political events in the countries of Eastern Europe have prevented the achievement of the fundamental goals and objectives of the European Neighborhood Policy (Bouris, Schumacher 2016).

Under the influence of the political events in 2014, the EU intensified its cooperation with Moldova and Ukraine, as a result of their pro-European initiative. On 30th August 2014, the European Union and Moldova signed an Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the basis of which they decided to create a free trade zone within ten years of the entry into force of the Agreement.

On 21st March 2014, the European Union signed an association agreement with Ukraine (Council Decision 2014/295 2014). Beginning from 1st November 2014, some of the provisions of the Association Agreement on political issues, in particular political dialogue and human rights, entered into force.

At the same time, Russia is not interested in the solution of economic liberalism and has launched its own project for the creation of the Eurasian Economic Community. Russia, Belarus and Kazakhstan signed an agreement on the establishment of the Eurasian Economic Community in 2014, which entered into force on 1st January 2015.

Some of the countries neighboring Russia have opted under the pressure of Russia's foreign policy to join the Eurasian Economic Community (The New York Times 2013). In 2015, by interrupting long-standing cooperation with the European Union, Armenia, which for many years has been part of the European Neighborhood Policy, joined the Eurasian Economic Community and cooperated with the EU to join the Eastern Partnership.

Crimean Crisis – European Union's sanctions against Russia

The armed conflict in Ukraine and the annexation of the Crimea have reduced the possibility of establishing in Ukraine the principles of democracy and the political system in force in the European Union. After the violation of territoriality of Ukraine, Russia ceased to be treated as a strategic partner of the European Union (Malek 2015).

Russia's armed intervention in Ukraine triggered a strong response from the European Union in the form of sanctions. The EU sanctions against Russia called smart sanctions (Crozet, Hinz), adopted between March and July 2014, concerned mainly the ruling elite responsible for military

intervention in Ukraine (Portela 2014). Other countries in the world such as Albania, Australia, Montenegro, Georgia, Japan, Canada, Moldova, Norway, New Zealand, the United States and Ukraine also have sanctions.

In March 2014, after the intervention of Russia in Crimea, the Council adopted Council Regulation No 269/2014 on restrictive measures in respect of measures undermining territorial integrity, sovereignty and independence of Ukraine or threatening them, expressly condemning the violation of territorial integrity of Ukraine.

In March 2014, the Council of the European Union adopted a document, part of the EU sanctions against Russia, Decision No 2014/145/CFSP on restrictive measures in connection with actions undermining territorial integrity, sovereignty and independence of Ukraine or threatening them (Council Decision 2014/145/CFSP 2014). It was forbidden to enter the territory of the European Union and pass through EU territory to natural persons from Russia who supported or implemented actions that undermined the integrity of Ukraine.

With the intensification of Russia's actions in Ukraine, the European Union introduced further sanctions on trade and capital movements in June 2014. Banned imports of goods from Crimea and Sevastopol, restrictions on trade, investment in selected sectors of the economy (European Council 2017).

In July and September 2014, the European Union introduced sanctions on trade with Russia, the movement of persons and sanctions in certain sectors of the economy.

Based on the conclusions of the European Council of 16th July 2014 (Council of the European Union 2014). The European Council has decided to extend sanctions on Russia for restrictive measures against those responsible for violating the territorial integrity of Ukraine. The European Council has commissioned the EU Council to prepare by the end of July 2014 a list of entities and persons from Russia supporting the operations in Ukraine. The European Council also requested the European Investment Bank to suspend the approval of EIB Financing Operations in Russia. On 25th July 2014, the Council of the European Union tightened sanctions against Russia, based on the conclusions of the European Council of 16th July 2014 (Council of the European Union 2014 b).

On 29th July 2014, the EU adopted a package of further economic sanctions against Russia, sectoral cooperation. A ban on the access to state-owned institutions from Russia to the EU capital market was imposed, an arms embargo was imposed; a ban on exports of dual-use items by military

users and sensitive technologies in the oil industry has been imposed (European Council 2014).

On 29th July 2014, the Permanent Representatives Committee agreed on the measures restricting the access to the EU capital market. EU natural and legal persons (entities) have been banned from buying and selling bonds, shares and financial instruments with a maturity of more than 90 days, issued by banks in Russia and their subsidiaries (Council of the European Union 2014c). On 30th July 2014, another 8 people and 3 entities were included in the list of persons subject to asset freeze and the total number of people subject to sanctions was 95 people and 23 members (Council of the European Union 2014d).

By adopting the European Council conclusions of 16th July 2014, the Council of the European Union announced on 30th July 2014 that measures to limit trade and investment in the Crimea and Sevastopol had been announced. New investment has been banned for infrastructure projects in the transport, telecommunications, energy, mining, gas, oil and mineral sectors. A ban on the provision of financial and insurance services related to these transactions was imposed (Council of the European Union 2014e).

On 31st July 2014, the Council of the European Union, following the decision of the Permanent Representatives Committee of 29th July 2014, adopted further restrictions on Russia's restriction on access to capital markets for citizens and companies from Russia; citizens and companies from the EU have been banned from buying and selling new bonds, shares and financial instruments with a maturity of more than 90 days, issued by major banks, development banks and their subsidiaries (Council of the European Union 2014f).

On 11th September 2014, another package of economic sanctions entered into force, tightening up on 31st July 2014 (Council of the European Union 2014g). First and foremost, the European Union came closer to accessing the EU capital market. Citizens and EU companies were banned from lending to the five largest state-owned banks in Russia, forbidden to sell new bonds, shares and financial instruments with a maturity of more than 30 days. These restrictions were imposed on the three most important defense industry companies and three power industry companies. EU sanctions took hold in three major power industry companies: Rosneft, Gazpromneft, Transneft (Yunle Mo 2016).

Additional 24 people involved in actions for territorial integrity of Ukraine, including the new leadership of Donbas, the government of Crimea, as well as Russian decision-makers and oligarchs were added to the

list of persons subject to travel bans and freezes. The total number of people subject to sanctions was 119, while the assets of 23 units were frozen in the EU (Council of the European Union 2014h).

The European Union has called for Russia to implement the Minsk provisions (European Council. Conclusions 2014i). Due to the tightening of the conflict in Ukraine, the European Union has not withdrawn its sanction decisions. In March 2015, the European Union extended the sanctions until 31st July 2016.

Due to non-compliance with the Minsk agreements, the Council adopted economic sanctions for further 6 months, until 1st July 2016, for a further period ending on 19th December 2016 and then until 28th June 2017. The Council subsequently imposed economic sanctions until 31st January 2018. 150 assets and 37 entities were freezing assets. On 13th March 2017 the EU extended the sanctions until 15th September 2017. In August 2017 the European Union adopted further restrictive measures against Russia and the Crimea as a result of violations of territorial integrity of Ukraine (Council Implementing Regulation (EU) 2017/1417).

Sanctions against Russia were also introduced by the United States, which as of 6th March 2014 announced the blockade of property of some people responsible for undermining the authority in the Crimea without permission from the Ukrainian government, interfering in the democratic processes in Ukraine. It was recognized that Russia's actions pose a threat to the national security of the United States (Presidential Documents 2014).

The United States' President, in the executive order of 24th March 2014, extended the scope of the sanctions against persons in Russia, any property and property in the United States held by the United States or a foreign branch, were blocked, could not be withdrawn by people who operated in the financial services, energy, metals and mining, engineering, defense industries (The President Executive Order 13662, 2014). In mid-2017, the United States tightened the sanctions against Russia. The Sanctions were adopted by US President Donald Trump in 2017, backed by the Congress and the Senate.

Russia has responded to the introduction of economic sanctions by the EU, the United States and other states by also imposing economic sanctions. On 20th March 2014, a list of US and Canadian citizens was banned from entering Russia, and on 6th August 2014, the Russian President announced a decree establishing an embargo on agricultural products from the USA, the EU, Norway, Canada and Australia.

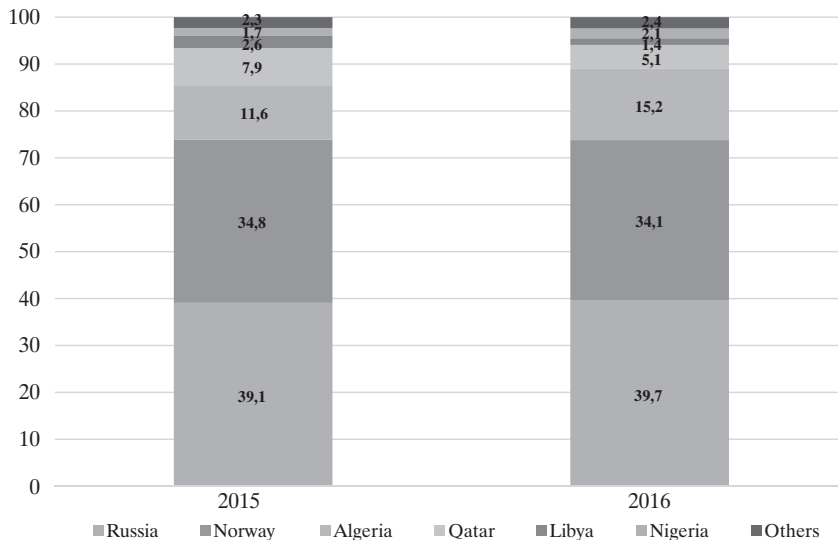
European Union Energy Security – a determinant of future EU relations with Russia

The European Union is not self-sufficient in energy production, it is a fact that at a time when energy trade is being used for political purposes by Russia, it creates tremendous problems in mutual relations.

Many EU Member States cooperated bilaterally with Russia on gas supplies. For those interested in cooperation, Russia has proposed favorable contracts, particularly for Germany, which is reluctant to pursue the EU's common energy policy initiatives. The illegal annexation of the Crimea has led to difficulties in implementing energy dialogue between the EU and Russia initiated in 2000 and adoption of a series of sanctions on the energy sector (Council Decision 2014/145/CFSP).

Russia is one of the most important suppliers of natural gas, alternative source of supply comes from Norway and, to a lesser extent, from Algeria. The largest share of energy production was in France, Germany and the United Kingdom.

Figure 1. Geographical structure of natural gas imports into the European Union, in %



Source: Based on Eurostat data, http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_imports_of_energy_products_-_recent_developments#Main_tables [accessed on: 7.07.2017].

Small supplies from alternative natural resources have led Russia to use the issue of gas trade with the European Union as an effective foreign policy

instrument. Natural gas is one of the most important elements of EU energy consumption. In 2016, the demand for natural gas in the EU was covered by imports from Russia in almost 40% (Figure 1). Russia's share of imports into the EU has increased in recent years as a consequence of the tightening of economic relations of Germany, Italy and the United Kingdom with Russia (Coulson, Shalamov, Wang 2014).

Italy, Hungary and Greece remain the largest buyers of gas from Russia. These countries supported the construction of another South Stream Pipeline Project (SSPP) by Russia, which would further depend on the supply of gas from Russia to Austria, Greece, and Italy.

The construction of the Nord Stream pipeline has made the European Union more dependent on gas supplies from Russia, and the ongoing work on the North Stream gas pipeline (Nord Stream II) in the North Sea will increase this dependency. The realization of the project is a manifestation of different concepts for the EU's energy policy and the great role Germany plays in its own economic interests in developing its policy in the EU. With the European partners of BASF, Eon, Royal Dutch Shell, OMV and Engie, technical work has led to the inclusion of further lines into the Nord Stream II pipeline, which will bring gas through the Baltic Sea to Germany. The construction of the gas pipeline will make such countries as Poland and other Central and Eastern European countries, in particular Ukraine, dependent on gas supplies from Russia (Hummer 2011).

In addition to the EU's increasing dependence on Russian gas supplies, anti-competitive actions have been undertaken by Gazprom, which is one of the largest suppliers of natural gas to Central and Eastern Europe. In 2015, the European Commission sent a list of objections to Gazprom over the abuse of Gazprom's dominant position on the Central and Eastern European market. Gazprom's actions became contradictory to the rules of EU competition policy, limiting the possibility of gas supply to EU Member States from Central and Eastern Europe at favorable prices. The company set limits (measures) in agreements with the countries of Central and Eastern Europe (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). Contracts include the ban on the export of gas and measures forbidding cross-border flows of gas (the consumer is forced to use the raw material only in the home country). The ban used in Gazprom's agreements with Central and Eastern European countries restricted gas supplies between EU Member States in the event of price fluctuations on the internal markets of EU members. The Commission recognized market sharing as a violation of EU competition policy. According to the

European Commission, Gazprom violated price competition in five Central and Eastern European countries: Bulgaria, Estonia, Latvia, Lithuania and Poland (European Commission 2015).

The European Commission launched an investigation into antitrust lawsuits by 2012 based on the application of Art. 102 of the Treaty on the Functioning of the European Union, accusing Gazprom of acting in favor of dividing markets in Central and Eastern European countries belonging to the EU, banning cross-border gas flows and affecting the infrastructure. The second complaint against Gazprom has been the European Commission's allegation of unfair pricing practices (Stern, Yafimava 2017).

The conflict in Ukraine has shown some solidarity among EU Member States in introducing sanctions against Russia. Work has also been undertaken in the EU to create an energy union that will make Europe independent of the supply of gas and oil from Russia. The unity of European states during the Crimean crisis led to the collapse of a business venture that increased the EU's dependence on Russian gas supplies in December 2014. Russia withdrew from the construction of the South Stream Pipeline Project (SSPP).

A definite return to support the EU's energy union is due to a change in the European Union's approach to the issue of becoming independent of gas supplies from Russia. The dispute between the European Commission and Gazprom on antimonopoly has sparked huge controversy in Central and Eastern European countries interested in becoming independent of gas supplies from Russia (Kanter, Kramer, Reed 2017).

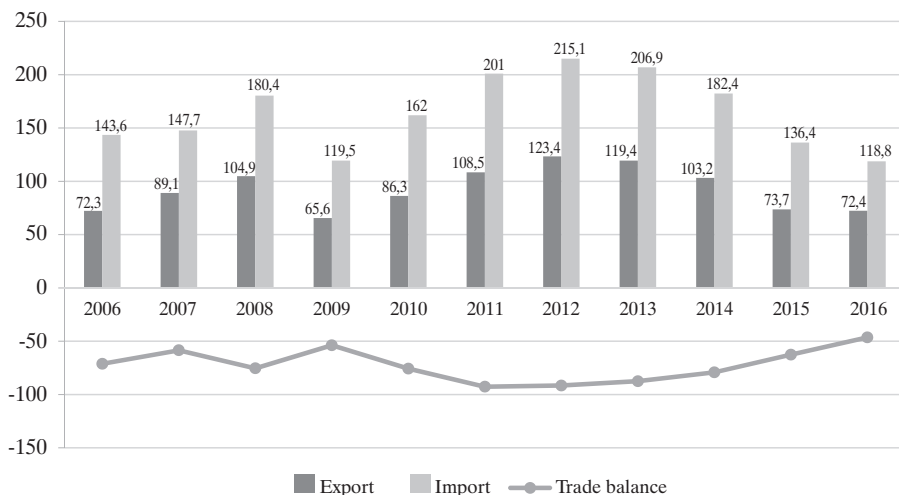
Changes in the European Union's trade structure with Russia

Russia is one of the most important trading partners of the European Union, and in 2016 it remained the fifth among the largest recipients of European goods. Russia's exports to the European Union amounted to 4.1%, topping the United States (20.8%), China (9.7%), Switzerland (8.2%) and Turkey (4.5%).

Russia is one of the leading countries from which the European Union imports goods, in 2016 it ranked fourth behind China (20.2% of total imports), the United States (14.5% of total imports), Switzerland (7.1% import into the EU). Exports to Russia in 2014, as compared to 2013, in which no sanction had yet been in force, decreased by 14%, by 2015 by almost 40%, as they did in 2016 (compare Figure 2). On the import side,

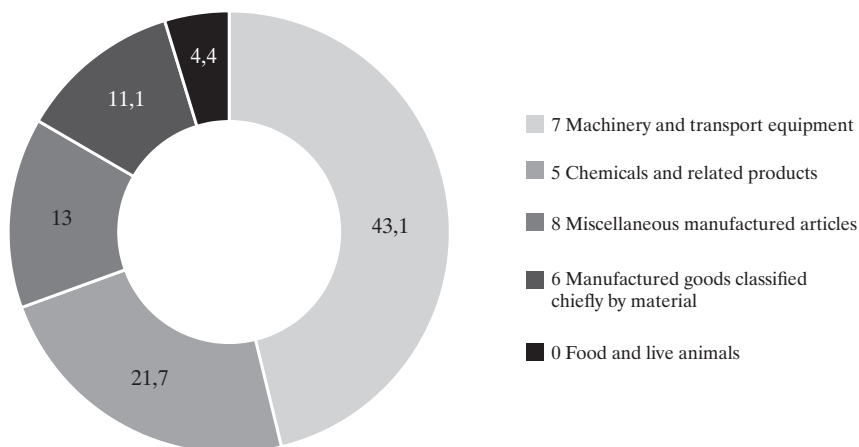
compared to 2013, there was a fall in turnover in 2014 by 12%; by 2015, by 34%; in 2016 by 43%.

Figure 2. Trade turnover of the European Union with Russia in 2006–2016, in billion



Source: European Union, Trade in goods with Russia. European Commission. Directorate-General for Trade. 03-05-2017. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113440.pdf [accessed on: 7.07.2017].

Figure 3. The five most important positions in EU exports to Russia in 2016, as a percentage of total trade, according to the SITC classification

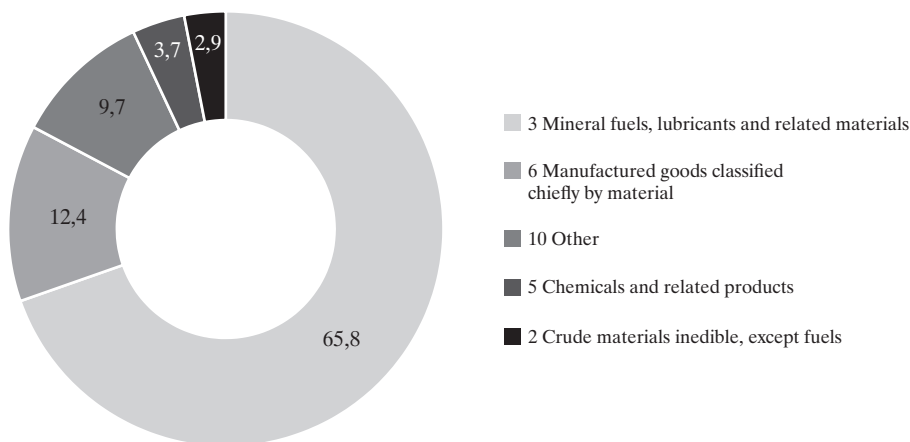


Source: European Union, Trade in goods with Russia. European Commission. Directorate-General for Trade. 03-05-2017. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113440.pdf [accessed on: 7.07.2017].

Russia remains one of the EU's major trading partners. Machinery, equipment and transport equipment (SITC 7) dominated the EU export, which accounted for 43.1% of total exports to Russia (Figure 3), chemicals and related products (SITC 5) with the share of 21.7% in total exports. Further places were taken by industrial products (SITC 8) and industrial goods classified according to the standard (SITC 6). There is a clear asymmetry in the commercial relationship between the two parties. Russia is one of the biggest energy exporters, reducing gas and oil exports as a result of the independence of the European Union, would reduce Russia's position in trade with the EU to a low level. Russia would no longer play the role of one of the EU's key trading partners.

In the commodity structure of imports into the European Union from Russia, mineral fuels, lubricants and related materials (SITC 3), with 65.8% of total EU imports, are dominated by Russia's main export commodities to the EU: oil and gas. Subsequently, industrial goods (SITC 6), with 12.4% of total EU imports, and other products (SITC 10) accounted for 9.7% (Figure 4).

Figure 4. The five most important items in EU imports from Russia in 2016, as a percentage of total trade, according to the SITC classification



Source: European Union, Trade in goods with Russia. European Commission. Directorate-General for Trade. 03-05-2017. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113440.pdf [accessed on: 7.07.2017].

The European Union's main trading partners are the European Union, with 38.3% of total imports, China with 21.1%, the United States with 6.1%, Belarus (5.1%) and Japan (3.6%). Russia exports its goods mainly to the

markets of such countries as: European Union (46.5%), China (9.6%), Belarus (5%), Turkey (4.8%), South Korea (3.7%).

The market of EU Member States is important because of the export of raw materials from Russia, especially oil and gas. On the other hand, Russia is an important recipient of machinery and equipment necessary for faster economic development. The EU's independence from the supply of gas and oil, with a huge asymmetry of trade, would change Russia's importance in EU trade. Potential tightening of economic relations would be more important for oil and gas imports to the EU, while the EU would reduce exports of industrial goods to a small extent. Attempts to differentiate Russia's commercial cooperation in terms of geographical structure with Asian and Latin American countries (Izotov 2017) are mainly under the influence of sanctions imposed by many states on Russia.

The future of the European neighborhood policy of the EU after the Crimean crisis

The European Union implementing the European Neighborhood Policy failed to create a "friendship ring", the outbreak of armed conflicts and social tensions in many countries led to the emergence of a "ring of fire" (Hahn 2017) surrounding the EU Member States from the South and the East in the second decade of the 21st century. Some neighboring countries have changed their priorities in domestic and foreign policy, and the EU has ceased to be a model reference in building democratic principles and economic relations.

For the European Union, the formulation of the neighborhood policy stemmed from the accession of the new Member States and the movement of the EU's borders to Europe's far east (Haukkala 2009). The European Neighborhood Policy has been instrumental in implementing priority actions for the promotion of European values that the neighboring countries of the EU have largely rejected. After the Crimean crisis and the Arab Spring, the EU's strategic goals in the neighborhood policy are to maintain political and economic stability in the eastern and southern regions. Maintaining this stability in the eastern dimension requires close cooperation with Ukraine, Georgia and Moldova. Negotiations on the EU-Ukraine trade deal have not addressed the issue of membership of the European Union, mainly because of objections by some EU Member States, particularly Germany and France. Closer cooperation with Ukraine will be a key element in the

implementation of the EU's Eastern Neighborhood Policy, especially as Eastern-European countries interested in NATO and EU membership are not yet ready for EU membership, and their cooperation with the EU is linked to their confrontation with Russia.

The importance of the European Union and Russia's cooperation will increase due to closer political and economic relations between the United States and China. Russia, wishing to maintain a significant geopolitical position, will be forced to maintain political and economic cooperation with the European Union. The EU's relations with Russia will depend to a large extent on the resolution of the Ukrainian crisis (Brzezinski 2017). The G20 summit in Hamburg has confirmed the possibility of resolving the conflict in Ukraine (The New York Times 2017). The European Union questions the annexation of the Crimea and intends to support the pursuit of European values in the countries of Eastern Europe. At the same time, the EU recognizes that both sides should cooperate (European Union – Global Strategy 2016).

Conclusions

The European Union has been carrying out the process of promoting European values in neighboring countries since 2004. The ambition of the EU's European Neighborhood Policy was to provide opportunities for neighboring countries to gain commercial benefits and development aid without participating in EU institutions and structural funds. The European Neighborhood Policy did not guarantee neighboring countries membership in the European Union.

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Turbulent Neighbourhood: Ukraine and the EU Relations under Ongoing Pressure

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Abstract

Ukraine and the EU have relatively long and complicated history of mutual relations. Ukraine does benefit a lot from the dynamic cooperation with the EU in general and its Member States in particular. The main object of Ukraine's aspiration on the way to European Integration last decades has been the Association Agreement. While it had been envisaged initially as a great success story, it came to seem to be a headache in the end. Having secured the signature of the Agreement after bloody and tragic events of 2014, Ukraine had to face an unprecedented political crisis and Russian military aggression. Crimea annexation and the war in Donbas made Ukraine's society and statehood vulnerable and threatened. On the one hand, EU support does help Ukraine to survive. On the other, the EU has certain claims against Ukrainian reforms and some aspects of its policy. Some issues concerning the EU's insufficient role as far as recent challenges are concerned are topical for domestic debate in Ukraine. They are about the consolidated position of the EU Member States regarding Russia's retro-imperial actions and plans, the capacity of the EU to withstand geopolitical pressure of insecurity etc. Moreover, lasting complications with visa-free regime for Ukrainians, Dutch dubious referenda on the Association Agreement, alongside with some emerging challenges of Ukrainian-Polish alliance made negative impact on the relations of Ukraine with the EU. They require reconsideration of the EU policy and politics as well as a thorough revision of the Eastern Partnership Program.

Key words: Ukraine and the EU, Russia's aggression, securitization, European integration prospect

Introduction

Ukraine and the EU have relatively long, and at the same time complicated, history of mutual relations. On the one hand, the EU makes really important contribution into Ukraine's economic, social and political reforms, and what is of crucial importance, it has been supporting Ukraine's struggle for independence and territorial integrity since the 2013–2014 political crisis outburst and military intervention of Russia. Indeed, Ukraine does benefit a lot from the active cooperation with the EU in general and its Member States in particular. On the other hand, Ukraine is not just a regular neighbor for the EU. Kyiv proclaims the strategic goal of the State to be fully integrated into the EU since the 1990s and have been making some steps in order to achieve this aim (Указ Президента України). But Ukraine's European aspirations are at their very best partly acknowledged and recognized by the EU institutions and Member States, and all of them seem to be far away from reaching a solid consensus on this issue. It creates certain obstacles in the course of Ukraine's integration and sets down limits on the scale and intensity of the support which the EU is able to provide for Ukraine.

In the last few decades the main target of Ukraine's aspiration on the way to European integration has been to complete and ratify the Association Agreement with the EU. At the very beginning that deal had been seen and envisaged by both sides as a great success story. All of a sudden, it turns into a kind of a headache, perhaps for all parties concerned. Moreover, even though the Agreement was successfully signed after the Revolution of dignity in 2014, its ratification faced enigmatic obstacles of the Dutch referendum, which in turn postpones the whole process of its coming into force till 2017.

The outline of the hardships of these bilateral and multilateral relations might be amalgamated with the general problems of Eastern European security challenges, where key instruments and available resources of Eastern partnership are not inadequate either for the sake of partner countries' or the EU's presence and influence in the region concerned. That's why Eastern Partnership requires a thorough reconsideration, as well as the whole set of the EU's political priorities concerning the post-soviet space, Ukraine and other partner countries in particular. It would not be true to state that experts and politicians of the EU do not recognize the gravity of the problems mentioned above. There are plenty of academic papers written on the subject and public discussions held on the EU policy in the region,

EaP including. But the practical outcome of the ongoing discussion remains less visible than the discourse itself. Their practical implications are lagging behind the existing realistic demands and some legitimate expectations. The paper takes into consideration some challenges that Ukraine and Eastern partnership countries are dealing with now and proposing possible ways of resolving the most urgent ones.

Troubles for Ukraine: the EU has little chance to remain indifferent

Ukraine and the EU have accumulated certain experience of mutual cooperation since 1991. After 1998 the principal legal ground of the cooperation was found within the Partnership and Cooperation Agreement, which covered a wide range of both sides' interaction (ЯКОВЮК). At the same time the document does not imply any special provision for Ukraine, being designed in general for New Independent States which emerged after the USSR breakdown. After three Baltic states, namely Estonia, Latvia and Lithuania, which succeed to move towards the EU and get membership in the biggest Enlargement of 2004, Ukraine has been the next one, proclaiming the European integration of the country to be the strategic goal and a national aspiration (Дацив, Ляшенко: 60). Ukraine has been approaching the EU with mixed results till now. Since the mid-1990s the most desired, while not the final, stage of European integration was the association with the EU, officially understood by Kyiv as the principal step on the way to the future EU candidacy. However, this kind of Ukraine's ambition has been treated in Brussels with no enthusiasm for many years. Only at the end of V. Yushchenko's presidency did Ukraine reach the consensus with Brussels on the association agenda in the forthcoming negotiation. Paradoxically, the major part of the negotiation went on under the next president of Ukraine, V. Yanukovich. He declared himself a true supporter of Ukraine's European course and a strong leader who would be able to move Ukraine closer to the united Europe. Despite the sometimes unstable character of the political dialogue on association agenda, including the formation of a free-trade zone, formalities were being completed successfully prior to Vilnius Summit of EaP in 2013 and both parties showed certainty with regard to the signature of the documents in Vilnius. Surprisingly, the Russian president V. Putin found ultimate arguments in persuading Mr. Yanukovich to quit the Association Agreement, a move which led to Yanukovich's total

political failure but paid with the Revolution of Dignity's shocking sacrifices (Kruglashov 2014). Having secured the signature of the Agreement after the bloody and tragic events in 2014 (kmu.gov.ua 2015) Ukraine had to face an unprecedented political crisis and military threats from Russia (Howort). Crimea annexation and War in Donbas made Ukraine's society and statehood as vulnerable and threatened as never before. V. Putin has recently said that if one looks from the space, there are no Russian troops around the border with Ukraine (gazeta.ua). We have to trust Mr. Putin, he is the most trustful Russian politician the world has ever met. It was him who repeatedly told his audience in Russia and the world that as of March 2014 there were no Russian military forces in Crimea outside of their legal garrisons (Rfi.ru). And soon after he 'proudly' informed in the documentary movie *Crimea, a road to Homeland* that Russia had been preparing for the annexation of the peninsula for around 10 years before it happened (Russia.tv). And yet, everybody has to trust Mr. Putin...

Thus Russia's intervention and other actions against Ukraine until now have made Ukrainians overstressed and mobilized around basic national survival tasks. Having nearly completed the Army and Security forces' annihilation, organized by previous political teams, culminated in V. Yanukovich "out of Block" policy, Ukraine had to start rebuilding its capacity to protect the country from scratch, sacrificing thousands of their defenders' lives and civic population victims (Vetarano.com.ua). This so-called hybrid war orchestrated by Russia was a great surprise for many Ukrainians, who never considered this country as a true foe. Now the majority of them do think about Russia more straightforwardly. Sure, it is a great challenge for Ukraine to come to the right conclusions in this dramatic situation, still remaining far from proper resolution. The very fact that Ukraine wasn't prepared by state institutions, the political leadership and the society's leaders for what has happened since 2014 prompts the country and its friends to be aware and prepared for what might happen next (Natorski, Pomorska). Here I would like to stress the vital importance of the EU in general and Member States' support of Ukraine. This aid does help Ukraine to survive under severe conditions of insecurity and continuous attempts to undermine the very foundations of its statehood. It is of great importance and value for Ukraine.

Still, what is good should not eclipse some worrying problems with the EU itself. One can see certain disappointment in the Unions and around, stemmed from the 'inner' problems of the EU like Brexit, right and left populism waves rolling upon United Europe etc. Certain positive moment

can be found in the victory of Macron in the presidential elections in France. Sure, today is too early to make a prediction on his presidency's possible outcome both for France and Europe. Still, the open question is whether we are witnessing the end of the populist pandemic and radicalist inflammation in Europe and in the world generally? Or do we have to acknowledge just a short break in their victorious performance? So far the very debatable issue of the Union is the possible scenario of its further evolution. The EU should be reformed and reinforced from within, otherwise it might be rolling back and shrinking down. For doing so it critically needs stronger political leadership with a strategic vision on the future and greater support of citizens. There are a lot of issues where the EU Member States and Ukraine are to work together. How the EU will react to these challenges is in no way a theoretical issue only. I mean political and military security, and for sure the trust for the EU and its institutions (Middelhaar). Ukraine is concerned with the EU as ever stronger, united and consolidated. It is of great importance because many Ukrainians do consider the United Europe as both our destination and destiny. Therefore this movement of the EU towards ever closer political unity from hesitation and fearsome distrust has to make the Union a more effective and powerful continental and global political actor (Горбулін et al.).

On the other hand, the EU has made certain claims against Ukraine's reforms' pace and their outcome. I have to stress that some of the reforms are more or less promising. However, many of the launched changes seem to me personally of palliative and, even worse, imitative character. They are narrowed by their agenda-setting and framework. Unfortunately, many of national politicians succeed to be mimic and hypocritical from the beginning of independence. Well, those characteristics are rather inherited from the Soviet time, where social mimicry and political hypocrisy did guarantee a chance for successful survival and career-making. But what served as an instrument of individual and collective cohabitation with the (oppressive by its nature) Soviet political system is rather burdening and obstructing for now. It's hardly compatible with the nation and state building processes imperative in Ukraine. Some of these reforms are either semi-successful or far from any success story, including the reforms of decentralization (Даниленко, Бровко: 100) medical care, pension reforms etc (Рудик, Олексійко). All of them are highly important for Ukraine's sake (Иличок). As much as Political system of Ukraine remains less effective and troublesome with regard to its democratic standards, the key reform is the one related to the decentralizing process (Харитонюк: 16–18). While on the lowest

level of territorial units (Hromady) some progress of amalgamations and shaping up more self-sustainable communities nationwide is evident, on the levels of districts and regions no real changes have yet come into existence. Moreover, there is no clear program and plan of reforming them. That's why it is a provable argument that the current political elite has possessed a very limited ability and willingness to lead the country through these obstacles and challenges towards critically needed completion of systematic reforms.

One should not ignore the fact of the changes which the Ukrainian political class underwent after 2013–2014. They are not satisfactory enough and remain uncompleted until now (Шевчук). Because the political elite of Ukraine has undergone changes only partially, including their habits and moral stances, the new situation in the state and society does require many more of them. A lot of other deficits of the political system's functioning pertain to Ukraine as for now (Мацієвський). We have a very high level of power centralization under the military security stress. The overall situation does imply certain and inevitable centralization of the Governance, that is obvious. At the same time the hyper-centralization process, which took place under V. Yanukovich's regime and previously in the final years of Kuchma, has resulted in widespread, all-penetrative corruption and bureaucratic alienation of the citizens (Kruglashov 2016). This experience should be the warning message for Ukrainians and their elected servants, the President included. Their continuing preservation in many aspects of civic service and public administration disguised as the need of foreign threats repulsion is hardly compatible with making Ukraine closer to the EU and European standards. Standards of good governance and local self-government included.

So far, when the first impact of the reforms, generated because the revolutionary claims and civic society mobilization were getting over, Ukraine has to redefine the reform agenda and schedule in order to avoid their failure. For the sake of doing so Ukrainians have to make public administration accountable and responsible to citizens, and citizens in their turn have to be made aware of their rights and duties. Actual construction of governing institutions, the functioning of the authorities have to undergo changes in line with the promised reforms as soon as possible.

Moreover, looking upon some key sources of the existing problem in the Ukrainian society, one could mention overconcentration of power and wealth in the hands of the so-called 'Ukrainian oligarchs' (Телешун: 402–404). Stats data reveal they are prospering further despite perpetual political crises and military fight. For instance, once again Renat Akhmetov is the champion of wealth in Ukraine and the same sounding surnames are

recorded at the top of the list as they happened to be there prior to 2014. We are proud of their rating, but what about of the rest of Ukraine's citizens' standard of life? If we consider the political system of Ukraine from this point of view, oligarchs have successfully reconsolidated political control in the country. It could be proved with the quality of the Ukrainian party system, which is mainly a product of the business project of the leading Ukrainian oligarchs (Ганжа: 62–64). It could be demonstrated also with the system of Ukrainian self-government, which after the 2015 local elections is going to be controlled mainly by the oligarchic Ukrainian parties (Semyvol, Kokorska). The rest of the seats in the local Councils are distributed among some ambitious minor groups of interests, who are eager to act in accordance with the same model of political conduct as their more experienced and powerful prototypes. Overall, there are a lot of problems in Ukraine which are observed, analyzed and approached by the EU, with monitoring and following recommendations made (dt.ua). This assistance could be very useful for Ukraine in order to find out prompt and effective solutions to these issues. It means that the EU does understand Ukraine's problems and strives to help us to extend of possible (news.liga.net).

Limits of this important assistance are set up not only with some Ukrainian peculiarities. It is worth paying attention to some debatable issues related to the EU's current role and characteristic as far as intra-EU agenda is concerned. It might be stated, the lack of truly consolidated position in the European elite regarding Russian retro-imperial foreign policy. And it is a very sad fact. The very capacity of the EU institutions to foresee and counteract geopolitical pressure from Russia, and not only this, is to be perceived as a worrying challenge. So it is a very important problem how the EU is to deal with resolving this issue (Middelaar). Let's recall Putin's speech in which he clearly warned the European and other foreign leadership about his far-reaching plans in Munich. It looks like some of his colleagues from the EU just ignored this warning. Now it is about some realities, not plans. After all, let's together make a delayed, but yet a very important conclusion that the EU has a deficit of strategic thinking, adequate risk management, predetermined by a certain misunderstanding of what the global system of security now is. It is very fragmented, disintegrated and far from the standards of mutually respected international legal norms. So the question is: how to deal with this problem now? This is a very challenging problem not only for Ukraine.

Another touchy issue remains the ability of the EU to react faster to some urgent problems which have already occurred and are to be expected

soon. Picking up more ‘neutral’ examples let me put forward only two of Ukraine’s cases. First one is about visa-free regime negotiations. It is a long story, officially started in 2008. Historically, the EU has developed the system of decision-making very slowly, but at the same time carefully. But if one looks at the visa-free regime story, which fortunately is resolved for now in 2017 (Movat), one can see a very long way to grant them to Ukrainians. For Ukrainians this possibility touches upon their pragmatic concerns as well as their feelings and sentiments. Symbolically it is recognition that they are welcome and indentified as part of Europe. And therefore several postponements and procrastination on the side of EU institutions in the recent years sometimes provoke certain concerns about the goals, and the EU’s stance with regard to neighboring countries, namely the Eastern partnership countries. Another example is the Dutch referendum (Van der Loo), which showed the emergence of some kind of ‘Ukrainephobia’ in the EU’s founding Member States. The growth of Euroskepticism and Europhobia, a very dangerous merger of them with pro-Putin political agencies, legally enrooted into some Western European countries have to be taken into careful consideration by European experts and politicians too.

Because the role Poland imposes on itself as an ‘advocate’ of Ukraine in the EU, I hereby have to look at some alarming recent trend of our bilateral relations. Strategically, Poland is a very important ally for Ukraine and a locomotive of Ukrainian integration into the EU. Undoubtedly, Ukraine has vital importance for Poland as well. Yet one could easily mention that the agenda of our actual relationship is undergoing some negative changes and the core attention is all of a sudden concentrated and revolts around ‘historic’ encounters and claims (Burlyuk: 311–314). The history of mankind is written often in black and red. The rest of the spectrum is rather a lucky exception. For neighboring and related nations, as Poles and Ukrainians are, they have a lot of stories which could be easily excavated from under the layers of the past and proposed for public observation as the ‘true’ essence of their mutual relations (Zieliński, Kulec). For instance, amidst them might be (and are) counted the tragedy of Volyn, of Holm, Ukrainian and Polish guerilla clashes etc. (Dvornichenko).

Instead of building together a stronger and exemplary Ukrainian-Polish alliance, which is strategically highly important for both nations and states, we are ‘invited’ to dig into the cultural layers of the past and to lift up complicated issues and discuss how important they are. Sinking down into the dark depth of the past might be insecure for the time being. Personally I wish these issues were attended to and carefully discussed by professional

historians, and least of all by politicians and diplomats with no academic credits in history of Eastern Europe. I am sure their competence and functions are to care about and secure our present and find a better way out to our common future. Instead, some of them do propose in quite a bold and disturbing way to change our past or to make the perception of that glorious or shameful (depends on the standpoints) past time acceptable for the other party of the dialogue, burdened with too many emotions and inherited stereotypes. It's better to stop it as soon as possible. These symptomatic deals make me worry about the prospect of our mutual relationship. People who are currently in charge of the top level of power have to pay more careful attention to them.

Conclusions

Challenges to policy and politics are numerous and they are really demanding for all of us. Therefore I would like to suggest in brief some ideas regarding reconsideration and changes concerning the Eastern Partnership policy content and implementation. I don't know as whether I have to incline to support the proposal of branding these supposed changes as revolutionary ones, but I guess these changes are inevitable. They have to be comprehensive and instant.

First of all, I would like to reconsider the very logic laid down in foundation of EaP: the concept that the region concerned could be covered with implicitly secure and peaceful agenda. This tacit assumption was false at the very beginning (Transdnistria, Abkhazian and South Ossetia crisis) and is totally a failure after the Russian-Georgian and Russian-Ukrainian military conflicts took place. The basic suggestions grounded on ideas that there is no neighbor who is going to challenge the regional strategy of the EU and its neighbors' sovereignty, as well as no major conflicts will occur as far as all states in the region are polite and concerned with keeping up good and strategic partnership. Unfortunately, all of these concepts were too good to be true. So, the EU and Eastern Partners have to accept military and non-military threats' existence in the region of EaP and recognize that they could be accelerating and aggravating there. Of course, in order to be able to withstand their pressure together.

The second important point is that, after the involuntarily turn to securitization of our neighborhood and Eastern European policy agenda, the EU has to differentiate its attitude to participating countries. The first

group consists of the countries aiming at the EU membership, namely Georgia, Moldova and Ukraine. Another group contains three non-aspirant countries, i.e. Belarus, Armenia and Azerbaijan. Countries which aspire to the EU membership should be enhanced with greater political and financial support. It is important for those three countries sake and benefits, as well as for the EU. I would suggest that it is very important to recognize these countries' membership prospect. This implies all-comprehensive support for reforms needed for their further sustainable development. Their success is a key issue in the process of their approach to the single market of the EU and other resources available.

The third point concerns the importance and necessity of encouraging horizontal cooperation, I mean between European Partnership countries in the region and with the EU Member States. Revising the story of the Eastern Partnership, I observe horizontal cooperation making very low profile advancement. It stood apart of the real priorities of the EU and the cooperating EaP countries. Georgia, Moldova and Ukraine first of all have to cooperate much more closely and intensively. Their cooperation also deserves supporting and promoting with the EU Member States, not only with EU institutions such as the European Commission, European Parliament and so on, and not only with the Eastern European Member States such as Poland, Lithuania, Romania etc., but also with countries from Western Europe. There is a lack of presence of these EaP countries in the media, political agenda and public space.

The fourth point is about the EU and EaP countries' work upon networking civic society closer. These issues are included in the framework of the Eastern Partnership. There are some regular meetings of civic activists, some ways of networking, and related programs are in effect. Considering the regional and local dimension of civic society activism, I am sure NGOs have to be more oriented towards closer regional cooperation and promotion of peer cooperation with the EU countries' counterparts. They are able of producing more social and political initiatives and they have to be met and listened to, and finally implemented.

The EU needs elaboration and wide spread discussion on the new agenda of institutional and political reforms. Many have been criticizing the EU for the lack of vision, strategic thinking and modest proposals made for the societies of the EU countries and neighbors. I mean the necessity of setting up domestically and globally oriented new agenda for United Europe, which has to be competitive with the demands of the era of growing uncertainty and changes in which we are living now.

Finally, if I doubt whether one has to promote the idea of an EaP 'revolution', I prefer very radical, fast and comprehensive evolution of the Eastern Partnership policy. As far as Georgia, Moldova and Ukraine are concerned, EaP should evolve into a policy of their future membership perspective. It is important for these countries' prospects as well as for the future of the EU Europe and of Europe in general.

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Monitoring and Dispute Settlement Mechanisms in the Association Agreements with Georgia, Moldova and Ukraine

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Abstract

The procedure for settling disputes between parties is one of the elements that ensure the integrity of an agreement. Besides, in case of association agreements concluded by the EU with Georgia, Moldova and Ukraine, where the partners of the EU assume the obligation to approximate their laws to the EU law, it is of utmost importance to examine whether the commitments as set out in the association agreements are met. The present contribution explores monitoring and dispute settlement mechanisms provided for in association agreements, examines the role of the bodies involved and analyses the challenges for the application of these mechanisms.

Key words: monitoring, dispute settlement, association agreement, Georgia, Moldova, Ukraine

Introduction

The Association Agreements concluded by the EU with Georgia, Moldova and Ukraine constitute the current legal framework of relations of the European Union with these countries. The texts of the EU-Georgia and EU-Moldova Association Agreements were initialled by the EU and partner countries on 29th November 2013, at the third Eastern Partnership Summit and together with the EU-Ukraine Association Agreement signed on 27th June 2014. The provisional application of substantial parts of the EU-Georgia and EU-Moldova Association Agreements started on

1st September 2014. They fully entered into force on 1st July 2016. The EU-Ukraine Association Agreement entered into provisional application on 1st January 2016. It shall take full effect from 1st September 2017.

As in the case of other obligations deriving from international treaties, the parties of the Association Agreements shall take any measures needed to fulfil their obligations under the Association Agreements and shall ensure that the objectives set out in them are reached (EU-Georgia AA: Art. 420 (1); EU-Moldova AA: Art. 453 (1); EU-Ukraine AA: Art. 476 (1)). The monitoring and dispute settlement mechanisms provided for in the Association Agreements belong to the elements that ensure the integrity of these international treaties.

Monitoring mechanisms in the Association Agreements

General rules on monitoring

Progress in implementing and enforcing measures in respect with approximation shall be evaluated within the framework of a monitoring system (EU-Georgia AA: Art. 419; EU-Moldova AA: Art. 450–452; EU-Ukraine AA: Art. 475), whereas assessments may be conducted in several ways: the EU can initiate an assessment on its own and conduct it individually, the EU can conduct an assessment but in agreement with partner countries, or the EU conducts it jointly with the partner country. As for the forms of monitoring, the association agreements specify that monitoring may include on-the-spot missions with the participation of EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities, independent experts and others as needed (EU-Georgia AA: Art. 419 (3); EU-Moldova AA: Art. 451 (2); EU-Ukraine AA: Art. 475 (3)). However, this wording shows that on-the-spot visits are considered as an additional tool to other forms of monitoring. Furthermore, for the purpose of facilitating the monitoring process, partner countries are obligated to provide reports to the EU on the progress in approximation.

The institutional mechanism created by the association agreements is fully involved in the monitoring system. The results of the assessment are to be discussed in all relevant bodies which are established under the relevant association agreement – Association Committee, Parliamentary Association Committee and Civil Society Platform. Subsequently, these bodies can adopt joint recommendations, which they have to submit to the Association

Council. Here should be noted that in contrast to the EU-Moldova and EU-Ukraine Association Agreements, the relevant provision of the EU-Georgia Association Agreement does not provide for the unanimity as the mode of decisionmaking while adopting joint recommendations. Nevertheless, in practice, unanimity will most likely also be used by the bodies established under EU-Georgia Association countries with respect to adopting joint recommendations (EU-Georgia AA: Art. 419 (4); EU-Moldova AA: Art. 452 (1); EU-Ukraine AA: Art. 475 (4)).

A joint recommendation on progress in implementing and enforcing the measures adopted by the relevant institutional bodies and submitted to the Association Council, or the failure to reach such a recommendation, or a decision taken by the relevant institutional body in this regard, or the failure to take such a decision, shall not be subject to dispute settlement as defined in the DCFTA part of the association agreement (EU-Georgia AA: Art. 419 (6); EU-Moldova AA: Art. 452 (3); EU-Ukraine AA: Art. 475 (6)).

The positive outcome of monitoring the approximation may result in further deepening of economic integration. If the parties of the association agreement will agree that all the necessary

measures provided for in the DCFTA part of the agreement have been properly implemented and are being enforced, the Association Council will decide on further market opening where provided for in the DCFTA part of the agreement (EU-Georgia AA: Art. 419 (5); EU-Moldova AA: Art. 452 (2); EU-Ukraine AA: Art. 475 (5)). Thus, the monitoring process is linked with the “market access” conditionality of the association agreements (Van der Loo 2016: 205).

Special rules of monitoring under DCFTA

The Trade and Sustainable Development Sub-Committee established under the association agreement constitutes the institutional core of the overseeing mechanism with respect to the DCFTA (EU-Georgia AA: Art. 240; EU-Moldova AA: Art. 376; EU-Ukraine AA: Art. 300). It comprises senior officials from each party and reports on its activities to the Association Committee. The EU-Ukraine Association Agreement provides for more detailed information on activities of the Trade and Sustainable Development Sub-Committee and specify that it shall oversee the implementation of the DCFTA chapter, including the results of monitoring activities and impact assessments, and shall discuss in good faith any problems arising from the application of the DCFTA part of the association agreement (EU-Ukraine AA: Art. 300 (1)).

Independent representatives of civil society have also been integrated in the overseeing mechanism under the EU-Georgia and EU-Moldova Association Agreements. In the status of domestic advisory groups, they may submit views or recommendations on the implementation of the DCFTA (EU-Georgia AA: Art. 240 (4) and (5); EU-Moldova AA: Art. 376 (4) and (5); EU-Ukraine AA: Art. 299). The involvement of the civil society should also be further facilitated by a joint civil dialogue forum, which includes members of advisory groups as well as the public at large, and is held once a year (EU-Georgia AA: Art. 241; EU-Moldova AA: Art. 377; EU-Ukraine AA: Art. 299 (3)).

Dispute Settlement

General rules on dispute settlement

The association agreements provide for general rules for dispute settlement and specific rules for dispute settlement for the DCFTA part. While the general rules apply to the whole framework of association agreements, disputes concerning the interpretation, implementation or the application in good faith of provisions of the DCFTA part are excluded from the scope of the general dispute settlement system. This kind of disputes should be resolved within the specific dispute settlement mechanism provided for in the DCFTA part itself (EU-Georgia AA: Art. 421 (1); EU-Moldova AA: Art. 454 (1); EU-Ukraine AA: Art. 477 (1)).

First step under the general dispute settlement system (EU-Georgia AA: Art. 420–421; EU-Moldova AA: Art. 453–455; EU-Ukraine AA: Art. 476–478) provided for in the association agreements is consultation between the parties on any matter that concerns the interpretation, implementation or the application in good faith of these agreements and other relevant aspects of the relations. If the relevant issue crystallises into a dispute, it should be referred to the Association Council with a formal request to resolve it.

The progress in consultations within the Association Council will require and depend upon the good faith efforts of the parties in order to reach a mutually acceptable solution in the shortest time possible. Accordingly, the association agreements call upon the parties to endeavour to resolve a dispute by entering into good faith consultations (EU-Georgia AA: Art. 421 (2); EU-Moldova AA: Art. 454 (2); EU-Ukraine AA: Art. 477 (2)).

This also includes the willingness of the parties to provide the Association Council with all relevant information needed for thorough examination of the situation (EU-Georgia AA: Art. 421 (3); EU-Moldova AA: Art. 454 (3); EU-Ukraine AA: Art. 477 (3)).

In the end, the Association Council is fully responsible for handling the dispute at this stage. It will either declare that the dispute is at an end or resolve the matter by taking a decision. Regardless, the decision of the Association Council on settlement of a dispute is binding (EU-Georgia AA: Art. 420 (3); EU-Moldova AA: Art. 453 (3); EU-Ukraine AA: Art. 476 (3)). One way or another, the Association Council shall discuss the relevant dispute until it is no longer an issue (EU-Georgia AA: Art. 421 (4); EU-Moldova AA: Art. 454 (4); EU-Ukraine AA: Art. 477 (4)).

However, if the dispute is not resolved within three months of the date of notification of a formal request for dispute settlement, the complaining party is free to take “appropriate measures”. In the selection of such measures, priority must be given to those which cause the least disturbance to the functioning of the association agreement. In any case, such measures may not include the suspension of any rights or obligations provided for under the DCFTA part of the agreement, except in cases when denunciation of the agreement is not sanctioned by the general rules of international law or the other Party violates any of the essential elements of the association agreement (EU-Georgia AA: Art. 422; EU-Moldova AA: Art. 455; EU-Ukraine AA: Art. 478). The same exceptional cases allow a party to waive the requirement for a three-month consultation period and take appropriate measures before the expiration of this period (EU-Georgia AA: Art. 422 (1); EU-Moldova AA: Art. 455 (1); EU-Ukraine AA: Art. 478 (1)). As for the essential elements of the association agreements, these are: respect for the democratic principles, human rights and fundamental freedoms, as proclaimed in the United Nations Universal Declaration of Human Rights of 1948 and as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, countering the proliferation of weapons of mass destruction, related materials and their means of delivery (EU-Georgia AA: Art. 2 (1); EU-Moldova AA: Art. 2 (1); EU-Ukraine AA: Art. 2). It should be mentioned that the list of the essential elements provided for in the EU-Ukraine Association Agreement also includes respect for the principle of the rule of law, whereas under the EU-Georgia and EU-Moldova Association Agreements, the parties “only” reaffirm their

respect for the principle of the rule of law (EU-Georgia AA: Art. 2 (2); EU-Moldova AA: Art. 2 (2)).

Dispute settlement mechanism under DCFTA

The DCFTA part of the association agreements differentiates between two types of consultations into which the parties can enter. The first type of consultation is a means to clarify any matter arising under the DCFTA chapter through communication between the parties. The second is part of the dispute settlement mechanism. The former starts when a party requests consultation with the other party regarding any matter arising under the DCFTA chapter of the association agreement by delivering a written request to the other party (EU-Georgia AA: Art. 242; EU-Moldova AA: Art. 378; EU-Ukraine AA: Art. 300 (4)). After entering into consultations the parties are under an obligation to make every effort to achieve a mutually satisfactory resolution to the matter. The Trade and Sustainable Development Sub-Committee may also be involved in this process if a party considers the matter to need further discussion and delivers the corresponding request in written form to the other party. Following this, the Sub-Committee shall convene promptly and make efforts to find a resolution of the matter.

Furthermore, a Panel of Experts (EU-Georgia AA: Art. 243; EU-Moldova AA: Art. 379) or a Group of Experts as it is called under EU-Ukraine Association Agreement (EU-Ukraine AA: Art. 301) can be convened upon request of a party to examine the matter that has not been satisfactorily resolved through consultations. Such a request can be made only 90 days after starting the initial consultations. The list of experts shall be established by the Trade and Sustainable Development Sub-Committee and comprise 15 individuals, of whom at least five shall be non-nationals of either party, with expertise on the issues covered by the DCFTA, who are independent, serve in their individual capacities and do not take instructions from any organisation or government with regard to issues related to the matter at stake. The Panel of Experts shall comprise three persons, two of them selected by the parties and one selected by the latter two. The panel presents its report to the parties, describing the finding of facts, analysing the applicability of relevant provisions and setting out recommendations.

As mentioned above, the DCFTA has its own system of dispute settlement (EU-Georgia AA: Art. 244–270; EU-Moldova AA: Art. 380–406; EU-Ukraine AA: Art. 303–326) and any matter arising under this part of the agreement should be discussed and solved on the basis of the procedures provided for in the DCFTA Title itself (EU-Georgia AA: Art. 421 (1) in

conj. with Art. 245; EU-Moldova AA: Art. 454 (1) in conj. with Art. 381; EU-Ukraine AA: Art. 477 (1) in conj. with Art. 304). There are three main stages to the dispute settlement system: consultations between the parties (EU-Georgia AA: Art. 246; EU-Moldova AA: Art. 382; EU-Ukraine AA: Art. 305); adjudication by panels (EU-Georgia AA: Art. 248–253, 261–267; EU-Moldova AA: Art. 384–389, 396–403; EU-Ukraine AA: Art. 306–310, 317–322) and implementation of the ruling (EU-Georgia AA: Art. 254–260; EU-Moldova AA: Art. 390–395; EU-Ukraine AA: Art. 311–316). At any time the parties may reach a mutually agreed solution to a dispute. In this case, the arbitration procedure will be suspended (EU-Georgia AA: Art. 362; EU-Moldova AA: Art. 398; EU-Ukraine AA: Art. 317).

The consultation stage aims at giving the parties the opportunity to settle their differences by themselves. Progress in consultations between the parties will depend upon the good faith efforts of the parties in order to reach a mutually agreed solution. Therefore, association agreements urge the parties to endeavour to resolve a dispute by entering into good faith consultations (EU-Georgia AA: Art. 246 (1); EU-Moldova AA: Art. 382 (1); EU-Ukraine AA: Art. 305 (1)).

Consultations shall be held and deemed concluded within 30 days of the date of receipt of a written request from the other party. In case of consultations on matters of urgency, this period is reduced to 15 days (EU-Georgia AA: Art. 246 (4); EU-Moldova AA: Art. 382 (4); EU-Ukraine AA: Art. 305 (4)). Furthermore, this timeframe is reduced to 3 days if consultations concern the transport of energy goods through networks and one party considers the resolution of the dispute as urgent because of an interruption, in full or in part, in the transport of natural gas, oil or electricity between the parties (EU-Georgia AA: Art. 246 (7); EU-Moldova AA: Art. 382 (7); EU-Ukraine AA: Art. 305 (5)). However, the parties can also decide to continue consultations after the end of these terms. If consultations fail, the complaining party may request the establishment of an arbitration panel (EU-Georgia AA: Art. 246 (5) and 248 (1); EU-Moldova AA: Art. 382 (5) and 384 (1); EU-Ukraine AA: Art. 305 (6) and 306 (1)). The request shall also be made in writing but addressed not only to the other party, but also the Association Committee in Trade configuration. In the request, the legal basis for the complaint should be clearly indicated.

An arbitration panel comprises three arbitrators (EU-Georgia AA: Art. 249 (1); EU-Moldova AA: Art. 385 (1); EU-Ukraine AA: Art. 307 (1)). It is worth mentioning that the EU-Georgia and EU-Moldova Association Agreements give the parties 5 days from providing the request for the

establishment of a panel for reaching an agreement on its composition (EU-Georgia AA: Art. 249 (2) and (3); EU-Moldova AA: Art. 385 (2) and (3)). In contrast, the EU-Ukraine Association Agreement provides for 10 days for the same purpose (EU-Ukraine AA: Art. 307 (2)).

If an agreement on the composition of a panel cannot be reached, either party may request to apply the formal procedure for panel composition, according to which arbitrators are appointed from the list of arbitrators established by the Association Committee in Trade configuration. The list of arbitrators is composed of three sub-lists, each including five individuals in the case of the EU-Ukraine Association Agreement and at least 5 individuals in the case of the EU-Georgia and EU-Moldova Association Agreements: one sub-list for each party and one sub-list of individuals that are not nationals of either party and who will act as chairperson to the arbitration panel. The arbitrators shall have expertise on the issues covered by the DCFTA, be independent, serve in their individual capacities and not take instructions from any organisation or government (EU-Georgia AA: Art. 268; EU-Moldova AA: Art. 404; EU-Ukraine AA: Art. 323). The provisions of the EU-Georgia and EU-Moldova Association Agreements on the one hand and the EU-Ukraine Association Agreement on the other hand differ in regard to the procedure of appointment of arbitrators. Under the EU-Georgia and EU-Moldova Association agreements, the parties have 10 days from the date of request to apply this procedure to appoint an arbitrator from the list of arbitrators. Only if any of the parties fail to appoint the arbitrator, he/she will, upon request of the other party, be selected by lot by the chair or co-chairs of the Association Committee in Trade configuration, their delegates to be selected by lot within 5 days of the request. The same applies if the parties fail to reach an agreement concerning the chairperson of the arbitration panel (EU-Georgia AA: Art. 249 (3) and (4); EU-Moldova AA: Art. 385 (3) and (4)). Under the EU-Ukraine Association Agreement, the parties do not have additional 10 days after requesting the formal procedure. The chair of the Trade Committee (or the chair's delegate) shall select all three arbitrators (or any remaining arbitrator or arbitrators, if the parties agreed on one or more of them) by lot within 5 days of the request to apply the formal procedure of composition of the arbitration panel (EU-Ukraine AA: Art. 307 (3), (4) and (5)). Similar to the stage of consultations, a special norm shall be applied in regard to trade-related energy, according to which if a party considers a dispute to be urgent because of an interruption, in full or in part, in any transport of natural gas, oil, or electricity or a threat thereof between the parties,

the parties will not have 10 days under the EU-Georgia and EU-Moldova Association Agreements and 5 days under the EU-Ukraine Association Agreement respectively, prior to beginning the formal procedure for panel composition and besides, the timeframe of the latter will be reduced to 2 days (EU-Georgia AA: Art. 249 (7); EU-Moldova AA: Art. 385 (8); EU-Ukraine AA: Art. 307 (8)).

The arbitration panel has to prepare an interim report with all findings and recommendations within 90 days after the date of its establishment. This term may be prolonged in case the arbitration panel is in delay. However, the term for the arbitration panel to submit an interim report to the parties shall not exceed 120 days (EU-Georgia AA: Art. 251 (1); EU-Moldova AA: Art. 387 (1); EU-Ukraine AA: Art. 308 (1)). In cases of urgency, the arbitration panel shall endeavour to prepare its interim report within 45 days and, when in delay, no later than within 60 days (EU-Georgia AA: Art. 251 (3); EU-Moldova AA: Art. 387 (3); EU-Ukraine AA: Art. 308 (3)).

Trade-related energy issues get further “special treatment” at this stage. In respect of a dispute concerning the relevant chapter of the association agreements which a party considers to be urgent, either party may request the chairperson of the arbitration panel to act as a conciliator. In this capacity, he/she will seek an agreed resolution of the dispute or seek to agree a procedure to achieve such resolution. If within 15 days no such agreement can be reached, the conciliator himself/herself shall recommend a solution or a procedure to achieve a solution, which the parties have to respect for three months following the conciliator’s decision or until resolution of the dispute, whichever is earlier (EU-Georgia AA: Art. 252; EU-Moldova AA: Art. 388; EU-Ukraine AA: Art. 309).

As for the final ruling, the arbitration panel has 120 days from the date of establishment to notify of it the parties and the Association Committee in Trade configuration. In case the arbitration panel is in delay, this term can be prolonged up to 150 days. In cases of urgency, these terms shall be reduced to 60 days and 75 days respectively, and in respect of a dispute concerning trade-related energy issues which a party considers to be urgent, the arbitration panel has even less time, namely 40 days, to notify of its final ruling (EU-Georgia AA: Art. 253; EU-Moldova AA: Art. 389; EU-Ukraine AA: Art. 310). The primary mode of decision-making process in the arbitration panel is consensus. However, if it cannot be reached, the decision will be made by a majority vote (EU-Georgia AA: Art. 266 (1); EU-Moldova AA: Art. 402 (1); EU-Ukraine AA: Art. 321 (1)).

In its search for an interpretation of any matter submitted, the arbitration panel shall use interpretation methods of international customary law and also take into account relevant interpretations established in panels and the Appellate Body adopted by the WTO Dispute Settlement Body. The arbitration panel is allowed neither to extend nor limit the scope of the rights and obligations of the parties provided for in the association agreement (EU-Georgia AA: Art. 265; EU-Moldova AA: Art. 401; EU-Ukraine AA: Art. 320).

The ruling of the arbitration panel is binding on the parties and it goes without saying that the party complained against shall comply with the arbitration panel ruling, to wit promptly and in good faith (EU-Georgia AA: Art. 254 and 266 (2); EU-Moldova AA: Art. 390 and 402 (2); EU-Ukraine AA: Art. 311 and 321 (2)). If immediate compliance is not possible, the party shall notify the other one and the Association Committee in Trade configuration of the time that it thinks will be required for compliance. This should be a reasonable period of time which, if the parties cannot agree on it, may be determined by the arbitration panel. The reasonable period of time may be extended by mutual agreement of the parties (EU-Georgia AA: Art. 255; EU-Moldova AA: Art. 391; EU-Ukraine AA: Art. 312). To complete the procedure of dispute settlement, association agreements also provide for options of temporary remedies in case of non-compliance (EU-Georgia AA: Art. 257–259; EU-Moldova AA: Art. 393–395; EU-Ukraine AA: Art. 314–316).

Special attention should be paid to the provisions of association agreements according to which the arbitration panel shall request the Court of Justice of the European Union to give a ruling on the question if the dispute concerns the interpretation and application of a provision of the Association Agreement which imposes upon a party an obligation defined by reference to a provision of EU law (Petrov 2016: 106). This provision is unique in international agreements concluded by the EU so far, as in no other agreements excepts of these three association agreements may arbitration ask for a preliminary ruling of the Court of Justice (Van der Loo et al. 2014: 20). In contrast to the EU-Georgia and EU-Moldova Association Agreements, the EU-Ukraine Association Agreement specifies that this procedure shall apply to disputes concerning the interpretation and application of a provision of this Agreement related to regulatory approximation contained in Chapter 3 (Technical Barriersto Trade), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Establishment, Trade in Services and

Electronic Commerce), Chapter 8 (Public Procurement) or Chapter 10 (Competition), or which otherwise imposes upon a Party an obligation defined by reference to a provision of the EU law. Nevertheless, relevance of the specification provided for in the EU-Ukraine Association Agreement referring to specific chapters is practically nullified given the more general character of the second part of the provision.

The ruling of the Court of Justice of the European Union shall be binding on the arbitration panel (EU-Georgia AA: Art. 267; EU-Moldova AA: Art. 403; EU-Ukraine AA: Art. 322). This procedure essentially aims at a heterogeneous interpretation of the EU law, thus guaranteeing the autonomy of the EU legal order (ECJ: Opinion 1/91; Van der Loo 2016: 296–301). Taking into account the specific focus of this procedure, it does not include the authority to decide on the direct applicability of a norm in the national legal order. The latter is reserved for domestic courts.

Conclusions

Though the three association agreements concluded by the EU with Georgia, Moldova and Ukraine are not identical, many of their provisions are similar. On monitoring and dispute settlement, all three agreements contain almost the same wording.

The association agreements stipulate a system of permanent monitoring. Several tools are used in order to scrutinise the enforcement and implementation of the association agreement. The Dispute Settlement mechanism is based on the model of the WTO Dispute Settlement Understanding, but with faster procedures. This combination of a well-established dispute settlement system and shorter timeframes seems to be an effective and efficient mechanism for avoiding and settling any dispute between the parties concerning the interpretation and application of the provisions of the association agreements.

Exclusive Jurisdiction of the Court of Justice of the European Union to interpret the EU legal norms will be preserved by involving the Court of Justice in the dispute settlement mechanism in relevant cases. Establishment of a direct link between the arbitration panel created under an international agreement and the Court of Justice constitutes an absolute novelty in the EU external relations and will contribute to achieving the goal of uniform interpretation of the EU acqui.

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Part III

EU Trade & Investment Policy:
Engine for Growth and Job Creation?
The Economic Effects
of New FTAs Generation
– How to Assess Their Effects?

Ukraine and the European Union. Trade Benefits Offered by Deeper Integration

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Abstract

The Eastern Partnership initiated in 2008 by Radosław Sikorski is aimed at transforming international relations between the European Union and the post-Soviet bloc states. All the states involved felt it was of paramount importance to emphasise their independence from the Russian Federation and their ability to implement and openness towards the reforms expected by the European Union. The complex political situation in Georgia and the conflict in Ukraine triggered the strife towards closer integration with Eastern partners. The support offered by the European Union changed the political, economic and social stability of particular countries.

The main aim of this study is to present an overview of the current situation of Ukraine with respect to trade and the changes taking place regarding the implementation of the Deep and Comprehensive Free Trade Area (DCFTA). This paper is based on a literature review outlining briefly the theoretical background for discussing trade effects in the context of economic integration. A statistical analysis of trade between the EU and Ukraine was mainly based on the data obtained from the International Trade Centre (Comtrade). Furthermore, the analysis includes a presentation of the results of econometric estimation of DCFTA between the EU and Ukraine. The methods proposed in the article are supported by an analysis of EU official documents.

It is beyond any doubt that the economic relations between the EU and Ukraine will be strongly affected by DCFTA. For Ukraine there are two types of benefits: quantitative and qualitative. It is estimated that next year over 80% of Ukrainian exports will be directed at the EU market. In qualitative terms, in order to achieve this volume it will be crucial for companies to comply with EU norms and consumer standards. Gradual liberalization of trade will also change its structure. It is precisely the exports and competition in the international arena that impel innovation and increased efficiency, which in the literature is called *learning by exporting* (Cieślík, Michałek A., Michałek J.J. 2012: 70).

Key words: economic integration, Eastern Partnership, European Union, international trade

Introduction

In May 2009 in Prague, the European Union (EU) and 6 European states signed a declaration which laid the foundations for the Eastern Partnership (EaP). The six states chose to strengthen their ties to the European Union in order to become less dependent on the Russian Federation. They felt it was crucial for their stability and security. Among those were Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The main objective of the Eastern Partnership was to offer the opportunity for selected post-Soviet countries to deepen their integration with the West. Introduced by the European Council (2009), the declaration focuses on four main aspects, i.e. the so-called platforms: democracy, good governance and stability; economic integration, energy security and contacts with people. 2016 and 2017 brought about dynamic negotiations between Ukraine and the European Union regarding trade agreements. The Deep and Comprehensive Free Trade Area (DCFTA) came into force on 1st September 2017, having been provisionally applied since 1st January 2016. The Ukrainian market means access to over 40 million consumers. This may seem to primarily benefit EU businesses, however stronger economic relations will also help Ukrainian companies. The process of open access to over 500 million consumers is certain to result in qualitative change and increased competitive pressure in manufacturing.

The estimation models presented in the paper show the scale of potential benefits for Ukraine from DCFTA. However, it is dependent on how effectively Ukraine adapts to EU requirements. The DCFTA not only introduces the reduction of tariffs, but also closes the gap in terms of norms and standards between EU and Ukrainian companies (Oomes et al. 2017). An analysis of trade data has demonstrated that in the coming years Ukrainian trade will be strongly affected by close economic relations with the European Union. Already in the years preceding the conclusion of the DCFTA there had been structural changes in terms of trade diversion. Since trade relations constitute one of the channels of distribution for positive economic change, it has to be stressed that over the coming years integration with the EU is bound to deepen.

Theoretical framework for deeper economic integration

One of the main areas of research in the post-war period was international trade and the impact of regional trade agreements. The free movement of goods, services and factors of production is perceived by economists as the

cornerstone of economic integration. Market integration means removing barriers to trade, barriers to market access and market presence of foreign capital, employees, technology or know-how (Gawlikowska-Hueckel, Zielińska-Głębocka 2004: 11–12).

In his theory of economic integration Bela Balassa (1961) introduced five main stages of economic integration, which are as follows: free trade area, customs union, common market, economic union and full economic integration. Among the economists analysing the economic effects of integration it is worth noting Viner (1950) and Meade (1955), who focused on the customs union and its impact on the change in trade. The following decades shifted the discussion to the long-term impact on the economies engaged in the process of integration. The dynamic effects or the so-called restructuring effects of the customs union (Molle 1995, 1997) are a direct response of companies, workers and governments to the new situation. As new markets engage in economic integration, it is vital to raise efficiency (lower-cost production) and respond to the challenge of new competition on the newly-entered market (economies of scale). It has a direct positive effect on welfare (Molle 1997).

As follows from a literature review, there are a number of channels connecting economic development and regional integration. Darrat, Kherfi and Soliman (2005) analysed 23 Central and Eastern European countries between 1979 and 1992. The economic effects varied significantly depending on the level of integration with the European Union. The authors concluded that it is the reforms required by the EU at the negotiation stage that are crucial for generating the desired economic effects. A highly similar conclusion has been drawn by Agrawal (2000), further comparable to the findings of Nair-Reichert and Weinhold (2001); however, these two analyses focus on the relationship between economic growth and Foreign Direct Investment (FDI). This seems relevant, as the dynamic growth of the share in Ukrainian trade and the increased exports to Ukraine by EU companies will soon be followed by an inflow of foreign capital. As emphasised in the Uppsala model of internationalisation, as companies learn by exporting and gain knowledge of local markets, the risk to international business activities decreases (Forsgren, Hagström 2007).

Ukraine is only just embarking on the trade effects path, but the dynamic changes taking place need to be noted. Although those issues are fairly recent in the context of the EU and Ukraine, it is worth mentioning the econometric analyses which are already available, estimating the trade effects of DCFTA on the EaP members (see the following section).

Profile of trade between Ukraine and the European Union

In 2016 the European Union was the most important trading partner for Ukraine, accounting for 37.2% of total exports and 43.7% of total imports (European Commission 2017). Between 2012 and 2016 the EU retained the leading role as Ukraine's main trade partner, with the share in total trade rising from 34% to 40.6%. In turn, Russia's share in Ukrainian trade dropped from 22% to 11.6% in 2012–2016. This may also be attributed to the actions undertaken by Russia as a consequence of the Association Agreement concluded in 2014 (Oomes, Appelmann, Witteman 2017: 18). This allows us to infer that Ukraine is becoming more independent from Russia and over the next decade we are likely to observe trade diversion to the West and the emergence of new trade channels.

At the same time, for the European Union Ukraine ranked 27th in terms of external trade, accounting for 0.9% of extra-EU exports and 0.8% of extra-EU imports (Table 1). It is worth noting that between 2008 and 2016 the share of Ukraine in extra-EU exports declined from 1.9%, whereas the imports remained stable.

Table 1. General statistics on trade between Ukraine and European Union

| Year | Indicator | Value |
|-----------|---|-------|
| 2016 | Share in EU extra-imports | 0.8% |
| 2016 | Share in EU extra-exports | 0.9% |
| 2015–2016 | Annual growth rate in imports | 2% |
| 2015–2016 | Annual growth rate in exports | 17.5% |
| 2016 | Share of imports from the EU (in total imports of Ukraine) | 43.7% |
| 2016 | Share of exports from Ukraine to the EU (in total exports of Ukraine) | 37.2% |

Source: European Commission (2017), *European Union, Trade in goods with Ukraine*, Brussels. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf [accessed on: 10.06.2017].

According to the data presented by the European Commission (2017), exports to Ukraine were dominated by 3 sections (SITC nomenclature): Machinery and transport equipment (36.4%), Chemicals and related prod., n.e.s. (20.9%) and Manufactured goods classified chiefly by material (14.9%). These 3 sections accounted for over 72% of EU exports to Ukraine. In 2016 EU imported from Ukraine: Manufactured goods classified chiefly by material (27.8%), Food and live animals (17.9%), Crude materials, inedible, except fuels (17.2%), which accounted for 62.9% of total imports from

Ukraine (Table 2). According to Table 2, it is important to underline that the trade between the EU and Ukraine has more extra-industry character, however there is a potential for overlapping the streams of trade in the *Manufactured goods classified chiefly by material* product group. Since the data presented by the European Commission are highly aggregated, it is impossible to conduct a detailed analysis of the share of intra-industry trade in the total trade between partners.

Table 2. Exports and imports between the EU and Ukraine in 2016 by SITC sections

| Exports to Ukraine | | Imports from Ukraine | |
|---|------|---|------|
| Machinery and transport equipment | 36.4 | Manufactured goods classified chiefly by material | 27.8 |
| Chemicals and related prod., n.e.s. | 20.9 | Food and live animals | 17.9 |
| Manufactured goods classified chiefly by material | 14.9 | Crude materials, inedible, except fuels | 17.2 |

Source: European Commission (2017), *European Union, Trade in goods with Ukraine*, Brussels. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf [accessed on: 10.06.2017].

Table 3 presents the value of imports and exports of the EU to Ukraine broken down into product groups according to SITC nomenclature. A more detailed analysis of the composition of the trade between the EU and Ukraine reveals interesting characteristics. Between 2013 and 2016 agricultural products, dominated by food products (87%), constituted over a third of EU imports from Ukraine. Another product group, which accounted for 20% of imports in 2016, was iron and steel. Those two groups stood for over 50% of EU imports from Ukraine in 2016. A similar situation was noted between 2013 and 2016. The imports are largely dominated by raw materials (Misala 2013: 97).

In terms of exports to Ukraine, in 2016 the highest share in total exports was noted by *Machinery and transport equipment*, which accounted for 36% (Table 3). This category was dominated by *Other machinery*, i.e. excluding transport equipment. Another significant group of products were *Chemicals* (21% of exports). In terms of intensity of product factors, exports to Ukraine are dominated by capital-intensive and technology-intensive products, which are easy to imitate. The future might bring about the process of spill-over in Ukraine. With rising exports, local businesses will have the opportunity to utilize the knowledge and technology contained in the products. In the long term the process of dynamic Ukrainian imports from the EU will result in the acceleration of the catching-up process in economic terms. According to the

“Flying geese paradigm” presented by Akamatsu, the developing countries use imports to complement their deficiencies in terms of capital, modern technology and managerial skills. Over time, however, with learning from the leaders, they become their equal partners and rivals on the international scene (Weresa 2007: 344–345).

Table 3. Composition of EU and Ukraine trade in selected years (Mio €)

| SITC Rev. 3 Product Groups | 2013 | 2014 | 2015 | 2016 | 2013 | 2014 | 2015 | 2016 |
|--|---------|--------|--------|--------|---------|--------|--------|--------|
| | Imports | | | | Exports | | | |
| Total | 13,882 | 13,731 | 12,833 | 13,091 | 23,899 | 16,986 | 14,039 | 16,501 |
| Primary products | 6,950 | 6,809 | 6,334 | 6,301 | 5,128 | 3,966 | 3,028 | 2,966 |
| Agricultural products (Food (incl. Fish) & Raw Materials): | 4,180 | 4,359 | 4,517 | 4,536 | 2,406 | 1,914 | 1,518 | 1,753 |
| Food | 3,712 | 3,825 | 3,941 | 3,975 | 2,052 | 1,639 | 1,270 | 1,475 |
| Raw materials | 468 | 535 | 576 | 561 | 354 | 275 | 248 | 278 |
| Fuels and mining prod. | 2,769 | 2,449 | 1,817 | 1,764 | 2,722 | 2,052 | 1,510 | 1,213 |
| Ores and other minerals | 1,586 | 1,374 | 1,187 | 1,158 | 63 | 53 | 68 | 49 |
| Fuels | 1,118 | 1,005 | 519 | 544 | 2,487 | 1,870 | 1,304 | 1,030 |
| of which Petroleum and petroleum prod. | 392 | 265 | 45 | 46 | 2,140 | 1,549 | 1,026 | 744 |
| Non-ferrous metals | 65 | 71 | 111 | 62 | 172 | 129 | 138 | 133 |
| Manufactures | 6,360 | 6,371 | 5,956 | 6,321 | 18,291 | 12,739 | 10,633 | 13,274 |
| Iron and steel | 3,352 | 3,161 | 2,696 | 2,696 | 379 | 288 | 242 | 265 |
| Chemicals | 555 | 551 | 507 | 396 | 4,589 | 3,676 | 3,098 | 3,449 |
| of which Pharmaceuticals | 23 | 20 | 18 | 18 | 1,785 | 1,402 | 953 | 1,109 |
| Other semi-manufactures | 453 | 561 | 633 | 797 | 2,409 | 1,746 | 1,358 | 1,575 |
| Machinery and transport equipment | 1,378 | 1,417 | 1,418 | 1,584 | 8,137 | 4,923 | 4,246 | 5,998 |
| Office and telecomm. equipment | 187 | 225 | 198 | 223 | 1,176 | 705 | 554 | 600 |
| Transport equipment | 180 | 106 | 98 | 84 | 2,441 | 1,037 | 980 | 1,600 |
| of which Automotive products | 13 | 14 | 15 | 14 | 2,031 | 837 | 742 | 1,229 |
| Other machinery | 1,012 | 1,085 | 1,123 | 1,278 | 4,512 | 3,177 | 2,706 | 3,797 |
| Textiles | 46 | 54 | 61 | 78 | 464 | 436 | 430 | 479 |

continued Table 3

| SITC Rev. 3 Product Groups | 2013 | 2014 | 2015 | 2016 | 2013 | 2014 | 2015 | 2016 |
|--|---------|------|------|------|---------|-------|------|-------|
| | Imports | | | | Exports | | | |
| Clothing | 312 | 310 | 288 | 326 | 632 | 445 | 329 | 364 |
| Other manufactures | 264 | 318 | 353 | 444 | 1,680 | 1,224 | 961 | 1,143 |
| of which Scientific and controlling instruments | 17 | 24 | 24 | 15 | 304 | 220 | 198 | 256 |
| Other products | 37 | 35 | 33 | 54 | 173 | 90 | 88 | 168 |
| Other | 535 | 516 | 511 | 415 | 307 | 191 | 259 | 94 |

Source: European Commission (2017), *European Union, Trade in goods with Ukraine*, Brussels. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf [accessed on: 10.06.2017].

Estimation of the effects of deeper integration between EaP and the European Union

To discuss the future trends in trade, the Author will present an estimation based on a gravity model prepared for all EaP States. Gylafson, Martinez-Zarzoso, Wijkman (2014) forecast trade effects using the gravity model to discover how EaP countries would be affected by various determining factors. They took into consideration the following issues:

1. Entering into the EU, full membership (EU)
2. A DCFTA with:
 - EU (EUdeep)
 - Russia (Eurasian Customs Union, RUSdeep)
3. A shallow FTA with:
 - EU (EUshallow)
 - Russia (RUSshallow)
 - Each of the EaP states (FTA-East).

Their research was based on the data obtained from 34 exporters and 150 importers. The scenario in which EaP countries become EU members will result in the increase of exports by 317%. However, it is crucial to underline that this scenario is unrealistic. The authors estimated that entering into DCFTA with the EU will result in an 86% increase in exports, whereas DCFTA with Russia under the Eurasian Customs Union will have no positive impact on trade. Interestingly, shallow cooperation with Russia will affect the export negatively, reducing the volume of trade. In conclusion, close and deep cooperation with the EU will stimulate EaP States' trade

in volume, but, taking into consideration the analysis of trade between the EU and Ukraine, a quality shift in terms of production and technology advancement will be observed.

Harbuzyk and Stefan (2004) estimated that Ukraine will benefit directly from a customs union with the EU, however the agricultural sector shall not be liberalised. The opening of this sector may result in adverse terms of trade. In 2007 Ecorys analysed the potential effects of DCFTA between Ukraine and the European Union. The report underlined that the welfare gain for Ukraine would be strengthened by reforms, which are a necessity for a country preparing for deeper integration with the EU. Maliszewska et al. (2009) estimated that the gains from a free trade agreement with Ukraine would result in the so-called welfare gain up to 0.09%, whereas for EU27 exports were predicted to increase by 0.26% and imports by 0.28%.

Conclusions

The theory of economic integration highlights the positive effects of deepening integration in the region. There is high probability of trade diversion and the emergence of new channels of trade between the partners. Over the past few years Ukraine as a member of the Eastern Partnership has consequently strived to modify the direction of their activities and has been looking for allies in the West. The open conflict with Russia is an obstacle on the Ukrainian path to stable economic growth. This was the reason for prolonged negotiations between the EU and Ukraine. At the same time, a rising interest of EU Member States in the Ukrainian market has been observed. As a matter of fact, even before the DCFTA took effect there was an obvious shift in trade between the European Union and Ukraine. The increase of EU exports and imports with Ukraine and the rising share of EU trade in Ukrainian trade suggests that this trend is likely to continue over the coming years. Different estimation research underlines how crucial the economic, especially trade, effects are for Ukraine in terms of welfare. The welfare gains will be the result of a spill-over effect from administrative, political and structural reforms required and necessary for Ukraine to meet the requirements of the European Union. The trade effects are only the beginning. Domestic (Ukrainian) companies will learn a lesson from trade effects and dynamic engagement with the EU market. EU exports to Ukraine will bring technology and quality to the market and companies will be given an opportunity to learn through knowledge spill-overs. As shown in

the Akamatsu model, over the next few years Ukraine will bridge the gap in terms of capital, knowledge, technology and managerial skills. A vital issue from a strategic point of view will be the creation of a stable political, fiscal and administrative environment to encourage foreign investors to invest. This is another interesting research area to explore in the case of EaP states.

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Implementation of DC-FTAs in the EU Eastern Partnership: The Dynamics of Costs and Benefits of Association

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Abstract

The implementation of Deep and Comprehensive Free Trade Agreements (DC-FTAs) within the framework of the EU Eastern Partnership (EaP), comes with costs and benefits for the three EaP countries involved (Georgia, Moldova, and Ukraine). Association processes are different from earlier accession processes in the sense that they have a more limited scope (by focusing mainly on limited access to the Single European Market) and do not necessarily lead to EU membership. Still, the approach followed by the EU in the EaP is to a large part path-dependent and builds on earlier enlargement practices. It is questionable whether this approach is the most effective.

In this paper, a typology is presented of the (economic) costs and benefits of implementation of DC-FTAs in the three EaP countries, for different sectors in society, and differentiated over time (short, medium and long-term). The magnitude and dynamics of these costs and benefits of association are tentatively compared to similar costs and benefits of earlier accession processes. From this analysis it follows that association involves higher costs, lower benefits, and misses out on the bonus of EU membership. In the case of association there is far more front-loading involved than with accession. The paper also looks at the potential implications this has for popular support of integration of the three EaP countries into the EU. In conclusion, it argues for more differentiation, more flexibility, and more gradualism in implementing the DC-FTAs in Georgia, Moldova and Ukraine, in order to prevent costly and unpopular front-loading.

Key words: Deep and Comprehensive Free Trade Agreement (DC-FTA), Association Agreement, Eastern Partnership, EU accession, European neighbourhood, front-loading

Introduction

Deep and comprehensive Free Trade Agreements (DC-FTAs) go beyond mere liberalization of the trade regime between the European Union (EU) and third countries. They involve:

- traditional reduction of trade-barriers (TBs): tariffs and quotas;
- reduction of non-trade barriers (NTBs), i.e. barriers ‘behind-the-border’: the ‘deep’ aspects (for example: food safety standards);
- legal approximation to EU law in various areas: the ‘comprehensive’ aspect, involving more general issues as, for example, public procurement and dispute settlement.

DC-FTAs are used by the EU in a broad and diverse range of economic relations with third countries. The focus here is on the use of DC-FTAs as the economic core of the so-called Association Agreements (AAs), in the Eastern Partnership (EaP). The EaP was launched in 2009 as part of the European Neighbourhood Policy (ENP) and aims at strengthening and deepening the relations between the EU and its six Eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Currently, there are AAs in place with three of the six EaP countries. DC-FTAs with Georgia and Moldova became formally operational in July 2016, but were already implemented provisionally in September 2014. The DC-FTA with Ukraine has been provisionally implemented in January 2016.

The use of DC-FTAs in the EaP was brought about as part of the changes made in the ENP in 2009, which was originally copied from the model of the EU’s enlargement policy and followed a one-size-fits-all approach (Koeth 2014). The DC-FTAs have a clear economic focus, and are bilateral by nature. They do use part of the *acquis communautaire* to establish the obligations of the countries involved, but it can be argued that they have a more mutual character; this fits in well with the new EU approach to trade policy which relies less on the World Trade Organization (WTO), i.e. on multilateralism, and more on bilateral agreements (Koeth 2014: 23). However, doubts can still be raised regarding the two-sided nature of the DC-FTAs, as the EaP countries involved are not given full access to the Single European Market (SEM), have limited access to EU funding, and have a very limited say in setting the contents of their DC-FTAs. Most importantly, there seems to be asymmetry in the way the EaP AAs/DC-FTAs are perceived by the EaP countries and by the EU. Whereas the EU has repeatedly signalled that the AAs do not necessarily lead up to EU membership, such membership is actively pursued by Georgia and Moldova. This seems to be inherent to the

ENP ‘roots’ of the EaP: as Cadier (2013) argues, the ENP was not originally designed as an alternative to enlargement, but it was sufficiently vague for some aspiring countries to conceive of the ENP as such an alternative. For the EU the ENP has been a surrogate to enlargement rather than an alternative (Cadier 2013: 55), meaning that to a large extent the ENP could be modelled on earlier accession processes. This has brought the conditionality logic into EaP accession processes: compliance with the EU *acquis* (which comes with costs) precedes SEM access and other benefits. Generally, according to a recent literature overview (Kostanyan 2017), the literature on the use of conditionality in the ENP is rather negative about its effectiveness due to the lack of a membership prospect. Most authors argue that the EU’s offer to the EaP countries (limited SEM access, EU funding, visa liberalization) is not sizeable enough to offset the costs of domestic change (Kostanyan 2017: 36). Moreover, conditionality is not sufficiently tailored by the EU to the capabilities of the countries involved (Kostanyan 2017: 62), which calls for further differentiation within the EaP.

Given the relative short period of implementation, it is understandable that most recent research on the effects of DC-FTAs focuses on the immediate effects these arrangements have had in terms of changes in trade flows between the EU and the countries involved, i.e. on short-term and static effects. As argued by Adarov, Havlik (2016), the chain of economic impacts of DC-FTAs is, however, far more complicated and diverse. As a first-order effect the reduction of TBs and NTBs impacts the costs of trade and the prices of goods, and thus changes export and import flows. But combined with approximation to the EU law, the reduction of TBs and NTBs also has second-order effects on the general business environment, on FDI flows, on competition, on global value chains, on employment, on tax revenues, and ultimately on real (per capita) income and on the quality of life (see Adarov, Havlik 2016: 25 for an adequate visualization of this causal chain of impacts). It thus makes sense to have a more comprehensive approach to the impacts of DC-FTAs than just focusing on immediate trade effects.

The analysis of the implementation of DC-FTAs as part of the EaP is also interesting in light of the changes that the Lisbon Treaty brought to EU trade & investment policy and policymaking (see Woolcock 2010 for a detailed overview of these changes). In addition to trade in goods, all trade in services, trade related to intellectual property rights (TRIPs), and FDI were brought into exclusive EU competence. The role of the European Parliament (EP) was strengthened as well: under the Lisbon Treaty trade

legislation follows the ordinary legislative procedure, there is an increased role for the EP Committee on international trade (INTA), and all trade agreements have to be ratified by EP. Moreover, EU trade and investment policy is explicitly made part of the wider EU's external action. Article 207 TFEU states that '[...] The common commercial policy shall be conducted in the context of and the principles and objectives of the Union's external action', as outlined in Chapter 1 Title V TEU: support for democracy, the rule of law and human rights, as well as more specific aims such as sustainable economic, social and environmental development, and good global governance. Some attention (see for example Osteikoetxea 2013) has been given to the impact these treaty changes have had on the effectiveness of EU trade negotiations in the post-Lisbon era, on the 'ownership' of trade issues in the European Commission, and on the potential intervening role the High Representative for Foreign and Security Policy has to ensure policy coherence. However, it is interesting to see how such policy coherence, and the increased embedding of trade policy in the wider EU's external action, have played out in practice, for instance in the case of DC-FTAs with the EaP countries. While this paper does not explicitly address that issue, it does link trade and non-trade aspects, and the more general societal costs and benefits of DC-FTAs within the larger framework of AAs.

Finally, looking at the implementation of AAs/DC-FTAs is interesting from the perspective of the dynamics of these costs and benefits of association, as compared to the dynamics of costs and benefits of earlier accession processes, leading to the 2004 and 2007 enlargements of the EU. The EaP association processes differ from earlier CEE accession processes in various ways. First, as mentioned above, the AAs (including the DC-FTAs) are less comprehensive as they do cover important parts but not the full *acquis communautaire*. Secondly, while the accession processes had a clear end point (accession to the EU), albeit not defined beforehand in time, in the EaP association processes the end point is ambiguous (both in content and time), and does not necessarily involve EU membership. What the two types of processes have in common is conditionality: the third country has to comply with (parts of) the *acquis* in order to get rewarded (for example by means of limited access to the SEM). From the perspective of the association/accession country this means that costs generally precede benefits ('front-loading'), which can be detrimental to popular support in EaP countries for integration into the EU.

This paper addresses three issues. First (in the next section), it identifies and clusters the main costs and benefits of association for the three countries (Georgia, Moldova and Ukraine) involved in the EaP AAs/DC-FTAs, by developing a typology of (positive and negative) effects of DC-FTAs, differentiated over time (short/medium/long-term). Importantly, by doing so, the paper will draw attention to the cost side as well as the benefit side of DC-FTAs. Secondly (in the subsequent section), the paper will address the dynamics of costs and benefits of association, compared to earlier accession processes, and the potential impact front-loading has on popular support in the three EaP countries for the EU. Thirdly, the concluding section addresses the question how DC-FTAs can be implemented in such a way that costly frontloading is prevented.

Costs and benefits of association

In order to identify the main costs and benefits of association, earlier research on similar costs and benefits may be useful. Several – but not many – authors have come up with overviews of the costs and benefits of earlier accession processes of EU-candidate countries. Neueder (2003) looked at the costs and benefits of accession to both existing and future EU members, in the 2004 enlargement. The main impacts he discussed were trade impacts, impacts on employment, impacts on the standard of living, and financial support from the EU. He paid particular attention to impacts on labour-intensive industries and the agricultural sector. Cuipagea et al. (2004) focused specifically on the costs and benefits of Romania's integration into the EU. They distinguished between economic and political impacts, and direct and indirect impacts. The main cost categories associated with accession are costs related to the adoption of EU norms and policies, costs related to compliance with the standards implied by these norms and policies, costs of assuming the status of an EU member, and costs related to the modernization of Romanian economy. As far as benefits are concerned, these concern financial support to Romania, (other) benefits resulting from EU membership, and acceleration of reforms and the transition process. Butković, Dujmović, Ondelj (2007) addressed benefits (not costs) of EU accession of Croatia, and distinguished between political benefits (including those regarding the functioning of the public administration) and economic/

social benefits (differentiating between various economic sectors). Assessing the – rather scarce – research on costs and benefits of accession, it is worth noting that quantification of costs and/or benefits is done in a very limited way and often involves data on financial support from the EU only. The time dimension, i.e. that costs often precede benefits, is touched upon by most authors, but not elaborated upon. Other studies have focused on the overall effect of accession in terms of GDP growth over time (see for example Campos, Coricelli, Moretti 2014, for different waves of enlargement).

All in all, earlier research on accession is informative but does not provide a comprehensive and detailed overview of impacts. Fortunately, the recent literature on the impacts of DC-FTAs is more extensive, although, as mentioned in the introduction, there is an overriding focus on trade effects. Regarding these trade effects Baier, Yotov, Zylkin (2016) show, among other things, that for third countries that already have trade agreements with the EU in place prior to the implementation of DC-FTAs, these trade effects are generally smaller than for countries without such prior agreements. Prior to the DC-FTA Georgia had GSP+ status (GSP: Generalised Scheme of Preferences), Ukraine had GSP-status, and Moldova was entitled autonomous trade preferences. Some authors focus specifically on agricultural trade (see for example Van Berkum 2015); this is interesting in the case of the EaP, as the DC-FTAs with Georgia, Moldova and Ukraine substantially differentiate in terms of *acquis* compliance requirements – linked to SEM access – between various agricultural goods, and between the countries involved.

A recent study by Adarov, Havlik (2016) provides a very comprehensive overview of the content of the DC-FTAs with the three EaP countries, of earlier research into impacts of DC-FTAs in Georgia, Moldova and Ukraine, as well as detailed quantitative analysis of these impacts. Table 1 is based on their summary of benefits and costs of DC-FTA implementation, but substantially amended and adapted. It shows the benefits and costs for various sectors within society: the business sector, the labour market/workers, consumers, the public sector, and society at large. Each impact is labelled in terms of the dynamics of that impact: short-term and/or medium term and/or long-term. Overall, costs are mainly short- and medium-term, whereas most long-term impacts involve benefits.

Table 1. Cost and benefits of association, based upon Adarov & Havlik (2016: 71), amended and adapted

| BENEFITS | t | COSTS | t |
|---|-----|--|-----|
| Business sector | | | |
| Decreased costs of imports/inputs | S | Restructuring/elimination due to: | SM |
| Increased exports due to access to EU markets (and indirectly RoW), but restricted in some sectors (e.g. agriculture) | SM | – increased competition from EU producers | |
| Increased domestic market efficiency, better business environment, higher level of competitiveness, possibilities to be part of global value chains | ML | – non-compliance with EU standards | |
| Financial and technical EU assistance to businesses | SM | – limits to state aid | SM |
| Higher FDI inflow | SML | Opportunity costs of not participating in other trade arrangements (esp. Eurasian Union) | SM |
| Better access to finance, lower costs of capital, but limited to larger companies | L | Compliance costs: business sector | SM |
| Potential access to EU-SEM public procurement | L | Higher FDI outflow | ML |
| | | Increased competition in domestic public procurement from EU competitors | SM |
| Labour market/workers | | | |
| Wage increases due to labour mobility (but de facto limited except for brain-drain, accelerated outflow) | ML | Unemployment due to restructuring (esp. low-skilled labour in inefficient industries) | SM |
| Consumers/citizens | | | |
| Lower consumer prices (due to lower import prices) | S | Higher consumer prices due to higher compliance costs, and due to removal of state aid | SM |
| Higher quality of and variety in products | S | Elimination of some products due to non-compliance with EU standards | SM |
| Visa liberalization | SM | | |
| Public sector | | | |
| Financial and technical EU support for public sector reform | SM | Costs of implementing public sector reform, training, new expertise | SML |
| Higher tax revenues due to expanding tax base | ML | Lower import tariff revenues | SM |
| Better public governance due to public sector reform | ML | | |
| Society at large | | | |
| Higher standards of living (GPD pc, sustainability) | ML | Preference distortion/loss of sovereignty in some policy areas | SML |
| | | Higher income inequality (personal, regional) | SML |
| | | Increased regional security problems (frozen/heated conflicts) | SML |

S: short-term effect; M: medium-term effect; L: long-term effect

The dynamics of costs and benefits, and popular support for integration into the EU

Although the impacts in Table 1 differ in magnitude, it is hard to quantify all of them. Still, it can be argued that in terms of dynamics most costs precede the benefits. This is true for current EaP association processes, and it was also true for earlier accession processes. Of these accession processes, those that led to the most recent EU enlargements (of 2004 and 2007) are obviously the most relevant to compare with the current EaP association processes.

Campos, Coricelli, Moretti (2014) argue that, compared to earlier enlargements, accession processes in Eastern enlargement took much longer. Still, the end-point was clear: EU membership. They show that in most cases this led to an anticipation effect, i.e. additional GDP growth in the run-up to EU membership, or put differently: a positive growth dividend from anticipated EU membership before actual accession. This growth dividend indicates that in the case of accession some medium- and long-term effects are pushed forward in anticipation of actual EU membership. Given the absence of such an end-point in the case of association, it is not likely that such a growth dividend arises with association.

Figure 1. The dynamics of costs and benefits of association and accession

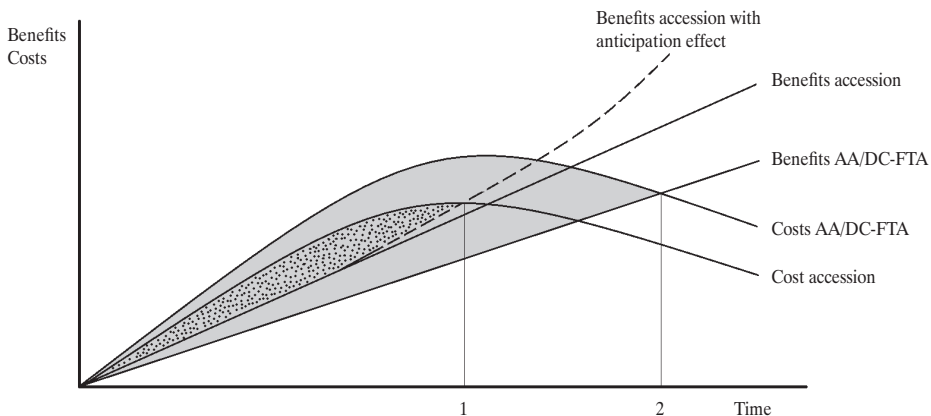


Figure 1 visualizes the development of the costs and benefits of association, compared to those of accession, over time. Behind this graph are several assumptions. First, the costs of association are generally higher

than the costs of accession, as we expect the EaP countries to be currently farther removed from the *acquis* than (most of) the CEE countries were in the run-up to EU membership; building on the European Council meeting in Copenhagen in 1993, Association Agreements were established with these countries in the period of 1994–1999 (Poland, Hungary: 1994; Bulgaria, Romania, Czech Republic, Slovakia: 1995; Estonia, Latvia, Lithuania: 1998; Slovenia: 1999). Secondly, the benefits of association are expected to be lower than the benefits of accession, as accession involved full EU membership, whereas association is about (limited) access to the SEM only. Thirdly, in both cases, the benefits are expected to develop proportionally over time, whereas the costs increase and later decrease. However, if we include the anticipation effect of EU membership (in the case of accession), the benefits curve follow a slightly progressive trajectory.

The grey-shaded area in Figure 1 shows how, in the case of association, over a longer period of time costs exceed benefits, i.e. the so-called frontloading. Only at time-point 2 do the benefits start to exceed the costs. In the case of accession, with the anticipation effect, the grey/dotted area is the area of frontloading. This area is smaller than in the case of association, and benefits start exceeding costs at an earlier point of time (time-point 1).

One can imagine that such heavy frontloading has an impact on support for integration into the EU. How about the development of popular support for the EU in the three EaP countries? Two time-series on popular support for the EU, based on different barometers, are available. The first one is available for Georgia only, within the framework of the Caucasus Barometer of the Caucasus Research Resource Centre (CRRRC), which focuses on EaP countries in the Southern Caucasus only. Tables 2 and 3 therefore only show data on Georgia.

Table 2. Support of Georgia's membership of the EU

| | Don't support | Neutral | Support | Don't know, refused to answer |
|------|----------------------|----------------|----------------|--------------------------------------|
| 2011 | 5% | 13% | 69% | 12% |
| 2012 | 3% | 13% | 72% | 12% |
| 2013 | 8% | 17% | 65% | 10% |
| 2015 | 16% | 27% | 42% | 15% |

Data from Caucasus Barometer time-series dataset on Georgia, Caucasus Research Resource Centre (no data on 2014)

Table 3. Trust towards the EU in Georgia

| | Distrust | Neutral | Trust | Don't know, refused to answer |
|------|-----------------|----------------|--------------|--------------------------------------|
| 2008 | 10% | 20% | 54% | 17% |
| 2009 | 9% | 27% | 43% | 22% |
| 2010 | 10% | 25% | 44% | 21% |
| 2011 | 10% | 23% | 45% | 22% |
| 2012 | 6% | 28% | 42% | 24% |
| 2013 | 13% | 38% | 33% | 16% |
| 2015 | 20% | 36% | 27% | 18% |

Data from Caucasus Barometer time-series dataset on Georgia, Caucasus Research Resource Centre (no data on 2014)

These data suggest a slight decrease of support for and trust in the EU in recent years in Georgia.

Similar data, on all three EaP countries, have been gathered as part of the ENPI East barometer, which ran up till 2014, and which has recently (2016) been replaced by a similar barometer, i.e. the annual EU Neighbours East survey. Tables 4 and 5 show information on the general perception of the EU, as well as trust in EU institutions, for the three EaP countries.

Table 4. Perception of EU in Georgia, Ukraine and Moldova

| | | Positive | Neutral | Negative | Don't know |
|---------|-------------|-----------------|----------------|-----------------|-------------------|
| Georgia | Spring 2013 | 44% | 46% | 7% | 3% |
| | Autumn 2014 | 40% | 49% | 7% | 4% |
| | Spring 2016 | 52% | 31% | 8% | 9% |
| Ukraine | Spring 2013 | 46% | 38% | 11% | 6% |
| | Autumn 2014 | 50% | 29% | 17% | 4% |
| | Spring 2016 | 49% | 32% | 14% | 5% |
| Moldova | Spring 2013 | 41% | 33% | 15% | 10% |
| | Autumn 2014 | 45% | 31% | 21% | 3% |
| | Spring 2016 | 52% | 30% | 17% | 2% |

Data from EU Neighbourhood Barometer ENPI East (wave 3, wave 6) and EU Neighbours East Annual Survey Report – Regional Overview Eastern Partnership Countries (1st wave; Ecorys 2016)

Table 5. Trust in EU, in Georgia, Ukraine and Moldova

| | | Trust | Don't trust |
|---------|-------------|-------|-------------|
| Georgia | Spring 2013 | 57% | 26% |
| | Autumn 2014 | 58% | 25% |
| | Spring 2016 | 69% | n/a |
| Ukraine | Spring 2013 | 57% | 24% |
| | Autumn 2014 | 56% | 31% |
| | Spring 2016 | 61% | n/a |
| Moldova | Spring 2013 | 58% | 29% |
| | Autumn 2014 | 50% | 38% |
| | Spring 2016 | 59% | n/a |

Data from EU Neighbourhood Barometer ENPI East (wave 3, wave 6) and EU Neighbours East Annual Survey Report – Regional Overview Eastern Partnership Countries (1st wave; Ecorys 2016)

The data from Tables 4 and 5 do not indicate a loss of support of or trust in the EU; they rather point towards an increase of support and trust. Interestingly, and confusingly, the data on Georgia from the CCRC show much lower levels of support of and trust in the EU than the data from ENPI/EU Neighbours Annual Survey.

Conclusions

The use of AAs/DC-FTAs in the EaP is to a large extent path-dependent, and builds on earlier accession practices. However, compared to these accession processes, association is more costly for the countries involved, entails lower benefits, and misses out on the ultimate bonus of EU membership.

The 2015 review of the ENP has made it clear that more differentiation and a more tailor-made approach are needed. The current EaP DC-FTAs (including the last one, with Ukraine) have however been developed and drafted prior to this review. As Dreyer (2012) and Van der Loo (2015) argue, the EaP DC-FTAs involve the approximation of parts of the EU *acquis* which are currently very difficult (i.e. very costly) to implement for the countries involved, but are not really necessary from the perspective of SEM access as such. More prioritization and flexibility can reduce the costs of DC-FTA implementation, without having significant impacts on the scope for SEM access or gradual economic reform. If EU membership is not

the end-point of association, then the *acquis* should not necessarily be the yardstick of association.

Moreover, in addition to the rules, actual implementation practices and EU financial and technical assistance projects should increasingly take into account domestic constraints and particularities. DC-FTAs should come with deep and comprehensive implementation strategies.

This call for more prioritization, more flexibility and more tailor-made implementation strategies echoes the call for more gradualism by Adarov, Havlik (2016) based on their analysis of the dynamics of costs and benefits of the implementation of DC-FTAs. As they argue, such gradualism is not only important for reducing the costs of association and for smoothing out costs and benefits over time, it is also essential in order to avoid risks of essential reforms being stalled or reversed due to falling support for the EU and increasing populism.

Alternatively and more fundamentally, as argued by Hoekman (2016: 13), if EU accession is not on the table, deep and comprehensive convergence with EU law and regulation may not be the most effective mechanism anyway for EaP countries to support their economic and social development objectives. More targeted approaches, which focus primarily on policy areas where there are clear payoffs to offset costs, may be more effective. Depending on the area concerned, adoption of international standards (and involvement of other international organizations than the EU) may then be more appropriate than an overriding focus on EU law and practice, as laid down in the EU *acquis*.

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The Connectedness of the European Union and China through the Multilateral Trade System

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Abstract

The European Union (EU) and China are the leading exporters and importers of goods and commercial services in the world. The EU as well as China are obligated by multilateral trade rules in the World Trade Organization (WTO). Since they are also important trade partners for each other, they are currently trying to strengthen their bilateral trade and investment relations through more favourable contractual framework. The object of the paper is to depict the development of bilateral trade between the EU and China in 2002–2016, i.e. after China's entrance into the WTO, and to analyse the sensitive areas of their cooperation, such as using trade defence instruments. Although the EU and China are advocates of the idea of free trade, trade barriers occur in both of them all the time. Besides the analysis of trade data, other logical methods, such as the specification of sensitive areas and the deduction of the main results will be used in order to fulfil the object of the paper.

Key words: China, European Union, market economy status, merchandise trade, trade balance, trade in commercial services, trade defence instruments, WTO

Introduction

The European Union (EU) and China are the leading trade blocks in the world. However, while the share of the EU in world trade has been declining, China's share has been increasing. China's share in the world merchandise exports is currently about 14 per cent and China has been the leading exporter of goods in the world since 2009. In the area of commercial services, China's share is 6 per cent and China is the third leading exporter

of commercial services in the world after the United States and the United Kingdom. Economic reports and studies predict that China will become the world's leading economic superpower in the 21st century and the data regarding economic development confirm it. Although politicians of different states are afraid of losing their jobs because nearly everything is made in China, from food and drugs to consumer products, Haft (2015) sees China not only as a threat, but also as an opportunity. Firstly, Chinese imports are unsafe. There have been thousands of safety scandals in China just over the past few years, such as tainted seafood, scraps of animal skin in milk, arsenic in soy sauce, paraffin and ink in noodles, poisonous gel caps and lethal antibiotics, etc. As Haft (2015) states, China struggles to make safe goods reliably, therefore it must import them. Statistical data also confirm it. For example, the EU's export of agricultural products to China recorded the highest export growth (i.e. 10.4 per cent in comparison to other products), although agricultural products' share in the total EU exports to China was less than 7 per cent in 2016 (European Commission 2017a).

Another view of China as a source of opportunity is through its growing middle class. Although the living standard of the Chinese inhabitants reached USD 13,206 in purchasing power standard in 2014, which is less than a third of the living standard of the people in the USA (Fojtíková, Vahalík 2017), there were 225 million middle rich people in China in 2016 and by 2020 their number could exceed the number of Europeans (Nevělík 2016). China's share in the global luxury market has already reached 27.5 per cent. From this development aspect of the Chinese economy, China actually supports millions of jobs in other countries, because exports support jobs. As Haft (2015) states, exports to China support over three million European jobs. Other statistical data show that China is among the three main export partners of the leading world economies, such as the USA and the EU. On the whole, China is not only an important exporter, but also an importer. In 2014, China shared 10 per cent in the world imports of goods, as well as commercial services, and was the second leading importer in the world in both cases (WTO 2016).

Last but not least, the view of China as a trade superpower is through supply chains. Having opened the Chinese economy as part of the reform measures in China, everything that could be made in China, from big steel infrastructure to little plastic parts, heavy industries to light, was located in China in order to decrease production costs. The international fragmentation of production through global supply chains has spread international outsourcing and has been a reality since the 1980s. In 2011, the participation of China in global

value chains reached 47.7 per cent of its gross exports (WTO 2017a). While the foreign value added content reached more than 32 per cent of China's gross exports, the domestic value added content was only about a half of this figure, although it has increased 1.6 times since 1995 (WTO 2017a). For example, Krugman, P.R., Maurice, O., Melitz, M.J. (2015) state that hi-tech products like iPhone, iPod, iPad are assembled in China and thus make a significant contribution to China's exports. However, the Chinese value-added represents only a small share of the value of these electronic devices that incorporate components from Germany, Japan, Korea and other economies that manufacture intermediate inputs. This fact has a significant impact on trade statistics and the calculation of trade balance. For example, the WTO calculated that the US-China trade balance in 2008 would be about 40 per cent lower if estimated in value-added terms. Similar results are provided in other studies, which also show a 50 per cent reduction in the EU15-China trade balance, and the Japan-China trade balance switching from a surplus in gross terms to a deficit in value-added terms.

On the whole, China's growing importance in world trade was caused by many factors, such as trade liberalisation, free movement of capital and economic globalisation in the world accompanied by domestic reforms that were first announced by the Chinese leader Teng Siao-Pching in 1978 (Fojtíková, Vahalík 2017). China's entering into the World Trade Organization (WTO) in 2001 also contributed to the strengthening of China's trade relations with more than 160 other Member States of the multilateral trade system through the most favoured nation treatment. The object of the paper is to depict the trade connectedness of the EU with China by analysing bilateral trade between both blocks since 2002, i.e. one year after China's entering into the WTO, and to show the most sensitive areas of their trade cooperation. The structure of the paper is as follows: firstly, China's trade commitments in the WTO will be introduced. Secondly, the development of the EU's trade with China from different aspects will be analysed. The conclusion will summarise the main facts.

China in the World Trade Organization

China entered the WTO in 2001, although it had already signed the General Agreement of Tariffs and Trade (GATT) in 1948. However, in connection with China's revolution in 1949 the Chinese government did not participate in the creation of a multilateral trade system governed by the

GATT for almost 40 years. As a part of reform measures and opening China to the world, in 1986 the Chinese government notified the GATT of its interest in resuming its status as a GATT contracting party, and a Working Party to examine China's status was established in March 1987. After the establishment of the WTO in 1995, the GATT Working Party was converted into the WTO Working Party on China's accession. The negotiations were concluded in September 2001 and China's Protocol of Accession was approved at the Fourth Ministerial Conference held in Doha, Qatar, on 10 November 2001. Based on this process, China became the 143rd member of the WTO on 11 December 2001 in compliance with the Final Provisions of the Chinese Accession Protocol to the WTO.

This document is divided into three parts, such as General Provisions, Schedules and Final Provisions and includes the full range of market access obligations which China is legally bound to grant to every WTO Member. The schedules cover tariffs and non-tariff measures applicable to agricultural and industrial products (commitments under GATT), and services (commitments under GATS). The protocol also includes the details of a number of special provisions that would make China the subject of temporary derogations from normal WTO rules, because China is an economy in the midst of a transition from state ownership to a market-based system. Namely, in Section 15d of the Protocol of Accession it is stated: *'Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession'* (WTO 2001: 9). In late 2016, Australia and South Africa were the only countries that had implemented the decision to grant market economy status to China, especially as a condition for the negotiation of free trade agreements with China. Other countries, such as Canada, the EU, the USA, India, Japan and Mexico, hold a legal presumption that China is a non-market economy (Puccio 2015).

Analysis of bilateral trade between the European Union and China

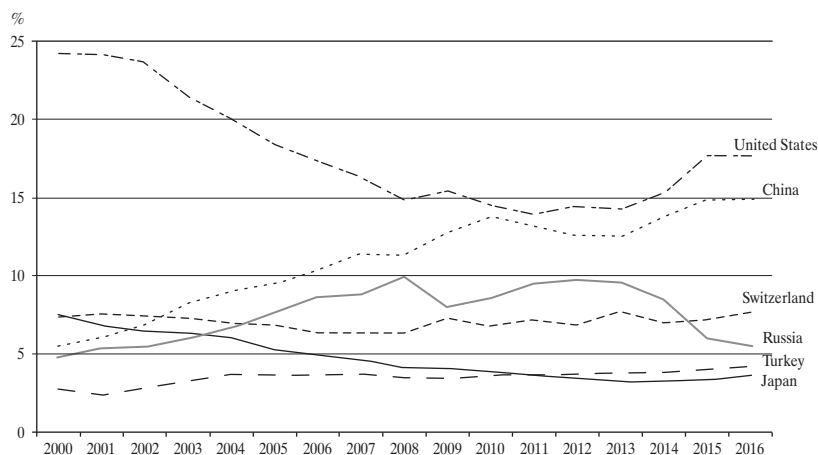
In the previous decades, the EU Member States, as well as other developed countries, moved its production to developing countries such as China in

order to lower their production costs and to be more competitive. However, the fragmentation of the production chain led to higher internationalisation of production and sales and incorporation of more countries into world trade. Although globalisation was accompanied by growing competition in world trade, EU representatives have supported trade liberalisation all the time. For example, on the occasion of the 50th anniversary of the signing of the Treaty of Rome, the previous EU General Director for Trade Peter Mandelson wrote a pamphlet entitled *The European Union in the Global Age*, in which he rejected the protectionist argument that the EU should be a bulwark against globalisation. Warning that this would ‘mortgage Europe’s economic future to its present’, Mandelson argues instead that the EU is a way of shaping globalisation to ensure it reflects European interests while preserving the benefits globalisation offers Europeans and hundreds of millions in the developing world (Mandelson 2007). Trade and investment flow spreads new ideas and innovation, new technologies and the best research, leading to improvements in products and services that people and companies use. In 2012, about 30 million jobs in the EU, or more than 10 per cent of the total workforce, depended on sales to the rest of the world – an increase of almost 50 per cent since 1995 (European Commission 2012). As 90 per cent of the global economic growth by 2015 was expected to be generated outside Europe, a third of it in China alone (European Commission 2012), the EU trade strategy *Global Europe: Competing in the World* was focused especially on the new global growth centres, including China. As Fojtíková et al. (2014) argues, while in 2011 the EU trade with the USA was at a similar level as in 2006, a significant growth of trade with India (by 69 per cent), China (by almost 66 per cent), Brazil (by 64 per cent) and Russia (by 47 per cent) was recognised. At the same time, the EU also increased its exports to these countries, for example to China by 113 per cent Fojtíková et al. (2014). These tendencies show a gradual change in the geographical structure of extra-EU trade, that is trade with non-EU countries.

The development of the share of the EU’s main trading partners in 2000–2016 is shown in Figure 1. The trends observed in the monitored period are very different for the main trading partners of the EU. In the case of China, the share of this country has almost tripled since 2000, rising from 5.5 per cent to 14.9 per cent in 2016 (Eurostat 2017a). The most significant share of China in extra-EU trade was especially on the import side (Figure 2). It accounted for 20.2 per cent, while on the export side it was only 9.7 per cent (European Commission 2017a). In 2016, China was in

the first position among the EU's main import partners and in the second position among the EU's main export partners. Contrary to this, the EU was China's main trading partner with a share of 14.6 per cent in China's total trade in 2015 (European Commission 2017a).

Figure 1. The EU main trading partners in 2000–2016
(share in total extra-EU trade in goods in %)

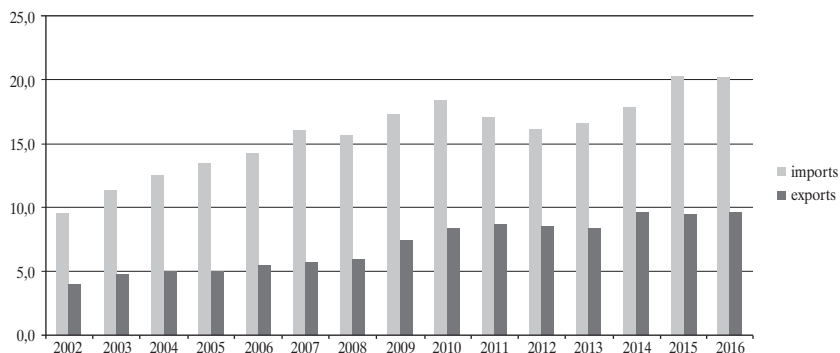


Source: Eurostat 2017a.

Although the values of China's imports to the EU were higher than the value of the EU's exports to China in 2002–2016, the EU's exports to China increased more than the EU's imports during the monitored period. While in 2002 China's shares in the EU's total imports and exports were 9.6 per cent and 4 per cent, in 2016 these shares accounted for 20.2 per cent on the import side and 9.7 per cent on the export side (Eurostat 2017b). This means that China increased its share in the EU's total exports 2.4 times, but China's share in the EU's total imports increased only 2.1 times. Graphically, the development of China's share in the EU's imports and exports in the monitored period is shown in Figure 2.

However, the importance of China is different for the individual EU Member States. When extra-EU imports as well as intra-EU imports of goods are considered, the predominant part of imports into the EU Member States came from Germany and other Member States of the EU, i.e. in the frame of intra-EU trade. China was the main destination among extra-EU trade partners, from which the EU Member States imported the most goods in 2016 (Table 1).

Figure 2. China's share in the EU's imports and exports in 2002–2016
(% of total imports/exports)



Source: Eurostat 2017b, own creation.

Table 1. China among the top 3 import partners of the EU Member States in 2016

| | Position of China | % of the total imports |
|----------------|-------------------|------------------------|
| Czech Republic | 3 rd | 7 |
| Germany | 2 nd | 7 |
| Greece | 3 rd | 7 |
| Spain | 3 rd | 7 |
| Italy | 3 rd | 7 |
| Hungary | 3 rd | 6 |
| Netherlands | 2 nd | 14 |
| Poland | 2 nd | 8 |
| United Kingdom | 3 rd | 9 |

Source: Eurostat (2017a).

Table 1 shows that China was the second leading import destination of Germany, the Netherlands and Poland, and the third leading importer of the Czech Republic, Greece, Spain, Italy, Hungary and the United Kingdom. However, the Dutch trade flows are over-estimated because of the so-called ‘Rotterdam effect’¹ (Eurostat 2017a). On the export side, China was not

¹ The Rotterdam effect (or quasi-transit trade) is goods bound for other EU countries arriving in Dutch ports and, according to EU rules, are recorded as extra-EU imports by the Netherlands (the country where the goods are released for free circulation). This in turn increases the intra-EU flows from the Netherlands to those Member States to which the goods are re-exported.

among the top three main partners of any EU Member States at the same time.

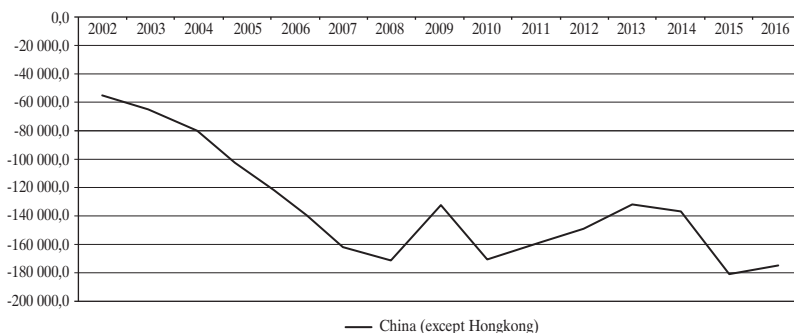
The main commodity items of the EU's bilateral trade with China are industrial products that shared 98 per cent in the total EU imports and 93 per cent in the total EU exports in 2016. In the methodology of the Standard International Trade Classification (SITC), manufactures shared 96.5 per cent in the EU imports and 83.5 per cent in the EU exports at the same time, while the share of primary products in the EU imports and exports was only 3 per cent and 14.6 per cent respectively. A similar structure of the EU imports and exports with China, which is shown in Table 2, corresponds with a high level of intra-industry trade between both trade partners.

Table 2. Top 5 SITC sections of the EU bilateral trade with China

| Imports | | | Exports | | |
|-----------|---|---------|-----------|---|---------|
| SITC code | Product | % Total | SITC code | Product | % Total |
| 7 | Machinery and transport equipment | 50.4 | 7 | Machinery and transport equipment | 54.5 |
| 8 | Miscellaneous manufactured articles | 29.3 | 5 | Chemicals and related products | 12.9 |
| 6 | Manufactured goods classified chiefly by material | 12.8 | 8 | Miscellaneous manufactured articles | 9.4 |
| 5 | Chemicals and related products | 4.7 | 6 | Manufactured goods classified chiefly by material | 8.0 |
| 0 | Food and live animals | 1.4 | 2 | Crude materials, inedible | 5.5 |

Source: European Commission (2017a).

Higher values of the EU imports than the EU exports resulted in an EU trade deficit with China. Figure 3 shows that the EU recorded a trade deficit with China for the whole monitored period. In 2002–2007, the EU trade deficit gradually increased from EUR 55.3 bln to EUR 170.8 bln. Because of the world financial crisis, the EU's imports as well as exports declined in 2009 and the trade deficit fell to EUR 132.8 bln. In the following years the trade deficit started growing again. The EU recorded the highest deficit with China in the value of EUR 180.3 bln in 2015, although the total trade balance of the EU has been in surplus since 2013.

Figure 3. The EU trade balance with China in 2002–2016 (EUR mln)

Source: Eurostat 2017b, own creation.

However, more than China's higher trade competitiveness, these results proved that the EU is a more liberal and open market for foreign products than China. As the EU and China did not sign any preferential agreement about a free zone until now, bilateral trade is only carried out on the base of the most-favoured nation clause in the frame of the WTO. While the simple average tariff applied in the EU reached 5.1 per cent and almost a third of goods were duty-free in 2015, China's applied simple average tariff was 9.9 per cent and less than 7 per cent of its imports were duty-free at the same time. Both the EU and China applied higher tariffs on agricultural products than on industrial products (Table 3). Another important fact is that the data about exports and imports were recorded in gross values, which gives us a less real picture about trade flows between the EU and China.

Table 3. Applied simple average most favoured nation tariff in the EU and China in 2015 (%)

| | Total products | | Agricultural products | | Non-Agricultural products | |
|-------|----------------|-----------|-----------------------|-----------|---------------------------|-----------|
| | MFN tariff | Duty-free | MFN tariff | Duty-free | MFN tariff | Duty-free |
| EU | 5.1 | 27.2 | 10.7 | 31.7 | 4.2 | 26.5 |
| China | 9.9 | 6.9 | 15.6 | 7.2 | 9.0 | 6.9 |

Source: WTO 2017b.

With respect to significant participation in world trade, both the EU and China rank among the most common subjects of trade disputes in the WTO. On the whole, 13 cases of trade disputes between the EU and China were recorded until now, from which 8 cases contained the EU as a complainant and China as a respondent in the period 2008–2016 (Table 4). These disputes

included measures affecting the imports of automobile parts, measures affecting financial information services and foreign financial suppliers, measures related to the exportation of various raw materials, provisional anti-dumping duties on certain iron and steel products from the EU, definitive anti-dumping duties on X-ray security inspection equipment from the EU, measures related to the exportation of rare earths, tungsten and molybdenum, measures imposing anti-dumping duties on high-performance stainless steel seamless tubes and duties and other measures concerning the exportation of certain raw materials. China complained to the EU in the WTO in 5 cases in the period 2012–2017. These disputes included definitive anti-dumping measures on certain iron or steel fasteners from China, anti-dumping measures on certain footwear from China, certain measures affecting the renewable energy generation sector, measures affecting tariff concessions on certain poultry meat products and measures related to price comparison methodologies. Especially the last case is subject to serious discussion. Many developed countries that are WTO Members do not consider China as a market-oriented economy, because state ownership and the influence of the Chinese state on the economy has remained significant all the time. At the end of 2016, when China was waiting to get the status of a market economy from the EU according to China's accession protocol to the WTO, the EU announced a new methodology of calculation of anti-dumping and countervailing duties, which China regards as a violation of the EU's contractual commitments.

Table 4. Trade disputes between the EU and China in the WTO

| Complainant/Respondent | Disputes |
|------------------------|---|
| European Union/China | 8 cases: DS339, DS372, DS395, DS407, DS425, DS432, DS460, DS509 |
| China/European Union | 5 cases: DS397, DS405, DS452, DS492, DS516 |

Source: WTO 2017c.

However, the cases that were solved through the WTO Panel do not include all trade defence investigations that occurred between the EU and China in the monitored period. While the EU investigated China due to unfair trade practices, such as dumping or subsidies in 100 cases, China used some trade defence instruments against the EU in 20 cases in 2003–2016 (European Commission 2017b). The instruments which were most frequently used both by the EU and China were the anti-dumping measures.

Conclusions

Bilateral trade between the EU and China increased in 2001–2016, although no preferential trade agreement has been signed between them until now. However, a good trade strategy and support of the EU exporters to the Chinese market, as well as the improving economic and legal environment in China had a positive effect on these bilateral trade relations after China's accession to the WTO. Solving trade disputes through the WTO Panel is also effective and transparent. However, in compliance with the growing position of China in the world, it would be desirable to negotiate with China not only a complex investment agreement, which started to be negotiated in 2013, but also some preferential trade agreement, such as a free trade zone. This issue arises especially now, when on the one hand, the multilateral trade liberalisation among the WTO Members has been stagnating for a long time and on the other hand, China has increased its role as a global player in the economic, but also political area. However, failure to provide the market economy status to China from the side of the EU in 2016 will probably have a negative influence on the economic cooperation of both units in the future.

Acknowledgements

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Trade and Investment Cooperation between the European Union and Mercosur and Perspectives for its Development

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Abstract

The EU is currently promoting interregionalism by establishing various economic relations with extra-European countries and groupings, including those in Latin America. The aim of this paper is to discuss trade and investment relations between the EU and Mercosur countries, as well as the institutional basis for realised economic cooperation and perspectives for its development. It is said that the free-trade agreement between the two groupings which is currently being negotiated should intensify mutual economic relations and at the same time strengthen the EU's global position.

Relations, including economic relations, between Mercosur and the EU are deepening, which can be seen in both the volume of trade and the influx of foreign direct investments. These relations are characterised by asymmetry. It is expected that establishing a free trade area between the two groupings should bring multiple benefits, but the scale of those benefits may be varied between the two partners. However, the constantly present differences in positions create problems for effective conclusion of negotiations of this agreement between the EU and Mercosur.

Key words: interregionalism, regionalism, Mercosur, EU, foreign direct investment, trade, association agreement

Introduction

Currently, the regionalisation process is becoming more and more intensive; this is reflected in the establishment of regional integration

agreements of varied scope and intensity of relations (Kot, Jedlińska 2013: 337). Integration activities are not limited only to trade cooperation; their scope is increasing and includes cooperation related to investment, economy, intellectual property rights and many other types. At the same time, interregional cooperation, realised between integrational organisations, is also developing.

The EU is also joining the progressing integration processes of world economy and seeks to tighten its relations with current partners, as well as to institutionalise that cooperation. This includes e.g. the *EU-Canada Comprehensive Economic and Trade Agreement (CETA)* (Comprehensive economic...); *The Transatlantic Trade and Investment Partnership* between the EU and the USA which has been negotiated until currently becoming suspended. The countries of South America which form Mercosur also constitute an important direction for cooperation with the EU. The treaty which established Mercosur, that is the Southern Cone Common Market, was signed on 26th March 1991. At first, the organisation included Brazil, Argentina, Paraguay and Uruguay, becoming the most important integrational organisation in South America. Its purpose was to establish a common market with free flow of factors of production by the end of 1994 and to promote economic growth. A customs union was established on 1st January 1995 (Oziewicz, Żołądkiewicz 2001: 181–182, 187–190). After that, Venezuela joined as a new member.

The aim of this paper is to discuss trade and investment relations between the EU and Mercosur countries, as well as the institutional basis for realised economic cooperation and perspectives for its development. It is said that the free-trade agreement between the two organisations which is currently being negotiated should intensify mutual economic relations and at the same time strengthen the EU's global position. However, there are still barriers related to liberalisation of economic relations between the two groupings. The article uses the analysis of statistical data and literature.

Institutional basis of economic cooperation between the EU and Mercosur

Currently, mutually complementary and related economic globalisation and regionalisation processes are progressing with considerable intensity. Regionalisation is associated with integration of countries and economies, the deepening of mutual relations on various levels, not only economic,

but also political, social and cultural, while being the institutional factor of regional integration. Regionalism, on the other hand, pertains to a project or a concept for functioning of a region put forward by a country or several countries. Regionalisation has undergone transformation; three distinct waves of regionalisation are identified. The current wave is a sign of the desire of various countries, often at different levels of development, to expand their activities, primarily export, and to strengthen their position. New regionalism, as a new form of contemporary economic integration, is a strategy of countries of a particular region which utilises a mechanism of cooperation occurring on multiple levels, not only economic, in order to improve competitiveness of that region, but also to give the ability to cope with challenges related to globalisation. Complex economic relations are created between groupings on different levels of development, initiating the so-called interregionalism; relations between the EU and Mercosur are an example of that (Kot, Jelińska 2013: 336–339).

The EU actively promotes integration in countries of Latin America, wishing to strengthen its position in that region, and by extension in the world, through influencing the behaviour of other entities within the global structure of forces (García 2015: 622–623). Promoting these interregional relations enables the EU to realise its own goals related to external relations. These goals are: promoting values such as human rights, democracy, sustainable development and a vision of a multilateral world; creating a clear regional identity; seeking to achieve its economic interests (García 2015: 623–625), and through that attaining power. The EU seeks to achieve its economic goals and exert considerable force, which manifests itself in the so-called imperial relations between organisations (García 2015: 624–626).

Economic relations between the EU and Mercosur have been regulated by an Interregional Framework Cooperation Agreement, which entered into force on 1st July 1999 (European Commission 2017a) and covers multiple areas of mutual interest, including trade and economic matters. Its objective, as indicated therein, is to strengthen the existing relations and to prepare the conditions enabling the creation of an Interregional Association. As far as trade is concerned, it was emphasised that further relations will be oriented towards gradual liberalisation of trade. The main areas of cooperation include: market access, trade liberalisation, trade relations with non-member countries, improvement of compatibility of trade with WTO rules, identification of sensitive and priority products and cooperation concerning exchange of information on services. Regarding agricultural and industrial

products, the groupings agreed to cooperate to approximate their policies on quality and conformity recognition. Other areas of cooperation were also mentioned, including economic cooperation in the scope of individual sectors (Interregional Framework Cooperation...). The EU also entered into separate bilateral agreements with Mercosur countries: Argentina, Paraguay, Uruguay and Brazil. The first country to sign such an agreement was Argentina; the agreement entered into force in 1991. The agreement focused on trade, economic, agricultural and industrial cooperation. The next bilateral trade agreement was concluded with Paraguay and entered into force in 1992; this was followed by Uruguay. Brazil was the last country to sign a similar agreement; it entered into force in 1995. Cooperation was to be strengthened in the following areas: trade, investments, finance and technology (Bilateral framework agreements...). The EU became an “active mentor” of Mercosur integration, assisting the organisation in activities for association, including financial aid within the project, through supporting infrastructure essential to economic integration (García 2015: 624, 628).

Currently talks between the EU and Mercosur concerning the free trade area are underway. Mercosur is represented by Argentina, Brazil, Paraguay and Uruguay; Venezuela acts as an observer and is not a party to the negotiations. This agreement will not be a regular free-trade agreement, as it covers issues related not only to trade, but also deals with such matters as technical barriers to trade, sanitary and phytosanitary measures, services or government procurement. Negotiations also cover such areas as intellectual property and sustainable development (European Commission 2017a). This currently negotiated free-trade agreement is planned to constitute a part of the Association Agreement (European Commission 2017a)¹. Negotiations began in 1999 with the first meeting of the *EU-Mercosur Cooperation Council*, which concerned the commencement of negotiations for the Interregional Association Agreement. During this meeting the parties agreed on the schedule of negotiations, as well as the methodology and structure. The established *Bi-regional negotiation committee* was to supervise the process regarding the pillars of the negotiations: cooperation and trade (Vaillant, Vaillant 2014: 339)². The agreement should also result in the intensification of cooperation in multiple areas, including trade and investments, between the two organisations.

¹ As of 1st July 2017.

² More on the negotiation process in: Vaillant, Vaillant 2014. The subject is also addressed in: Doctor 2007.

Trade between the European Union and Mercosur

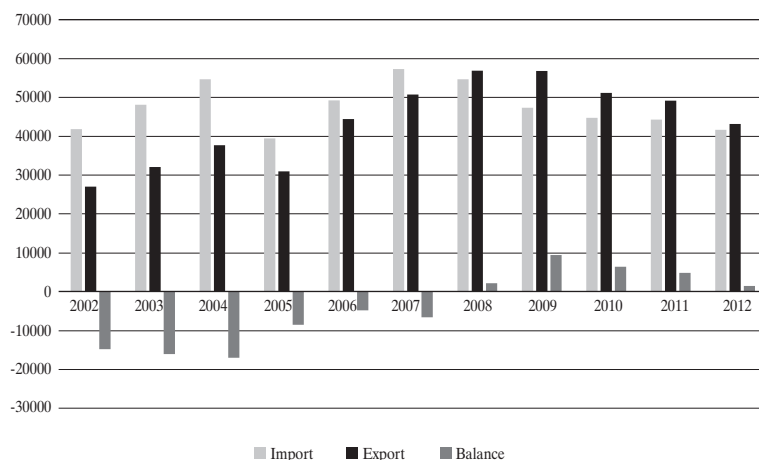
Trade with the EU is of strategic importance for Mercosur countries. The EU-28 countries (hereafter the EU)³ are the main trade partners for the Mercosur countries because they come first among all countries with the 20.3% share in the total Mercosur trade, i.e. 82,332 million EUR in 2016. Another trade partner of Mercosur was China (19.4%), and then the USA with the share of 16.8% in the year in question. These three countries account for over 56% of the total trade of the bloc. When it comes to import, the EU comes first as the main partner of Mercosur with the share of 22.8%, behind China and the USA. China comes first as far as export is concerned, while the EU comes second, even though these differences are not significant because the volume of exports to these countries was 40,418 million EUR and 40,232 million EUR respectively, and they are followed by the USA (15%) in 2016.

There is an asymmetry in trade between these groups. The share of the EU trade with Mercosur was 2.5% of the total trade, i.e. 84,873 million EUR in 2016. The share of the EU export targeted at the markets of the Mercosur countries was 2.5% and amounted to 43,191 million EUR. There has been a gradual reduction of the EU export targeted at this bloc since 2013. On the other hand, the share of the EU import from Mercosur was 2.4% in 2016, i.e. 41,682 million EUR and has decreased from 3.1% to 2.4% (the entire volume of the EU imports) for the last decade. The balance of trade of the EU with the block has been positive since 2012, when it was 1,509 million EUR in 2016 (Figure 1).

The Mercosur countries are an important source of raw materials for the EU; on the other hand, the EU mainly exports manufactures, which is indicated by the analysis of a trade product pattern. According to the SITC product groups, raw materials (71.5%) and manufactures (23.7%) were predominant in the EU imports from the Mercosur countries; on the other hand, in 2016 manufactures had an 85.5% share in the total EU exports to the bloc, while raw materials had an 11% share.

The product pattern analysis of the EU imports (by SITC section) performed on 5 Mercosur countries points out that food and live animals constitute the predominant 37% share, then inedible raw materials, except for fuels (26.5%), then manufactured goods classified by raw material (9.4%), machinery and transport equipment (8.4%) in 2016.

³ Unless otherwise stated, the point 3 of this article was based on data presented in: *European Union, trade in goods with Mercosur 5*.

Figure 1. Trade between the EU and Mercosur over the period 2006–2016 (in million EUR)

Source: *European Union, Trade with Mercosur 5.*

On the other hand, chemicals and related products (26%), machinery and transport equipment (44.4%) constitute the biggest share in the EU exports to Mercosur (SITC section) (Table 1).

Table 1. Trade flows between the EU and Mercosur in 2016 by SITC section

| SITC categories | | Imports | | | Exports | | |
|-----------------|---|-----------------------------------|-------------------------------------|------------------------------|---|---------------------------------|------------------------------|
| | | Value of imports (in million EUR) | As the % of all imports to Mercosur | As the % of external imports | Value of exports from the EU (in million EUR) | As the % of exports from the EU | As the % of external exports |
| SITC 0 | Food and live animals | 15433 | 37.0 | 15.3 | 1274 | 2.9 | 2.5 |
| SITC 1 | Beverages and tobacco | 874 | 2.1 | 10.6 | 428 | 1.0 | 1.5 |
| SITC 2 | Crude materials, inedible, except fuels | 11060 | 26.5 | 18.7 | 465 | 1.1 | 1.3 |
| SITC 3 | Mineral fuels, lubricants and related materials | 1819 | 4.4 | 0.7 | 1903 | 4.4 | 1.2 |
| SITC 4 | Animal and vegetable oils, fats and waxes | 200 | 0.5 | 2.2 | 256 | 0.6 | 2.6 |
| SITC 5 | Chemicals and related products, n.e.s. | 2201 | 5.3 | 1.2 | 11227 | 26.0 | 4.8 |

continued Table 1

| SITC categories | | Imports | | | Exports | | |
|-----------------|---|-----------------------------------|-------------------------------------|------------------------------|---|---------------------------------|------------------------------|
| | | Value of imports (in million EUR) | As the % of all imports to Mercosur | As the % of external imports | Value of exports from the EU (in million EUR) | As the % of exports from the EU | As the % of external exports |
| SITC 6 | Manufactured goods classified by material | 3928 | 9.4 | 2.2 | 3886 | 9.0 | 3.6 |
| SITC 7 | Machinery and transport equipment | 3496 | 8.4 | 0.6 | 19193 | 44.4 | 2.1 |
| SITC 8 | Miscellaneous manufactured articles | 677 | 1.6 | 0.3 | 3054 | 7.1 | 2.6 |
| SITC 9 | Commodities and transactions not classified elsewhere in the SITC | 1309 | 3.1 | 1.6 | 611 | 1.4 | 1.5 |
| | Other | 686 | | n/a | 894 | 2.1 | 1.1 |

Source: *European Union, Trade with Mercosur* 5, 4.

Brazil is a strategic trade partner of the EU and came 11th in 2006 (the 1.7% share in the entire trade) in import, while it came 16th in export (European Commission 2017b). The share of Brazil in the entire EU trade with Mercosur was over 70%, followed by Argentina (19.7%). Over 90% of the entire EU trade with the bloc was shared between the two countries in 2016. Including the two countries, the balance of the EU trade with Mercosur is positive, except for Paraguay and Uruguay (Table 2).

Table 2. Trade between the EU and the Mercosur countries in 2016, in million EUR

| Countries | Import | | Export | | Total trade | | Balance |
|--------------|----------------|----------|----------------|----------|----------------|----------|---------|
| | in million EUR | as the % | in million EUR | as the % | in million EUR | as the % | |
| 1. Brazil | 29412 | 70.56 | 30992 | 71.64 | 60334 | 71.09 | 1509 |
| 2. Argentina | 8249 | 19.79 | 8521 | 19.70 | 16771 | 19.76 | 272 |
| 3. Paraguay | 1079 | 2.59 | 578 | 1.34 | 1656 | 1.95 | -501 |
| 4. Uruguay | 1667 | 4.00 | 1621 | 3.75 | 3288 | 3.87 | -46 |
| 5. Venezuela | 1274 | 3.06 | 1550 | 3.58 | 2824 | 3.33 | 275 |
| Total | 41681 | 100.0 | 43262 | 100.0 | 84873 | 100.0 | 1509 |

Source: author's own work based on Eurostat.

The analysis of the pattern of the EU import according to the SITC product groups from individual Mercosur countries indicates that apart from raw materials, manufactures constitute a significant share (28.6%) in the imports from Brazil (Table 3).

Table 3. Product pattern of the EU exports and imports with the Mercosur countries according to the SITC product categories in 2016 (in %)

| Countries | Imports from the Mercosur countries | | | | Exports to the Mercosur countries | | | |
|-----------|-------------------------------------|--------------|----------------|-------|-----------------------------------|--------------|----------------|-------|
| | Primary products | Manufactures | Other products | Other | Primary products | Manufactures | Other products | Other |
| Brazil | 65.4 | 28.6 | 4.3 | 1.7 | 11.1 | 85.1 | 1.5 | 2.2 |
| Argentina | 86.6 | 12.4 | 0.2 | 0.8 | 8.9 | 88.4 | 1.1 | 1.7 |
| Paraguay | 87.6 | 7.6 | 4.6 | 0.2 | 11.6 | 85.9 | 1.9 | 0.6 |
| Uruguay | 88.8 | 10.5 | 0.3 | 0.4 | 13.3 | 83.2 | 0.9 | 2.7 |
| Venezuela | 77.8 | 14 | 0.3 | 7.9 | 1.2 | 79.3 | 2.5 | 1.0 |

Source: *European Union, Trade in goods with Argentina; European Union, Trade in goods with Brazil; European Union, Trade in goods with Paraguay; European Union, Trade in goods with Uruguay, European Union, Trade in goods with Venezuela.*

Brazil is also an important trade partner of the EU in terms of services and came 10th as the recipient of EU services in 2015 (i.e. 15.6 billion EUR). The EU imports services worth 8.7 billion EUR (16th place) from Brazil (DG Trade Statistical Guide, June 2017: 59).

Flows of foreign direct investments between the EU and Mercosur

The intensification of mutual economic cooperation between the EU and Mercosur takes place through foreign direct investments (FDI). The abovementioned bloc is attractive for investors from the EU. The volume of investments made by EU entities in Mercosur was 36,741.9 billion EUR, which was 6.8% of (external) investments made by the EU in 2015. The main recipient of the investments among the Mercosur countries is Brazil, where 78.8% of investments were made (5.4% of the EU total external investments). However, there has been a gradual decrease in the number of investments over the period 2013–2015 (Table 4). On the other hand, the share of FDI resources in the Mercosur countries was 406,607.3 billion EUR and was the highest in Brazil. The share of the EU FDI resources in Brazil was 4.8% of the investments made in non-EU countries⁴ (Table 4, Table 5).

⁴ Due to the change of the classification, only the period between 2013–2015 is analysed.

Table 4. Flows of FDI between the EU and the Mercosur countries over the period 2013–2015 (in billion EUR)

| Countries | Outflows from the EU | | | | Inflows to the EU | | |
|----------------------------|----------------------|----------|-----------|---|-------------------|----------|-----------|
| | 2013 | 2014 | 2015 | As the % of the total outflow from the EU to Mercosur | 2013 | 2014 | 2015 |
| EU | 546,777.6 | 58,286.7 | 537,162.2 | – | 506,799.0 | 98,740.2 | 466,517.3 |
| Argentina | 5,997.9 | 1,896.2 | 5,005.9 | 13.6 | 160.0 | 440.6 | –90.3 |
| Brazil | 44,974.9 | 32,762.8 | 28,937.0 | 78.8 | 9,989.1 | –2,048.0 | –2,085.3 |
| Paraguay | 236.6 | 82.8 | 73.2 | 0.2 | 83.3 | 5.2 | 9.2 |
| Uruguay | –52.3 | 1,310.0 | 1,365.6 | 3.7 | 708.2 | 513.1 | –288.6 |
| Venezuela | –2,604.6 | 3,631.1 | 1,360.2 | 3.7 | –2,231.4 | 997.6 | –239.0 |
| Total – Mercosur countries | 595,330.1 | 97,969.6 | 36,741.9 | 100.0 | 515,508.2 | 98,648.7 | 463,823.3 |

Source: author's own work based on Eurostat database.

Table 5. FDI resources in the EU and in the Mercosur countries (in billion EUR)

| Countries | EU FDI resources in the Mercosur countries | | | | | Mercosur FDI resources in the EU | | | |
|-----------|--|-------------|-------------|--|--|----------------------------------|-------------|-------------|--|
| | 2013 | 2014 | 2015 | As the % in total EU FDI resources, 2015 | | 2013 | 2014 | 2015 | As the % in total Mercosur FDI resources, 2015 |
| EU-28 | 5,456,191.8 | 6,000,193.6 | 6,891,625.1 | – | | 4,130,346.0 | 4,758,479.3 | 5,744,912.9 | – |
| Argentina | 34,378.8 | 37,760.4 | 39,116.8 | 9.6 | | 1,534.7 | 2,304.4 | 1,784.0 | 1.3 |
| Brazil | 276,829.5 | 331,630.4 | 329,934.0 | 81.1 | | 101,061.1 | 116,629.3 | 127,584.1 | 94.7 |
| Paraguay | 726.2 | 974.0 | 850.2 | 0.2 | | 83.1 | 17.3 | 20.5 | 0.0 |
| Uruguay | 6,221.6 | 8,590.4 | 11,046.0 | 2.7 | | 4,204.8 | 4,552.7 | 3,550.2 | 2.6 |
| Venezuela | 25,245.1 | 30,429.7 | 25,660.3 | 6.3 | | 4,166.1 | 3,025.9 | 1,723.6 | 1.3 |
| Total | 343,401.2 | 409,384.9 | 406,607.3 | 100.0 | | 111,049.8 | 126,529.6 | 134,662.4 | 100.0 |

Source: author's own work based on Eurostat database.

There was a gradual decrease of FDI in the years in question in Brazil, in 2014 in Argentina; there was also a decrease in Paraguay. In 2015 the share of the FDI from the EU to Mercosur was 6.64% of the total volume of FDI made by the EU-28 countries. Over 78% of the FDI made by the EU to the bloc was targeted at Brazil and then at Argentina.

The importance of the EU FDI in the Mercosur countries is reflected in the fact that over 5000 branches create jobs for over 1.5 million people, while companies such as Spain's Telefonica or Volkswagen in Pacheco, the latter selling to over 70 markets around the world, made their investments, and a new investment by Bader is going to create 400 jobs in Uruguay (The benefits of open trade with Mercosur...).

Development prospects for the EU-Mercosur mutual cooperation

The rationale for renewed negotiations between the EU and Mercosur was multidimensional. Some Latin American countries signed or negotiated free-trade agreements with the USA, and the EU itself also signed such agreements with them in order not to lose trade preferences with the USA on that market (Vaillant, Vaillant 2014: 339).

If the agreement is signed, an area covering approx. 250 million consumers will be created and will generate 5% of the global GDP. European Union enterprises, which are currently responsible for 85% of the EU export to Mercosur markets, are expected to be given preferential access to the markets of the Mercosur countries and experience fewer duties. In some cases, the duties are high, e.g. 20–35% for machinery and equipment, 23–35% for cars. Reduced duties will facilitate access to the Latin American markets in terms of products such as dairy products, vines, alcohol, processed food, pig meat products. Access to cheaper raw materials from Mercosur is relevant to the EU food industry, as well as access to vegetable proteins for animals, while reductions in components used in the European industry will affect the competitiveness of the European industry. It is expected that there will be benefits associated with access to services, as well as to the public procurement market, the value of which is estimated at 150 billion EUR in Brazil (Comprehensive Free-Trade Agreement with Mercosur...). The volume of duties paid by EU exporters is over 4 billion EU a year, excluding costs associated with other barriers; in addition, costs increase due to the requirements concerning a long-term certification and authorisation

process. The costs of the EU export of products such as beverages, olive oil and other vegetable oils to Mercosur is approx. 90 million EUR (The benefits of open trade...).

In addition, individual Mercosur countries expect to draw benefits, Brazil in particular, which would not only result from the increase in export and import from the EU countries, including for main sectors, e.g. semi-finished products for industrial products, and would, as a result, contribute to the increase in the competitiveness of Brazilian products (How two new free-trade agreements...). However, it is assessed that the potential costs and benefits for the EU are primarily associated with agricultural sector (Burrell et al. 2011). Also, following liberalisation, the effects may vary for different markets of agricultural products, e.g. beef (Junker, Heckeles 2012: 215–231). Even though the negotiation process is still long, there is some pressure from the EU to speed up its finalisation due to the growing Chinese influence in Latin America, also in terms of investments, which at the same time offers a chance to revitalise the European economy. However, Mercosur has some concerns regarding the agreement which may pose a threat consisting of the increased EU influence, as well as over-exploitation of resources and population in the region (A potential accord...).

The negotiations of the agreement are carried out with intervals on account of different views and difficulties in reaching collective decisions. In the period of 2000–2004 they related to the purpose of the agreement, as Mercosur opted for an in-depth agreement, which was to cover all sectors and instruments. On the other hand, the EU was in favour of a broader agreement which would cover more disciplines, including services and other areas, and argued against the inclusion of the agricultural sector in liberalisation. Thus, the EU was more cautious when it comes to the liberalisation of goods. The discrepancies were related to the degree of involvement of the partners, as the Mercosur countries sought greater concessions in the area of agricultural products and the agriculture of the EU, while the demands of the EU concerned the increase in the access to services (<http://www.esf.be/new/esf-eu-trade-policy/bilateral-negotiations/eu-mercotur/>).

On the other hand, the resumption of talks took place in 2010 and focused on the following issues: goods, services in the area of market access and national treatment, including investment, intellectual property rights, competition policy as well as public procurement and the issue of disputes settlement (Vaillant, Vaillant 2014: 345–347). The round was stopped in 2012 and resumed in 2016 (European Commission 2017a).

The extension of the negotiations resulted also from internal differences within the EU, in particular the agricultural lobby, DG Regio, as well as within some EU countries opposed to excessive opening of agricultural market. It was not conducive to achieving an effective compromise (García 2015: 629). During the 18th round of negotiations, which took place on 3–7 July 2017 in Brussels, the parties confirmed their commitment to concluding the negotiations quickly (European Commission 2017c).

In conclusion, the negotiation process between the EU and Mercosur is still being prolonged. There are structural problems which slow down the whole process and the lack of transparency in the area of trade in products. There is also a conflict of interests between the parties. Mercosur insists on faster access to the agricultural market. On the other hand, the EU supports access to the market of manufactured goods and to the market of services (Vaillant, Vaillant 2014: 337–362).

Conclusions

To sum up, the European Union is developing increasingly intense relations with non-European centres and is at the same time strengthening the existing relations within the trade agreements in order to strengthen its position in the world economy and pursue its own interests by promoting interregionalism. It should be pointed out that currently the Free Trade Area agreements relate to a broad spectrum of cooperation, not limited to commercial issues. For example, the CETA has been signed and the EU is negotiating a free-trade agreement with Japan and Mercosur. The EU and Mercosur maintain deepened relations in the economic sphere as well, which can be seen in both the volume of trade and the flow of foreign direct investments. It is expected that if the agreement is signed, a new free trade area between the EU and Mercosur should provide a lot of benefits, albeit in a possibly varying scope. However, the disparities that still exist in the positions between both partners pose difficulties in ending the agreement negotiation process effectively.

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EAC – EU Economic Partnership Agreement (EPA) – the Domestic Market Recapturing Strategy – the Rwandese Approach

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Abstract

The East Africa Community is facing stable growth and progressive integration. As a cooperation partner, the EAC offers a multiplicity of opportunities and challenges. Development in sub-Saharan Africa is multi-faceted so as other African organisations it is a crucial partner for the EU. One could observe over the last decade a number of new trends of crucial significance to the continent.

The aim of this paper is the analysis which focuses on the implications, opportunities and challenges for the EAC economies in implementing the EPA. Nevertheless, its impact on the EAC countries highly depends on initial protection conditions. As it can be observed in Rwanda, African countries should seize the opportunity of economic partnership agreements (EPAs) between some regions and the European Union to strategically determine their external protection structures.

Key words: Economic Partnership Agreement, EAC, European Union, emerging markets, market recapturing strategy

Introduction

The East Africa Community is a regional intergovernmental organisation of five Partner States, namely the Republics of Burundi, Rwanda, the United Republic of Tanzania, and the Republic of Uganda (all of which are Least Developed Countries or “LDCs”), and Kenya (which is a non-LDC).

It is one of the seven ACP regions recognized by the EU. Apart from the Republics of Burundi, the rest of East African Community countries are rather stable in economic and political terms, with growing regional integration which fosters a positive outlook, e.g. for Foreign Direct Investments.

East Africa is in the political and economical transition period of adapting to the vision of a united East African Community. This area, with its human capital and rich natural resources, deserves the most attention. Regional integration and trade is the most promising avenue for EAC's industrial development. What is more, some economic experts have advised the East African Community (EAC) to consolidate regional markets and reject signing the EAC-European Union (EU) Economic Partnership Agreement (EPA), as it might ruin local economies (Vasey 2017). Since 1st October 2014, the European Union has been developing a new architecture in the economic relations with the ACP countries, including sub-Saharan Africa. The EU intends to base their trade relations on the Economic Partnership Agreement establishing a free trade area. The main goal behind it is to change the nature of trade relations between the parties from a system of one-sided preferences for ACP countries to mutual benefits and concessions in market access. "Opening-up Africa's market through reciprocal agreements can also deliver positive benefits to many African countries" (Vasey 2017).

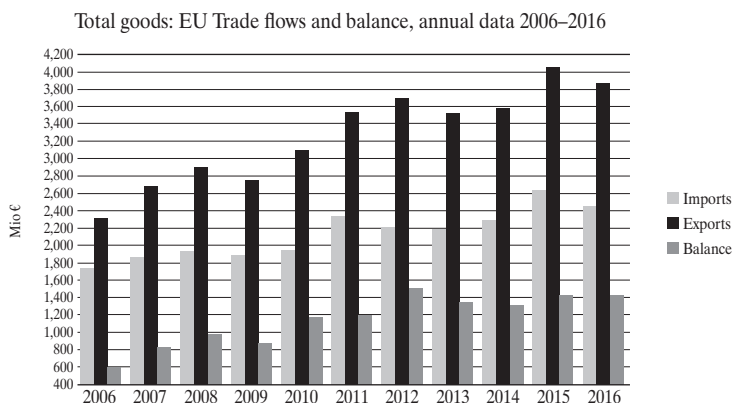
The domestic market recapturing strategy – the Rwandese approach

Rwanda is one of the leaders in the area of economic development. In 2015, the World Bank estimated the growth rate at 5.7%, while the economy growth at 7% (World Bank Group 2015). Although Rwanda's economy is still suffering from negative trade balance and a weak position of companies, in the long term may become the leader. This process has to be combined with the cluster policy and national export strategy. It has to be underlined that the change which will take place in the Rwandan economy must be based on innovation and international openness. In other words, the domestic market recapturing strategy must not lead to closing of imports. Import should be treated as a vital stimulating factor for national companies to progress. Learning through importing is an essential process for countries to develop and create strong competitive economies. Import brings new technology, know-how and innovation, which are essential for progress countrywide. The key to future development is to strengthen national companies in exporting and learning from import dynamics.

Although Rwanda's average annual growth rate of 7.7 percent in the past decade is the 14th highest among 129 countries, its GDP per capita is one of the lowest (World Bank Group 2015). At the same time Rwanda's exports of commodities have increased significantly in recent years from USD 241.8 million in 2009 to USD 653.4 million in 2014. While imports have grown more rapidly, from \$282 million in 2003 to \$1.9 billion in 2014 (International Trade Center 2017) – Rwanda is a net importer from the EAC region, which constitutes a third of its overall imports – Rwanda still fails to capture most of the value of its products, depending instead on volatile commodity products such as its tea, coffee, and minerals industries for the majority of its product-based export revenues.

The 2010 World Economic Forum's annual Global Competitiveness Report ranked Rwanda as the 6th most competitive market in sub-Saharan Africa, and among the world's best on indicators such as female participation in the labour force, staff training, and legal rights. Nevertheless, in Global Competitiveness Report 2014–2015 Rwanda was assigned to the group of factor-driven economies, with the lowest income. In other words, it means its economy is mainly based on the production of primary goods, unskilled labour and natural resources. To strengthen its competitiveness there comes a need to increase the productivity of labour, which change it will as a result lead to an increase of wages and then to advancement of the economy (Schwab 2015).

Graph 1. European Union, Trade with ACP – East African Community (EAC), 2006–2016



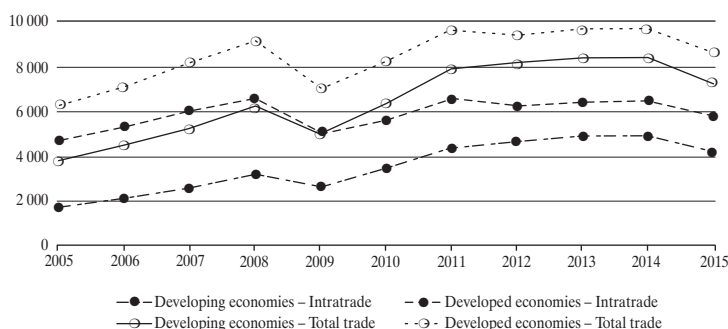
Source: Eurostat Comext – Statistical regime 4.

European Union, Trade with ACP – East African Community (EAC), 2006–2016 official figures value this trade at USD7.34 billion in 2015,

USD2.88 billion of which represents EAC exports to the bloc (Graph 1). Kenya is by far the largest trader with the EU, with 2015 trade totalling USD1.46 billion (EU imports were about double). At almost half the value, Tanzania's exports totaled USD766 million.

Intra-group trade, defined as the intra-trade of the group, which is the trade between all members of the group (UNCTAD 2017), shows that strong country in the region dominates exports (Graph 2).

Graph 2. Intra-Trade 2015 Merchandise export of developing and developed economies 2005–2015 (billion US dollars)



Source: United Nations Conference on Trade and Development. 2017. “UNCTADSTAT. Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995–2016”. Data File [accessed on: 16.06.2017] (UNCTAD 2017).

Exports between EAC members “unsurprisingly Kenya dominates exports with USD1.29 billion against Tanzania’s USD992 million and Uganda’s USD909 million. Kenya, then, clearly has much more to lose from a loss of free access than its regional peers. That said, trade volumes are significant for all parties” (in particular the EU) (Vasey 2017).

Tourism as an engine of growth in Rwanda from the EAC perspective

Direct revenue derived from international tourism is an important source of foreign exchange earnings for many countries – including Kenya, Rwanda, Tanzania and Uganda (Table 1). Direct revenue from international tourism includes taxation revenue, which can be significant in many countries. Tourism literature identified 40 different taxes, which are, in practice, imposed on the tourism industry to boost government revenue. Some of

common taxes comprise: (1) airport departure taxes, (2) hotel room taxes, and (3) visa fees. The level of direct revenue earned by a country depends upon three variables: (1) the number of visitors, (2) average length of stay, and (3) average daily expenditure. International tourism receipts are defined as all tourism receipts made by foreign visitors on food, drinks and lodging, on transport and entertainment, and on shopping and international fares. Tourism receipts are viewed as the direct revenue of a country in which international tourists spend their money (UNWTO 1997; Gosh, Siddique, Gabbay 2004).

Table 1. International tourism receipts in the EAC Countries

| EAC Countries | 2010 | 2013 | 2014 | 2015 |
|---------------|----------------|-------|-------|-------|
| | (US\$ million) | | | |
| Burundi | 2 | 2 | 4 | – |
| Kenya | 800 | 881 | 811 | 723 |
| Rwanda | 202 | 294 | 304 | 318 |
| Tanzania | 1,255 | 1,880 | 2,010 | 2,231 |
| Uganda | 784 | 1,334 | 791 | 1,149 |

Source: UNWTO (2016).

Direct revenue leads to indirect revenue by a series of forward and backward linkages (Multiplier Effect). Indirect benefits are generated by the circulation of tourist expenditure at a destination through inter-business transactions in the domestic economy. In addition, tourism spendings can create induced benefits. Employment generation is another important consequence of tourism expenditure (UNWTO 1997; Gosh, Siddique, Gabbay 2004).

This economic impact shows that international tourism can be “an engine of growth” in Rwanda and in the rest of EAC countries. Kenya, Rwanda, Tanzania and Uganda have positive impact of tourism incomes on their economies. The point is that these countries should perceive each other as complements, but not as competitors. The EAC area from tourism’s perspective should be without internal borders – an area within which tourists circulate without being subjected to border checks. The EAC area should be perceived as one tourist market – one destination for international tourists.

EPA EAC – UE framework

The ability to benefit from the potential of globalisation, as well as growing international trade, are becoming crucial growth factors for African economies. Africa as a whole has long had difficulty competing in the growing global market. For EAC countries the European Union is the most important trading partner, it accounts for 30% of its countries' exports. Trade between Africa and the world has expanded four-fold in two decades. Product diversification of these exports is insufficient, because 1 out of 4 African countries relies on 1–2 commodities for 75% or more of their export revenues. Patterns of EAC exports are similar, boosted with the presence of countries rich in natural resources, and traditional close economic relations with Western European countries.

On 16th October 2014, the Eastern African Community finalised the negotiations for a region-to-region comprehensive Economic Partnership Agreement (EPA) with the EU.

The agreement covers trade in goods and development cooperation. It also contains an extensive chapter on fisheries – aiming mainly to reinforce cooperation on the sustainable use of resources – and foresees further negotiations on services and trade-related rules in the future.

According to European Commission and the statement officially made by EAC, Economic Partnership Agreement between the EU and the Eastern African Community (EAC) “is balanced and fully in line with the EAC Common External Tariff. It supports the EAC’s ambitious regional integration project and has what it takes to foster development. It was expected to be signed and ratified by October 2016, but only Rwanda and Kenya did” (EPA, EU 2015). However Tanzanian manufacturers fear that an influx of manufactured goods from the EU will undercut their profits before they can fully modernize, while for the time being all EAC members other than Kenya (which is middle-income) are Least Developed Countries (LDCs) and are guaranteed free access to the EU irrespective of signing the EPA.

In East Africa, ambitious integration plans have been drawn up by the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). However, the full economic and political potential of these regional commitments has not been exploited (Table 2).

Table 2. Main features of the Economic Partnership Agreement EU-EAC

| | | |
|--|--|---|
| 1. Immediate duty-free quota-free access to the EU market for all EAC exports; | 2. A chapter on sanitary and phytosanitary measures that should allow, <i>inter alia</i> , to address plant health-related trade problems, promote intra-regional harmonisation with international standards in this area and enhance EAC capacity to implement and monitor this type of measures; | 3. A chapter on agriculture geared towards sustainable agricultural development, including food security, rural development and poverty reduction in the EAC. It guarantees that the EU will not apply exports subsidies, even in times of market crisis, and commits the Parties to a deepened policy dialogue on agriculture and food security, including transparency as regards their respective domestic policies; |
| 4. Partial and gradual (“asymmetric”) opening of the EAC market to imports from the EU, taking full account of the differences in the levels of development between the EAC and the EU | 5. Rules for dispute settlement and Provisions reinforcing cooperation on the sustainable use of resources in the area of fisheries (such as resource assessment and management; monitoring of environmental, economic and social impacts; conformity with existing national laws and relevant international instruments; effective control and surveillance for combating illegal, unreported and unregulated fishing); | 6. Ban on unjustified or discriminatory restrictions on imports and exports, which contributes to the EAC’s efforts to eradicate non-tariff barriers (NTBs) in intra-EAC trade; |

continued Table 2

| | | |
|--|--|---|
| 7. Trade defence provisions including safeguards allowing each side to reintroduce duties if imports from the other side disturb or threaten to disturb its economy, as well as special safeguard conditions to protect EAC infant industry; | 8. Rules of Origin, defining which products are eligible for trade preferences under the EPA, fully take into account EAC specificities and the needs of its sectors and industries; | 9. A chapter on economic and development cooperation aimed at enhancing the competitiveness of the EAC economies, building supply capacity and assisting the EAC members in implementing the EPA smoothly; |
| 10. A clause linking the EPA to the Cotonou Agreement and its essential elements such as human rights, democracy and the rule of law; | 11. Customs-related provisions aiming to facilitate trade between EAC countries and the EU, to promote better customs legislation and procedures, and to provide support to the EAC's customs administrations; | 12. Clauses foreseeing further talks on trade in services and trade-related rules addressing sustainable development, competition policy, investment and private sector development, intellectual property rights, transparency in public procurement – to be concluded within five years following the entry into force of the EPA |

Source: Economic Partnership Agreement between the EU and the Eastern African Community (EAC), European Commission 2017.

It is hoped that the African Union (AU) will be able to act as a kind of continental catalyst for the promotion of regional integration and development. However, this effect remains to be achieved. African regional integration arrangements are generally ambitious schemes with unrealistic time frames towards deeper integration and, in some cases, even a political union (Hartzenberg 2011; Nathan 2004).

Conclusions

EAC is one of the most progressive integrational organizations in sub-Saharan Africa and a very important trading partner for the European Union in this region of the world economy. East African countries have very

close economic relations with Western European countries because of their colonial history. Nowadays, EAC-EU trade relations are shaped by a vision focused on foundation of a free trade area under the Economic Partnership Agreement. There is reason to believe that Africa's share will continue to grow, particularly as several of the world's new growth markets are actually located in Africa, and in view of growing interest in the continent.

Moreover, it is anticipated that the Economic Partnership Agreements (EPAs) currently being negotiated between the countries of Africa and the EU will be a powerful instrument for promoting increased trade and investment. Within a few years, all the sub-Saharan countries except four will have full access to the EU Internal Market under the Everything But Arms Initiative (EBA) and the EPA.

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National Trade and FDI Policies in the Era of Global Value Chains – the Example of the Visegrad Countries

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Abstract

The growth-enhancing role of trade and FDI came into focus in most EU countries after the international crisis. Investment and trade have become more interconnected in the past decades within the global value chains (GVCs). As known, the Visegrád countries intensively participate in GVCs. The purpose of the paper is to analyse how governmental trade and investment promotion policies of these countries reacted to these phenomena. Both investment and trade can be promoted in a wide sense – creating stabile business environment – and in a narrow sense. Narrow sense export promotion measures generally target small and medium-sized enterprises. After the crisis, non-EU, emerging markets were targeted in all four countries as new directions of promotion. However, we show that in the past years foreign trade data have proven an increasing weight of the EU. In the narrow sense, in most cases FDI incentives serve large multinationals. The Visegrád countries applied several types of state incentives on a large scale, which we compare in the paper. Using international surveys and indices we show that several factors that are favourable for trade and FDI in a wide sense, have deteriorated recently. Legal stability has been shaken, corruption increased and education indices declined. The shortage of qualified labour force became acute. Visegrád countries continue competing for large investments, therefore costly, tailored grants for foreign firms (narrow tools) will be more and more important. However, this cannot endlessly compensate for the worsening business climate (wide tools).

Key words: FDI, export, Visegrád countries, trade policy, global value chains

Introduction¹

In the post-crisis period, trade and foreign investment (FDI) promotion came into focus in most EU countries. The Visegrád (V4) economies' companies also intensively searched for market possibilities abroad. However, over the last decade the conditions of exports have been increasingly defined by global production networks. As known, firms of the Visegrád region are particularly strongly involved in these global value chains (GVCs). Multinational companies of mainly automotive and electronic GVCs have invested heavily in this region since the nineties. We argue that FDI and trade is strongly interconnected in these countries and because of this, incentives for FDI also promote exports.

We can speak about investment stimuli in a *narrow sense* and in a *wide sense* (Antalóczy, Sass 2000). Investment promotion in a wide sense means the attractiveness of a country and its economic policies (monetary and fiscal policy, budgetary system, structural policy, labour market policy and education). Regulatory conditions, the state of the infrastructure and favourable business environment benefit the production and export of both larger and smaller firms.

Investment incentives in a narrow sense can be tax allowances, financial tools (grants, local allowances) and other investment benefits (infrastructure, services, training). Theoretically these 'narrow' measures refer to all investors, but in practice large foreign companies benefit from them in the Visegrád region.

Trade promotion also exists in a narrow sense; moreover, there is a considerable amount of literature on 'narrow' trade promoting institutions, strategies and their effectiveness in general (e.g. Rose 2007; Nitsch 2005; Kotabe, Czinkota 1992). Narrow trade promotion usually targets small and medium-sized enterprises. The state can stimulate export via 'soft' interventions and by direct financing (credits, subsidies). Diplomacy and export promotion programmes belong to the *'soft' group* (Van Biesebroeck et al. 2015). The usefulness or effect of diplomacy and export promotion agencies is generally debated (see Moons, van Bergeijk 2013; Durmuşoğlu et al. 2012). Regarding *direct export financing*, risks of export can be varied (Malaket 2014). State help can be very useful to mitigate risks, especially for SMEs, therefore governments establish public Export Credit Agencies.

¹ The study was prepared in the research supported by the National Research, Development and Innovation Office, project no. K 115578, title: *Factors influencing export performance – a comparison of three European regions.*

Recently evidence has been growing that their activities have positive effects on exports (Janssen 2016). Below we focus on state trade and FDI policies in V4 countries, especially after the crisis.

Trade promotion in a narrow sense in the Visegrád countries

The export promotion strategy of Poland during the crisis was based on brand promotion, economic missions of officials, assistance to Polish firms by providing information on foreign markets, financial instruments. In 2016 export promotion became one of the five pillars of the new general growth strategy (Ministry of Economic Development 2016). The Export Strategy of the Czech Republic 2012–2020 (Ministry of Industry and Trade 2012) aims, among others, to increase the number of exporters, diversify and shift Czech exports into economic sectors with higher added value, and reduce product concentration².

By 2014, the Research and Innovation Strategy recognized that in Slovakia, the production of motor vehicles and electronics are decisive export sectors and aimed to strengthen them. Later, the Strategy for External Economic Relations of the Slovak Republic for 2014–2020 was elaborated by the Ministry of Foreign Affairs in order to boost exports. The Hungarian export development strategy was adopted in 2011 for the 2012–15 period with the aim to diversify Hungary's foreign economic relations towards non-EU countries, doubling Hungary's exports and promoting exports of Hungarian SMEs. In 2016 the 'Irinyl plan', which intends to develop the industrial sector, innovation, promoting competitiveness and export enterprises, was elaborated by the government³.

The export promoting institutions (Table 1) were reorganised and centralised after the crisis in most V4 countries. The Polish Development Fund has been created under the control of the Ministry of Economic Development. This Fund coordinates the Polish export credit and trade agencies. In Hungary, the export-promoting and financing institutions have

² "...foreign direct investments... can change very fast from a comparative advantage of the Czech Republic into a threat to the stability of the Czech economy. The Czech Republic experiences a significant concentration of exports to a few industries linked to foreign manufacturing plants in the Czech Republic... The high sectoral concentration of Czech exports, together with the even more significant territorial export orientation on EU countries make the Czech Republic vulnerable to fluctuations on international markets." (Export Strategy 9–10).

³ The main goal of the strategy is to increase the industrial output-to-GDP ratio from the current 23.5 per cent to 30 per cent in 2020 (Ministry of Economy, 2016).

also been centralised. Their direction and ownership was transferred to the Ministry of Economy. Investment promotion is the task of Hungarian Investment Promotion Agency (HIPA) and export promotion is the task only of the National Trading House (NTH), established in 2013⁴. In Slovakia, the National Business Centre (established in 2015) is an umbrella organisation providing institutional support to entrepreneurs interested in internationalisation. It operates via the Slovak Business Agency under the Ministry of Economy (Antalóczy, Éltető 2017).

Table 1. State export policies and institutions in the V4 countries

| | Government strategy for export or internationalisation | 'Soft' tools, agencies | 'Direct' tools, financing (export credit agency) | Need for diversification | Importance of innovation, higher added value connected to export |
|-----------------|---|------------------------|--|--------------------------|--|
| Poland | New Development Strategy 2016 | PaIIZ/PAIH | KUKE | Geographical | Yes |
| Czech R | Export Strategy 2012–20 | CzechTrade | CEB, EGAP | Geographical and product | Yes |
| Slovakia | Part of Research and Innovation and National Development Strategy. Later: 'The Strategy for External Economic Relations of the Slovak Republic for 2014–2020' | SARIO | Eximbanka | Geographical | Yes |
| Hungary | 'Eastern Opening' | HIPA, trade houses | Exim | Geographical | No |

Source: Antalóczy, Éltető (2016).

Common feature of post-crisis policies is that the importance of non-EU markets emerges in every country. The Hungarian foreign economic strategy is even named 'Eastern Opening Strategy.' Data show, however, that in the case of the Visegrád countries extra-EU export had been increasing until around 2012, but later stagnated and slightly declined (the share of EU in V4 export was 75–83% in 2013 and 80–85% in 2016⁵).

⁴ NTH has opened trade houses in more than 60 economies, its functioning, however, is not transparent.

⁵ Based on Eurostat Comext data.

At the same time, export towards the EU increased dynamically. This is partly due to the intra-regional trade: the Visegrád countries export large volume of automotive, telecommunication, electrical and metal products to each other. The production of foreign multinational companies shapes the geographical and product structure of trade in the V4 economies. Therefore, FDI promotion, attraction of multinationals also influences foreign trade – sometimes much more than direct export promotion measures.

Investment promotion in a narrow sense in the Visegrád area

During the nineties the Visegrád countries applied FDI-promoting measures, allowances, grants, even tailored to large multinational companies. However, under EU law, such incentives classify as state aid, which may violate the EU's competition policy: Article 107 of the Treaty on the Functioning of the European Union prohibits any state aid that may distort competition within the EU (Commission Regulation 2014). However, state aid promoting the development of an economically backward area can be compatible with EU law⁶. This is especially relevant for the V4 countries, because their per capita GDP is well below the EU average in most of the regions (Blauberger 2009; Medve-Bálint 2014). Among V4 countries, Hungary usually shows the highest intensity of aid within all the region (Table 2).

Table 2. Share of state aid in GDP and share of regional aid in total aids, percentage

| | EU | CZ | HU | PL | SK |
|------------------------------------|------|------|------|------|------|
| State Aid/GDP 2000–2015, average % | 0.52 | 1.18 | 1.21 | 0.83 | 0.44 |
| Regional aid/SA 2000–2003 | 16.6 | 3.3 | 22.2 | 16.3 | 51.7 |
| Regional aid/SA 2004–2015 | 18.7 | 51.2 | 27.4 | 25.3 | 51.9 |

Source: own calculations from European Commission (2016) State Aid Scoreboard data

After the international crisis the Czech Republic increased its state aid intensity again, devoting aid to regional development. In the Visegrád countries, as we will see, foreign investors were the greatest beneficiaries of the EU's investment regime. Investment grants are openly 'advertised' on the homepages of the ministries and promotion organisations.

⁶ Article 107(3a): ... may be considered to be compatible with the internal market: aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation.

Regarding Hungary, the main types of cash incentives related to investments are focused on implementing the investment creating new jobs and training employees (Eugo Hungary 2017). The Hungarian government provides a negotiation-based ‘VIP’ *subsidy* opportunity – often co-financed by EU Funds – for investments greater than EUR 10 million. VIP subsidy for *training employees* is also offered for investors creating at least 50 new jobs. A *job creation subsidy* is provided for those investments entitled to VIP investment subsidies and which create at least 250 new jobs in disadvantaged or least-developed micro-regions. Various Corporate Income Tax and Local Business Tax bases incentives apply to special business areas, for example free entrepreneurship zones of over 900 settlements in unprivileged areas (taxsummaries.pwc.com 2017).

In 2012 the Hungarian government introduced ‘*strategic agreements*’, signed with selected multinational firms with the declaration of partnership, intention of general cooperation in job creation, training and education, R&D, local supplier network development. Up till May 2017 74 such strategic agreements were signed, out of which 65 partners were foreign-owned companies (kormany.hu 2017). According to the Transparency International Hungary (2014) study, foreign firms hoped that this new agreement will be an efficient lobbying and communication tool with the Hungarian government, despite of its often unfriendly attitude.

In the Czech Republic, the Investment Incentive Act was amended in May 2015 with the aim to increase the attractiveness for investors and to reduce the impact of the EU rules (KPMG 2016). Incentives are provided in the following forms: corporate income tax relief for up to 10 years; employment subsidies such as cash grants for job creation and training; cash grants for strategic projects; availability of land at discounted prices; exemption from real estate tax in strategic industrial zones. The investment must be maintained (in the minimum amount and structure) for at least five years from its finalization. Large strategic investments can obtain higher incentives in cash instead of tax relief. If the project is located in a ‘strategic’ industrial zone, the employment grant is higher. There are six strategic industrial zones (Ostrava-Mosnov, Holesov, Most-Joseph, Triangle, Kolín-Ovcáry, Nad Barborou). These strategic industrial zones and other agglomerations are important FDI-attracting areas. Several recent larger foreign investment decisions target industrial zones.

In Slovakia, according to the amendment of the Investment Aid Act in 2015, investment grants and employment grants are offered to industrial projects, technological, tourist and strategic services centres (Sario.sk

2015). The aim of the Slovak authorities is to guide new investments to high unemployment regions (KPMG 2016b). The creation of industrial parks in Slovakia started late (in 2001) because of the government's bias against foreign capital before 1998 (Surkala 2014). A non-repayable financial contribution of more than EUR 110 million was granted for the construction of 24 industrial parks (Slea.sk 2016).

Data on Slovakian government grants signed in contracts with companies are available (Table 4). Multiple companies have received investment incentives repeatedly (Vlachynsky, Kristály 2017). Some measures are not formally included into official investment stimulus statistics. For example, in the case of the Jaguar grant⁷ the cost of extensive infrastructure construction worth around additional EUR 300 million is officially for the whole industry park. However, without the arrival of the big investor these investments would not have been realised⁸.

In Poland, the subsidies vary depending on the value of the investment or the number of new jobs created (Grzegorzczuk 2015). Only entrepreneurs planning to invest in the priority sectors can apply for support for creating new jobs. There are significant incentives in the Special Economic Zones (SEZ) being administratively separate parts of Polish territory, allocated for the running of businesses on preferential terms (corporate income tax exemption, availability of land and infrastructure, etc. PAIH, 2017). SEZ were created in 1994 and their regulation was modified several times (Gwosdz et al. 2008). Local governors and in some cases the foreign investors themselves, have been able to bargain to make the policy applicable in areas adjacent to the original zones or other areas. Fourteen SEZ have been set up and their final date of operation was extended to 31 December 2026.

From Table 3 we can have an idea of the granted firms and the amount of V4 state aids. The cost of one job is generally around EUR 40–60 thousand, but there are also extreme cases. All of these firms are producing for export.

The investment incentives described above are, in a narrow sense, good tools for influencing location choices of foreign investors. Competition for location of new investments is strong among the V4 countries.

⁷ In 2016 the Slovakian government approved EUR 130 million in direct aid to Jaguar Land Rover to build a plant with an annual output of up to 150,000 cars.

⁸ Jaguar investment attracts further foreign suppliers too. In 2016 the Spanish company Gestamp announced to invest EUR 133 million near Nitra in Slovakia to supply to Jaguar Land Rover (automotivemanufacturingsolutions.com 2017).

Table 3. Large state aid cases for foreign companies 2004–2017

| HUNGARY | Aid EUR mln | EUR th per job | SLOVAKIA | Aid EUR mln | EUR th per job |
|----------------------------------|------------------------|---------------------------|---|------------------------|---------------------------|
| Mercedes-Benz, (D) 2008 | 88.1 | 35.2 | Kia Motors Slovakia, (KR) 2004 | 179.7 | 75.7 |
| Apollo Tyres, (IN) 2014 | 51.9 | 53.6 | PCA Slovakia, (FR) 2003 | 166.0 | 47.4 |
| Hankook Tire, (KR) 2005 | 63.5 | 42.1 | Jaguar Land Rover, (UK) 2016 | 130.0 | 46.4 |
| AUDI Hungaria, (D) 2011 | 46.5 | 25.8 | Samsung Display, (KR) 2007 | 74.9 | 62.4 |
| Mercedes-Benz, (D) 2016 | 41.4 | 41.4 | Duslo, a.s., (CZ) 2014 | 58.5 | 45.0 |
| CZECH REPUBLIC | Aid EUR mln | EUR th per job | POLAND | Aid EUR mln | EUR th per job |
| Hyundai Motor, (KR) 2008 | 177.8 | 50.6 | Mercedes Benz*, (D) 2017 | 18.7 | 46.7 |
| Nexen Tire Corp, (KR) 2016 | 129.0 | 93.2 | IBM Global Services Delivery Centre 2010 | 7.4 | 2.5 |
| Daikin Device, (JP) 2006 | 55.4 | 68.7 | Michelin Polska**, (F) 2014 | 7.2 | 28.8 |
| IPS Alpha Techn., (JP) 2006 | 49.9 | 23.7 | Orion Electric***, (JP) 2007 | 6.8 | 13.6 |
| Bosch Diesel, (NL) 2005 | 47.8 | 130.1 | Nokia Siemens (Fi) Network 2010 | 5.1 | 12.7 |
| Automotive Lighting, (D) 2006 | 43.2 | 68,34 | MTU Aero Engines, (D) 2009 | 2.9 | 7.2 |

* ec.europa.eu (2017) ** ec.europa.eu (2014) *** ec.europa.eu (2007)

Source: Calculations from the data of Czech, Hungarian and Slovak governments, European Commission and Slusarczyk and Kot (2012).

Investment and trade promotion in a wide sense in the Visegrád countries

In a wide sense, investment and trade incentives are the same: such business conditions which are favourable for the functioning of firms (either domestic or foreign). In several areas there are comparable

indices gathered by international organisations⁹. In the following pages we use some of these indices and based on the evaluation of the European Commission (Country Reports 2017), we highlight the legal environment and educational system.

Legal uncertainty can be harmful for investment. Corruption decreases transparency and increases inefficiency in allocation of financial resources. In *Poland* the EU Country Report states that ‘the current systemic threat to the rule of law creates legal uncertainty’. The Polish tax system underwent many rapid changes in 2016, often introduced quickly and without broad consultations. The ease of doing business in Poland has been, however, gradually improving. The *Czech* authorities are planning to introduce some steps to simplify the tax system. Corruption continues to be perceived as a major ongoing problem. The business environment is characterised by a heavy regulatory burden and administrative barriers. Regarding *Hungary*, quality of institutions has been deteriorating, mainly since 2010. The personal income tax was replaced by a flat rate of 16% in 2011 and the corporate income tax was reduced to 10%, but VAT rate rose and sector-specific taxes were introduced (Šćepanović 2015). In 2017, the general corporate income tax rate was lowered to 9%, mostly benefiting large companies and tax optimisation purposes. Transparency and competition are limited at public procurements, corruption risks are high (Table 4). In *Slovakia*, administrative and regulatory barriers continue to harm the business environment. However, measures are being taken to improve the business environment and foster entrepreneurship. The level of perceived corruption remains high. The Slovak taxation framework has been changed several times.

⁹ In the book by Götz (2016) EU countries’ approach towards FDI is described by indices such as, among others: IRR – Investment Regulatory Restrictiveness Index by OECD, concluded Bilateral Investment Treaties (BITs), launched claims under Investment State Dispute Settlement procedure, (ISDS) and indicators of discriminatory measures reported by the Global Trade Alert. The total number of ISDS cases has increased in every country since 2008, being quite high for the Czech Republic.

Table 4. Factors of business environment in the Visegrád countries

| | Poland | Czech Republic | Slovakia | Hungary |
|---|--|--|--|---|
| Transport infrastructure | improving but key bottlenecks, large fatality rate | high rail density, inadequate road network | fragmented road transport network | improved air transport, but rail system underdeveloped |
| <i>TEN-T road</i> <i>TEN-T rail core network</i> | 34% 23% | 55% 63% | 39% 20% | 81% 9% |
| <i>Legal, regulatory environment</i> | The current systemic threat to the rule of law creates legal uncertainty | Heavy regulatory burden and administrative barriers, but improving | Harmful administrative and regulatory barriers, corruption | Legal uncertainty, changing taxes, deteriorating institutions, corruption |
| <i>Corruption</i> | improving CPI=62 | stagnating recently CPI=55 | stagnating recently CPI=51 | worsening CPI=48 |
| <i>Education</i> | Improving, good | Relatively good | Deteriorating | Significantly worsening results |
| <i>PISA 2015</i> <i>PIAAC 2015</i> | 501,504,506 267,260,19 | 493,492,487 274,276,29 | 461,475,453 274,276,28 | 477,477, 472 n.a |
| <i>Vocational educational training (VET)</i> | Relatively good results | Relatively good outcomes, positive perception | In 2015 introduced a dual VET system, but interest among potential participants remains limited. | Secondary school types were renamed in 2016, unlikely improvement in basic skills and competencies. |
| <i>Skilled labour force</i> | relatively good | available, good | shortage | shortage |
| <i>GERD/GDP 2015*</i> | 1.0% | 1.95% | 1.18% | 1.38% |
| <i>GCR** 2016</i> | 4.6 | 5.3 | 5.5 | 5.1 |
| <i>DB*** 2016</i> | 24 | 27 | 33 | 41 |
| <i>BIT¹⁰ 2016</i> | 68 | 113 | 58 | 60 |

* Gross domestic expenditure on R&D, %, source Eurostat; ** Global Competitiveness Report 2016–17; *** World Bank (2016)

Source: EU Commission Country Reports, Transparency International (2016), OECD (2015), European Commission (2017).

¹⁰ Number of Bilateral Investment Treaties, ICSID (2017).

Educational performance in *Poland* has remained strong over recent years in comparison to other EU countries. The results for technical secondary schools are considerably better than for basic vocational schools. Employment rates of recent vocational school graduates were still slightly below the EU average in 2015. In the *Czech Republic* so far only a limited number of pupils have benefited from the reform aimed at improving the inclusiveness of compulsory education. The employment outcomes of VET students are good. In *Hungary* labour shortage in both skilled and unskilled categories is the most important investment barrier as stated by company managers. The 2015 PISA survey of educational systems showed significantly worsening results for Hungary and a very high impact of the socio-economic status on students' performance. A recent reform has changed the structure of vocational education and training. In *Slovakia*, low access to life-long learning and a weak educational system translates into skills shortages. Low participation in early childhood education and low inclusion of marginalized groups, especially the Roma population, have all contributed to the deterioration of the educational system. Slovakia introduced a dual vocational education training system, but interest among potential participants remains limited.

Conclusions

Trade and investment promotion are strongly connected in the Visegrád countries. We can distinguish promotion in a narrow and in a wide sense. Incentives in a narrow sense are seemingly harmed by EU rules of competition, but can be well arranged as regional development aims. Grants and tax allowances have attracted foreign investors whose production facilities have increased the export of the countries significantly. Direct export-promoting measures of agencies target SMEs, although their effectiveness is ambiguous. Wider incentives, general business environment and policies can be the most important for all firms. Apart from proper administration, infrastructure and taxation, availability of good workers is essential. However, for today the education and training problems and emigration have led and will lead to serious problems in skilled labour supply in the V4 economies most critically in Slovakia and in Hungary. Shortage of workforce pushes up wages that will make labour more expensive.

Legal stability has been shaken in Hungary and Poland, corruption is also high in Slovakia and the Czech Republic. Visegrád countries compete for

large investments, therefore grants for foreign firms (narrow incentives) will be more and more important. However, this cannot endlessly compensate for the mentioned worsening business climate, that is promotion in a wide sense.

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Part IV

The EU External Policy at a Crossroads Facing New Challenges and Threats from the East and Mediterranean Region

EU External Policy at a Crossroads: Facing New Challenges from the East

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Abstract

The aim of this paper is to conduct a problem analysis of the main challenges facing the EU's external policy, or more broadly – the entire European Union – in its relations with Eastern Europe. This first of all requires a brief outline of this policy, the effectiveness of which (especially of the foreign and security policy, which constitutes its integral part) is limited by a number of shortcomings and deficiencies, also affecting the relations between the EU and Eastern Europe. These relations present several major challenges, mainly related to problems such as the need to resolve the issue of further EU enlargements to the east and to regulate the Union's relations with countries of Eastern Europe that are not members of the EU, as well as with Russia. In order to examine these issues we have to present the main instrument that the EU has at its disposal in its relations with Eastern Europe, namely the Eastern policy. The policy has two main components: the Eastern Partnership and the strategic partnership with Russia. Several difficulties in the functioning of both pose serious challenges for the EU. The analysis includes an indication of the main sources of these difficulties, while an overall assessment of the challenges for the EU arising from the east is provided in the conclusions.

Key words: European Union, EU external policy, EU's Eastern policy, Eastern Partnership, strategic partnership with Russia

Introduction

The European Union is currently facing several serious challenges and crises that severely hamper its effective functioning and, according to some, even threaten its very existence. A substantial part of these are international problems, directly or indirectly resulting from the situation in the EU's external environment. This mainly concerns the migration crisis, as well

as other international crises that affect Europe particularly seriously: the unresolved global economic crisis that started in 2008 or the growing military tensions in the EU's immediate neighbourhood, namely in the Middle East and Ukraine. It is important to remember that the European Union does not operate in an international void. We are dealing here with a certain dialectic feedback loop: although the EU is a powerful actor capable of exerting considerable influence on the events in the global arena, at the same time it is very strongly influenced by its international environment. This manifests itself not only through the considerable role of the economic and trade exchange with foreign countries; it is also evidenced by the increasing weight attached to issues related to foreign and security policy.

All this means that the broadly understood sphere of the EU's relations with its international environment is becoming ever more important. It also means that the role of the various instruments that regulate the functioning of this sphere is growing, and all of them are subject to evolution derived from the changes taking place in the EU. This includes the need to face the abovementioned crises and challenges originating, among others, in the eastern part of the European continent. To further present and analyse these challenges, it is first necessary to describe the main instruments used by the EU to regulate its relations with the outside world.

EU external policy: general characteristic

In most general terms, the broad sphere of the European Union's relations with the external world includes its relations with third countries, their groupings, international organisations, etc. This sphere has been undergoing constant changes over the years, which have involved growing complexity and interdependence, covering at the same time a multitude of diverse spheres of life: politics, economy, social and cultural issues, defence, etc. Faced with the need to regulate this sphere, the European Union (and earlier the European Communities) created a series of rules and principles, established specific institutions and introduced procedures which all make up a complex category that can be referred to as the EU external policy. It resembles the classical foreign policy conducted by states, but at the same time it exhibits its own special characteristics.

These special characteristics involve the existence of certain mechanisms that can either improve the functioning of the EU external policy or in fact weaken it. The weakening might result from unclear internal structure of

this policy. In practice, this means that the sphere of the EU's relations with the external world has not been precisely defined and lacks clearly defined mechanisms. This vagueness is further increased by the chaos surrounding its various names: EU foreign policy, EU external relations, European foreign policy, etc.

Despite the said problems, we can say that the EU external policy has two main components: an economic and a political/military one. The first one concerns the foreign economic relations in the form of the Common Commercial Policy, along with development assistance and humanitarian aid (Zajączkowski 2013), and the second one concerns the foreign and security policy in the form of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) (Barburska 2016; Jørgensen 2015).

One of the hindrances to the implementation of the EU external policy is the fact that its two components do not share the underlying philosophy: economic issues fall mainly within the competences of EU institutions (the community method), while in foreign and security policy it is the Member States that have the final say (intergovernmental cooperation). Consequently, this policy is a conglomeration of elements of the policies adopted on the EU level and of national foreign policies.

This state of affairs gives rise to tensions and conflicts in various spheres and dimensions (Zajączkowski 2014). Disputes may arise between EU bodies and the Member States, between different EU institutions, as well as between individual Member States, leading to more or less serious tensions or even crises. One of the main reasons behind this is that the EU external policy has not supplanted the foreign policies of individual Member States. What is more, while agreeing to the emergence of this policy, Member States largely seek to take advantage of it in order to consolidate their own political and economic positions in their relations with third countries. The situation is made even worse by the crisis the EU has been going through and the increasingly stronger striving of individual Member States to protect their own interests.

All this results in general ineffectiveness of the EU external policy. In functional terms, its main flaw seems to be the lack of consistency in political, as well as institutional/legal terms. The Treaty of Lisbon represented an attempt to provide solutions to this deficiency, but despite the existence of relevant Treaty provisions, Member States still show considerable scepticism towards closer coordination of their own foreign policies within the framework of the EU. This means that the European Union has so far

failed to develop a truly common and consistent institutional system that could successfully represent it and its members in relations with the rest of the world, including relations with Eastern Europe.

This is especially true of the political and defence component of the Union's external policy, that is the foreign and security policy. In this case we are often dealing with, as Nicole Gnesotto (2012: 80) put it, examples of an actual 'national obsession': whenever the European Union 'touches upon [...] diplomacy and the use of military force, states immediately start to cling to their national prerogatives'. While the very fact that the CFSP and the CSDP were established can already be considered a success, these policies obviously suffer from many flaws. One of the biggest problems is the lack of an efficient decision-making centre on the Union level, one that would initiate, execute, coordinate and supervise undertakings in all areas covered by this policy. What is more, we are also dealing with unclear and inconsistently formulated main goals and tasks, inadequate financing and related lack of autonomous military capacity, as well as several other deficiencies (Milczarek 2013; Toje 2008).

Generally speaking, the weaknesses of the EU's foreign and security policy seem to have one thing in common: the lack of political will of European decision-makers – especially Member State governments – to introduce the necessary reforms. This stems directly from the general principle governing this policy, namely the domination of the model based on intergovernmental cooperation. It is understandable why Member States are clinging to this model so fiercely – one of the main reasons is their anxiety to transfer to supranational bodies the competences in such sensitive areas as determining their own diplomacy and having their own armed forces, areas which are traditionally considered crucial for a state to retain its sovereignty.

This does not change the fact that this approach is only one of many examples of weaknesses and deficiencies in the functioning of the EU's foreign and security policy, or, more broadly, of the EU external policy in general. While it also has its strengths, in the context of the issues addressed in this text there is no doubt that the flaws of this policy are what most impinges on how the European Union can deal with a number of very serious challenges originating in its international environment.

Main challenges coming from Eastern Europe

One of the major international challenges faced by the European Union is the need to respond appropriately to the processes taking place in a very

important area it borders, namely Eastern Europe. In historical terms, the challenges primarily concerned the initiation and development of integration ties with the young Central and Eastern European democracies emerging on the ruins of the Soviet empire after 1989. This finally led to the accession of 11 of the region's countries to the European Union between 2004 and 2013. The initiation of the eastward enlargement process was an important turning point in the history of modern European integration; even more so because this process is far from complete. While the states accepted to the European Union since 2004 are no longer subject to the EU's policy towards Eastern Europe, a number of other countries in the region have been expressing a desire to join the EU.

Consequently, the issue of the future composition of the Union still remains a very important challenge. While since the accession of Croatia in 2013 the eastward enlargement process seems to have been suspended, it still has serious geopolitical, economic and social implications (Adamczyk 2016). The point is that the further course of this process, regardless of whether it is continued, suspended or terminated, will have considerable impact on the future of both the EU itself and the group of candidate countries. For these countries, their further political and socio-economic development, as well as their safety in the geopolitical terms, will largely depend on whether or not they join the EU. And for the Union, the future of the enlargement to the east will largely shape its further evolution as an integrational structure, which will be forced to operate either in a broader or a narrower form – not only in geographical terms.

The issues of EU enlargement, however, do not exhaust the list of challenges to EU external policy caused by the situation in Eastern Europe. What remains a very important issue is the regulation of the current relations with the countries of the region, which the EU is trying to achieve by establishing new instruments, such as the Eastern Partnership. Furthermore, the relations with the Russian Federation are extremely important, their significance for the EU and its individual Member States depending on various economic and political factors and lately also on the issues related to international security. This in turn is caused by the evolution of Russia's policy under President Putin, which openly gains a neo-imperial orientation. The fullest manifestation of this dangerous evolution has been Russia's ongoing involvement in the crisis in Ukraine.

Reacting to this crisis is currently the most essential challenge for the EU's policy towards Eastern Europe. This concerns, for example, the need to redefine the entire international security architecture in Europe

or to rearrange the political, economic and trade relations between the EU and Russia. In addressing those challenges, however, the European Union is hindered by the repercussions of the deep crisis the EU is clearly experiencing. The crisis largely stems from a fundamental unresolved dilemma, namely the undetermined future of European integration. This is because the EU is currently facing the need to make an important choice: whether to keep developing its supranational structures and strengthen community competences in all spheres, including foreign and security policy (which implies the adoption of the community model), to retain the present mixed model (largely dependent on intergovernmental cooperation) or to develop its new, more flexible dimension, based on so-called differentiated integration model, which implies the creation of different 'circles' or 'cores' within the framework of the EU (Schimmelfennig et al. 2015). The future of the Union, including its ability to perform effective external policy, depends on this very choice.

The lack of decisions on this crucial issue entails serious consequences, also as regards the EU's relations with its eastern neighbours. Neither the European Union nor its Member States are currently able to take binding decisions on the scale and nature of further integration with the countries of Eastern Europe, as they themselves do not know what the Union will be like in the future: more open and flexible or more focused on itself and on the interests of its current members. The same applies to the relations with Russia, the shape of which will in the long run depend on the evolution of the EU external policy, that is on whether it will be more effective and coherent, taking into account the interest of the entire Union, or remain the domain of the Member States unwilling to give up their competences and placing their own interests above all else.

This means that the effectiveness of the European Union's external policy is one of the main factors determining how the EU will deal with the challenges originating in the east of Europe. With regard to the relations with its Eastern European neighbours, this policy has already developed a range of instruments, the most important one being the Eastern Policy, which is part of the broader European Neighbourhood Policy, and which has its own instruments: the Eastern Partnership and the strategic partnership with Russia. What are the genesis and the objectives of this policy?

The Eastern policy as an instrument of the EU–Eastern Europe relations

Throughout the entire post-war period the European Communities, and then the European Union, faced the task of maintaining proper relations with their eastern neighbours in the form of the so-called Eastern policy (Milczarek 2015; Barburska, Milczarek 2014; Adamczyk 2014). In fact, this was one of the crucial directions of their foreign policy, both at the community level and at the level of individual Member States. The significance of these issues increased immensely in the wake of the Autumn of Nations in Eastern Europe at the turn of the 1980s and 1990s. As mentioned above, establishing close ties with the post-communist democracies in the region became an important external policy task of the newly founded European Union. As a result, the EU accepted several new members, who thus were no longer subjects but instead co-creators of the EU's Eastern policy.

Hence, today the EU Eastern policy concerns only a strictly defined group of states in Eastern Europe – a region that should be, however, perceived in a broader context. The policy, as it is today, covers adjacent areas as well, including the Balkans and according to some analysts, also Turkey – that is, obviously south-eastern rather than strictly eastern regions. Moreover, the evolution of the Eastern policy means that the concept of Eastern Europe should be treated very broadly, encompassing areas in the Southern Caucasus and on the shores of the Black Sea, as well as the territories of the Russian Federation. Seen from this perspective, which should be strongly emphasised, Eastern Europe is much more of a geo-political rather than just a geographical notion.

In terms of definition, the EU's Eastern policy can be described as the common formulation of certain principles, development of institutional solutions, and execution of specific undertakings and actions by EU bodies and institutions or the Member States under their relations with selected countries of the broadly understood Eastern Europe. This policy comprises different components, including both broad political concepts and more specific undertakings implemented in different legal and organizational forms.

At the same time, the EU's Eastern policy has become the eastern component of the European Neighbourhood Policy (ENP) (Pietraś et al. 2012; Casier 2012). While the ENP was established in order to pursue broader goals, it was undeniably to a great extent a response to challenges coming from the east. The policy, officially established in 2004, was addressed to

two groups of states: (1) seven eastern countries: Russia, Ukraine, Moldova, Belarus, Armenia, Azerbaijan and Georgia; (2) the ten participants of the Barcelona Process in the Mediterranean Region¹. Generally speaking, the principal aim of the ENP was to support cooperation between the EU and its neighbours in the spheres of economy, politics, culture and security. This cooperation was to be based on shared political values (such as democracy, the rule of law, protection of human rights), as well as on the principles of free market economy. Thus the EU offered to its neighbours both privileged political relations and deepened economic cooperation. It should be stressed, however, that participation in the ENP by no means implied inviting the addressees of this policy to become Member States of the European Union.

It soon turned out that the European Neighbourhood Policy would experience a number of problems resulting, for example, from the fact that the policy has been too broadly defined. The ENP covers a total of 17 countries, spanning the area from Gibraltar to the Caucasus, inhabited by some 400 million people representing very diverse civilisations, levels of socio-economic development, political systems, etc. This has given rise to tensions and disproportions in the treatment of ENP recipient countries by EU authorities and some of the EU Member States, with clear disadvantage to the interests of the Eastern European ones. The shortcomings of the ENP's eastern component forced the EU's decision-makers to look for new forms and instruments to implement the policy. Additional impetus was provided by some alarming developments in Eastern Europe, such as the fiasco of the Ukrainian Orange Revolution of 2004, the surge of authoritarian tendencies in Belarus, as well as Russia's armed conflict in Georgia in 2008.

All this induced EU decision-makers to launch new initiatives addressed to the eastern neighbours, but also faced the Union with a whole range of new and very serious challenges. The most important of those include problems related to the functioning of the two essential components of the EU's Eastern policy: the Eastern Partnership and the strategic partnership with Russia.

Challenge # 1: The shortcomings of the Eastern Partnership

In the above situation, in response to Poland's initiative and with Sweden's support, a new project, namely the Eastern Partnership, was

¹ Morocco, Algeria, Tunisia, Libya, Egypt, Israel, the Palestinian Authority, Jordan, Lebanon, and Syria.

established (EaP) (Adamczyk 2010; Barburska 2013; Gil, Kapuśniak 2009). Officially inaugurated in 2009, it covers six countries: Ukraine, Moldova, Armenia, Azerbaijan, Georgia, as well as Belarus (provided that democracy is restored in this country). The principal aim was to support democratic system transformation in recipient countries and to help them develop close ties with the EU through, among others, the conclusion of association agreements and the establishment of free trade zones. From the very beginning the concept of the EaP has been a part of the broader ENP context, although this concept was also based on original principles. This made the Eastern Partnership a new quality within the framework of the entire EU policy towards Eastern Europe.

The EaP partners constitute a group of states situated in a key geopolitical region, with more than 75 million inhabitants and the territory of approximately 1 million square kilometres. As the project does not provide for the participation of Russia (traditionally mistrustful towards the EU), the choice of this specific target group was based on the criterion of their readiness to engage in closer integration with the European Union. (The authoritarian Belarus may be an exception, although it is also a beneficiary of some EaP actions.) As stated quite frankly by the then President of the European Commission, José Manuel Barroso (2010: 4): '[t]he Eastern Partnership offers these countries the chance of making a strategic choice: a pro-European orientation'.

There is no doubt that the EaP constitutes an important instrument allowing the European Union to influence the political and socio-economic situation in Eastern Europe. However, it should also be noted that this instrument has a number of flaws that diminish its effectiveness. The main structural limitation inherent in the very format of the Partnership – and of the entire ENP – is the lack of official prospects of EU membership for the addressees of the EaP who have such aspirations. This, on the one hand, weakens the motivation of these countries to make the difficult and costly adjustments to EU standards, and on the other hand, further reduces the EU diplomacy's ability to effectively influence policies of the partners.

Another major hindrance to the effectiveness of the EaP are the authoritarian tendencies (often combined with political instability) which are clearly surfacing in all countries subject to the EaP, currently perhaps except for Ukraine. This makes it considerably more difficult for them to observe the democratic standards and consequently reduces the room for manoeuvre for the EU, which according to its principles should make the development of mutual cooperation conditional on the observance of human

rights in the countries of the EaP. This also means that unless the EU's policy becomes more effective in the future, we may be faced with 'Putinisation' of the political systems in the countries of this region, modelled after the anti-democratic solutions adopted in Russia. In the EaP recipient countries the indexes concerning the state of democracy, free market economy, corruption, as well as political, civil and economic freedoms did not improve; they were in stagnation at best, and often they simply decreased (Piskorska 2013: 74–92). All of this could lead to the EU being accused of not having managed to properly influence the political life of its partners.

Another significant problem is the insufficient funding of the Eastern Partnership by EU institutions (Latoszek, Kłos 2015). So far, they have clearly been giving priority to the assistance provided to other countries among the EU's neighbours – according to official data, the funds allocated to the EaP constitute less than a third of the budget for ENP assistance. At the same time, the EU funds are not always spent properly, as they are largely squandered, and the EaP recipients implement legislative changes and various reforms on paper only. This, in turn, is linked to relative inefficiency of the EaP measures in the sphere of economy. Only for three among the recipients of the EaP the EU is the most important sales market, Moldova being the leader in this respect, with more than half of its exports going to the EU, while for Ukraine the same can be said of only a quarter of exports. On the other hand, the EU's trade with the EaP countries is also minimal, with only slightly more than 2 per cent of EU exports going there. The EU assistance has also not translated into any significant economic growth in EaP recipients.

The opinions on the effectiveness of the EaP among politicians and analysts are very diverse. Some believe that alongside the rest of the ENP it is only an ephemeral political idea that changes little in the relations between the EU and Eastern Europe or in the internal and external policies of the recipient countries. While there is general agreement that the presence and influence of the European Union has never been that strong and visible in the east of Europe as they are now, there are also very critical opinions on the results of this involvement. Criticism has become even stronger given the recent events in many EaP countries, especially the crisis in Ukraine. The further development of the situation in this country, which is now at a historic crossroads, can be crucial to the entire Partnership as well (Stępniewski 2015). It is still unknown what direction the Ukrainian policy will take, therefore it is also hard to predict the fate of the EaP because it may simply become pointless without the participation of Ukraine.

While the future of Ukraine remains unknown, the development of the situation in the rest of the EaP countries is rather clearly worrying, in particular with regard to the evolution of the foreign policy of Armenia, which has apparently chosen the path of rapprochement with Russia rather than with the EU, only formally remaining a member of the EaP. The Belarusian authorities, in turn, only benefit from various EU aid programmes, but are by no means willing to conduct democratic reforms that would weaken the local totalitarian regime. Even in the domestic and foreign policies of the former 'leaders' in assiduous striving to integrate with the EU, Moldova and Georgia, there is a dangerous trend involving growth of authoritarianism and weakening of the ties with the West in favour of rapprochement with Russia.

Nevertheless, it would seem that the severe accusations against the EaP and the Eastern policy in general should be deemed exaggerated. A considerable number of institutions and mechanisms were established, and while some of them function under the ENP, others complement it or constitute original solutions, specific to the EaP. In some cases positive effects have been achieved, predominantly due to the functioning of the EaP – one of the most important examples of which is the transformation in the foreign policy of Ukraine. On the other hand, the fact that the EaP is not always fully effective does not stem solely from the goodwill or determination of its creators and implementers, but also from a variety of broader determinants (Stepniewski 2016), one of the most important of which (apparently underappreciated by the EU) is the huge influence of Russia – as a major power with great imperial aspirations in the region – on the EaP countries and, as a result, on the final shape of the EU's Eastern policy.

Challenge # 2: The failure of the strategic partnership with Russia

Another key element of the EU's Eastern policy alongside the Eastern Partnership is the strategic partnership with Russia (Barburska 2014). From the point of view of Western Europe Russia had always had a special position in Eastern Europe. Throughout the entire post-war period the European Communities have tried to maintain good relations with this country, and after the collapse of the European communist system this continued to apply to the successor of the Soviet Union: the Russian Federation. The newly-born European Union believed that the international situation in Europe

after 1991 largely depended on the efficiency of the political transformation in Russia. Russia, in turn, perceived cooperation with Western European integration structures at that time primarily as one of the key means of ensuring a place for itself in the new international system that was being shaped.

In order to strengthen bilateral relations with Russia, the EU signed special agreements with Russia, which were the basis for establishing relevant institutions and for developing cooperation in the spheres of economy, trade and even foreign and security policy. Unfortunately, as we have already mentioned, since the rise to power of President Putin Russia's foreign policy has been subject to some dangerous neo-imperial tendencies. They are reflected in the desire to change the balance of power in Europe and in the world in favour of Moscow, as evidenced by, among others, the Russian involvement in the crisis in Ukraine (coupled with the transformation of the Russian domestic policy aimed at limiting democracy and building an authoritarian system). All this aggravated the bilateral relations, and it is now a major challenge for the entire EU to improve them.

There have been some positive results in the relations between those two partners, but it is also clear that the strategic partnership between the EU and Russia has not been successful. The main reason is that both partners represent fundamentally different, incompatible political and economic systems, therefore rapprochement is impossible. Consequently, it is very difficult to develop a new vision of mutual relations that could replace the paradigms applied so far. The situation is further complicated by Russia's obvious return to aggressive policy, as shown by its aggression against Georgia in 2008 and against Ukraine in 2014. Furthermore, the current Russian leadership does not desire a real rapprochement with the EU, which Putin obviously disregards. All this means that Russia does not want to fulfil all its commitments resulting from the agreements concluded with the European Union.

In extreme cases of this neo-imperialism, however, the EU is sometimes able to react more decisively, even despite the lack of unanimity, as was the case after the Russian military aggression in Ukraine. Fortunately, it seems that the way president Putin was perceived in the West has changed, as the Western capitals have finally understood that Russia is a revisionist power that wants to challenge the existing order in Europe. Unfortunately, there is insufficient political will to draw the right conclusions, which means that the West (especially the EU) still has no strategy of holding Russia off. This seems to be very dangerous, since it is not unlikely that in the current

circumstances the West (for example the USA under President Trump) will be ready to come to an agreement with Putin.

At the same time, however, we need to remember that despite all the current turbulences, the European direction of the foreign policy remains one of the priorities of the Russian *raison d'état*. Russia simply cannot afford to give up cooperation with the West, especially with the European Union. This fact will not change even with political and economic sanctions imposed on each other by both sides. The real significance of the mutual relations is indicated, among others, by the fact that the EU is Russia's first and most important trade partner. For the EU, in turn, Russia also is and will be one of the main partners in the international arena. This means that in the coming years the EU needs to develop a new effective strategic partnership model with its largest eastern neighbour.

Conclusions

The European Union's external policy faces a number of important challenges originating in the broadly understood region of Eastern Europe. The ability to address these challenges depends primarily on the overall effectiveness of this policy (particularly as regards the EU's foreign and security policy), which faces many structural shortcomings and deficiencies. These, in turn, impact the effectiveness of the basic instrument that the EU uses in the relations with this region, namely the Eastern policy, with its two main components: the Eastern Partnership and the strategic partnership with Russia.

The current outcome of the EU's Eastern policy is not impressive, which can be clearly concluded from the assessment of the effects of the efforts undertaken to achieve the main objectives of this policy: to help the Eastern European countries build a more democratic political life and create a stable market economy. None of these goals has been achieved to a satisfactory degree. As mentioned before, in practically all the Eastern Partnership countries and Russia there have been growing authoritarian tendencies of varying intensity and/or there is no political stability, while the economic situation is not successful in any of them and neither has developed a free market.

This means that the European Union has failed to create beyond its eastern border a reliable group of friendly liberal democracies, operating in accordance with EU standards, which could be valuable political or even

military allies. The same can be said about the failures in the endeavour to create an economic system based on free market principles in this region. This means that the EU does not fully realise its economic interests in the region, which would be safeguarded by the functioning of economies constituting valuable economic and trade partners.

One should bear in mind, however, that the effectiveness of the EU's Eastern policy depends on a whole range of different factors, which are influenced not only by the EU, but also by the recipient countries. The most important of these factors are the ability and willingness of a given state to adopt European standards. Eastern European countries unfortunately do not show much readiness in this respect, which in turn primarily depends on their geopolitical position, which largely shapes their domestic and foreign policies. An appropriate EU policy is admittedly crucial and at the same time undoubtedly weakened by such deficiencies as the absence of the prospect of membership for the EaP countries, but figuratively speaking, 'it takes two to tango', so commitment on both sides is necessary.

The relations between the EU and Eastern Europe should not be treated as a one-way street. Closer ties between the two partners can bring numerous benefits to all stakeholders, as evidenced (despite all the related controversy) by the results of the last EU enlargement to the east. The Union assumed, perhaps naively, that the current Eastern policy would lead to the same positive results, but it turned out that the overall geopolitical situation had changed due to 'the Russian factor', while the partners also proved to be more difficult. The question that remains open is whether the European Union as a whole will be able to draw the right conclusions from the current experience of its Eastern policy and whether it can address all the challenges coming from Eastern Europe.

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From Imperial Backwater to Strategic Minefield: the Mediterranean and the EU

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Abstract

The entity that is now the European Union (EU) has always been fairly active in the greater Mediterranean region, especially since the end of the Cold War. Still, the EU would always regard the Mediterranean as a relative backwater. The ability of the EU to manage Mediterranean affairs has further been reduced by EU administrative changes, the Eurozone crisis, the Arab Spring, Brexit and the partial US withdrawal from the region. This has left the EU increasingly vulnerable, given that currently the most serious threats to European security are arguably emanating from the Mediterranean. The EU seems unprepared to meet those threats, which include the possibility of interstate conflict between Turkey and two EU Member States, terrorism and population movements. Compared to the potentially overwhelming Russian threat, these Mediterranean threats may seem insignificant. However, Russia is still contained by NATO and ultimately the US, whereas the destabilizing pressures emanating from the Mediterranean remain uncontained. The Mediterranean has become a strategic minefield that can blow up the EU.

Key words: European Union, Mediterranean, European security, contained & uncontained threats, terrorism, population movements, Turkey, Russia

Introduction

Arguably the greatest threat the Roman Empire kept facing came from the east. For centuries, the Parthian and then the Persian state was a persistent great power that could and did inflict severe battlefield defeats on the Romans. Nevertheless, Rome generally retained the upper hand

in this long-standing conflict with its eastern neighbor. To use modern terminology, the Parthian/Persian threat was successfully contained and the great eastern power proved unable to significantly change the status quo, let alone overthrow the Roman Empire. Instead, the collapse of Rome came from the north-northeastern border, whence relatively small bands of Germans and Goths infiltrated and eventually supplanted the empire (Ferrill 1986).

Historical analogies are very often inexact and even banal, and analogies with ancient Rome tend to be among the most suspect of the kind. Still, within limits, they can and have been usefully employed for illustrative purposes (James 2006). In using this analogy, the present essay purports to convey a simple message: great threats that can somehow be contained are ultimately less dangerous than smaller threats that for various reasons cannot or would not be contained. Hence the potentially overwhelming Russian threat to the European Union (EU) will actually prove less harmful than the supposedly low-key threats emanating from the Mediterranean.

To demonstrate this, the essay will begin with a brief strategic outline of Mediterranean affairs from the creation of what is now the EU (1957) until the beginning of the 21st century – a relatively benign period for the EU as regards threats of Mediterranean provenance. Then, it will analyze certain developments that during the last decade or so have led to a deterioration of the security environment in the Mediterranean and a simultaneous inability of the EU to cope with the emerging situation. After that, it will deal with the threats to European security emanating from the broader Mediterranean region and will try to show that they have the potential to derail the European integration project and are only partially contained at best. Finally, it will compare those smaller caliber threats with the threat that the EU is currently said to be facing from Russia; the argument here is that, even if there is indeed a Russian threat against the EU, the US and consequently NATO have both the capability and the incentive to contain it.

The imperial backwater

The entity that is now the EU has been a factor in the Mediterranean since its very creation; with France and Italy among its founding members, it could not be otherwise. The Mediterranean role of the then European Economic Community (EEC) was further enhanced with the association agreements it concluded with Greece and Turkey in 1961 and 1963

respectively. However, it must be stressed that the EEC was not designed to perform any strategic functions in the Mediterranean – or anywhere else for that matter. As a result, the strategic challenges emanating from the Mediterranean from the 1950s to the 1980s, were dealt with by NATO and chiefly the US. This would set a pattern that basically continues to this day.

There were such challenges aplenty. To start with, the strategic importance of the Mediterranean as a conduit to the oil-rich Middle East was manifest (Evriviades 2013). A number of Arab-Israeli wars further raised the stakes and brought the two superpowers to a potentially deadly confrontation in the eastern Mediterranean in October 1973. Interestingly, although conventional wisdom at the time had it that the powerful US Sixth Fleet would easily prevail over its Soviet counterpart, American naval opinion was, to put it mildly, far less sanguine about the outcome and was expecting very heavy losses (Lebow, Stein 1994: 253, 263–265, 284–285, 299, 343). Finally, the Cyprus conflict and the division of the island after the Turkish invasion in July–August 1974 rose tensions still higher.

As the Cold War drew to its close, the international environment became calmer and the Mediterranean was no exception; in contrast to the previous decades, the early 1990s witnessed no major war and almost no threat thereof in the Mediterranean. However, the great news of the time was the dissolution of the eastern bloc and the subsequent collapse of the Soviet Union itself. Thus, although the European Community had already strengthened its Mediterranean presence with the accession of Greece, Spain and Portugal in the 1980s and did launch the Euro-Mediterranean Partnership in 1995, this combination of a benign Mediterranean environment, the emergence of Eastern Europe from behind the Iron Curtain, and the creation of a completely novel geopolitical situation in the former Soviet Union, led to a neglect of Mediterranean affairs by Europe.

Despite the lamentations of some analysts (Kausch, Youngs 2009), this relative neglect was understandable. To start with, the Eastern European countries were candidates for the European Community (later EU) membership. While for the Western Europeans the south and east Mediterranean countries were neighbors, the Eastern Europeans were kin. Ever since, a few years after World War II, the Council of Europe decided on the highly symbolic gesture to keep a number of empty seats reserved for members from Eastern Europe, it was expected that when the time was ripe the Eastern European countries would join the Western European institutions; maybe not necessarily NATO, but definitely the Council of Europe and eventually the EEC and its later incarnations. This culminated

in the great enlargement of 2004 that, apart from the accession of Malta and Cyprus, focused overwhelmingly on Eastern Europe – as it was bound to. Even when some Eastern European countries were considered to be far away from membership, their geopolitical significance meant that the EU would retain a much greater focus on Eastern Europe than in the Mediterranean region – Russia being the prime but not the only example.

So, during the 1990s and until the late 2000s, the EU kept exploring new vistas to the east, while being reasonably happy to treat the Mediterranean as a relative backwater. However, by the end of the 2000s some developments took place that would both create the need for the EU to respond to security threats emanating from that backwater, *and* weaken its ability to do so. It is to these developments that we now turn.

Evolving context

One can identify at least five developments that in the last few years have had an impact on the ability of the EU to manage Mediterranean affairs: the EU administrative changes; the Eurozone crisis; the Arab Spring; Brexit; the partial US withdrawal from the region.

The EU administrative structure has been changing all the time, in an attempt to cope with continually changing circumstances. One particular change that bears on the present analysis is the reduction of the power of the rotating Presidency of the Council of the EU. The rotating President of the Council of the EU (the council of national ministers) is only one of four EU Presidents (European Union 2017) and definitely not the most important, as this rotating Presidency is clearly eclipsed by the Presidency of the European Council (the council of heads of state or government) and probably by the Presidency of the European Commission as well. This means that it has become far more difficult for interested Member States to include Mediterranean affairs in the general EU agenda upon assuming the Presidency of the Council of the EU.

Moreover, it seems that even if those interested Member States did have the administrative capability to add a more Mediterranean aspect to the general agenda, they would still fail to do so due to the lack of political wherewithal. The reason is the Eurozone crisis. This crisis has severely affected virtually every Mediterranean member of the EU. Greece is still bankrupt, Cyprus, Spain and Portugal are more or less in dire straits, Italy is balancing on the precipice, and France is seriously weakened. With these

countries being, to varying degrees, dependent on the solidarity and goodwill of the non-Mediterranean EU partners, they lack the political capital to bring Mediterranean matters to the forefront. Even if the Eurozone manages to overcome the crisis, the Mediterranean voice within the EU will be largely inaudible for the foreseeable future – and grandiose-sounding institutions like the Union for the Mediterranean (established in 2008) cannot change or hide this fact.

The Arab Spring has been another game changer in Euro-Mediterranean affairs. The overthrow of sclerotic authoritarian regimes brought on widespread euphoria, both regionally and internationally. However, perceptive analysts were quick to point out that well-organized conservative elements had managed to hijack the democratic process in the countries in question (Herzenni 2013), as well as that, even if everything turned out well in the end, those countries were bound to remain unstable for quite some time (Cheila 2013). Nowadays, these conclusions have become virtually self-evident. Consequently, the West has been reduced to accepting and managing the new situation that has evolved very differently from what had initially been hoped (Simon 2013). Of course, with the forces of instability now unleashed, this management becomes increasingly difficult, as will be seen in the next section.

The Brexit negotiations have only just begun, and it has become immediately apparent that the mind-boggling complexity of the issue and the immense distance between the two sides' perceptions do not foreshadow an amicable divorce (Gutschker 2017; Peck 2017). Even in the unlikely event that Brexit turns out to be a success, however defined, the long and arduous negotiations will leave little time and inclination in European capitals for dealing with Mediterranean matters.

The fifth development touched upon in this section is the heavy scaling-down of US military presence in the Mediterranean, in the context of the notorious 'pivot to Asia' promulgated by the former US President Barack Obama (Schiavenza 2013). This is an interesting development. To start with, it has indeed been a major strategic initiative; for instance, current US naval forces in Europe have been reduced to about a fourth of their strength in 1989 (IISS 2017a: loose sheet). However, the 'pivot' has curiously not entailed any significant strategic change in the Mediterranean and may not do so in the foreseeable future. This is because, even after the 'pivot', the NATO naval forces in the Mediterranean are still superior to any potential adversary; besides, contrary to 1973, there is no Russian fleet in the Mediterranean at the moment and, if it were to reappear, the US has

plenty of naval assets to counter it (Ibidem: 22–23, 48–51, 90–175, 213–216, 368–408). Moreover, Americans are not completely abandoning the Mediterranean; on the contrary, they would welcome the retention of their core naval base in Crete for an extended period (Athanasopoulos 2017). The continuation of US maritime presence in the Mediterranean is easily the greatest source of strategic stability in the region, and an immense aid to European security in general. However, two things should be pointed out. First, although the strategic picture has basically remained unaltered, the ‘pivot’ has left the US with forces that could prove insufficient *tactically*, that is in the face of short-term eventualities; this could prove very important in case of a Greek-Turkish military clash (see below). Second, as will be seen shortly, the EU faces some strategic threats that even a fully committed US military might not be able to counter.

The developments examined in this section would not be important in a benign strategic environment like that of the 1990s, but the Mediterranean strategic environment has ceased to be benign.

A strategic minefield

There are three broad sets of threats to the EU’s security emanating from the Mediterranean, namely local conflicts, terrorism and population movements. There are quite a few conflicts, actual or latent, in the broader Mediterranean region nowadays. Among them, the wars in Syria and Libya bear indirectly on EU security through encouraging population movements and jihadism (see below). However, there is a set of conflicts that has a direct impact on EU security because two EU Member States are implicated; this refers to the conflicts between Turkey on the one hand and Greece and Cyprus on the other.

This is not the place to comprehensively review the Greek-Turkish conflict and the Cyprus question. Suffice it to say that the possibility of war between Turkey and one or both Hellenic states is a very real one. Among others, the Cyprus question is in all probability not going to be resolved anytime soon, since Turkey has made it clear that it wants to retain ‘forever’ its ‘guarantor’ status in the island, i.e. its right to intervene militarily whenever it sees fit (Reuters 2017). These age-old conflicts have been recently further exacerbated by the Turkish President Erdogan’s bid to consolidate his dominant position inside Turkey, making him project an ultra-nationalist image in the process; and by the discovery of rich

hydrocarbon deposits within the exclusive economic zone of Cyprus – which Turkey does not recognize (IISS 2011; 2013). Things almost came to a head last February, when a Turkish vessel fired a volley of small caliber guns off a Greek-inhabited island (Nedos 2017a; ekathimerini.com 2017). Turkish aircraft have been violating Greek airspace and territorial waters on an almost daily basis (HNDGS 2017); ‘Turkey’s parliament stated in 1995 that a move by Greece to extend territorial waters to 12 nautical miles would be a justification for going to war’ (IISS 2013); and finally, last April Turkey notified the United Nations that it ‘will not allow foreign companies to conduct unauthorised hydrocarbon exploration and exploitation activities on its continental shelf, within which Cyprus’ block 6 falls’ – a not too thinly disguised threat (themanews.com 2017). One might be tempted to dismiss these actions as mere saber rattling intended for domestic consumption. Still, the whole situation has come to look pretty serious and the possibility of an accident or miscalculation is quite high.

While two EU Member States are threatened with war, the EU has been unable to contain these threats. The EU has little leverage over Ankara, especially now that Turkey’s bid for EU membership is moribund if not already dead. One cannot blame the EU for failing to contain Turkey, because the EU has never been designed to meet such tasks. The high-sounding European Security and Defense Policy (ESDP) is in reality a lightweight institution that is primarily geared towards low-risk ventures and would never be used against a NATO ally anyway (Koliopoulos 2007). Still, should an actual military conflict erupt between Turkey and Greece and/or Cyprus, the EU’s inability to meaningfully react will scuttle forever the notion that the EU is a global actor to be reckoned with. There have already been quite a few indicators suggesting that the EU has entered a downward spiral regarding its status in world politics (Toje 2010; Youngs 2010; Gillingham 2016; Merritt 2016). Even if, strictly speaking, the EU is not a military alliance with an obligation to defend its members, to be seen as manifestly unable to do so can create a snowballing loss of confidence with incalculable ramifications.

Currently, the only power that can and does somehow contain the conflict of Turkey with Greece and Cyprus is the US. Washington has been active behind the scenes, leading to a certain reduction of tension in the Aegean – though not yet in the eastern Mediterranean, where the hydrocarbon deposits probably make the stakes higher (Nedos 2017b; 2017c). American pressure has proved capable of preventing a Greek-Turkish war since 1974. Nevertheless, as was pointed out in the previous section, the withdrawal

of a large portion of US naval assets from the Mediterranean has left Washington with fewer hard-power instruments with which to tackle eventualities if need arises. Eventually the US can and probably will assert its will in the Aegean and the eastern Mediterranean, but nobody can tell what will have happened in the meantime and what this will mean for the future of the EU.

When terrorism strikes the EU from abroad, it is the Islamic terrorism and it mainly comes via the Mediterranean. Among others, this imported terrorism has been recently fuelled by the successes of the so-called Islamic State (ISIS), however ephemeral those have actually proven to be. A calm and objective analysis of the terrorist threat to the West quickly demonstrates that, as regards sheer numbers of victims, it is a very low-level threat indeed. For instance, statistics show that in the US one has been more likely to be killed by a law enforcement officer or even to be shot by a gun-tottering toddler, than to fall victim to a terrorist act (Global Research 2014). In Europe the lethality of terrorist attacks in 2015, a rather bloody year, was about three times higher than in North America; still, the numbers were so low (175 deaths in Europe vs. 53 in North America) that, as Professor Pinker of Harvard University put it, 'For all the fear that terrorism generates, you're almost certainly going to die of something else' (quoted in Chalk, Maybin, Brown 2016).

However, there is more to terrorism than numbers of dead and injured. Thus, metropolitan centers like Boston and Brussels were all but paralyzed as a result of terrorist attacks. The problem with terrorism is that it is difficult to retain one's composure when planning to counter it; apart from legitimate security concerns, publicity and outrage cloud one's vision. This occasionally leads to overreaction that has pernicious effects on social and political life. Thus, in the bigger picture, the main problem is not the direct results of terrorism as such, but its broader impact on the fundamentals of Western democracy. This has been particularly evident in the US, where the 9/11 terrorist attacks have been used as a justification for glaring violations of human rights. The widespread, officially sanctioned use of torture by US authorities has of course been the most egregious of these (Greenberg 2009), but not the only one. 'The home of the free' now witnesses long detentions without trial, wholesale communications surveillance and relevant data recovery without legal warrant (with retroactive immunity from prosecution if the law has been violated in the process), secret court orders, etc. (Assange, Appelbaum, Müller-Maguhn, Zimmermann 2012: 13–19, 39, 53–56, 113–117, 168–174). This is not meant to be a facile condemnation of

those practices. Actually, the very fact that President Obama felt it necessary to retain most of them, despite having expressly opposed them before assuming the presidency, should at least suggest that they have become sort of indispensable. It may even be argued that the victims of terrorism have remained so few precisely because of the huge investment in counter-terrorism measures. In other words, the terrorist threat has now imbedded illiberal practices into democratic and liberal systems, thus diluting them.

Although the EU countries have increased their surveillance operations for the purpose of fighting terrorism, they have not gone nearly as far as the US in curtailing individual liberties in the process (cf. *Ibidem*: 41, 43–5, 125, 171, 183–184). Be that as it may, recent high-profile terrorist attacks in France, Belgium and Sweden have had a disproportionate impact on their target states and have provided powerful incentives for tightening the screw on civil liberties. The result of this tug-of-war between counter-terrorism and civil liberties in the EU remains to be seen, but the fact that the very strong American liberal tradition did not manage to withstand the pressures of ‘the war on terror’ does not augur well for civil liberties in the EU. This can be fairly devastating for the EU, since from its very foundation the European integration has been a project based on liberal principles. As the American reaction to the 9/11 attacks demonstrated, in times of national emergency people have been willing to sacrifice civil liberties (up to a certain level) in order to ensure public safety. Similar logic may prove workable at the level of individual EU Member States. Applying such measures at the level of the EU as a whole will create a severe legitimacy crisis for the EU, even more serious than the present one. There is already much talk about the so-called democratic deficit of the EU; turning the EU into a surveillance super-state will make this deficit even more of a reality and will appreciably increase Euroscepticism.

In view of significant radicalization that has taken place within Islam over the last few decades (see below), one cannot expect the imported Islamic terrorist threat to the EU to vanish anytime soon. At the end of the day, it is not too difficult to carry out a terrorist attack. True, a hastily improvised terrorist attack can prove ineffective or be foiled altogether, but even such attacks almost never fail to have an impact along the lines discussed above. In other words, this particular threat is essentially uncontainable.

Imported Islamic terrorism is closely intertwined with homegrown Islamic terrorism. This is linked with the third threat examined in this section, namely population movements. The term ‘population movements’ is used so as to avoid having to distinguish between refugees and immigrants,

legal or illegal. *Population movements and their consequences may well be the greatest threat Europe faces, especially in the long run.* Initially, such views were aired by staunch right-wingers (Buchanan 2002), making it easier to dismiss them as unduly alarmist and doctrinaire. However, a relevant analysis quickly became mainstream (Bawer 2006; Phillips 2006; Steyn 2006). It goes as follows: over the last few decades, European populations have entered a downward demographic spiral. Simultaneously, substantial numbers of Muslim populations from the Middle East and North Africa (plus the Indian subcontinent) have settled in Europe. These Muslim populations, bolstered by high fertility rates and further replenishment from their countries of origin, already constitute significant minorities in their host countries. In the meantime, Saudi money has fuelled the worldwide promotion of a particularly militant form of Islam, leading to the considerable radicalization of Muslims everywhere. In conjunction with the decline of traditional Western values and a fear among Westerners to be dubbed racist, this has led to continual cultural and political concessions on the part of the host countries to their growing Muslim minorities. This milieu has become fertile ground for Islamic violence in Europe, and in the long run it is certain to erode and profoundly transform Europe politically and culturally.

Evidence supporting the above accumulates virtually every day (Clarke-Billings 2016). Just as this essay was nearing completion, the terrorist attack at Manchester Arena took place, apparently committed by a Manchester-born Muslim of Libyan origin (BBC 2017). Thus, the aforementioned thesis is at least plausible. In fact, there is ample historical precedent of such developments. Arnold Toynbee (1934–1961: V 63) has shown that at times a society may acquire a ‘proletariat’, namely a social element that in some way is ‘in’ but not ‘of’ any given society at any given stage of such society’s history – ‘proletarianism is a state of feeling rather than a matter of outward circumstance’, hence the phenomenon of educated, well-off British Muslims becoming suicide bombers. This proletariat is in turn divided into an internal proletariat, consisting of people living within the bounds of the society in question, and an external proletariat, consisting of outer ‘barbarians’ (Ibidem: I 41–42, 187–188; IV 5–6). According to Toynbee (Ibidem: V 28, 33, 79; VIII 1–87) the proletariat will eventually overthrow the society, having invoked their own religion in the process. The fact that Toynbee’s mechanistic conception of history has met with harsh and quite justified criticism (Geyl 1956; Trevor-Roper 1956) should not lead one to reject all his insights outright. In the present case, his ‘internal proletariat’

clearly corresponds to Europe's resident Muslim populations and his 'external proletariat' corresponds to the non-European jihadist groups that attempt to stage terrorist attacks on European soil. Of course, apart from accepting these categories, one need not succumb to Toynbee's determinism regarding the future course of events.

The ongoing population influx from Syria has brought these issues into sharp relief, with particular emphasis on the connection between refugee hardship and Islamic radicalization (IISS 2017b). As a result, identity politics has returned with a vengeance to Europe; even if it makes economic sense to replace one's aging workforce with newcomers, large-scale immigration is deemed to negate the very identity of the community and thus is politically unacceptable (IISS 2015). Be that as it may, one merely has to make some elementary comparisons between EU Mediterranean countries on the one hand and non-EU Mediterranean countries on the other, so as to realize how overwhelming the urge for population movement has become. A comparison between the median age and per capita GDP of two neighboring countries, namely Spain and Morocco, will demonstrate huge disparities (CIA 2017a; 2017b): the average Spaniard is 42,3 years old and earns (in PPP equivalent) \$36,500 a year, whereas the average Moroccan is 28,9 years old and earns \$8,400 a year. Evidently these glaring imbalances and the corresponding incentives for population movements are not going to be eradicated anytime soon. In other words, population movements and their consequences will constitute an unstoppable threat for the EU for a long time to come.

This concludes the section on the Mediterranean-related threats to the EU. It remains to be seen how the perceived Russian threat compares to those.

The Russian threat in perspective

Many believe that Russia currently constitutes a threat to the EU as a whole, or at least to some of its Member States. In this vein, analyses of the military defensibility of the Baltic States and Poland vis-a-vis Russia have already started appearing in open sources (Frühling, Lasconjarias 2016; Paszewski 2016). To make matters worse, some electoral campaign statements of the US President Trump regarding NATO seem to have undermined the alliance. Particularly worrisome was his statement that the US would defend the Baltic States from a Russian attack only if they had 'fulfilled their obligations to us' (Sanger, Haberman 2016).

In reality, things are probably not so serious. If Russia attacked, say, one or more Baltic States and the US looked the other way, then NATO would probably collapse and most of Western Europe would be 'Finlandized'. It is inconceivable that Washington would allow contemporary Russia to achieve something that had proved beyond the capabilities of the mighty Soviet Union. In all probability, President Trump would have no choice than to start World War III – or, more accurately given Russia's current isolation, a NATO-Russian war. With the Russian President Vladimir Putin being the rational actor he is widely believed to be (viz. his inaction when the pro-Russian uprising in Russian-speaking Odessa in southwestern Ukraine was speedily crushed), he is unlikely to embark on large-scale military adventures against a EU Member State that belongs to NATO as well. As to non-NATO EU Member States, however threatened they may feel (Osborne 2017), Russia is not going to do to Finland or Sweden what the USSR had refrained from doing during the Cold War.

In short, NATO and ultimately the US do contain a potential Russian military threat. They may be unable to contain certain Russian low-intensity threats, such as cyber attacks like the one that hit Estonia in 2007 and has been plausibly attributed to Russia, though without conclusive proof (Rid 2012: 11–13). Still, such threats cannot presumably have far-reaching strategic consequences; and if they do, NATO is once again sure to take a hand.

Conclusions

It is beyond the scope of this essay to offer policy prescriptions in order to meet the threats outlined above; such prescriptions are hard to come by anyway. This need not sound fatalistic. On the contrary, the very identification of a problem is the necessary first step towards solving it. Concern about the perceived Russian threat to the EU is of course legitimate, even though perceptions as to its intensity or even its existence vary among European capitals. At any rate, the Russian threat is being contained and, barring fundamental changes in the European security architecture, it will probably continue to be contained in the foreseeable future. Still, the impressive magnitude of the Russian threat should not blind anyone to a set of less spectacular, but uncontained threats that can have disastrous consequences for the project of European integration.

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Quo Vadis Turkey – Is this the End of European Direction in Turkey's Foreign Policy?¹

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Abstract

Since the founding of the republic in 1923, Turkey has been geared towards westernization and building close contacts with European states. Even after the end of World War II and the emergence of the bipolar system, it decided on membership in the capitalist bloc as an ally within NATO and aspired to membership in the European Communities. The disintegration of the Yalta system and the creation of the multipolar system became a challenge for shaping new directions in Turkey's foreign policy, and at the same time weakened its links with the Western allies. Ankara started to believe uncritically in its own potential and capacity to act as a regional power and Eurasian state that was building its influence in the area of the former Ottoman Empire. It seems, however, that uncritical self-esteem and excessive ambition have outstripped the possibilities of Turkish politicians.

Key words: Turkey, European Union, Middle East, foreign policy

Introduction

The main goal of the paper is to analyse the evolution of the European direction in Turkey's foreign policy in the context of its changing international environment. In 1923, while setting the social and political foundations for the functioning of the young state, Kemal Pasza Atatürk, the charismatic leader of the Turkish Republic, clearly indicated westernization as the main priority in Turkish development. Westernization is to be understood as

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modernisation of the country based on deepened and expanded co-operation with European countries (Gonl bol 1971: 13). It was the implementation of solutions introducing the principles of democracy and secularisation based on European standards which was supposed to ensure the transition of the young republic into a strong, secular nation-state rising from the ruins of the Ottoman Empire. Young Turkey had thus abandoned the Islamic heritage of the Ottomans, associated with despotism and backwardness, in favour of systematic implementation of western values. These revolutionary social and political changes influenced the shaping of Turkey's foreign policy up until the end of the 20th century. As a consequence, Turkey tightened its relations with European countries while restraining those with its eastern neighbours. In this way, Ankara wanted to manifest a "breakup" with its middle-eastern identity and to identify as a fully European country. Turkish politicians perceived their eastern neighbours as second-best, economically backward, politically unstable and untrustworthy. Ankara accused the Arabic societies of betrayal and "backstabbing" the Ottoman Empire during WW1, which supposedly contributed to its fall. It should be emphasised that Arabic countries were equally sceptical towards tightening their relations with Turkey, fearing the rebirth of Turkish power in the region (Martin 2004: 161). According to Joanna Sztubert, "the main characteristic of Turkish statehood turned out to be nationalism, and one of the methods of propagating and strengthening it was to discriminate the Arabic language and culture" (Sztubert 2011: 157).

During WW2, Turkey declared neutrality while maintaining close relations both with the Axis powers and the Allies, systematically striving for close relations with European countries. It was only in February 1945, in the final phase of the conflict when the fate of the Third Reich had practically already been decided, that Turkey entered the war on the side of the Allies (Cyr 2015: 226).

The post-war division of the world into two blocs forced Turkey to side with the western countries. Its relations with Western European countries constituted a continuation of the foreign policy concept left as a political testament of Atat rk. With the USA as the leader of the democratic world working closely with the Western European countries, Turkey's westernization relied not only on its co-operation with European countries, but also – quite naturally – with the leader of the bloc, namely the USA. Co-operation with this group of countries was the obvious counterweight, as well as an attempt to find a safety guarantee, against the aggressive politics of the USSR.

The European politics of Turkey at the turn of 20th/21st century

The post-war division of the world into two blocs forced Turkey to side with the western countries. Its relations with Western European countries constituted a continuation of the foreign policy concept left as a political testament of Atatürk. With the USA as the leader of the democratic world working closely with the Western European countries, Turkey's westernization relied not only on its co-operation with European countries, but also – quite naturally – with the leader of the bloc, namely the USA. Co-operation with this group of countries was the obvious counterweight, as well as an attempt to find a safety guarantee, against the aggressive politics of the USSR.

The disintegration of the two-bloc system was a great challenge to Turkish politicians, who feared that the disappearance of the main threat posed by the Soviet Union would contribute to the erosion of Turkish importance to Western countries. As a consequence, this new international situation could cause Turkey to become isolated, or even abandoned as a partner no longer needed in the region. Turkey could then feel estranged in the face of newly emerging problems related to unstable neighbourhood, conflicted young states in Caucasus and typically unpredictable countries in the Middle East. The first impression of such abandonment could certainly be caused by the refusal to bestow membership in the European Communities on Turkey in 1989 (Guvenc, Ozel 2012: 536).

It soon turned out that Turkey remains an important link for the safety of its hitherto allies in the newly shaping power system. During the First Gulf War (1990–1991), the USA and the coalition asked Turkey for help, and it provided access to its bases and airspace for the cause of fighting the regime of Saddam Hussain (Altunisik 2013: 160). Ankara seemed to have rebuilt its position as a significant partner for the Western world, however American support for Kurdish fighters in Iraq visibly concerned Turkish politicians, who – seeing that American priorities contradict Turkish interests and safety – began to distance themselves from the USA's activity in the region. During the 2003 invasion of Iraq, Turkey refused to support Americans due to its own national interest and negative experiences during the Gulf War. The Turkey-American alliance began to erode. At the same time, Turkish politics aligned with the position of the most important members of the EU, who criticized the American intervention in Iraq (Buhari 2009: 93).

It should be stressed that the 1990s were the period of the EU gaining independence in the international arena. The European countries which had

been allied with the USA for decades decided to emphasise their own role and position in the world and to create the Common Foreign and Security Policy within the EU. Seeing the rising importance of European countries and the EU's ambition to become a global player equal to the USA, Ankara set the path to full membership in the European structure to be the main goal of its foreign policy.

In order to achieve that goal, Ankara focused its efforts on signing the European Union Customs Union, which took its final shape in 1994 (Ambroziak 2014: 241–255). Initially, the implementation of this agreement was being blocked by Greece, however Brussels' guarantee to give the Republic of Cyprus the status of an EU candidate mitigated the Greek veto and the agreement came into force in 1995 (Agnantopoulos 2013: 73). As a result of the implementation of the Customs Union, the economic exchange between Turkey and EU countries rose sharply and EU Member States became the main trade partner for Turkey (Zajączkowski 2011: 70–88).

In 1998, when the European Council decided to start negotiating accession with the so-called Luxembourg group, including the Republic of Cyprus, the government in Ankara expressed its dissatisfaction and hinted at the possibility of abandoning its EU membership aspirations. Turkey's dissatisfaction had two causes. Firstly, as a potential EU Member State, Cyprus could block future integration between Turkey and the EU. Secondly, the EU started negotiating accession with countries which got their Associate status far later than Turkey did. EU politicians made it clear that their decision was made due to far more advanced reforms having been introduced by the countries invited to the negotiations, at the same time taking up efforts to appease their now worsened relations with Ankara. As a result, Turkey was granted the candidate status during the European Council summit in Helsinki in 1999. Further tensions between Brussels and Ankara happened after Cyprus being accepted into the EU during the great enlargement of 2004. Once again, Brussels decided to compensate for Turkey's political humiliation by announcing in December 2004 that Turkey had met the so-called Copenhagen criteria and a year later, accession negotiations began (Szymański 2011). However, 12 years on the negotiation process has noted no significant progress, mostly due to the bilateral conflict between Turkey and the Republic of Cyprus (Osiewicz 2015). 16 chapters have been opened up to this point, only one of which has been temporarily brought to a close. Nicosia keeps blocking the opening of new ones, demanding international recognition for itself by the Turkish

government and for the occupying forces to retreat from the north of the island².

The lack of solution to the Cyprus problem is not the only argument cited against Turkish accession to the EU. The recent wave of accessions has triggered *enlargement fatigue* in the society and among a number of European politicians, who identify them with the weakening cohesion of the EU. As if to confirm such impressions, the EU has undergone a financial crisis accompanied with a possibility of GREXIT. Strong nationalistic tendencies have emerged, negating the idea of deepening the European integration, which as a result led to the launch of the BREXIT process. The events following the great accession of 2004 contributed to the wave of scepticism towards that decision among the original 15 members, and thus towards further enlargement. The possibility of Turkey's accession triggers particularly negative emotions, with sceptics arguing that such a strong cultural and religious dissimilarity makes Turkey unfit to join the EU and its presence will portend a fatal end of the idea of European integration. Due to this fact, part of the EU politicians prepared a series of arguments to stand in the way of Turkey's accession, the most important ones, apart from the Cyprus problem, being: Ankara's admittance to Armenian genocide during WW1, respecting the rights of the Kurdish minority, solving the problem of the Aegean Sea delimitation between Greece and Turkey. Some countries, such as Austria and France, are considering a referendum regarding Turkey's accession to the EU, assuming (naturally) most of their societies' negative attitude towards the enlargement. The abovementioned arguments are, of course, making mainly unofficial appearances in the rethorics of European politicians. Officially, the obstacle on Ankara's path to the EU is still the country's unpreparedness for membership, and most of all lack of compliance with EU standars.

Successive assessments by the European Commission criticise Turkey for neglecting pro-European reforms, particularly as regards human rights and protection of minorities. According to Adam Szymański, the main objections include the use of torture and violence, infringing the freedom of speech, conscience and religion. Further objections concern the failure to comply with the rule of female and male equality and the freedom to participate in organisations (Szymański 2008: 73).

² Turkey does not recognise the Republic of Cyprus in the international arena. It does, however, recognise ausurpatory Turkish Republic of Northern Cyprus, where Turkish armed forces are deployed.

The recent opinions of the European Commission concerning Turkey's preparedness for accession as regards political criteria clearly indicated that the tempo of reforms is slowing down, especially in respect of the Kurdish issue. A moderate mark was awarded for the public administration reform, in which interference with the independence of jurisdiction was reproached. Turkey is hardly prepared to counteract corruption and organised crime. Failures to execute laws resultant from the European Convention of Human Rights and the jurisdiction of the European Court of Human Rights were also pointed out. In addition, the European Commission criticised Turkey's regress in freedom of speech and freedom of public meetings, especially the changes regarding the use of the Internet (blocking of content) and bringing action against journalists. Regarding economic criteria it was agreed that Turkish economy "presents advanced levels of preparedness and can be considered to be a fully capable market economy" (*Strategia* 2015). It is also well prepared to face competition and the market forces of the EU. However, the final assessment by the Commission stated that it was not ready for membership.

The negative opinions of the European Commission and the increasingly hostile attitudes of the European societies towards Turkey's potential accession contributed to the despondency of Turkish politicians towards further efforts to reform the country to fit the European standards. President Recep Tayyip Erdoğan clearly implied that EU membership was not the only alternative for Turkey's future, and his country could set different priorities and directions to strengthen Turkey's position in the region.

New directions in Turkish foreign Policy – an alternative to the European Direction?

Erdogan's declarations concerning the abandonment of the European direction and setting new priorities for Turkish foreign affairs did not appear out of nowhere. The disintegration of the two-bloc system and the emergence out of the rubbles of the USSR of new republics whose societies had been tied to the Ottoman influences created new opportunities for Ankara to build contacts. The disintegration of Yugoslavia and the emergence of new countries with Muslim societies was also interpreted as a chance to form new relationships in the region. In the first half of the 1990s the Turkish president, Turgut Ozal, and later the Prime Minister Sulejman Demirel propagated the idea of building a *Turkish world spreading from the Adriatic to the Great*

Wall of China (Tuysuzoglu 2014: 90). Ozal was convinced that Turkey could become a model of political and economic solutions to the countries formed after the disintegration of the USSR and their advisor on the subject of reform implementation (Aydin 2014: 385). That obviously implied greater involvement of Turkey in the Caucasus, Central Asia and the Balkans, and strengthen its international position, simultaneously emphasizing its importance for the western partners. Turkish politicians began to employ rhetorics describing Turkey as an Eurasian country, highlighting the importance of mutual cultural, religious and historical values which facilitated expanded co-operation in the region under Turkey's leadership. In the academic circles, this direction became known as neo-ottomanism, even though this term was not used by the politicians themselves, for fear of a negative response from the neighbours, who could consider such activities to be a sign of Turkish neo-imperialism.

When the 2002 parliamentary election was won by the Justice and Development Party (AKP), its leader, Erdogan, expressed his willingness to continue the pursuit of this direction in the country's foreign policy. Ahmet Davutoglu, the future Minister of Foreign Affairs and the Prime Minister of Turkey, became the main architect of the new doctrine of Turkish diplomacy known as the 'strategic depth'. According to Tomasz Stepniewski, "according to the doctrine, Turkey's foreign policy should be based upon two dimensions: historical and geographical. In the case of the historical dimension (...), Turkey should look back to the heritage of the Ottoman Empire. (...) The geographical dimension means that Turkey should consider the geopolitical conditions while constructing its foreign policy" (Stepniewski 2011: 45). Ankara began to emphasize that owing to its geopolitical location Turkey is not only a regional player, but is also destined to be the central country – a country placed in the middle of the world. Due to its location, the country can play a significant role in the Balkans, the Caucasus, the Middle East, Central Asia, the Gulf of Persia, the basin of the Mediterranean Sea, the Black Sea and the Caspian Sea – it is the strategic centre of Eurasia. According to Davutoglu, Turkey's politics has so far been narrowed down to close co-operation with the Western countries; Turkey limited itself and underappreciated the potential of its location (Yesilyurt, Akdevelioglu 2009: 40). Turkey allowed itself to become degraded to the role of a country used in the games of the great empires, used to promote the interests of other powers around it. The strategic depth was meant to be a new opening in Turkish foreign policy, which intended to realize its own interests and use its location to promote its own vision of shaping the

international environment as a regional and global power (Grigoriadis 2014: 161). The main element of Davutoğlu's doctrine was the rule of "zero problems with the neighbours", the realization of which was supposed to enforce the image of Turkey as a stable and predictable country, attractive to its neighbours and other partners. To achieve this, Turkey intended to use its *soft policy* attributes, that is to use its economic and cultural contacts in order to gain the strongest possible influence in its surroundings.

The decision to redefine the directions of Turkey's foreign policy coincided with the loosening of the country's ties with the USA and the EU. The decline of the contacts with Washington was due to the lack of support for the invasion of Iraq in 2003, while the regress in the contacts with Brussels happened in 2006, when the EU froze the accession negotiations due to the protests from Cyprus and France (Szymański 2011: 15). The worsening of these relations obviously meant that Turkey was abandoning those directions in its foreign policy and turning its back on the West. However, Davutoglu wanted to make the European and American politicians understand that Turkey was not "doomed" to only co-operate with them, but had other options available instead. The politician emphasized that "Turkey can be European in Europe and eastern in the East" (Gunay, Renda 2014: 53). Davutoglu's concepts were supported by Rother AKP-affiliated politicians, including the then president Gul, who stated that "Turkey is a modern Eurasian country, conjoining the East and the West, and which has been successful at combining the cultures and values of both civilizations. Our roots in Central Asia and interactions with the western world, which go centuries back, give us a unique position of full belonging to both continents at the same time" (Yanik 2011: 80).

When analyzing the effectiveness of the AKP rule in the first decade of the 21st century one can get the impression that the implementation of Davutoglu's doctrine is bringing Turkey nothing but success. The improvement of bilateral relations in the region together with a very good economic situation of the country has resulted in the improvement of Turkey's international position and it being perceived as a regional power. Within the framework of *soft power* and appealing to common history and culture Turkey initialized co-operation with post-soviet Turkmen republics of Central Asia. In 2010, the Council of Turkmen States' Co-operation was called into life, including – apart from Turkey – Azerbaijan, Turkmenistan, Kazakhstan, Kirgistan and Uzbekistan (Barrinha 2014: 175).

The relations with the Middle Eastern countries deserve particular attention, as due to permanent instability of the region Turkey used to

distance itself from them for long decades. Davutoglu emphasized that if Ankara wanted to be a respected player in the region, it had to abandon its politics to date. The architect of Turkish strategic depth claimed that “if Turkey does not assume an active role in the Middle East, the Middle East will become active in Turkey” (Yesilyurt, Akdevelioglu 2009: 41). As a result, the government in Ankara strengthened its relations with Syria, developing contacts both in the economic and military sphere. Relations with Iran have also become normalized, owing to which Turkey signed a number of contracts for hydrocarbon deliveries from that country. Iraq has become the most important trade partner, especially the autonomic region of Kurdistan in northern Iraq, where Turkey located numerous direct investments. The tightening of co-operation between Ankara, Baghdad and Damascus has contributed to the creation of the Councils of Strategic Co-operation, which – following the example of the European Union – were supposed to constitute a forum for consultations between the ministers of the three countries regarding working out solutions for problems in the region. Turkey has consistently tightened its bilateral relations, aiming at regional leadership at the same time. As a result of bilateral agreements with Syria, Libya, Yemen, Lebanon and Jordan, visa-free traffic was introduced in order to reinforce Turkey’s external image due to a greater number of visits to the country (Kuru 2015). In 2011, Ankara offered to sign the “Shamgen” agreement, which was supposed to mirror the European Schengen, creating regional visa-free traffic between Turkey, Iran, Iraq and Syria, with Yemen, Lebanon, Libya, Morocco and Tunisia to join in the future. These agreements were supposed to strengthen the economic co-operation in the region and facilitate the development of the tourism sector (Grigoriadis 2014: 166). It needs to be emphasized that the expansive role of Ankara in rebuilding the trust in the region and strengthening the co-operation between the Muslim countries of the Middle East was only possible due to its deteriorating relationship with Israel. Since 2009, Erdoğan had been expressing increasingly stronger criticism of Israeli politics towards Palestinian National Authority. The events around the 2010 Israeli attack on the Turkish Freedom fleet, carrying humanitarian aid for Palestinian citizens in the blocked Gaza Strip, became the culmination of the crisis in the relations between Ankara and Tel-Aviv (Marcou 2013: 2). According to Ankara, such deterioration predetermined Turks to overtaking the leadership of Islamic countries, as the proponents of improving the living conditions of Palestinians.

The Turkish politicians themselves, still reveling in economic and political successes to date, started openly aspiring to name their country as a rising

power. This self-evaluation further emanated through Erdoğan's new ambitious goals: to place in the top ten of the world's highest economically developed countries by 2023 and to rank as the second economy in Europe (after Germany) by 2050. The furthest-reaching goal was for Turkey to achieve the status of a global power within the upcoming decades (Barrinha 2014: 166).

The Arab Spring of late 2010 became a peculiar test for Turkey's ability to impact the region. The then Prime Minister Erdoğan engaged himself in solving the political problems in the countries of northern Africa and the Middle East, which were suffering from the revolutionary wave at the time. His activities were visible in Tunisia, Libya and Egypt, where he appeared as a leader of a democratic, modern and at the same time Muslim country which could become the model for laying constitutional foundations in those countries. Turkey began posing as the leader of Sunni Islam in the region, not only threatening the interests of Shia Tehran (Gürzel 2014), but also provoking the dislike of another important player, which was Saudi Arabia. Erdoğan was especially involved in Syria, where he supported the anti-government opposition, first demanding president Baszar al Asad to introduce reforms, and later to resign. Turkish politicians were hoping that owing to their support for the opposition and overthrowing the Asad regime they would with time be able to effectively influence the internal situation in Syria. It turned out, though, that Turkish ambitions clashed with the interests of Russia and Iran, which supported the dictator from Damascus (Onis 2014: 211). Another country whose internal situation Erdoğan got involved with was Egypt. Similarly, the Turkish leader called Mubarak to resign and after the overthrow he supported president Morsi, supported by the Muslim Brotherhood. And yet, Turkish operations in Egypt failed when after overthrowing Morsi power was seized by an anti-Turkish general Sisi, who became the new president, and the Muslim Brotherhood, which Erdoğan sympathised with, was delegatised. It became apparent that Turkey's "zero problems with the neighbours" policy could not be realised due to the instability of the international environment in the Middle East. Turkish ambitions to build a position of power clashed with the resistance of other players in the region.

The international events following the Arab Spring significantly overwhelmed the capabilities of Turkish foreign policy. Turkey had overestimated its position and its abilities to play the leading role in the region. In 2009 Turkey was hit by an economic crisis, its macroeconomic indicators worsened and economic growth slowed down. It occurred that

the Arab countries which underwent the Arab Spring were not interested in the Turkish model – Turkey was too much of a secular country for their liking (*Turkey's Role* 2013: 10). Arab countries were largely focusing their interests on the sources of the previous economic boom and the rising living standards in Turkey, instead of mirroring the political model of the Bosphorus country.

The fiasco of Turkish foreign policy in the Middle East has shown that Ankara was not prepared to handle the task which it wanted to perform in its environment. The decision to take up an active role in the internal affairs of its neighbours and to become involved in their domestic conflicts was very risky and as it turns out, based on insufficient, or in fact inadequate diagnosis of the situation. This only attests to the weakness of the staff and the lack of experience in assessing the middle-eastern policy by the members of AKP. Opening to closer contacts with the countries of the Middle East comes with enormous risks and requires exceptional political dexterity and experience in diplomacy which could handle the whirlwind of discordant political and religious interests of Muslim countries. According to Ahmet Kuru, “among 135 Turkish diplomats working in more than 20 Arab countries, only six could speak Arabic” (Kuru 2015: 102) during the Arab Spring. Ankara’s definitive overambitiousness with regard to its capabilities to influence the present international policy laid bare the weakness of Turkey, which became needlessly involved in the religious conflicts of the Middle East. One could risk stating that Turkey discredited itself and became a laughingstock in the international arena. Previously seen as a secular, stable and predictable country it has become a middle-eastern country, perceived as unstable, unpredictable and prone to generate conflicts and inhabited by a Muslim population. Turkey is obviously trying to save its international image in the region by making attempts at agreements with Russia and Iran. However, these can hardly be thought of as long-term due to the brittleness of the international system in the Middle East, resulting from civil wars, religious conflicts and ambitions of the other players in the Muslim world.

Conclusion – the perspectives for Turkey’s foreign orientation

Resignation, or perhaps temporary weakening of the pro-Western or pro-European direction in Turkey’s foreign policy under the lead of AKP has only brought losses for Ankara. Turkey has ceased to be perceived as a loyal partner by its allies to date, which was particularly visible when in

2014 it refused to co-operate with the USA at shaping a coalition against the so-called Islamic State. Americans accused Ankara of supporting the Al-Nusra Front, a jihadist organization associated with the Al-Kaida, which operated on the Syrian territory. There were even proposals to abandon the NATO base in Turkish Incirlik and open a new airbase in the Kurdish autonomy in Iraq (Park 2015: 581).

A particular expression of the lack of trust towards Turkey was the first international visit in Saudi Arabia and Israel by president Donald Trump in 2017. Trump's journey to the Middle East was a clear sign that the region is particularly important to the US politics, however the omission of Ankara and pointing to Saudi Arabia as the main American ally in the region may be interpreted as degradation of Turkey in the system of American middle-eastern connections. All the more given that Saudi Arabia, aspiring to the role of a regional power, is treated as a rival by the Turks, who compete with it for leadership of the Sunni Islamic world as well. Trump's visit to Israel, which is in conflict with Ankara, is just as symptomatic and can be understood as another "cheek" for Turkey. The search for regional counterweight in the shape of tightening the relationships between Ankara and Tehran may prove shortsighted and unpredictable. Even Ankara's politics to date, based on its getting closer to Iran, has already provoked criticism from the USA and its European allies fearing Iranian nuclear programme. If Iran created its own nuclear bomb, it would definitely disturb the brittle power balance in the region, which would leave Turkey very weak. It is then that the surroundings of Turkey would become extremely dangerous for the country's citizens. The more surprising Erdoğan's shortsighted decisions supporting waiving the sanctions against Iran.

Turkey distances itself increasingly from the NATO politics, simultaneously worsening its relations with the EU. Firstly, Turkey consciously "exported" the problem of middle-eastern refugees to Europe in 2015 when it stopped controlling its external borders and enabled the exodus of migrants from its territory to the EU. Knowing that refugees destabilize the political situation in numerous European countries, president Erdoğan decided to use that fact to force concessions upon Brussels. An agreement between the EU and Turkey was signed in March 2016, bringing the influx of refugees to Europe to a stop. In exchange, Turkey received financial aid, a promise of visa-free transit for its citizens moving to the EU territory and of renewing accession negotiations. The EU obliged to advance the process of visa liberalization for Turkish citizens after meeting the conditions of the European Commission. Initially, liberalization was scheduled for the end of June

2016, however due to failure to meet the criteria by Turkey visas have not been waived until the present moment. Moreover, the agreement presumed intensifying Turkey's accession process, which entailed opening the chapter concerning financial and budgetary rulings, with further chapters scheduled to open in near future. One has to remember, though, that by agreeing to Turkish demands, the EU emphasized that Ankara has to simultaneously implement and respect the fundamental rules of the European law.

Another element negatively affecting the EU-Turkey relationship was Erdoğan's critique towards European politicians for their failure to react and support during the coup d'état in July 2016. In his opinion, the West was disloyal towards Ankara. His anger with the position of European leaders was exacerbated when they criticized the steps taken by the Turkish government against the opposition when Erdoğan decided to use the failed coup d'état to dispose of his political opponents. It came to repressions and mass arrests of people associated with opposing the AKP. Reacting to this obvious violation of lawfulness and democratic rules, European politicians emphasized that such steps push Turkey further away from the EU and make further accession negotiations difficult, while at the same time precluding the waiver of visas for Turkish citizens. As a consequence, Erdoğan's rhetoric once again resorted to elements of blackmail when he threatened to renounce the agreement regarding the influx of refugees, intending to use it as a "demographic weapon".

The third element negatively affecting the relations between Turkey and the EU is Erdoğan's campaign motivated by his internal affairs and related to negating the 1923 Treaty of Lausanne, which established the external borders of Turkey. The policy of border revisionism violates the interests of one of EU Member States, namely Greece (setting aside the matter of Cyprus), questioning the Hellenic affinity of a number of Aegean Sea islands. This type of politics reminds Europe of the events preceding the Second World War, the great catastrophe in the history of humankind. It is true that Erdoğan uses revisionist slogans mostly in order to consolidate his own electorate in Turkey, however the dangerous international repercussions of his politics are difficult to predict. The revisionist slogans are certainly a tool of political games in the context of very unstable situation in Iraq and a possibility of its disintegration, bringing with it Turkish takeover of control over the oil-bearing region of Mosul, which according to Erdoğan should belong to Turkey.

Observing the current politics of Ankara it is important to say that from the European perspective Turkey is becoming an increasingly difficult,

unpredictable and problematic neighbour to the European Union. Erdoğan's decisions regarding external policy are increasingly difficult to understand and explain. It appears that Turkey does not have any long-term strategy of building relationships with its neighbourhood. Considering the support for his vision of presidential system, which the society expressed in the referendum, the president's authoritarian ambitions, restraining the freedom of speech and the role of the media, subduing the judicial system – all these elements suggest that Turkey is drifting away from its European allies-to-date. It befits more and more into the unpredictable middle-eastern environment, entangled into military and religious conflicts. Turkey's anti-European drift is particularly difficult to understand, as apart from the West, the other foreign political directions concern exceptionally unstable, conflict-prone areas. This applies not only to the Middle East and the Gulf, but also the countries of Caucasus and Central Asia, where Turkey will inadvertently have to compete against the reemerging expansive politics of Russia.

The vision of building its own power based on its geographical location and describing itself as a raw materials hub requires a stable neighbourhood as well. In order to perform such a role, one needs predictable suppliers and recipients. More than anything, one has to be perceived as stable, reliable and predictable partner – a characteristic which Turkey particularly lacks at the moment. Certainly, highly developed European countries may be the recipients of raw materials from Turkey, however it must be stressed that Ankara's exceptionality as an energy hub might be very short-term and limited. There is increasingly serious competition growing in this area, for instance the enormous deposits of hydrocarbons on the continental shelf of Israel.

It has to be emphasized that under the rule of the AKP Turkey drifted apart from the "European family", if it has ever belonged to it (Buhari 2009: 95). Ankara does not have any chances to join the European Union, this however should not cause the reaction of "being insulted" and "turning its back" on the West. Turkey and the EU are divided by a cultural gap, important to the processes of European integration. The very fact of Ankara naming itself a bridge between the East and the West suggests that the politicians from the Bosphorus area did not fully identify with the European heritage. Turkey is, however, closely tied to the EU by a customs union, both markets are tied together and complementary to each other. Turkey can remain a close EU partner without full accession, gaining a privileged status and using the relations to build its prestige among middle-eastern

countries. The anti-European drift, turning away from its only stable and predictable partner at the moment would have catastrophic consequences for Turkey in a longer perspective, especially considering the endless wars, crises and tensions in its eastern and southern surroundings.

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