



# **Romanian Journal of European Affairs**

**Vol. 16 No. 3  
September 2016**

# **Romanian Journal of European Affairs**

**Vol. 16, No. 3, September 2016**

**European Institute of Romania**

**Founding Director** - Nicolae Idu

**Director** - Gabriela Drăgan

**Editor-in-Chief** - Oana Mocanu

**Associate Editors** - Mihaela Moncea, Mihai Sebe, Eliza Vaș

## **Editorial Board**

Farhad Analoui – Professor in International Development and Human Resource Management, the Center for International Development, University of Bradford, UK

Daniel Dăianu – Professor, National School of Political Studies and Public Administration, Bucharest, former MEP, former Minister of Finance

Eugen Dijmărescu – Deposit Guarantee Fund Romania

Gabriela Drăgan – Director General of the European Institute of Romania, Professor, Academy of Economic Studies, Bucharest

Andras Inotai – Research Professor of the Institute of World Economics, Research Center for Economic and Regional Studies, Hungarian Academy of Sciences

Mugur Isărescu – Governor of the National Bank of Romania

Alan Mayhew – Jean Monnet Professor, Sussex European Institute

Costea Munteanu – Professor, Academy of Economic Studies, Bucharest

Jacques Pelkmans – Jan Tinbergen Chair, Director of the Department of European Economic Studies, College of Europe - Bruges

Andrei Pleșu – Rector of New Europe College, Bucharest, former Minister of Foreign Affairs, former Minister of Culture

Cristian Popa – Former Vice Governor of the National Bank of Romania

Tudorel Postolache – Member of the Romanian Academy

Helen Wallace – Emeritus Professor, European Institute, London School of Economics and Political Science, UK

© European Institute of Romania, 2016

*Romanian Journal of European Affairs* is published by the European Institute of Romania  
7-9, Regina Elisabeta Blvd., Bucharest, Code 030016, Romania

Tel: (+4021) 314 26 96, 314 26 97, Fax: (+4021) 314 26 66

E-mail: [rjea@ier.ro](mailto:rjea@ier.ro), Web: <http://rjea.ier.ro>

DTP and cover design: Monica Dumitrescu

Print: Alpha Media Print, <http://www.amprint.ro/>

ISSN print: 1582-8271

ISSN online: 1841-4273

## Contents

---

<b>How to Achieve National Goals in the European Union? Small State Strategy in Internal Security Integration .....</b>	<b>5</b>
Ramon Loik, Ketlin Jaani-Vihalem	
<b>Migrants, the EU and NGOs: The ‘Practice’ of Non-Governmental SAR Operations .....</b>	<b>20</b>
Daniela Irrera	
<b>The Europeanization of Political Parties in Montenegro .....</b>	<b>36</b>
Vladimir Vučković	
<b>EU-Russia Rivalry in the Balkans: Linkage, Leverage and Competition (The Case of Serbia) .....</b>	<b>56</b>
Galina A. Nelaeva, Andrey V. Semenov	
<b>European Provisions for the Protection of Dissenting Shareholders within the Framework of Cross-border Mergers .....</b>	<b>72</b>
Hamed Alavi, Tatsiana Khamichonak	
<b>Book Review: Werner Müller-Pelzer (ed.): <i>Europe Renaissance. Essaying European Civil Society – Europa-Renaissance. Die europäische Bürgergesellschaft auf dem Prüfstand, Göttingen: Cuvillier</i> .....</b>	<b>87</b>
Werner Müller-Pelzer	

## Guidelines for Authors

**Romanian Journal of European Affairs (RJEa)** is a quarterly publication, issued by the European Institute of Romania, which deals with a wide range of topics pertaining to the realm of European Affairs. Its articles focus on issues of significance in the EU today, such as: institutional building, economic and monetary affairs, internal market, energy, migration, security, neighbourhood policy, the effects of the European integration process on the new member states (with a particular focus on Romania), as well as the EU's relations with other global actors.

The recognition of RJEa's role in the European studies area has also been confirmed by its admission in several *international scientific databases*, such as: **ProQuest, EBSCO, SCOPUS, Index Copernicus, DOAJ, HeinOnline, Cabell's Directory, ICAAP** - International Consortium for the Advancement of Academic Publications, **Gesis, Open J-Gate** etc. The articles of the Romanian Journal of European Affairs are also indexed in World Affairs Online (WAO), accessible via the portal IREON. Since 2015 it is also included in **INFOBASE INDEX** and **CiteFactor**.

### We warmly welcome submission of articles or book reviews.

The articles (written in English or French) must have between **4,000 and 8,000 words**, followed by a **200-word abstract** in English, a very brief autobiographical note, keywords and [JEL](#) classification (if the case). Book reviews should be no longer than **2, 000 words**.

The articles will be presented in Microsoft Office Word format, Times New Roman, 12, at 1.5 lines, and will be sent to the address [rjea@ier.ro](mailto:rjea@ier.ro) mentioning "For RJEa". Oxford citation system is highly recommended.

Starting 2010, the submission of an article implies commitment from the author to comply with the copyright policy of the Romanian Journal of European Affairs. The **Copyright Agreement** is available online here: [http://www.ier.ro/documente/rjea\\_pdf/copyright\\_agreement\\_for\\_RJEa\\_articles.pdf](http://www.ier.ro/documente/rjea_pdf/copyright_agreement_for_RJEa_articles.pdf)

### Peer-review process:

Each article received for publication enters a thorough selection procedure before being accepted or rejected. All articles under analysis are made anonymous and handed over to two referees whose reports shall be synthesized by the editorial team and provide the basis for acceptance or rejection.

Within the evaluation procedure, there are several factors, both quantitative and qualitative, that are taken into consideration. The main selection criteria are: scientific excellence, originality, novelty and potential interest for the journal's audience.

The editors reserve the right to ask for changes, both in form and scope, to decide upon publication, to edit the articles or to modify/eliminate some fragments, observing the original sense.

For more general information on the journal, please visit <http://rjea.ier.ro> or contact us at [rjea@ier.ro](mailto:rjea@ier.ro).

# How to Achieve National Goals in the European Union? Small State Strategy in Internal Security Integration

**Ramon Loik, Ketlin Jaani-Vihalem<sup>1</sup>**

**Abstract:** *The Treaty of Lisbon brought about principal changes in the decision-making process of the European Union by forcing to abjure the intergovernmental approach and increasing the competencies of supranational institutions. Every member state in the EU has its national goals and preferences. Due to limited resources, the small Member States need to develop their strategies in certain ways for successful navigation between the institutions and regulatory frames, domestic factors and interests of other actors. The paper discusses on the bases of explanatory case studies that small states' efficiency in the process of EU internal security integration is mainly influenced by (i) coherent domestic political consensus, (ii) clear setting of strategic priorities and their multi-level use, (iii) professionalism and expertise of civil servants involved, (iv) appropriate timing and flexible negotiation skills to represent its interests.*

**Keywords:** *European Union, internal security, small state, decentralised agencies, governance*

---

## Introduction

The safety of contemporary society largely relies on the security cooperation functioning of ICT-solutions. Taking the Schengen area, the main information system (SIS), the visa information system (VIS) and the fingerprint database for asylum seekers (Eurodac) have been developed as necessary tools for European Union's (EU) level Justice and Home Affairs (JHA) cooperation in the Area of Freedom, Security and Justice (AFSJ). The compensatory measures and cooperation tools are developed, managed and implemented by cross-border JHA agencies.

---

<sup>1</sup> **Ramon Loik** is a *frm*. Advisor to the Estonian Minister of Defense and Vice-Rector of the Estonian Academy of Security Sciences (2010–15). He has also worked as a political advisor at the European Parliament (2004–7). He researches and supervises at the University of Tartu, Johan Skytte Institute of Political Studies and Estonian Academy of Security Sciences. He is a Member of the Research and Development Council of the Estonian Ministry of Defense (MoD) and was a National Voting Member of European Police College's (CEPOL) Governing Board. His main research areas include EU Justice and Home Affairs, the integration of transnational security communities and institutions, the Baltic security policy and the Europeanization of security provisions.

Corresponding E-mail: [ramon.loik@ut.ee](mailto:ramon.loik@ut.ee)

**Ketlin Jaani-Vihalem** is a Guest Lecturer at the Estonian Academy of Security Sciences, Institute of Internal Security. She holds University degrees in European Studies (University of Tartu) and Public Administration (Tallinn University of Technology). She has worked as a Chief of Department and Counsellor at the Estonian Ministry of the Interior (2007–15) in EU and international law enforcement cooperation affairs. Her main research areas include small states in transnational decision-making process and the professional formation of civil service.

The establishment of the EU internal security and law enforcement agencies, especially decentralised agencies<sup>2</sup> is not a linear process framed by unified standards. Since the agencies have been founded in different EU Member States (MS) in order to make the 'perception of the Union better' (European Commission, 2008), these agencies have become so-called subjects of political bargains. Thus, reaching the agreement to establish an agency in a certain MS means various negotiations and agreements to realize national interests. This kind of navigation process between EU institutions and different regulations also have a significant impact on the relationships between the actors involved.

The case used in this research – the establishment of the eu-Lisa agency (hereinafter the agency) in Tallinn, Estonia – included disputes on different levels and between various stakeholders in order to decide upon the Headquarters' country of location. In parallel, the disputes were conducted in the framework of preceding of the post-Lisbon legal basis, which brought about principal changes in the decision-making processes of the EU by forcing to abjure the intergovernmental approach and increasing the competencies of supranational institutions. Moreover, Estonia, a new and small Member State, as one of the candidate countries for the location, had to be capable of protecting its interests in the intergovernmental negotiations and negotiating with respect the logic and peculiarities of complex EU decision-making process.<sup>3</sup>

The paper is methodologically based on an explanatory study, aiming to get a detailed and deep understanding of a particular case (George and Bennett, 2005; Gerring 2005; Baxter and Jack, 2008; Dul and Hak, 2008; Flyvberg, 2011; Jaani-Vihalem and Loik, 2013). The empirical data was collected through expert interviews from Estonia and the EU institutions involved in the agency's establishment processes. In order to get information as versatile as possible, the experts were chosen according to a pattern in which all characteristic roles would be present, e.g. initiators, facilitators, decision makers and accomplices. In addition, relevant EU legal acts, studies analysing judicial and home affairs and regulations as basis for EU decision-making process were taken into consideration.

## **Context of Strategy Building**

### **Domestic Context**

Until the enforcement of the Treaty of Lisbon (TFEU), the setting of strategic and main competencies in EU JHA/AFSJ was mainly an intergovernmental matter (see European Supreme Council, 1999; Carrera and Guild, 2012: 2; Council of the European Union, 2004; Council of the European Union, 2009b). Composing the Stockholm Programme,

---

<sup>2</sup> *Decentralised agencies* are independent legal entities operating according to the public law of the EU and mainly fulfil some specific technical, scientific, operational and/or regulative tasks.

<sup>3</sup> Although there have been several researches carried out about the EU, which focus on defining the success or the extent of impact of small countries in cooperation (see, among others Beinartoviča, 2012; Golub, 2013; Lehtonen, 2009), but the focus has rarely been set on explaining the specialities of EU JHA.

and especially its operational part, was influenced by the soon to be enforced TFEU and the significant increased importance of supranational institutions. Since joining the EU in May 2004, the Republic of Estonia's government has stated principles and aims to rely on when considering the relationship activities with the EU. The outcome strategy document 'Estonia's European Union Policies' (EUPOL)<sup>4</sup> noted the most important political goals the government relies on dealing with the EU matters.

One of the most important aims of the first EUPOL was making the citizens more familiar with the EU issues and ensuring the citizens' safety and security (Government Office, 2004). The second EUPOL focused on improving the judicial and home affairs coordination by stimulating cross-border activities and cooperating with third countries (Government Office 2007: 31-36). It is important to note that widening the Schengen area of justice and commencing the use of SIS II and VIS were considered as priorities. Estonia's support of the establishment of an agency for ICT innovations, development and governance of EU JHA, and wish to put forward its candidacy as the country of location was highlighted (see Government Office 2009a, 2009b, 2010a, 2011a, 2011b, 2013). The question of location was principal to Estonia as an option to 'get closer' to Europe and ensuring its place in the EU. In addition, Estonia perceived a further perspective when applying to be the country of location; bringing the agency to Estonia would approve the business environment and international education development (Pomerants, 2013). In parallel, the importance of advancing Schengen cooperation, ensuring successful migration management and the need for the privacy protection were also prioritised.

When proceeding the EU legislation and related matters, the central role in Estonia was given to the governmental coordination body COB (Government Office, 2005: 27), which consisted of representatives from the Central Bank and all ministries. The COB was *de jure* managed by the Secretary of State (Riigi Teataja, 2005), but *de facto* by the Director of the Government's Office EU Secretariat. When establishing the agency both formal and informal decision-making processes were important. When shaping Estonia's positions on the legal basis of the agency national decision-making process had to be followed. At the same time, the discussions about Estonia being a possible location for the agency started long before the design of its legal basis (Lepassaar, 2013; Lilleväli, 2013; Pihl, 2013; Põllu, 2013). In spite of the proceedings' framework having been fixed, it cannot be said that shaping the positions had always run smoothly. The governmental positions were introduced and discussed at the COB meetings, approved by the Government and confirmed by the Parliamentary EU Affairs Committee, but the main bottlenecks appeared to be limited resources of time and civil servants.

## Issue Context

Initial ideas about the necessity of establishing the agency reach back to 2001 when the European Parliament drew the council's attention to the challenges of the Schengen

---

<sup>4</sup> The first similar was made for period 2004–2006, which was followed by documents covering longer periods, namely 2007–2011 and 2011–2015. European Union Secretariat (EUS), ministries and non-state organisations have contributed into composing the EUPOL document (Government Office 2011a).

information system (SIS) and suggested the creation of a special body that would be financed by the EU (European Parliament, 2001). A few years later, the Parliament made a similar suggestion (European Parliament, 2003). Both suggestions were then left unnoticed by the Member States who had authorised France to provide technical support for the establishment of the SIS and VIS (Official Journal of the European Union, 2000 and 2008). For this reason, the data management centre was established to Strasbourg, and servers were decided to be placed in Sankt Johann im Pongau, Austria.

The infrastructure of the SIS did not enable adding new users in 2001. This was one of the reasons why the Council assigned the Commission to develop a new version of the system (Official Journal of the European Union 2001, Article 2). The Commission's work was initially effortless and Member States' expenses on the development of the central system were growing. At the same time, the Commission tried to start VIS system, but the development was also not without obstacles (Lilleväli, 2013). The relations between the Commission and France had become intensive during this period of developments (Coelho, 2013). The situation was also complicated by the fact that developments of the system were innovated simultaneously with the elaboration of corresponding regulations.

A few years later, the dissatisfaction was such that the Council and the European Parliament decided to make a joint declaration in order to implement a SIS II and VIS (see Official Journal of the European Union, 2006, 2007, 2008a and 2008b). In this declaration, the Commission was asked to evaluate the influence of the detached agency to be established that would administrate the information systems and present proposals for corresponding legislative acts. According to the declaration, the agency had to commence its work at least five years after the adoption of the legal basis of the SIS II and VIS (European Commission, 2009c). Hence, the implementation of the joint measures was mainly the functional will of the Member States, which thus proved the domination of the inter-governmental approach at that time.

After the evaluation in June 2009, the Commission presented its suggestions for the legal basis of the agency (Commission of the European Union, 2009a and 2009b). Discussions about the legal basis began at the expert group level, dealing with the Schengen issues in September 2009. The following negotiations with the European Parliament lasted for almost two years. Estonia shaped its positions on the governmental level in July 2009 (Document Registry of the Government Office, 2009a). The Parliament approved those a few months later, in September 2009 (European Union Affairs Committee of the Riigikogu, 2011). The regulation of the agency was passed by the Council in September 2011 (Official Journal of the European Union, 2011), and the negotiations continued within the new legal framework.

## **Strategy Options for a Small EU Country**

### **Attributes of a Small Country**

One may agree that it is quite unrealistic for a small country to be equally involved in discussions concerning all spheres of politics, which is why a reasonable choice of topics (the most important for the country) has to be selected and only the spheres of consolidated

priority have to be mainly focused on. Increasing professionalism and ensuring continuity in every branch of politics are goals to move towards if a country wants to influence the decisions taken in the EU (Randma-Liiv, 2004: 110). The negotiations to find a location for the agency were carried out in a difficult bargaining situation. Estonia as a small EU country started to introduce its candidacy during the very early stage and tried to map the interests of other Member States as quickly as possible (Lepassaar 2013; Põllu, 2013). Since there was no doubt about France's capability to realise its interests, these efforts in turn gave better levers for the capability to bargain. The situation was even more sharpened by the lack of clear procedures regarding the making of an agreement on the agency's location.

Another important aspect to be considered is the financial capability to implement its goals. Diana Panke (2012) stresses that success in international negotiations often depends on the finances of the countries involved. Resources are also needed in order to have enough officials to proceed with the national interests. At the same time, a country also needs diplomats and experts at the negotiation. Hence, it is more difficult for smaller delegations to get a thorough overview of the interests of others, which in turn makes it more difficult to find suitable compromises. It does not necessarily mean that small countries cannot be successful in the process of negotiation if they set the consolidated priorities and carefully plan their resources (Panke, 2012: 316-317). Thus, a successful coordination system on a national level supports to achieve better results within the EU's decision-making process.

In order to influence the course of negotiations, small countries generally have the same arsenal of strategies to use that major countries have. According to Panke (2012, 319–22), those strategies involve causal, moral and legal convincing, (re-)framing, coalition-building, bargaining and value-claiming. The first three can be categorised as convincing strategies and the last three as bargaining strategies. Re-framing can be in either category. The causal convincing could lead to success if a small country has prioritised its interests and has thoroughly dealt with the interests of the sphere. Moral convincing is often effective if the arguments used in order to defend its interests emphasise its size (smallness) and thus express the likelihood of impartiality in the matter concerned. Legal convincing is used from the positions of excellent legal analyses.

### Inter-governmental Puzzle

Taking the liberal inter-governmental approach as a theoretical basis springs from an assumption that the main establishments of politics are rational countries (Moravcsik and Schimmelfennig, 2009: 68) and as EU security integration is mainly explained through the realisation of MS' security interests, one should recognize that governments strive to achieve their goals by negotiations and by using bargaining strategies. The EU here is rather composing a suitable framework for the Member States to coordinate their policies, and the MS are using the EU framework to realise their national interests. When choosing a suitable way of behaving, each Member State tries to find the most profitable solution at the time. Critics claim (Moravcsik and Schimmelfennig, 2009: 73; see also Bache and George, 2006) that the inter-governmental approach is focusing only on the broad changes

in which Member States have greater competence and thus the theory is insufficient to explain the every-day routines of the EU decision-making processes.

From the inter-governmental perspective, we should evaluate the decision making process through three principal levels, two of which have been derived from Putnam's (1988) *two-level game theory* – (1) shaping national interest(s); (2) international bargaining, and (3) protecting preferences inter-governmentally. In the international bargaining situation, countries normally strive to find the best compromise that would satisfy the parties. The capacity to bargain is in turn connected to the countries' levels of dependence on the result of the negotiation, and with how well they have been informed of the preferences of other countries. The countries not really connected with the result of the negotiation may not express readiness to cooperate and thus force the others to make some significant admissions.

At the same time, those who have been successful in finding out the preferences of the competitors can manipulate in order to protect their own interests. In case of the agency establishment, it was attempted to find common ground for the necessity. As experts described, people had to work hard until the final moment to convince Germany that the best solution is to establish such an agency and Germany should support it (Lilleväli, 2013). Still the Member States did not do that in solitude, the assistance of the institutions was significant, too (Tudorache, 2013). The latter could be explained by the fact that sometimes the cost of the negotiation may be un-proportionally high (Moravcsik and Schimmelfennig, 2009: 71) in terms of the time, human or financial resources related to desired result, etc. Federalists and neo-functionalists thus propose a solution, which would mean involving intermediate actors such as the European Commission which should guide the governments more optimally in reaching 'balanced' solutions.

On the other hand, the liberal inter-governmental view claims that the best regulators for the costs are the Member States themselves, because the existing information is available to the states and institutions, and thus upon making the decision the same grounds are relied on. Taking the establishment of the agency and the negotiation over its location as an example, the latter is valid. Estonia and France as negotiating counterparts were equally informed of the interests of other MS and about the readiness to support either one or the other candidate. Taking part in the negotiation process was not 'cheap' for either of the parties; it demanded finances, human resources and time, which probably neither of the sides would have been ready to delegate to a third party.

## **Strategy Implementation**

### **The Main Actors**

It was in 2007 when the establishment of the agency was initially discussed in Estonia (Lepassaar, 2013; Lilleväli and Põllu, 2009; Põllu, 2013). Having heard about the idea at an EU level meeting in Warsaw (2007), the Estonian minister of interior at the time asked diplomats of the ministry to find out more about the establishment of the agency and to analyse some options to present country's candidacy (Pihl, 2013). The outcomes indicated that Estonia's outlooks on becoming a candidate for the location is worth for advanced

working on the idea (Märtin, Adson, Jaani, Põllu, 2007; Põllu, 2013). Several initial consultations with the cabinet members were followed by a detailed discussion amongst officials. In addition to civil servants of MoI, representatives from the EU Secretariat of the Government Office and from MFA were involved (Põllu, 2013). The concept about the interests of Estonia and its implementation plan was finished by the summer 2008. The Cabinet ministers' approval was followed in consensus.

The candidacy conception was based on three main arguments – (i) There were no EU agencies in Estonia, (ii) Estonia's candidacy is supported by the country's positive IT-image, and (iii) according to the Council's decision made in 2003 (Council of the European Union, 2004) new EU agencies would be established in new Member States (Lilleväli, 2013; Põllu, 2013). The principles of the offer were described in detail (see Memorandum of the Government, 2008a); the expenses on realisation were evaluated, and in addition, a tangible value of the agency to the country was assessed. Putting up its candidacy was also in accordance with the Government's principle of proactivity in EU-related policies (Lepasaar, 2013). In addition, at that time Estonia did not have any goals as big or as worth striving for (Kotli, 2013), and the economic situation was generally approving. It is probable that a few years later Estonia would not have dared to think about such a competitive offer (Lepasaar, 2013) due to following period of economic recession.

From Estonia's perspective the decision adopted by the Council in 2003 (Lilleväli, 2013), positive IT-image (Põllu, 2013) and the adoption of qualified majority vote (Tudorache, 2013) should be highlighted as enabling aspects.<sup>5</sup> The main obstacles could have been Germany's hesitation about the necessity of the agency (Lilleväli, 2013; Põllu, 2013; Tudorache, 2013), the dilatory strategy of France at the negotiations on the location (Lilleväli, 2013; Pomerants, 2013; Põllu, 2013) and the co-decision procedure with the European Parliament. The mutual interests of MS had already been expressed in the joint declaration of the European Parliament and the Council and were added to the legal bases needed for the implementation of SIS II and VIS (Tudorache, 2013). By establishing the agency, the Member States expected to find a solution to their problems and thus general support from the Council become realistic.

In spite of the generally positive attitude about the necessity of the establishment of the agency, it took a lot of effort to convince Germany (Tudorache, 2013). The existent 'encumbrance' that had appeared at the establishment process of SIS and VIS tended to be adapted to the agency, too (Lilleväli, 2013; Tudorache, 2013), and it was the Commission's role to disprove those hesitations. For a certain time the process was held back by the France's dilatory strategy (Pomerants, 2013), which aim was to avoid looking for a compromise when considering the location. Being aware of the Council's decision from 2003, France took a position according to which establishing the agency did not mean founding a new one but customising an existing practice (Lilleväli, 2013; Põllu,

---

<sup>5</sup> Adapting qualified majority voting (QMV) at the Council was useful because of forming coalitions had become easier. Establishing the agency was also encouraged by the compromise between Estonia and France. The compromise seemed to be a balanced solution for the subjects of the process, for the Presidency, and for the other MS who finally did not have to 'take sides'.

2013; Council of the European Union, 2009a). As a result, France did not find it necessary for a long time to have consultations with Estonia, which prolonged the process.

As the general attitude among the Member States tended to be in favour of establishing a new agency for the ICT innovations, the process still became significantly more difficult by the co-decision process with the European Parliament after the enforcement of the TFEU. In spite of the Parliament's support for establishing the agency, its vision and expectations were different from those of the Council. Further disputes followed over defining the legal basis of the location and defining the countries allowed to be involved in the work of the agency (Coelho, 2013). These discussions also prolonged the process and finally forced the Council's decision.

### **Tactics of Negotiations**

When discussing the matters of the agency it was useful for the government to rely on the policy document defining country's EU policies (EUPOL 2007–11) and on the principles that coincided with Estonia's readiness to take on a more proactive role (Lepassaar, 2013). In a later phase, striving to become the location of the agency started to be a separate goal in the EUPOL and a priority when considering country's EU policy (Government Office, 2009a, 2009b, 2010a, 2010b). The matter of the agency had developed an important national goal and information about it was spread in different formats even though there was no formal obligation to do so. Nevertheless, partly depending on the experience gained from the agency the functions of the COB have been amended to some extent (Lepassaar, 2013). Among other things, a separate format for discussing and making decisions about important matters of the EU has been created – the so-called COB2, which consists of deputy secretary-generals of the ministries.

Estonia validated all its interests and options related to the agency by using a formal national decision-making process (Memorandum of the Government, 2008a and 2008b; Document Registry of the Government Office, 2009a, 2009b, 2010). The candidacy was not taken seriously in the beginning. This not because of Estonia's low efficiency but because of a rival who was too strong and 'beating the rival' was considered to be impossible by many (Kotli, 2013; Tudorache, 2013). Hence, Estonia started to look for coalition partners from amongst its neighbours and then widened the circle first among the so-called new Member States and then to the rest (Lepassaar, 2013; Lilleväli, 2013). When introducing its proposal for the candidacy a special international 'sales strategy' (The Ministry of Foreign Affairs, 2008) was relied upon. According to the strategy, the approach had to be broad-based, but it was adjusted when necessary (Lepassaar, 2013; Pomerants, 2013). Diplomatic representations in the EU MS (Kotli, 2013), members of the cabinet (Lilleväli, 2013, Põllu, 2013) and officials of the ministries of the interior and of the foreign affairs were involved (Lepassaar, 2013; Lilleväli, 2013; Põllu, 2013).

The quickly popularised nickname for the agency "IT Agency" was successfully linked with Estonia's positive IT-image, which was later, when putting up the candidacy, successfully used (Kuningas-Saagpakk, 2013; Lepassaar, 2013). In order to make this image strong and to compose Estonia's offer, additional consultations with Estonian experts of

the IT-sector were carried out (Pihl, 2013; Põllu, 2013). Thus, the wider audiences were involved and country was committed in cross-sectoral bases. It also appears that the country's positive IT-image brought success throughout the process (Lepassaar, 2013; Lilleväli, 2013; Põllu, 2013). This tendency was even more contributive when Estonia was introducing its candidacy and negotiating on the legal basis where country was more like an expert of IT domain.

The continuous 'lobbying' Estonia used with many opportunities, including causal convincing relying on the country's positive IT-image and emphasising the need to establish the agency as a centre of excellence, reflected the interests of all Member States (Lilleväli, 2013), and was thus successful. Due to these aspects, Estonia started to become more influential already before representing the legal basis. By making contacts with the representatives of the EU institutions and of the other MS, Estonia started introducing its vision of the role and functions of the agency and later expressed readiness to put up its candidacy for location (Lilleväli, 2013; Põllu, 2013).

In order to convince France about the credibility of the Estonia's candidacy, several meetings were organised (e.g. Ministry of the Interior, press release no 231, 2009), and media support was to be brought in, which later became irrelevant (Kuningas-Saagpakk, 2013; Põllu, 2013). Disputes over different solutions France offered as alternatives followed (Kuningas-Saagpakk, 2013; Põllu, 2013). Estonia's fortitude and willingness to settle on only one condition – headquarters in Tallinn, servers in Strasbourg – came as a big surprise for France (Kuningas-Saagpakk, 2013; Lepassaar, 2013). Meetings took place in most of the capitals of the member states of the EU (Kotli, 2013). Support for Estonia increased quickly, although the competition with France was generally seen as hopeless (Kotli, 2013). The strategy used was adjusted, for example, when the proximity of Russia as a great security risk appeared in the arguments of France (Kuningas-Saagpakk, 2013; Pihl, 2013; Põllu, 2013). The issue was discussed when possible at the EU Affairs committee of the Parliament (Aarma, 2013).

Still Estonia did not succeed in bringing the whole agency to Estonia (Lilleväli, 2013; Põllu, 2013). It was partly caused by some MS changing their orientation, which caused some agreements lose their validity at a certain time (Lilleväli, 2013). Looking for the compromise with France was inevitable (Lepassaar, 2013; Euobserver (2010). In the course of the negotiation with France, Estonia exploited the decision made by the Council in 2003 and thus expressed its legitimate expectation as a new MS state to set up its candidacy for the location (Lepassaar, 2013; Lilleväli, 2013; Põllu, 2013).

Transferring the whole agency to Strasbourg would have been opposed by many countries, including European Commission and European Parliament (Tudorache, 2013), because in this case the change brought about to the situation would have been of a questionable extent. Bringing the whole agency to Tallinn would probably have driven a wedge between Estonia and France and probably between Estonia and Austria, because the latter was also interested in maintaining the same situation, which meant back-up servers being in Austria, in Sankt Johann im Pongau (Põllu, 2013). At the same time it would have meant additional financial load on Estonian government (Põllu, 2013), which would have been very complicated to publicly explain during the financial crisis.

Usually countries have several positions in international negotiations, for example positions to withdraw. Estonia did not have anything like that because making compromises was the last opportunity to reach the goal. It could be claimed that Estonia did not take the position of a neutral dealer, as Panke (2012) had suggested for small countries. Instead it can be said that Estonia proved its capability of being an equal partner, whose interests had to be considered by major Member States, too. Value was claimed by both parties as France was interested in assuring its position and employment in Strasbourg (Coelho, 2013), Estonia wanted to come closer to Europe and improve its international environment (Pomerants, 2013). As a result, France made a point of its prior experience and practice in maintaining SIS II and VIS. The compromise the countries made (see Estonian Ministry of the Interior, Press Release No 97, 2010; Presidency, 2010) was probably as equitable as it could have been in particular case.

## Conclusions

It is quite common to assume that the options for a small country and new Member State to stand for its interests in international arena are quite limited or moderate compared to major ones. The current explanatory case study reflected a sign of certain patterns of behaviour being profitable for a small country to achieve its strategic goals in the EU's security governance system. The case demonstrated that inter-governmental logic dominated during the process but supranational institutions such as the European Parliament were also important actors as mediators and context providers for the final decision. Negotiations over the agency's location and the adoption of the legal basis were all to take place after the TFEU had come into force.

Until the Lisbon amendments, the whole process could be described as inter-governmental. According to liberal inter-governmental approach it could be concluded that the Member States perceived the new decision making process as a tool to reach their common goals at lower costs. The enforcement of the TFEU changed the balance of powers within the decision-making process. Previous attempts of the European Parliament to get support for establishing a separate agency had no results because the majority of the Member States had not seen it necessary enough. After the direct expenses had become un-proportionally high and obstacles to extend the Schengen area had appeared, the Member States were finally ready to agree about further joint measures.

The pre-TFEU decision-making process had also intended to discuss the legal basis of the agency with the European Parliament, but according to Lisbon amendments had to be proceeded considering the whole package, including the issue of agency's location. The TFEU limited the power of single Member States and proposed some advantages to the European Parliament. Thus, the establishment of the agency was literally dependent on the approval of the Parliament, and the Council was finally pressed to accept the Parliament's amendments. For approval, the compromise between Estonia and France had to attend interpellation sessions and convince the Parliament about the positive impact of the decentralised location. Estonia also had to explain and reason the cost-effectiveness of establishing the agency's Headquarters in its capital.

The disputes over the location on the Council's level followed the logic of the inter-governmental approach, as expected. Germany's initial opposition regarding the establishment of new agencies significantly hampered the negotiations on a legal basis. Estonia, France and Austria had nationally shaped their interests considering the location of the agency and started to realise their goals in the cooperation framework of the EU, using cross-national negotiations and coalition building; getting support from other Member States became vital. Domestically, the whole process could be characterised as broad-based involvement from Estonia's perspective. Officials cooperated with different offices and institutions as well as with the private sector. In order to get support for its position a thorough 'tour of capitals' was carried out and on their foreign visits the Prime Minister and the President of the Republic of Estonia included the issue into their agendas.

The main arguments pro Estonia's candidacy had been chosen carefully and were difficult to contradict: Estonia wished to put up its candidacy because it has no EU agencies by that time. The candidacy was in accordance with the decision made by the Council in 2003, and using its positive IT-image Estonia wished to contribute good conditions for the agency. The content of Estonia's offer and at least the first two arguments finally turned out to point in its favour when disputing over the final decision.

Negotiations on the location appeared to become quite classical example of bargaining. At first, the interested parts tried to form coalitions and used their power to direct forthcoming negotiations in most suitable way. In the bargaining situation, both parties tried to convince their counterpart about the advantages of their own offer. Willingness for compromises could bring success. Although Estonia had grown its support group significantly, it decided to go for a compromise. Finding a compromise with France presented Estonia as a Member State who is ready to make concessions in order to achieve a mutual goal. Hence, one may conclude that success could be granted if a small country does not focus only on its self-interest, but makes extra efforts to find a common ground. Thus, bargaining as a tactic serves the interests of small countries if they want to express themselves as rather neutral dealers.

One may also learn that when defending its interest, the first call normally has some advantage to realise its will. Appropriate timing may be more important than usually considered to be. A national political consolidation about the strategic goals and concentration of resources for implementation is an especially important feature in achieving the interest. For a small country, it is challenging to deal with several priorities at the same time, especially if it requires great expenses. The case study demonstrated that a coherent domestic political consensus, clear setting of strategic priorities and their coordinated multi-level use, *Europeanized* professional expertise of civil servants, appropriate timing and flexible negotiation skills to represent its interests with openness to find a compromise can bring success for a small and new Member State within the security governance system of the EU.

## REFERENCES

- Aarma, O. (2013). Expert Interview (14.02.2013).
- Apap, J. (2004). *Problems and Solutions for New Member States in Implementing the JHA Acquis*. In: Justice and Home Affairs, CEPS Working Documents.
- Bache, I. and George, S. (2006). *Politics in the European Union*, 2<sup>nd</sup> ed., United States: Oxford University Press.
- Baxter, P. and Jack, S. (2008). *Qualitative Case Study Methodology: Study design and implementation for novice researchers*. In: The Qualitative Report, Vol. 13, No 4, pp. 544–559.
- Beinaroviča, O. (2012). *Could small Member State as Latvia potentially exercise power in the EU decision-making at the EU Council's level?* Latvian Institute of International Affairs.
- Cabinet Memorandum (2008a). *Euroopa Liidu sisejulgeoleku IT-süsteemide agentuur* [IT–Agency of EU Internal Security]. Estonian Government, Tallinn.
- Cabinet Memorandum (2008b). *Euroopa Liidu justiits- ja siseküsimumuste IT-süsteemide agentuur* [IT–Agency of EU JHA]. Estonian Government, Tallinn.
- Carrera, S. and Guild, E. (2012). *Does the Stockholm Programme matter? The Struggles over Ownership of AFSJ Multiannual Programming*. In: CEPS Paper in Liberty and Security in Europe. No 51.
- Council (1999). *Presidency Conclusions*. Tampere.
- Council (2004). No 16054/04 JAI 559.
- Council (2007). *Addendum to draft minutes*. 2807<sup>th</sup> meeting of the Council of the European Union (Justice and Home Affairs), held in Luxembourg on 12 and 13 June 2007 (13.09.2007).
- Council (2009a). *Legislative package establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice– Location of the seat of the Agency. Comments from the French Delegation*. Council Secretariat, Brussels.
- Council (2009b). No 17024/09 CO EUR-PREP 3 JAI 896.
- Coelho, C. (2013). Expert Interview (11.02.2013).
- Council of the European Union. (2004). *Presidency Conclusions of the Brussels European Council 12 and 13 December 2003* (05.02.2004).
- Dul, J. and Hak, T. (2008). *Case Study Methodology in Business Research*. Oxford: Butterworth-Heinemann.
- EUobserver (2010). *Estonia looking for 'peaceful' solution with France on IT agency*. Available <http://euobserver.com/justice/30994> (21.10.2012).
- European Commission (2008). COM (2008) 135 final (11.03.2008).
- European Commission (2009a). COM (2009) 293 final (24.06.2009).

- European Commission (2009b). COM (2009) 294 final (24.06.2009).
- European Commission (2009c). COM (2009) 292 (24.6.2009).
- Estonian Legislation (2003). RT I 2003, 24, 148. Redaction RT I 2007, 44, 316.
- Estonian Legislation (2005). *Euroopa Liidu koordineerimiskogu moodustamine* [Establishment of EU Coordinating Unit] Regulation of Government No 149 (14.03.2005).
- Estonian Ministry of the Interior (2009). Press Release No 231.
- Estonian Ministry of the Interior (2010). Press Release No 97.
- European Legislation (1987). *Single European Act*. OJ L 169.
- European Legislation (1992). *Treaty on the European Union*. C 191.
- European Legislation (2000a). *Convention implementing the Schengen agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*. L 239.
- European Legislation (2000b). *The Schengen Acquis – Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*. OJ L 239.
- European Legislation (2001). No 2424/2001, L328/4.
- European Legislation (2006). No 1987/2006, L381.
- European Legislation (2007). No 2007/533, L 205.
- European Legislation (2008a). No 767/2008, L218/60.
- European Legislation (2008b). No 2008/633, L218/129.
- European Legislation (2010). *Treaty on the Functioning of the European Union*, No C83.
- European Legislation (2011). No 1077/2011, L 286.
- European Parliament. (2001). *Report on crossing external borders and the development of Schengen cooperation*. Final A5-0233/2001.
- European Parliament. (2003). *Report with a proposal for a European Parliament recommendation to the Council on the second-generation Schengen information system (SIS II)*. Final A5-0398/2003.
- Flyvbjerg, B. (2011). *Case Study*. In: Norman K. Denzin and Yvonna S. Lincoln, (Eds.), *The Sage Handbook of Qualitative Research*, 4<sup>th</sup> Edition. Thousand Oaks, CA: Sage, pp. 311–13.
- George, A. L. and Bennett, A. (2005). *Case studies and theory development in the social sciences*. London: MIT Press.
- Gerring, J. (2005). *Case Study Research*. New York: Cambridge University Press.
- Golub, J. (2013). *Far from dominating EU decision-making, France and Germany are among the least successful EU states at negotiating legislation and budget contributions*. European Politics and Policy.

- Government Office (1995). RT I 1995, 94, 1628. Redaction 18.02.2007.
- Government Office (2004). *Estonian EU Policy 2004–2006*. Government of Estonia, Tallinn.
- Government Office (2007). *Estonian EU Policy 2007–2011*. Government of Estonia, Tallinn.
- Government Office (2009a). *Valitsuse eesmärgid Euroopa Liidus Tšehhi eesistumisperioodil* [Governmental Goals for the Period of Czech Republic's EU Presidency]. Government of Estonia, Tallinn.
- Government Office (2009b). *Valitsuse eesmärgid Euroopa Liidus Rootsi eesistumisperioodil* [Governmental Goals for the Period of Swedish EU Presidency]. Government of Estonia, Tallinn.
- Government Office (2010a). *Valitsuse eesmärgid Euroopa Liidus Hispaania eesistumisperioodil* [Governmental Goals for the Period of Spanish EU Presidency]. Government of Estonia, Tallinn.
- Government Office (2010b). *Valitsuse eesmärgid Euroopa Liidus Belgia eesistumisperioodil* [Governmental Goals for the Period of Belgian EU Presidency]. Government of Estonia, Tallinn.
- Government Office (2011a). *Estonian EU Policy 2011–2015*. Government of Estonia, Tallinn.
- Government Office (2011b). *ANNEX 1. Activity Goals of Estonian EU Policy 2011–2015*. Government of Estonia, Tallinn.
- Government Office Documents (2009a). Protocol No 32. Government of Estonia, Tallinn.
- Government Office Documents (2009b). *Eesti kandideerimine Euroopa Liidu õiguse, vabaduse ja turvalisuse valdkonna suuremahuliste IT-süsteemide operatiivjuhtimise ameti asukohamaaks*. [Estonian Candidacy for Country of Location of the IT–Agency of EU JHA]. Government of Estonia, Tallinn.
- Government Office Documents (2010). *Eesti pakkumine kandideerimisel asukohamaaks Euroopa Liidu ametile õiguse, vabaduse ja turvalisuse valdkonna suuremahuliste IT-süsteemide operatiivjuhtimiseks* [Estonian Offer for Country of Location Candidacy of the IT–Agency of EU JHA]. Government of Estonia, Tallinn.
- Government Office Website (2012). *Eesti EL eesmärgid ja poliitika* [Goals of Estonian EU Policy]. Government of Estonia, Tallinn.
- Government Office Website (2013a). *Eesti Euroopa Liidu poliitika 2007–2011* [Estonian EU Policy 2007–2011]. Government of Estonia, Tallinn.
- Government Office Website (2013b). *Valitsuse eesmärgid Euroopa Liidus eesistumisperioodiks 2004–2011*. [Governmental Goals for the Period of EU Presidencies 2004–2011]. Government of Estonia, Tallinn.
- Guild, E. and Carrera, S. (2010). *The European Union's area of Freedom, Security and Justice ten years on*. In: Justice and Home Affairs, CEPS Paperbacks.

- Jaani-Vihalem, K. and Loik, R. (2013). Small State Performance in the EU Decision Making Process: Case of the IT-Agency Establishment to Estonia. *Proceedings of the Estonian Academy of Security Sciences*, No 12, pp. 13–59.
- Kotli, A. (2013). Expert Interview (11.02.2013).
- Kuningas-Saagpakk, C. (2013). Expert Interview (12.02.2013).
- Lehtonen, T. (2009). *Small States – Big Negotiations Decision-Making Rules and Small State Influence in EU Treaty Negotiations*. European University Institute.
- Lepasaar, J. (2013). Expert Interview (30.01.2013).
- Lilleväli, P. and Põllu, K. (2011). *IT-agentuuri toomine Eestisse*. Civil Service Yearbook 2010. Ministry of Finance, Tallinn.
- Lilleväli, Piret. (2013). Expert Interview (25.01.2013 and 31.01.2013).
- Moravcsik, A. and Schimmelfennig, F. (2009). Liberal Intergovernmentalism. In: Wiener, Antje and Diez, Thomas (Ed.) *European Integrations Theory*. New York: Campus.
- Märtin, H., Adson, T., Põllu, K. ja Jaani, K. (2008). *SIS II MEMO* (07.04.2008). Ministry of the Interior, Tallinn.
- Panke, D. (2012). *Dwarfs in international negotiations: how small states take their voices heard*. Cambridge Review of International Affairs. Vol 25(3).
- Pihl, J. (2013). Expert Interview (08.02.2013).
- Pomerants, M. (2013). Expert Interview (30.01.2013).
- Presidency (2010). Document No 16658/10.
- Putnam, R. (1988). Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization*, Vol 42(3).
- Põllu, K. (2013). Expert Interview (10.01.2013).
- Randma-Liiv, T. (2004). *Euroopa Liiduga ühinemise väljakutsed Eesti avalikule haldusele* [EU Membership Challenges for Estonian Public Management]. Riigikogu Toimetised RiTo, Vol 9, pp. 109–116.
- Särglepp, M. (2013). Expert Interview (29.01.2013).
- Tudorache, I.–D. (2013). Expert Interview (06.03.2013).
- Vos, J. (2010). *Police cooperation on an EU-wide level 1998–2010. Developments and Challenges*. In: Justice and Home Affairs, CEPS Paperbacks.

## Migrants, the EU and NGOs: The 'Practice' of Non-Governmental SAR Operations

**Daniela Irrera<sup>1</sup>**

**Abstract<sup>2</sup>:** *Migration issues are dominating current debates at all levels. The perception of migrants as a threat quite often prevails over the human dimension and is associated to the immediate emergency management phase, particularly in respect of recent developments in the Mediterranean. The analysis of the roles of NGOs, a combination of traditional assistance to development and social integration and more active interventions i.e. Search and rescue operation in the Mediterranean may offer some interesting insights. The paper is a preliminary analysis of such trends, and is enriched by the results of an expert survey research on the performance of Mare Nostrum and its capacity to manage the crisis. There are three major considerations consisting in an assessment of the literature on the role played by NGOs in EU migration policies, an analysis of the use of SAR by different actors, including the non-governmental, in order to investigate the impact on the management of the crisis and finally empirical data which are used to assess current trends and raise future perspectives.*

**Keywords:** *European Union, NGOs, member States, migrants, search and rescue operations*

---

Migration issues are currently dominating government agendas, public opinion and academic considerations. The need to guarantee the security of EU borders by Member States and to ensure legitimate cross-border mobility on the one hand, and the urgency to foster irregular migration and human trafficking, on the other, has produced differing institutional experiments and political innovations which have been extensively tested and debated. However, in the face of contemporary events this ambitious balance has demonstrated its structural weaknesses. Thus, the security paradigm, which conceives migrants as a threat, seems to prevail over the legal obligations which impose the protection

---

<sup>1</sup> **Daniela Irrera** is Associate Professor of Political Science and IR, University of Catania. She has been Visiting Fellow in several Universities and Institutes, in Europe, US and Asia. She has been recently awarded with a DAAD Fellowship at the Peace Research Institute Frankfurt and Visiting Fellowship at the EU Center of Excellence, University of Alberta. She is part of several research projects funded by the EU under Jean Monnet Action, Lifelong Learning Programme, and Horizon 2020. She is currently working as a team member of the H2020 TransCrisis project, focusing on the issue of 'Managing Immigration Crisis' ([www.transcrisis.eu](http://www.transcrisis.eu)). She has published in the areas of International Relations and EU politics, dealing with global terrorism, transnational organized crime, civil society and humanitarian affairs. E-mail: [dirrera@unict.it](mailto:dirrera@unict.it).

<sup>2</sup> A preliminary version of this article was presented at the European Union Centre of Excellence at the University of Alberta, where the author was short-term visiting scholar. The author would like to thank Lori Thorlakson for her insightful conversations.

of human beings, particularly in respect of recent developments in the Mediterranean. An analysis of the roles of civil society organisations, particularly NGOs, a combination of traditional assistance to development and social integration and active interventions offer some interesting insights.

The article is a pilot analysis of such trends, and aims at answering the following questions: is there an impact NGOs can exert on a Member state and at the EU level? If so, is this impact able to produce long-term and established practices beyond the emergency phase? Are NGOs search and rescue (SAR) operations at sea becoming a kind of civilian practice to be associated to governmental ones?

The empirical part of this article is based on the results of an expert survey research conducted by researchers of the University of Catania within the FIR2014 project on the performance of Mare Nostrum and its capacity to manage the crisis<sup>3</sup>. The theoretical framework, developed within the project, is particular relevant to understanding NGOs actions within EU development. Attinà states that the process that has led to the present EU crisis management can be traced by using four scenarios that followed one another in the time period between 2011-2015 up to the present day (Attinà, 2015b). In the first scenario (2011-2013), the response is conventional, that is to say, based on the lack of recognition of a threat and a need to change the existing EU policy towards migration. This policy is represented by the Commission's 2011 Communication *Global Approach to Migration and Mobility* (GAMM), approved by the Council. The second (Oct. 2013-Oct. 2014) is marked by the launch of the Mare Nostrum operation, as an Italian initiative, to manage and assist the humanitarian rescue of migrants in distress at sea. Attinà calls the third scenario (Nov. 2014-Sept. 2015) the EU Turn, because a more comprehensive approach is adopted by the EU, through the end of the Mare Nostrum and the launch of the Triton mission, together with a structured set of SAR tools and tasks. The last (Oct. 2015 to present) is a return back to the protection of external borders and the reintroduction of controls, or a Fencing Europe. The approach shown by NGOs followed this development and was particularly visible and relevant in the third scenario, through the direct management of SAR.

The article analyses such development into three parts. Firstly, civil society organisations, and specifically NGOs, are analysed within the theoretical studies on migration, in order to stress their roles and approaches and understand their relevance in such an analysis. Secondly, the influence and the impact exerted by NGOs on EU migration policies are explored. A special focus is devoted to the recent use of SAR operations at sea by NGOs to rescue people in the Mediterranean. It is based on the assumption that operations directly run by NGOs represented a complementary tool to the governmental one and, in some periods, contributed to filling the gap opened up by the lack of EU intervention. Therefore, their use has the potentiality to become more than a temporary solution and constitutes an innovative and consolidated practice of 'non-

---

<sup>3</sup> The **research** is supported by two projects held at the Department of Political and Social Sciences of the University of Catania, namely the Project 4.2 "Managing the immigration crisis" of TransCrisis, funded by the EU Horizon 2020 programme, and the Project "Military Humanitarian Operation at a Crossroad? The Mare Nostrum Operation" funded by the University of Catania FIR2014 programme.

governmental SAR operations'. Lastly, empirical data, taken from the abovementioned survey, are used to assess the perception of such a practice and to discuss its political and social legitimation.

### **1. The Civil society, NGOs and migration studies**

In the contemporary era, migration debates dominate government agendas, public consciousness and academic discussions. Globalisations, as well as economic, social and demographic inequalities are factors which increase mobility and accelerate international migratory movements. Additionally, the formation of regional and supranational institutions is transforming national borders into something to be adapted to the new conditions. However, a noticeable paradox has been manifesting in recent times. The increasing porosity of state borders all over the world is producing, at the same time, the simultaneous tightening of national borders in respect to the movement of human beings. Masses of people are forced to escape, because of local conditions, as in the political failure of some states (Libya, Eritrea) or institutional instability (Tunisia), civil war (Syria) and the effects of organised smuggling activities. Whilst international migration is by no means a recent phenomenon, the discourse surrounding contemporary patterns, and the effects of economic crises, the unexpected amount of people crossing the Mediterranean or the Balkans and the fear of ISIS infiltration, has become increasingly concerned with its relation to security questions, especially after 9/11.

The more recent events occurring in the Mediterranean as well as in the Balkan region are demonstrating that Europe is, undoubtedly, a region of immigration and this has political implications. It is clear that the issue of external migration represents a political test for the EU and its values, *"a test to assess [the] EU's practical adherence to its founding values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights"* (Marin, 2001, p.470).

As a result of the abovementioned considerations, immigrants, asylum seekers and refugees are at the core of public debates, policy-makers' speeches and academic reflections and the security paradigm appears dominant. Next to a traditional policy approach which emphasizes asylum as a human rights question and which proposes human rights instruments in dealing with the question, migrants are more frequently framed as a security problem, in terms of lives to save and rescue, while political refugees are to be protected and asylum seekers are to be managed and integrated into European societies.

The security paradigm directly concerns migration studies. The identification of threats is essential in order to structure political integration and provide criteria for membership in a specific community. According to Bigo, security practices permeate the whole community's way of life by shaping a potential response to an existential threat. The community defines what corresponds to a good life and what should be considered as part of societal danger such as the criminal, the diverse and the invading enemy. Therefore, political discourse and security practices are legitimated through their capacity to stimulate people to contract into a political community and to ground political authority on the

basis of reifying dangers (Huysmans, 2000; Bigo, 2011). In the case of the EU, member states community practices and policies have been designed over the years through the integration process and the building up of a common European security culture. The more recent events have contributed, however, to amplify divergent views and to fragment the constellation of actors, norms and approaches, shifting the focus from the need of integrating people to the need of managing the emergency of migration 'waves'.

This article aims at contributing to the current debate, by focusing on the impact of civil society organisations and NGOs in respect of migrants' emergencies. It offers a preliminary reflection of the state of the art of the scholarly debate at EU level, which is relevant to the understanding of the approach towards the phenomenon of the 'boat people' in the Mediterranean.

Civil society organisations, and particularly the more structured NGOs, have played a pivotal role over the years in the assistance of migrants at all levels. It is true in fact that an investigation of their roles may appear quite repetitive. The position of civil society as a factor in the contestation, change, or integration of public policies on immigration is already part of the scholarly debate (among others Geddes, 2003). However, as prominent scholars in the field have observed, civil society activities with respect to service provision has not yet been adequately explored at the local level, and neither from a more comparative angle (Ambrosini, 2013b). Moreover, the events in the Mediterranean are changing such roles as well, producing a combination of traditional assistance to development and social integration and more active interventions i.e. the action of SAR boats run by NGOs. Therefore, the analysis of this increasing and unusual combination and its implication on migration policies at member states and EU level may offer some interesting insights.

This debate can be included into the broader and controversial issue of civil society engagement in political participation, representation, and democratization of the decision-making processes, at state, regional and international organizations level. Also, it cannot avoid a specific emphasis on NGOs, which do not represent civil society as a whole, but are those actors which have structured a dialogue with political power (Irrera, 2013). The major contribution of the analysis of NGOs role in migration studies are inevitably influenced by these preliminary considerations and can be summarised into three main sub-topics: firstly, their impact on policies (local, national, European); secondly, the inputs provided through development programmes and thirdly, their efforts in promoting the return of migrants.

As far as the first is concerned, scholars have observed that in addition, and/or sometimes in reaction, to state policies towards the needs of migrants, civil society has responded in very different ways, producing various forms of support, aid, and supply of essential services (Fernandez-Kelly, 2012).

Although it is sometimes remarked that NGOs may often outstep the state directly or indirectly in the provision of essential services and basic rights, there is very little empirical data on the kinds of services NGOs in reality offer to immigrants that are not eligible for certain state-funded services and how they do so in different settings. In other words, one

cannot take for granted that NGOs always support migrants' policies, as many studies seem to suggest. Some NGOs and social movements instead oppose pro-migrant policies and argue against the granting of social rights to irregular migration. Thus, civil society organizations more or less openly play a role in the support of immigrants who live in legal ambiguity or, in other cases, in protesting against their admission and settlement (Ambrosini & van der Leun, 2015).

Another aspect concerns the limitations that NGOs themselves may confront and the condition in which they are allowed to operate. Local governments have to align with state policies, but at the same time they face effective issues of residing populations. If certain services are not granted to people in need, insecurity can rise, the sense of discrimination of minorities could be increased and the moral legitimacy of public institutions can be weakened, that is their capacity to obtain the loyalty of citizens as bearers and defenders of basic human rights. At the end of the day, the exclusion of a part of the migrant population may lead to major problems for local authorities. Therefore, local authorities often try to provide necessary services, not directly, but by delegating these tasks to NGOs or by indirectly facilitating or funding their activities. In the specific case of EU humanitarian action, for example, the relations with NGOs have been strongly developed over the years through the aid programme and within ECHO activities. At the same, they have developed and strengthened direct relations with member states, in a more or less coordinated manner (Irrera, 2014).

As for the relationship between migration and development, it is widely acknowledged that, through transnational activities such as the sending of remittances, migrants make significant contributions to the development of their countries of origin. Co-development policy is aimed at controlling migration and regulating the established tradition of the transnational involvement of immigrants, by stimulating the transfer of immigrants' savings and knowledge to sending countries (Nijenhuis and Broekhuis (2010). Joint policies by authorities in countries of origin and residence, as well as programmes funded by international agencies have attempted to channel migrants' transfers of financial, social and human capital towards planned development. This implies that the discussion and research on co-development sometimes overlaps with migration and diaspora mobilization.

The third subtopic, return policies, represents the natural thing to do for migrants, but also the most controversial. In migration studies, return is conceived as an indicator of the economic and social growth of a state and a way of contributing towards the peace processes of post-conflict countries or, as a means of reversing ethnic cleansing and other problem related to divided societies, as for example in the case of the former Yugoslavia. Towards return policies the NGOs that are involved in development and migration present divergent attitudes. While some NGOs working with migrants, refugees and development are very reluctant to see the perspective of return as a danger for many people, others focus on return, as a way to help migrants in facing the increasingly restrictive asylum policies. Therefore, many NGOs cooperate with partner organisations in societies of return, assisting migrants to return independently and safely to their country of origin, and contributing to viable resettlement.

Even though this NGOs involvement deals with a long-term impact on migrants' life and may overlap with other research lines, that is to say conflict transformation and state-building processes, scholars have developed some interesting contributions. Van Houte and Davids have analysed, for example, the relationship between the NGOs role in favouring migrants' return and the reactions of governments. On one hand, claims that their assistance can lead to sustainability and even development creates expectations among potential returnees but also among policy makers. On the other, governments can use these claims as a further legitimisation of their return policies. Alternatively, since the efficacy and security of return is dependent on internal migration policies, a new role for NGOs working with the issue of involuntarily returning migrants might be to start a strong lobby of host governments to remove the inconsistencies in migration policies by applying more humane and less restrictive policies (Van Houte & Davids, 2008). To some extent, such debate is coherent with the first scenario, highlighted by Attinà, in which migration is essentially an economic phenomenon, which drives people in the search of better jobs towards high growth and job opportunity areas. The migrants' remittances contribute to enhancing the nexus migration/development, which is at the core of GAMM and at the same time, the main concern of NGOs working in this field. There is a growing interplay between a service-oriented role of NGOs and a political necessity to be more influential. It is true that such an interplay can be observed in several policy fields at all levels. However, in the specific case of migration, and particularly in the Mediterranean, NGOs traditional and more recent roles are more and more dominated by the security paradigm and the need to understand how to manage the emergency phase. In 2011, NGOs started to seriously denounce the weakness of GAMM and the consequent lack of strategy shown by the EU.

## **2. NGOs and EU migration policies in the Mediterranean**

The recent events occurring in the Mediterranean have forced policy-makers to reshape their discourse and scholars to refresh their research agenda. Waves of migrants who have crossed the basin over the last 10 years by using unsecure boats provided by organised crime groups and smugglers are not a new phenomenon. The dramatic events which occurred in 2015, and are continuing in 2016, are only the most recent, visible and sad manifestation of a longer pattern. The practical implications they produce can be analysed through the lenses of established scholarship, but at the same time they open new research lines in terms of policy prescriptions.

In the last decades, within the EU, among member states and at European level, migration has been locked in the refugee debate and linked to terms of restrictive admission. While the latter focused on the need to protect those persons whose civil and political rights are violated from further violence and persecution, the migration debates are sustained by socio-economic interests and values and have produced efforts in terms of socio-economic development policy <sup>4</sup>. However, the terms of the emerging debate

---

<sup>4</sup> Particularly, in terms of labour market measures, family and gender policies, social inclusion strategies and pension policies, in order to face typical European problems, such as labour market shortages, skills gap and an ageing population.

are distinctly different from those being used in the refugee debates. The Balkan wars with their shocking ethnic cleansing represented the first major political event to produce masses of refugees and impose to the newborn EU the need to identify an ad-hoc policy. The successive Euro-Mediterranean dialogue shifted EU efforts towards democratisation policies and local civil society empowerment, for promoting a greater plurality of the political system (Feliu, 2005). However, the Arab Spring demonstrated the failure of such an approach and the war in Syria constituted the last chance, in chronological order, to understanding that migrants, asylum seekers and refugees on their way to Europe need a renovated political approach, which cannot simply be an adaption of old practices.

Scholars have extensively analysed the EU mode of governance in the field of migration. It has followed a path of intense political reforms, within the pillar of Justice and Home Affairs. In parallel with the increased relevance of EU agencies such as Frontex, this has produced a mode of governance which has been defined by the majority of scholars as neither predominantly intergovernmental nor supranational (Caviedes, 2016). Deeper analyses have focused on the different actors involved in such process. Sandra Lavenex (2015: 368) has used the label *transgovernmentalism* to name a combination of elements of traditional 'communitarisation' with more intergovernmental practices, based on some kind of cooperation. In this context, marked by an often asymmetric balance between European institutions taking the lead and Member States influencing decisions through their preferences, it is hard to identify the role of non-state actors.

Even here, as already experienced in several other policy fields, European NGOs have consolidated an established set of formal and informal consultations with institutions and governments, which usually works quite well. NGOs are generally considered as useful actors, informed about current initiatives and able to enrich the agenda with their own proposals. In order to increase the level of information and participation among non-governmental actors working on the national level, several initiatives have been promoted within the specific field of European migration policies. All kinds of consultations have demonstrated that, even in this field, as in many others, NGOs working on the national level do not feel sufficiently informed about the European dimension of migration policies. The main problems are often dealing with poor access to information, its format and the speed with which it is delivered. Additionally, the technical nature of many EU documents makes it hard for organisations to use information and to disseminate it to the wider public. On the opposite, links with local stakeholders can provide direct access to information on legislative initiatives as well as on governmental and non-governmental positions (Niessens and Schibel, 2004).

The impact of NGOs on EU policies is generally difficult to measure. In migration policy, it is even more fragmented and controversial, given the dominant roles of Member states and the strong influence of intergovernmental preferences. Therefore, the majority of NGOs have continued to work within the traditional field of assistance, by developing a wide variety of approaches. Some of those that had initially worked on migration responded to the end of legal immigration and to the growing dominance of control and admission issues by shifting their focus to integration, anti-racism or multiculturalism. Similarly, NGOs that developed a strong focus on asylum may now

recognise that migration is emerging as an alternative mode of entry into Europe, and that questions relating to the assessment of migration needs and the design of migration systems deserve close non-governmental attention. Generally speaking, this action was turned into another traditional role of non state actors, that is to say, as the watchdog of EU policies and member states behaviour and the consequent production of documents, position papers and press releases which express critical views. More recently, the main target of such positions has been the use of SAR by states, individually or within the EU though FRONTEX, to rescue people in the Mediterranean and reduce fatalities, or at least, in the way SAR were conducted.

### **3. NGOs and SAR: who is rescuing people in the Mediterranean?**

The most interesting debate came in respect of recent EU initiatives regarding border controls through military and civilian operations. In October 2013, the arrival by sea of unwanted people to Europe dramatically demonstrated that there was a real humanitarian crisis in the Mediterranean, which could not be simply denied, and forced the Italian government to launch the Operation Mare Nostrum (OMN). It was established with the aim of tackling the dramatic increase of migratory flows during the second half of the year and consequent tragic ship wreckages off the island of Lampedusa. According to the Italian position, Mare Nostrum was complying to international law norms such as those on the Search and Rescue of persons in distress at sea, and humanitarian values, endorsed by many international treaties and state constitutions (Attinà, 2015(a)). Additionally, OMN was also coherent with a 2004 national law, since it empowered the Migration Flows Control (CFM) activities carried out within the Italian Navy operation Constant Vigilance.

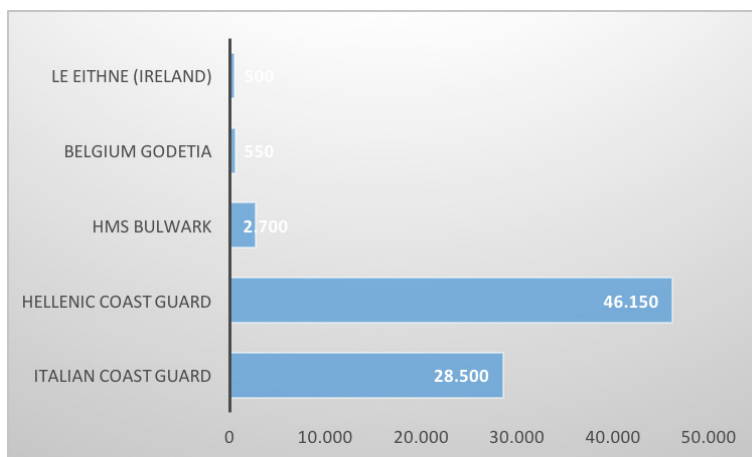
The debate on the efficacy of SAR and the pertinence of its use is still quite controversial. According to reports, NGOs claim that people die because of, or despite, these operations, and they consider that border controls are a form of military war against migrants. Mare Nostrum was provided with ample powers and was able to rescue more than 100.000 people in the Central Mediterranean. However, NGOs expressed very critical views, in line with documents produced by UN agencies, like IOM and UNHCR. They restarted to use the terminology of Fortress Europe and they criticised Frontex operations because, even though the military are not deliberately killing migrants, they do not make efforts to save them and do not demonstrate a human approach. According to some researchers, it is possible to talk about a militarization of EU borders by way of the implication of military personnel. In this line of thought, the border controls' logics are understood as a "pre-war of civilisation opposing the Islamists and the rest of the world" by some navy personnel, or as a "war on migrants" by the NGOs criticising this divide between friends and foes (Walters et al., 2010). The number of death at sea is not the result of a "war", an active "fight" against migrants, it is a shift in responsibility between different actors that avoid taking action in a managerial process, which is not integrated, but strongly heterogeneous in terms of goals and strategy and is clearly the result of the construction of the Mediterranean Sea as a locus of danger (Omeje, 2008; Bigo, 2011). Such an approach was exacerbated by the launch of Triton, a Frontex operation, provided with specific, but limited when compared to Mare Nostrum, search and rescue tasks. Triton was

officially presented not as a replacement of Mare Nostrum, but as a new effective part of a comprehensive strategy, aiming at saving lives, giving protection to refugees and managing the root causes. However, while NGOs previously expressed very critical views on the Mare Nostrum performance, they then decided to become more active, as a consequence of the so-called EU Turn.

As already seen, TRITON started its operations in November 2014 and was expanded in terms of budget and equipment in May 2015. From that date, its ships were able to rescue about 10,600 people. However, it was not enough according to NGOs, which showed the same concern as other UN agencies, especially if compared to Mare Nostrum performances. As Attinà points out, the comprehensive approach, as developed by the EU to manage this acute phase, was mainly based on the recognition of *exceptional circumstances*, which caused the waves of migrants, and on the need to coordinate efforts among EU (Triton) and member states (Attinà, 2015b).

The humanitarian duties requested of coastal states and of others in the name of solidarity turned into a mixture of reluctant willingness, forced reactions and self-protective closure. It is true that some Member states continued to be very actively engaged in the Central Mediterranean. The Italian and the Hellenic coastguards and navy have been the busiest to patrol the area together with the British HMS Bulwark, the Belgian Godetia and the Irish Le Eithne which joined the efforts, with various levels of commitment. As visible through data of rescued people in 2015 in Figure 1, these combined efforts, made by states, were able to replace OMN, to some extent, and contribute to mitigate the effects of the crisis.

Fig. 1 – No. of rescues by governmental SAR Operations 2015



Source: Missing Migrants Project (IOM)

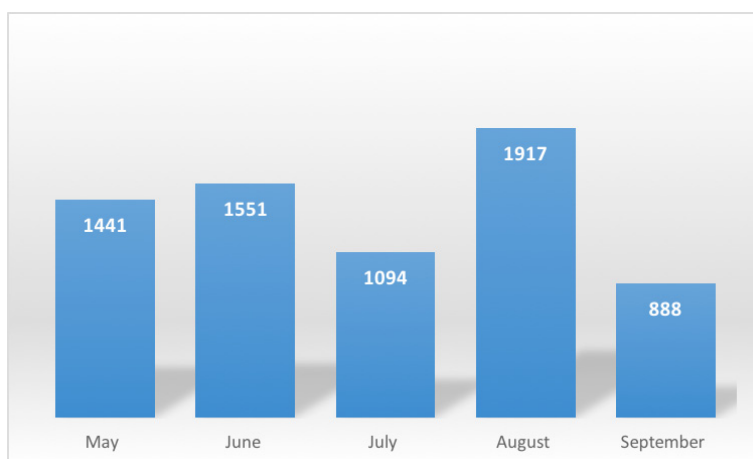
However, this was mainly due to the willingness, or to the necessity, of some member states, rather than a EU collective effort. In this scenario, more than in the past, NGOs

started to be more publicly critical and to align with views expressed by IOM and UNHCR, denouncing the inability of the EU to properly evaluate the humanitarian crisis in the Mediterranean as well as its member states to change current policies. Critics were particularly focused not only on the rescuing capabilities, but also on the ways migrants were gathered, once rescued, in the reception centres, which placed together asylum seekers, refugees and irregular migrants

In Spring 2015, several NGOs announced a series of search and rescue operations in the Mediterranean Sea, directly ruled by a 'non-governmental approach'. In April 2015, Médecins Sans Frontières (MSF) started this initiative together with MOAS (Migrant Offshore Aid Station), an NGO registered in Malta, which consists of international humanitarians, security professionals, medical staff, and experienced maritime officers who have come together to help prevent further catastrophes at sea.

The MY Phoenix, a 40-metre rescue ship equipped with high speed rigid hull inflatable boats and surveillance drones, was stationed in the central Mediterranean with aboard lifesaving support for those in distress. MSF funded 50% of the budget needed and offered medical care from primary care right through to resuscitation and advanced life support. Additionally, the Bourbon Argos was launched in May 2015, carrying a total crew of 26 people, of which 14 are MSF staff, including an experienced search and rescue crew as well as medical staff, water and sanitation experts and logisticians. Lastly, Dignity I was launched in June 2015 and was provided with a crew of 18, including medical staff, and the capacity to carry 300 rescuees. As represented in Figure 2, their activities have been constant over the summer and started to decrease in September. In total, from May to September 2015, the two organisations were able to rescue 7368 people to be brought in Lampedusa and other rescue centres, where MSF have their own missions.

Fig. 2 – No. of rescues by MOAS/MSF SAR Operations May-September 2015

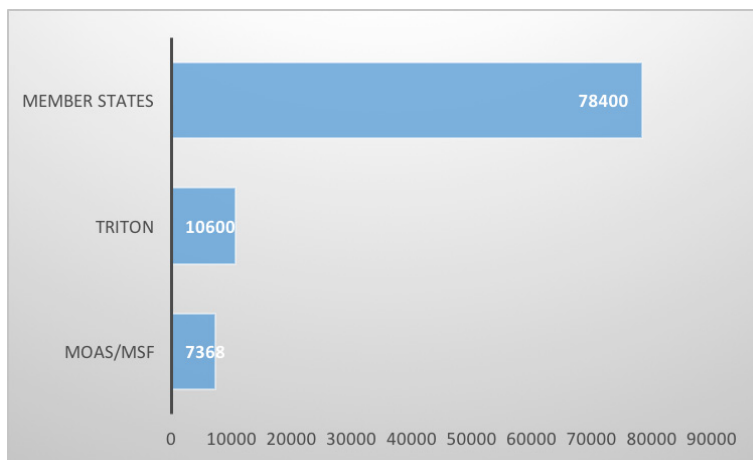


Source: MSF; MOAS

MSF and MOAS are not the only NGOs active in the area to rescue people. Other organisations, like SeaWatch, Medecins du Monde and the Norwegian Society for S&R deployed their ships during summer 2015. More recently, SOS Méditerranée, was created by a German doctor, with the specific aim of rescuing migrants and refugees. The MS Aquarius was turned from a fisheries protection vessel into an emergency tool and started to sail the sea in May 2015. As it is clear from data, the number of organisations is still limited as for personnel and as a time slot however, it is correct to consider SAR operations led by NGOs as a contingent action.

Instead, the continuous and structured set of operations by NGOs, individually or jointly, provided a wide range of services to be offered to migrants, the ability to deploy all required equipment and the level of coordination with other ships operating in the area demonstrate the existence of ‘non-governmental SAR operations’ as an established practice which can work wherever there are people to rescue at sea. As a whole, they were not in contraposition to Triton, nor to member states, rather such operations aim at bridging others’ gaps, with the final result that, in the same period (May-September 2015) and over the same area, the continuous floods of migrants benefited from rescues operated by differing actors.

Fig. 3 –Total No. of rescues by SAR operations Spring 2015



Source: MissingMigrants Project (IOM); MSF; MOA

Figure 3 incorporates the total number of rescued people by SAR operations made by states, EU and NGOs in the period May-September 2015. Data on rescues are collected by different sources and constantly updated according to the crisis trends, however, they are sufficient to give an overview of what happened in spring 2015 in the Mediterranean and to demonstrate how different the kinds of interventions, both intergovernmental, governmental and non-governmental, interact. NGOs are obviously more limited in terms

of budget and equipment, but their contribution is smaller if compared to states rather than Triton. This brings us to four main conclusions, which are relevant for understanding the EU turn. Firstly, different actors operated in the same environment without coordination, but also without significant frictions, with the unintended but paradoxically fruitful consequence of mitigating the effects of the emergency while secondly, EU action was perceived as extremely weak and slacker and thirdly, member states preferences and needs dominated the action, far from any solidarity approach. Finally, NGOs expressed very critical views towards the way the comprehensive strategy was launched by the EU, but they were substantially coexisting with states operations and, in some cases, cooperating with them<sup>5</sup>. It is worth affirming that such non-governmental SAR operations offer a contribution which is undoubtedly useful to partially help member states actions and are benefiting the whole emergency phase. At the same time, such kinds of action may also appear as unusual and be criticised as a way of substituting EU intervention without legitimization. It would be more interesting to analyse whether and how such self-legitimated and yet non-governmental initiatives will be embedded into broader EU policies. The analysis of data collected within the expert survey provides some interesting insights.

### **3.1 Non-governmental SAR operations: towards a consolidated practice?**

Media have discussed MSF's SAR operations as a controversial initiative, since it lies outside MSF's usual business and on the contrary MSF try to 'justify' its decision by saying that *'Saving lives is our core business, whether it is on land or at sea'*<sup>6</sup>. Indeed, this initiative was welcomed by public opinion with a mixture of positive curiosity and usual scepticism. The opinions expressed by experts within the FIR2014 projects were substantially in favour of a continuation of it. The invitation to participate in the survey was sent to the experts on 21 September, and the form was filled in from 30 September - 20 October 2015. The sample was composed of several categories of respondents, including opinion-makers (journalists, academics, think tanks members) and practitioners (politicians, NGOs officers, civil protection workers). They were asked to reply to a structured set of questions on Mare Nostrum, its performance and its impact on the crisis. Few questions were devoted to civil society and NGOs roles, but they give an overall perspective on their action. They are linked, for example, to the perception they have on EU policies and on SAR.

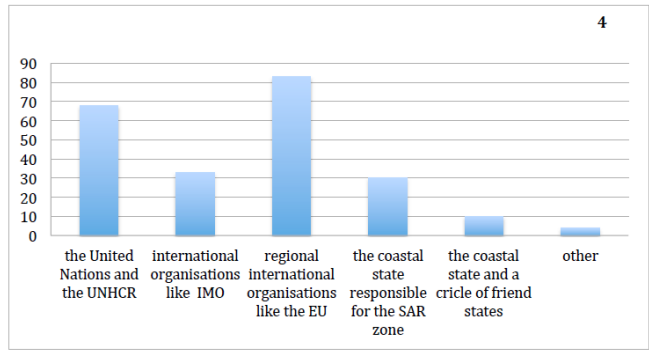
It is true that the migration crisis is not easily managed on an intergovernmental level. However, especially in the Mediterranean, it is essential to constantly monitor and provide surveillance on a high number of ships carrying people in difficult conditions. In other words, the main problem is the humanitarian dimension. According to the experts, then, even though the coastal state is directly involved and should intervene to manage the emergency, collective actors, namely the UN agencies and the EU are the first to be responsible and are entitled to do so according to international humanitarian law.

---

<sup>5</sup> There are some examples of services offered by NGOs to ships deployed by member states, like Save the Children operating on the Italian coast guard ships.

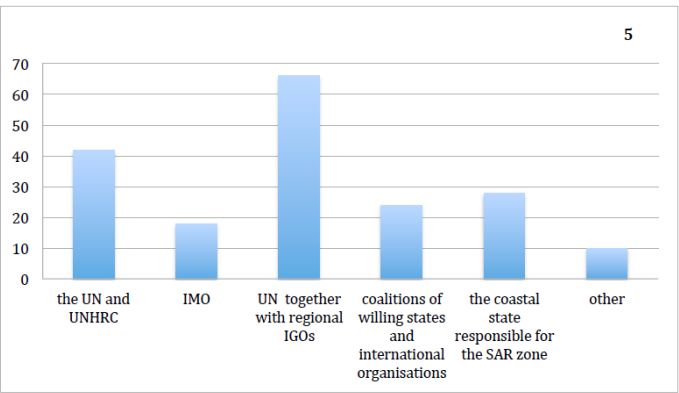
<sup>6</sup> Declaration by Aurélie Ponthieu, MSF Humanitarian Adviser on Displacement, Brussels, April 2015.

4. The costs of the SAR operations in the Mediterranean should be borne by (multiple answer possible)



Even on the actors responsible for the settlement of people rescued by SAR opinions are quite clear and coherent. After rescue, migrants need to be supported and helped in the asylum procedures, and this is considered as a second step of the crisis management process, which should be provided by the same intergovernmental organizations, both international and regional. Some experts, however, affirm that coastal states are not completely free from responsibilities.

5. Who should bear the task of providing settlement to the migrants rescued by SAR operations? (multiple answer possible)

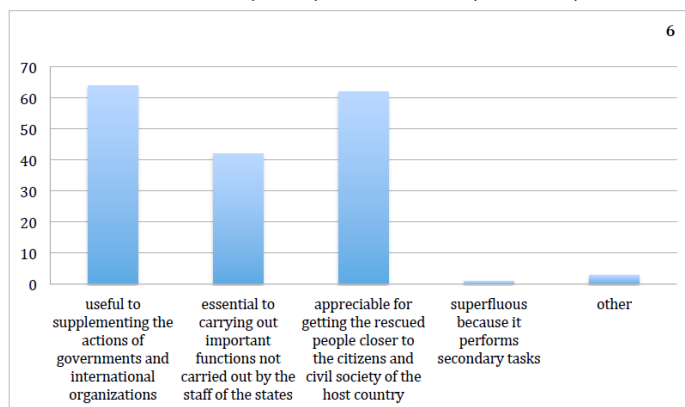


These data are coherent with those about the criticisms raised during the EU Turn period, that is to say, the comprehensive strategy launched by the EU consisted into a reduction of the collective commitment towards a stronger involvement of member states. This produced, as seen in the previous paragraph, the rise of non-governmental SAR operations.

Opinions on the roles of NGOs and other civil society organisations in SAR are extremely positive. They are first of all useful in supplementing the lack of other responsible

actors and appreciable as a link between migrants and local communities, a role which is traditionally associated to civil society. The dominant idea which is coherent with those expressed in this chapter is that governmental, or public, action and non-governmental, or private, should be complementary and far from old-fashioned divisions of frictions.

6. The free participation of non-governmental and non-profit organizations in rescue and reception operations is (multiple answer possible)



Generally speaking, the migration crisis is another meaningful example of the current complexity of world politics, in which global and regional institutions are undergoing a process of change, and national interests, common values and different competencies may interact and clash.

#### 4. Conclusions

As announced in the introduction, this article aims at being a preliminary analysis of the state of the art on the impact of civil society organisations and NGOs in respect of migrants' emergencies and launching some considerations on SAR as a potential new established practice.

As an initial consideration, it is certainly possible to affirm that, even in this policy field, as in other sensitive fields, in the large and structured NGOs community, there are great differences in approaches to problems and at times ideological and political divergences. Such differences reflect in the relationship with political power, which is always central and determining.

On a national level, several countries present long and established cooperation with civil society and a set of laws and practices which have strengthened the private-social sector. Therefore, it is possible to argue that the public sector cannot be expected to solve the integration puzzle without relying extensively on and leveraging the resources of the private and non-governmental sector.

Additionally, more and more immigrant communities are emerging and, even though many migrants rely on their own resources and/or informal networks, they are expected to be a future source of support for the non-governmental sectors. Dialogue and interactions between these organisations and between them and the public institutions should be empowered and improved.

At the EU level, NGOs are more and more influenced by the security paradigm and by the need to protect and emphasize the human dimension against a discourse which targets migrants as a threat also in societal terms. This has produced, next to traditional assistance to development and social integration, a series of more active interventions i.e. SAR operations, associated to the immediate emergency management phase, particularly in respect of recent developments in the Mediterranean.

By using the scenario scheme developed by Attinà, NGOs have been analysed in relation to EU policy development. While they remained critical during the deployment of Mare Nostrum by raising concern about the quality of assistance effectively provided to people after rescue, in the following scenario, the so called EU turn, NGOs decided to supplement the lack of proper interventions.

As described through data, the continuous and structured set of operations by NGOs both individually or jointly provided a wide range of services to be offered to migrants, the ability to deploy all required equipment and the level of coordination with other ships operating in the area demonstrate the existence of 'non-governmental SAR operations' as an established practice which can work wherever there are people to rescue at sea.

The last scenario, a Fencing Europe, is still difficult to evaluate, in respect of NGO actions. It corresponds to the current phase and most likely to the waves which are expected in the next spring/summer. Some NGOs such as MSF and SeaWatch have not yet declared their official continuation of SAR operations, while others such as MOAS and SOS Méditerranée are expected to proceed, since they have been created with this specific aim. It will be subsequently necessary to wait to verify whether non-governmental SAR operations will be consolidated or changed. In the face of a fencing Europe, however, and a general trend of a return to the protection of borders the need for 'private' action can only increase.

## REFERENCES

- M. Ambrosini & J. Van der Leun, *Introduction to the Special Issue: Implementing Human Rights: Civil Society and Migration Policies*, Journal of Immigrant & Refugee Studies, 13:2, 103-115, 2015.
- F. Attina, *Mare Nostrum e Triton: la valutazione degli esperti*, ReShape Online Papers Series, Paper no. 13/15 - February 2016.

- F. Attina (a), *The Mare Nostrum Operation and the migration crisis in the Mediterranean. Expert online survey*, ReShape Online Papers Series, Paper no. 12/15 - November 2015.
- F. Attina (b), *Europe faces the immigration crisis. Perceptions and Scenarios*, ReShape Online Papers Series, Paper no. 10/15 - October 2015.
- D. Bigo, 'Globalisation and Security' in Edwin Amenta, Kate Nash and Alan Scott (eds.) *The New Blackwell Companion to Political Sociology*, (London: Blackwell, 2011).
- Caviedes, *European Integration and the Governance of Migration*, Journal of Contemporary European Research. 12 (1), 552-565, 2015
- L. Feliu, *Global Civil Society Across the Mediterranean: The Case of Human Rights*, Mediterranean Politics, 10:3, 365-383, 2005.
- Geddes, *The politics of migration and immigration in Europe*. Sage, 2003
- J. Huysmans (2000), *The European Union and the securitization of migration*, Journal of Common Market Studies, 38:5, 751-77, 2000.
- D. Irrera, *Humanitarian NGOs and EU emergencies response policy: continuity or change?* in R/Evolutions, A. Filipiak, E. Kania, J. Van den Bosch, R. Wiśniewski (eds.), Revolutions Research Center, Poznań, pp. 100-124, 2014.
- Irrera D. (2013), *NGOs Crisis Management and Conflict Resolution: Measuring the Impact of NGOs on Intergovernmental Organisations*, Edward Elgar, Cheltenham.
- S. Lavenex, Justice and Home Affairs: Communitarization with Hesitation, in H. Wallace, M. A. Pollack, and A. R. Young (eds) *Policy-Making in the European Union* (7<sup>th</sup> ed), (New York, NY: Oxford University Press, 2015), 367-387.
- L. Marin, *Policing EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*. Journal of Contemporary European Research. 7:4, 468-487, 2011.
- G. Nijenhuis & A. Broekhuis, Institutionalising transnational migrants' activities: the impact of co-development programmes, International Development Planning Review 32:3/4, 245-65, 2010.
- J. Niessen J. & Y. Schibel, Promoting Debates on European Migration Policies, European Journal of Migration and Law 4: 469-475, 2003.
- P. Ruspini, Overview of Public Policies and NGOs Services for Immigrants' Integration in Italy in Mary J. Fischer Paolo Ruspini Nicholas Glytsos Hana Kabeleova (eds.) *What can we learn from European and American experience?* – Conference proceedings, Fundacja Instytut Spraw Publicznych, Warsaw, 2003.
- M. Van Houte M. & T. Davids, *Development and return migration: from policy panacea to migrant perspective sustainability*, Third World Quarterly, 29:7, 1411-1429, 2008.

# The Europeanization of Political Parties in Montenegro

**Vladimir Vučković<sup>1</sup>**

**Abstract:** *This paper aims to examine the impact of the process of Europeanization on the relevant political parties in Montenegro in the period between the 2009 and 2012 parliamentary elections by focusing on an in-depth content analysis of their election manifestos. The article argues that the EU has demonstrated a limited impact on Montenegrin changes due to the existence of a strong influence of internal factors which hinder the transformative power of the EU. This assertion is particularly observable in the case of the EU impact on Montenegrin parties where the political elite expresses its unwillingness to comply with the EU requirements. The study claims that the influence of Europeanization on domestic changes will be limited in the following period unless the political elite demonstrates true political will to fully align with the EU accession conditions. The research findings may serve as a suitable framework for providing new scientific insights, as well as for the enhancement of current scientific knowledge related to this particular field.*

**Keywords:** *Europeanization, European integration, political parties, election manifestos, Montenegro*

---

## 1. Introduction

The article seeks to examine the process of Europeanization of the political parties of Montenegro, a country which is not yet an EU Member State. Rather, Montenegro has the status of a candidate country for the EU membership, and is currently positioned as a frontrunner among the Western Balkans (WB) states. Like in many other European countries, Montenegrin parties play a crucial role in the country's political processes and, thus, undoubtedly affect the domestic changes. Therefore, for the purpose of this research, it is of great importance to determine the scope and the outcome of the EU impact on Montenegrin parties as the main factors of domestic change by observing the top-down approach of European integration on political actors.

In accordance with the aforementioned, the main research line of the paper is to determine whether the Montenegrin parties have decreased or increased their interest in the concept of Europeanization in the period between the two parliamentary election rounds in 2009 and 2012, bearing in mind the remarkable progress which has been made by Montenegro in the European integration process. By using a methodological framework, the article attempts to provide the answer based on the defined research question: *have EU policies*

---

<sup>1</sup> **Vladimir Vučković** is a PhD candidate at the Department of International Relations and European Studies, Faculty of Social Studies, Masaryk University (FSS MU), Brno. E-mail: [vladimir.bodin@gmail.com](mailto:vladimir.bodin@gmail.com)

*become prominent in the election manifestos of Montenegrin political parties between the parliamentary elections of 2009 and 2012?* Furthermore, the intended contribution of the paper is to identify the current level of Europeanization among the Montenegrin parties by analysing their manifestos in the context of European integration. By focusing on political parties as the main domestic political actors (not on civil society actors, veto players etc.), the paper aims at reducing the possibility for the creation of research gaps, given the role they play in every society, including Montenegrin. However, one article limitation may be caused by the author's choice to examine Montenegro as a single case study rather than the whole Western Balkans region (as a single unit). On the other hand, the conducted empirical analysis, along with the description of recent external and internal events within the single case study could constitute a suitable framework for providing new scientific data, as well as for the enhancement of current scientific knowledge related to this particular field.

The paper has the following structure: The first part of the article analyses different theoretical approaches to the concept of Europeanization of the WB in order to present various theoretical debates. Along with the examination of Montenegrin post-referendum politics and society, this part of the article tries to provide an overall empirical case study of both internal and external factors which undermine the process of Europeanization of Montenegro. The second part of the paper attempts to present the outcomes of the conducted empirical content analysis of the Montenegrin parties' election manifestos during the parliamentary elections in 2009 and 2012. Finally, the third part of the article tries to provide discussions and conclusions based on the findings of the empirical analysis.

## **2. Current developments**

Among the academia and political elites, there is a generally accepted view that the process of Europeanization of the Western Balkan countries (WB)<sup>2</sup> has become much more challenging, demanding and complex than it was the case with the countries of Central and Eastern Europe (CEE). Unlike the Eastern enlargement policy, which can be evaluated as a successful EU foreign policy, the WB face numerous serious obstacles, both internal and external, which prevent smooth reforms of their political, economic and social system. The historical legacy, ethnic and religious issues, border issues, return of refugees, secessionist movements, rise of nationalism based on ethnic differences, strength of national identities, contested states, limited statehood, weak state capacities, clientelism, corruption, organized crime, as well as the dysfunctional economy, are some of the issues which significantly hinder the development of the WB (Elbasani 2013; Börzel 2011; Börzel and Risse 2012; Keil 2013; Beiber: 2011; Noutcheva and Aydin-Düzgit 2012; Freyburg and Solveig 2010; Džihic and Wieser 2008). These obvious internal political and socio-economic problems to a large extent call into question the peace, stability and security of the region, thus opening the possibility for the EU to engage more actively in the process of building consolidated democracy and developed liberal economy of the WB.

---

<sup>2</sup> In this paper, the Western Balkans refers to a group of countries located in South-East Europe which are not EU members, but which have expressed their willingness to join the EU. The Western Balkans include: Albania, Bosnia and Herzegovina, Croatia, Macedonia (FYRoM), Montenegro, Serbia and Kosovo.

The literature on Europeanization demonstrates serious concerns regarding the future of the WB due to the limited EU impact on domestic politics, and points out that the Europeanization of the WB is shallow. Although since the beginning of the 20<sup>th</sup> century the EU has adopted a number of strategic documents which confirm the Western Balkans membership perspective, the impression is that this incentive did not ring out well among the regional countries. More specifically, taking into account the individual integration dynamics of each country, the WB have not adequately fulfilled the accession conditions stipulated by the Stabilization and Association Agreement (SAA) as an integral part of the Stabilization and Association Process (SAP) nor have they adequately implemented the *acquis communautaire*. Moreover, the WB have demonstrated problematic democratic reforms by “complying inconsistently with membership criteria, rather than flatly refusing to fulfil them” (Freyburg and Solveig 2010:264).

Apparently, the EU has demonstrated certain discrepancies in terms of fulfilling the promise of the European future for the WB from the beginning of the 20<sup>th</sup> century. Firstly, the EU has proven not to be an effective state building actor due to the lack of experience in state building processes, absence of clear criteria within the *acquis communautaire*, as well as the notable disagreements which exist between different Union institutions and the EU Member States (Beiber 2011:1785, 1793; Keil: 2013:349; Börzel 2011:11; Keil and Arkan et al. 2015:16). Secondly, apart from the WB “stateness problem” (limited statehood), it is the EU strategy of conditional external initiatives based on “the principle of carrot and stick” which significantly undermines the EU’s credibility as a normative power and at the same time negatively reflects on the region’s willingness and motivation to implement the EU norms and rules stipulated by the SAP (Börzel 2011:12-15; Börzel and Risse 2012:203; Notcheva 2009:1081; Elbasani 2013:8; Keil 2013:348; Beiber 2011:1791). Thirdly, in the light of the recent EU enlargement waves from 2007 (Bulgaria, Romania) and 2013 (Croatia), there is a lack of consensus about the future of the enlargement process among the EU Member States - “enlargement fatigue” which gravely affects the continuation of alignment with the Copenhagen criteria and effective implementation of the *acquis communautaire* among the WB (Džihic and Wieser 2008:81). As a result, the progress of these countries towards the EU membership is limited. While, on one hand, the EU has offered these countries a membership perspective to stabilize the region and overcome the problems caused by the weak and contested statehood, on the other hand, the limited statehood of the WB countries undermines their compliance with the EU norms and rules (Börzel 2011:5).

Evidently, the limited EU impact on domestic politics is the result of a lack of commitment of both sides – i.e. the EU’s and the WB completion of the effective democratic transition and consolidation. However, despite different integration dynamics which exist among the WB, Montenegro is one of the countries in the region (with the exception of Croatia) which stands out as a positive example of the European integration process based on the observable EU impact on domestic changes.

In the light of examining the process of the Montenegro's Europeanization as a separate case study, the literature of Europeanization demonstrates its continuous development. Various types of research on Europeanization in the course of time have influenced the creation of separate research areas such as: Europeanization of old, new and candidate

member states, as well as the Europeanization of political parties within the EU and non-EU member states (Carter et al. 2007; Kulachi et al. 2012; Vachudova 2008). Therefore, for the purpose of this research, it is of particular importance to focus on the Europeanization of the political parties of Montenegro – a country which has received the candidate status in the negotiation process for EU accession.

The study of the Europeanization of political parties towards the status of the EU candidate countries has become the most significant issue within the European Studies, especially in the political discussions among the political scientists during the period prior to the fifth wave of enlargement in 2004 (Sedelmeier 2011:7). Nowadays, it is evident that scholars have devoted little attention to the present day potential and candidate countries from the Western Balkan region (Albania, Bosnia and Herzegovina, Macedonia, Kosovo, Montenegro and Serbia) when it comes to determining their level of Europeanization, and the EU impact on domestic actors in the EU enlargement policy. Specifically, by observing Montenegro as a separate case study within the European integration process, the scholars have demonstrated limited interest in the issue of EU impact on Montenegrin domestic changes and politics, by failing to determine the degree of European policy implementation in domestic politics. Namely, most researchers have dealt with the Europeanization of the Montenegrin party system, but significantly little attention has been dedicated to the analysis of the process of Montenegrin Europeanization through the study of domestic parties and their manifestos. Therefore, this article will try to fill this research gap by focusing on the analysis of domestic parties and their manifestos during the parliamentary elections of 2009 and 2012.

In line with the above, this paper seeks to examine the process of Europeanization of political parties using the example of Montenegro as an EU candidate country. The selection of this specific topic is justified given the fact that the issue of Europeanization of Montenegrin parties is characterized by the lack of the domestic and foreign literature in this specific field, indicating insufficient interest and will of international and domestic scholars to conduct the research. Granted, several studies have been conducted in this field of EU impact on the Montenegrin party system, however with little attention devoted to a more specific research of the EU influence on domestic parties (Stojarová and Emerson et al. 2010; Fink-Hafner 2008; Fink-Hafner and Ladrech 2008; Vujović and Komar 2008).

In their first study, Komar and Vujović (2007) examined the process of Europeanization in Montenegro by focusing on the analysis of the domestic party system in the period 1990-2007, as well as on the aspect of building consensus on European integration among the parties and citizens of Montenegro. However, regarding the Europeanization of domestic parties, the authors provided a brief content analysis of four Montenegrin parties after the 2006 parliamentary elections. In addition, in his recent work Vujović (2015) examines the impact of the Europeanization process on Montenegrin parties by focusing on the dynamics of the relationships within the domestic party system, as well as its interaction with the actors of the European integration process in Montenegro. Similarly to his previous study, the author briefly examines several parties (3 ruling and 3 in opposition) after the 2012 parliamentary elections in order to identify the differences in the manifestations of the party consensus related to the EU integration.

To conclude, the article tries to provide new scientific insights on the EU impact on Montenegrin parties. Unlike the authors who have mostly examined the process of Europeanization in Montenegro by analysing the party system and the internal political situation (and domestic parties to a lesser extent), the novelty in this approach will be in the examination of the EU transformative power in Montenegro on the domestic parties by focusing on their election manifestos during the parliamentary elections of 2009 and 2012.

## **2.1 Post-referendum Political Context of Montenegro**

Since the declaration of independence from Serbia in 2006 to this date, Montenegro has made evident progress towards the compliance with the Copenhagen criteria and harmonization with the *acquis communautaire*. As a result, Montenegro has positioned itself as the frontrunner among the WB. As of 21<sup>st</sup> December 2015, twenty-two negotiating Chapters, including the rule of law Chapters, 23 – Judiciary and fundamental rights and 24 – Justice, freedom and security, have been opened, and two Chapters (25 – Science and research and 26 – Education and culture) have been provisionally closed (Delegation of the European Union to Montenegro 2015).

Not surprisingly, after gaining its independence, for a short period of time Montenegro made quick progress in the European integration process as a result of two lucky factors: the status of the country, which is not contested either internally or externally, and the unanimous consensus of all political parties towards the EU membership (Keil 2013:350). Although there are continuing disagreements between the ruling and opposition parties, the question of Montenegro's membership in the EU is a strategic priority of all entities. The party's support for EU integration corresponds with the public support, as 65% of the population believes that the EU membership would be beneficial for Montenegro (Eurobarometer Report 2014:84). Likewise, the latest EU official report has stressed that Montenegro continues to broadly implement its obligations under the SAA. However, more importantly, this document has emphasized the areas which are identified as requiring improvements: implementation of the new electoral legislation, public administration reform, improvement of judicial system, decisive fight against corruption and organized crime, strengthening of the rule of law and protection of human rights (European Commission Montenegro Report 2015).

Still, Montenegro's progress towards the EU membership does not depend on the capacity of domestic actors to induce governmental structural changes. Rather, it is a completely driven project in which the EU has positioned itself as a major actor of domestic change (Keil and Arkan et. al 2015:83). Consequently, Montenegro, as the smallest country among the post-Yugoslav states, seriously suffers from the issue of limited statehood i.e. weak state capacities "due to a lack of resources (staff, expertise, funds), as well as institutionally-entrenched structure of corruption and clientelism" (Börzel 2011:10).

By using the external incentive models as a tool of transformative power, the EU has influenced the process of democratization and consolidation of statehood in Montenegro and slightly empowered institutional capacities in order to comply with the EU norms and rules. Correspondingly, the EU transformative power was seen in two cases in Montenegro: the visa liberalization process, so far the strongest conditionality mechanism towards the

WB, and the recommendations stipulated in the EU's Opinion of Montenegro's preparedness for the EU membership (Keil and Arkan et. el 2015:96; Radeljić et. el 2013:125). As it is the case in other WB, the Montenegrin political elite very often uses EU initiatives (policies and institutions) to ensure the survival of the current governing authority, promote its own party programme, satisfy the voters or remain in power. The extent to which the EU and domestic initiatives influence each other largely depends on the prominence of certain EU policies (visa liberalization, recommendation for opening accession talks, judicial reform, rule of law, corruption and organized crime etc.) for voters. In the absence of public interest for certain EU policies, norms or rules, the EU will face a limited impact on domestic institutional change in the WB (Borzel and Risse 2012:200; Keil and Arkan et. el 2015:97).

However, although Montenegro has demonstrated certain progress towards the EU membership, the country still encounters internal political problems which need to be addressed prior to the EU accession. The Montenegrin society is a deeply divided society. The issues of statehood, nationhood and national identity have continued to play a significant role in the political life of Montenegro, whereas different interpretations of these categories between Montenegrins and Serbs consequently affect the internal political dynamics and processes within the society and development of the political situation. By the same token, several policies adopted by the DPS government in the post-referendum period which aimed at the reconstruction of Montenegrin national identity (recognition of the Montenegrin language, adoption of new state symbols and detachment of the government elite from the Serbian Orthodox Church), have to a large extent contributed to the Serbian minority's non-acceptance of Montenegro as their homeland (Džankić 2014a:356,362-371; Morrison 2009:223). Furthermore, the decision of the Government to recognize Kosovo as an independent state in 2008 as well as the proclaimed activities towards the NATO membership have also been perceived by the Serbian parties as clear examples of anti-Serb policy. Namely, the anti-NATO policy of the Serbian parties has significant public support with the 37.3 % of the population against Montenegro's membership in the Alliance and 36.6% for it (CEDEM Survey 2015:5). Unlike the Serbian minority, the Montenegrin Bosniak-Muslim and Albanian communities, respectively, see Montenegro as their homeland mainly due to the adopted provisions in the Constitution of Montenegro which define the state as a civic rather than a national state (Džankić 2014a:357; Morrison 2009:224).

One of the major problems in the Montenegrin politics is its internal structure (Morrison 2009:229). Montenegro is the only post-communist country with one political party, – Democratic Party of Socialists (DPS), ruling without disruption since the introduction of the multiparty system (Vuković 2013:73; Morrison 2009:230; Džankić 2014b:44). Vuković (2013:79) holds the view that the reasons for long-term political rule of the DPS can be observed from various perspectives: "the political culture of the country in which the government has never been changed in elections, its size that allows incumbents to rather easily establish and maintain clientelistic network, the "aura of invincibility" around the DPS as well as the charismatic leadership of its president Đukanović, six-time Prime Minister and the head of the independent movement, the inability of opposition parties to come together behind a competitive political platform, and Western support for the Montenegrin ruling elite".

However, besides his political capabilities to maintain and consolidate power in Montenegro, the current Prime Minister and the President of the ruling DPS, Milo Đukanović has created a “tight-knit clan” of his closely related allies who possess strong political and economic power and deeply affect domestic internal political processes in the society (Morrison 2009:229). The existence of a democratic system obscures the real situation in the country, where the ruling DPS continuously controls many aspects of society, particularly in the domain of pressure on voters employed in the state and public institutions, as well as a sporadic pressure of DPS party activists on the neutral voters and those with a poor financial status. Furthermore, clientelism and patronism play a significant role in the DPS strategy of remaining in power for many years (Ibid. 2009:229). By the same token, Mocht`ak (2015:111) has done an analysis of parliamentary and presidential elections in Montenegro from 1990 to 2013 and argued that the escalation of electoral violence continuously occurs, detecting the DPS as a “potential incendiary factor igniting political conflict”. Similarly, Džankić (2014b:44) holds the view that the citizenship policy in Montenegro as an “image of the nation” and an “image of politics” was an important mechanism which enabled the survival of the DPS rule: “by embedding the `image of the nation` in the citizenship legislation, the ruling Montenegrin elite reinforced their political agenda. By entrenching the `image of politics` in the citizenship law, they managed to produce conditions favouring their electoral victories and thus enabling the party’s institutional dominance”.

Still, it is evident that the rule of law is still not the dominant principle in Montenegro. Strong political influences on the judiciary are not providing equal chances for all, nor the full respect of human rights, especially when it comes to most vulnerable groups who feel insecure. Frequent attacks are seen on journalists and media property and the authorities failed to produce a track record in these investigations, and smear campaigns were noted against civil society activists who are critical towards the ruling coalition, which are not properly also handled by the authorities. Last but not least, violations of human rights are evident in the case of members of the LGBT community. The Government still does not possess an effective mechanism in order to protect their constitutional rights, particularly in the case of freedom of assembly and free movement (Vučković 2015). The NGO “Freedom House” issued a report in October 2015 stating that Montenegro fell from free to party free country due the restrictions on the freedom of peaceful assembly and repeated disposal of the LGBT pride parade. It was clearly pointed out that “Montenegro’s progress toward EU membership, even as the entrenched government of Prime Minister Milo Đukanović sanctioned the harassment of independent media, tarnished the bloc’s image as a purveyor of good governance and democratic norms” (Freedom House Report 2016:8).

The above presented discussions regarding the Europeanization of the WB, with a particular emphasis on the post-referendum political context in Montenegro, have indicated the existence of the European Union’s influence on domestic politics although “its impact is patchy, often shallow but certainly not spurious” (Börzel and Risse 2012:194). Essentially, the understanding of these two aspects will help us in detecting the process of change among the Montenegrin parties through the analysis of their election manifestos, paying special attention to the EU transformative power on the domestic political actors.

### 3. Operationalization of Research

Ladrech (2002:396-400) defines five areas of investigation to obtain the evidence of Europeanization in parties which could be used as a suitable theoretical framework for providing qualitative insights into the EU impact on Montenegrin parties. Following Ladrech's five areas for indicating the phenomenon of Europeanization of political parties (programmatic change, organizational change, patterns of party competition, party-government relations and relations beyond the national party system), the paper will use the first area - programmatic content, as one of the documents which is, apparently, most frequently changed and exposed to the EU impact.

Following the case study of the Europeanization of political parties in Montenegro, Komar and Vujović (2007) and Vujović (2015) provided a credible analysis of visible EU impact on domestic parties, where they presented apparent internal changes (party rhetoric changes, mentioning the EU in party manifestos) and the consensus of all domestic parties on the EU membership issue. The authors have made significant contributions to the identification of the EU institutional influence on domestic parties as a result of the parties' participation in the Delegation to the EU-Montenegro Stabilization and Association Parliamentary Committee. However, apart from the institutional aspect, the authors failed to provide more reliable findings about the EU impact on domestic parties through an in-depth content analysis of election manifestos. Thus, due to the focus placed merely on the identification of party consensus related to EU integration, the authors' results touched upon the Europeanization of Montenegrin parties only tangentially. The question is, does this tell us that the parties are more or less Europeanized or whether parties use an EU membership perspective as a buzzword to enhance their appeal?

In line with the above, the paper seeks to examine the impact of the process of the Europeanization of political parties in Montenegro between the 2009 and 2012 parliamentary elections by focusing on an in-depth content analysis of election manifestos of nine relevant parties and coalitions. These two dates have been carefully selected and they represent the time when Montenegro signed the SAA with the EU (2007) and the period when Montenegro officially started the EU accession talks (2012). The empirical analysis will be conducted on primary sources – election manifestos. The relevant parties are those political associations which won at least two seats in the respective elections (CMP/MARPOR 5<sup>th</sup> revised edition 2014:2). Therefore, the study does not include the analysis of manifestos of those ethnic-minority parties (FORCA, UDSH-DUA, Koalicioni Shqiptar (KS) "Perspektiva", Lista Shqiptare and Hrvatska građanska inicijativa in 2009 and 2012 elections) which won one seat in the Montenegrin Parliament.

Figure 1. A list of analysed political parties in Montenegro

Abbreviation	Full Name	English translation	Elections
KECG	Koalicija za Evropsku Crnu Goru <sup>3</sup>	Coalition for European Montenegro	2009
SNP	Socijalistička narodna partija	Socialist People's Party	2009

<sup>3</sup> KECG comprises of the strongest political party – the Democratic Party of Socialists (DPS), Social Democratic Party (SDP) and two national ethnic parties - Croatian Civic Initiative (HGI) and Bosniak Party (BS).

NOVA	Nova srpska demokratija	New Serb Democracy	2009
PzP	Pokret za promjene	Movement for Changes	2009
KECG	Koalicija Evropska Crna Gora <sup>4</sup>	Coalition European Montenegro	2012
DF	Demokratski front <sup>5</sup>	Democratic Front	2012
SNP	Socijalistička narodna partija	Socialist People's Party	2012
PCG	Pozitivna Crna Gora	Positive Montenegro	2012
BS	Bošnjačka stranka	Bosniak Party	2012

Source: 2014 CHES candidate survey (scheme available at: <http://chesdata.eu/>)

The rules and definitions applied to measure the EU policy positions of all relevant Montenegrin parties will be conducted based on the handbook of Manifesto Project (CMP/MARPOR 5<sup>th</sup> revised edition March 2014) along with the use of self-defined categories. In addition, the paper will use MARPOR's definition of relevant parties as an indicator of those parties which have won at least two seats in the elections (Ibid. 2014:2). In addition, the use of the central question of the manifesto coding defined by the CMP/MARPOR will present a special contribution to the research: What are the statements of the party candidate? Which policy positions does the party candidate convey? (Ibid. 2014:9). In order to measure the policy positions of the relevant parties all over the world, including Montenegro, the Manifesto Project developed a system of 56 standard categories grouped in seven major policy areas. However, due to the specificity of the WB mentioned above, together with the stated intent to particularly measure the prominence of EU policies (not the entire political and socio-economic context) within the Montenegrin manifestos, it can be assumed that the defined coding procedures within the MARPOR may generate difficulties and potential ambiguities instead of obtaining qualitative insights and outcomes. Therefore, the study relies on the content analysis of Montenegrin parties' election manifestos with the use of eleven self-invented categories.

The SAA has been used as the basis for defining the methodological framework of the research – the integral part of the SAP as the contractual relationship between the EU and the Western Balkans. Montenegro's progress towards the EU membership entirely depends on the fulfilment of the accession conditions which are set on three different levels: the Copenhagen criteria – general conditions (stability of democratic institutions, rule of law, respect and protection of human and minority rights and functioning of market economy), conditions which are specific, unique and common for the WB (cooperation with the International Criminal Tribunal for the Former Yugoslavia in the Hague, regional cooperation and strengthening of good neighbourly relations, the return of refugees, ethnic and religious reconciliation, protection of minorities, freedom of the media, judicial reform) and specific conditions pertaining to Montenegro (decisive fight against corruption and organized crime, state institution reforms, judicial reform, free and fair elections, protection and improvement of human and minority rights) (Mišćević 2009:151,168; Đurović 2012:324-327).

<sup>4</sup> KECG comprises of the DPS, SDP and Liberal Party (LP).

<sup>5</sup>DF is a coalition consisting of NOVA, PzP, Democratic Party of Unity and a group of citizens.

However, this research will not consider certain EU requirements embedded in the SAA. Apparently, some policies appear in all three levels, while in the case of Montenegro's cooperation with International Criminal Tribunal for the Former Yugoslavia in the Hague (ICTY), return of refugees and ethnic and religious reconciliation, the state regularly fulfils the requirements stipulated in the SAA (European Commission Montenegro Report 2015:21,57). Therefore by omitting these three EU requirements, the defined category scheme will be employed on 11 categories related to the fulfilment of the political, good governance and economic requirements for the EU membership (democracy, rule of law, human rights, minority rights, regional cooperation and good neighbourly relations, free elections, freedom of media, corruption and organized crime, judicial reforms, state institution reforms and liberal market economy). According to the Manifesto Coding Instructions, every positive category contains all the references of the negative category. As an example, "democracy positive" is a shift to "democracy negative" statements (CMP/MARPOR 5<sup>th</sup> reversed edition 2014:16). Therefore, positive references to these categories will be marked as "yes" while the negative statements will be labelled as "no". Furthermore, the use of direct quotations of manifestos will make special contribution to the content analysis.

#### 4. Outcome of research

##### *Party position in 2009*

*2009 parliamentary elections – Montenegrin political parties – content analysis of election manifestos*

Figure 2. Relative salience of European integration in the election manifestos

	<b>KECG</b>	<b>SNP</b>	<b>NOVA</b>	<b>PzP</b>
Democracy	Yes	Yes	Yes	Yes
Rule of law	Yes	Yes	No	Yes
Human rights	No	Yes	No	Yes
Minority rights	Yes	Yes	No	Yes
Regional cooperation	Yes	Yes	Yes	No
Free elections	No	Yes	No	No
Freedom of media	No	No	No	No
Corruption and organized crime	Yes	Yes	No	Yes
Judicial reform	Yes	Yes	No	Yes
State institution reform	Yes	Yes	Yes	No
Liberal market economy	Yes	Yes	Yes	Yes

Yes – Positive or favourable references to particular EU policy

No – Negative or no references to particular EU policy

The KECG offered the potential voters an election leaflet as a form of an official election programme. Although KECG strongly supports the EU membership, the coalition demonstrates prominence of EU policies only in a very broad, general sense: "By applying for the EU membership, we have created a realistic perspective for the Montenegrin future in the EU and proved that we are worthy of the renewed statehood achievements"(KECG 2009:1). The manifesto mentions a certain increase of salience of EU policies (minority rights, regional cooperation, corruption and organized crime, state institution reforms and liberal market economy etc.) in the coalition's declarative support to the European integration process. Therefore, the manifesto (consisting of 224 pages out of which 2 with direct reference to the EU matters) apparently demonstrates prominence of EU issues only in a general and vague fashion failing to provide any clear elaboration on how to conduct or implement the mentioned EU policy. Instead, the party in its manifesto devotes a significant space to the emphasis of the government achievements in the European integration process: "In October 2007, we adopted the Constitution and formalized our relations with the European Union by signing the Stabilization and Association Agreement (SAA)" (KECG 2009:1). Overall, the KECG manifesto could be evaluated as general, short and vague, paying no particular efforts to prove that concrete measures or courses of action have been taken in order to fulfil political requirements for the EU membership.

The SNP manifesto strongly advocates Montenegrin policy of open doors towards the EU integrations in the chapter entitled "*Together for the European future of Montenegro*" highlighting the EU membership as an advantage and "the basic strategic objective and the means which will turn Montenegro into a modern, democratic, economically developed and socially responsible state for all its citizens"(CGO 2009:33). Although the EU policies make the salient points in the manifesto, the party still fails to offer specific solutions and measures as to how to address certain EU policy issues. Furthermore, the manifesto only generally elaborates on the benefits of the Montenegrin accession to the EU (strengthening of the economy and the rights of employees, protection against discrimination, better education etc.) without mentioning any specific details regarding the solution of these issues (CGO 2009:58). The novelty in this manifesto is the party's effort to present the main political and economic obstacles (corruption and organized crime, political influence upon judicial and prosecutorial work, weak macroeconomic stability) which stand in the way of Montenegro's accession to the EU (CGO 2009:59). Curiously enough, it is obvious that the party sees the EU as a sphere of pragmatic interests where the EU membership was observed as a benefit for domestic economy and social arena, specifying the national interest as the main reason for maintaining closer ties with the EU.

NOVA was the only party which does not support the Montenegrin membership in the EU, or at least it has an extremely reserved attitude towards the European integration process. Rather, due to its strong Russophile orientation, NOVA seeks to maintain closer ties with the current ruling party in Russia (Vijesti 2016).<sup>6</sup> In terms of the EU impact to the domestic change, NOVA's programme expresses an extremely detached attitude towards

---

<sup>6</sup> As a result of mutual cooperation, on 25 February 2016 the United Russia and NOVA signed an agreement on joint activities in Moscow.

the EU process, given the fact that not a single word has been dedicated to the EU issues. However, certain attention has been paid to the development of regional cooperation and strengthening of good-neighbourly relations: "New Serbian Democracy will specifically advocate for the strengthening of regional economic relations, especially with Serbia as the biggest foreign trade partner, and with the Republic of Srpska as an entity with the highest energy potential in the region" (CGO 2009:63).

Generally speaking, the *PzP* manifesto has reached a shallow degree of Europeanization. Apparently, the party leaders have demonstrated a certain lack of interest for providing more reliable data regarding the European integration process, as well as the adequate measures or courses of action, in order to address certain political issues which burden Montenegro on its European path. Therefore, the party positions towards the EU issues seem more likely to be a party proclamation of general objectives. In that respect, the chapter entitled "*The policy of European integration*" demonstrates the salience of the EU issues, however its content is very limited and vague, displaying only general solutions and measures in the form of bullet points.<sup>7</sup> Unequivocally, *PzP* is strongly in favour of the Montenegrin membership in the EU, which is stressed in the following statement: "We will be persistent in advocating for Montenegrin accession as a full member and partner of the European Union" (CGO 2009:21). By the same token, the manifesto has introduced several new important general measures, which has not been the case with the other Montenegrin parties: "we will present to the Montenegrin citizens the advantages of the EU membership, which would lead to a full consensus; we will protect Montenegrin national interests; we will make a global, regional and sector cost and benefit analysis of the EU membership, etc." (CGO 2009:21). The described general party measures demonstrate that the EU transformative power upon *PzP* comes to effect slowly but its outlines are visible.

In all, Montenegrin parties demonstrate a visible degree of prominence of the EU policies in their manifestos but mostly in a general and vague fashion. The basis of the political division into referendum winners and losers (for and against the Montenegrin independence) continued to play a significant role among the members of political elite in their programmes. One might assume that the reasons for a certain reduction of the EU policies in their programmes should be sought in the submitted Montenegrin application for the EU membership at the end of 2008 i.e. before the elections.<sup>8</sup> Instead of emphasizing the importance of EU issues, during the electoral campaign, the parties addressed the resolution of the main internal socio-economic policy issues mainly due to strong influence of the global economic crisis on Montenegro in 2009. Furthermore, constant mutual accusations during the election campaign between the government and the opposition regarding the election irregularities and pressure on voters significantly reduced the relevance of the EU issues.

---

<sup>7</sup> The chapter consists of 9 short bullet points.

<sup>8</sup> Montenegro applied for the EU membership on 15 December 2008 whilst the 2009 parliamentary elections were held on 27 March 2009.

### **Party position in 2012**

*2012 parliamentary elections – Montenegrin political parties – content analysis of election manifestos*

Figure 3. Relative salience of European integration in the election manifestos

	<b>KECG</b>	<b>DF</b>	<b>SNP</b>	<b>PCG</b>	<b>BS</b>
Democracy	Yes	Yes	Yes	Yes	Yes
Rule of law	Yes	Yes	Yes	No	Yes
Human rights	Yes	Yes	Yes	No	Yes
Minority rights	Yes	Yes	Yes	No	Yes
Regional cooperation	Yes	Yes	Yes	No	Yes
Free elections	No	Yes	Yes	No	No
Freedom of media	No	Yes	Yes	No	No
Corruption and organized crime	Yes	Yes	Yes	No	Yes
Judicial reform	Yes	Yes	Yes	No	Yes
State institution reform	Yes	Yes	Yes	Yes	No
Liberal market economy	Yes	Yes	Yes	Yes	Yes

Yes – Positive or favourable references to a particular EU policy

No – Negative or no references to a particular EU policy

Similarly to previous elections, *the KECG* published the 2012 official manifesto in the form of a concise electoral leaflet. In comparison with the 2009 elections, the coalition in its manifesto demonstrates an apparent higher level of salience with respect to EU policy (human rights). The coalition frequently raised the issue of “restored independence” together with the mentioned EU policies although the issue of state-legal status had been determined in 2006. Likewise, the coalition advocated for a strong, general support of the Montenegrin membership in the EU by emphasizing only vague principles related to the European integration process: “The integration of Montenegro in the EU and NATO is the best framework both for maintaining the legacy of 21 May 2006 and the achievement of our development ambitions” (CGO 2012:98). Apparently, the content of the manifesto has been reduced to 143 words as it shows a significant limitation by highlighting mainly the examples of the government’s positive achievements in the EU accession process. “The decision made by the European Council to open the negotiations on the EU accession on 29 June 2012 is argument more which speaks in favour of the Montenegrin realistic perspective ” (CGO 2012:98). Overall, the 2012 manifestos did not express any shift in comparison to previous party programmes, failing to offer any clear elaboration related to specific EU policies.

Interestingly enough, *the DF* manifesto does not contain a clear statement of the party’s strategic determination to support the Montenegrin road towards the EU membership.

However, the manifesto advocates for a moderate yet continuous aspiration towards the EU integration processes, taking into account discernible support for the EU membership and at the same time having a critical attitude towards the issue of substantial consensus on the participation in European integration issues, quality and dynamics. "It is completely true that the opening of negotiations with the EU is primarily the consequence of the situation in the EU itself, as well as in the region, rather than the reward for the achievements of the current authorities (...) No one from the outside guarantees us when we will become an EU member and what the quality of our life will be like in our state" (CGO 2012:37). The DF manifesto demonstrated a visible level of the EU domestic impact through the prominence of EU policies in its programme. Following its moderate pragmatism towards the EU membership, the coalition in the chapter entitled "*European integration*" notes the importance of joining the EU, which requires a broad domestic consensus. Correspondingly, the manifesto provides numerous significant and unusual measures which are essential for the Montenegrin progress in the process of accession negotiations: "to adopt the national programme of the European integrations for the period 2012-2016; to make a cost-benefit analysis of European integrations by each segment and cumulatively; to involve all relevant factors in the process of European integrations: opposition, NGO sector, universities, trade unions; etc (CGO 2012:78). In comparison to the previous, 2009 programmes (NOVA and PzP), the 2012 manifesto brings considerable and noticeable changes in the party, which reflects in the purposeful absorption of the EU policies (rule of law, judicial reform corruption and organized crime, human and minority rights, free elections and freedom of media etc.). Therefore, one may conclude that the EU domestic impact had a significant foothold in this entity, which provided meaningful measures in order to comply with the EU requirements.

Following its pragmatic attitude towards the European integration process, the SNP emphasizes its commitment to the EU membership but still not providing explicit support. "We will affirm the key role of the National Parliament of Montenegro in the negotiation process of Montenegro for a full EU membership" (CGO 2012:130). In comparison to the previous elections, the 2012 manifesto demonstrates a higher level of prominence of the EU policies (freedom of media) and offers reliable solutions and measures for compliance with the EU condition criteria. In its chapter entitled "*European integration and foreign policy*" the party strongly advocates for an active role of the parliament during the negotiation process, emphasizing the importance of transparent EU processes and active participation of all domestic political actors, so that the citizens could be better informed about the future challenges that lay ahead on the path towards the EU. Analytically speaking, both manifestos pay special attention to the issue of a decisive fight against corruption and organized crime, defining it as a priority problem which awaits Montenegro on its road towards the EU membership. Therefore, the party provided meaningful measures in order to resolve these issues: "to adopt a separate law which would define the establishment of a unique agency for combating corruption and organized crime with the authorization to impose sanctions and monitor other institutions engaged in this area" (CGO 2012:121). To sum up, in comparison to the previous manifesto the party programme shifts have been traceable (the protection of human and minority rights and freedom of media), demonstrating that the party achieved a visible but shallow degree of Europeanization as a result of the EU impact.

In terms of the Europeanization of domestic parties, the *PCG* manifesto expresses no particular interest towards the compliance with the EU requirements through the introduction of its programme in a form of political declaration (CGO 2012:103-110). Although the *PCG* strongly supports Montenegro's membership in the EU, its manifesto remains unclear and inconsistent, without paying any particular attention to the salience of EU policies. Furthermore, except for the reference to certain EU policies (democracy, state institution reform and liberal market economy) in a general and vague fashion, the manifesto makes no offer to provide adequate solutions and measures in order to address these policy issues. Therefore, this may lead to the conclusion that the *PCG* manifesto expresses a low level of the EU impact on domestic party due to the insufficient level of salience of EU policies.

Among the analysed parties the *BS* introduced the shortest version of the manifesto to voters.<sup>9</sup> In the terms of EU domestic impact, the *BS* manifesto demonstrates noticeable salience of EU policies, but its content is largely limited as it provides only declarative statements of commitments regarding certain EU policy issues. The party is committed to "political support to regional cooperation which must be undivided, real and dynamic in the monitoring of the needs of the entire region" (CGO 2012:16). Similarly, the party strongly advocates for the Montenegrin membership in the EU and NATO, however, only declaratively, i.e. in the form of bullet points, and without offering any detailed explanations to support their claims. Consequently, one might conclude that the party has defined general principles only in its manifesto, which corresponds to the EU policies but only declaratively.

In all, it would be reasonable to assert that the analysed manifestos indicated a higher level of prominence of the EU policies, as well as the relevance of the European integration process compared to the 2009 elections. The analysis revealed that the degree of Europeanization increased among the relevant parties between the two parliamentary elections in 2009 and 2012, which might correspond to the Montenegro's progress on the EU accession talks. However, the parties' attitudes towards the EU policies appeared in their respective manifestos mostly in a general and vague fashion, indicating a shallow and patchy transformative power of the EU upon the Montenegrin parties.

## 5. Discussion

The research findings have revealed that the EU transformative power upon the Montenegrin parties is visible, but apparently limited in its scope and outcome. Certain visibility of the EU impact on domestic actors can be observed in the case of the party attitudes towards the European integration process where all parliamentary parties strongly support the policy of Montenegrin accession to the EU. By the same token, a clear pro-European orientation of all parties represents a novelty compared to the 2009 elections, where the conservative *NOVA* appreciably softened its pragmatic attitude towards the EU membership as a result of their joining the *DF* in 2012.

As a result of the achieved consensus among the parties on the issue of the EU membership, the EU influence on the Montenegrin parties increased between the two

---

<sup>9</sup> *BS* manifesto consists of 5 pages.

electoral cycles. Correspondingly, the EU impact on the relevant parties (KECG, SNP, PzP, DF and BS) was observable in the increased prominence of the EU policies in their manifestos, which testifies about the certain visibility of the EU transformative power on domestic changes.

However, although the majority of relevant Montenegrin parties reached a noticeable level of Europeanization in their respective manifestos, it is also evident that the majority of the promises, solutions and measures in the respective party manifestos were principally general and vague. More precisely, the parties' attitudes towards the EU process are strongly in favour of the future membership but evidently without clear and accurate course of actions or strategies, which proves that the majority of parties (except DF) only declaratively support the European integration process. Therefore, it might be reasonable to infer that a certain degree of the EU influence on domestic parties is obvious, however with an apparently limited range. The reasons for the limitation of the EU domestic impact can be considered from several aspects. Foremost, the lack of domestic parties' interest in the issue of compliance with the EU requirements can be explained in light of both parliamentary elections, which occurred after Montenegro had submitted its application for EU membership, and opened official accession talks. Apparently, Montenegro's advance towards the EU membership was seen as a sufficient sign for the political elite to focus more broadly on the internal socio-economic issues, which led to the neglect of the relevance of EU policies. Another indicator could be the constant shaking of Montenegrin political soil as a result of frequent emergence of new parties on the domestic political scene (PzP in 2009 and PCG and DF in 2012). In line with this, instead of adopting the EU policies, the newly-established parties were devoting more attention to internal socio-economic endeavours to gain the support of the voters and to ensure their parliamentary status. A similar "election attitude" was noticeable among the "old" parliamentary parties.

Obviously, a major problem which significantly hinders the EU domestic impact is a lack of political will of the elite to adequately resolve current reforms of political issues by the compliance with the EU standards. Although the Montenegrin public strongly supports the country's accession to the EU, the political elite only declaratively emphasizes the EU membership as the most important foreign policy priority, unwilling to systematically and adequately solve political conditions which are set in the EU accession conditions. We have witnessed the situation where the political elite emphasizes only a strong declaratory support to the process of EU accession, but in practice the strategic party orientation to address certain political and economic criteria for the EU membership is not visible. To be more specific, in the field of decisive fight against corruption and organized crime, rule of law, judicial and state institutional reform, protection of human rights and improvement of liberal market economy, insufficient progress has been achieved in terms of providing clear and precise strategies or measures for their implementation. Furthermore, there is a reason for serious concern - insufficient attention paid to meeting other political criteria, such as freedom of media and free elections, as the prominence of these two political criteria was noticeable only in two opposition parties – SNP and DF. Moreover, putting these issues under the spotlight is of particular importance for all Montenegrin parties, including the ruling government coalition, given the fact that a lack of confidence in the election process, due to the alleged abuse of public funds for party political purposes ("audio recordings

affair”), caused some opposition parties (DF) to boycott the parliament in September 2015 (European Commission Montenegro Report 2015:7). Obviously, the lack of the parties’ attitudes in terms of effective compliance with the EU requirements had no impact on voters. The Montenegrin citizens opted for a particular party not based on the substance of its election programme, but based on the status of a charismatic personality. Therefore, we have a paradoxical situation where the coalition (KECG) whose manifesto was published in the form of the election leaflets won the highest number of seats two times in a row. The same case happened with the opposition parties (NOVA, PzP and PCG) that received significant support from the voters although they had dedicated little or no attention to EU issues.

Taking into consideration the above discussion, it may be concluded that although the Montenegrin political elite defines the EU membership as a strategic priority of the country, its members demonstrate only formal support to the European integration process mainly by using the “EU membership perspective” as a lever to strengthen their influence in the society as the means to keep them in power. The implementation of the EU norms and rules happen only in those cases where there is a strong public pressure to comply with certain EU policies.

## **6. Concluding remarks**

The article aimed to examine the impact of the process of Europeanization on the more relevant Montenegrin parties in 2009 and 2012 parliamentary elections by focusing on an in-depth content analysis of their election manifestos. By using a methodological framework, the study attempted to provide an answer based on the designed research question as to whether EU policies have become prominent in the manifestos of Montenegrin parties during the two parliamentary elections.

Therefore, based on the provided research findings it might be reasonable to conclude that the EU transformative power on domestic Montenegrin parties was visible in the general prominence of EU policies but apparently limited in its scope and outcome. The EU impact on the Montenegrin parties mostly varies, from the political subjects where the EU has had certain influence which resulted in introduction of concrete meaningful measures in order to comply with the EU requirements, to those political entities which failed to offer any clear elaboration related to EU policies, leaving the average voters without a clear and precise attitude and the course of action towards the issue of compliance with the EU condition requirements. As a final conclusion, it might be possible to expect that the influence of Europeanization on domestic changes will be limited in the following period unless the political elite demonstrates a true political will to completely align with the EU accession conditions.

## REFERENCES

- Bieber, F., 'Building Impossible States? State Building Strategies and EU Membership in the Western Balkans', *Europe-Asia Studies*, vol.63, no. 10, 2011, 1783-1800.
- Börzel, T., 'When Europeanization Hits Limited Statehood. The Western Balkans as a Test Case for the Transformative Power of Europe', *The Freie Universität Berlin*, no. 30, 2011, pp. 3-15.
- Börzel, T.A. and T. Risse, 'When Europeanisation Meets Diffusion: Exploring New Territory', *West European Politics*, vol.35, no.1, 2012, pp.192-204.
- Carter, E. et al., *The Europeanization of National Political Parties – Power and organizational adaptation*, 1<sup>st</sup> edn., London and New York, Routledge, 2007.
- CEDEM: Političko javno mnjenje Crne Gore. 2015. (<http://www.cedem.me/me/programi/istraivanja-javnog-mnjenja/politiko-javno-mnjenje>), (accessed 17 January 2016).
- Centar za građansko obrazovanje – CGO, *Parlamentarni izbori 2009: Prilog razvoju političkog pamćenja u Crnoj Gori*, Podgorica, CGO, 2009.
- Centar za građansko obrazovanje – CGO, *Izbori i izborni program 2012: suština ili forma?*, Podgorica, CGO, 2012.
- CHES candidate survey 2014. <http://chesdata.eu/>, (accessed on 16 January 2016).
- Džankić, J., 'Reconstructing the Meaning of Being "Montenegrin"', *Slavic Review*, vol. 73, no. 2, 2014a, pp. 356-371.
- Džankić, J., 'Citizenship between the 'image of the nation' and the 'image of politics': the case of Montenegro', *Southeast European and Black Sea Studies*, vol.14, no. 1, 2014b, p. 44.
- Delegation of the European Union to Montenegro, [website], 2016, <http://www.delmne.ec.europa.eu/code/navigate.php?ld=1>, (accessed 29 January 2016).
- Džihic, V. and A. Wieser, 'The Crisis of Expectations – Europeanisation as "acquis démocratique" and its limits. The case of Bosnia-Herzegovina and Serbia', *L'Europe en formation*, no.349-350, 2008, pp. 81-98.
- Đurović, G., *Evropska unija Crna Gora: Politika proširenja*, Podgorica, Univerzitet Crne Gore – Ekonomski fakultet, 2012.
- Elbasani, A. (ed.), *European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual?*, Abingdon, Routledge, 2013.
- European Commission: Standard Eurobarometer 81. 2014. [http://ec.europa.eu/public\\_opinion/archives/eb/eb81/eb81\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_en.htm), (accessed 12 February 2016).
- European Commission: Montenegro Report 2015. [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_montenegro.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_montenegro.pdf), (accessed 10 February 2016).

- Fink-Hafner, D., 'Europeanization and party system mechanics: comparing Croatia, Serbia and Montenegro', *Journal of Southern Europe and the Balkans*, vol. 10. no. 2, 2008, pp. 167–181.
- Fink-Hafner, D. and R. Ladrech, 'Introduction: Europeanization and party politics in the territory of former Yugoslavia', *Journal of Southern Europe and the Balkans*, vol.10, no.2, 2008, pp. 135–138.
- Freyburg, T. and S. Richter, 'National Identity matters: the limited impact of EU political conditionality in the Western Balkans', *Journal of European Public Policy*, vol.17, no.2, 2010, pp. 263-276.
- Freedom House: Freedom in the World 2016. [https://freedomhouse.org/sites/default/files/FH\\_FITW\\_Report\\_2016.pdf](https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf), (accessed 3 February 2016).
- Keil, S., 'Europeanization, state-building and democratization in the Western Balkans', *Nationalities Papers*, vol.41, no. 3, 2013, pp.343-350.
- Keil, S. and Z. Arkan (ed.), *The EU and Member States Building: European foreign policy in the Western Balkans*, Abingdon, Routledge, 2015.
- Koalicija za Evropsku Crnu Goru – Milo Đukanović. Sigurno. 2009. [http://www.dps.me/images/stories/Program\\_-\\_Sigurno.pdf](http://www.dps.me/images/stories/Program_-_Sigurno.pdf), (accessed 17 January 2016).
- Komar, O. and Z. Vujović, 'Europeanisation of National Political Parties and Party Systems: Case Study of Montenegro', *The Journal of the Central European Political Science Association*, vol. 3, no.1, 2007, pp. 51-68.
- Kulahci, E. (ed.), *Europeanization and Party Politics – how the EU affects domestic actors, patterns and systems*, Colchester, ECPR Press, 2012. Ladrech, R., 'Europeanization of Political Parties: Toward a Framework for Analysis', *Party Politics*, vol. 8, no.4, 2002, pp. 396-400.
- Mišević, T., *Pridruživanje Evropskoj Uniji*, Beograd, Službeni glasnik, 2009.
- Mocht'ak, M., 'Democratization and electoral violence in post-communism. A study of Montenegro', *Southeast European and Black Sea Studies*, vol. 15, no.1, 2015, p.111.
- Morrison, K., 'Montenegro: A Modern History', London and New York, I.B. Tauris, 2009.
- Noutcheva, G., 'Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans', *Journal of European Public Policy*, vol. 16, no. 7, 2009, p. 1081.
- Noutcheva, G. and S. Aydin-Düzgit, 'Lost in Europeanisation: The Western Balkans and Turkey', *West European Politics*, vol.35, no.1, 2012, pp.59-75.
- Radeljić, B. (ed.), *Europe and the Post-Yugoslav Space*. Surrey, Ashgate Publishing Limited, 2013.
- Sedelmeier, U., 'Europeanisation in new member and candidate states', *Living Reviews in European Governance*, vol.6, no.1, 2011, p. 7.
- Stojarová, V. and P. Emerson (ed.), *Party Politics in the Western Balkans*, Abingdon, Oxon, Routledge, 2010.

- Vachudova, M. A., `Tempered by the EU? Political parties and party systems before and after accession`, vol. 15, no.6, 2008, pp. 861-863.
- Vijesti online `NOVA potpisala sporazum sa Jedinstvenom Rusijom`, 25 February 2016, <http://www.vijesti.me/vijesti/nova-potpisala-sporazum-sa-jedinstvenom-rusijom-876550>, (accessed 25 February 2016).
- Vučković, V., `Should Montenegro be declared as a safe country of origin?`, *European Western Balkans*, 22 May 2015, <http://europeanwesternbalkans.com/2015/05/22/should-montenegro-be-declared-as-a-safe-country-of-origin/>, (accessed 28 February 2016).
- Vujović, Z. and O. Komar, `Impact of the Europeanization process on the transformation of the party system of Montenegro`, *Journal of Southern Europe and the Balkans*, vol. 10, no. 2, 2008, pp. 223-241.
- Vujović, Z., `Uticaj procesa evropeizacije na političke partije u Crnoj Gori`, *CIVIS*, vol. 4, no. 4, 2015, pp. 43-58.
- Vuković, I., `Political dynamics of the post-communist Montenegro: one-party show`, *Democratization*, vol. 22, no. 1, 2015, pp. 73-79.
- Werner, A. and O. Lacewell and A. Volkens (ed.), *Manifesto Coding Instruction (5<sup>th</sup> revised edition)*, Berlin: CMP/MAPOR, 2014.

## EU-Russia Rivalry in the Balkans: Linkage, Leverage and Competition (The Case of Serbia)

**Galina A. Nelaeva, Andrey V. Semenov<sup>1</sup>**

**Abstract.** *The article seeks to examine Serbia's EU integration process in the context of EU-Russia relations in the Western Balkans. Serbia's path to the EU has been long and problematic, with Serbia recovering from economic turmoil, difficulties in post-conflict reconstruction, the destructive floods of 2014, the refugee crisis of 2015, and strained relations with its Balkan neighbours. By applying Levitsky and Way's theoretical framework that stresses the importance of an external actor in the democratization process (the importance of leverage and linkage vis-à-vis the democratizing state) and the analysis of linkages/leverage with counter-hegemonic states, we argue that in examining competing linkages/leverages, we must acknowledge the importance of the interplay between powerful actors as well. The events of 2014, which have led to a dramatic rift in EU-Russia relations, offered Serbia an opportunity to exit the "grey zone", as defined by Thomas Carothers, as well as gave the EU the chance to deepen its influence in the Western Balkans.*

**Keywords:** Serbia, transition, leverage, linkages, EU integration

---

### Introduction

On 10 November 2015, the EU Commission issued a report declaring that Serbia had "completed comprehensive action plans required for the opening of rule of law chapters 23 and 24 and has reached key agreements with Kosovo as part of the normalization process, dealt with under chapter 35."<sup>2</sup> Serbia started EU accession negotiations in December 2015.<sup>3</sup>

Following Vladimir Putin's visit to Belgrade in October 2014, a regional conference was held for ministers of foreign affairs and finance from the Western Balkan countries

---

<sup>1</sup> **Galina A. Nelaeva**, PhD, Associate Professor, Modern History and International Relations Department, Tyumen State University, Tyumen, Russia; Office 403, Lenina str., 23, Tyumen 625000, Institute of History and Political Science, Tyumen State University, Russia, E-mail: [gnelaeva@mail.ru](mailto:gnelaeva@mail.ru).

**Andrey V. Semenov**, PhD, Associate Professor, Center for Comparative History and Politics Studies, Perm State National Research University; Office 301, Bukireva 15, Perm 614990, Faculty of History and Politics, Perm State National Research University, Russia, E-mail: [andre.semenoff@gmail.com](mailto:andre.semenoff@gmail.com).

**Funding:** The authors received no financial support for the research, authorship, and/or publication of this article.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, (10 November 2015), available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_serbia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf), accessed 6 Feb. 2016.

<sup>3</sup> 'Serbia readies to open first EU chapters', *Balkan Insight*, (14 December 2015), available at: <http://www.balkaninsight.com/en/article/serbia-starts-eu-talks-challenges-lie-ahead-12-11-2015>, accessed 5 Feb. 2016.

and a meeting between Vučić and Füle (outgoing EU Enlargement Commissioner) where it was reiterated again that Serbia “is working at full steam” towards EU membership.<sup>4</sup> On the other hand, there were fears that increasing antagonism between Russia and the EU over the situation in Ukraine, and the subsequent imposition of sanctions by the EU, followed by Russia’s bans on food imports from the EU states, threatened to turn the Balkans into a contested space once again.<sup>5</sup> While EU integration was declared a priority for Serbia, its economic troubles, unresolved territorial questions over Kosovo and nation-building issues increased the likelihood of Moscow’s influence in a whole range of matters, and observers noted that, indeed, contacts between Moscow and Belgrade intensified.<sup>6</sup> While Serbia’s transformation from a problematic state in “the heart of Europe” to an EU candidate state with a more or less clear membership perspective is well-studied, what merits attention is Serbia’s path from a “grey zone”, in Carothers’ terms,<sup>7</sup> and its foreign policy options in the context of manoeuvring between the EU and Russia.

Thus, Serbia represents an interesting case for post-communist transformation studies: it maintains close relations with both the West and Russia, which in turn exercise leverage over Serbian politics and want to see Serbia as their foreign policy ally. In this article, based on Levitsky and Way’s model, we explore the specifics of Serbia’s transformation process, taking into account an additional variable: the interaction between Russia and the EU as external actors seeking to influence Serbia’s policy choices. We demonstrate that, despite wide and intensive relations between Serbia and the “normative” actor (EU) and the counter-hegemon (Russia), the priority remains with the European Union while the “black knight” is not that black indeed and does not have sufficient means to prevent Serbia’s integration into the EU. The article is structured as follows: we start by giving an overview of theoretical models of the “grey zone” transition states, and then we analyse and compare the EU and Russia’s leverage/linkage and their impact on Serbia’s political trajectory.

### **“Third-Wave Democratization” and the “Grey Zone” Countries**

Democratization scholars have long highlighted the difficulties and uncertainties associated with the transition to democracy. In his seminal article, “The End of the Transition Paradigm”, Tomas Carothers identified five core assumptions that defined the transition paradigm and proved inaccurate when tested against empirical evidence: namely, the direction, sequence and inevitability of transition, overemphasis on elections at the price of contextual factors and systematic underestimation of state-building. He stressed that transitional states can stay in the “grey zone”, between authoritarianism and

---

<sup>4</sup> ‘PM: Serbia belongs in EU, “wants to be appreciated”, B92, (2 December 2014). [http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=10&dd=24&nav\\_id=92005](http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=10&dd=24&nav_id=92005), accessed 6 Feb. 2016.

<sup>5</sup> Marta Szpala, ‘Russia in Serbia – soft power and hard interests’, *OSW Commentary*, (29 October 2014), available at: <http://www.osw.waw.pl/en/publikacje/osw-commentary/2014-10-29/russia-serbia-soft-power-and-hard-interests>, accessed 5 Feb. 2016.

<sup>6</sup> Dan Bilefsky, ‘Serbia Honors Putin While Keeping Its Eyes on Ties to the West’, *New York Times*, (16 October, 2014), available at: [http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?\\_r=0](http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?_r=0), accessed 3 Feb. 2016.

<sup>7</sup> Thomas Carothers, ‘The End of the Transition Paradigm’, *Journal of Democracy* 13 (1) (2002) ps. 5-21.

democracy for a long time either in the form of “feckless pluralism” or “dominant-power politics”. Indeed, the flourishing literature on stability of the so-called hybrid regimes (that combine features of well-established democracies with elements of authoritarian rule) shows that, though not necessarily durable in the long-term, hybrids exert a fair degree of adaptability and can survive behind democratic façades.<sup>8</sup>

The international environment has long been recognized as an important variable explaining the (un)successfulness of transition. Huntington, among other factors conducive to the third wave democratization, pointed at human rights and democracy promotion by Western Europe, the USA and non-governmental actors after the Second World War.<sup>9</sup> Levitsky and Way explored the role of Western linkages and Western leverage in the course of transition in determining the outcome (democracy consolidation, unstable and stable authoritarianisms).<sup>10</sup> However, as Huntington’s model predicts, there must come a reverse wave of rollback from democracy – a tendency observed both by academic scholars and policy experts. Since 2006 there has been an accelerating rate of democratic breakdown, declining quality and stability of democratic governance, deepening authoritarianism and poor performance of established democracies.<sup>11</sup> Though Møller and Skaaning argue that this is not a recession, but rather a “democratic plateau”, Diamond posits that there is no evidence that autocracies are going to advance,<sup>12</sup> and that the different international environment for democratic promotion and development in the world is worth taking note of. Autocracies around the world (most notably China and Russia) now promote an alternative economic or even “civilizational” model, using all means at their disposal – from investments to soft power and coercion – to stabilize their neighbourhood and challenge Western hegemony.<sup>13</sup>

Therefore, in the case of nations caught between powerful democratic and authoritarian states it is important to compare the strength of linkages and leverage of the rival centres. Post-communist Europe presents a number of such cases with Ukraine at the forefront,

---

<sup>8</sup> Jason Brownlee, ‘Portents of pluralism: How hybrid regimes affect democratic transitions’, *American Journal of Political Science* 53 (3) (2009) ps. 515-532; Larry J. Diamond, ‘Thinking about hybrid regimes’, *Journal of Democracy* 13 (2) (2002) ps. 21-35; Beatriz Magaloni. *Voting for autocracy: Hegemonic party survival and its demise in Mexico* (Cambridge: CUP 2008); Andreas Schedler. *The politics of uncertainty: Sustaining and subverting electoral authoritarianism*, (Oxford: OUP, 2013); Lucan A. Way and Steven Levitsky, ‘Linkage, leverage, and the post-communist divide’, *East European Politics & Societies* 21 (1) (2007), ps. 48-66.

<sup>9</sup> Samuel Huntington. *The Third Wave: Democratization in the late 20th century*. 4<sup>th</sup> Edition. (University of Oklahoma Press, 2012).

<sup>10</sup> Steven Levitsky and Lucan A. Way. *Competitive authoritarianism: hybrid regimes after the cold war*. (Cambridge: CUP 2010).

<sup>11</sup> Larry J. Diamond, ‘Facing Up to the Democratic recession’, *Journal of Democracy* 26 (1) (2015) p. 144, available at: <http://www.journalofdemocracy.org/sites/default/files/Diamond-26-1.pdf>, accessed 4 Feb. 2016; Jakob Tolstrup, ‘Black knights and elections in authoritarian regimes: Why and how Russia supports authoritarian incumbents in post-Soviet states’, *European Journal of Political Research* (2014).

<sup>12</sup> Jørgen Møller, and Svend-Erik Skaaning, ‘The third wave: Inside the numbers’, *Journal of Democracy* 24 (4) (2013) ps. 97-109, available at: <http://www.journalofdemocracy.org/sites/default/files/Moller-24-4.pdf>, accessed 5 Feb. 2016.

<sup>13</sup> Olga Oliker, Keith Crane, Lowell H. Schwartz and Catherine Yusupov, ‘Russian Foreign Policy. Sources and Implications’, RAND Corporation (2009), available at [http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND\\_MG768.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG768.pdf), accessed 5 Feb. 2016; Zhu Liqun, ‘China’s Foreign Policy Debates’, Chaillot Paper. European Union Institute for Security Studies (2010), available at: [http://www.iss.europa.eu/uploads/media/cp121-China\\_s\\_Foreign\\_Policy\\_Debates.pdf](http://www.iss.europa.eu/uploads/media/cp121-China_s_Foreign_Policy_Debates.pdf), accessed 5 Feb. 2016.

but also with Armenia, Georgia, Moldova and the majority of the Western Balkan states as well. Most of these countries teeter between the European Union and Russia (and to a lesser extent the US and China). Though Russia's "black knight" counter-hegemonic role has been acknowledged,<sup>14</sup> there is still a lack of theoretically-guided empirical studies revealing the mechanisms and interplay of competing linkages/leverages.

Serbia represents an interesting case-study: on one hand, it began EU accession negotiations in 2014 and established strong trade and economic ties with European countries; on the other hand, it is highly dependent on energy supplies and investments from Russia, while Moscow has doubled its efforts to attract the Serbian public over the last few years.

The linkage model is generally well-received in the academic community. Further research enhanced the model with nuanced analysis of the conditional and mediation effects. For instance, Sasse, using Moldova and Ukraine as examples, argues that the role of linkages with the West in democratic development is significant only if it becomes a part of political competition (e.g. to reinforce emerging cleavages).<sup>15</sup> Weak stateness and unresolved territorial conflicts can undermine the prospects of democratic consolidation. Tolstrup adds the "gatekeeper" concept to this model, and summarizes that the "external actor matters most for democratization when it is relatively more powerful than the state it tries to affect, when a tight network of linkages exists... and when the gatekeeper elites try to strengthen these ties and thus ease the transmission of the external actor's pressure..."<sup>16</sup>

These assumptions are further tested by Bidzina Lebanidze who looks at the South Caucasus states. "Contrary to the model's prediction, democratization under low linkage is still possible when leverage is used in a conditional way and the influence of other powers is low."<sup>17</sup> The researcher also believes that Levitsky and Way's internal factors, namely, organizational power is "neither as important as it is portrayed by the authors, nor is it a purely domestic variable, but rather a product of external and domestic interactions. In fact, when used properly, leverage seems to be more important than organizational power, regardless of the latter's strength."<sup>18</sup> According to Lebanidze, continuation of authoritarian regimes without democratic opening can be explained by the influence of Russia as a counter-hegemonic power in Armenia and Azerbaijan, which decreases the influence of the West, conclusions which resonate with similar research on the topic.<sup>19</sup>

---

<sup>14</sup> Anastassia Obydenkova and Alexander Libman, 'Understanding the foreign policy of autocratic actors: ideology or pragmatism? Russia and the Tymoshenko trial as a case study', *Contemporary Politics ahead-of-print* (1-18, 2014); Jakob Tolstrup, *Russia vs. the EU: the competition for influence in post-Soviet states*. (Lynne Rienner Publishers, 2015); Lucan A. Way, 'Explaining the Efficacy of Russia as a Black Knight', APSA Annual Meeting Paper (2011); Gary C. Hufbauer, Jeffrey J. Schott, and Kimberly A. Elliott. *Economic sanctions reconsidered: History and current policy* (Washington DC: Institute for International Economics, 1990).

<sup>15</sup> Gwendolyn Sasse, 'Linkages and the promotion of democracy: the EU's Eastern neighbourhood', *Democratization* 20 (4) (2013) ps. 553-591.

<sup>16</sup> Jakob Tolstrup, 'When can external actors influence democratization? Leverage, Linkages and Gatekeeper Elites', *Democratization* 2 (4) (2013), p. 735.

<sup>17</sup> Bidzina Lebanidze, 'What makes authoritarian regimes sweat? Linkage, leverage and democratization in post-Soviet South Caucasus', *Southeast European and Black Sea Studies* 14 (2) (2014) p. 214.

<sup>18</sup> Ibid.

<sup>19</sup> Nicu Popescu and Andrew Wilson. 'Turning Presence into Power: Lessons from the Eastern Neighborhood', European Council on Foreign Relations Policy Brief (May 2011).

Serbia, like most post-communist countries, is under pressure from both Russia and the EU: the two are much more powerful, have a dense network of linkages and resort to leverage. Both have influence over the gatekeeper elites, and Serbia has some troubles with statehood (not to mention the Kosovo issue). And as Russia and the EU hold considerable sway in the international arena, maintaining good relations with them is important for Serbia to move further from the “grey zone” or stay on its edges. Hence we argue that the linkage model can further be strengthened by comparing the linkages and leverage of the external actor and the “black knight” over the country of interest and examining its impact on political competition, elites and the question of statehood.

Therefore, we are interested in how Serbia’s manoeuvring between Russia and the West impacts its political trajectory. Applying Levitsky and Way’s model to Serbia allows us to examine the influence of two powerful external actors, and the leverage/linkages they use. Furthermore, Serbia has a sensitive territorial question: the question of Kosovo, over which Russian and EU positions differ. Thus, in analysing Serbia’s political trajectory and democratic consolidation prospects it is necessary to compare not only Russia and EU leverage/linkages but also the interaction between these two external actors, especially in light of events in 2014. Our analysis proceeds from the early 2000s. This can be explained by several reasons: first of all, there is already extensive literature covering Western Balkans transformation processes in the 1990s;<sup>20</sup> secondly, the year 2000 can be considered a watershed separating Serbia under Milošević from present-day Serbia; and finally, it was in the 2000s that Russia’s policies towards the Western Balkans became more assertive and consistent with Russia assuming the role of a counter-hegemonic power.

### EU linkage and leverage

Serbia inherited much of its ties with Western Europe from the Cold War era. The dissolution of Yugoslavia followed by ethnic conflicts forced the newly formed European Union to engage in the region, but due to its internal weakness the USA and NATOP played first fiddle. However, the EU maintained many linkages with Serbia, facilitating the transition and eventually helping the opposition to outplay Slobodan Milošević and gain power in 2000. Seeking regional stabilization, the EU launched several initiatives in the mid-1990s: the South-East European Cooperation Process (1996), Stability Pact for South-Eastern Europe (1999-2008), Southeast European Cooperative Initiative (1996) and the Stabilisation and Association Process (SAP). In 1996, a framework for the ex-Yugoslav countries was established that listed a number of conditions for strengthening cooperation. By the late 1990s Serbia was among the worst performers.<sup>21</sup> Nevertheless, financial aid was not completely cut off, and it was not until the escalation of the Kosovo

---

<sup>20</sup> See, for instance, Judy Batt, ed. ‘The Western Balkans: moving on’, Chaillot Paper, European Union Institute for Security Studies, № 70 (2004); Leonard J. Cohen and John L. Lampe. *Embracing democracy in the western Balkans: from postconflict struggles toward European integration* (Woodrow Wilson Center Press with Johns Hopkins University Press 2011).

<sup>21</sup> Communication from the Commission to the Council and the Parliament, Compliance with the conditions in the Council Conclusions, (29 April 1997), available at: <http://aei.pitt.edu/4357/1/4357.pdf>, accessed 4 Feb. 2016.

conflict in 1998 that the EU imposed sanctions, though this leverage was not sufficient enough to halt the escalation.

Between the 1999 NATO campaign and the opposition victory (both via ballots and street protests) of autumn 2000, the EU-initiated SAP from June 1999 became a new leverage instrument, that emphasized, *inter alia*, the need for regional cooperation and conflict resolution, and a special provision for Serbia and Croatia, namely cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). In June 2000, the European Council made SAP the focal instrument of the accession process and in October, the EU-FRY (Former Republic of Yugoslavia) Consultative Task Force was established. SAP officially started in November. Sanctions were lifted and the European Economic Community market was opened to facilitate export from the Western Balkans. Thus, the EU took part in the post-Milošević transformation period by gradually increasing its presence in the region.

This tendency continued throughout the 2000s. The Stability Pact for South East Europe was initiated in 1999 and finally, the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme was launched with 4.65 billion euro earmarked until 2006. In its first annual report on SAP, the European Commission noted that Belgrade “has made progress with its political reform since the introduction of the new regime.” In the same report, however, the Commission mentioned that, “it is vital for the country to combat corruption and collaborate successfully with the International Criminal Tribunal for the former Yugoslavia.”<sup>22</sup> Even if the EU in the early 2000s was steadily increasing its leverage over the Balkans, the internal political situation in Serbia inhibited the effects of external pressure: there was a split in the ruling coalition between president Koštunica and prime-minister Đinđić over the course of reforms and Serbia-ICTY cooperation, particularly on the issue of the extradition of war criminals. Serbia’s relations with the ICTY were one of the most painful aspects of EU-Serbia relations,<sup>23</sup> especially after the unexpected extradition of Slobodan Milošević to the ICTY.

During the Thessaloniki Summit of June 2003, the European Union declared its determination to integrate the Western Balkan states, a commitment reiterated on a number of later occasions.<sup>24</sup> Despite the fact that initial enthusiasm waned in the aftermath of the French and Dutch referenda on the EU Constitution, there were no more doubts within the EU on the issue of the integration of Serbia. Thus, the EU made a decision to unfreeze the Interim Trade Agreement with Serbia and abolish visa requirements for Serbian

---

<sup>22</sup> Stabilisation and Association Process for South Eastern Europe, First Annual Report, COM(2002)163, final 03.04.2002. [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=502DC0163](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=502DC0163), accessed 7 Feb. 2016.

<sup>23</sup> Jelena Stojanović, ‘EU Political Conditionality and Domestic Politics: Cooperation with the International Criminal Tribunal for the Former Yugoslavia in Croatia and Serbia’, PhD Thesis, Budapest: Central European University (2009).

<sup>24</sup> EU-Western Balkans Summit, Thessaloniki. The Thessaloniki Agenda for the Western Balkans, Declaration, (21 June 2003), available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/misc/76291.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/76291.pdf), accessed 10 Feb. 2016; Salzburg Declaration, Salzburg EU/Western Balkans Joint Press Statement, (03 November 2006), available at: [http://europa.eu/rapid/press-release\\_PRES-06-77\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-06-77_en.htm?locale=en), accessed 4 Feb. 2016.

nationals.<sup>25</sup> Strengthening of the trade linkages enabled the EU to increase its influence over the country. According to the European Commission, in 2011 the EU-Serbia trade volume exceeded 14 billion euro (with 9 billion export from the EU and 5.1 billion export from Serbia); in 2013 - almost 16.2 billion (9.7 and 6.6 billion accordingly).<sup>26</sup>

By the mid-2000s there had been a gradual growth in foreign direct investment into the Western Balkans, including Serbia, with the EU as the major donor. While in 1999 FRY received 112 million USD in foreign direct investments, and only 25 million in 2000, in 2003 it surged to 1 542 million, and in 2008 Serbia attracted 2 955 million in FDI.<sup>27</sup> Though the global recession of 2008-2010 undermined the FDI inflow, which remains rather volatile due to internal (slow pace of reforms, specifics of the business environment) and external factors, in 2013 the FDI volume accounted for 1 034 million. If compared to other states of Southeast Europe and the Balkans, Serbia comes second (after Romania) in the level of FDI.<sup>28</sup> Key investor states (as of 2011) are: Austria (17.1% of total FDI), Netherlands (10.1), Greece (9.6), Germany (9.1) and Norway (8.4).

The EU states, in addition to being the main trade partners and investors, offer substantial financial assistance (the EU is the biggest financial donor in Serbia). The amount of financial assistance in the period 2001-2014 exceeded EUR 2.6 billion (with Germany contributing EUR 1.2 billion, Italy- EUR 276 million, Greece- EUR 254 million, and Netherlands- EUR 214 million). In 2014 the European Union, as a sign of "special trust", transferred managerial power of over 600 EU-funded projects to the Serbian government.<sup>29</sup> For policy and legislation harmonisation the EU relied on the Instrument for Pre-Accession (IPA) with 1.1 billion euro allocated. A further 2 billion are earmarked for the period of 2014- 2020 for the Western Balkans and Turkey (IPA2 2014).<sup>30</sup>

The question of Kosovo's status remains a significant impediment to EU leverage. Not only has the question of Kosovo's independence *per se* (proclaimed in 2008) been a difficult issue domestically (with the ICJ adding to the controversy with its much-debated decision), some EU states like Germany were openly pushing for recognition.<sup>31</sup> After Kosovo was recognized by 108 countries (including 22 EU members), Germany assumed

---

<sup>25</sup> Walter Mayr, 'Serbians Get Visa-Free Travel: EU Welcomes 'Leper of Europe' Back into the Fold', *Spiegel International*, (29 December 2009), available at: <http://www.spiegel.de/international/europe/serbians-get-visa-free-travel-eu-welcomes-leper-of-europe-back-into-the-fold-a-669233.html>, accessed 6 Feb. 2016.

<sup>26</sup> European Union. Trade in Goods with Serbia. European Commission. Directorate-General for Trade. (27 August 2014), available at: [http://trade.ec.europa.eu/doclib/docs/2008/august/tradoc\\_140028.pdf](http://trade.ec.europa.eu/doclib/docs/2008/august/tradoc_140028.pdf), accessed 5 Feb. 2016.

<sup>27</sup> World Investment Report. UNCTAD. (2014), available at: [http://unctad.org/en/publicationslibrary/wir2014\\_en.pdf](http://unctad.org/en/publicationslibrary/wir2014_en.pdf), accessed 4 Feb. 2016.

<sup>28</sup> Estrin, Saul and Milica Uvalic, 'FDI into transition economies: are the Balkans different?' 12th EACES conference and the International Conference on occasion of the 75th Anniversary of the Faculty of Economics, University of Belgrade, (20-22 September 2012), available at: <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper64.pdf>, accessed 5 Feb. 2016.

<sup>29</sup> EU Assistance to Serbia. The Delegation of the EU to the Republic of Serbia Official Website. (27 August 2014), available at: [http://www.europa.rs/en/eu\\_assistance\\_to\\_serbia.html](http://www.europa.rs/en/eu_assistance_to_serbia.html), accessed 5 Feb. 2016.

<sup>30</sup> IPA2. The Delegation of the European Union to the Republic of Serbia Official Website. (27 Aug. 2014), available at [http://www.europa.rs/en/eu\\_assistance\\_to\\_serbia/ipa/IPA2.html](http://www.europa.rs/en/eu_assistance_to_serbia/ipa/IPA2.html), accessed 4 Feb. 2016.

<sup>31</sup> 'Germany's Foreign Policy Towards Kosovo. A Policy Perspective', Group for Legal and Political Studies. Prishtina Council on Foreign Relations. (No. 2, 2014).

the role of a key mediator between Belgrade and Prishtina. Despite the fact that official recognition of Kosovo was not declared a necessary precondition for membership, "it is clear that without some sort of "silent recognition", which is a prerequisite of developing bilateral relations between Serbia and Kosovo to a minimal degree of normality, Serbia will not be able to join. However, asking a state to silently accept losing part of its territory is a much more demanding request than calling for the application of democratic norms."<sup>32</sup> Even if the EU largely contributed to the normalization of relations between Belgrade and Prishtina (which eventually led to the conclusion of an agreement between them in spring 2013), the Kosovo question remains a sensitive issue both in the political and public domains and is actively manipulated by the counter-agent, Russia.

If we look at the social contacts between the EU and Serbia, polls show that the EU enlargement is still seen as a popular long-term objective and the EU itself as quite an attractive model.<sup>33</sup> According to the Gallup "Balkan Monitor" polls, 72.4% of Serbians support the idea of EU accession, 59.7% believe that accession would make life better for the community, and 69.4% for them personally. The numbers, however, are lower than in the rest of the Western Balkans.<sup>34</sup> One-third of the respondents (28.8%) think that EU membership is a threat to national identity, and 45.8% have negative feelings towards the EU (especially true for the elderly and undereducated strata).

### **Russia's linkage and leverage**

Just like the EU, Russia has diverse and strong linkages with Serbia, though its leverage is considerably lower. In the 1990s the Russian government was the main FRY supporter on the international arena. The most illustrative example is the famous episode of Russian PM Primakov "turning over the Atlantic" on 24 March 1999 – the day the NATO air campaign started.

Rapid economic growth of the early 2000s enabled Russia to strengthen its international standing. This was especially true for Russia's policies towards the post-Soviet states and "Near Abroad", with Moscow's position becoming more ambitious and assertive. A milestone of Russia's policies towards the Western Balkans was the "South Stream" project announced in 2010, which would enable gas transit to European countries by way of bypassing traditional transit routes. Serbia embraced the project with enthusiasm and in 2013 the Serbian Parliament awarded a special status to the gas pipeline. Expectations were high: "The construction of the South Stream onshore section will provide approximately 2.1 billion euro of direct foreign investments to the nation's

---

<sup>32</sup> Beáta Huszka, 'The Next Enlargement Round- the Balkan Challenge', EU Frontiers Policy Paper. Center for EU Enlargement Studies (No.1, 2010), available at: <http://cens.ceu.edu/publications/huszka/2010/5806>, accessed 6 Feb. 2016.

<sup>33</sup> Smiljana Vukojić, 'Poll: Serbia's complex attitude towards the EU', *EurActiv*, (9 January 2015), available at: <http://www.euractiv.com/sections/global-europe/poll-serbias-complex-attitude-towards-eu-311141>, accessed 3 Feb. 2016.

<sup>34</sup> Insights and Perceptions: Voices of the Balkans, Summary of Findings. *Monitor, Gallup Balkan* (2011), available at: <http://balkanfund.org>, accessed 5 Feb. 2016.

economy.”<sup>35</sup> “In the face of growing instability in Ukraine, which has been the traditional route of Russian gas and oil transport to Europe, South Stream envisions shifting Russian natural gas supply lines through the Black Sea, then across Bulgaria, Serbia, and Hungary into the lucrative Western European markets. Austria, Italy, and Germany top the list of energy-hungry buyers in the EU, all of which have adopted less fiery language on Russia’s recent behaviour.”<sup>36</sup>

There has also been a significant increase in investment: in 2008 Russia’s Gazprom bought 51 percent stake in NIS (Serbian state-owned oil company), which was part of the overall strategy to ensure Gazprom’s presence at the energy market in the Western Balkans. This would enable the “South Stream” project to run smoothly. From 2003 till 2012, cumulative Russian FDI amounted to 2.85 billion dollars, and in 2013 Serbia attracted 723.5 million dollars in investments originating from Russia (still well behind the EU). In terms of trade, there is a large deficit in balance, especially in regards to energy products: it is estimated that in 2012 Serbia imported from Russia fuel and energy products worth 3337.3 million USD, the second commodity group after “machinery, equipment and transport” worth 4371.1 million.<sup>37</sup> Russia’s energy import volume is volatile, but on average it accounts for 54.5% while retaining the monopolistic position in gas supplies.

On the political level we have seen an intensification of contacts in the past six years. High-level events have been organized, which included President Medvedev’s official visit in October 2009, where he addressed the Serbian parliament and reiterated Russia’s stance on Kosovo, UN resolution 1244, and the 1999 NATO operation while once again invoking their common past, and President Putin’s working visit in October 2014 to Belgrade. Apart from that there were foreign affairs minister Lavrov’s and his deputies’ four journeys to Serbia in 2014, seven visits of Serbian delegations to Moscow and five high-level telephone talks and numerous business contacts between 2008 and 2014. In 2014, Russian Railways CEO Yakunin visited Serbia three times to discuss large-scale investments (up to 800 million USD) in infrastructure.

On the “track-two” diplomacy level, Russia has a number of organizations promoting its image in Serbia: the Russian Centre in Belgrade University and gymnasium in Novi Sad (a branch of “Russkyi Myr” foundation headed by “United Russia” MP and political adviser Nikonov), “Russian House” (branch of Rosstrudnichestvo – agency under MFA to maintain ties with compatriots abroad), Russian-Serbian Humanitarian Center in Niš and numerous GONGO and NGOs in both countries that promote the ideas of a Slavic

---

<sup>35</sup> The South Stream Project in Serbia (official website), available at: <http://serbia.south-stream.info/project/>, accessed 12 Feb. 2016.

<sup>36</sup> Alexander Mirescu, (2014). “Between a Rock and a Hard Place: Serbia, Russia, and the Effects of the Ukraine Crisis.” The Global Observatory, (3 June 2014), available at: <http://theglobalobservatory.org/2014/06/serbia-russia-and-effects-of-ukraine-crisis>, accessed 5 Feb. 2016.

<sup>37</sup> ‘Ob’em i Struktura trgovli Respubliki Serbiya s zarubezhnymi stranami za period 2008-2012 gg’ [Volume and Structure of Serbian Republic’s Trade with Foreign Countries in the period 2008-2012], Portal of External Economic Relations, Ministry for Economic Development of Russia (12 June 2014), available at: [http://www.ved.gov.ru/files/images/kai/trade/123/Volume%20and%20structure%20of%20the%20five%20years%20the%20whole%20world%20\(2008-2012\).xls](http://www.ved.gov.ru/files/images/kai/trade/123/Volume%20and%20structure%20of%20the%20five%20years%20the%20whole%20world%20(2008-2012).xls), accessed 6 Feb. 2016.

world and brotherhood. The Russian Orthodox Church (ROC) also maintains its linkages: patriarch Cyril regularly visits Serbia and meets Serbian officials. In almost all of his speeches he regards Kosovo independence as intolerable and regularly condemns the damage done to the historical and religious heritage in Serbia and Kosovo. During his meeting with Serbian patriarch Irenej in July 2013 Cyril even stated: "With regret we have to say that the Serbian political establishment lacks integrity [on the issue of Kosovo] and must listen to Serbian Orthodox Church not to ignore it let alone publicly."<sup>38</sup> In addition, ROC organizes donor campaigns and educational activities.

Security cooperation has been quite intensive as well, with Serbia obtaining an observer status in the Russia-led Collective Security Treaty Organization in 2013. Russia, alongside with the EU states, provided assistance to Serbia to deal with the destruction caused by the 2014 floods: the Russian Ministry of Emergency Situations sent several planes equipped with personnel, food and rescue boats,<sup>39</sup> and the Russian-Serbian Humanitarian Centre located in Nis was highly visible during emergency and relief operations in the Western Balkans.

In addition, Russia and Serbia are uniform in their view of the ICTY as a biased and incompetent institution and frequently criticize it (for instance, for the notorious release of Croatian war criminals Ante Gotovina and Mladen Markač).<sup>40</sup> They have repeatedly stated that the ICTY should be closed down.<sup>41</sup>

In 2015, Russia vetoed UN Security Council draft resolution related to the massacre in Srebrenica. Russian Foreign Minister Lavrov reportedly said that the resolution, which condemned the events as genocide, was written "in an anti-Serb tone and incorrectly interpreted, from a legal point of view, what had happened in Srebrenica."<sup>42</sup>

In general, Russia's presence in Serbia is quite visible. According to opinion polls, Russia is perceived as the main donor in the country, leaving the EU and the USA behind. Serbs have a positive image of Russia: only 3.2% of those polled believe Russia is not an important partner for Serbia (the number is 6.1% for the EU and 24.3% for the USA). This data mirrors the polls in Russia: the majority of Russians have a positive image of Serbia:

<sup>38</sup> 'Sostojalas' vstrecha Predstojatelej Russkoj i Serbskoj Pravoslavnyh Cerkvej' [Meeting was held between the highest church officials of the Russian and Serbian Orthodox Churches], (17 July 2013), available at: <http://www.patriarchia.ru/db/text/3105636.html>, accessed 5 Feb. 2016.

<sup>39</sup> Matt Robinson, 'Russia, EU join flood relief efforts in Serbia, Bosnia', *REUTERS*. (18 May 2014), available at: <http://www.reuters.com/article/2014/05/18/us-balkans-flood-idUSBREA4G03P20140518>, accessed 8 Feb. 2016.

<sup>40</sup> Louis Charbonneau, 'Russia slams Hague court for freeing Croatian generals', *Reuters* (5 December 2012), available at: <http://www.reuters.com/article/2012/12/06/us-warcrimes-gotovina-russia-idUSBRE8B500020121206>, accessed 3 Feb. 2015.

<sup>41</sup> Stanislava Gaydazhieva, 'Russia firmly committed to completion of ICTY's activities', *New Europe*, (30 November 2012), available at <http://www.neurope.eu/article/russia-firmly-committed-completion-icty-s-activities>, accessed 3 Feb. 2016; Marija Ristic, 'Russia, Serbia Criticise the ICTY before the UN', *Balkan Insight*, (6 December 2012), available at: <http://www.balkaninsight.com/en/article/cooperation-with-ex-yugoslav-countries-crucial-icty-says>, accessed 6 Feb. 2016.

<sup>42</sup> 'Russia Backed Old Friend Vetoing UN Condemnation of Serbia', *Sputnik*. (09 July 2015), available at: <http://sputniknews.com/analysis/20150709/1024399587.html>, accessed 6 Feb. 2016.

only 14% of the people didn't follow the developments of the 1990s Yugoslav wars, 59% were outraged and 29% were worried about NATO's actions in Yugoslavia.<sup>43</sup>

### Serbia's "Policy of Neutrality"

In January 2015, Serbia attained Chairmanship of the OSCE. On this occasion first deputy prime minister Ivica Dačić stated: "We share the assessment that the crisis in Ukraine is a great challenge to European security. It brings into question the very concept based on the guiding political documents, such as the Helsinki Final Act, the Charter of Paris for a New Europe and the Istanbul Charter for European Security."<sup>44</sup> Despite Serbia's proclamations of support of Ukraine's territorial integrity, it tries to maintain friendly relations with all parties that have stakes in the conflict.<sup>45</sup> Thus, for example, the Serbian delegation did not take part in the voting for the General Assembly Resolution 68/262 on 27 March 2014 on the territorial integrity of Ukraine (A/RES/68/262), and in July Prime Minister Aleksandar Vučić in his conversation with the US Ambassador in Serbia remarked that Belgrade's stance concerning Ukraine was that of support for Ukraine's territorial integrity, which applied "even to Crimea."<sup>46</sup>

Comparing the EU and Russia and their policies towards Serbia is not an easy task given that the EU is frequently divided over its foreign policy choices while Russia makes more or less consolidated decisions. However, as the above analysis shows, Serbia maintains deep and diverse relations with both, and in this light, the statement by President Nikolić that he planned to follow Tito's orientation of both East and West, since "Nowadays, Tito's foreign policy concept is the only right choice"<sup>47</sup> does not come as a surprise. According to the Serbian Ambassador in Russia Slavenko Terzic, who declined the possibility of Serbia's imposition of sanctions on Russia, "Our policy is determined clearly as a policy of military and political neutrality, we will insist on this."<sup>48</sup> What is important, however, is to what extent can this policy be adhered to in the constantly changing international environment?

The analysis shows that despite the fact that the EU has more leverage and linkages in Serbia, Russia represents an important counter-agent. Even if these two parties are not openly antagonistic towards one another (given that on some issues like stabilization of

---

<sup>43</sup> Elena Arlyapova, 2014. 'Dynamics of Public Opinion in Russia Concerning Serbia', Center for Strategic Alternatives (2014), available at: [http://www.strateskealternative.rs/?p=1943#\\_edn3](http://www.strateskealternative.rs/?p=1943#_edn3), accessed 3 Feb. 2016.

<sup>44</sup> Statement by H.E. Mr. Ivica Dačić, First Deputy Prime Minister and Minister of Foreign Affairs of the Republic of Serbia. OSCE Ministerial Event. Addressing the Crisis of European Security: The Way Forward and the Role of the OSCE. New York. (26 September 2014).

<sup>45</sup> Nemanja Rujevic, 'Serbia: A new mediator in the Ukraine conflict?' *Deutsche Welle*, (1 January 2015), available at <http://www.dw.de/serbia-a-new-mediator-in-the-ukraine-conflict/a-18165680>, accessed 4 Feb. 2016.

<sup>46</sup> Milos Mitrovic, 'Vucic "surprised" with US ambassador's statement', *Independent Balkans News Agency*, (23 July 2014), available at: <http://www.balkaneu.com/vucic-surprised-ambassadors-statement>, accessed 5 Feb. 2016.

<sup>47</sup> Gordana Filipovic, 'Serbia to Avoid Sides in Ukraine Crisis, Nikolic Says', *Bloomberg*, (10 July 2014), available at: <http://www.bloomberg.com/news/2014-07-09/serbia-to-avoid-sides-in-ukraine-crisis-nikolic-says.html>, accessed 5 Feb. 2016.

<sup>48</sup> Oksana Toskic, 2014. 'Serbia mulls no possible sanctions on Russia — ambassador', *TASS. Russian News Agency*, (25 November 2014), available at: <http://en.itar-tass.com/russia/763542>, accessed 4 Feb. 2016.

the region they hold a common view), intensification of hostility in EU-Serbia and Russia-Serbia relations remains a possibility not to be ignored.

While comparing the intensity of economic linkages, the EU has a stronger presence in Serbia, both in terms of resources and variety of economic linkages. Russia has less experience in aid provision, and its trade relations with Serbia primarily involve the energy and investment (albeit growing) sectors and cannot surpass those originating from the EU. EU integration offers Serbia a more predictable alternative: the EU is not just the main investor but a regular one, with a consistent presence in the region. On the other hand, the Serbian economy is struggling: after the 2008 financial crisis external debt has gone up (which makes full EU membership a distant prospect), and the inflow of investment is volatile (thus any investment, whatever the source, is highly desirable).

Political linkages, as far as elite and public support is concerned, extend to both external actors. All major political forces in Serbia declare the necessity to have friendly relations with both the EU and Russia, taking into account, *inter alia*, public opinion polls. During the March 2014 elections all political parties resorted to pro-European rhetoric. Russia, however, due to historical and cultural linkages, is more popular than the EU, especially among adult and elderly citizens who still have fresh memories of the 1990s wars and the 1999 NATO campaign. Besides, not a single major political party dares mention the question of recognizing the independence of Kosovo. Having Russia's support on this matter is considered important, given that Russia, as a permanent UNSC member, is capable of vetoing any decision considered to be damaging by Belgrade. The EU has fewer capacities to resort to political levers in this regard, even if it acts as a key mediator in negotiations with Prishtina in addition as a guarantor of stability with its support of the EULEX mission.

Finally, cultural linkages and soft power instruments are also asymmetrical. Russia has a more visible presence in the EU (though the situation is gradually becoming equal for both parties). Historical and cultural linkages, frequently referred to by politicians and other public figures, allow Russia to maintain a positive image among the Serbian population. A New York Times journalist quotes a resident from Belgrade who during Vladimir Putin's visit to Serbia mentioned that, "This brought me back to the time when my parents were alive, to when Russia and Yugoslavia loved each other. The West is blackmailing us all the time, but we can always rely on Russia and Putin."<sup>49</sup> However, as public opinion polls show, the EU member-states are seen as the main destination for immigration and for students who wish to obtain European diplomas, and this trend can lead to a situation where Russia's popularity among younger generations of Serbs is significantly reduced. Moreover, over 70% of Serbs responded that they would prefer their children to grow up in the EU.<sup>50</sup>

---

<sup>49</sup> Dan Bilefsky, 'Serbia Honors Putin While Keeping Its Eyes on Ties to the West', *New York Times*, (16 October, 2014), available at: [http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?\\_r=0](http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?_r=0), accessed 3 Feb. 2016.

<sup>50</sup> Vukojčić, note 32.

During his visit to Turkey Vladimir Putin announced Russia's plan not to continue its \$50bn "South Stream" gas pipeline project across the Black Sea into European countries,<sup>51</sup> and Russian Ambassador to Serbia Aleksandr Chepurin clarified that "Gazprom paid for everything from its own pocket and President Putin has suggested that the EU should pay for loss of profit damages, but I think that would be very difficult."<sup>52</sup> Serbia's reaction to the news was bitter: Prime Minister Aleksandar Vučić is quoted saying, "We have been investing in South Stream for seven years and we in no way contributed to that decision, it is obvious that we are suffering because of a clash between big (countries)."<sup>53</sup> Serbian Minister of Energy and Mining Aleksandar Antic complained that, "All losses relating to the investments in the project to date are marginal compared to the possible loss of the investment of EUR 2.1 billion and the fact that our companies are due to execute the construction works totalling EUR 500 million."<sup>54</sup> Serbs fear that other projects might as well be abandoned: investments into the railway system (EUR 800 mln) and the oil refining industry (EUR 1.5 bln).

To sum up, the strongest aspects of the EU leverage are enlargement politics, financial and economic instruments and political involvement (as a mediator on the question of Kosovo, in regional dialogue). Russia in its turn actively uses public opinion as well as political, economic (investments and energy supplies) and international (support of Serbia's position in the UN, support of Serbia's stance on ICTY and NATO) levers. 2014 became a crucial year in this EU-Serbia-Russia triangle as both external actors intensified their linkages and resorted to leverage: Germany initiated a Western Balkans Conference of heads of state and government (held in Berlin on 28 August 2014); and Russia, on the one hand, confirmed its commitment to Serbia as a regional partner, with Vladimir Putin's visit to Belgrade, and on the other hand, by cancelling the "South Stream" project it gave a signal that it was ready to resort to tough measures if necessary.

## Conclusion

In the 2000s Serbia sought to manoeuvre between two foreign policy options: EU integration and closer links with its long-standing partner Russia. While experiencing external pressure from both sides, it had to take into account signals and demands originating from the EU and Russia (as well as from the Serbian population, observers of this ongoing contest).

While comparing the intensity of leverage/linkages of the EU and Russia towards Serbia, several important points must be made: first of all, for the EU, which has invested

---

<sup>51</sup> 'Russia drops South Stream gas pipeline plan', *BBC News* (1 December 2014), available at: <http://www.bbc.com/news/world-europe-30283571>, accessed 5 Feb. 2016; 'Anger and dismay as Russia scraps \$50bn gas plan', *The Financial Times*, (02 December 2014), available at: <http://www.ft.com/cms/s/0/1a5954f0-7a41-11e4-a8e1-00144feabdc0.html>, accessed 2 Feb. 2016.

<sup>52</sup> 'Ask EU for compensation, Russian ambassador advises' *B92*, (03 December 2014), available at: [http://www.b92.net/eng/news/business.php?yyyy=2014&mm=12&dd=03&nav\\_id=92452](http://www.b92.net/eng/news/business.php?yyyy=2014&mm=12&dd=03&nav_id=92452), accessed 3 Feb. 2016.

<sup>53</sup> 'PM: Abandoning of South Stream is bad news', *B92*, (2 December 2014). [http://www.b92.net/eng/news/comments.php?nav\\_id=92428](http://www.b92.net/eng/news/comments.php?nav_id=92428), accessed 5 Feb. 2016.

<sup>54</sup> 'Loss of investment great damage to Serbia', *B92*, (3 December 2014). Available at: [http://www.b92.net/eng/news/comments.php?nav\\_id=92428](http://www.b92.net/eng/news/comments.php?nav_id=92428), accessed 5 Feb. 2016.

significant resources into the Western Balkans, the stability of the region remains an unquestionable priority. The EU Representative for Foreign Affairs and Security Policy, Federica Mogherini (as well as her predecessor, Catherine Ashton), takes an active part in Belgrade-Prishtina negotiations. The European Union remains the main trade partner and investor in Serbia (trying not to repeat its inconsistent and often unsuccessful initiatives of the 1990s). For Moscow, despite Serbia being a cultural and historical ally, it remains an important but still peripheral country, “a sleeping resource”, which can be used for certain foreign policy tasks like building an alternative pipeline or obtaining support of specific political moves internationally. Russia’s interests in Serbia cannot be regarded as purely geopolitical, and Russia certainly does not intend to have a “Trojan Horse” inside the EU, but it does expect a certain level of support on the part of Serbia. However, Russia (unlike the EU) cannot afford to invest substantial political and economic resources in the Balkans, even if it actively uses a whole range of cultural linkages, including pan-Slavic ideas, anti-Western sentiments and the popularity of Russian politicians. Given that Russia itself faces a serious economic crisis driven by a rapid decline in oil prices spearheaded by foreign sanctions,<sup>55</sup> its economic influence in the Balkans is likely to weaken.

Serbia has so far managed to adhere to its “neutrality policy”. Even if the EU would like to see Serbia firmly declare its commitment to European integration,<sup>56</sup> there is no need to apply much pressure on Serbia because the European alternative is not even questioned (there are certain political forces with polarized views over EU integration and relations with Russia, but their influence is insignificant). The status of Kosovo remains an important lever for Moscow, but it is worth noting that the Kosovo conflict is not a “frozen” conflict: political dialogue is ongoing. The political space in Serbia can be characterized as contentious, thus sensitive to external signals.

Serbia’s adherence to the “policy of neutrality” depends very much on the stance that the EU and Russia take. So far, both the EU and Russia (at least officially) demonstrate their respect for Serbia’s choices in this difficult international environment. However, it remains to be seen how exactly EU-Russia relations will unfold: the year 2014 became the lowest point in the post-Cold War period. We can claim that Serbia has exited the “grey zone” largely due to EU (and to a less extent, Russia’s) involvement in the region. Despite its “policy of neutrality”, Serbia is likely to move closer to the EU. The likelihood that Russia will seek to prevent Serbia’s integration is low; it runs contrary to Moscow’s official position (though the likelihood of possible pressure on Serbian political elites cannot be excluded). The EU, in turn, by harmonizing its position on Serbia and giving it a clear picture of full membership perspective, might help consolidate the changes that have been going on in the country in the past fourteen years.

---

<sup>55</sup> ‘The rouble’s rout,’ *The Economist*, (15 November 2014), available at: <http://www.economist.com/news/finance-and-economics/21632634-bold-policies-russias-central-bank-may-not-stem-roubles-decline>, accessed 4 Feb. 2016; Stepan Kravchenko and Henry Meyer, ‘Russia Braces for ‘Catastrophic’ Drop in Oil Prices’, *Bloomberg*, 14 November 2014), available at: <http://www.bloomberg.com/news/2014-11-14/putin-says-russia-preparing-for-catastrophic-oil-slump.html>, accessed 5 Feb. 2016.

<sup>56</sup> ‘Serbia should “harmonize on Russia” - EP resolution draft’, *B92*. (8 January 2015), available at: [http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=01&dd=08&nav\\_id=928022](http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=01&dd=08&nav_id=928022), accessed 6 Feb. 2016.

## REFERENCES (selection)

- Communication from the Commission to the Council and the Parliament, Compliance with the conditions in the Council Conclusions, (29 April 1997), available at: <http://aei.pitt.edu/4357/1/4357.pdf>
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, (10 November 2015), available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_serbia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf)
- 'PM: Serbia belongs in EU, "wants to be appreciated', *B92*, (2 December 2014). [http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=10&dd=24&nav\\_id=92005](http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=10&dd=24&nav_id=92005)
- 'Serbia readies to open first EU chapters', *Balkan Insight*, (14 December 2015), available at: <http://www.balkaninsight.com/en/article/serbia-starts-eu-talks-challenges-lie-ahead-12-11-2015>
- Stabilisation and Association Process for South Eastern Europe, First Annual Report, COM(2002)163, final 03.04.2002. [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&g=en&numdoc=502DC0163](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&g=en&numdoc=502DC0163)
- Alexander Mirescu, (2014). "Between a Rock and a Hard Place: Serbia, Russia, and the Effects of the Ukraine Crisis." *The Global Observatory*, (3 June 2014), available at: <http://theglobalobservatory.org/2014/06/serbia-russia-and-effects-of-ukraine-crisis>
- Anastassia Obydenkova and Alexander Libman, 'Understanding the foreign policy of autocratic actors: ideology or pragmatism? Russia and the Tymoshenko trial as a case study', *Contemporary Politics ahead-of-print* (1-18, 2014)
- Beáta Huszka, 'The Next Enlargement Round- the Balkan Challenge', *EU Frontiers Policy Paper*. Center for EU Enlargement Studies (No.1, 2010), available at: <http://cens.ceu.edu/publications/huszka/2010/5806>
- Bidzina Lebanidze, 'What makes authoritarian regimes sweat? Linkage, leverage and democratization in post-Soviet South Caucasus', *Southeast European and Black Sea Studies* 14 (2) (2014)
- Dan Bilefsky, 'Serbia Honors Putin While Keeping Its Eyes on Ties to the West', *New York Times*, (16 October, 2014), available at: <http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?r=0>
- Dan Bilefsky, 'Serbia Honors Putin While Keeping Its Eyes on Ties to the West', *New York Times*, (16 October, 2014), available at: <http://www.nytimes.com/2014/10/17/world/europe/serbia-honors-putin-while-keeping-its-eyes-on-ties-to-the-west.html?r=0>
- Estrin, Saul and Milica Uvalic, 'FDI into transition economies: are the Balkans different?' 12th EACES conference and the International Conference on occasion of the 75th Anniversary of the Faculty of Economics, University of Belgrade, (20-22 September 2012), available at: <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper64.pdf>

- Gordana Filipovic, 'Serbia to Avoid Sides in Ukraine Crisis, Nikolic Says', *Bloomberg*, (10 July 2014), available at: <http://www.bloomberg.com/news/2014-07-09/serbia-to-avoid-sides-in-ukraine-crisis-nikolic-says.html>
- Gwendolyn Sasse, 'Linkages and the promotion of democracy: the EU's Eastern neighbourhood', *Democratization* 20 (4) (2013) ps. 553-591.
- Jakob Tolstrup, 'When can external actors influence democratization? Leverage, Linkages and Gatekeeper Elites. *Democratization* 2 (4) (2013)
- Jason Brownlee, 'Portents of pluralism: How hybrid regimes affect democratic transitions', *American Journal of Political Science* 53 (3) (2009)
- Jelena Stojanović, 'EU Political Conditionality and Domestic Politics: Cooperation with the International Criminal Tribunal for the Former Yugoslavia in Croatia and Serbia', PhD Thesis, Budapest: Central European University (2009).
- Jørgen Møller, and Svend-Erik Skaaning, 'The third wave: Inside the numbers', *Journal of Democracy* 24 (4) (2013) ps. 97-109, available at: <http://www.journalofdemocracy.org/sites/default/files/Moller-24-4.pdf>
- Judy Batt, ed. 'The Western Balkans: moving on', Chaillot Paper, European Union Institute for Security Studies, № 70 (2004)
- Larry J. Diamond, 'Facing Up to the Democratic recession', *Journal of Democracy* 26 (1) (2015), available at: <http://www.journalofdemocracy.org/sites/default/files/Diamond-26-1.pdf>
- Marta Szpala, 'Russia in Serbia – soft power and hard interests', *OSW Commentary*, (29 October 2014), available at: <http://www.osw.waw.pl/en/publikacje/osw-commentary/2014-10-29/russia-serbia-soft-power-and-hard-interests>
- Matt Robinson, 'Russia, EU join flood relief efforts in Serbia, Bosnia', *REUTERS*. (18 May 2014), available at: <http://www.reuters.com/article/2014/05/18/us-balkans-flood-idUSBREA4G03P20140518>
- Nicu Popescu and Andrew Wilson. 'Turning Presence into Power: Lessons from the Eastern Neighborhood', European Council on Foreign Relations Policy Brief (May 2011).
- Olga Oliker, Keith Crane, Lowell H. Schwartz and Catherine Yusupov, 'Russian Foreign Policy. Sources and Implications', RAND Corporation (2009), available at [http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND\\_MG768.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG768.pdf)
- Samuel Huntington. *The Third Wave: Democratization in the late 20th century*. 4<sup>th</sup> Edition. (University of Oklahoma Press, 2012).
- Stanislava Gaydazhieva, 'Russia firmly committed to completion of ICTY's activities', *New Europe*, (30 November 2012), available at <http://www.neurope.eu/article/russia-firmly-committed-completion-icty-s-activities>
- Steven Levitsky and Lucan A. Way. *Competitive authoritarianism: hybrid regimes after the cold war*. (Cambridge: CUP 2010).
- Thomas Carothers, 'The End of the Transition Paradigm', *Journal of Democracy* 13 (1) (2002)

# European Provisions for the Protection of Dissenting Shareholders within the Framework of Cross-border Mergers

**Hamed Alavi, Tatsiana Khamichonak<sup>1</sup>**

**Abstract:** *The European legislative framework of cross-border mergers is a result of a long process of identifying the needs of the common market, domestic laws and national businesses and bringing them closer together. From virtual impossibility of merging across national borders, to a transfer of seat, to the Cross-Border Mergers Directive private and public limited companies can now engage in a cross-border merger transaction under best harmonised rules to date. However, the diversity of national company laws leaves gaps that are not resolved on a European level - there is no harmonising instrument in the area of creditor protection and the protection of dissenting minority shareholders, among others. The CBM Directive contains a framework provision referencing the need of protection of minority members, whereas specific mechanisms are left for the Member States to implement. The question that arises is whether the status quo of minority protection is sufficient to ensure smooth functioning of the cross-border mergers framework or whether further harmonisation is required.*

**Keywords:** *Cross-Border Mergers Directive, corporate mobility, cross-border mergers, protection of dissenting minority shareholders*

---

## 1. Introduction

In the process of international business a merger is the fastest way to expand production and access new market opportunities that lie beyond national borders. In the context of the four freedoms celebrated in the European Union, this desire is predetermined. However, until relatively recently, even though the right of establishment allowed companies to pursue economic activities in Member States other than their own, in practice a lot of manoeuvres were too complex and, at times, legally impossible to carry out.

In the framework of the historical dynamics of M&A (Merger and acquisitions) transactions, the period between 1994 and the first years of the 21<sup>st</sup> century is referred to as the *fifth merger wave* that was of a truly international character. Particularly, the

---

<sup>1</sup> **Hamed Alavi**, MBA, LL.M, PhD candidate, is lecturer at Tallinn School of Law, Tallinn University of Technology, Estonia. His areas of research cover International Trade, International Trade Law, International Negotiations and Dispute Resolution. He can be contacted via: [hamed.alavi@ttu.ee](mailto:hamed.alavi@ttu.ee).

**Tatsiana Khamichonak** is currently LL.M Candidate in Vrije Universiteit Amsterdam, the Netherlands. Her research interests include European Law, Business Law, Company Law and Law of Mergers and Acquisitions. She can be contacted via: [tatsiana.khamichonak@hotmail.com](mailto:tatsiana.khamichonak@hotmail.com).

number of mergers escalated in Europe with their peak in 1999, one third of which were cross-border transactions with the most active participants coming from the UK, France and Germany.<sup>2</sup> This was not only due to increase in worldwide economic demand, but also because the economic situation in Europe changed significantly. The regulatory barriers were being broken down after the creation of the European Community.<sup>3</sup>

Since the Treaty of Paris of 1951, what we now call the European Union has expanded its membership to include as many as 28 countries<sup>4</sup>, a large number of which have been working together towards a common goal only a bit over a decade<sup>5</sup>. The different historical backgrounds and different understandings of how to fit in the Union's functional architecture showcase in the hardships of bringing legal discrepancies to a common denominator. Although a number of competences are exclusively within the ambit of the EU law making, some areas, albeit within the EU reach, have always been passionately guarded from any interference by the Member States. Company law is one of those areas. The harmonisation of corporate laws has been piecemeal and painful, with the Member States not letting the national provisions on core aspects of company law – such as structure, duties and responsibilities of the board of directors and cross-border mergers – be altered.<sup>6</sup>

Albeit a handful, the Directives in the area of European company law provide a legal framework within which a number of crucial aspects are aligned among the Member States, making the forum shopping for best company laws less of a necessity. Ever since the F-word failed to sneak into the EU fundamental texts, the EU's non-federalist nature is one more obstacle to a smooth harmonisation of company law on the Union level, and a reminder of why only three Regulations have been adopted in this area so far. The reality, in which the European corporate legal landscape has existed for a long period of time, can be characterised as a “non-mobility equilibrium”.<sup>7</sup> This means that the Member States persistently maintained the relative autonomy of their company laws and thus reduced any chance of cross-border mobility of companies to an unattractive, and at times legally impossible, opportunity.

The paper provides an account of how corporate mobility in the EU developed up to the point of adoption of the Cross-Border Mergers Directive (hereinafter also referred to as the ‘CBM Directive’) and locates the status of minority shareholder protection within the existing framework of cross-border mergers. Part I tracks the beginnings of the recognition

---

<sup>2</sup> Martynova, M., Renneboog, L. Mergers and Acquisitions in Europe. Tilburg CentER Discussion Paper, 2006-6. <https://pure.uvt.nl/ws/files/777056/6.pdf>. (29.04.2016).

<sup>3</sup> Gaughan, PA. Mergers, Acquisitions and Corporate Restructurings. 4<sup>th</sup> ed. USA, John Wiley & Sons Inc 2007, pp 3-4.

<sup>4</sup> Croatia acceded on 1 July 2013 becoming the 28<sup>th</sup> member.

<sup>5</sup> The largest enlargement of 2004 simultaneously brought under the EU roof 10 new Central and Eastern European states (Estonia, Latvia, Lithuania, Slovakia, Slovenia, Czech Republic, Poland, Hungary, Malta and Cyprus), followed by the accessions of Romania and Bulgaria in 2007. The fifth wave of enlargement also brought about the individual historical legacies, including the former Soviet Union countries, which had to be accommodated within the Union's complex mechanisms.

<sup>6</sup> McCahery, JA., Vermeulen, EPM. Understanding corporate mobility in the EU. A working Paper Prepared for the 5<sup>th</sup> European Company Law and Corporate Governance Conference 2007, Berlin, p. 16. [http://www.ecgi.org/presidency/presentations/2007\\_berlin\\_vermeulen\\_paper.pdf](http://www.ecgi.org/presidency/presentations/2007_berlin_vermeulen_paper.pdf). (29.04.2016).

<sup>7</sup> Ibid, p 3.

of the need of harmonisation of rules relating to cross-border mergers. Part II outlines how the employee representation issue was untangled, which gave way to the adoption of the CBM Directive. Part III gives an overview of the most prominent case law in the area of corporate mobility, including one of the pillars of a cross-border merger, the *Sevic Systems* case. Part IV looks at where the European legislator has placed the provisions relating to minority shareholders protection, if at all, and inquires whether the existing framework is sufficient. In our Concluding remarks, the authors propose the way forward and the area for potential further research.

## 2. Cross-border mergers as a method of establishment

The Treaty of Rome<sup>8</sup> provided that for the purpose of, *inter alia*, a harmonious development of economic activities measures must be taken to abolish obstacles to the freedom of movement of persons, services and capital as between the Member States, as well as to approximate the laws of the Member States in order to ensure proper functioning of the common market.<sup>9</sup> Freedom of movement of persons is a compound concept consisting of four principles: right of establishment, right of circulation, elimination of controls at the internal borders and the right of residence.<sup>10</sup> The right of establishment covers both natural and legal persons, who can engage in activities as self-employed persons as well as set up and manage undertakings in a Member State other than their own under the same conditions as are laid down in that state for its own nationals. No restrictions shall be imposed on foreign nationals wishing to establish in the host state other than those provided for in the Treaty.<sup>11</sup> For the purposes of cross-border mergers, the freedom of establishment is the most important principle incorporated in the Treaty.

Cross-border mergers by virtue of their international character inevitably involve a clash of legal systems. Essentially, the absence of or inadequate harmonisation of relevant rules in different states may make cross-border transactions less attractive or preclude their realisation. The practical impossibility to merge across borders can render the freedom of establishment obsolete. For example, when no common rules exist to govern cross-border mergers or when tax treatment of mergers differs significantly among jurisdictions, companies are able to engage in such a transaction only if the states of their establishment match in terms of respective legal provisions. Thus, until recently mergers were possible only as between certain Member States, like France and Italy that had specific provisions for cross-border mergers.<sup>12</sup> In the Netherlands, Sweden, Ireland, Greece, Germany, Finland, Denmark and Austria cross-border mergers were simply not legal as of 2003.<sup>13</sup>

---

<sup>8</sup> Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11. (Hereinafter the "Treaty of Rome").

<sup>9</sup> Treaty of Rome, Art 2, Art 3(c)(h).

<sup>10</sup> Zaman, *supra* nota 6, p 128.

<sup>11</sup> Treaty of Rome, Articles 52 and 53.

<sup>12</sup> Zaman, *supra* nota 6, p 126.

<sup>13</sup> European Commission Press Release, MEMO/03/233, 18<sup>th</sup> November 2003.

In its Communication<sup>14</sup> in May 2003, the Commission acknowledged the need for a proper legal instrument to facilitate cross-border restructurings with the view of the growing integration of the common market and increasing cross-border business transactions, and set forward a new proposal for the cross-border mergers Directive. The Cross-Border Mergers Directive (hereinafter also referred to as the 'CBM Directive' and the 'Tenth Directive'), which was adopted by the European Parliament and the Council on 26<sup>th</sup> October 2005 and has entered into force on 15<sup>th</sup> December the same year, was a product of lengthy negotiations that started as early as 1965.

In 1967 a preliminary draft of the "cross-border mergers" Convention was prepared under Article 220 of the EC Treaty (currently Article 293). Article 220 instructs the Member States to negotiate with one another with a view of securing for the benefit of their nationals the "possibility of mergers between companies or firms governed by the laws of different countries". The Convention, however, as well as the subsequent draft of 1972, did not offer much relief to merging across borders because it referred back to the national legislations on internal mergers, which at the time had not yet been harmonised.<sup>15</sup>

The necessary step on the way to implementing working legislation on cross-border mergers was thus to harmonise the national rules on internal mergers first. To this end, in 1978 the Directive concerning mergers of public limited liability companies<sup>16</sup> was adopted, which introduced provisions regarding mergers into the laws of every Member State. Article 2 of the Directive required the Member States to implement rules to govern mergers of companies subject to their national laws.

However, the many legislative and administrative obstacles intrinsic in the nature of cross-border mergers remained.<sup>17</sup> Among these was the concern expressed by some states that the existing differences in relation to employee participation could be disadvantageously by-passed. The state of affairs was such that according to the provisions of the Convention Member States were free to choose the country where the company resulting from a merger transaction was to be incorporated, and thus choose the governing law.<sup>18</sup> Employee participation has at the time not been harmonised; the proposed Fifth Company Law Directive of 12 August 1983 on employee participation in supervisory boards following the German model has never been adopted.

On December 14<sup>th</sup> 1984 the Commission presented a proposal for the Directive on cross-border mergers. The Commission recognised that the work on the new Directive was based primarily on the earlier achievements of both the draft convention and the

---

<sup>14</sup> Communication from the Commission to the Council and the European Parliament 'Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward', COM/2003/0284, 21 May 2003, § 3.4.

<sup>15</sup> Ugliano, A. The new Cross-Border Merger Directive: harmonisation of European company law and free movement. *European Business Law Review*, 2007, 18 (3), p 587.

<sup>16</sup> Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies, amended by Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies. OJ L 110, 29.4.2011, pp 1-11.

<sup>17</sup> Dorresteyn, A. et al. *European Corporate Law*. 2<sup>nd</sup> ed. Netherlands, Kluwer Law International 2009, pp 60–63.

<sup>18</sup> Ugliano, *supra* nota 18, p 587.

Third Directive, especially so that the mechanisms of national and cross-border mergers are virtually identical. The consensus could not be reached and both the Fifth Directive and the Tenth Directive were not approved by the European Parliament.<sup>19</sup> In the years that followed the wish for a directive on cross-border mergers has not been abandoned.

### **3. Resolution of the employee participation deadlock and adoption of the CBM Directive**

The catalyst that untangled the long-lasting search for codetermination compromise came in the form of the Council Regulation (EC) 2157/2001 on the Statute for a European Company (*Societas Europaea* hereafter referred to as the SE)<sup>20</sup>, which was approved on October 21<sup>st</sup> 2001, and the Council Directive 2001/86/EC on the involvement of employees supplementing the SE statute<sup>21</sup>, both of which came into force on 8<sup>th</sup> October 2004. Besides the progress on employee involvement negotiations, the other significant feature the SE legislative tandem introduced is that the SE Regulation made possible what had otherwise been impossible – cross-border mergers under a single legal framework, albeit within the context of a SE structure. This is due to the fact that one of the methods of creating a European Company is by way of a cross-border merger. The other three include incorporation of a new holding SE, incorporation of a new subsidiary SE and converting an existing public limited liability company into a SE.<sup>22</sup> One of the reasons a SE option itself is hardly suitable for small companies, less so for start-ups doing business *ex novo*, is that the subscribed capital of a SE shall be no less than 120 000 EUR.<sup>23</sup>

It is important for the purposes of chronological accuracy to mention the Tax Directive<sup>24</sup>, which created an interesting situation in the EU corporate mobility environment. The Directive was adopted in 1990 and was meant to facilitate cross-border mobility of companies from a tax perspective by establishing a common system of taxation applicable to mergers between companies established in different Member States. The interesting situation so created was the discrepancy in the legal regulation of cross-border transactions: concerning tax issues cross-border mergers were regulated, whereas technically and legal they were not yet possible.<sup>25</sup>

The Regulation on the SE Statute and the accompanying Directive on employee involvement was a turning point in the process of preparation and adoption of the Cross-Border Mergers Directive. In 2001 the 1984 Directive proposal was withdrawn and a new one was submitted in 2003. The primary difference from the 1984 proposal was

---

<sup>19</sup> Siems, MM. The European Directive on Cross-Border Mergers: an international model? *Columbia Journal of European Law*, 2004-2005, 11 (1), p. 172.

<sup>20</sup> Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for the European company (SE), OJ 2001 L294, 10.11.2001, p. 0001–0021.

<sup>21</sup> Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ 2001 L294, 10.11.2001, p. 0022 – 0032.

<sup>22</sup> Zaman, *supra nota* 6, pp 130–131.

<sup>23</sup> Regulation on the SE Statute, Article 4(2).

<sup>24</sup> Council Directive 90/434/EEC of July 23<sup>rd</sup> 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchange of shares concerning companies of different Member States, OJ L 225, 20.08.1990, p. 1.

<sup>25</sup> Ugliano, *supra nota* 18, p 587.

that firstly, the principles underlying the SE Regulation and Directive were taken into account when preparing a system of employee participation in decision-making bodies of a company resulting from a cross-border merger; secondly, the scope of the Directive was extended from public limited liability companies to all limited liability companies.<sup>26</sup> Such are companies with share capital, having a legal personality and possessing separate assets that alone serve to cover a company's debts<sup>27</sup>, as well as companies as referred to in Article 1 of the First Company Law Directive.<sup>28</sup> The extension of the scope will allow small and medium-sized enterprises to engage in cross-border mergers as well. The proposed Directive was adopted on 26<sup>th</sup> October 26 2005 as Tenth Directive<sup>29</sup>. The amendments necessary to bring the national laws in compliance with the Directive were to be completed in the Member States by 15<sup>th</sup> December 2007. By this date, however, only 16 Member States managed to do so, whereas due to certain technical difficulties some in some states cross-border mergers were made possible only by 2012.<sup>30</sup>

In the period of 2008-2013 the number of cross-border mergers increased by 173 percent, from 132 to 361 mergers in 2012. This is an outstanding result because, despite the continuous increase in cross-border transactions and cooperation among Member States and EEA countries, the global economic crisis that hit in 2008 and the relatively static EU/EEA membership did not account for the most favourable environment. The CBM Directive is a long desired instrument that can be said to be a cornerstone for corporate mobility: it increases efficiency and competitiveness among European companies, removes obstacles to cross-border activities, reduces costs and provides for effective tax planning.<sup>31</sup>

The condition that triggers application of the Cross-Border Mergers Directive is that there must be a cross-border merger between companies with share capital, which can be effected via a company acquisition, creation of a new company or transfer of assets to a holding company.<sup>32</sup> Although it is greatly welcomed that the scope of the Directive was extended to include not only public but also private limited liability companies, it leads to a situation where in the law of the latter the only harmonised aspect is essentially the rules on cross-border mergers. In this respect, public companies have enjoyed a far greater degree of harmonisation<sup>33</sup>, including the Third Directive on domestic mergers and the SE Regulation.

---

<sup>26</sup> Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital, COM/2003/0703, p. 3.

<sup>27</sup> Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. OJ L 310, 25.11.2005, p.1. Article 2(1)(b).

<sup>28</sup> Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards, OJ L 65, 14.03.1968.

<sup>29</sup> Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. OJ L 310, 25.11.2005, p.1.

<sup>30</sup> Study on the Application of the Cross-Border Mergers Directive. The European Union, Bech-Bruun and Lexicdale, September 2013. [http://ec.europa.eu/internal\\_market/company/docs/mergers/131007\\_study-cross-border-merger-directive\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/mergers/131007_study-cross-border-merger-directive_en.pdf). (29.04.2016).

<sup>31</sup> Ibid, p 31.

<sup>32</sup> Articles 1 and 2(2)(a)-(c).

<sup>33</sup> Siems, *supra* nota 22, p 173.

The basic underlying principle of the Directive is that the companies remain subject to the provisions and formalities of the national laws applicable to them, including those relating to the decision-making process and the protection of creditors, debenture holders and holders of securities or shares, and the rights of employees not covered by the Directive.<sup>34</sup> The application of national laws leads to the situation when companies are precluded from merging due to the fact that under the domestic laws of the relevant Member States they are types of companies that are not “mergeable”.<sup>35</sup> It is noteworthy that the CBM Directive thus does not create a unified system of rules for cross-border mergers, rather, it refers to the existing domestic rules on mergers under the Third Directive. A unification approach is arguably not necessary as it would contradict the principle of subsidiarity; rather, a clear system of rules on the conflict of laws would have been preferable.

#### 4. The European Court of Justice contribution to corporate (non-)mobility

The trinity of decisions in *Centros*<sup>36</sup>, *Überseering*<sup>37</sup> and *Inspire Art*<sup>38</sup> already introduced several breakthroughs regarding the mobility of companies within the EU. In *Centros* the ECJ established that even when a state’s law is based on the “real seat” theory, it cannot deny recognition to a company formed under the laws of another Member State.<sup>39</sup> It was pointed out that the status of the company was to be determined according to the law of the state where it was formed.<sup>40</sup> Besides, if a company seeks to establish a branch in the host state to enable it to carry out all its economic activity in that state, while having its registered office in another one, it does not justify the refusal of the host state to register the branch and is contrary to the freedom of establishment. *Überseering* judgement revealed the significance of *Centros* to the real seat theory. *In casu*, a company formed under Dutch laws moved its head office to the real seat jurisdiction – Germany, under whose laws, accordingly, no company has ever been formed. But, so long as the status of *Überseering* BV was to be established by application of Dutch law, the court concluded that doing otherwise would contradict Article 54 of the Treaty. The facts of the *Inspire Art* case reflected those in *Centros*: a company was formed in the UK with the view of avoiding the otherwise applicable rigid minimum capital requirements. The law of the Netherlands, which was the host state in the case, required a company established under foreign laws but carrying out business exclusively in the Netherlands to add a suffix to its name indicating that the company was, in fact, a pseudo-foreign company. This effectively created an additional status condition that companies were supposed to meet in order to be able to rely on the freedom of establishment.<sup>41</sup> The court, relying in the

---

<sup>34</sup> Article 4.

<sup>35</sup> Ugliano, *supra* nota 18, p. 599.

<sup>36</sup> C-212/97 *Centros* [1999] ECR I-1459.

<sup>37</sup> C-208/00 *Überseering* [2002] ECR I-9919.

<sup>38</sup> C-167/01 *Inspire Art* [2003] ECR I-10155.

<sup>39</sup> Vargova, P 2010, “The cross-border transfer of a company’s registered office within the European Union”, LL.M. Thesis, Central European University, Hungary.

<sup>40</sup> Armour, J & Ringe, WG 2011 op. cit., p. 9.

<sup>41</sup> Armour, J & Ringe, WG 2011 op. cit., p. 10.

previous decisions in *Centros* and *overseering*, struck this down as contrary to the Treaty provisions and reaffirmed that a company's legal status is essentially a matter of the law of its formation.

For the fuller impression of the distinction between application of domestic corporate laws for the purposes of determining a company's status and the European provisions on the freedom of establishment, the *Cartesio* judgment demands notice. Whereas the ECJ trio discussed above dealt with companies wishing to enter the territory of a Member State, i.e. inbound establishment, *Cartesio* was concerned with a Hungarian company seeking to transfer its real seat to Italy while retaining its status under the Hungarian law – outbound establishment. The Hungarian law did not permit such transfer without liquidation. It might seem that the home state preventing its company from migrating across national borders would violate the freedom of establishment just like the host state's reluctance to recognise a foreign company did in the *Centros* case. However, in *Cartesio* the court ruled that a state of incorporation has the authority to not only rule on the initial status of a company, but also on its continuous status. Thus, if according to Hungarian law the company had to be dissolved before moving its head office, the application of Article 49 was not triggered simply because of the fact that no company existed anymore. Such a condition was considered legitimate only due to the fact that the company *in casu* indeed wished to remain subject to Hungarian law instead of changing the applicable law to that of Italy, in which case the tables would have turned.<sup>42</sup> The line of reasoning of the court in these cases follows the distinction between a company's emigration and immigration, covering only the latter with undoubted right of establishment.

Two days before the entry into force of the CBM directive, on 13<sup>th</sup> December 2005, the ECJ passed down a decision in the *Sevic Systems* case.<sup>43</sup> Remarkably, in as much as its reasoning and solution agree with the ratio of the new CBM Directive, the court did not mention it in its judgment, and decided the case on the basis of the Treaty's provisions on the freedom of establishment. The *Sevic* case was the first case to deal with cross-border mergers. Before that there were neither domestic laws allowing them, nor existing EU-level framework, except for the possibility of merging via creating a European Company. Therefore, *Sevic* forms one of the pillars on which the EU legislative framework on cross-border mergers rests.

Advocate General Tizzano maintained that “the right of establishment covers all measures which permit or even merely facilitate” the pursuit of economic activity in the territory of another Member State under the same conditions as its nationals.<sup>44</sup> He also recognised the particular effectiveness of a merger transaction due to the fact that a company can continue carrying out business in a new form, but without liquidation, which reduces the costs, time and complexity compared to other forms of company consolidation.<sup>45</sup>

---

<sup>42</sup> Vargova, P 2010 op. cit., p. 21.

<sup>43</sup> C-411/03 *Sevic Systems AG* [2005] ECR I-10805.

<sup>44</sup> Opinion of July 7th 2005, case C-411/03 *Sevic Systems*, par. 30.

<sup>45</sup> *Ibid*, par. 47.

The significance of the *Sevic* decision, now that the CBM Directive's implementation deadline has passed, cannot be underestimated. By recognising that a merger is a particular method of exercise of the freedom of establishment, *Sevic* altered the conventional view on what an establishment in another Member State is. It is thus not only the formation of a subsidiary or a branch, but any measure that facilitates access to another Member State with the view of participating in its economic life. *Sevic* introduced another model for cross-border mergers: accordingly, the provisions on freedom of establishment in the Treaty secure a possibility of cross-border mergers to all companies falling under Article 54 TFEU that could merge under the national law of a Member State. The requirement of availability of a domestic merger ensures equal treatment of national and foreign companies.<sup>46</sup> Secondly, a cross-border merger is now available under the CBM Directive. Thirdly, the possibility to carry out a merger exists under the Regulation for the SE Statute through creation of a European Company. And finally, a merger could be effected via a seat transfer. As such, a company could transfer its seat and then merger under the national laws on mergers.

## 5. Minority shareholder protection – where does it fit in?

Article 50(2)(g) TFEU<sup>47</sup> (ex Article 44 EC Treaty) is the ancestor of all the secondary legislation adopted in the EU with the purpose of protection of shareholders' rights. The Article pursues the attainment of the freedom of establishment and imposes on the European Parliament, the Council and the Commission a duty to coordinate the safeguards "for the protection of the interests of members and others", which the Member States require of their companies. The continuous integration of the internal market led to acknowledge that the differences in corporate governance provisions across the Community may jeopardise its sound functioning.<sup>48</sup> In its Communication "A Plan to Move Forward" the Commission mentioned the strengthening of shareholders' rights as an essential part of the dynamic and flexible systems of company law and corporate governance in the EU.<sup>49</sup> Specifically, the Communication addressed strengthening of the shareholder's rights in the three areas: access to information, shareholder democracy and other shareholders' rights.<sup>50</sup> Since then a number of Company Law Directives have incorporated provisions that cater for shareholder protection.

On the face of it, there is no pan-European instrument that would specifically cater for the needs of minority shareholders.<sup>51</sup> Their protection could only be inferred from the generally available provisions that cover all shareholders with respect to, for example,

---

<sup>46</sup> Rønfeldt, T., Werlauff, E. Merger as a Method of Establishment: on Cross-Border Mergers, Transfer of Domicile and Divisions, Directly Applicable under the EC Treaty's Freedom of Establishment. *European Company Law*, 2006, 3 (3), p 125.

<sup>47</sup> Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47.

<sup>48</sup> Xiangxing Hong, F. Protection of Shareholders; Rights at EU level: How far does It Go? *European Company Law* 2009, 6 (3), p. 124.

<sup>49</sup> COM2003/0284, p. 3.

<sup>50</sup> *Ibid*, pp 13-14.

<sup>51</sup> Save the Shareholder's Rights Directive, which covers information and voting rights of shareholders in listed companies.

information and voting rights. The elaboration of protection mechanisms is left to the Member States. This is the case with mergers and cross-border mergers, too – the national legislation provides for a safety net of remedial and other rights for the minority, which need to be interwoven when a cross-border merger occurs.

As the SE Regulation allows for merging across borders only when a resulting from a merger company takes a form of a *Societas Europaea*, the Regulation will not be considered within the scope of this paper. However, the relevant minority protection principles contained in the Tenth Directive repeat those in the SE Regulation; these are analysed in detail below.

Article 4(1) of the Tenth Directive refers the company participating in a cross-border merger transaction to the provisions and formalities of the law of the Member State to which it is subject.<sup>52</sup> The national law is meant to cover, *inter alia*, the decision-making process relating to a merger and the protection of shareholders as regards the cross-border nature of a merger. Specifically, the Article indicates that for the purpose of affording adequate protection to minority shareholders that opposed a cross-border merger (the dissenting shareholders), Member States may adopt appropriate national provisions. Indicative here is the word “may”, which is expressive of the discretionary nature of such protection. As it will become evident in the following from the brief analysis of the available relief afforded to minority shareholders across the Member States, the degree and ways of protection differ significantly.

Article 6 prescribes that the common draft terms of a cross-border merger are to be published in a national gazette of each Member State of the merging companies at least one month before the general meeting, on which the merger is to be agreed. The publication must indicate, among other things, the specific arrangements made in each of the merging companies for the exercise of rights of their minority members as well as the address, where the details of such arrangements can be obtained free of charge.<sup>53</sup> This provision satisfies shareholders’ right to information – in order to be able to cast a vote at a general meeting, a shareholder shall be made acquainted in advance with the meeting’s agenda and the matters that are up for a vote. This is ever more important when one considers that some shareholders vote distantly by appointing a proxy or electronically.

Further, Article 10(2) provides that when the law of a Member State, to which a merging company is subject, contains a mechanism for compensating minority shareholders that does not prevent the registration of a cross-border merger, such mechanism can only be employed with explicit acceptance of the other merging companies. Specifically, the other companies shall agree by a vote of a general meeting upon approval of the draft terms of the cross-border merger that the members of that merging company can have recourse to such a mechanism and can initiate it before the competent courts. The approval precondition is important because the resulting from a cross-border merger company will bear the results, and costs, of the court proceedings.<sup>54</sup>

---

<sup>52</sup> Cross-Border Mergers Directive, Article 4.

<sup>53</sup> Cross-Border Mergers Directive, Article 6(2)(c).

<sup>54</sup> Wyckaert and Geens, *supra* nota 54, p 43.

The Tenth Directive minority protection provisions are evidently framework provisions - the substantive decision-making is delegated to the Member States. The Directive, however, indicates some important minimum requirements that the national laws cannot overstep as well as reminds about the compliance of national protection provisions with the freedom of establishment and the free movement of capital.

However, whereas some states have interpreted the provisions of the Cross-Border Mergers Directive by introducing minority protection provisions in their national laws, some States provide for no such special remedies. For example, no special rights are afforded to minority shareholders in Belgium, Bulgaria, France, and Lithuania.<sup>55</sup> The spectre of the remedies that dissenting shareholders may have recourse to is limited. Whereas providing for one or several protection mechanisms, the Member State national laws provide for the same options: the right of withdrawal; repurchase or redemption of shares; monetary compensation in case of inadequacy of the share exchange ration; judicial remedy in case of procedural flaws and liability of the responsible company members, management and experts.

Moreover, the common denominator amongst the available rules in the Member States is that they can only be applied in two cases: if the laws of the Member States, to which the merging companies are subject, provide for similar protection rights, or in case of a Member State with no specific protection rules – if the protection rights are agreed upon by the general meetings of all the merging companies. This illustrates that even though the European legislator did not provide for a system of substantive rules applicable in cross-border merger transactions, there is a basic coordination platform that merging companies can fall back onto. There is only a handful of states that did not introduce specific provisions in their national laws. So, if a company governed by the laws of the State with minority protection merges with a company from, for example, France, where protection mechanisms in case of cross-border mergers are absent, an unobtrusive transaction is still possible because appropriate treatment of dissenting shareholders can be mutually agreed upon. The question that arises is whether such framework is sufficient to reconcile the conflicting national provisions, satisfy the dissenting shareholders' claims and not delay the merger process.

In September 2014 the Commission launched a consultation with the stakeholders on the effectiveness of the EU rules relating to cross-border mergers and divisions.<sup>56</sup> The summary of the consultation, which returned 151 contributions, was published in October of 2015.<sup>57</sup> The responses came from scholars, practitioners, public authorities, chambers of commerce, business organisations and others, which aid in identifying the general attitudes regarding the proposed questions. The most noteworthy are the three questions relating to minority shareholder protection: the Commission inquired whether the rights of minority shareholders in cross-border mergers shall be harmonised; whether the date when minority shareholders can start exercising those rights shall be harmonised; and

---

<sup>55</sup> Van Gerven, D. *Cross-Border mergers in Europe*. Volume 2. UK, Cambridge University Press 2011, pp. 23 and 81.

<sup>56</sup> European Commission Press Release, Daily News 08.09.2014.

<sup>57</sup> European Commission web-page, EU Company Law. [http://ec.europa.eu/justice/civil/company-law/eu-company-law/index\\_en.htm](http://ec.europa.eu/justice/civil/company-law/eu-company-law/index_en.htm).

whether the period of time when minority shareholders may exercise those rights shall be harmonised.<sup>58</sup> The majority of responses reacted positively to all the three questions (over 60%). The authors, however, wish to point out that a considerable number of stakeholders were against such harmonisation (35%, 25% and 31%, respectively), which illustrates that the issue of minority protection in cross-border mergers is a rather debatable and multifaceted concern. For example, the Council of Bars and Law Societies of Europe (CCBE) was also of the opinion that no specific protection is required in a case of a cross-border merger as there is perceivably no difference between domestic and transnational mergers regarding minority protection.<sup>59</sup>

### Concluding remarks

Mergers are often referred to as being among the most complex transactions, which is aggravated by the fact that cross-border mergers involve the laws of different jurisdictions. The differing legal forms and national laws have been recognised by the European lawmaker as an impediment to the unobstructed functioning of the common market and the freedom of establishment. As a result, corporate mobility has been facilitated by the prominent ECJ decisions, the adoption of the Cross-Border Mergers Directive and several other instruments that paved the way to the possibility of cross-border mergers. After the revision of the overall success of the CBM Directive several gaps still remain, such as the protection of minority shareholders and creditors. The voiced concern is whether the gaps compromise the effectiveness of the cross-border mergers legislative framework to such an extent that the transaction becomes burdensome and unwarranted. Whereas the overwhelming majority favour further harmonisation of minority shareholders protection provisions, many still advise against such harmonisation maintaining that the existing national provisions are sufficient to secure the efficiency of cross-border merger transactions.

In light of the existing domestic rules and the umbrella provision in Article 4(2) of the Cross-Border Mergers Directive, the authors submit that no further harmonisation of substantive rules regarding minority shareholder protection shall be introduced by the European legislator. However, mindful of the variety of national laws, of the importance of a shareholder's right to be heard, of the importance of further integration of the common market and the role that freedom of establishment plays in pursuing this goal, minority protection rights may be brought to the spotlight in ways other than full or partial harmonisation. Improved transparency and pan-European information platforms for pooling the national minority protection laws together could be one option.

Noteworthy is the absence of consensus as regards to the temporal rules pertaining to protection mechanisms, that is – when the protection period shall commence and how

---

<sup>58</sup> Summary of responses to the Public Consultation on Cross Border Mergers and Divisions, European Commission, October 2015. Questions 7-8, pp. 9-12. [http://ec.europa.eu/internal\\_market/consultations/2014/cross-border-mergers-divisions/docs/summary-of-responses\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2014/cross-border-mergers-divisions/docs/summary-of-responses_en.pdf). (29.04.2016).

<sup>59</sup> Council of Bars and Law Societies of Europe (CCBE), Response to European Commission consultation of cross-border mergers and divisions, 22.02.2015, p. 1. [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/22022015\\_EN\\_CCBE\\_Con1\\_1424700904.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/22022015_EN_CCBE_Con1_1424700904.pdf). (29.04.2016).

long it shall last. The recent Commission consultation returned varying results – both for and against harmonisation. The authors consider that this aspect requires further research: the procedural construct could be the piece of Union harmonisation that is perceived as missing in the context of minority protection. It could be possible that when the Member States' respective protection mechanisms are further aligned or at least disclosed and standardised, a partial or full harmonisation instrument could be adopted on the EU level to create a coherent timeline regarding the administration of the different protection mechanisms among all the Member States.

## REFERENCES:

- Dorresteyn, A. et al. *European Corporate Law*. 2<sup>nd</sup> ed. Netherlands, Kluwer Law International 2009, pp 60–63.
- Van Gerven, D. *Cross-Border mergers in Europe*. Volume 2. UK, Cambridge University Press 2011.
- Martynova, M., Renneboog, L. *Mergers and Acquisitions in Europe*. Tilburg CentER Discussion Paper, 2006-6. <https://pure.uvt.nl/ws/files/777056/6.pdf>. (29.04.2016).
- Gaughan, PA. *Mergers, Acquisitions and Corporate Restructurings*. 4<sup>th</sup> ed. USA, John Wiley & Sons Inc 2007, pp 3-4.
- McCahery, JA., Vermeulen, EPM. *Understanding corporate mobility in the EU*. A working Paper Prepared for the 5<sup>th</sup> European Company Law and Corporate Governance Conference 2007, Berlin, p. 16. [http://www.ecgi.org/presidency/presentations/2007\\_berlin\\_vermeulen\\_paper.pdf](http://www.ecgi.org/presidency/presentations/2007_berlin_vermeulen_paper.pdf). (29.04.2016).
- Ugliano, A. *The new Cross-Border Merger Directive: harmonisation of European company law and free movement*. *European Business Law Review*, 2007, 18 (3), p 587.
- Siems, MM. *The European Directive on Cross-Border Mergers: an international model?* *Columbia Journal of European Law*, 2004-2005, 11 (1), p. 172.
- Vargova, P 2010, "The cross-border transfer of a company's registered office within the European Union", LL.M. Thesis, Central European University, Hungary.
- Armour, J & Ringe, WG 2011, "European Company Law 1999–2010: Renaissance and Crisis", ECGI Working Paper No. 175/2011. P. 6.

- Xiangxing Hong, F. Protection of Shareholders; Rights at EU level: How far does It Go? European Company Law 2009, 6 (3), p. 124.
- Wyckaert, M, Geens, K. Cross-border mergers and minority protection. An open-ended harmonisation. Utrecht Law Review, 2008, 4 (1), pp. 40-52.
- Study on the Application of the Cross-Border Mergers Directive. The European Union, Bech-Bruun and Lexicdale, September 2013. [http://ec.europa.eu/internal\\_market/company/docs/mergers/131007\\_study-cross-border-merger-directive\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/mergers/131007_study-cross-border-merger-directive_en.pdf). (29.04.2016).
- Summary of responses to the Public Consultation on Cross Border Mergers and Divisions, European Commission, October 2015. Questions 7-8, pp. 9-12. [http://ec.europa.eu/internal\\_market/consultations/2014/cross-border-mergers-divisions/docs/summary-of-responses\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2014/cross-border-mergers-divisions/docs/summary-of-responses_en.pdf). (29.04.2016).
- Council of Bars and Law Societies of Europe (CCBE), Response to European Commission consultation of cross-border mergers and divisions, 22.02.2015, p. 1. [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/22022015\\_EN\\_CCBE\\_Con1\\_1424700904.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/22022015_EN_CCBE_Con1_1424700904.pdf). (29.04.2016).

#### *Legislative materials and case law*

- Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11. (Hereinafter the “Treaty of Rome”).
- Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47.
- Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies, amended by Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies. OJ L 110, 29.4.2011, pp 1-11.
- Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for the European company (SE), OJ 2001 L294, 10.11.2001, p. 0001–0021.
- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ 2001 L294, 10.11.2001, p. 0022 – 0032.
- Council Directive 90/434/EEC of 23<sup>rd</sup> July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchange of shares concerning companies of different Member States, OJ L 225, 20.08.1990, p. 1.
- Directive 2005/56/EC of the European Parliament and of the Council of 26<sup>th</sup> October 2005 on cross-border mergers of limited liability companies. OJ L 310, 25.11.2005, p.1.
- European Commission Press Release, MEMO/03/233, 18<sup>th</sup> November 2003.
- European Commission Press Release, Daily News 08.09.2014.

- Communication from the Commission to the Council and the European Parliament 'Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward', COM/2003/0284, 21 May 2003, hancin
- Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital, COM/2003/0703, p. 3.
- Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards, OJ L 65, 14.03.1968.
- C-212/97 *Centros* [1999] ECR I-1459.
- C-208/00 *Ü-208/00 CR* [2002] ECR I-9919.
- C-167/01 *Inspire Art* [2003] ECR I-10155.
- C-411/03 *Sevic Systems AG* [2005] ECR I-10805.
- C-210/06 *Cartesio* [2008] ECR I-09641.

**Werner Müller-Pelzer (ed.): *Europe Renaissance. Essaying European Civil Society – Europa-Renaissance. Die europäische Bürgergesellschaft auf dem Prüfstand*, Göttingen: Cuvillier, 2015, 274 pages. ISBN 978-3-7369-9032-6**

**Book Review by Werner Müller-Pelzer<sup>1</sup>**

**Abstract:** *The texts of the present volume represent the result of a conference held at Dortmund University of Applied Sciences and Arts in 2014. With their contributions, researchers and students from different fields of investigation from several European countries invite the reader to focus on the perspective of European citizens to which less attention has been paid, compared to the institutional crisis of European Union. In contrast to its increased political and economic power, the EU has not succeeded in incorporating an authority able to communicate to its citizens the feeling of belonging together and to struggle for a common goal. In this sense the title “Europe Renaissance” is meant to push the search for a “good life” back to centre stage. From 2014 to 2016, the situation of the European Union has so clearly deteriorated that a well-known German expert in constitutional and public law Dieter Grimm comes to the result of an alarming democratic failure (Dieter Grimm, 2016, Europa ja – aber welches? Zur Verfassung der europäischen Demokratie, München: C.H. Beck). The political scientist Ulrike Guérot supports this analysis with a fresh manifesto (Ulrike Guérot, 2016, Warum Europa eine Republik werden muss! Eine politische Utopie, Bonn: Dietz).*

**Keywords:** European Union, European Civil Society, Europeanization, European Youth

---

The conference took place at the Business Faculty and was motivated by the idea to overcome the *absence* of Europe (also in the sense of absence of mind) in the curricula. Accordingly, the texts are meant to take up the preoccupation of business students with the future of Europe and not so much to be a contribution of specialists of modern Europe.

Taking in account this proviso, the contributions turn around the central preoccupations of European citizens:

- the search for a normative base of civil sense,
- the role of the nations in a united Europe,
- the rapprochement of different traditions of justice and constitutional order,

---

<sup>1</sup> **Dr. phil. Werner Müller-Pelzer** recently retired from University of Applied Sciences and Arts (Fachhochschule) Dortmund, Business Faculty, where he was responsible for the linguistic and thematic organization of exchange programs with the francophone and the hispanophone university partners; editor of the e-journal impEct; responsible for the Dortmund Center for Intercultural and European Studies. E-mail: [werner.mueller-pelzer@fh-dortmund.de](mailto:werner.mueller-pelzer@fh-dortmund.de).

- a reflection on the embedding of affective identities,
- the philosophical backbone of Europe and
- the questioning of the ideology of infinite growth.

Ten of twelve contributions are in English, two in German and one in French. The contributors are researchers as well as BA and MA students.

In his paper **“What is European Civil Society about?”**, the editor **Werner Müller-Pelzer** (Center of Intercultural and European Studies, Dortmund University of Applied Sciences and Arts) gives a brief explanation of the terms “Renaissance” and “civil society”, both being connected with the legitimation problem that the European Union has to face. After a short review of the historical background, the author emphasizes the normative use of the term “civil society”, leading to the social embedding and the subjective concern which stand out as the two characteristics of a European civil attitude.

In his second essay, **“Jenseits der Wachstumsideologie. Europa kommt zur Besinnung”** (followed by a shorter English version, entitled „Beyond growthism: Europe comes to its senses”), Werner Müller-Pelzer chooses the fictitious perspective of two students who begin to discuss aspects of TTIP but quickly come to a critical judgment of the European Union as global player and the dogma of infinite economic growth. With reference to relevant literature, the students identify the intellectual and historical turning points which are responsible for the fatal influence of *growthism*. The contemporary anthropology which has overcome obsolete traditions allows them to put to good use the outlines of post-growth economy for their practice of responsible European citizens.

**Gerd Held** (researcher and journalist, Humboldt University Berlin) addresses in his contribution **“Die Sackgasse des ‚Immer enger vereint‘. Europa lebt vom Pluralismus nationaler Zivilgesellschaften”** the main question underlying the debate about the future of the European Union: Are the citizens able to follow, with an existential commitment, an always wider and deeper union or are there limits for finding themselves in an embedding identity? Or even: Has the EU yet transcended these limits? The bonding capacity of civil society, the author maintains, should not be confounded with the dispersal ability of a state or state-like organization. Therefore, he recommends a renewed interpretation of the nation beyond its current popular demonization. “For Europe, he asserts, the pluralism of responsible ‘civil nations’ is not replaceable by a unified European civil society.”

**Peter Kruzclics** (lawyer and researcher, Szeged University) examines the role of the “young” European law *vis-à-vis* the “old” national constitutional laws of European countries. In his contribution **“Valeurs constitutionnelles européennes: Les fondements juridiques de la construction d’une communauté politique”**, the author analyses with  *finesse* how the exchange between national constitutional identities and European jurisprudence could contribute to the beginning of a European constitutional identity. The delegation of the (national) principle of sovereignty and the (European) exercise of subsidiarity are shown to be interdependent. The cooperation of both constitutional levels could be a prefiguration for the completion of normative expectations of national civil societies and a future European civil society.

**Peter Kuzclics and Marton Sulyok** (both lawyers and researchers, Szeged University) chose for their contribution the paper **“Constitutional cacophony, polyphony or symphony: Fine-tuning the constitutional framework for a European concert in a stronger harmony”** a suggestive musical metaphor. Having in mind the complex interplay of political, social and cultural integration, the authors induce us to understand the coexistence of different players as sources of constitutional thinking in Europe. The European Court of Justice (CJEU) has to consider the different nationally marked values and the jurisdiction of the respective constitutional courts. On the other hand the CJEU has to weigh them against comprehensive European values, especially those formulated in the European Convention on Human Rights (ECHR). The role of the *conductor* should stay vacant because the European *ensemble* has to start from an unspoken but fundamental cohesion; each member, nevertheless, being legitimated to tactfully remind the others in event of disharmonies. With the notion of a “fundamental identity” (as opposed to a momentary identity) there appears a term of constitutional intersection, which warrants closer attention.

In an original approach, **Mihály Bak, Lea Pitzini and Xhoana Dishnica** (MA students, Szeged University), analyse in **“Making the EU (more) flexible: Becoming ‘European’ without being a full member of the EU?”** the different layers of the term “European”. Seeing that there is not one compelling argument for justifying the title of being “European”, the authors come to the intellectually stimulating result that “membership is actually the least important criterion”. Instead, they prefer to speak of “Europeanization”, with it underlining that a specific bundle of arguments is decisive, the political will of belonging to Europe being a necessary but not sufficient criterion. On this foundation, the authors give an outlook on the present negotiations on TTIP indicating a “potential risk to the European identity and to the EU economic family”.

**Hannah Kloppert and Denise Baller** (BA students, Dortmund University of Applied Sciences and Arts) address the educational situation in Europe. In their contribution **“The Reasons for Disenchantment of European Youth”** the authors try to find out why the considerable investments of the European Union in education couldn’t prevent the distancing, if not the indignation, of academic youth. One assertion is that the ordinary student does not differentiate between European and national education politics and financing. A second claim explores the unsubstantiated promise by the authorities to guarantee students an interesting and well paid job; the stagnant EU-economy, the banking crisis and the austerity politics in some member states thwarted this expectation. A third argument explores how the lack of a European civil spirit is not helping to counterbalance deceptions. Nevertheless, the authors describe a number of attractive educational offers that are mostly limited to technological excellence and economic growth.

In their text, **“Communitarian Method vs. Intergovernmentalism”**, **Mohamed Betbaieb and Anouk Gibelin** (BA students, Dortmund University of Applied Sciences and Arts) give an insight into the present debate about good governance in the European Union. This debate has its origin in the unsatisfactory decision taking procedures which weaken public support in an already stressful state of affairs. Indeed, the EU institutions suffer from incoherence while the national governments augment this incoherence by

forcing the intergovernmental method instead of restoring the *méthode communautaire*. Its advantages are inner coherence, transparency and, above all, the search for a general interest. The alternative is well known: The economic and political weight prevails against arguments consolidated from common politics – a procedure which debilitates the European Parliament and the European Commission as well.

**Daria Korobtseva** (MA student, Kostroma University) in her short paper, **“Approach to Auto-stereotypes of Russians”**, focuses on the Russian mentality. The author shows the importance of peculiar historical experiences in Russia. The difficulty for outside spectators to accept the contradictory behaviour of Russians is a strong argument for restraint in dreaming of a comprehensive European civil society.

In his contribution **“How to become a European citizen?”**, **Werner Müller-Pelzer** (Dortmund University of Applied Sciences and Arts) examines where the resources for a European citizenship may come from. By excluding state or state-like authorities as being derived structures, the author turns towards philosophical theories to lay the base for the development of citizenship. Here, Kant and Hegel represent the antipodes: Kant’s position argues for a strictly individualistic morality, whereas Hegel pleads for the concept of an original social wholeness. In this perspective, Hegel is closer to modern anthropological theories which emphasize the emergence of a moral and civil *sensus communis* from common situations rooted in a corporeal base. In this vein, instead of construing an abstract European civil society, it seems more plausible that Europeans should learn to become more sensitive to the value of common experiences in their daily life. The embeddedness of these experiences in a local, regional and national environment provides at the same time the guidance to cope with the threats of social autism.

**Vlad Mureşan** (philosopher and researcher, Cluj-Napoca University) in his paper, **“Hegel and Derrida on negativity”**, addresses the crucial question of how to speak about Europe in a philosophically positive way. Beyond a one-dimensional idea of technological progress, the driving force of dialectical evolution of society could give the impression of an irreducible negativity, devouring all achievements and blocking a positive European identity. That Europe is the byword for “otherness” is the thesis of Jacques Derrida: To prevent that Europe in its acting and interpreting would appropriate and submit the rest of the world, Europe as non-identity should accept and absorb the otherness of the world. Against this dissolution of European identity the author pleads for the positive ideal of universal conciliation he finds in Hegel: instead of fusing with the Others – a process in which the antagonism of mutual recognition would come to a standstill – the concrete struggle of standpoints and their overcoming would result to be an enrichment recognizing the part of universality that is deposited in the Other.

**Thomas Brysch** (researcher, Viana do Castelo Politechnic University) asks: **“How can Kant’s Philosophy contribute to a Renaissance of European Thought?”** The author argues that Kant’s critique of the scientific knowledge of his time remains a paradigm of occidental thinking reminding us that Science as the knowledge of Nature is not just the technical domination of the world; it would be a disaster to keep suggesting nowadays that in principle Science will overcome all our problems and answer the last questions. Kant showed that Science, by its methodological arrangements, creates a distance towards

the phenomena, and this filter alienates them from ordinary experience. Science, then, operates a transformation of phenomena and additionally establishes a restriction on the field of investigation. Both arrangements mean a restriction of findings and, thus, the impossibility of a total knowledge, or a scientific *Weltanschauung*. In opposition to Descartes and Hume, Kant does not intend to become an engineer: his objects are mind-objects as for modern physicians. Accordingly, scientists who are overstepping their area may become dangerous; by interfering in nature they are unable to predict all the consequences. Nevertheless, with a critical enclosure of Science, society is provided with a powerful tool for mastering life.

Different in scope, discipline and size, the contributions provide the foundation for advanced students who are searching for a motivating perspective. In fact, most universities seem more involved in the global run for reputation and money than to deal with their task of educating the Europeans of tomorrow.

**Rien ne se crée sans les hommes. Rien ne dure sans les institutions.**

**Jean Monnet**



7-9 Regina Elisabeta Blvd., Code 030016, Bucharest, Romania

[ier@ier.ro](mailto:ier@ier.ro), [www.ier.ro](http://www.ier.ro)

**ISSN 1582-8271**