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Part III ✳ Policy Papers

Foreword

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I am proud to introduce the very first issue of the *Amsterdam Review of European Affairs* (AREA). AREA is an emerging interdisciplinary academic journal showcasing the work of undergraduate and graduate students on European policy and politics. Published by European Horizons University of Amsterdam, it seeks to provide a platform for young people to propose critical reflections on European internal and external affairs and to develop ingenious proposals to improve European Union (EU) policy and that of its Member States.

This edition covers a range of highly relevant issues which will prove themselves to be some of the hardest challenges that youth will have to confront in the next few years. The eighteen pieces delve into European policy and decision-making with regards to defense, migration, judicial independence, euroskepticism, data privacy, gender equality, and mass tourism. This issue includes some of the best work of our Writers and Working Groups, who have dedicated their time and energy this year to producing high-quality, innovative academic and policy papers on behalf of the organization. In addition, it comprises the three best opinion pieces written by our members this year. As a policy incubator, it is indeed a tradition for us to encourage all members to contribute to our research output by producing opinionated reviews of recent European news. This edition also presents the three winning policy proposals from the Amsterdam Policy Prize 2022, which took place in April. On this occasion, thirty students based in Amsterdam competed to develop original recommendations to improve the city's efforts to make tourism sustainable through urban development.

I wish to extend my thanks to the many incredible individuals who participated in making this first AREA issue a reality. The editorial board, and particularly our Editor-in-Chief, worked tirelessly in the last few weeks to select and edit with me all of the pieces contained in this issue. They perfected the three opinion pieces and sixteen papers in record time, overcoming unexpected hurdles along the way. This issue could not have been possible without the dedication showed by our Research Officers and News Reviews Officers who, throughout the year, made sure that our members produced regular and high-quality papers and opinion pieces. In addition, I am also very grateful for the twenty-two members who gave extensive feedback and honest recommendations on the submissions we received as part of the peer-review process. Lastly, my gratitude goes to the Board of European Horizons University of Amsterdam 2021-2022. My fellow board members met my decision to create the present academic journal with unwavering encouragement, pride, and loyalty. I am certain that all of these formidable people will continue on to do great things.

This issue reflects the anxieties and concerns of Europe's youth. As Europe emerges from a global pandemic which deeply affected the lives of all individuals for over two years, it is also facing a great number of internal political struggles which divide countries and individuals. Some of the most important of these challenges are explored in the featured articles.

First, the three opinion pieces included in this issue touch on different aspects of EU defense and security.

Yeva Seplyarska starts off the issue with a reflection on one of the most significant developments of the year: Russia's invasion of Ukraine. She examines how the Russian government manipulates national media outlets so as to disseminate and strengthen its official narrative on the war and thereby legitimize its course of action. Russian President Vladimir Putin has argued at several occasions that invading Ukraine was the only way to protect Russia from the supposedly Nazi regime ruling the former. In order to prevent citizens' access to uncontrolled information, he has been enforcing a ban of international social media and news websites. Seplyarska therefore draws from evidence of a large-scale operation of censorship and disinformation to argue that Vladimir Putin is infringing Russian citizens' fundamental right to freedom of speech. Her piece puts forward a critique of the Kremlin's propaganda campaign, which entails not only the unlawful detention of opposition journalists and demonstrators but also, in the long run, the widespread indoctrination of Russian citizens.

Similarly inspired and appalled by the Russia-Ukraine war, **Robin Staes-Polet** delves into the discussion on European Strategic Autonomy (ESA) which was re-ignited with the ongoing events. He suggests that Russia's invasion of Ukraine has directed much attention to the internal vulnerabilities of the European Union and the brittleness of the peace that we have all come to take for granted. Staes-Polet reflects on the components that ESA's implementation and coordination would require. He argues that most of the decision-making power should be allocated to a central body in order to avoid issues of unanimity among Member States, though considerations of troops and equipment should be made at the national level as they entail concerns of sovereignty. He concludes that an important effort should be made at the EU-level to increase its defensive abilities in order to ensure the success of any military intervention it undertakes.

The last opinion piece of this issue continues on to examine another threat to the EU's political and military stability. **Céline Paré** discusses the prospect of a new genocide in Bosnia-Herzegovina, prompted by the spike in Serb hyper-nationalism the country is currently experiencing. From announcing the withdrawal of the Republika Srpska from Bosnia-Herzegovina to leading a far-reaching discursive campaign of dehumanization of Bosnian Muslims, Bosnian Serb President Milorad Dodik is perpetuating the country's long history of ethnic-based violence and, in so doing, threatening the domestic stability. Through her application of Moshman's ladder of genocide, Paré therefore proposes an informed assessment of the possibility of a resurgence of ethnic cleansing in Bosnia-Herzegovina. She concludes that it is crucial for the EU to keep a close eye on the internal situation in the country and consider implementing preventive measures, insofar as a conflict in Bosnia-Herzegovina would disturb the regional order and the peace that Europe treasures.

Several articles in this issue critically examine the policies instituted by EU Member States in the face of incoming waves of migration.

Annalisa Scaletta, Victoire Tissinié, Nadia Nasrdine, and Angus Kerr examine the disparities between EU Member States' implementation of voluntary returns. The EU has long considered voluntary returns to be a humane and sustainable solution to migration. Their paper delves into four case studies, that of France, Italy, Denmark, and Sweden, to provide insight into the complexity and ambiguity of national voluntary return schemes. The authors suggest that Member States' strategies to assist returning migrants differ in terms of their conceptual and practical dimensions. This results in a lack of uniformity at the EU-level and jeopardizes the core principles on which the EU was built, particularly equality, human dignity, and free movement.

Céline Paré further explores how Europe's policy towards migration contradicts the fundamental values which served as the foundation of the European project. By highlighting the discrepancy between European countries' welcoming attitude towards Ukrainian migrants during the ongoing influx and their closed-door response towards Mediterranean migrants during the 2015 refugee wave, she underscores the critical role played by race in generating feelings and behaviors of solidarity. Her analysis of the biopolitics of Europe's migration politics reveals that non-European migrants are constructed in opposition to European migrants and are divested from their political value and rights on the basis of their non-Europeanness. Her paper prompts readers to think about the racialized process of Othering which underlies European decision-making and practically results in an unequal distribution of compassion and generosity. Paré ultimately calls into question the ideal of cosmopolitanism, ever-so cherished by European elites yet fundamentally threatened by their actions.

The policy paper by **Annalisa Scaletta** offers an analysis of the return sponsorship mechanism proposed by the European Commission (EC). She identifies five flaws within the proposed mechanism, which threaten to hinder its proper implementation and reception. In particular, she stresses that this measure would put at risk migrants' human rights, insofar as it involves that Member States individually make decisions about the latter's future. Ultimately, Scaletta proposes three amendments to the return sponsorship mechanism in order to strengthen its execution and to safeguard human rights: 1) strengthening the EC's supervisory role, 2) sharing migrants' return sponsorship among several Member States, and 3) promoting the regularization of migrants' asylum and residence status on humanitarian grounds.

In her article, **Natalia Barszcz** analyzes the border control and migration policy of Poland, Lithuania, and Latvia with regards to the recent migrant influx from neighboring Belarus. She argues that Belarusian President Alyaksandr Lukashenko is conducting an operation of hybrid warfare using migrants to generate a humanitarian crisis in the EU, as a response to the latter's sanctions against his regime. Barszcz then puts forward an insightful comparison of how the three Member States exercise shared competence in the area of security, freedom, and justice to protect their borders.

Moreover, several authors of this issue discuss fundamental facets of EU governance in their papers.

Ioana Constantinescu investigates the repercussions of Brexit on European governance. Her application of Rodrik's political trilemma reveals that the United Kingdom (UK) has opted for a Golden Straitjacket following its withdrawal from the EU – it has decided to prioritize hyper-globalization and national self-determination over democracy. Constantinescu concludes that post-Brexit UK's inclination towards a Golden Straitjacket, which inspired Eurosceptic discourse and created a power imbalance within the EU, might have engendered a democratic decline at the EU-level.

In her paper, **Teodora Ivanova** immerses the readers in the history of European integration. She examines the role played by Konrad Adenauer, the first Chancellor of West Germany, in founding what we now know as the EU – then called the European Coal and Steel Community. Adenauer supported and greatly facilitated the implementation of the Schuman Plan, which was in line with his vision for postwar German identity. Her in-depth analysis, which delves into the functionalist and intergovernmentalist models of European integration, ultimately demonstrates that Adenauer was at the very heart of the European project.

Then, **Katarzyna Niedźwiecka** delves into the judicial pillar of the EU. She proposes a legal analysis of the discrepancy between the rulings of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) with regards to the disciplinary regime for judges in Poland. Her examination of the workings of each court reveals that two institutional factors can explain this apparent lack of judicial coherence. First, the two courts do not have the same primary objective: the ECtHR seeks to prevent and remedy violations of human rights, whereas the CJEU aims to ensure the consistent interpretation and application of EU law. Second, the courts differ in the scope of the human rights protection they grant, insofar as the ECtHR operates under the norms set by the European Convention on Human Rights, while the CJEU applies EU law.

Finally, **Chiara Frinke** dives into the legal personality of the EU. The Union's legal status has long been the subject of debates within the academic community. On the one hand, some scholars argue that the EU resembles a federation of nation-states, which confer certain powers to a supranational entity in order to function as a whole. On the other hand, it is argued that the EU operates as an international organization made of several supranational and intergovernmental institutions. Ultimately, Frinke shows that the EU does not perfectly fit any of those two categorizations, and considers itself an entirely new legal order. The ambiguous nature of the EU leads her to assert its *sui generis* character – a never-before-seen entity.

Four additional authors contribute to increasing the diversity of perspectives and policy areas covered by this issue.

In their article, **Aleksandra Adach and Giulia Torchio** delve into data privacy from a political and legal perspective. They compare the EU's approach to privacy with that of the United States (US), in light of recent negotiations on a new deal for the regulation of transatlantic data flows. They argue that any new deal between the EU and the US would be crucially hindered by the inherent incompatibility of their privacy regimes. On the one hand, American legislature allows private actors to collect and manage data and in so doing, makes data a marketplace commodity. On the other hand, the EU provides its

citizens with fundamental rights on data protection through the enforcement of the General Data Privacy Regulation.

Zsigmond Tar presents an up-to-date picture of German-Russian relations in relation to the Nord Stream 2 pipeline project. Through a close examination of official documents and news sources from 2015 to 2022, he reviews the claim that Germany is cooperating with Russia on energy policy for political reasons, which the former denies. His paper demonstrates that Germany's collaborative attitude towards Russia in the context of Nord Stream 2 reflects the former's long-term foreign policy of appeasement (Ostpolitik) towards the latter, motivated by the possibility of strengthening bilateral economic interdependence between the two countries.

Ioana Constantinescu then offers an assessment of the trend of increasing Euroscepticism in Greece and develops a proposal to counter it. Fueled by national distrust in EU democracy and dissatisfaction with regards to Greece's economic instability, Greek Euroscepticism has led to talks of a possible 'Grexit,' following the UK's own withdrawal from the EU. Constantinescu recommends the implementation of a promotional campaign of the benefits of EU membership, so as to improve public sentiment towards the EU. She suggests the use of posters which would redirect viewers to the various informational online resources of the EU would be a cost-efficient and viable approach to raise public approval levels.

The policy memo by **Bozhidara Tsvetilova** addresses the gender pension gap in the EU, which increases the likelihood that elderly women find themselves at risk of poverty. The possibility that women leave their jobs to carry children, thereby creating difficulties for their employers, leads the latter to avoid hiring women for higher-paid positions. Such discourse is a major cause of the gender pay gap, which fuels the gender pension gap. Tsvetilova recommends introducing an EU-wide mandatory parental leave, as well as the enlargement of the EC's Pay Transparency Directive, in order to change gender norms and monitor the compliance of employers with the principle of equal pay for equal work, thereby strengthening women's economic security.

Finally, this issue features three policy papers which address the pervasive challenges posed by mass tourism in Amsterdam.

The memo by **Ella Otterbeck, Márton Réti, and Anna Žižková** tackles the insufficient circulation of tourists within the city of Amsterdam. Noting the repercussions engendered by the popularity of the city center, the authors suggest that decentralization of tourism could be encouraged by increasing the attractiveness of the surrounding districts through investing in developing touristic destinations in each of them: an Urban Artscape in Noord, night-life establishments in Zuid, collaborative officers and startup incubators in West, and a biannual food festival in Oost.

Mikolaj Robaczyński and Mert Gürer similarly address the lack of sustainability of Amsterdam's tourism industry through decentralization. After detailing the drawbacks and inefficiencies of past policies implemented by the municipality to combat mass tourism, they argue that ensuring the wider dispersion of tourists throughout the city is a more viable strategy than attempting to reduce the number of tourists. Their memo then lays

out a three-phase initiative to ensure the decentralization of the city through the development of new urban centers.

Lastly, the memo by **Bianca Zordan, Marlena Dziekanowska, Max Pralle, Ryan Dillmann, and Sterre Blok** suggests a shift towards ecotourism in Amsterdam. First, it delves into the manifestations of mass tourism which threaten the livability of residents: congestion, rising temperatures, and a lack of space for sustainable activities are three of the most important issues generated by the presence of great numbers of tourists in the city center. Then, the authors recommend the development and promotion of the 'Green Circle,' a green walking and cycling route surrounding the tourist-dense areas of Amsterdam. According to them, implementing this initiative would not only foster the decentralization of tourism towards the outskirts of the city by providing an alternative activity for tourists to enjoy, but also strengthen the city's environmentally-friendly image.

Modern Media War: How Putin is Reframing the War and the Russian Media Landscape

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The first thing one learns in politics is that states, leaders, and their actions need legitimacy to secure their power and their subjects' support. Particularly in a democracy where government power is legitimised by the people, state actions need to be not only justified but supported by the population – or at least those able to vote. Most leaders, however, will find it hard to justify courses of action such as annexation, bombing civilians, or waging war, and have to resort to something beyond the truth: propaganda. Ever since Putin's invasion of Ukraine, the Kremlin's PR team has been working overtime, attempting to target and replace buzzwords like 'war' and 'invasion' in Russian media outlets with positively connotated terms, such as 'liberate' and 'denazify.'[1]

Indeed, Russia's long-standing President Vladimir Putin, who only two years ago pushed for a constitutional change that allows him to remain in power for ten more years,[2] has attempted to rationalise this war with multiple rather outlandish claims; the most common ones being Ukraine's alleged Nazi regime and the genocide of Russians in the Donbas region. According to Putin, Ukraine left Russia no other choice but to invade, as they had to protect their kin from Nazi persecution. However, both claims are without foundation. There is no proof of Ukraine being run by Nazis, particularly since its very President, Volodymyr Zelenskyy, is Jewish. The claim that a genocide is occurring in the Donbas region also lacks evidence; neither independent human rights organisations, nor Russia itself have produced or released any evidence support such assertions.[3] However, the dual threat of Nazis and genocide is a powerful rhetorical tool for the Kremlin. The memory of World War II is still alive in most former Soviet countries and the more than twenty million people who gave their lives in the fight against fascism have not been forgotten. Thus, the thought of the very same Nazi monsters who killed one's grandfathers living right next door becomes a terrifying and effective threat to Russian citizens.[4] Considering this and the claim that there is an ongoing genocide, the 'military operation,' as Putin refers to it, seems rather reasonable, and nothing like an unprovoked war to annex land.

To keep this said illusion alive, the Russian government must not only phrase its President's speeches delicately but also keep opposing voices silent. Since Russia's invasion of Ukraine on February 24, anti-war protests have spread like wildfire with thousands of

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[1] Roth, "'Don't Call It a War.'"
[2] Frye, "What's Vladimir Putin's End Game?"
[3] Blanco, "How to Justify a War."
[4] Waxman, "Historians on What Putin Gets Wrong."

people in countless cities demanding an end to the invasion. Even in Russia, citizens dared to turn to the streets and protest a war they never wanted. However, demonstrators were immediately met with a violent response by the police, who detained over four thousand people including 1,700 in Moscow alone.[5]

Russian media outlets are prohibited from referring to the invasion as a war. They may only describe it euphemistically as a 'military operation.' Those who refuse to adhere to the censorship are shut down swiftly and permanently, as was the case with the radio station Ekho Moskvy and the television channel Dozhd, both very popular news sources in Russia.[6] Furthermore, prison sentences are increasingly becoming a looming threat for journalists reporting on issues that the Kremlin does not approve of.[7] The newly intensified censorship has further spread to international social media and news sites such as Twitter and the BBC, which at first would not load properly in Russia and are now completely banned.[8] By cutting off the population's access to independent media sources and effectively censoring all those within his reach, Putin perpetuates his narrative of liberating Ukraine and attempts to forcefully indoctrinate his citizens into believing it. More media outlets are being shut down and many journalists live in fear of the repercussions that performing their jobs and fighting for freedom might have. Footage and information that does manage to filter through Russia's massive censorship, often surrounded by a flood of Kremlin-made propaganda, is immediately dismissed as fake news and Western propaganda, an alleged tool of Ukraine and the North Atlantic Treaty Organisation (NATO).[9]

While many Russian citizens oppose the war and fiercely fight against it, the restricted media coverage continues to limit the number of people hearing the truth, while the growing propaganda simultaneously increases the number of people confronted with misinformation. Indeed, ever since Russia (re-)invaded Ukraine this February, support for the war has been rising among the Russian population. While at first it seemed as though Russians were opposed, or at the very least hesitant regarding the prospective annexation of Ukraine and the inevitable slaughter of civilians, support for Putin's 'military operation' now seems prevalent. Most polls investigating Russian support for the invasion score well over fifty percent.[10] One could argue that civilians might hesitate to voice disdain for the actions of a government that threatens those who oppose it with prison sentences, but even such self-censorship does not explain the growing support Russians show for this war sufficiently.[11] Particularly, the West's reaction to the war and the sanctions Russia is faced with seem to fuel the populations' hatred for the West and the resulting conviction that their war on Ukraine is a justified step in protecting Russia from NATO.[12]

In fact, Russia now being (rightfully) criticised in Western media seems to have consolidated this narrative. While many social media sites are shut down in Russia, VPNs are very common among the population and used by many to still access classics like Instagram or Facebook.[13] A number of Russian influencers have taken to their online

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[5] BBC News, "Protests Across Russia."
[6] Brezar, "Russia Cracks Down."
[7] Brezar, "Russia Cracks Down."
[8] Milmo, "Russia Blocks Access."
[9] Kralova and Vetsko, "Ukraine."
[10] Yaffa, "Why Do So Many Russians."
[11] Troianovski, Nechepurenko and Safronova, "Shaken at First."
[12] Troianovski, Nechepurenko and Safronova, "Shaken at First."
[13] Sucio, "VPN Usage Has Skyrocketed."

platforms to spread support for the war, ranging from calling Bucha a Ukrainian PR stunt[14] to claiming russophobia to be a widespread disease in the West that Russia needs to protect itself from; a new trend of cutting up Chanel bags has spread over Russian social media in opposition to allegedly growing russophobia.[15]

Not only has Russia transformed into an increasingly authoritarian regime, but its censorship of journalists has now reached dizzying new heights, despite being constitutionally outlawed. More worryingly, the Kremlin's PR team seems to have sown the right media-seeds, successfully increasing support for their war on Ukraine among the Russian population and implanting Putin's narrative of acting in Russia's interest in those still watching state-controlled media. It remains to be seen what other violations of free speech and civil rights Putin and his cabinet will deem to justify the ends expanding Russia and its power further, but it is now more evident than ever that it is not only international law but Russia's very own constitution that the Kremlin is comfortable with tossing away.

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[14] Seitz and Lajka, "Russian Media."
[15] Bubola, "Russian Influencers."

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European Strategic Autonomy: A Luxury or Necessity Good?

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Russia's recent invasion of Ukraine has abruptly thrust the importance of European state sovereignty into the spotlight, exposing the fragility of the regional security and extended run of peace that most have taken for granted since World War II (WWII).[1] In this context, this piece focuses on European Strategic Autonomy (ESA), an early concept revived by the demands of recent geopolitical shifts. This notion is explored by first tracing back the roots of pan-European security in the wake of WWII. Next, it points to and evaluates the recent geopolitical developments which have reinvigorated calls for a more independent pan-European military force. Later, the importance of coordination, which could determine the success of the concept, is discussed. Lastly, this piece probes the assumption of whether the endeavour of ESA is even a worthy pursuit.

To first clarify the concept of strategic autonomy, this piece must first point out that it focuses exclusively on its military aspect of the term. Though this term can also refer to building broader economic independence, in this formulation, strategic autonomy refers to the capacity to act in cases of conflict, backed by independent military capabilities.

To provide historical context on European security, ever since 1949, the North Atlantic Treaty Organisation (NATO), an intergovernmental military alliance, has provided a seemingly unwavering US-backed guarantee safeguarding European security, enshrined under Article 5 of the treaty.[2] Under these auspices, European states were enabled to focus on strengthening their economies following the war, while their defence umbrella was chiefly funded and provided by the United States (US).[3]

European efforts to join military forces and create a common European army have come to nought, in part due to the failure of the French and Italian leadership to ratify the Treaty of Paris in 1952. The treaty would have created the European Defence Community (EDC), a pan-European defence force.[4] When it comes to regional conflicts around the world, European politicians grouse that the diplomatic ambitions of the European Union (EU) is not backed by a common military force, leading to their exclusion from the negotiation table. This is evident in cases such as the conflicts in Nagorno-Karabakh, Libya, and Syria, where the 'Astana platform' for conflict negotiations included powers such as Russia, Iran, and Turkey, but left out Europe, despite its geopolitical significance to the region.[5]

Recent shifts in global geopolitics, most prominently the Obama administration's 'pivot' towards Asia in 2011, have moved the US' foreign policy focus away from Europe and the Middle

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[1] Vershbow, "Our Security."
[2] Deni, *NATO and Article 5*.
[3] Techau, *The Politics of 2 Percent*.
[4] Ruane, *Rise and Fall.*
[5] Mezran and Varvelli, *The MENA Region.*

East, rendering Europeans uncertain about the robustness of NATO's security guarantee.[6] To make matters worse, the Trump administration strongly resisted funding and supporting NATO while implementing a poorly organised withdrawal of US troops from Syria.[7] Even during the administration of pro-NATO President Joe Biden, Europeans have witnessed clumsy US leadership in Afghanistan, including a rapid yet poorly communicated and executed withdrawal,[8] forcing its European allies to seek 'strategic autonomy.'

Originally discussed in 2013, the concept was put to practise through the establishment of the European Defence Fund (EDF) in 2017, and later became a central tenet of the von der Leyen Commission.[9] Many European initiatives are criticised as vague discussions leading to a tangle of grand stratagems which are never nurtured to fruition.[10] Whether the fate of strategic autonomy is to become another vague European initiative can be ascertained through an examination of the EU Strategic Compass, which was adopted on March 24, 2022. The document sketches out the planned evolution of EU military capabilities, promising increases in defence investment and research and development. While not representing a radical departure from the military status quo, the Strategic Compass rather represents a commitment to gradually increase its stake in European security. In the aftermath of the debacle in Afghanistan, this thrust also involves the fine-tuning of the speed and flexibility of EU military response and decision-making, creating an 'EU Rapid Reaction Capacity' of five thousand quick-response troops.[11]

Given the enthusiasm of French President Macron for developing an 'EU army'[12] and the changing winds of the Russia-Ukraine war pushing Germany to stray further from its demilitarised post-war status - as demonstrated by the state's extra one-hundred-billion-euro investment into its military[13] - strategic autonomy does not seem a mere fad. Although it is important to analyse the pace of this development, the EU's current trajectory clearly appears to be leading in that direction. Already, projects such as the Future Combat Air System (SCAF), involving France, Germany, and Spain, are in the pipeline, even though the fighter jets are only planned to enter service in 2040.[14] Building military and defence capabilities, by nature, is a long-term process and its benchmarks should be set accordingly.

Having established the political will and ability behind ESA, this piece now posits an important facet in ensuring its successful coordination. It is crucial to make sure that these projects do not duplicate any national efforts, and that organisation is smooth at the European-level. A possible way to facilitate this is by having a unified central command make major decisions and raise other important questions of sovereignty over national troops and materiel. The same needs to be asked of overlaps with NATO efforts, which the Strategic Compass paid heed to but offered no concrete solutions. However, the EU's increased investment into European defence must eventually be welcomed by their Atlantic partners, who have long harangued them to meet the 2-percent-of-GDP spending target on their militaries.[15]

After establishing how coordination is a factor necessary for the success of ESA, one can take a step back to question whether the real limiting factor even is military capacity, and whether more coordinated firepower would necessarily reap greater foreign policy rewards for Europe.

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[6] Davidson, "The U.S. 'Pivot to Asia'."
[7] Erlanger, "Trump's Syria."
[8] O'Connor, "As Biden Leaves for Europe."
[9] Blockmans, "Why the EU."
[10] Billon-Galland and Thomson, *European Strategic Autonomy*.
[11] Nováky, "EU's Draft Defence Strategy."
[12] Wheeldon, "Proposals for an EU Army."
[13] Connolly, "Germany to Set Up."
[14] Machi, "New Trinational Deal."
[15] Techau, *The Politics of 2 Percent*.

Looking outwards, the US armed forces have unquestioned superiority in almost any militaristic area, and yet has faced a long string of failures in its history, from losing wars in Vietnam to losing lives in Afghanistan.[16] While an increase in EU defensive capability would surely improve its domestic security, European belief in its moral superiority over the US (as a moral rather than military power) might not necessarily lead to more successful interventions. A rejuvenated EU military (a hawkish success) would need to be properly directed as a force for good (a dovish ambition) and not abused by blithely sending troops on foreign military interventionist missions. Perhaps building European strategic autonomy is the easy part, and the real challenge lies in its righteous wielding.

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Discursive Othering and Detrimental Nationalism: Bosnia-Herzegovina's Slide Towards Ethnoreligious Conflict

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Bosnia-Herzegovina is in shambles. The peace that the country has known since the end of the war in 1995 is under intense threat by the ongoing political crisis prompted by Serbian hypernationalist and separatist ambitions.[1] This article places the recent events in Bosnia-Herzegovina in their historical context and analyzes them through the lens of genocide theory so as to assess the prospect of a new ethnoreligious conflict.

The 1992-1995 Bosnian Genocide: Historical Background

During the Bosnian War which spanned the years 1992 to 1995, Serbian forces carried out a genocidal campaign against Bosnian Muslim civilians.[2] Seeking to ethnically "cleanse" the country of non-Serbs, the Army of Republika Srpska led the killing of over a hundred thousand individuals and the assault, mass rape, and torture of countless more.[3] In particular, the Srebrenica massacre of July 1995, orchestrated by Bosnian Serb General Ratko Mladić, resulted in the death of eight thousand Bosnian Muslim men and boys, even though the town had been declared a "safe area" by the United Nations.[4] In November 1995, the United States (US) and the North Atlantic Treaty Organisation (NATO) brokered the Dayton Agreement, which marked the end of the war and established a single state made up of two autonomous entities – the Federation of Bosnia and Herzegovina and the Republika Srpska (RS).[5] Today, the country is headed by a three-member presidency – representing the Bosnian, Serb, and Croat nations – and a bicameral legislative body.[6] In addition, the Dayton Accords mandated the creation of the Office of the High Representative (OHR) and the European Union Force in Bosnia-Herzegovina (EUFOR) – or "Operation Althea" – to oversee the agreement's civilian and military implementation.[7] In 2007, the International Court of Justice recognized the culpability of the Bosnian Serb army in executing a genocide against Bosnian Muslims.[8] Yet, the notion of Bosnian genocide is still widely contested, with numerous nationalist Serb and international leaders engaging in genocide denial.[9] In the wake of the mounting ethnic

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[1] Gadzo, "Bosnia's Political Crisis."
[2] Gadzo, "Srebrenica Genocide Survivor."
[3] Gadzo, "Srebrenica Genocide Survivor."
[4] Gadzo, "Srebrenica Genocide Survivor."
[5] McGee, "A Dangerous Crisis."
[6] McGee, "A Dangerous Crisis."
[7] McGee, "A Dangerous Crisis;" Saric and Ruy, "Bosnia is a Test."
[8] Gadzo, "Bosnians Worried."
[9] Grebo, "Disputed Truth;" Hajdari, "Bosnia's Peace Envoy."

tensions, the thought of a potential "return to the genocide of the 1990s" is a frightening prospect for the country's two-million Muslim population.[10]

Bosnia-Herzegovina's Current Political Crisis: Timeline of Events

Last July, High Representative for Bosnia-Herzegovina Valentin Inzko used his executive powers to pass a bill criminalizing the denial of the Bosnian genocide.[11] Any individual participating in genocide contestation could be sentenced to prison for a duration ranging from six months to five years. This new legislation sparked a wave of condemnations and boycotting of state institutions by Bosnian Serb politicians,[12] including Serb President Milorad Dodik who reiterated that "genocide did not happen in Srebrenica" following the announcement.[13] He added: "This is the final nail in the coffin of the country of Bosnia and Herzegovina. The RS has no choice but to launch the process of dissolution."[14] Since then, Dodik has embarked on a campaign to break away from the power-sharing arrangement and form a new Serb-led entity. The authority of the Office of the High Representative was rejected by Bosnian Serb leaders. In October, Dodik announced that Bosnian Serbs would withdraw from the national tax system and army and set up their own, a declaration which many interpreted as a move towards secession.[15] He demanded that the Bosnian army leave Bosnian Serb territory, otherwise "friends" of the Bosnian Serb nation would have no choice but to take military action to remove them.[16] Later that month, Bosnian Serb security forces held "anti-terrorist" drills in the ski resort at Mount Jahorina.[17] The mountain is a site of collective memory for Bosnian Muslims – hundreds of civilians were shot down as they attempted to flee Serb violence during the 1992-1995 war.[18] Bosnian Serbs' military exercises were thus perceived as a provocation.[19] In December, Dodik commanded the Bosnian Serb parliament to launch the official pull-out of the RS from the federal system of Bosnia-Herzegovina,[20] a six-month long process which promises to engender a geopolitical upheaval in the Balkans. As a response, the US imposed sanctions on Dodik for corruption[21] and use of "divisive ethno-nationalistic rhetoric."[22] Dodik refuted the allegations and denounced the imperialist tendencies of Western countries. On January 9, several marches were organized by Bosnian Serbs throughout the country, celebrating the twentieth anniversary of the declaration of independence of 1992 which had triggered the start of the Bosnian war and genocide.[23] Serb nationalists praised convicted war criminals in their songs and burned torches as they passed Bosnian Muslims' homes.[24] With no regard for the outlawed status of this particular holiday, Dodik attended the festivities, accompanied notably by Russian

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[10] Harding, "Bosnia Faces 'Terrifying' Prospect."
[11] Gadzo, "Bosnians Worried;" Hajdari, "Bosnia's Peace Envoy"
[12] Kovacevic, "Bosnian Serbs;" Niksic, "Bosnia's Dodik."
[13] Hajdari, "Bosnia's Peace Envoy."
[14] Hajdari, "Bosnia's Peace Envoy."
[15] Borger, "Bosnia is in Danger;" Latal, "Radical Rhetoric."
[16] Borger, "Bosnia is in Danger."
[17] Saric and Ruy, "Bosnia is a Test."
[18] Borger, "Bosnia is in Danger."
[19] Rettman, "Bosnia Break-Up."
[20] Prothero, "Bosnian Serb Paramilitaries."
[21] Niksic, "Bosnia's Dodik."
[22] Walker, "US Slaps Sanctions."
[23] Gadzo, "Protesters Call for Action."
[24] Gadzo, "Protesters Call for Action."

ambassador Igor Kalabuhov, French right-wing European Parliament members Herve Juvin and Thierry Mariani, and war criminal Vinko Pandurevic.[25] In the following week, demonstrations in support of Bosnian Muslims and in demand of a return to political stability took place in over fourteen countries.[26] In early February, the RS approved a draft law proposing the formation of a new legal body which would be granted the authority to select judges and prosecutors.[27] The unconstitutional creation of such an institution would effectively strip the current High Judicial and Prosecutorial Council from its judicial power, and in doing so, undermine Bosnia-Herzegovina citizens' fundamental legal rights.[28] Shortly after, the EU announced its intention to prevent the potential breakup of the country through an eventual imposition of sanctions.[29] On February 24, it increased the number of EUFOR peacekeepers in Bosnia from 600 to 1,100 "as a precautionary measure."[30]

From Institutional Disintegration to Identity Polarization: The Prospect of a New Genocide

Moshman's ladder of genocide[31] provides a useful analytical tool to evaluate the political situation in Bosnia-Herzegovina. His model involves the existence of "four overlapping phases"[32] leading up to genocide: dichotomization, dehumanization, destruction, and denial. Dichotomization involves the differentiation and demarcation of an ingroup ("us") and an outgroup ("them"). During this operation, the saliency of particular cultural markers is heightened – citizenship, ethnicity, language, ideology, and religion are among the features most often associated with national identity and belonging. Such a process is also referred to as "Othering," insofar as an existential "Other" is constructed in opposition to the "Self." The dichotomizing operation occurred decades ago in Bosnia-Herzegovina. In their political imaginaries, the Bosnian Serb and Bosnian Muslim identities have been shaped in opposition to one another. In the 1990s, their respective national identifications were predicated upon ethnicity and religion. Today, an additional dimension has been supplemented – that of ideology. Indeed, Dodik is determined to fight an ideological war against the West in parallel of the ethnoreligious antagonism with Bosnian Muslims, resulting in the discursive and political conflation of the two disputes.

Dehumanization occurs when the "us" versus "them" dichotomy is imbued with a power imbalance, insofar as members of the outgroup are categorized as lesser beings.[33] In particular politically potent periods, "identities deemed inferior may be actively stigmatized or, in the extreme, dehumanized."[34] The discursive, psychological, and institutional dehumanization of members of the outgroup provides the ingroup grounds for treating them less humanely.[35] In denying their personhood and subjectivity, the ingroup effectively excludes them from their realm of moral obligation, thereby legitimizing the use of violence

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[25] Prothero, "Bosnian Serb Paramilitaries."
[26] Gadzo, "Protesters Call for Action."
[27] Sito-Sucic, "Bosnian Serb Region."
[28] Vutajovic, "Bosnian Serb MPs."
[29] Cook, "EU Vows."
[30] Latal, "EU Doubles Bosnia Peacekeepers."
[31] Moshman, "Us and Them," 116.
[32] Moshman, "Us and Them," 116.
[33] Jensen, "Othering," 65; Schwalbe, "The Elements of Inequality," 777.
[34] Moshman, "Us and Them," 121.
[35] Todres, "Law," 615.

against them – thereby giving way to the destruction and denial phases of the genocidal process. In the 1990s, the operationalization of dichotomies and the manipulation of an incendiary dehumanizing rhetoric eventually resulted in the systematic ethnic cleansing and genocide of Bosnian Muslims. Serb extremists "labelled the Bosniaks as jihad fighters, mujahidins, janissaries, brothers in fez, whose final ambition was to turn Bosnia into a state modelled on the Qur'an, an Islamic fundamentalist state, or a Libya-style Jamahiriyah, in which non-Muslims would become slaves."[36] Bosnian Muslims were therefore constructed by Serbs as their fundamental "Other" – whose presence posed a threat to the very existence of the Serb culture and nation. As explained by Khan, "by transgressing imagined national boundaries, European Muslims... embodied in their very being an existential problem which could only be solved through expulsion where practical, and extermination when not."[37] Importantly, the ethnoreligious Self/Other dichotomy still regulates today the social relations between ethnic Serbs and ethnic Muslims in Bosnia-Herzegovina. Ever since the Dayton Agreement, a faction of hyper-nationalist Bosnian Serbs have continued to *Other* Bosnian Muslims through symbolic and semantic acts. Recently, Dodik referred to Bosnian Muslims as "second-rate people,"[38] effectively categorizing them as inferior to Bosnian Serbs. The ongoing pull-out of the RS from state structures marks the institutional actualization of the Self/Other dichotomy. The establishment of separate bodies indeed implies the production of a barrier between "us" (Serbs) and "them" (Bosniaks). Also, the expected formation of a Serb army would give nationalists the military capacity to turn their presently symbolic violence into an armed confrontation. In addition, war criminals convicted for their participation in the genocide against Bosnian Muslims are still today praised in the Bosnian Serb collective memory and publicly celebrated. Despite the interdiction to glorify war criminals, separatist groups have on repeated occasions led marches and erected commemorative plaques in their honor.[39] Furthermore, the recurrent denial of the 1992-1995 genocide by Serb politicians symbolically carries on the destruction of the Bosnian Muslim identity, by attempting to challenge their collective memory. Dodik has greatly participated in the dissemination of historicist interpretations of Bosnia-Herzegovina's past, referring to the 1995 massacre as a "fabricated myth"[40] and arguing that the genocide "did not happen."[41] Studied in isolation, these incidents seem arbitrary and inconsequential. But taken as a whole, they indicate the resurgence of an extreme (and potentially destructive) form of nationalism which threatens the social and political stability of the country, and might, in hindsight, constitute the first manifestations of a new genocidal move.

This is not to say that a genocide *is* in Bosnia-Herzegovina's near future. It would be an over-simplification to label the current political crisis a genocide in the making. Rather, using a theoretical framework of genocide to examine the Bosnian Serbs' recent actions allows one to draw similarities between 1992-1995 and now, thus shedding light on the significance of the crisis. The current events should be placed in a historical continuum of ethnic-based violence in Bosnia-Herzegovina that spans from issuing commemorating plaques for convicted genocide perpetrators to orchestrating the extermination of the outgroup. In doing so, we can conceptualize the current events as early signs of a *potential* reoccurrence of ethnic cleansing in Bosnia-Herzegovina. The institutional disintegration of Bosnia-Herzegovina marks an unprecedented step toward a new conflict along

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[36] Velikonja, "In Hoc Signo Vinces," 32.
[37] Khan, "Bosnia-Herzegovina," 291-92.
[38] Radovanovic, "Amid Tensions."
[39] Husaric and Dzaferagic, "Ratko Mladic Plaque;" Prothero, "Bosnian Serb Paramilitaries."
[40] Niksic, "Bosnia's Dodik."
[41] Hajdari, "Bosnia's Peace Envoy."

ethnoreligious lines. The frightening prospect, however credible, of a new civil war and/or genocide should constitute motive enough for the EU to take preventive measures, especially considering their historical precedent of inaction. Undeniably, the breakup of Bosnia-Herzegovina would not only have far-reaching consequences for Bosnian citizens, but would also profoundly disturb the geopolitical order of the region.

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Voluntary Returns: National Strategy or EU Common Strategy?

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Abstract

Voluntary returns have long been considered a durable solution to migration. In that regard, the European Union has invested an increasing number of resources to consolidate a common approach to voluntary returns, which culminated in the 2021 proposal of the Strategy on Voluntary Returns and Reintegration. Despite the initiatives promoted by the EU and its partner associations, the differences between individual Member States (both in terms of strategy and implementation) have hindered the establishment of a shared framework. This paper fills the gaps in existing literature by delving into voluntary migration tactics – that are often overlooked when considering the approach to immigration taken by EU Member States. In doing so, it analyses the differential implementation of voluntary return programmes across the EU by examining four national contexts – France, Italy, Denmark, and Sweden – and demonstrating how each of them tend to follow specific regional trends rather than an EU common framework. This analysis hopes to prepare future discussions of return migration and inform scholars and policy-makers about the practical implications of the strategies currently adopted at the national level.

Keywords: Voluntary returns, EU Strategy on Voluntary Returns and Reintegration, migration, European Union, Sweden, France, Denmark, Italy

Introduction

The issue of migration has been a topic of contestation, disagreement, and disputes among European Union (EU) Member States for decades, and will most likely continue to be for years to come. Among the long-term solutions to migration proposed by the EU and its Member States, voluntary return programmes have often been disregarded by mainstream media and the academic world. EU countries appear to have particular national stances on migration and how this critical matter should be managed.[1] Due to what has been regarded as an individualistic perspective on migration, one could predict that the same is the case regarding EU Member States and their national system of voluntary returns. However, there is a lack of research on this topic, especially concerning the differential implementation in various Member States. Therefore, this paper aims at filling this academic gap with a systematic analysis of several EU Member States' stances on voluntary return. The paper is centred around the research question: How are voluntary return programmes implemented differently by EU Member States? To address these concerns, the paper focuses on four case studies: two northern EU Member States, namely Denmark and Sweden, and two central EU Member States, France and Italy, to gain a well-rounded understanding of how different governments handle the pressing issue of the voluntary return of migrants. Taking these four Member States as case studies contributes significantly to the discussion on voluntary returns since it illustrates the differences among these states that might go unnoticed, as well as highlights the ambiguity that voluntary returns have within the EU.

The paper is structured as follows: the first section defines key concepts relevant to the topic. The EU's core directives surrounding voluntary return procedures are discussed so as to gain a better understanding of the EU's perspective and values in this area. Subsequently, the methodology section outlines the approach used in this paper and the choice of case studies. Thereupon, the analysis sections present in detail how each of the four chosen countries perform voluntary returns and the specific programmes in place to assist returning migrants. The paper concludes by highlighting how the voluntary return programmes illustrate the paradox between the promotion of rights, equality, and dignity as the EU's core values, and the protection of its Member States' sovereignty.

The EU Dimension of Voluntary Returns

Voluntary return (or repatriation) has long been listed among the three durable solutions to migration proposed by national governments and international organisations.[2] The United Nations Refugee Agency (UNHCR) defines it as 'the most desirable durable solution - provided that return is genuinely voluntary and sustainable,'[3] insofar as voluntary returns 'allow [migrants] to rebuild their lives' and 'to live their life in dignity and peace.'[4] Unlike forced returns, the voluntariness and full awareness of the migrant throughout the return process is to be of primary concern. The distinction between voluntary and forced returns is, therefore, clear-cut in theory. On the one hand, forced return is the 'act of returning an individual, against his or her will, to the country of origin, transit or to a third country that agrees to receive the person, generally carried out on the basis of an administrative or judicial

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[1] Garvik and Valenta, "Seeking Asylum in Scandinavia," 2.
[2] The other two durable solutions are integration in the country of first arrival and resettlement to a third country.
[3] UNHCR, "Rethinking Durable Solutions," 130.
[4] UNHCR, "Global Appeal 2017 Update," 136.

act or decision.'[5] On the other hand, voluntary returns are 'the assisted or independent return to the country of origin, transit or another country based on the voluntary decision of the returnee.'[6]

In line with the positive engagement of the international community with this deemed durable measure, the EU has invested significant resources in the attempt to improve a common EU voluntary return system. The EU's renewed interest has been further encouraged by the Council of Europe's Parliamentary Assembly,[7] which described voluntary return programmes as 'an effective, humane and cost-effective mechanism for returning irregular migrants.' Interestingly, while the UNHCR and the International Organisation for Migration (IOM) adopt the term 'repatriation,' the EU privileges the word 'return.' As argued by Bottaro, the choice is not by chance but is specifically aimed at portraying the return to the country of origin as an empowering decision for the migrant rather than a failure of the migratory project.[8] The EU's efforts over the past decades culminated in the Voluntary Return and Reintegration Strategy, proposed by the European Commission (EC) in April 2021.[9] A brief overview of the EU approach to voluntary returns is therefore necessary to understand the more recent developments.

In June 2014, the EU founded the European Reintegration Network (ERIN) with a Specific Action Programme to implement sustainable return and reintegration of third country nationals in their country of origin and enhance cooperation between ERIN partner institutions and the participating countries.[10] Less than four years later, in mid-2018, the European Return and Reintegration Network (ERRIN) came to substitute ERIN with the objective of further improving the quality of the assistance provided to returnees and the collaboration between migration authorities.[11] Funded through the EU Asylum, Migration and Integration Fund (AMIF), ERRIN gathers sixteen European partner countries[12] and has become a key stakeholder in the assisted voluntary return and reintegration process at the EU level. According to EU official reports, since its launch, ERRIN has supported the partner Member States to achieve the return and reintegration of almost twenty-five thousand migrants.[13] Following the increasing relevance of voluntary returns, the ECannounced that, from mid-2022, the European Border and Coast Guard Agency (Frontex) will take over the activities of ERRIN to ensure that all Member States have equal access to the benefits of the Network.[14] The need for the EC to take this decision already hints at the difficulties[15] encountered in the implementation of a shared EU approach. The EU's efforts in creating a common framework of reference for Member States are also reflected in the return counselling initiative,[16] which provides guidelines for 'creating or running national return counselling programmes and

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[5] International Organisation for Migration, *Glossary on Migration*, 77.

[6] International Organisation for Migration, *Glossary on Migration*, 229.

[7] The Council of Europe is an international organisation distinct from the EU. It was founded in 1949 to uphold human rights, democracy, and the rule of law in Europe.

[8] Bottaro, "Il Ritorno Volontario Assistito," 66.

[9] European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration.*

[10] European Commission, "ERIN."

[11] International Centre for Migration Policy Development, "European Return and Reintegration Network."

[12] Austria, Belgium, Denmark, Finland, France, Germany, Greece, Luxembourg, Malta, the Netherlands, Norway, Spain, Sweden, and Switzerland. ERRIN remains open to all EU Member States and Schengen Area Members.

[13] European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration.*

[14] Return, "Frontex Pilot Project."

[15] This will be addressed later in the section.

[16] European Return and Reintegration Network, "Improving Return Counselling."

addresses the challenges of counselling by promoting good practice and giving recommendations.'[17] From a strategic and operational point of view, the EU and Member States have developed tools such as the Reintegration Assistance Tool (RIAT)[18] and Return and Reintegration Assistance Inventory (RRAI)[19] to facilitate cooperation both at the national and at the EU level. Furthermore, Member States are able to rely on the EU-IOM Joint Initiative for Migrant Protection and Reintegration, launched in 2016. The initiative is directly financed by the EU Trust Fund for Africa (EUTF), with contributions from Germany (forty-eight million euros) and Italy (twenty-two million euros), while the IOM is responsible for the monitoring of the return process.[20] The programme, however, has three regional components (Central and West Africa, North Africa, and Horn of Africa), meaning that it cannot be implemented regardless of the country of origin of the returnee.[21]

Despite all the initiatives launched by the EU and partner organisations, the possibility of a shared voluntary return system seems to be hampered by significant shortcomings, as the EC admitted in the 2021 EU Strategy proposal.[22] The main concerns[23] emerging from the differential implementation of voluntary return programmes are the fragmentation of national approaches and the lack of coordination among stakeholders. First, the lack of coordination between Member States results in a fragmented and confusing support system, which undermines the trust of returnees and third countries as well as their willingness to engage in such a project.[24] Indeed, national programmes differ significantly, although Member States have access to the same EU instruments and funds.[25] This does not only represent a challenge in terms of coordination but can also spark tensions between returnees when they confront their situations during joint return operations or once in their home countries.[26] Similarly, the inefficient organisation between the different stakeholders[27] involved in the various phases of the return process risks undermining the experience of the returning migrant, potentially resulting in the violation of their fundamental human rights.[28] This concern is echoed in the academic debate, with experts arguing that, while return and reintegration policies are increasingly aimed at favouring the sustainable satisfaction of

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[17] European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration.*

[18] RIAT 'facilitates information exchange and referral among return counsellors and providers of reintegration services in a secure digital environment and enables users to monitor assisted voluntary return and reintegration programmes' (see European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration*).

[19] RRAI 'compiles information on the type of assistance (i.e., level and type of cash or in-kind assistance), potential beneficiaries, organisations involved and the stages of the procedure at which support is offered' (see European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration*).

[20] IOM Regional Office for West and Central Africa, "EU-IOM Joint Initiative."

[21] IOM Regional Office for West and Central Africa, "EU-IOM Joint Initiative."

[22] European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration*.

[23] An overview of shortcomings of the voluntary return system goes beyond the scope of this study. For further information refer to European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration.*

[24] Webber, "How Voluntary," 105.

[25] European Commission, *Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration*.

[26] This refers to operations where two or more Member States share the costs of charters to repatriate migrants.

[27] These include border and migration authorities, social work and healthcare providers, housing and education authorities, legal aid, and non-profit organisations in multiple countries and at different levels.

[28] EESC, "Voluntary Returns."

returning migrants' social and economic needs - without impacting the community of their country of origin - assistance lacks effective global instruments to ensure a smooth and durable functioning.[29]

Methodology

Having clarified the EU framework and the concepts that are deployed throughout the paper, this section outlines the methodology underpinning the analysis. Goodrick suggests that comparative case studies involve the 'analysis and synthesis of the similarities, differences, and patterns across two or more cases [having] a common focus or goal.'[30] In light of its objective of evaluating the differential implementation of voluntary return programmes across EU Member States, this paper employs a case-study methodology so as to attempt to understand how the same EU directives are interpreted and enacted in different national settings. However, even if this paper recognises that the strategy adaptation to the needs and possibilities of individual Member States plays a pivotal role in the long-term implementation, it also maintains that the holistic component, coordinating the activities of Member States, should not be overlooked.[31] Aware of the fact that often depth and breadth of analysis do not go hand in hand,[32] but still aiming to provide a representative overview of voluntary return implementation in different national settings, this study focuses on four case studies: Italy, France, Denmark, and Sweden. This choice was guided by the intention of selecting four Member States that were as similar as possible and, at the same time, as different as possible, except for the dimension in which we were interested (i.e., voluntary returns).[33] Indeed, while both Italy and France face the Mediterranean Sea with their Southern borders corresponding to the EU external borders, Sweden and Denmark are Nordic countries[34] constituting the Northern region of the EU. The geographical location of the four countries implies that they experience migration to different extents and in different ways: on the one hand, Italy and France have a direct encounter with irregular migration at their external borders;[35] on the other hand, the impact of irregular arrivals on Denmark and Sweden is filtered through the more external EU Member States making migration a less pressing and immediate issue compared to the Italian and French context.[36] In the past, the discrepancy in individual Member States' interests has represented a pivotal issue for the successful implementation of a common EU approach to migration.[37] However, the 2020 New Pact on Migration and Asylum and, consequently, the 2021 EU Strategy on Voluntary Returns and Reintegration, have shown a step forward in the consolidation of a shared migration policy based on shared responsibility and solidarity among Member States.[38] The comparison between these four case studies thus helps evaluate whether Member States are following a

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[29] Biella-Battista et al., *Manuel*, 11.
[30] Goodrick, *Comparative Case Studies*, 1.
[31] EESC, "The EESC Calls;" Faure, Gavas, and Knoll, *Challenges*, 16.
[32] Goodrick, *Comparative Case Studies*, 8.
[33] Vannoni, "What Are Case Studies," 334.
[34] The other Nordic countries are Finland, Iceland, Norway, the autonomous territories of the Faroe Islands and Greenland, and the autonomous region of Åland.
[35] Petroni, "Why EU States."
[36] Petroni, "Why EU States."
[37] Faure, Gavas, and Knoll, *Challenges*, 11.
[38] European Commission, *Communication from the Commission to the European Parliament and the Council on a New Pact on Migration and Asylum*; European Commission, Communication from the Commission to the European Parliament and the Council: The EU Strategy on Voluntary Return and Reintegration.

shared approach, or if the discrepancies are, de facto, increasing. Each case study is examined in a dedicated section. The latter follow the same scheme: a first part briefly explains the position of the national government towards voluntary return initiatives, a second part analyses how the national voluntary return system is structured, and a final part discusses concrete projects that are currently being or have been implemented. This paper relies on official documents published by national governments, non-governmental organisations, and associations directly involved in the projects, and complements these with relevant academic literature. The quotes from sources consulted in other languages (Italian, French, Danish, or Swedish) have been directly translated by the researchers.

In accordance with the official definition provided by the UNHCR, this paper adopts the term 'migrant' as an umbrella term to identify an individual who 'changes his or her country of usual residence, irrespective of the reason for migration or legal status.' However, it appreciates the differences in the legal definition of migrant and refugee (persons who are outside their country of origin for reasons of feared persecution, conflict, generalised violence, or other circumstances that have seriously disturbed public order and, as a result, require international protection, as defined in the 1951 Geneva Convention). Therefore, when the term refugee is used (especially in the case of Denmark and Sweden), it refers to a specific legal situation which is not extendible to all migrant individuals.

Analysis

This section presents the analysis of the case-studies in the following order: France, Italy, Denmark, and Sweden.

France

France has a love-hate relationship with migration. Although the country used to be known for being the most open to foreigners within the continent, French populist and nationalist parties whose political programs focus on the reduction of immigration are now on the rise.[39] The sudden need for manpower in the aftermath of World War I led France to voluntarily attract migrants, mainly from Italy, Poland, Spain, and Belgium.[40] Yet, the time where France was welcoming foreigners seems far away. Overwhelmed by the abundant flows of migrants - especially coming from Africa - the country seems to have forgotten how foreigners helped rebuild its post-war national economy.[41] Between nationalistic claims advocating the expulsion of certain migrants, and current policies aiming at reducing illegal migration within the French territory - such as the decrease of the number of visas granted to migrants from Maghreb countries[42] - France's approach to migration appears to have shifted. One alternative way of evicting undesired migrants from the national territory is assisted voluntary returns, which aim at offering support to migrants who willingly decide - that is, without, in theory, being forced by the French Administration - to leave.

The motives of migrants for wanting to return to their home country vary: whether the conditions of their mobility evolved, or they decide to put an end to their experience in the host country, foreigners might make the choice to go back to their families or start a new

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[39] Momtaz, "How France Pivoted to the Right."
[40] Britannica, "Immigration of France."
[41] Britannica, "Immigration of France."
[42] Pallier, "Réduction des Visas."

life in the land they left.[43] For these reasons, the French government commits to helping and supporting migrants through the voluntary return mechanism. Taking the form of material and financial support, such help is said to aim at easing the process of reintegration of migrants into their country of origin - and of origin only.[44] It entails assistance in preparing the trip and transport costs, as well as financial help - which can only be received once. However, the government encourages migrants to obtain the travel documents by themselves by promising them one hundred and fifty euros in return.[45]

As stipulated by the French public services, the return can in no instance be forced by the French authorities. Migrants should indeed decide by themselves whether or not to put an end to their experience. Nevertheless, for the conditions for assistance to be granted by the French government, it is stated that the migrant, on top of having lived in France for more than six months, has to meet one of the following criteria: be in an irregular situation, have had its asylum request refused, or be subjected to the Obligation to Leave the French Territory (OQTF).[46] One could consider that such criteria put into question the legitimacy of the procedure, thus resembling a concealed form of expulsion.[47] The term 'voluntary' therefore appears as a euphemism.[48] Critics of the EU's - and indirectly, France's - approach to migration further state that the masked motives of such returns and the way they are conducted fail to ensure migrants a 'regular and safe mobility.'[49] Moreover, voluntary returns are thought to represent a failure with regards to the lack of cooperation from home countries or the wish of migrants not to return, potentially leading them to later attempt to come back to the EU.[50]

In France, migrants benefit from two projects created in order to facilitate their reintegration within their home country. The first one, ERSO III, concerns returns to Morocco, Cameroon, Senegal, Sierra Leone, and Togo. It offers professional as well as social support to migrants voluntarily returning.[51] Such operations are conducted in close collaboration with local partners. The second one, LATAM, focuses on returns to Peru, Brazil, Colombia, Bolivia, Argentina, Ecuador and Uruguay. It analyses the migrants' needs - such as housing or access to the work market - so as to contribute to the elaboration of a personalised support.[52] It mainly aims at strengthening the cooperation between European and Latin-American organisations, in order to facilitate the formulation of common strategies to better address the issue of reintegration of migrants in their country of origin.[53]

Italy

Italy has long been considered the 'gateway to Europe.'[54] Especially since the 2011 Arab Uprisings, Italy's strategic position at the centre of the Mediterranean Sea has attracted thousands of migrants from the African coasts and was soon turned into one of the pivotal

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[43] Biella-Battista et al., *Manuel*, 9.
[44] Service Public, "Qu'est-ce que l'Aide au Retour?"
[45] Service Public, "Qu'est-ce que l'Aide au Retour?"
[46] Service Public, "Qu'est-ce que l'Aide au Retour?"
[47] Agence France-Presse, "L'UE Veut Accroître."
[48] El Qadim, "L'Expulsion des Étrangers."
[49] El Qadim, "L'Expulsion des Étrangers."
[50] El Qadim, "L'Expulsion des Étrangers."
[51] ERSO, "About Erso."
[52] France Terre d'Asile, "Accompagnement."
[53] France Terre d'Asile, "Accompagnement."
[54] Lowen, "Lampedusa."

migration trajectories to the EU.[55] Nonetheless, the number of individuals deciding to leave Italy to return to their home country has also increased over the past decades.[56] In line with the approach promoted by the EU, the Italian government has dedicated itself to improving the voluntary repatriation system that has existed in Italy since 2009.[57]

As defined by the Italian Interior Ministry, an Assisted Voluntary Return & Reintegration programme (RVA&R) is an 'individualised path to return home, which a foreign citizen and their family can access only voluntarily and with full awareness'[58] throughout the process. These projects are promoted by the Department for Civil Liberties and Immigration of the Italian Ministry of the Interior, and co-financed by European and national economic resources. Public bodies and non-governmental organisations already active in the immigration sector (such as GUS, CIES ONLUS, CIR Rifugiati, CO&SO, and ARCI[59]) are, instead, in charge of the practical implementation of the programmes across the Italian territory. However, as admitted by the Ministry of the Interior itself, there may be periods when projects are not operative due to insufficient provision of funds.

Between 2014 and 2020, voluntary return procedures in Italy have been inscribed within the RE.V.ITA framework ('Voluntary Return Network Italy'), a project aimed at consolidating and expanding the network of private and public actors involved in the return system[60]. Furthermore, RE.V.ITA played a pivotal role in disseminating information on the voluntary return option among potential beneficiaries and non-governmental organisations.[61] Within this framework, Assisted Voluntary Repatriation programmes have been financed by the Fund for Asylum, Migration and Integration (AMIF), a financial instrument established by EU Regulation NO 516/2014[62] to promote integrated management of migration flows by supporting all aspects of the phenomenon: asylum, integration, and return.[63] The Italian Department for Civil Liberties and Immigration has released an Operational Manual outlining the beneficiary categories of the return programmes: individuals who have not yet received a final negative response to their request for residence or international protection, and regularly or irregularly residing foreign citizens, including those whose removal has been postponed.[64] Furthermore, the Manual presents clear guidelines on the various stages of the return and reintegration process, including the provision of financial, organisational, and psychological support to the repatriated individual both in the pre-departure and reintegration phases.[65] In particular, the returning individual is followed by specialised personnel to draft a feasible Individual Reintegration Plan (PIR) to identify opportunities to start an economic activity in the country of origin. Before departure, the individual receives four hundred euros to accommodate the first expenses. Upon arrival, each household benefits from a reintegration contribution equal to two thousand euros for the family head, one thousand euros for each adult family member, and six hundred euros for each minor.[66]

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[55] McMahon and Sigona, "Navigating the Central Mediterranean," 498.

[56] Bottaro, "Il Ritorno Volontario Assistito," 7.

[57] Bottaro, "Il Ritorno Volontario Assistito," 20.

[58] Italian Ministry of the Interior, "Che cos'è il Rimpatrio Volontario Assistito?"

[59] Gruppo Umana Solidarietà (Human Solidarity Group), Centro Informazione e Educazione allo Sviluppo ONLUS (Centre for Development Information and Education ONLUS), Consiglio Italiano Rifugiati (Italian Refugee Council), Consorzio per la Cooperazione e la Solidarietà (Consortium for Cooperation and Solidarity), and ARCI Mediterraneo Impresa Sociale (ARCI Social Enterprise).

[60] Italian Ministry of the Interior, "Progetto RE.V.ITA."

[61] Italian Ministry of the Interior, "Progetto RE.V.ITA."

[62] European Parliament and Council of the European Union, *Regulation (EU) No 516/2014*.

[63] Italian Ministry of the Interior, "Cos'è il Fondo Asilo Migrazione e Integrazione."

[64] Italian Ministry of the Interior, *Manuale Operativo-Formativo*.

[65] Italian Ministry of the Interior. *Manuale Operativo-Formativo*.

[66] Italian Ministry of the Interior. *Manuale Operativo-Formativo*.

However, the programmes implemented by the various non-governmental organisations can have different target countries or social groups, depending on the resources and networks of the association involved. For instance, ERMES 3, the project promoted by CIES ONLUS and active from March 2019 until June 2022, addresses three hundred individuals coming from the following countries: Bangladesh, Burkina Faso, Cameroon, Ivory Coast, Ethiopia, Ghana, Iraq, Jordan, Kenya, Lebanon, Mali, Morocco, Mauritania, Niger, Nigeria, Democratic Republic of Congo, Senegal, Syria, Somalia, and Tunisia.[67] Interestingly, with the exception of Ghana, Morocco, Senegal, and Tunisia, all the other target countries do not appear in the safe countries of origin[68] list referred to by Italy.[69] The project promoted by CIR, Integrazione di Ritorno 4, adopts a broader approach to migration trajectories, including nationals from South American countries. Launched in March 2019 and active until September 2022, the project has an overall budget of 2,646,283.84 euros (partially funded by AMIF).[70] It targets 550 citizens from Bangladesh, Bolivia, Burkina Faso, Burundi, Cameroon, Ivory Coast, Ecuador, Ethiopia, Gambia, Ghana, Jordan, Iraq, Kazakhstan, Kenya, Kosovo, Lebanon, Malawi, Mali, Morocco, Mauritania, Mozambique, Myanmar, Niger, Nigeria, Pakistan, Palestine, Democratic Republic of Congo, Rwanda, Senegal, Sierra Leone, Syria, Somalia, South Sudan, Tunisia, and Uganda.[71] Similar to ERMES 3, the project includes several countries which are not considered safe countries of origin according to Italian and EU directives.

This evidence echoes the concerns expressed by several international non-profit organisations regarding the potential violation of fundamental human rights once the migrant has returned to the country of origin.[72]

Denmark

Unlike the previous cases, Denmark has been far from a desirable destination for migrants and refugees due to its notoriously harsh and restrictive migration laws.[73] Many migrants tread through Denmark in hopes of getting to Sweden in order to apply for Swedish asylum. This was made clear in 2015, when Danish bystanders were seen spitting on a group of refugees attempting to walk from Denmark to Sweden.[74] On account of its overt anti-immigrant sentiment, the Danish government has been keen on encouraging and facilitating voluntary returns to asylum seekers, refugees, and migrants. The Danish government highlights that voluntary returns are tailor-made processes that involve both activities in Denmark such as counselling, legal assistance, and medical care, as well as assistance after arrival in the recipient country.[75] In Denmark, one can qualify for financial aid when agreeing to voluntarily return to their home country. In order to qualify for this aid, individuals must have received residence permit in Denmark as a refugee or be a family member of a refugee.

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[67] CIES, "ERMES 3."
[68] As defined by the EU, a safe country of origin is a country where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution. For more information, see European Commission, "Safe Country of Origin."
[69] Italian Ministry of External Affairs and International Cooperation, *Decree*, 86.
[70] CIR, "Ritorno Volontario."
[71] CIR, "Ritorno Volontario."
[72] Fill and Moresco, "I Rimpatri Volontari."
[73] Garvik and Valenta, "Seeking Asylum in Scandinavia," 11.
[74] The Local, "Denmark's Spitting Man."
[75] Danish Refugee Council, "Assisted Voluntary Return and Reintegration."

The reason that refugees agree to voluntary return differs from case to case; however, many point to the long waiting time in Danish asylum centres and to the realisation that the life many hoped to achieve and create in Denmark was a false expectation and a mirage.[76] The UN International Organisation for Migration assisted the Danish State, alongside the Danish Refugee Council, with voluntary returns from 2003 until 2017. However, upon their collaboration ending, the IOM continued to help Denmark with assistance to vulnerable migrants who had been victims of human trafficking or unaccompanied migrant children until the end of 2020.[77]

A peculiarity in the Danish case is the situation regarding Syrian refugees. In March 2020, the Danish Refugee Appeals Board (Flygtningenaevnet) publically defined the Greater Damascus area as a safe zone to return to and immediately began revoking the residence permits of Syrian refugees living in Denmark.[78] However, having broken diplomatic ties with the Syrian government in 2011, the Danish government is not able to negotiate the return of refugees to Syria at the present time. Hence, it appears that the return of Syrian refugees will not be possible until Denmark re-establishes diplomatic ties with the Syrian State. Consequently, Syrian refugees in Denmark risk being isolated in deportation centres for years.[79] By April 2021, an estimated 380 Syrian refugees, including children, have had their residence permits revoked.[80] Denmark is the first European country to label Syria as a safe zone, and the Danish government has already faced condemnation from many EU lawmakers, UN agencies, and human rights groups. The Secretary General of Amnesty International Denmark, Dan Hindsgaul, has stated that 'It is difficult to comprehend how the Danish authorities have reached the conclusion that Damascus and the surrounding area are safe enough for asylum seekers to return to. Our research shows that Syrians who have been returned to their home country are routinely subjected to interrogation by Syrian security forces, known and notorious for being behind arbitrary detention, torture and murder. To return people to such a risk is contrary to Denmark's human rights obligations.'[81]

Sweden

Sweden has long been an oasis for migrants in the far North of Europe, being relatively welcoming compared to neighbouring Nordic states like Denmark. With 14 percent of its population being foreign-born, it has long relied on successfully attracting migrants with offers of prosperous and stable work opportunities.[82] However, it should be noted that despite it being renowned as a hospitable refuge for asylum seekers and immigrants, recent policies have demonstrated a political tendency mirroring that of nearby Denmark[83]. Yet, as welcome signs are removed, the Swedish embrace of humane migration approaches remains strong. The nation's approach to voluntary migration follows suit, as Stockholm has invested heavily into considerate reestablishment policies that rank amongst the most generated in Europe.[84]

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[76] Danish Refugee Council, "Assisted Voluntary Return and Reintegration."
[77] International Organisation for Migration Denmark, "Assisted Voluntary Return and Reintegration."
[78] ECRE, "Denmark."
[79] Svan, "Syrian Refugees."
[80] Amnesty International, "Denmark."
[81] Amnesty International UK, "Denmark."
[82] Organisation for Economic Co-operation and Development, "Sweden."
[83] International Organisation for Migration Denmark, "Assisted Voluntary Return and Reintegration."
[84] Government of Sweden, "Sweden."

To understand developments in Sweden's voluntary remigration strategy, it is necessary to examine the impact of the 2015 refugee crises in the country. The Swedish government had to contend with a dramatic 35 percent increase in refugee admittance from 2014 to 2015, a rate that continued to grow until 2020.[85] More than one million refugees have been welcomed since 2015, most of them originating from Syria or Afghanistan. Despite the high rates of asylum seekers, general migration has experienced a decline since 2016, largely due to increasing reluctance towards unprecedented levels of migrants. A longstanding policy to allow Syrian refugees immediate permanent residency status was abandoned in 2016 in favour of temporary asylum for three years.[86] Rates of return have also increased since 2010, and in 2015, over eighty thousand asylum applications were rejected.[87]

Migration in Sweden is therefore a major topic of concern, and the high rates of voluntary return demand an analysis of how the system functions. To analyse the Swedish voluntary return system, it is crucial to understand the Government agencies involved and the two distinct categories of voluntary returns that exist in Sweden. The Swedish Migration Agency (Migrationsverket) is the department responsible for handling migration cases and asylum applications, and for assisting voluntary returns in cases where an application is rejected.[88] The first category of voluntary return (Frivillig Återvandring, translated as voluntary return) refers to cases where a permanent resident voluntarily decides to return to their country of origin. This is an entirely voluntary exit and while it is the most humane system of return, it remains controversial in Sweden because of the government expenditure involved with the return procedure of those who willingly decide to leave themselves. This differs significantly from types of return whereby the government plays a role to encourage or coerce the migrants to return to their country of origin.[89] The second category, Återvända Självmat, is translated as assisted return for rejected asylum seekers who 'return on their own initiative or accept the decision.' This category provides specialised assistance for those whose asylum has been refused by Sweden. Such migrants may have already spent considerable time in Sweden.[90] A study on the quality of life of returned migrants found that many individuals experience extreme mistreatment and persecution upon their return, with the vast majority planning to attempt to seek asylum in Sweden again in the near future. Such instances demonstrate a clear failure within the Swedish return system, despite being lauded as amongst the most effective and welcoming in the EU.

The Swedish voluntary return system primarily relies on two tools aimed at encouraging and supporting migrants' return to and reestablishment in their home country[91]. The first tool is the Swedish approach to cash support for reestablishment. The current Swedish policy was designed almost exclusively for those seeking to return to their home country despite security risks, and the entire process is operated by the Swedish Migration Office. However, while the application by the migrant must begin in Sweden, the migrants do not receive the reestablishment payment until they have started the process in the country of origin. While grants are usually available to cover the return migration process - specifically the flights - the Swedish government has been criticised for not providing subsidies to cover the migration process itself more readily.[92] In addition, the size of the payments are most often not sufficient to pay for the reestablishment process. Thirty thousand Swedish Krona

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[85] Macrotrends, "Sweden Refugee Statistics."
[86] Crouch, "Sweden Sends."
[87] Swedish Migration Agency, "Återvända Självmat."
[88] Swedish Migration Agency, "Projektstöd till Projekt."
[89] Swedish Migration Agency, "Projektstöd till Projekt."
[90] Moullin, "A Comparative Analysis," 33-36.
[91] Moullin, "A Comparative Analysis," 37.
[92] Swedish Migration Agency, "Återvända Självmat."

(equivalent to less than three thousand euros), the maximum for any person over eighteen years of age, is rarely enough to help migrants sufficiently reintegrate into their homeland. The payment for each child is only half of this amount (fifteen thousand Swedish Krona), and the maximum any entire family can earn is seventy-five thousand Swedish Krona (less than eight thousand euros). Critics of the reestablishment payments have highlighted that this is rarely enough to compensate for the significant security concerns, exploitation, and the lack of well-paying jobs in the country that face migrants upon return. Families are often at a considerable disadvantage, only helping to perpetuate a cycle of circular refugee migration.[93] Yet this policy is not the most transparent of recent policies that demonstrate the country's shift of hesitancy towards refugees. The Swedish Aliens Act was enforced in 2016, directly in the wake of the so-called migration crisis. It replaced the previous, more compassionate strategy for a temporary residence permit, and imposed new stringent requirements for any applicant. One of the involved measures was requiring that any migrant applicant be able to support themselves financially and live an orderly life. Any applicant under consideration for return migration was similarly subject to these requirements. Critics argued that these new laws, replacing previous temporary measures, mirrored the hostile attitudes of neighbours like Denmark and threatened the welcoming ethos of the nation.[94]

Discussion

As the analysis has shown, the complexity - and often ambiguity - characterising national voluntary return schemes makes it difficult to identify common elements that can hint at an overarching EU framework. All the four countries observed (France, Italy, Denmark, and Sweden) seem to share a EU understanding of what voluntary returns should be: tailor-made programmes aimed at encouraging migrants and refugees to return to their countries of origin by providing them assistance throughout the return and reintegration process. However, the case-studies have also highlighted significant differences at the practical level. For instance, while the programmes promoted by Italy and France define relatively broad criteria of access to them (as irregularly residing in the country or having been rejected for asylum status), Sweden and Denmark tend to identify narrower categories of potential beneficiaries (having been recognised the refugee status, in the case of Denmark, and being a permanent resident, in the case of Sweden). This, in addition to the multitude of governmental, international, and civil actors involved in the development and implementation of the various programmes, makes it even more challenging for the EU and its Member States to pursue a shared and united strategy. Although an exhaustive analysis of the factors involved lies outside the scope of this paper and deserves further research, the regional trends emerging from the case-studies are noteworthy. Indeed, while being the least affected since they are geographically less accessible, the two Northern EU Member States (Denmark and Sweden) tend to have the harshest return migration policies compared to the two Southern EU Member States (France and Italy). This paper's findings suggest that this striking paradox, grounded in the geographical location of Member States and their consequent different experience of the migratory phenomenon, represents a pivotal element in the differential implementation of the voluntary return strategy promoted at the EU level.

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[93] Swedish Migration Agency, "Återvandring."
[94] Traub, "Even Sweden."

Conclusion

The core values on which the EU was founded, such as human dignity, free movement, or equality,[95] may suggest that the latter should adopt rather welcoming policies regarding migrants. Yet, Member States' responses to migration are quite distinct, and often strict. For the purpose of narrowness and clarity, this paper focused on the concept of voluntary returns. It therefore investigated how the latter, differing from forced returns, constitute one of the softer ways in which migrants are returned to their country of origin.[96] Throughout the four case studies - respectively focusing on France, Italy, Denmark and Sweden -, this paper attempted to emphasise the diverse ways in which Member States handle such a process. The paper first showed how, depending on their location, countries are differently impacted by migration flows and tend to share similar strategies with countries located in the same geographic region.[97] Second, the paper highlighted how voluntary returns, implying a willful choice of migrants to leave the host country, offer a paradox in terms of their conditions and requirements.[98] Indeed, the criteria that migrants must meet in order to be granted the assistance - such as being in an irregular situation - suggest that the voluntary nature of such returns remains questionable. Finally, the paper analysed how Member States handle, each in their own way, the return of migrants, from distributing monetary assistance to providing reintegration support. Consequently, analysing these diverse responses brought to light the various challenges faced by the EU: first, the diversity between its members, leading to a struggle for more cohesiveness and harmony; then, the need to find the right balance between the promotion of rights, equality and dignity as its core values, and the protection of its Member States' sovereignty. Undeniably, available information on the topic is lacking, and remains vague, which makes it difficult to draw general conclusions from the various ways Member States handle voluntary returns. Hence, this calls for additional research on recent voluntary return policies and their implementation, for which increased transparency from EU Member States on the application of their return and reintegration programs is thus necessary.

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[95] European Commission, "EU Values."
[96] UNHCR, "Rethinking Durable Solutions," 130.
[97] Petroni, "Why EU States."
[98] Agence France-Presse, "L'UE Veut Accroître."

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Selective Solidarity? Racialized Othering in European Migration Politics

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✳

Abstract

This paper analyzes the discrepancy between Europe's response to the ongoing Ukrainian refugee influx and the one it provided to the 2015 refugee wave. Europe's welcoming attitude towards Ukrainian migrants stands in stark contrast to its 2015 de facto closed-door policy towards Mediterranean migrants. This paper adopts the notion of Othering as a theoretical framework to investigate the seemingly antithetic reactions to the two migration waves. Particular importance is awarded to the role played by the politics of emotions in generating attitudes of solidarity or hostility, insofar as fear, anger, blame, love, empathy, and compassion, among others, are interwoven in Europe's political imaginary of migrants and refugees. I argue that Europe's differing attitudes and policies towards European and non-European migration reveals the existence of an invisible psychological and institutional mechanism of selective solidarity based on a process of highly racialized Othering and entrenched in the idea and actualization of European identity. By drawing distinctions between groups of migrants along racial lines, European political elites define who counts as human and is deserving of compassion and generosity based on race and ethnicity. The contemporary Othering of the Mediterranean migrant calls for a contestation and re-evaluation of the ideals of cosmopolitanism and solidarity which serve as the foundation of the European project.

Keywords: Othering, migration, race, solidarity, European policy

Introduction

In the past six weeks since the Russian invasion of Ukraine, European states have welcomed over 3.5 million Ukrainian refugees fleeing from the war. To date, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Ireland, Kosovo, Latvia, Lithuania, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, and Switzerland have opened their borders – admittedly to differing extents – to Ukrainians in search of refuge.[1] State leaders, who were previously well-known for their anti-immigration stance, have now allowed thousands of Ukrainian migrants to enter their countries without travel or identification documents. All over Europe, governments have mobilized their populations and national services to provide Ukrainian refugees with food, clothing, medicine, accommodation, transport, phone communication, and employment. For the first time since its introduction in the 1990s, the Temporary Protection Direction was activated, under which Ukrainian refugees can live up to three years in EU countries without having to request asylum through the official channels. Critics have denounced the apparent "double standard"[2] in Europe's treatment of refugees, pointing out the de facto closed-door attitude that it had adopted to deal with the influx of Mediterranean migrants during the 2015 migration "crisis." This paper investigates the claim that Europe's immigration policy varies along racial lines. By examining Europe's differing attitudes towards Mediterranean and Ukrainian refugees through the lens of the concept of "Othering," this paper answers the following question: How does Europe's current response to the Ukrainian refugee crisis reveal the highly racialized nature of its approach towards migration?

The first section of this article reviews social identity theory in the case of the formation of the European identity. It discusses and interrelates notions of "Othering" and "Europeanness," and in doing so establishes the theoretical framework on which the rest of the paper relies. In a second section, this article examines dynamics of Othering in Europe's immigration politics. The European project fundamentally rests on a differentiation between a European "Self" and non-European "Others" – in contemporary times, the figure of the migrant incarnates Europe's existential Other. The migrant is Othered through exclusionary discourse and policies of immigration. In a third section, this article explores the securitization of the migration crisis, which has interwoven notions of threat and fear in the politicization of migration. In a fourth section, this article introduces race in the Othering discussion, and explores the racialized dimensions of Europe's discrepant treatment of white migrants (the "Western" migrant) and migrants of color (the "Oriental" migrant). In a fifth section, Agamben's notion of "bare life" is used to evoke the implications of Europe's racialized immigration policy. This article ends with a re-evaluation of the ideal of cosmopolitanism and solidarity, cherished by the European project.

Othering, Belonging, and the Question of a European Identity

Social psychology has long proven that inherent in human interaction is a differentiation process between the ingroup ("us") and the outgroup ("them").[3] According to

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[1] Barigazzi, "EU Hails 'Historic' Deal;" Fallon, "European Nations;" McGrath, "Outpouring of Compassion;" Steward and Canton, "Crisis in Ukraine."

[2] Reilly and Flynn, *The Ukraine Crisis Double Standards*, 3.

[3] Delanty, *Inventing Europe*, 51; Hogg and Abrams, *Social Identifications*, 17; Jesse, *European Societies*, 22; Staszak, "Other/Otherness," 43; Todres, "Law," 611-12.

social identity theory, the construction of the Self implies the construction of an "Other." The Other embodies a difference – whether real or imagined –, which incites and sustains a continual operation of comparison.[4] The valuation of the Self is met by a corresponding devaluation of the Other; that which is appraised to be different from the virtuous Self is considered inferior and abnormal, and is rejected on that basis.[5] "Othering" thus refers to the cognitive and discursive process by which an "Other" is not only distinguished, but also, and more importantly, stigmatized. Othering is a social process insofar as Self/Other dichotomies are often activated by (dominant) groups to categorize and exclude other (minority) groups,[6] based on perceived differences in gender, ethnicity, race, nationality, language, religion, skin color, sexual orientation, political affiliation, or socio-economic background, which all contribute to (national) identity.[7] Such distinctions are often embedded in institutions, policies, and mainstream discourse, resulting in discriminatory practices and attitudes towards the outgroup. Central to the Othering process is therefore the devaluation, dehumanization, and demonization of the Other;[8] the subordinate group's particularities are accentuated, essentialized, stereotyped, and associated with evil, barbarity, and disorder. This, in turn, functions to rationalize the ingroup's differential and often inhumane treatment of the outgroup.[9] Edward Said argued that Western societies actively Other eastern cultures by internalizing and performing negative convictions about them, as a continuation of their colonial domination.[10] He coined the notion of "orientalism" to refer to the often-romanticized Eurocentric assumptions about and cultural representations of the "Orient," which perpetuate the idea of a Western superiority and legitimize Europe's imperialist ambitions.[11] Importantly, demarcations between Self and Other become particularly salient in times of crisis. As noted by Laffan, "crises are 'open moments' that impact on rulers and ruled, testing existing paradigms, policies, institutional roles and rules. They are 'moments of truth', critical junctures replete with risk and characterized by a high level of contingency."[12]

The European project sought to articulate and ingrain a clear and potent European identity which would transcend national identifications and tie member-states and their populations together. The construction of "Europeanness" has long been marked by a "feeling of uncertainty over what represented the European specificity."[13] The idea of a European identity emerged at the Copenhagen European Summit of December 1973[14] and based itself on a principle of "responsibility towards the rest of the world,"[15] rooted in the Christian tradition. A fundamental (supra-)national myth on which the European Community – and with it the European identity – founded itself was therefore an ideal of solidarity, unity, and cosmopolitanism.[16] Combined with its pride in its scientific and technical progress, the aspiration towards democratic and humanistic values contributed to embedding a belief of (moral) superiority in Europe's self-image. According to White, "in the discourse of Europe,

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[4] See social comparison theory. Staszak, "Other/Otherness," 43.
[5] Myers, "Other/Otherness," 345.
[6] Todres, "Law," 613.
[7] Jesse, *European Societies*, xxii.
[8] Todres, "Law," 614.
[9] Jesse, *European Societies*, 23; Todres, "Law," 607.
[10] Said, *Orientalism*, 4.
[11] Said, *Orientalism*, 3.
[12] Laffan, "Europe's Union in Crisis," 916.
[13] Passerini, "Europe and Its Others," 121.
[14] Passerini, "Europe and Its Others," 121; Stråth, *Europe and the Other*, 402.
[15] Stråth, *Europe and the Other*, 20.
[16] Cantat, "Ideology of Europeanism," 50; Delanty, *Inventing Europe*, 1; Grimmel, "Solidarity in the Politics of European Integration," 243; Passerini, "Europe and Its Others," 121; Tazzioli and Walters, "Limits of Europe," 175.

other civilizations can become fully civilized only in the extent to which they adopt Western science as a paradigm for their own modes and means of knowledge production."[17] Such rhetoric permeated Europe's colonialist ambitions, which gave itself the mission to bring civilization and progress to "backward" societies, and continue to pervade its foreign relations towards the Global South today. The semantic constructions of so-called "Second" and "Third" worlds indeed indicate a continued perception of the "Other" as inferior.[18] The creation of non-European "Others" (in opposition to which the European "Self" could be established) was a response to "the lack of meaningful material and popular ideology within the European Community which could generate an emotional response or a sense of belonging towards "Europe"."[19] As explained by Cantat,

> Official narratives of Europe have been based on a notion of European belonging premised on the idea of a distinct and recognisable European character that could set aside Europeans from non-Europeans. This is what I call the ideology of Europeanism. This narrative has led to the production of new figures of otherness at the regional level, among which the "migrant" has played a central role.[20]

The Migrant as Europe's Other: The Case of the 2015 Migration Wave

The European continent began registering unprecedented numbers of refugee arrivals and asylum requests from 2010, with a peak of 1.3 million arrivals in 2015, due to escalating conflicts in Syria, Afghanistan, Eritrea, Iraq, and a number of other states in the Global South. The last decade has been marked by intense (and seemingly never-ending) political discussions about the reception, management, and integration of immigrants. Immigration is heavily problematized in public and governmental understandings: migrants are generally depicted as an economic burden, a security hazard, and a threat to "European identity."[21] The European migrant "crisis" thereby provided a particularly fertile context for the development of exclusionary Othering processes; a combination of xenophobia and racism positioned the migrant figure as Europe's fundamental Other.[22] As stated by Dauvergne, "the new politics of immigration is characterized by legalization, rapid change, defiance of partisan expectations, a new worldwide "us" and "them" divide, existential fear, and an unprecedented place on the central political stage of all Western liberal democracies."[23] Mass media play a crucial role in constructing the figure of the migrant Other.[24] They form and disseminate certain potent narratives and representations which fuel hegemonic discourse about migration. Out of place, migrants are associated with abnormality,[25] for they have "become the bogeymen invading Europe in waves and floods."[26] In the collective imaginary, the migrant embodies the eternal vagabond, roaming about the European continent and wreaking havoc: "an object of deep

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[17] White, "Discourse of Europe," 80.
[18] Tangerstad "The Third World," 161; White, "Discourse of Europe," 79.
[19] Cantat, "Ideology of Europeanism," 49.
[20] Cantat, "Ideology of Europeanism," 44.
[21] Cetti, "Centrality of the Forced Migrant," 91; Jesse, *European Societies*, 4; Karyotis, "Security-Migration Nexus," 9.
[22] Delanty, Wodak, and Jones, *Identity, Belonging and Migration*, 1; Harrison, "Mediations," 3; Junuzi, "Refugee Crisis," 120; Ibrahim and Howarth, "'Migrant' Other as Risk," 3.
[23] Dauvergne, *New Politics of Immigration*, 8.
[24] Harrison, "Mediations," 4; Himmel and Baptista, "Migrants, Refugees and Othering," 181.
[25] Jesse, *European Societies*, 2.
[26] Harrison, "Mediations," 3.

fascination and utter indifference, or horror and pity, he stalks the borders of the rich world, sowing panic, wrecking election campaigns, and generating headlines as he goes."[27]

Securitization of the Migrant Crisis: The Politics of Fear

The issue of migration was securitized by European political and security elites. Theorists of the Copenhagen School of Security Studies developed the notion of securitization to refer to "the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics."[28] Practically, this means that (im)migration is widely framed and perceived as a security threat. A rhetoric of risk is associated with the migrant,[29] who "collude[s] with smugglers in cross-border crime, reckless and irresponsible in choosing to 'risk their lives' and those of their families in making the treacherous journey to Europe."[30] In addition, the conflation of migration with terrorism, extremism, and organized crime[31] deepens the conception of the migrant as a fearsome Other lurking around the borders of Fortress Europe. By categorizing migration as a risky and unpredictable phenomenon, media, governments, and non-governmental organizations play on the apprehensions and anxieties of Europeans with regards to their physical and economic preservation to construct the migrant as a threat – not only to their well-being, but most importantly to their sense of national belonging.[32] The influx of migrants from Africa and the Middle East is perceived to destabilize and endanger European culture and identity.[33] Such a perception is reminiscent of Huntington's "clash of civilizations" thesis which suggested the existence of an irreconcilable cultural rift between the "West" and the "Rest."[34]

The securitization discourse produces a climate of fear around migration. Ever since the September 11 terrorist attacks, the European imaginary of migrants and of their own identity has been exceedingly characterized by unease and aversion towards the Other[35] - which Fisher terms "fearism." According to him, the production and dissemination of a hegemonic discourse "creates an experience of fear that is normalized."[36] Fearism, "the systematic (often unconscious) production and perpetration of fear on others,"[37] is fed by mass media and popular culture.[38] Insofar as fear has become a "framework for developing identities and for engaging in social life,"[39] fearism shapes individual and national reactions to migrants, refugees, and asylum-seekers.[40] As stated by Zembylas, "fear produces fearful subjects in relation to fearsome others and secures the very boundaries between us and them,"[41] thereby triggering the Othering process and generating attitudes of hostility, resentment, and

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[27] Andersson, *Illegality*, 3.
[28] Buzan, Wæver and de Wilde, *Security*, 23.
[29] Ibrahim and Howarth, "'Migrant' Other as Risk," 14; William and Balaz, "Migration, Risk, and Uncertainty," 167.
[30] Ibrahim and Howarth, "'Migrant' Other as Risk," 14.
[31] Cetti, "Centrality of the Forced Migrant," 3; Karyotis, "Security-Migration Nexus," 1.
[32] Zembylas, "Discourses of Citizenship," 33.
[33] Heisler and Layton-Henry, "Migration," 148; Karyotis, "Security-Migration Nexus," 9.
[34] Huntington, *Clash of Civilizations,* 29.
[35] Harrison, "Mediations," 5; Karyotis, "Security-Migration Nexus," 12-13.
[36] Fisher, "Invoking "Fear" Studies," 51.
[37] Fisher, "Invoking "Fear" Studies," 51.
[38] Altheide, *Creating Fear*, 9; Furedi, *Culture of Fear*, 52; Zembylas, "Discourses of Citizenship," 32.
[39] Altheide, *Creating Fear*, 3.
[40] Papastergiadis, "The Invasion Complex," 429; Zembylas, "Discourses of Citizenship," 31.
[41] Zembylas, "Discourses of Citizenship," 33.

repulsion. Europe's existential fear of the migrant Other stems from "growing anxieties over national identity and the permeability of borders, and a climate of increased hostility and aggression towards refugees."[42] According to Cetti, "the 'politics of fear' is woven into the very conception of the border."[43] Conceptualizing Europe as suffering from such an "invasion complex"[44] provides a good starting point for understanding its closed-door immigration policy.

Securitization occurs through a "speech act" – the verbal identification of a threat renders it real in the political arena. As explained by Wæver, "in naming a certain development a security problem, the "state" can claim a special right, one that will, in the final instance, always be defined by the state and its elites."[45] The act of discursively labeling the migration wave a "crisis" activated a "state of exception"[46] in which the deployment and normalization of "controversial policies"[47] is justified. In addition, the "crisisification"[48] of the 2015 migration wave set in motion a "drama of accountability and blaming"[49] which involves the identification of a scapegoat responsible for the critical state of affairs – the migrant. As such, the heavy politicization of the migrant subject[50] has sanctioned the use of extraordinary – almost authoritarian – measures to protect European citizens from the threat posed by the arrival and settlement of foreigners.[51] As explained by Cetti,

> "The objectification and dehumanisation of the forced migrant into a figure of 'illegality' justifies, in turn, the continual stream of border legislation, fast-track development of surveillance and policing technologies, and expanding number of places of detention. These militarised administrative technologies and punitive legislative processes help keep in circulation a narrative of security that validates a belief in the essential integrity of Europe's external borders as boundary and defence of an inherent national/European culture and identity – and the threat posed to these by 'culturally alien' 'outsiders' seeking to cross into Europe's core nation-states 'illegally'. However, its displaced, de-territorialised and increasingly virtual borders, extending into global space, cannot be guarded through administrative and military border policing alone, but also calls for biopolitical technologies for identifying, categorising and intercepting such 'illegal' individuals. The figure of the forced migrant as 'global illegal' is thus framed by the discourse of security that suffuses the European Union's integrated asylum and immigration policies – a discourse that is embedded"[52]

Dehumanization makes it "easier to treat the out-groups 'less humanely', or, in the case of immigrants, to enact harsher laws and procedures to keep them at a distance."[53] Categorized solely as a security threat (and nothing else), refugees and asylum-seekers are stripped of

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[42] Papastergiadis, "The Invasion Complex," 429.

[43] Cetti, "Centrality of the Forced Migrant," 60.

[44] Papastergiadis, "The Invasion Complex," 429.

[45] Wæver, "Securitization and Desecuritization," 54.

[46] Agamben, *State of Exception*, 3-4.

[47] De Genova et al., "Europe/Crisis", 20.

[48] Rhinard, "Crisisification of Policy-Making," 2.

[49] Boin et al., "Crisis Response," 706.

[50] Cetti, "Centrality of the Forced Migrant," 11.

[51] Karyotis, "Security-Migration Nexus," 3; Jesse, *European Societies*, 25; Junuzi, "Refugee Crisis," 129; Zembylas, "Discourses of Citizenship," 39.

[52] Cetti, "Centrality of the Forced Migrant," 155.

[53] Jesse, *European Societies*, 23.

their personhood, subjectivity, and individuality. "Once the Other is constructed in the position of debasement, abjection and evil, they are excluded from the field of human values, civic rights and moral obligations, and maintaining the boundary that divides 'us' from 'them' becomes even more crucial,"[54] argued Papastergiadis. No longer human in the European collective imaginary, their existence is devoid of intrinsic value. As a result, they do not fall within European citizens' psychological realm of humanitarianism, solidarity, or compassion, which allows the latter to safeguard their self-image of altruism and integrity.

As such, a process of securitization originating from European elites has taken migration outside the bounds of ordinary democratic processes and placed it at the top of the "panic politics"[55] agenda. In doing so, it has enabled the development of immigration policies which further contribute to the marginalization and Othering of refugees and asylum-seekers.

The Shadow of Race: Uncovering the Racialized Dimension of Europe's Migration Policy

The ongoing Ukrainian refugee wave is unfolding in a strikingly different fashion to the 2015 Mediterranean migration wave, insofar as Europe has embraced Ukrainians where it had rejected Syrians and Afghans. States, which during the last decade had shown heavy reluctance to immigration, have in the past month opened their borders to large numbers of displaced Ukrainians. I argue that this shift in both policy and attitude reflects the highly racialized nature of Europe's "Othering" process towards migrants.[56] The importance of racism in the securitization of migration has been widely discussed.[57] Scholars have given a range of labels to the novel kind of racism that characterizes European societies today and notably manifests itself through aversion towards migrants and refugees – "symbolic racism," "cultural racism," "new racism," and "xeno-racism" are among the terms coined to refer to this more concealed form of racialized prejudice.[58] As explained by Delanty, Wodak, and Jones,[59]

> The 'new' racism differs from the older kinds in that it is not expressed in overtly racist terms or in the terms of neo-fascist discourse, for instance by some notion of biological or racial superiority, white supremacism or skin colour. Instead, the repertoires of justification that are typically employed use social characteristics (for example, protecting jobs, concern about welfare benefits) or cultural incompatibilities or differences (migrants lack 'cultural competences', 'they do not want to integrate', they are not 'tolerant'). The new racism exploits established xenophobic frames (fear of the other), ethnocentrism, masculinities and 'ordinary' prejudices in subtle ways and often, too, in ways that are unconscious or routinized.

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[54] Papastergiadis, "The Invasion Complex," 433.
[55] Buzan, Wæver and de Wilde, *Security*, 34.
[56] Ibrahim and Howarth, "'Migrant' Other as Risk," 2.
[57] Chebel d'Appollonia, "Xenophobia," 252; Huysmans, "Securitization of Migration," 764; Ibrahim, "Racial Discourse," 164; Orsini et al., "Institutional Racism," 153; Togral, "Convergence of Securitization," 219.
[58] Balibar, "Is There a "Neo-Racism"?," 23; Cantat, "Ideology of Europeanism," 54; Cetti, "Centrality of the Forced Migrant," 65; Delanty, Wodak, and Jones, *Identity, Belonging and Migration*, 1; Fekete, "The Emergence of Xeno-Racism," 23; Macmaster, *Racism in Europe*, 193.
[59] Delanty, Wodak, and Jones, *Identity, Belonging and Migration*, 2.

Hungarian right-wing Prime Minister Viktor Orbán has been one of Europe's leading voices against Mediterranean migration. He led the deportation of refugees over the border into Serbia,[60] and recently proposed banning immigration to Hungary for two years, in the context of the coronavirus pandemic.[61] He has been relying on a dehumanizing and securitizing rhetoric to justify his controversial immigration policies, claiming that "migration is inherently bad," "all terrorists are basically migrants," migration is "a poison," and "migrant armies are banging on all the gates of Europe."[62] His attitude towards migration has an important racialized and ethnicized dimension – he has casted himself as the defender of "Hungarian and European culture"[63] against "Muslim invaders."[64] In doing so, Orbán positioned "the V4 countries as the "vanguard" in leading Europe back to its "true", genuine origins and values, which have to be protected against outsiders and more particularly Muslims."[65] The "new" racism which Orbán displays is motivated by the "preservation of one's identity, own way of life and values in the face of the destabilizing and damaging effects of other cultures."[66] The figure of the migrant is therefore instilled with a "range of characteristics pointing to the impossibility of [their] cultural assimilation into a supposedly consistent set of European values."[67] Orbán indeed claimed at several occasions that he led his anti-immigration campaign to preserve "ethnic homogeneity"[68] in Hungary and Europe, a sentiment which was echoed by Poland, Romania, and Slovakia.

Mediterranean migrants are constructed as a danger to European identity, to Europe's very existence. In such discourse, identity is predicated upon religion and ethnicity – the ideal European citizen is white-skinned and of Christian faith.[69] As argued by Van der Woude, "whiteness has been the historically predominant framework of reference in terms of racial and ethnic identity of the continent."[70] The narratives discussed above are symptomatic of a "racism without race."[71] Insofar as it is "too embarrassing to admit the continued existence of "race""[72] in a "decolonized" world, contemporary European political discourse does not openly discuss race. Instead, new racism – which underlies Europe's attitude towards immigration – relies on neutral and "sanitized"[73] notions of "culture" and "identity" to disseminate racialized and ethnicized rhetoric and in doing so, "functions to maintain racial hierarchies of oppression."[74] As Harrison stated, "the issue of cross-border movements has been displaced onto a first world/third world divide, designed to keep the 'Rest' [...] away from the 'West'."[75]

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[60] Dearden, "Hungarian Parliament Approves Law."
[61] InfoMigrants, "Hungary's Orban Proposes to Ban Migrants."
[62] InfoMigrants, "Hungary's Orban Proposes to Ban Migrants;" Kroet, "'Migrants are 'a Poison';" Mortimer, "All the Terrorists are Basically Migrants."
[63] Cantat, "Ideology of Europeanism," 57.
[64] Staudenmaier, "Hungary's Orban Tells Germany."
[65] Cantat, "Ideology of Europeanism," 57.
[66] Togral, "Convergence of Securitization," 220.
[67] Cantat, "Ideology of Europeanism," 58.
[68] Sheppard, "Protecting 'Ethnic Homogeneity' is Vital."
[69] Ammaturo, "Europe and Whiteness," 547; Böröcz, ""Race" in Europe," 1123; Cantat, "Ideology of Europeanism," 57; Van der Woude, "Crimmigrant 'Other'," 71.
[70] Van der Woude, "Crimmigrant 'Other'," 71.
[71] Balibar, "Is There a "Neo-Racism"?," 23.
[72] Böröcz, ""Race" in Europe," 1130.
[73] Al-Azmeh, "Afterword," 209.
[74] Togral, "Convergence of Securitization," 222.
[75] Harrison, "Mediations," 4.

The twenty-first century saw the emergence and routinization of a new form of orientalism which blames the political and social turmoil of European societies on the pervading influence of the Islamic faith.[76] Right-wing parties denounce the "Islamization" of Europe, brought forth by the influx of Muslim migrants, refugees, and asylum-seekers. The "neo-orientalist" mode of representation generates new racialized and Islamophobic tropes of Othering. It frames Islam as "dangerous, ubiquitous and homogenous… the antithesis to Western and European "civilization"."[77] For instance, the public debate on the burqa and hijab in France attest to the "visual securitization"[78] of Islam. Muslim women are politically constructed as victims of Islamic teachings, evidencing the "backwardness" of the Islamic religion and culture. As argued by Cetti, "the characterisation of the forced migrant as the 'illegal' 'global alien' has melded with the construction of the figure of a demonised Muslim 'other'."[79] Immigrants from Islamic countries are not the only group subjected to racist devaluation in Europe. Immigrants of color, in general, are the targets of such racialized Othering processes. African migrants also suffer from discriminatory "anti-immigration policies, violent policing, profiling of individuals under the guise of national security, aesthetics of culture and physical appearance, and curtailed access to resources."[80] Essed and colleagues argued that Europe was built on "rooted hierarchies of races representing Black lives and ways of being as less human" and on the concomitant idealization of "European Whiteness as the desirable norm."[81] As Davies and Isakjee stated, "mobile black and brown bodies are used as visual identifiers of threats to European 'sovereignty'."[82]

The public discourse about the refugee influx generated by Russia's invasion of Ukraine in late February 2022 betrayed the subconscious racism of European political elites. Western media, in particular, were heavily criticized for their dissemination of racist and orientalist rhetoric.[83] News reporters from CBS, ITV news, and Al Jazeera respectively stated that Ukraine "isn't a place […] like Iraq or Afghanistan that has seen conflict raging for decades. This is a relatively civilized, relatively European […] city where you wouldn't expect that or hope that it's going to happen," that "this is not a developing third world nation. This is Europe," and that "these are prosperous, middle-class people […] These are not obviously refugees trying to get away from areas in the Middle East […] in North Africa. They look like any European family that you would live next door to,"[84] prompting outrage. European state leaders and politicians made similar comments. According to Austrian Chancellor Karl Nehammer, "it's different in Ukraine than in countries like Afghanistan."[85] Bulgarian Prime Minister Kiril Petkov claimed that "these are not the refugees we are used to; these people are Europeans […] These people are intelligent. They are educated people […] This is not the refugee wave we have been used to, people we were not sure about their identity, people with unclear pasts, who could have been even terrorists."[86] "It's very emotional for me because I see European people with blue eyes and blonde hair being killed," Ukraine Deputy General

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[76] Castles, "Immigration and Asylum," 201; Cetti, "Centrality of the Forced Migrant," 117; Jesse, *European Societies*, 2; Junuzi, "Refugee Crisis," 133.

[77] Cantat, "Ideology of Europeanism," 58.

[78] Mavelli, "Between Normalisation and Exception," 172.

[79] Cetti, "Centrality of the Forced Migrant," 117.

[80] Essed et al., *Relating Words of Racism*, v.

[81] Essed et al., *Relating Words of Racism*, v.

[82] Davies and Isakjee, "Ruins of Empire," 215.

[83] Ali, "Maltreatment of Non-White Refugees;" Bayoumi, "Racist Coverage;" Dabashi, "Racist Media Coverage;" Fernandez, "Refugees, Reporting and the Far Right;" Makura, "Media Coverage of Ukraine."

[84] Ali, "Maltreatment of Non-White Refugees;" Bayoumi, "Racist Coverage."

[85] Bayoumi, "Racist Coverage."

[86] Bathke, "Ukraine, Eastern EU States Accused."

Prosecutor David Sakvarelidze said.[87] Spanish congressman and President of VOX Party Santiago Abascal declared that "anyone can tell the difference between them [Ukrainian refugees] and the invasion of young military-aged men of Muslim origin who have launched themselves against European borders in an attempt to destabilize and colonize it."[88] Finally, Hungarian Prime Minister Viktor Orbán commented that one doesn't have to be a "rocket scientist" to see the difference between Ukrainian refugees who are fleeing from Russia's invasion and the "masses arriving from Muslim regions in hope of a better life in Europe."[89] Through these words, Europe's media and politicians propagate orientalist and racist narratives which contribute to the Othering and dehumanization of the Mediterranean migrant. By describing them as "uncivilized" former "terrorists" who are "trying to get away" from their countries where conflict has been "raging for decades" and who are looking to "destabilize and colonize" Europe, and discursively opposing them to the "good," "prosperous," "intelligent," "educated" Ukrainians, they associate migrants of color, and by extension their societies of origin, with danger, savagery, malevolence, poverty, ignorance, cowardice, and above all uncertainty. Such semantic violence[90] is reminiscent of Western countries' orientalism, as depicted by Said, which perceived Arab and Muslim as characterized by "backwardness, lack of democracy, and abrogation of women's rights."[91] This manifestation of hyper-nationalism in Europe functions "according to the biopolitical logic of race,"[92] insofar as white-skinned refugees with "blue eyes and blonde hair" benefit from special, favorable treatment from European elites.

In addition, thousands of students from India and several African countries were treated as "second-class citizens"[93] as they attempted to leave Ukraine. Their testimonies speak of being refused crossing at Ukrainian borders, being sent to the back of queues as they waited for public transportation or at border control, and not being allowed to board buses out of Ukraine, on the basis of their skin color.[94] The fact that refugees of color are also subjected to differential treatment because of observable physical characteristics incompatible with "Europeanness" further indicates the racialized dimension of European elites' distribution of solidarity.

In that regard, it seems clear that Europe's treatment of refugees originating from Global South countries is not an isolated attitude but rather constitutes part of a continuum of racism and orientalism on which European identity founded itself, which legitimized Europe's "*mission civilisatrice*," and which continues to define Europe's policy towards foreign countries in contemporary times. Disabling dichotomies opposing the European Self and the non-European Other have long permeated European discourse towards (migrants from) the Global South – binary constructions such as advanced/backward, developed/developing, peace/war, civilized/uncivilized, white/brown, and Christian/Muslim associate European whiteness with all that is good and superior, and conversely non-Europeanness (and by association, people of color) with negativity and inferiority. Such dichotomies establish "a formative contrast between *borderland* traits of barbarity, excess and irrationality, and

[87] Ali, "Maltreatment of Non-White Refugees."
[88] McMurtry, "Spain's Vox Party Leader."
[89] Reilly and Flynn, *The Ukraine Crisis Double Standards*, 3.
[90] Žižek, *Violence*, 1-2.
[91] Said, *Orientalism*, xiv.
[92] Passavant, "The Paradox of Human Rights," 153.
[93] Noko, "West is Empathic – If you are Blonde."
[94] Ali, "Maltreatment of Non-White Refugees;" Bathke, "Ukraine, Eastern EU States Accused;" Blake, "'Bloodshot Racism' Treatment;" Ferris-Rotman, Noko, "Violence and Racism;" "West is Empathic – If you are Blonde;" Zaru, "Nonwhite Refugees Fleeing Ukraine Caught in Limbo."

metropolitan characteristics of civility, restraint and rationality."[95] The use of "borderland" imagery not only strips Global South individuals of their agency and moral integrity – rendering them subaltern subjects –,[96] but also allows European political elites to rationalize the standardization of biased (racist) policies.

Who Matters? The Biopolitics of Europe's Immigration Policy

Agamben's notion of "bare life" is a useful analytical tool to interpret the discrepancy in Europe's responses to the different refugee waves. Ancient Greece distinguished between "zoe" and "bios" to refer to the notion of "life," with important semantic significance: "zoe" designated one's mere biological existence, while "bios" referred to one's participation in society. For Agamben, Western nation-states manipulate the zoe/bios dichotomy as a central tool of inclusion and exclusion. As Junuzi explained, "the bio-power of the sovereign is exercised through perpetual production of "zoe" or bare life, of those who are excluded from the political realm (bios) and stripped of any political or juridical rights."[97] Manifold scholars have discussed migrants' reduction to bare life in the context of Europe's anti-immigration policy and rhetoric.[98] In Agamben's framework, refugees are "the ultimate 'biopolitical' subjects... who can be regulated and governed at the level of population in a permanent 'state of exception' outside the normal legal framework."[99] While this provides a good starting point to understand the biopolitical Othering of the Mediterranean migrant, I suggest that the figure of the migrant holds *within itself* a zoe/bios dichotomy, which is operationalized by European political and security elites to determine their immigration policies. The migrant's inherent zoe/bios dichotomy is racialized, insofar as the differentiating markers include physical appearance – and in particular skin color –, country of origin, and/or religion. The "Oriental" migrant is constructed in opposition to the "Western" migrant, because of their non-White appearance, their non-European (non-Western) nationality, and their (assumed) non-Christian faith. They embody the naked life: "stripped of every right" and forced into "perpetual flight,"[100] the "Oriental" migrant is divested from their political value as soon as they reach Europe's borders, while the "Western" migrant is welcomed into European life. Migrants are therefore discursively and politically ranked along a biopolitical, racialized hierarchy of worth. The "Oriental" migrant is less worthy of Europe's solidarity than the "Western" migrant, and is rather appointed the receptacle of its hostility. The naked/political life distinction is at play in the context of the Ukrainian refugee wave, especially when placed in comparison with the 2015 influx of migrants. The Ukrainian migrant is endowed with political value by European political stakeholders and therefore deserving of more compassion, benevolence, and generosity than their Mediterranean counterparts. As such, Europe's contrasting response to the Ukrainian refugee influx sheds light on the unequal distribution of empathy and solidarity inherent to migration politics.

Building on Foucault's concept of "biopower," Mbembe argues that "the ultimate expression of sovereignty resides [...] in the power and the capacity to dictate who may live

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[95] Duffield, "Radicalization of Development," 1052.

[96] Otto, "Subalternity and International Law," 338; Spivak, "Can the Subaltern Speak?," 80.

[97] Junuzi, "Refugee Crisis," 141.

[98] Agamben, *Homo Sacer*, 81; Cetti, "Centrality of the Forced Migrant," 19; Davies and Isakjee, "Ruins of Empire," 214; Davitti, "Biopolitical Borders," 1181; Fassin, "Compassion and Repression," 367; Harrison, "Mediations," 12; Junuzi, "Refugee Crisis," 141; Owens, "Beyond 'Bare Life'," 135; Rajaram and Grundy-Warr, 33, 39; Zembylas, "Discourses of Citizenship," 36.

[99] Owens, "Beyond 'Bare Life'," 135.

[100] Agamben, *Homo Sacer*, 183.

and who must die."[101] The Western nation-state engineers "new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead."[102] Racialized thinking is interwoven in such biopolitical configurations. "In the economy of biopower, the function of racism is to regulate the distribution of death and to make possible the murderous functions of the state,"[103] he claims. The Mediterranean migrant, I argue, epitomizes such racialized "necropolitics." Rejected by the European project on the basis of cultural incompatibility, the Mediterranean migrant is stripped bare - of their rights, of their entitlement to sympathy and hospitality, of their political life. The "deliberate and harmful inactivity of the state" keeps them "injured, dehumanized and excluded."[104] On European soil, the space of the refugee camp is the paragon of racialized Othering, destitution, and brutalization.[105] Agamben considers the camp the "the fundamental biopolitical paradigm of the West."[106] It is an "abject space," where "distressed, displaced, and dispossessed peoples are condemned to the status of strangers, outsiders, and aliens [...] and stripped of their (existent and potential) citizenship (rights of becoming political)."[107] In particular, the Calais refugee encampment in France is a site where forced migrants are produced as disposable biopolitical racial subjects.[108] Such necropolitical governance orders the world's inhabitants into humans and nonhumans.

Discussion: Selective Solidarity and the Death of the Cosmopolitan Ideal

In "Necropolitics," Achille Mbembe stated that race is "the ever present shadow in Western political thought and practice."[109] In this article, I showed that race continues to permeate European policy, especially with regard to (im)migration. The formation of a single, European identity was realized by constructing the European Self in opposition to (often racialized) non-European Others – since the 2015 migration wave, the figure of the Mediterranean migrant has been positioned as Europe's existential Other. Mediterranean migrants are Othered through draconian immigration policies and racist mainstream discourse which construct them as a threat to national security and identity, and exclude them from Europe's realm of solidarity. Necropolitical governance, including the seclusion of asylum seekers into camps where they are forced to live in degrading conditions for years, define who counts as human (and who does not) along racial lines. Similarly, the show of empathy and generosity towards (white) Ukrainian refugees during Russia's invasion reveals the existence of an invisible psychological and institutional mechanism of selective solidarity based on a process of highly racialized "Othering" and entrenched in the idea and actualization of European identity. As such, adding the notion of race to the migration

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[101] Mbembe, "Necropolitics," 11.
[102] Mbembe, "Necropolitics," 40.
[103] Mbembe, "Necropolitics," 17.
[104] Davies and Isakjee, "Ruins of Empire," 214.
[105] Agamben, *Homo Sacer*, 171; Davies and Isakjee, "Ruins of Empire," 215; Davies, Isakjee, and Dhesi, "Violent Inaction," 1280; Davitti, "Biopolitical Borders," 1188; Isin and Rygiel, "Abject Spaces," 197; Minca et al., "Rethinking the Biopolitical," 7, 11; Sanyal, "Calais's 'Jungle'," 162; Zembylas, "Discourses of Citizenship," 37.
[106] Agamben, *Homo Sacer*, 181.
[107] Isin and Rygiel, "Abject Spaces," 181.
[108] Davies and Isakjee, "Ruins of Empire," 215; Davies, Isakjee, and Dhesi, "Violent Inaction," 1268; Sanyal, "Calais's 'Jungle'," 172.
[109] Mbembe, "Necropolitics," 17.

discussion allows one to uncover the complexity that characterizes the refugee's position in contemporary European societies.

The racialized Othering of the Mediterranean migrant calls for a contestation and re-evaluation of the ideals of cosmopolitanism and solidarity which serve as the foundation of the European project. As expressed by Bhambra, "the cosmopolitanism of 'cosmopolitan Europe' rarely has space for those it perceives as others."[110] The fortressing of Europe against migrants from the Global South has put considerable pressure on the Western values cherished by Europe. For Delanty,[111] saving cosmopolitanism would require the adoption of post-national citizenship as the backbone of immigration policy. He states:

> The essence of post-national citizenship is that citizenship is determined neither by birth nor nationality but by residence... Citizenship is international and transcends the particularist assumptions of culture and nationality. It is also more than a mere political-legal principle but involves recognition of social rights. It is crucial to break the connection between citizenship and nationality, both intellectually and constitutionally.[112]

Until then, Europe's racialized treatment of migrants epitomizes the agonizing death of the cosmopolitan ideal.

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[110] Bhambra, "Whither Europe?," 197.
[111] Delanty, *Inventing Europe*, 162.
[112] Delanty, *Inventing Europe*, 162.

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Towards a New 'New Deal'? The Past and Future of Transatlantic Cooperation on Privacy Regulation

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Abstract

This paper analyses EU-US relations in matters of privacy in light of the recent progress made by the European Commission and the United States towards negotiating a new deal for the regulation of transatlantic data flows. More specifically, it sets out to investigate how the struggle to agree on a new transatlantic data privacy mechanism has been affected by the two players' differing legal identities. To do so, the paper first offers an overview of the major developments in regulating and protecting privacy in the European Union. In this way, it deconstructs the legal approach of the EU, which has been traditionally characterised as having a rights-talk legal identity due to its omnibus laws that prioritise the protection of data subjects. Moreover, the paper demonstrates that the sector-specific approach to regulating privacy preferred by the US is emblematic of a market-based legal identity. Coupled with the governmental surveillance operations, the American way has been shown to be incompatible with the privacy regime of the EU. Taking a closer look at some recent developments in EU-US cooperation – particularly, the progressing talks regarding a new transatlantic deal and the Tech and Trade Council – reveals a promising renewal of bilateral cooperation. Nonetheless, the paper concludes that the inherent mismatch between the legal identities of the EU and the US is likely to affect any future data deals, prolonging the legal uncertainty on both sides of the Atlantic.

Keywords: Data privacy, transatlantic data flows, GDPR, Schrems, CJEU, Privacy Shield, Safe Harbour, legal identity

Introduction

On March 25, European Commission (EC) President Ursula von der Leyen and United States (US) President Joe Biden made a surprising announcement that flew under the radar amidst the high-level press conferences and meetings of world leaders surrounding the war in Ukraine. The two leaders proclaimed to have reached an 'agreement on principle' that would regulate the flow of personal data between the US and the European Union (EU), while taking account of public security and citizens' privacy.[1] If the deal materialises, it will revive the deadlock caused by the Schrems I and Schrems II judicial challenges before the Court of Justice of the European Union (CJEU) which abolished the previous frameworks for transatlantic data exchanges and caused businesses handling European data to operate in a legal limbo.[2]

Activists and experts have already expressed concerns regarding the inadequacy of the new measures, claiming it would not effectively prevent the US from carrying out mass surveillance of EU citizens.[3] The recent US Supreme Court ruling in FBI v. Fazaga, where the judges declared the Bureau's surveillance of Muslim individuals lawful on the basis of national security interests, reinforces such fears.[4] Striking a deal now, some argue, would give the US leeway to infringe on EU citizens' rights to privacy and data protection, which are legally protected within the Union.[5]

While there are multiple geopolitical factors that influence the transatlantic partnership – among others, the United Kingdom's (UK) decoupling from the Union, and the different policies with regards to China or the EU's renewed ambitions towards creating its own 'defence Union'[6] –, this paper specifically examines how data flows are pivotal to the relationship's tech-trade aspect. An analysis of the transatlantic relationship in the sector is all the more significant considering that the EU has established itself as a leading agent in data protection, with its third-country agreements serving as models for data protection across the globe.[7] Therefore, it is crucial to understand the extent to which it would be possible for the EU and the US to mend their differences and restart their data flows under a new transatlantic cooperation mechanism. The paper therefore explores the extent to which the EU and the US can bridge the gaps caused by their differing legal identities in the field of privacy law to achieve a transatlantic partnership post-Schrems II.[8]

To this end, the paper begins with a brief overview of the development of privacy law in the EU. While the paper concerns the transatlantic relationship, its scope is limited to a primarily European perspective on the issue, although due attention is paid to the US privacy framework. Discussing some of the milestone laws then helps to frame the history of the transatlantic cooperation between the EU and the US in matters of privacy and data protection. By recalling the EU-US agreements, the paper also provides an analysis of the implications the aforementioned CJEU judgements had for 'resetting' the data flows between the EU and the US. Then, the paper offers a more in-depth analysis of the differing approaches to data privacy regulation in the EU and US, stressing the points of divergence between the legal identities of their privacy laws and the institutional differences which

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[1] Guarascio and Yun Chee, "EU-U.S. Data Transfer Deal Cheers Business."
[2] Bodoni, "Big Tech Blackout."
[3] Guarascio and Yun Chee, "EU-U.S. Data Transfer Deal Cheers Business."
[4] Hurley, "U.S. Supreme Court."
[5] European Union, *Charter*, Art. 7 and 8.
[6] Csernatoni, "The Technology Challenge," 158.
[7] Satariano, "E.U. Takes Aim."
[8] Schrems II is the name for the second CJEU case initiated by Max Schrems. See Case C-311/18, Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems.

influence the blocs' law-making processes. Lastly, it delves into the areas of possible policy convergence and diplomatic dialogue. In addition, it discusses relevant recent political developments (e.g., Tech and Trade Council, new deal proposal) so as to assess the viability of a renewed transatlantic data flow.

First Developments of Privacy Regulation

In a speech given on October 28, 2020, EC President Ursula von der Leyen claimed that access to the internet was an 'essential digital right' that needed to be complemented by other rights, including the rights to data privacy and to personal data protection.[9] This sentiment is also reflected in recent EU strategies for the digital future, such as the Digital Compass: The European Way for the Digital Decade, which focuses on promoting a 'human-centric' framework aimed at empowering European citizens.

This rights-based approach has been the central tenet of the European model of data protection regulation for decades, going back to the 1970 Data Privacy Act of the Hessian state parliament in Wiesbaden, Germany.[10] The German court then extended its jurisdiction, through the *Census Act* of 1983, which established that measures interfering with the protection of rights under Basic Law[11] had to be approved by the parliament, 'serve a legitimate purpose, and satisfy the proportionality test, that is, suitability, necessity, and proportionality *stricto sensu*.'[12] The first instance of a bloc-wide codification of data privacy rights in the EU dates back to more than two decades after the Hessian Act, with the 1995 Data Protection Directive. This Directive was built upon existing national legislation and was mainly concerned with two objectives: the regulation of free flow of personal data within the EU, and the protection of the 'fundamental rights and freedoms of natural persons.'[13] Thus, the Directive 'combined economic liberalisation of trade involving personal data with harmonised policies to protect civil liberties,' by establishing that data transfers would only be allowed if the receiving country was characterised by 'an adequate level of protection.'[14]

Specifically, the Directive set the 'rules for transfers of personal data from Member States to third countries to the extent that such transfers fall within its scope,' ensuring the 'respect of for private life with regard to the processing of personal data,' and guaranteeing a 'high level of protection of those fundamental rights and freedoms.'[15] Additionally, Article 25 on the extraterritorial reach declared that such decisions were to be made at the national level and had to be based on contextual analysis of the third country's legal system. Additionally, the provision granted the EC the competence to negotiate data protection deals with third countries whose systems failed to offer the necessary level of protection required by the Directive.[16]

However, the country-by-country implementation of the law – inherent to EU Directives – led to a patchwork of laws that did not harmonise the divergent national rules on data privacy. To counter this need, a more extensive privacy law was passed in 2016 - the General Data Privacy Regulation (GDPR). The implementation of the GDPR emphasised the

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[9] von der Leyen, "Internet, a New Human Right."
[10] Schwartz, "The EU-U.S. Privacy Collision," 1969.
[11] *Grundgesetz* – the German Constitution.
[12] Kommers and Russell, cited in Bignami and Resta, "Transatlantic Privacy Regulation," 233.
[13] Schwartz, "The EU-U.S. Privacy Collision," 1972.
[14] Schwartz, "The EU-U.S. Privacy Collision," 1973.
[15] European Commission, *Commission Implementing Decision*.
[16] European Commission, *Commission Implementing Decision*.

key role of citizens' data rights for the European digital strategy, consolidating the EU's role as the top watchdog.[17] Thus, the Regulation catalogues a set of basic data privacy principles and rights, which includes a multi-tiered regime for transfers of Europeans' personal data to third countries. Essentially, the European legislator sought to ensure that data of European citizens abroad is handled with a degree of protection equivalent to that under the GDPR. Thus, third countries wishing to make use of data originating from the EU must 'adequately protect' the subjects' privacy. This specific aspect has played a crucial role in the transfer of data with the US, which therefore involves close cooperation between the two actors through a series of agreements.

Sketching out the developments in the field of data privacy that took place on the other side of the Atlantic serves to give more context to the privacy regulations at hand. In 1972, the US Department of Health, Education, and Welfare established an Advisory Committee on Automated Data Systems, which drafted and released the 1973 Code of Fair Information Practices (FIPs). Therein, the creation of secret systems of data storage was prohibited, and the imperative for transparency, accountability, and veracity while processing, storing, and sharing information about individuals was emphasised.[18] Overall, the US has traditionally 'cultivated a business-friendly environment with minimal involvement from the US administration' and delegated the regulation of data privacy to state governments and service providers.[19]

This brief overview paints a clear picture: with its privacy laws – like the 1995 Directive or the GDPR – the EU has aimed to provide a more comprehensive framework that applied to 'nothing less than any and all personal data processing in Europe.'[20] This approach exemplifies the so-called 'omnibus laws,' i.e., general laws that are broad in their scope and are later clarified through sectoral laws. In this way, legislators can increase the 'specificity of regulatory norms stemming from the initial statutory framework,' usually by setting concrete targets.[21] The US, on the other hand, has focused on 'information privacy on a sector-by-sector basis' legislation, meaning that unless it falls within a category protected by law, information might not be protected at all.[22] In the words of Schwartz, 'the United States does not rely on a notion that personal information cannot be processed in the absence of a legal authorization. Rather, it permits information collection and processing unless a law specifically forbids the activity.'[23]

The next section offers an overview of the historical cooperation between the two actors, setting the scene for the later assessment of the future of the transatlantic data partnership.

History of EU-US Transatlantic Agreements

The wave of policy implementation on both sides of the Atlantic in the 1990s coincided with a renewed interest in the subject of privacy regulation, which in turn led to the first

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[17] Satariano, "G.D.P.R., a New Privacy Law."

[18] U.S. Department of Health, Education & Welfare, *Report of the Secretary's Advisory Committee.*

[19] Csernatoni, "The Technology Challenge," 161.

[20] The rights of data subjects under the Directive, and now under the GDPR can be restricted on specific grounds, e.g., in the fields of national security and criminal prosecution. Therein, data controllers and processors are allowed to suspend the application of certain privacy rights (within limits). See also: GDPR.eu, "General Data Protection Regulation," Art. 23; Papakonstantinou and de Hert, "Post GDPR EU Laws."

[21] Schwartz, "The EU-U.S. Privacy Collision," 1974.

[22] Schwartz, "The EU-U.S. Privacy Collision," 1974.

[23] Schwartz, "The EU-U.S. Privacy Collision," 1976.

attempts at establishing a transatlantic partnership on the subject.[24] The first transatlantic data exchange agreement – the International Safe Harbour Privacy Principles – was negotiated between the US Department of Commerce and the EC over the course of the 1980s and was eventually implemented in 1998. It was influenced by both American and European standards in matters of privacy regulation, in addition to establishing an operational mechanism to ensure that American companies were compliant with the EU privacy standards.[25]

However, the Safe Harbour operated on a voluntary basis, relying on the companies' willingness to apply for a 'self-certification' program before US agencies.[26] One of such agencies was the Federal Trade Commission (FTC) – a bipartisan federal institution tasked with promoting fair competition as well as the interests and privacy of consumers. It was under the Safe Harbour that, in 2012, the FTC charged Facebook for its deceiving practices, i.e., disclosing users' personal information without obtaining their consent.[27] However, despite few notable examples, the enforcement of the 'adequate level of protection' against private parties located overseas has proven to be challenging for European data subjects, who lack the access to judicial remedies in the US.[28]

This issue was one of the central grievances of the CJEU in the Schrems I judgement, a case initiated by Austrian activist Max Schrems who lodged a complaint against Facebook's mishandling of his data with the Irish Data Protection Authority. In October 2015, the European Court of Justice rendered its judgement and annulled the Privacy Shield upon finding that Europeans lacked the necessary judicial recourse to challenge potential violations in front of American courts.[29] Moreover, the Court acknowledged that the revelations made by NSA contractor Edward Snowden regarding PRISM – the spy program implemented against ordinary citizens by the US National Security Agency – posed a problem for the effective data protection enjoyed by Europeans overseas (Schrems I).

The invalidation of the Safe Harbor coincided with the ongoing negotiations over the adoption of the Umbrella Agreement, a US-EU instrument intended to patch up the privacy holes created by previous transatlantic agreements on law enforcement cooperation.[30] Moreover, following the adoption of GDPR in April 2016 and an expedited negotiation round, the EC passed the proposal of the European Parliament and the Council to replace the Safe Harbor Agreement with a new EU-US Privacy Shield in July of the same year.[31] The central aim of the Shield was to protect the rights of EU citizens whose personal data were being transferred to the US to then be sold to third party companies.[32] This system, however, was highly criticised since it relied on the certification of companies under the Privacy Shield, reflecting weak institutionalisation and a fragmented structure that eventually did not succeed in limiting the US' access to EU personal data.[33]

Consequently, these new agreements were short-lived. On July 16, 2020, Schrems 'reformulated his complaint lodged with the Irish Data Protection Authority to the effect that the Standard Contractual Clause Decision was not able to justify the transfer of personal data to the US, since US surveillance programmes interfered with his fundamental rights to

[24] Schwartz, "The EU-U.S. Privacy Collision," 1976.
[25] Schwartz, "The EU-U.S. Privacy Collision," 1980.
[26] Schwartz, "The EU-U.S. Privacy Collision," 1980.
[27] Federal Trade Commission, "FTC Approves Final Settlement."
[28] Christakis, "After Schrems II."
[29] Blount, "Schrems II."
[30] Hunton, "Privacy Shield."
[31] Fahey and Terpan, "Torn Between," 205.
[32] Fahey and Terpan, "Torn Between," 216.
[33] Fahey and Terpan, "Torn Between," 216, 218.

privacy.'[34] Once again, the CJEU agreed with Schrems, and invalidated the agreement on the basis of the principles set in Article 4(2) TEU, and 7, 8, and 47 of the Charter of Fundamental Rights of the EU.[35] According to Fahey and Terpan, the demise of all three transatlantic agreements was caused by the overall poor institutionalisation and negative judicialisation of the Safe Harbour, which in return 'triggered the adoption of the Privacy Shield.'[36] This last agreement was presented 'as a strengthened and more institutionalised version of the Safe Harbour,' when in reality it was 'weakly institutionalised, masked by new terminology and some governance but little else.'[37]

As a consequence of the invalidation of the Privacy Shield, the two actors could not agree on any additional agreement, leading to nearly two years with no enforceable replacement mechanism and counting. The effective abolition of legal data transfers between the EU and US Court's decisions following Schrems I and II posed additional hurdles for businesses operating at the intersection of trade and technology who wished to exchange data across the Atlantic. Additionally, it occurred at a time of growing animosity between the two blocs, exacerbated by calls for EU strategic autonomy, which is seen as extending to the larger question of 'technological sovereignty.'[38] The March 25 announcement offers a glimmer of hope, but its preliminary character still leaves open the question of breaking the impasse.

Therefore, the following section investigates one possible way of understanding the collapse of the data transfer system, namely by examining the different legal identities of the EU and US.

Regulatory Framework

In the aforementioned October 2020 speech, the EC President curtly remarked that 'digital sovereignty is not just an economic concept.'[39] This covert statement reflects the tension between the conflicting norms underlying data privacy regulation. Indeed, the 'right-talk' paradigm is embedded within the regulatory framework of the EU and has been at odds with the 'marketplace discourse' dominant in the US approach to privacy regulation.[40] If the protection of data subjects' privacy is a central focus for the Union, the US stands for perceiving individuals as consumers within a data marketplace.[41]

Thus, approaching them and the regulatory frameworks that characterise them as mutually reinforcing entities is best. The 'rights-talk' and 'market-based' approaches are not only the causes and the by-products of the regulatory frameworks of the EU and US, but also influenced by the different systems of governance. This closed mechanism contributes to the exacerbation of differences and makes it all the more difficult for the EU and the US to achieve an agreement as time passes and the identities further consolidate.

Although arguably of weak nature in its initial development, the past decade saw the European protection of data subjects' privacy evolving into a strict(er) regulatory framework that established a collective approach to ordering privacy.[42] Indeed, by building upon the

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[34] Mildebrath, "The CJEU Judgement," 1.
[35] Case C-311/18, Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems.
[36] Fahey and Terpan, "Torn Between," 208.
[37] Fahey and Terpan, "Torn Between," 208.
[38] Csernatoni, "The Technology Challenge," 159.
[39] von der Leyen, "Internet, a New Human Right."
[40] Schwartz and Peifer, "Transatlantic Data Privacy Law," 117.
[41] Schwartz and Peifer, "Transatlantic Data Privacy Law," 120-21.
[42] Schwartz and Peifer, "Transatlantic Data Privacy Law," 120.

shell of the 1995 Data Protection Directive – which subjugated data protection to the creation of the internal market – the GDPR passed in 2018, changing the landscape of European data protection. By introducing a revolutionary understanding of the data subject as the 'bearer of rights,' i.e., the 'prominent active agent of the sentence,' the GDPR reflects the centrality of the individual to the EU's approach.[43] It also extended the territorial scope so as to cover data processing in countries outside of the EU, granting EU citizens more protection against malpractices carried out in third countries.

On the other hand, despite its leadership position in innovation, the US sees information privacy law deeply entrenched in the logics of the marketplace. Therefore, the system fails to provide individuals with fundamental constitutional rights on data protection. Delving into the recent developments of the second phase of World Wide Web and, specifically of the social web (also known as Web 2.0), through a post-Marxist lens, would help to fully grasp the mechanisms behind such a market-oriented identity. Scholars such as Fuchs[44] have provided an analysis of the evolution of the capitalist society in the last century, arguing for the rise of a new transnational informational type of capitalism that has replaced Fordism. Such a new model is also characterised by the creation of new means of production whose byproducts are non-tangible goods, such as knowledge.[45] Accordingly, the spike in technological development witnessed in the last decades and the failure of traditional capitalism have pushed society to adapt to a new type of commodity: data.

One possible explanation for how these two distinct understandings of privacy emerged is their governance modes. The EU boasts a system of multilevel governance, driven by its entrenched belief in the vertical division of powers, whereas the US is characterised by horizontal decision-making as a result of its federal make-up.[46] These differences become more concrete and evident in the constitutional and statutory protections that the actors afford to their citizens.[47] The EU is able to introduce centralised top-down laws that prioritise human rights, while the US is 'stepped in a laissez-faire spirit of entrepreneurial innovation' which is reinforced by fragmented and, as such, weaker federal regulation.[48]

More specifically, as a result of the Union's recognition of data protection as 'a fundamental right anchored in interests of dignity, personality, and self-determination,' a plethora of sources and judicial bodies are in place to ensure compliance.[49] The European Convention on Human Rights, the Charter of Fundamental Rights, the European Court of Human Rights (ECtHR), and the aforementioned CJEU are the primary examples of the supranational frameworks and systems guaranteeing the observance of EU citizens' rights.[50] For what concerns statutory protections instead, EU regulation clearly establishes the need for a legal basis falling within the criteria expressed in Article 6 of the GDPR to carry out data processing. Additionally, if necessary, sectoral laws can be passed to further specify the already existing framework.[51]

On the other side of the Atlantic, the data commodification produced by the marketplace discourse also contributed to affording no constitutional rights to data subjects, hence favouring 'data processors over privacy consumers.'[52] In contrast to the EU, there is a lack of

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[43] Schwartz and Peifer, "Transatlantic Data Privacy Law," 123.
[44] Fuchs, *Internet and Society*.
[45] Fuchs, *Internet and Society*, 79.
[46] Schwartz and Peifer, "Transatlantic Data Privacy Law," 126.
[47] Schwartz and Peifer, "Transatlantic Data Privacy Law," 127-29.
[48] Csernatoni, "The Technology Challenge," 161.
[49] Schwartz and Peifer, "Transatlantic Data Privacy Law," 123.
[50] Schwartz and Peifer, "Transatlantic Data Privacy Law," 125.
[51] Schwartz and Peifer, "Transatlantic Data Privacy Law," 128.
[52] Schwartz and Peifer, "Transatlantic Data Privacy Law," 132.

sources and judicial bodies, and the few that do operate in the sector have a limited scope and powers. For example, the Fourth Amendment of the Constitution (concerned with data protection) has its scope limited to ensuring no unlawful data collection is being carried out by the government.[53] In this way, potential violations by private bodies or other non-governmental entities can escape its reach. At its heart, the US' legislative identity stands in direct opposition to the right to privacy enshrined in EU treaties. The US, indeed, finds its core principle in the 'principle information flow,' which 'allows the processing of personal data unless a law specifies the conditions why that should not occur.'[54]

Recent Developments

Trying to overcome these lacunae is not an easy task, since the achievement of a transatlantic framework to ensure cooperation falls within the scope of political negotiations rather than lawmaking processes. The EU and US do not have the power to draft an entirely new legal framework, but rather have to find a 'common-denominator' mechanism that does not compromise their respective constitutional orders and internal political priorities. Notwithstanding this obstacle, this section looks at the future of the transatlantic partnership on data flows by discussing the EU's digital strategy ambitions and their putative impact on the new Privacy Shield-like agreement. In the sphere of bilateral relations, the July 2021 EU-US summit in Brussels 'marked a sea change in tone and the overall rhetoric' on the future of cooperation between the two actors.[55] The forum served as an announcement of the newly established EU-US Trade and Technology Council (TTC) – yet another attempt at bridging the policy gap between the two actors through an alignment of their regulatory approaches. The TTC succeeds the failed 1995 New Transatlantic Agenda, the 1998 Transatlantic Economic Partnership, the 2007 Transatlantic Economic Council, and the Transatlantic Trade and Investment Partnership.[56]

To avoid the disbandment that plagued the previous bilateral endeavours, the TTC's agenda had been stripped down to the areas with most congruence by avoiding the divisive issues of agricultural subsidies or regulatory barriers to trade.[57] However, the inaugural meeting in Pittsburgh, US in September 2021 was put in jeopardy by the scuffle over the AUKUS tripartite security pact that unexpectedly put an end to a pre-existing French-Australian submarine deal.[58] Eventually, the US and EU gathered in Pittsburgh as planned, but the negotiating teams responsible for establishing the new Privacy Shield stayed behind in Brussels to carry out their talks outside the TTC format – despite data privacy cutting across all issues related to technology and trade partnerships.[59]

Regardless of the enthusiastic promises made by the American negotiators about reaching an agreement by the end of 2021, the preliminary announcement of a new transatlantic data flow scheme only came by the end of March 2022.[60] In its press release, the White House confirmed that the agreement will 'ensure that signals intelligence activities are necessary and proportionate in the pursuit of defined national security objectives,'[61] clearly

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[53] Schwartz and Peifer, "Transatlantic Data Privacy Law," 133.
[54] Schwartz and Peifer, "Transatlantic Data Privacy Law," 135.
[55] Csernatoni, "The Technology Challenge," 159.
[56] Hillman and Grundhoefer, "Can the U.S.-EU Trade and Technology Council Succeed?."
[57] Hillman and Grundhoefer, "Can the U.S.-EU Trade and Technology Council Succeed?."
[58] Manancourt, "Trade and Tech Council On or Off?."
[59] Holland, "Differing Data Privacy Policies;" Manancourt, "Trade and Tech Council On or Off?."
[60] Bodoni, "Big Tech Blackout;" Manancourt, "Trade and Tech Council On or Off?."
[61] White House, "United States and European Commission."

referring to CJEU's Schrems concerns over effectiveness of Europeans' protection against US governmental surveillance. Moreover, the US will establish a 'new mechanism for European citizens to seek redress if they believe they are unlawfully targeted by signals intelligence activities,' countering the accusation of lack of judicial remedies.[62]

Since no text has been published as of yet, it is impossible to tell if the commitments will prove compelling enough for the Court in a possible legal challenge to this latest iteration of a data flow deal; however, Max Schrems himself remains sceptical of the proposal's efficacy.[63] Moreover, the latest US Supreme Court judgement confirming the uncurbed powers that American intelligence services enjoy against data originating from certain groups of individuals (in the present case, Muslims) seems to suggest an increased risk of mishandling of Europeans' data that could be condemned by its European counterpart.

Aside from the attempts at bilateral talks, the EU is also eyeing to implement a series of tech-related laws that will likely impact Big Tech companies and, by extension, the bloc's relations with the US. As part of its plan to tackle the challenges posed by the digital transformation, von der Leyen's EC announced plans for a legislative package that would help to curb the exploitation of the bloc's competition, taxation and labour rules by tech giants, in order to realign the existing framework with the EU's 'values-based approach.'[64] These proposals include the Digital Markets Act, which would target anti-competition and monopoly practices of tech companies, the Digital Services Act, which would focus on enforcement of fundamental rights on intermediary platforms, and the Data Governance Act, which would deal with regulation of AI technologies).[65] Simultaneously, the EC expressed its wish to utilise the digital transformation for establishing a 'genuine European single market for data.'[66]

As noted by Csernatoni, there are major areas of potential policy convergence in the sphere of future data regulation between the EU and US, particularly regarding responsible AI innovation.[67] Moreover, the appointment of Lisa Khan, a renowned antitrust scholar, as the Chair of the Federal Trade Commission, followed by a slew of other 'privacy hawks' hired to join the powerful body, signalled Biden's willingness to police the American tech giants more extensively than his predecessor.[68] Although antitrust compliance and litigation is a slow-moving process on both sides of the Atlantic,[69] the increased interest in Big Tech oversight could have ripple effects for the field of data privacy. At the same time, the GDPR's 'architect' made the news in mid-2021 for calling for an overhaul of the data protection system – which she helped to set up – over its enforcement difficulties.[70] These details reveal a more nuanced picture of the transatlantic data protection scheme and show the interplay between the various technologies and political challenges that undercut the question of data privacy.

Conclusion

This paper attempted to envision the future of data privacy cooperation between the EU and US. To this end, it discussed the history of privacy regulation in the EU, which went

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[62] White House, "United States and European Commission."
[63] Noyb, "Privacy Shield 2.0?"
[64] Csernatoni, "The Technology Challenge," 162; European Commission, *Communication*.
[65] European Council, "EU–US Summit."
[66] European Commission, *Communication*.
[67] Csernatoni, "The Technology Challenge," 162.
[68] Manancourt, "Trade and Tech Council On or Off?."
[69] Noyb, "Privacy Shield 2.0?"
[70] Manancourt, "EU Privacy Law's Chief Architect."

from scattered national privacy laws to the first bloc-wide Data Protection Directive in 1995. This was followed by the 2016 General Data Protection Regulation, lauded for setting up a global standard for top-down, comprehensive data protection. Both pieces of legislation emphasised the centrality of data protection rights and principles to the management of Europeans' data, expecting the standard to be also upheld in cross-border transfers. Successive agreements on EU-US data transfers were challenged for their inadequacy and struck down by the EU's top court in 2015 and 2020. The judges found the US surveillance practices and ineffective system of remedies to be an indication of the country's insufficient protection of Europeans' privacy, thus invalidating the legal basis for transatlantic data transfers.

Thus, the paper examined the institutional causes for the divergent legal identities of the EU and US systems to discover their potential for adopting a new data flow agreement. Therein, it showed that the American legislature subscribes to the 'marketplace discourse' that relegates questions of data privacy to entities that handle the data, prioritising entrepreneurship and hands-off governance. The European rights-based approach is exhibited in the concrete and enforceable fundamental data rights offered to Europeans under the Charter and within the GDPR. However, the EU can be seen as integrating the marketplace discourse into its Data Strategy. By calling for the creation of an internal market for data, the institution is leaning towards the commodification of data preferred by the American legislator. At the same time, the US is ramping up its efforts to police its Big Tech companies through antitrust, an issue high on the EC's priority list. Moreover, the establishment of the TTC constitutes a new chapter in transatlantic cooperation, with the diplomatic forum serving as an incubator for bilateral transatlantic policies in the fields of trade and technology.

In light of the foregoing, it is not surprising that the two sides managed to achieve a new 'agreement in principle' for data exchanges. However, commentators remain suspicious of the deal's success, despite the EC's pledges to integrate the CJEU's remarks into any new transatlantic data pact. While the preliminary proposal makes the appropriate commitments to comply with the outcomes of Schrems I and Schrems II, the success of the new cooperation scheme will rely on the US's ability to guarantee an effective protection of Europeans' rights. Therefore, if the country fails to establish sufficient safeguards, the past years' efforts to revive the transatlantic data flow might as well conclude with a new, third instalment of the Schrems saga.

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Politisches Motiv: Reviewing Germany's Support for Nord Stream 2

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Abstract

The Nord Stream 2 gas pipeline was supported by few European countries throughout its construction. Most notably, Germany defended it, rejecting supposed political motives for the project. The exact nature of such political factors influencing Germany's cooperation with Russia on the project remains unclear. This paper revisits German-Russian relations in relation to Nord Stream 2 by reviewing official documents and news articles from September 2015 to mid-February 2022. The analysis is divided into time periods of two to three years, with a focus on events within Europe. The paper finds that independently from the political affairs of each time period, Germany has attempted to maintain its long-pursued policy of appeasement towards Russia through Nord Stream 2, despite having multiple reasons to suspend the project. The paper further argues that German cooperation on Nord Stream 2 is part of a long-term foreign policy of the German government, rather than a policy particularly related to the Merkel government.

Keywords: Nord Stream 2, Germany, Russia, Ostpolitik, gas security, political factors

Introduction

The Nord Stream 2 gas pipeline has been a controversial project ever since its announcement in 2015. Most European Union (EU) Member States have opposed themselves to the initiative, largely because the pipeline would allow the Russian state-owned company Gazprom to avoid the gas routes to Europe through Ukraine, providing Russia with more geopolitical bargaining power in Eastern Europe.[1] Germany, the EU's major supporting Member State of the pipeline, has maintained that the project was entirely about commercial benefits.[2] Such benefits include lowering gas prices in the EU and meeting the rising net demand for gas in Europe.[3] This economic argument was widely rejected by other Member States across the EU, who claimed that the geopolitical motives for the project were more dominant.[4]

Nord Stream 2 comes additionally to the existing Nord Stream 1 pipeline, which goes through the Baltic Sea from Russia to Germany. The project was announced in 2015, when European energy companies Shell, Wintershall, Engie, OMV, and E.ON signed an agreement with Gazprom to build a new gas pipeline.[5] While scholars have argued that the project has significant political dimensions,[6] only certain aspects of the German motives, such as self-interest[7] and lack of domestic authority over the issue[8] have been demonstrated. However, the overall political factors for Germany to cooperate with Russia on the project have not been explicitly analysed. This paper aims to contribute to academic literature by revisiting the political context of each time period in relation to Nord Stream 2 and examining the reasons for Germany to work closely with Russia throughout its construction. Now that the construction of the pipeline is complete and waiting to be certified for gas flows,[9] it is timely to examine the political factors so that the different events in each time period can be looked over. Furthermore, the current military tensions at the Russian-Ukrainian border make the geopolitical advantage of Russia avoiding the gas supply routes through Ukraine even more relevant. The analysis of the study is guided by the research question: what were Germany's political motives to cooperate with Russia on the Nord Stream 2 pipeline project?

As such, this paper analyses German-Russian relations since the announcement of the pipeline's construction in 2015, with a focus on the context of Germany's approach to the situation in Ukraine. These relations are reviewed through periods of two or three years, allowing the systematic study of the events relevant to the project and showing the developments of the German approach to the project over time. In view of its European focus, discussing the role of other international actors - such as the United States (US) - falls outside the scope of this study. The paper further takes into account the post-Merkel government of Germany, evaluating whether it handles this controversial project differently than its predecessor.

The paper is structured as follows. It begins with an explanation of the controversy of the Nord Stream 2 project, including its geopolitical implications for Ukraine and its economic outcomes. The paper then answers the research question by examining German-Russian relations over particular time periods after the announcement of the pipeline. The analysis is

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[1] Lang and Westphal, "Nord Stream 2," 26.
[2] Adomeit, "Germany, the EU and Russia," 6-7.
[3] Sziklai, Kóczy, and Csercsik, "Impact of Nord Stream 2," 2.
[4] Sziklai, Kóczy, and Csercsik, "Impact of Nord Stream 2," 2.
[5] Erbach, *The Nord Stream 2.*
[6] Lang and Westphal, "Nord Stream 2", 26.
[7] Sziklai, Kóczy, and Csercsik, "Impact of Nord Stream 2," 12.
[8] Pifer, *Nord Stream 2*, 2-3.
[9] Reuters, "Nord Stream 2."

based on documents released online by the relevant actors and on articles published by selected news media outlets, such as *Deutsche Welle*, *Euronews*, *EURACTIV*, *Reuters*, and *POLITICO*. The time frame of the research is from September 2015, when the project was signed, to mid-February 2022.[10] The final section explores how the new German government handled the issue compared to the previous government, discussing whether the decisions were specifically tied to the Merkel government or reflective of a long-term foreign policy.

Geopolitical and Economic Background

Russia and the EU have a seemingly interdependent relationship when it comes to gas trade. However, as argued by Krickovic, their cooperation is rather a case of a security dilemma due to fears of the relationship becoming asymmetrical,[11] creating a mutual mistrust where neither Russia nor the EU can improve its security without threatening the other's.[12] The relationship is further complicated by each side having different interests. On the one hand, Russia aims to secure buyers for its state-owned Gazprom gas company.[13] Due to its conflict with Ukraine, Russia had to adapt its interests in the energy sector to its geopolitical interests in Eastern Europe, where Gazprom attempts to avoid Ukraine through the already existing Nord Stream and Turkish Stream.[14] On the other hand, the EU's traditional liberal market approach has also come to involve more regulations on Gazprom due to political relations with Russia.[15] Such deteriorating relations between Russia and the EU, most notably due to the 2014 Ukraine crisis, has led the EU to become more strategy-oriented in the 2010s, as argued by Siddi and Kustova.[16] This shift of policy approach resulted in regulations and energy legislation on the company being more based on geopolitical relations.[17]

Due to pressure caused by EU regulations, Gazprom found itself needing more flexibility to operate in the EU gas market, for example by constructing new pipelines like Nord Stream 2.[18] The completed pipeline has a capacity of fifty-five billion cubic metres of gas per year, which has been suggested to be more than the amount Gazprom needs to supply to Europe in the long term.[19] By using the route going from Russia to Germany through the Baltic Sea, the company would avoid passing through a number of Eastern European countries, including Ukraine, Poland, Belarus, and Slovakia. Gazprom would consequently not have to pay transition fees anymore and would be less dependent on Eastern European countries.[20]

The dominant argument for Germany to support the pipeline - and to a lesser extent for Austria - concerns commercial advantages.[21] Gazprom needs to compete with other

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[10] The author is aware of recent developments relevant to this topic, such as the German suspension of Nord Stream 2 on February 22 and the invasion of Ukraine by Russia on February 24. However, as such events do not fall within the specified time frame of this research, they are excluded from the analysis.
[11] Krickovic, "When Interdependence Produces Conflict," 4.
[12] Krickovic, "When Interdependence Produces Conflict," 4.
[13] Siddi, "The Role of Power," 1567.
[14] Siddi, "The Role of Power," 1566-67.
[15] Siddi, "The Role of Power," 1566-68
[16] Siddi and Kustova, "From a Liberal to a Strategic Actor," 1081-85.
[17] Siddi and Kustova, "From a Liberal to a Strategic Actor," 1088-90.
[18] Loskot-Strachota, *Nord Stream 2*, 3.
[19] Pifer, *Nord Stream 2*, 2.
[20] Loskot-Strachota, *Nord Stream 2*, 3-4.
[21] Pifer, *Nord Stream 2*, 2-3.

companies in Europe, most notably LNG.[22] Increased competition in the gas market would benefit Germany, because the country usually relies on the private sector to supply gas instead of managing it through government intervention, which is increasingly common in Eastern European countries, particularly Poland.[23] The competition would be most significant when it comes to Northwest Europe, insofar as the loss of gas supply from Groningen prompted a slight increase in demand for gas.[24] From an economic point of view, the additional pipeline is also beneficial for Germany because it gains distributional control over the gas to Europe in general by preventing Poland and Slovakia from controlling the gas supply route towards the rest of Europe. Furthermore, the environment-related aspects of reducing coal can be tied to the project as well, since EU Member States have agreed to replace coal as a source of energy with gas, meaning that there is a higher demand for more gas across Europe.[25]

On the other hand, Ukraine and Eastern EU Member States, especially Poland, Slovakia, and the Baltic States, would come out as the main losers of the project, both economically and politically. One of the main opponents of the pipeline is Ukraine, which, apart from the loss of transit fees worth three million euros a year, would lose its strategic bargain against Russia.[26] As Dempsey argues, the geopolitical loss of not being able to control the pipeline is stronger than the economic factors, which can be represented by the fact that Poland, for example, is more concerned about its dependency on Russian gas imports than about the loss of transition revenues.[27] The general Eastern European opposition has been openly expressed through a letter submitted to the then EC President Juncker in 2016, where eight countries in the region - Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, and Romania - objected to the pipeline.[28]

EU institutions, most notably the European Commission (EC) and the European Council, are also opposed to the construction of the pipeline.[29] Both the former climate and energy commissioner Miguel Arias Cañete and European Council President Donald Tusk share the view that Nord Stream 2 would not reduce the EU's energy dependence, and would instead undermine the EU's diversification goal.[30] The EU prefers the Russian gas routes to go through Ukraine for two main reasons: first, this is the only transit route that is not under the complete control of Gazprom; second, Ukraine is part of the Energy Community Treaty, where the regulatory approximation of energy legislation can be foreseen.[31] The EC also opposes Nord Stream 2 because of the geopolitical aspect of potentially bypassing gas supply routes through Eastern European countries, where the pipeline would provide greater power for Moscow to pursue its foreign policy interests in the region.[32]

The leading EU institution for the negotiations about Nord Stream 2 - and on the EU's external energy relations in general - is the EC.[33] However, its leadership faces several challenges.[34] Firstly, the EC has limited power when it comes to suspending Nord Stream 2,

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[22] Guili, "Nord Stream 2," 3-6.
[23] Lang and Westphal, "Nord Stream 2," 26.
[24] Guili, "Nord Stream 2," 18.
[25] Kiguradze, "Commercial and Political Implications," 9.
[26] Meister, "Nord Stream 2."
[27] Dempsey, "The (German) Politics."
[28] Sytas, "EU Leaders Sign Letter."
[29] Adomeit, "Germany, the EU and Russia," 10.
[30] Adomeit, "Germany, the EU and Russia," 11.
[31] Guili, "Nord Stream 2," 18.
[32] Guili, "Nord Stream 2," 18.
[33] Schmidt-Felzmann, "Gazprom's Nord Stream 2," 130.
[34] de Jong and van de Graaf, "Lost in Regulation."

and despite multiple attempts, has failed to stop the project.[35] This is especially notable considering that the Commission does have significant regulatory powers in the European gas market.[36] Second, as argued by Schmidt-Felzmann, the EU's authority is contested by the conflicting interests between local authorities, Member States' national governments, and international frameworks when it comes to external issues, particularly in the gas sector.[37] Thus EU institutions were not effective enough to resist the challenges posed by Nord Stream 2.

The firm opposition from both EU institutions and its Member States indicates that there are significant political factors needed for Germany to maintain its cooperation with Russia on Nord Stream 2. As shown by de Jong, van de Graaf, and Haesebrouck,[38] given the two dominant factors of material and geopolitical conditions determining EU countries' preference for Nord Stream 2, the material factors were far more dominant for Germany. However, the exact political factors for Germany are unclear from the literature. Yet, in the current context of military tensions at the Ukrainian border, it is especially relevant to review these factors. Given that one of the advantages of Nord Stream 2 for Russia is that Gazprom would be able to avoid passing through the Ukrainian gas routes, this paper has a specific focus on Germany's Ukraine policy when it comes to its relations with Russia.

2015-2016: Short Term Effects of the Ukraine Crisis

Since the end of the Second World War, Germany has maintained a stable relationship with Russia, following a policy of rapprochement until the 2014 Ukraine crisis.[39] Then, German relations towards Russia fundamentally changed to more economic pressure and more unity with its European partners in order to support Ukraine.[40] In fact, Germany was the leading country in the EU negotiations to protect Ukraine's sovereignty at the time. This was largely because Germany had to prioritise geopolitical security in Eastern Europe[41], where Russia is considered the biggest security threat in the region by far.[42] The main tool that Germany could use was economic sanctions, which were effective to a certain extent on limiting Russian activities in Ukraine.[43]

Fix and Keil suggested that German cooperation on the Nord Stream 2 project is undermining the turnaround of German foreign policy towards Russia.[44] This idea is also in line with Russia attempting to resolve issues through bilateral negotiations instead of dealing with the bloc as a whole, in order to circumvent the overall EU policy.[45] However, Meister has contended that the German-led sanctions on Russia at the time deteriorated the relations between the two countries to such an extent that Nord Stream 2 is not significant enough of a project to build back relations, even in the short term.[46]

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[35] de Jong and van de Graaf, "Lost in Regulation."
[36] Severin, "Nord Stream 2," 3.
[37] Schmidt-Felzmann, "Gazprom's Nord Stream 2," 129-40.
[38] Jong, van de Graaf, and Haesbrouck, "A Matter of Preference," 10-12.
[39] Fix and Keil, *Berlin's Foreign Policy Dilemma*, 2-8.
[40] Bolinger, "How Crimea Changed Germany's International Role."
[41] Speck, "German Power and the Ukraine Conflict."
[42] Speck, "German Power and the Ukraine Conflict."
[43] Speck, "German Power and the Ukraine Conflict."
[44] Fix and Keil, *Berlin's Foreign Policy Dilemma*, 8.
[45] Gens, "Germany's Russia Policy," 325.
[46] Meister, "Russia, Germany and Nord Stream 2."

2017-2019: Developments

Between 2017 and 2018, one of the major events that was influential in German decisions over the question of Nord Stream 2 were the 2017 elections and government formation. The Green party was an opponent of the pipeline long before the elections.[47] The CDU forming a coalition government with the Greens was a very likely option at the time, which would have potentially altered the government's approach to the pipeline project.[48] During the negotiations, Green party leader Reinhard Bütikofer promised that if they were to become part of the German government, the country's position would be significantly different than with the Social Democratic Party of Germany (SPD), which has historically supported the pipeline.[49] With the coalition government ultimately being formed with the SPD, the German support for the pipeline was arguably reinforced.

Furthermore, then German Chancellor Merkel acknowledged in 2018 that the project has political aspects as well, contrary to the country's previous stance where they consistently declared it to be solely commercial.[50] Merkel stated that the 'project without clarity about the Ukrainian transit role is not possible,' after which Gazprom chief Alexei Miller was quoted saying 'they have never raised the question of stopping the Ukraine transit,'[51] meaning that at least officially, there were some impacts of a potential change in the German stance over the issue. However, by the end of the year, Germany ended up supporting the pipeline again,[52] suggesting no significant changes in the German approach to the pipeline in the long-term.

2020 - 2021: Final Years of Construction

During later stages of the construction of the pipeline, two main political incidents in German-Russian relations became relevant. First, the poisoning and later imprisonment of Russian opposition politician Alexei Navalny led to a significant decline in Russia's relations with most European countries, including Germany.[53] Germany has been called upon to withdraw from the Nord Stream 2 project by multiple members of the European Parliament[54] and EU lawmakers,[55] but it has never done so. The German government rejected the link between the case of Navalny and the pipeline, declaring that the project must continue.[56] Similar comments can be made about the cyberattacks on the German elections in 2021, which further deteriorated Russian-German relations at the time. Russia's exact party preferences to be supported by the attacks were unclear, but it was still deemed a significant threat to German democracy.[57] At that point, Germany could use the halt of the construction of Nord Stream 2 as a threat to increase its leverage on the Kremlin. Despite Merkel having

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[47] Gotev, "Green MEP Denounces."
[48] Chazan and Buck, "Germany Cools."
[49] Chazan and Buck, "Germany Cools."
[50] Deutsche Welle, "Merkel Casts Doubt."
[51] Deutsche Welle, "Merkel Casts Doubt."
[52] Euractiv, "Germany to Back Nord Stream 2."
[53] Fix and Keil, *Berlin's Foreign Policy Dilemma*, 8.
[54] Liboreiro and Gorbe, "Nord Stream 2: MEPs and US."
[55] Abnett and Emott, "EU Lawmakers."
[56] Abnett and Emott, "EU Lawmakers."
[57] Abnett and Emott, "EU Lawmakers."

been pressured both domestically by the German Green party and externally by other EU Member States,[58] the project has not been suspended.

Germany's rejection of the links between Nord Stream 2 and the then wider political affairs of the case of Navalny and cyberattacks were largely due to the fact that these incidents happened at later stages of the construction of the pipeline, meaning significant financial losses following a potential withdrawal for Germany.[59] This economic reason also relates to the idea that Russia needs the revenues from the gas trade more than Germany needs the supplies, which has been stressed by the supporters of the pipeline.[60] This dependency is important because with large amounts of gas supplied, Germany can afford to halt these supplies in the long term, while Russia is less likely to do so with the potential revenue losses.[61] Therefore, in theory, Germany can use the pipeline as a political and economic leverage on Russia, keeping the country committed to maintaining diplomatic relations to a minimum extent.[62]

In these years, there were multiple opponents to the pipeline in German domestic politics, including from Merkel's CDU party. For example, in 2016, CDU party member Norbert Röttgen requested to cancel the project, and in 2018 Annegret Kamp-Karrenbauer similarly stated that 'Nord Stream 2 is not the project that I support with all my heart.'[63] However, as pointed out by de Jong, there were no future political costs for Merkel for continuing with the project, since she announced that she would not be running again for chancellor, meaning that domestic critique would not have affected her political career.[64] This means that in her last term as Chancellor, she had little to lose from maintaining cooperation in the Nord Stream 2 project.

November 2021 - February 2022: Policies under the New German Government

After its instalment, the new German government was quickly pressured to suspend the project by the Polish prime minister after its setup.[65] As argued by Bielkova, the government's position on the issue will show its level of cooperation with the rest of Europe.[66] As previously stated, the new government could reflect on whether previous policy for Nord Stream 2 could only be tied to the Merkel governments, or whether Germany followed a more inevitable course of foreign policy. This section investigates this question.

It has been noted that new Chancellor Olaf Scholz does not have as strong a political position as Merkel did.[67] In Germany's first-ever three-party coalition, the Chancellor has to follow agreements made with the other parties involved.[68] The question of Nord Stream 2 is a particularly disputed issue within the government, with Foreign Minister Annalena Baerbock from the Green party being a major opponent to the pipeline. Baerbock has previously stated

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[58] Westendarp, "German Green Leader."
[59] Kramer, "Pipeline Politics."
[60] Kramer, "Pipeline Politics."
[61] Kramer, "Pipeline Politics."
[62] Westphal, "Nord Stream 2."
[63] de Jong, "Nord Stream 2."
[64] de Jong, "Nord Stream 2."
[65] Reuters, "Polish PM."
[66] Bielkova, "Nord Stream 2."
[67] Ward, Andrew, and Forgey, "Why Scholz Won't Say."
[68] Ward, Andrew, and Forgey, "Why Scholz Won't Say."

that she is against the EU's legal approval of Nord Stream 2, arguing that it goes against EU rules and against the EU gas directive.[69] Her stance shows that the German government's support for the pipeline is not as strong as it was under its predecessor.

Scholz, a long-time supporter of Nord Stream 2,[70] in principle stood with Merkel's position on the question of Nord Stream 2.[71] His continued support for the pipeline is especially significant in the context of the military standoff in Ukraine, where even Russian experts have pointed out that with moves such as Nord Stream 2, Russia is likely planning to redraw relations in Eastern Europe.[72] In response, Scholz has threatened to halt the project, partly due to EU and US pressure on the issue.[73] What is clear from the approaches of the new German government is that it has been overall less supportive of the project than the previous government. However, this weaker support is to a very limited extent. The general German backing of Nord Stream 2 is also reflected in the 2021 election polls, where the Green party's supporters were the only part of the German electorate to oppose the project. This means that support for Nord Stream 2 is not only coming from the political leadership, but that it has significant public support as well. Overall, the suspension of the project was kept only as a threat and has not been implemented, meaning that the longer-term German foreign policy towards Nord Stream 2 did not change significantly after a change in the government.

Conclusion

This study aimed to review the political reasons for Germany to cooperate with Russia on Nord Stream 2, from its announcement until mid-February 2022. The paper was focused on European factors, especially on the German-Russian relations, leaving other involved actors, most notably the US, outside. These political factors were reviewed through sections analysing time frames of two or three years in an attempt to show potential changes and developments through time.

What emerged from the analysis of the overall German-Russian relations since the announcement of the pipeline project in 2015 is that the political costs were overwhelmingly higher than the commercial benefits Germany stressed. These political costs include those that were directly affecting Germany, such as Russian interference in the 2021 elections, as well as its relations with Eastern European countries. The post-Merkel government has shown little change in support for the pipeline, demonstrating that keeping the project alive is part of a longer-term German foreign policy, which aims to secure Russia by creating a stronger bilateral economic interdependence. Furthermore, the fact that Germany has not suspended the project shows that the country has continued its long-term Ostpolitik, where it aims to maintain some sort of good relations with Russia.[74] This conclusion supports the point made by Meister,[75] who argues that Russia and Germany are not negotiating as equals in this context, because Germany has failed to be more assertive on the Nord Stream 2 project. This paper overall adds to academic literature that German policy for the Nord Stream 2 was consistently based on its Ostpolitik, the policy of appeasement towards Russia, where the

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[69] Westendarp, "German Green Leader."
[70] Chazan and Buck, "Germany Cools."
[71] Eddy, "Germany Wants its Russian Pipeline."
[72] Bunde et al. "Turning the Tide", 96-105.
[73] Chazan, Foy, and Seddon, "Germany Eyes Nord Stream 2."
[74] Meister, "Nord Stream 2."
[75] Meister, "Nord Stream 2."

government has failed to use the pipeline as leverage in practice. This conclusion suggests that in order for Germany to suspend the project, events need to be significantly more threatening than those shown in this analysis.

Given that from a political perspective, the major function of Nord Stream 2 for Germany was to maintain a certain level of good relations with Russia, future research can focus on other alternatives for German foreign policy towards the region. The German Ostpolitik can be revisited in more detail in the context of the later developments, such as the suspension of the project on the February 22, 2022[76] or the Russian invasion of Ukraine two days later. While these events are not considered for this study due to their later occurrence, including them in further analyses could produce interesting reflections on the longer-term German energy policy and on Germany's Russia policy.

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[76] Marsh and Chambers, "Germany Freezes Nord Stream 2."

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Exercising Shared Competence on the EU's External Borders of Poland, Latvia, and Lithuania Amidst the Recently Increased Irregular Migration on the Border with Belarus

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Abstract

This paper evaluates the characteristics and the scope of the European Union's shared competence regarding external border control and migration policy. Amidst the ongoing instrumentalised migration crisis on the eastern part of the EU's external border which the three Member States Latvia, Lithuania and Poland share with Belarus, the actions taken by the Union and the aforementioned Member States have been under scrutiny on both European and international stages, with unusually ambiguous and discursive communication from all European parties. Instances of border pushbacks and violations of international human rights conventions have also been reported. The two interlinked policy areas of external border control and migration are therefore used to compare how the three Member States exercise the shared competence of freedom, security, and justice, in the light of the current refugee "crisis" alongside their borders. After offering a policy contextualisation and a literature review of European migration, this paper examines how Poland, Lithuania, and Latvia managed the severely increased migration on their eastern borders. Likewise, the European dimension of and response to the "hybrid warfare" Belarus stands accused of are also evaluated, according to the Union's stance on the shared nature of its operations. Through highlighting prominent issues with the EU's migration and external border management policies, the paper also suggests areas for further research.

Keywords: Shared competence, border management, instrumentalised migration, EU eastern external border, European Union, hybrid warfare, Belarus

Introduction

The policy area of external border management of the European Union (EU) has been subject to many changes over the years. The EU's borders first became a matter of interest almost thirty years ago, when five out of, then, ten Member States of the European Economic Community signed the Schengen Agreement, which led to the abolishment of border checks within the territories of the states concerned – Belgium, France, Germany, Luxembourg, and the Netherlands - just five years later. Many have followed since then, expanding the EU borderless zone to twenty-six states at this moment in time.[1] Yet, as time went by, the dynamics on the EU's borders changed significantly and the already existing mechanisms were challenged. The EU needed new policies that would consequently strengthen its borders amidst the ominous influx of irregular and mixed migration in mid-2015, the recurring terrorist attacks in key Member States, and the recent shifts in international dynamics caused by the COVID-19 pandemic. The past five years, in particular, have seen a significant shift in the rhetoric on the EU's external border management policy - traditional borders became a matter of digitalisation, and measures facilitating swift border checks, seamless identification processes, and more rapid documentation were implemented to improve border security. All the while, as a result of increased migration flows post-2015, a focus on returns of third-country nationals, rather than adaptation or support of relocation, has become prominent.[2] Europe's external borders have received significant attention from interdisciplinary scholarship.[3] Buck-Morss, for instance, referred to them as 'wild zones of power.'[4] In the same vein, De Genova developed his notion of the border spectacle of illegality.[5]

Following David Newman's concept of the duality of the European 'zone borderlands' - inwardly soft and accepting, outwardly hard and selective - this paper uses the EU's external border management policy, with its close ties to the migration blueprint, to study broader control measures of the EU's external border in Poland, Lithuania, and Latvia with neighbouring Belarus.[6] The two interlinked policy areas serve as a ground for comparison of how the three Member States exercise the shared competence of freedom, security, and justice, in light of the current refugee crisis alongside their borders. The current developments in the policy areas also allow for an examination of the Union's ability to reconcile the concurrent objectives of guaranteeing migrants the right to seek asylum on the one hand, and of allowing Member States to exercise shared competence to protect their external borders on the other hand. First, this paper provides context to the current rise in the number of irregular border crossings across this particular external border of the EU, as well as explains the concepts of 'hybrid warfare' and 'migrant weaponization.' Through analysing measures currently put in place on the EU's external borders and the upcoming developments of the two policy fields, it then presents the role of the EU on its external borders, considering its competence is external and shared with Member States. Later, the review of literature prompted by the previous migration crisis in the EU's Mediterranean border zone serves to highlight the EU's changing approach towards migration and explains the practice of criminalising solidarity, and of border pushbacks currently exercised on its external borders. Then, the paper examines how Poland, Lithuania, and Latvia have been reacting to and managing the increased migration on their eastern borders. After that, the paper discusses

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[1] Barszcz, "EU External Border Management," 1.
[2] Barszcz, "EU External Border Management," 1.
[3] O'Dowd, "The Changing Significance," 20.
[4] Buck-Morss, "Dreamworld and Catastrophe," 23.
[5] De Genova, "Spectacles of Migrant 'Illegality'," 1183.
[6] Newman, "Borders and Bordering," 11.

the main observations and drawing conclusions from the responses of the Member States and the EU, and evaluates that the actions of the Member States seen so far coincide with the EU's border practices exercised since the 2015 migration increase and fall short to represent the fundamental European values and respect international human rights principles. Finally, it proposes areas for further research, highlighting prominent issues with the Union's migration and external border management policy.

Contextualising the Case Study: Belarusian Hybrid Warfare, Migrant Weaponisation, and the EU's Eastern External Border as a Grey Zone

In recent months, Frontex has noted a significant increase in illegal crossings on the main migratory routes at the external borders of the EU, reaching 23,630 people in September - a new record that marks a 40 percent increase from 2020.[7] The eastern border of the EU itself has seen a 1,407 percent increase in the influx of migrants compared to the year before.[8] Altogether, the three Member States sharing the EU's eastern external border with Belarus – Poland, Lithuania, and Latvia – saw 6,174 illegal crossings at their borders from January to September 2021. And the numbers keep growing - in October alone, the Polish border guards recorded thirty thousand attempted crossings on that part of the border.[9] Although the most updated domestic statistics vary and are not always available, the rise in irregular migration in these three countries is a clear trend.

The situation on the EU's eastern border has been described by both the EU and Member States' government officials as a geopolitical battle between the EU and Belarusian President Alyaksandr G. Lukashenko.[10] The surge of refugees causing the current humanitarian crisis at the border is believed to be the President's response to a round of economic and sectoral sanctions imposed on Belarus over the course of the last year, as Lukashenko allegedly facilitated the organisation of flights from Middle Eastern countries to Belarus with a promise to help migrants further cross borders of the EU. Similarly, the alleged falsification of the last presidential elections, violent crackdowns on and abuses of citizens, the extradition of Svetlana Tikhanovskaya - Lukashenko's election rival - and the imprisonment of Sergei Tikhanovsky - her husband and a previous presidential candidate -, and the forced plane landing prompted by a detention order of Raman Pratasevich and Sofia Sapega - two Belarusian opposition journalists -, all resulted in sanction packages for the Belarusian government.[11]

The current surge of migrants experienced by the three affected Member States is therefore interpreted as a much bigger problem than migration seen in that region so far, which previously mainly consisted of refugees fleeing the Belarusian regime and asking for international protection or asylum in neighbouring countries. This time, most migrants detected on the EU's eastern external border come from countries much further away – most of them are Iraqis, Afghans, Syrians, Yemenis, Kurds, and Egyptians.[12] It has been reported that the Belarusian leader has been facilitating transport of these migrants from their countries of origin by drawing them in with a temporary Belarusian visa, thus giving them

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[7] Frontex, "Migratory Situation."
[8] Korkut and Fazekas, "Embrace of Belarusian Dissidents."
[9] Onet, "Ministerstwo Obrony Narodowej."
[10] Przetacznik and Russell, *EU-Belarus Relations*.
[11] Baker, "The Belarus Opposition Leader;" Council of the EU, "Belarus;" France 24, "US Charges Belarusian Officials;" Human Rights Watch, "Belarus."
[12] Greenhill, "When Migrants Become Weapons."

access to enter Europe.[13] However, when they arrive in Belarus and are transported to their destination – the EU's eastern external border –, the document does not grant them entry to the Union.[14] Having no possible way to enter the EU and no right to go back to Belarus, they are left waiting in the bordering forests, with no food, water, or shelter, and little humanitarian aid.[15]

Brussels, Warsaw, Vilnius, and Riga all denounced the EU's eastern external border as a grey zone of the Belarusian 'hybrid warfare,' in which migrants are used as hybrid weapons to orchestrate a humanitarian crisis in the EU.[16] The three bordering Member States have announced a state of emergency, whose level varies from country to country, and the EU has urged European institutions to support their measures in these difficult times. Yet, the ambiguity of laws in said grey zone serves the purpose of geopolitical gaslighting, 'a politically motivated pattern' as framed by European Commission President Ursula von der Leyen, that confuses which approach should be taken and which actions should be implemented to manage this hybrid war.[17]

The International Phenomenon: The EU's External Shared Competence Over Migration and Border Management

Theoretically, the EU's Integrated Border Management (IBM) strategy currently in place focuses on 'efficiently managing the crossing of the external borders and addressing migratory challenges and potential future threats at those borders, while fully respecting fundamental rights.'[18] The external border management policy thus aims to improve the EU's internal security through strengthening its external borders by detecting and preventing potential threats caused by migration and cross-border crimes.[19] When looking at the EU's border management and migration policies and analysing its external actions in these fields, it is crucial to refer to the distribution of competences between the EU and its Member States – which is often considered an international phenomenon of migration.[20] According to Article 4(2)(j) TFEU, to successfully manage the situation at its external borders, the EU shall work in cooperation with national authorities from Member States in the status of shared competence in the area of freedom, security, and justice, keeping both of the parties accountable for adopting legally binding acts.[21] The field of migration also contains the EU's external competence, indicated in Article 79(3) TFEU, making the EU's external border action linked to migration as well as development cooperation and humanitarian aid under Article 209(1) TFEU - a matter of external irregular shared competence.[22] As thoroughly described by Marcus Klamert, 'The ability of the Union to conduct a 'common policy' for development cooperation and humanitarian aid must not be read as conferring the power to harmonise national laws in this field' and 'shall rather contribute to Member State policy.'[23]

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[13] BBC News, "Belarus Border Crisis."
[14] Schmitz, "The EU Accuses Belarus."
[15] Plucińska and Pempel, "In Forests."
[16] Przetacznik and Russell, *EU-Belarus Relations*.
[17] Sytas, "EU's Von Der Leyen Says."
[18] Calvi, "Border Management Law," 117.
[19] Barszcz, "EU External Border Management," 1.
[20] Garcia Andrade, "EU External Competences," 157.
[21] European Union, *Treaty of Lisbon*, art. 2C.
[22] European Union, *Consolidated Version of the Treaty on the Functioning of the European Union* (OJ C 202/77).
[23] Klamert, *The Principle of Loyalty*, 163-164.

Within the EU's external competence on migration, which gives the Union the means to act as an international actor when participating in agreements with third countries or international organisations, different dimensions of migration should be addressed. This external competence implies two dimensions to the division of authority – ERTA competence on Schengen visas and border control, and concurrent competence on readmission, legal admissions of migrants, socio-economic integration, and socio-cultural integration to exclude 'any harmonisation of the laws and regulations of the Member States.'[24] This division essentially conditions 'the ability of the Union to offer incentives to its partners in exchange for more control-oriented commitments such as border controls, the fight against irregular immigration or readmission.'[25] All in all, when managing external borders amidst migration surges, the EU shall act within its set policy measures on border control and withhold from implying inducements on admissions and integration of migrants in Member States, all the while cooperating closely with the migrants' countries of origin and transit. Looking at such precise, yet ambiguous power division, one may notice that 'The challenge of coordination between the Union and its Member States and among the EU institutions themselves is, however, imperative,' as concluded by Garcia Andrade.[26]

Within the shared competence on migration and border management, Member States shall not only act according to their national constitutions and in line with European values, but also follow international obligations – the most important of which, with regards to migration, being the principle of non-refoulement. According to the OHCHR, 'Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.'[27] An essential protection under international human rights, the principle of non-refoulement poses a legal obligation to uphold its values and establish coordinated international efforts to save lives. Countries shall manage their borders in an integrated and secure manner, implement measures that would allow migrants who are unable to return to their country of origin to enter and stay on their grounds - i.e., to grant them temporary or permanent legal status -, or cooperate with other countries to facilitate a safe return, readmission, and reintegration.

The EU's Approach to Migration over the Years: The Soft Power Dilemma, Border Pushbacks, and Paradoxical Humanitarian Protection

The EU's actions in terms of migration and border management have long been questioned by scholars, particularly after the first European migration crisis which had its peak in mid-2015. Considering the increased migrant crossings at the Southern borders of the Union after the so-called Arab Spring, the literature on this topic has consequently primarily focused on the Mediterranean border zone.[28] The findings, however, reflect the EU's

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[24] European Union, *Consolidated Version of the Treaty on the Functioning of the European Union* (OJ C 202/77).
[25] Garcia Andrade, "EU External Competences," 164.
[26] Garcia Andrade, "EU External Competences," 177.
[27] UNHCR, "UNHCR Note."
[28] De Genova, "Spectacles of Migrant 'Illegality'," 1180; Grzymski, "Europe's Borders and Neighbourhood," 589; Grzymski, "Seeing Like a European Border," 131; Tazzioli and Garelli, "Containment Beyond Detention," 1009; Tazzioli and Walters, "Migration, Solidarity and the Limits of Europe," 175.

approach to the migration issue as a whole, an approach visible when analysing the migration crisis and hybrid warfare in the eastern border zone.

Migration and border management are the spheres in which the EU bears duality in its narrative and actions, on the one hand seeking to preserve their representative soft laws and the power of dialogue, while on the other hand expressing the urgent need to protect its citizens from dangers waiting outside of its borders - circling back to the notion of 'Fortress Europe.' Jan Grzymski calls this phenomenon the paradoxical logic of the Gated Community Syndrome of the EU, that is, the shift from the EU seeking political frameworks of cooperation with third countries and maximising synergies to the new European strategy of effective protection of its external borders by supporting returns, exercising border pushbacks, and investing in strict preventative measures.[29] Grzymski notes that over the last few years, the EU turned to 'the politics of hard forms of bordering, focusing on walling itself against the neighbours with simultaneous emphasis on the very selective mechanisms for allowing entrance to the EU's territory.'[30] This harsher shift in discourse has also been described by Martina Tazzioli and Glenda Garelli when looking at the EU's Mediterranean hotspots in Lampedusa and Lesbos. Primarily created to serve as enclosed sites 'for temporarily detaining migrants while they are identified, labelled and partitioned upon landing,'[31] these hotspots have become spaces of containment, forcing migrants to 'undertake convoluted geographies' as a consequence of strict identity control measures enforced through the presence of Frontex officers.[32]

Not only the EU but also particular Member States have become more reluctant to continuously increasing migration in Europe – in particular those at the Southern and Western external borders of the EU, previously affected by the notion of forced geographies implied by the Dublin Regulation. Although the New Pact on Migration and Asylum recognised that Member States will no longer hold disproportionate responsibilities, many countries have remained averse to accepting surges of migrants.[33] Such attitudes of hostility and 'criminalisation of solidarity' were highlighted by Tazzioli and Walters, who examined instances of the governments penalising individuals and NGOs for helping undocumented migrants on the Alpine migrant track in France and Italy. Small helpful acts of service, such as giving directions, or letting migrants in to charge their phones or to take a shower, were 'perceived as an element of disturbance' by the French and Italian authorities.[34] The COVID-19 pandemic and the imposed restrictions on movement have also reinforced the EU's narrative towards migration, which Maurice Stierl and Deanna Dadusc explain as a 'Covid excuse' to accelerate 'further securitization and containment practices that we have observed already for several years along the Mediterranean border.'[35] The more restricted reality of the pandemic gave the EU more space to further exercise a racialised approach to migrants, no longer referred to as criminals or potential terrorists, but also 'as virus carriers, and thus as a threat to public health.'[36] The authors also note that pushbacks of migrants to Libya and Tunisia became even more prominent since the beginning of the pandemic in March 2020, with certain Member States becoming involved in 'push-back by proxy' activities 'whereby, merchant vessels were instructed to return rescued migrants.'[37]

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[29] Grzymski, "Europe's Borders and Neighbourhood," 592.
[30] Grzymski, "Europe's Borders and Neighbourhood," 137.
[31] Tazzioli and Garelli, "Containment Beyond Detention," 1022.
[32] Tazzioli and Garelli, "Containment Beyond Detention," 1019-20.
[33] European Commission, *Communication*.
[34] Tazzioli and Walters, "Migration, Solidarity and the Limits of Europe," 184.
[35] Stierl and Dadusc, "The "Covid Excuse"," 14.
[36] Stierl and Dadusc, "The "Covid Excuse"," 2.
[37] Stierl and Dadusc, "The "Covid Excuse"," 15.

The narratives of space and mobility containment, of the gated community syndrome, and of the criminalised discourse on migration, all stem from European fear – fear of attack on the sacred European values and identity, crucial for external representation. As explained by Jan Grzymski, 'The issue of EUropean borders is, therefore, framed mostly in terms of efficacy of controlling non-EU population movement, providing EUropean people with security, and a sense of identity. It is justified in terms of values that are seen as representing the essence of 'Europe.''[38] He further argues that 'the othering' of the EU's neighbours is necessary for the polity to maintain the established borders between what is European and the Other – the latter being its neighbours and third countries, be it Libya, Tunisia, or Belarus. These borders can be strictly physical, but they can also indicate the vast differences in their values and practices. 'Europe not only presents itself as superior to its own Other but also attributes to itself the civilising power of bringing 'peace and prosperity' to its own Other,' Grzymski stated.[39]

Case Study: Poland, Lithuania, and Latvia and the Humanitarian-Crisis on the EU's Eastern External Border

The eastern side of the EU is currently struggling with an unprecedented surge in irregular migrants from the outside of the European space - a surge the neighbouring Member States were not prepared for, considering the scope of the border management and migration policy in place. Three of the countries sharing the EU's eastern external border, Poland, Lithuania, and Latvia, are currently facing a growing migration crisis, already classified as a vast humanitarian crisis by international institutions, international organisations, and media.[40] Thousands of migrants of all ages and conditions, both individuals and families, are suffering in the bordering forests with little to no food, water, supplies, support, or empathy from authorities – and they have been since July 2021. Although the situation was officially referred to as 'hybrid warfare' from Belarus against the EU, this humanitarian crisis, which has resulted from Lukashenko's weaponisation of migrants from Middle Eastern countries, has become much more than a matter of security and power play for sovereignty between the Union and Belarus. The life and safety of the thousands of people trapped in Belarus' political game are at play on the EU's eastern external border. The next section examines the reactions of Poland, Lithuania, Latvia, and the EU to the ongoing eastern migration crisis.

Poland

The Polish part of the EU's eastern external border with Belarus has caught the most attention of EU institutions and media, in part because of the severity of the migration crisis currently occurring there. It is difficult to grasp a precise picture of how many people have attempted to cross the four hundred and eighteen kilometres long border so far, primarily due to a strict form of the state of emergency. Official data about the scope of the crisis and the handling of migrants on the border cannot reach the public under the declared state of emergency and due to the lack of assistance from Frontex on the Polish bordering regions

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[38] Grzymski, "Seeing Like a European Border," 137.
[39] Grzymski, "Europe's Borders and Neighbourhood," 590.
[40] Amnesty International, "Witamy w Guantanamo;" Commissioner for Human Rights, "Commissioner Intervenes;" Human Rights Watch, "Die Here or Go to Poland."

alongside the ten thousand Polish troops.[41] However, recent findings estimate that there have been over 30,000 crossing attempts in October alone, with as many as 700 migrants appearing at different points of the Polish-Belarusian border every day.[42] The number of migrants started increasing in late June. By early July, Polish border authorities were putting irregular migrants in detention centres and the EU began expressing its concerns over the increased migration.[43] On August 20, a ministerial decree limiting movements at the Polish-Belarusian border was published, expressing that those intercepted in the border area must leave Poland and return to the border line, which was already closed from the Belarusian side, pushing illegal migrants inside nothing else but bordering forests.[44] Five days later, the European Court of Human Rights ordered Poland to provide humanitarian assistance to migrants and refugees forced to reside at their border – which the country failed to comply with. On September 2, Poland declared a state of emergency in the regions bordering Belarus, thus preventing non-residents and non-authorised persons from coming within three kilometres of the border zone.[45]

The Polish constitution indicates three possible types of states of emergency – martial law, a state of exception, and a state of natural disaster – and it is the second one that is being currently imposed on the bordering regions.[46] According to the state of emergency ordinance, within the state of exception, the region concerned cannot hold public gatherings or host members of the public without residency, meaning that proof of identity is required at all times. Furthermore, information about the state of the region and actions undertaken in it is limited so as to protect the nation's borders and prevent actions that would hinder the state's efforts to counteract illegal migration. In addition, visual documentation of the areas of the region is not permitted. Most importantly, the actions taken by the authorities under the state of exception shall lead to the quickest resolution of the issue causing dangers to the state, in order to bring back regular functioning as soon as possible. The state of emergency can be imposed in instances of potential danger to the Polish state, the nation's order, or the safety of its citizens. Primarily, it is implemented for thirty days only, with a possibility for the government to prolong it for another sixty days.[47]

The current state of emergency in Poland has not only prevented the oversight of how the situation at the border is being handled and has acted against the basic public right to information, but it has also hampered independent authorities in helping manage the situation and render the current conditions more humane, by not allowing journalists, non-governmental organisations, aid workers, and volunteers to act in the bordering regions. This limited information incoming from the border zone raises concerns over the practices exercised by border guards and potential inhumane treatment of migrants trapped in the area, such as pushbacks, violence, and insufficient support. Furthermore, as recently explained by Adam Bodnar, former ombudsman of Poland, and Agnieszka Grzelak, deputy director of the Constitutional, European and International Law department in the Ombudsman office, the ongoing rule-of-law crisis in Poland also induced further abuses of the law within the state of emergency insofar as 'the role of parliament in Poland has been marginalised, and there is limited government accountability when it comes to abuses of law. (...) This is because

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[41] Bodnar and Grzelak, "In Poland, Where Is Frontex?"
[42] Onet, "Ministerstwo Obrony Narodowej."
[43] Bodnar and Grzelak, "In Poland, Where Is Frontex?"
[44] Polish Ministry of the Interior and Administration, *Rozporządzenie*.
[45] Polish Council of Ministers, *Rozporządzenie*.
[46] Parliament of Poland, *Konstytucja Rzeczypospolitej Polskiej*.
[47] Parliament of Poland, *Konstytucja Rzeczypospolitej Polskiej*, Art. 228-230.

the law introducing the state of emergency provides criminal penalties for disclosing any facts relating to the situation at the border.'[48]

Poland has thus fostered nothing but politics of fear and hostility – both towards incoming migrants and the EU itself. On September 27, the country once again failed to provide humanitarian assistance on the border, as per a second order from the European Court for Human Rights. In addition, the Polish authorities also refused the EU's help in the form of Frontex's assistance.[49] However, on October 7, the Deputy Prime Minister Jarosław Kaczyński announced the state's plan to build a 350 million euros permanent border that would replace the temporary barbed-wire, arguing that 'The experience of other countries affected by the migrant crisis shows that this is the only effective method.'[50] Only a week after, Polish authorities officially legalised border pushbacks on the Polish-Belarusian border – which not only accounts for a breach of the non-refoulement principle and therefore opposes international law, but is also against basic human rights and consequently against fundamental values of the EU.[51] Interestingly, the Polish narrative is about protecting the borders of the entire bloc due to its collective nature as a European matter that should be exercised through integration and Europeanisation. At the same time, however, the Polish state has so far not been compliant with their obligations within the shared competence on migration and border management, going as far as not accepting recommendations and resources provided by the EU. At a time when migrants are compared to balls being thrown from one national pitch to another, Poland and the EU should reach optimal cooperation strategies through clear diplomacy and negotiations. Considering that such a solution calls for mutual trust and communication, this task might, unfortunately, seem unattainable, particularly in view of the range of controversies Poland has been entangled in on the EU arena since the last parliamentary elections in 2019.

Lithuania

With a length of 670 kilometres, Lithuania holds the longest part of the EU's eastern external border. In its recent report, Frontex named Lithuania the most affected country out of the three Member States sharing the border with Belarus - especially at the beginning of the migration surge in June -, with statistics showing 4,170 border crossing attempts in the summer months alone.[52] Frontex has respectable insight into how the migration crisis is handled in Lithuania, as the country sought their help and assistance as well as accepted financial help from the EU - amounting to 36.7 million euros from the Asylum, Migration and Integration Fund - for emergency assistance for migrant detention facilities, asylum processing, and medical care.[53] Similarly to the Polish approach, the Lithuanian authorities have expressed clear hostility towards incoming migrants and the idea of possible integration. Lithuania announced a state of emergency much earlier than Poland, on July 2. Although the country initially set up makeshift camps by the border, first practices of pushbacks have been recorded in August – in that month alone, Lithuanian border guards refused entry to 1,300 migrants.[54] Today, 508 kilometres of the Lithuanian border is protected by a razor wire and migrants are encouraged to leave the bordering regions and return to their countries of origin

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[48] Bodnar and Grzelak, "In Poland, Where Is Frontex?"
[49] European Court of Human Rights, *Court Gives Notice*.
[50] Polish Ministry of the Interior and Administration, "A Barrier Will Be Built."
[51] European Union, *Charter*; Parliament of Poland, *Ustawa z dnia 14 października 2021*.
[52] Frontex, "Migratory Situation."
[53] Schinas (@MargSchinas), "The @EU_Commission."
[54] Seputyte, "Lithuania Declares Emergency."

– considering that they cannot come back to Belarus. The Lithuanian government pledged that every migrant who decides to return voluntarily will get a plane ticket and a one-off sum of three hundred euros.[55]

This opposing narrative comes from the Lithuanian state's opposition against Lukashenko's regime and his persistent hybrid warfare imposed on the EU's eastern members – particularly since Lithuania currently hosts the Belarusian opposition leader Svetlana Tihanovskaya, which state authorities believe is one of the reasons why the Belarusian leader has chosen Lithuania as one of its targets[56]. The government's approach is negative enough that even Lithuanian Foreign Minister Gabrielius Landsbergis expressed hostility towards Middle Eastern refugees coming to the Lithuanian border: 'Because you were involved in a cunning crime, virtually no-one of you will receive an asylum and be recognised as a refugee. You will have to live in the tent camp until we find a way to send you home. And you will go home,' he wrote in a Facebook post.[57]

Latvia

With its one hundred and seventy-five kilometres long external border being the shortest, Latvia is the Member State with the least international coverage on the eastern migration crisis. Latvia also declared a three-month state of emergency, set from August 11 until November 10, and has acknowledged that it cannot properly respond to a migration crisis of this scope on its own.[58] So far, through imposing a state of emergency, Latvia closed its border with Belarus and has tasked the military with patrolling and refusing entry to incoming migrants - if necessary, through the use of force.[59] This practice was criticised by the UNHCR.[60] The organisation expressed its concerns over the state of emergency and its consequences on migrants in Latvia. It also presented recommendations for Latvian authorities to act within the principle of non-refoulement, and to stand against discrimination and encourage the granting of asylum - rather than continuing the narrative of returns. During a talk on hybrid warfare and the eastern grey zone at the Riga Conference on October 16, Deputy Prime Minister and Minister of Defence of Latvia Artis Pabriks addressed the issue and explained that the ongoing migration is not a Latvian problem but rather a European one, wherefore Latvia seeks cooperation in its adaptation to these unprecedented migratory challenges.[61] He urged that, in the case of the Belarusian warfare going on for much longer, Latvia would need more cooperation and support from the rest of Europe, particularly from its Southern countries that have bigger asylum capacities. He also expressed the state's geopolitical objective to work together with other Baltic states for more visibility.[62]

The EU's Response and Observations

From the beginning of the eastern migration crisis, Poland, Lithuania, and Latvia have been openly averse to accepting refugees coming from Belarus, all the while producing a

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[55] LRT.it, "Lithuania to Offer €300."
[56] Thebault, "Belarus's Weaponization."
[57] LRT.it, "Lithuanian FM."
[58] Kincis, "Three-Month State of Emergency."
[59] Kincis, "Three-Month State of Emergency."
[60] UNHCR, "UNHCR Observations."
[61] LATO Latvian Transatlantic Organisation, "The Riga Conference 2021."
[62] LATO Latvian Transatlantic Organisation, "The Riga Conference 2021."

hostile discourse towards those who wish to reach the EU. Despite legal obligations to accommodate incoming migrants, treat them with respect, show solidarity, and not send them back to countries where their safety and wellbeing might be at stake under the principle of non-refoulement, each of the Member States has been disregarding their responsibilities and showing a severe lack of compliance. Additionally, although previously both Poland and Lithuania had shown support to Belarusian dissidents and had been open to offering them exile and extending humanitarian visas, their current actions are now the driving force of the deepening humanitarian crisis.

The blame, however, does not only lay on the Member States' side. As defined by the external shared competences of the EU and Member States in the fields of migration and external border management, the actions taken to cope with the issues concerned shall be mutual, respectful, and supportive. The Polish, Lithuanian, and Latvian borders are also EU borders, and should be protected and managed as part of a joint effort. Furthermore, it is within the same competence scope that the EU may take actions and intervene in instances when a Member State does not comply to address vulnerabilities on its borders or opposes to assist – such as in the case of the Polish state, which is refusing to accept additional troops from Frontex. Although the Polish government continues to explain that its reason for acting alone in the border zone is solely due to the belief that its troops have enough capacity to deal with the migrants without additional help, not having Frontex watching over its back also gives it leeway and further strengthens its state of emergency.

Considering that for the last five months, thousands of people have been residing in the bordering forests in Poland, Lithuania, and Latvia, families have spent days and nights camping in the wild with no food, water, and limited medical care, and, from what we know, at least eight deaths have been recorded, the EU's soft and silent approach to the eastern migration crisis currently appears like it is backing the actions of the Member States. This is, essentially, what the Union has been doing in the last years since the 2015 migration crisis. What we have seen and heard so far have been oppositions, recommendations, condemnations, and invitations to change – yet we have not seen the EU act to show its opposition to the inhumane treatment of migrants on its eastern border. A narrative about 'Europeanising' migration and asylum policy has been prominent, however, it is only recently, at the European Council during October 21-22, that Ylva Johansson expressed the need for more intervention for strengthened cooperation with Frontex and increased transparency of action.[63] 'The more we 'Europeanise' migration and asylum policy, the more effective our response, and the less vulnerable we will be in the future,' she claimed[64] Simultaneously, other EU leaders pledged their readiness to fight Belarus' hybrid attack and continue to exercise restrictive measures at its borders. Time and time again, the European discourse revolves around nothing else but the European strength, sovereignty, and identity it presents externally – whether one calls it 'Europeanisation' or 'Fortress Europe.'

Discussion and Conclusion

Poland, Lithuania, and Latvia, the three Member States sharing the EU's eastern external border with Belarus, have become a geopolitical target of the Belarusian hybrid warfare, which was conducted by the country's leader to counterattack the EU's sanctions opposed on his regime. Irregular migrants encouraged by the Belarusian authorities to seek

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[63] European Council, "European Council, 21-22 October 2021."
[64] Johansson, "#Timetodelivermigrationeu."

a better life on the grounds of the Union have surged the Polish, Lithuanian, and Latvian borders in numbers the eastern border zone has never seen before and was certainly not prepared for. The EU and the concerned Member States have long been struggling with containing both Lukashenko's hybrid war and the disturbing humanitarian crisis resulting from its weaponisation of migrants.

Through analysing how Poland, Lithuania, and Latvia have been handling the escalating migration and humanitarian crisis on the eastern border zone, a few issues with the present migration and external border management policies of the EU - exercised based on external and shared competence with Member States - can be highlighted. The EU's policies, the actions (or inactions) of its institutions, or the discourse it presented in the past few years, from the first migration crisis on the Mediterranean border to the current refugee influx on the eastern border, all reflect the ever-changing, yet ambiguous image of the EU; on the one hand promoting its soft values of partnerships and negotiations, of cooperation and communication, and of humanity and support, and on the other hand standing by the ongoing human rights violations, changing its narrative towards strengthening the European identity, and reinforcing its external borders to become more resilient to dangers coming from the non-European space. The Union is undergoing a change, which affects thousands of people currently trapped between two closed borders. The framing of the 'grey zone' itself and the imposing and prolonging of the states of emergency can also be viewed as a way of creating exceptional spaces where traditional law is suspended, rendering confusion over how to act. Ultimately, the Belarusian regime leader knew which controversial policy area to tackle with his hybrid warfare execution.

Furthermore, the EU's new focus on digital sovereignty and on strengthening its borders through higher digitalisation of its control measures can be considered as yet another way for the EU to show its reluctance towards admitting migrants. The new digitalisation of external border management disregards a big part of non-EU nationals - those undocumented or waiting for essential documentation simply trying to cross its borders to build a better life for themselves and their families -, and immediately puts them at a disadvantage. Additionally, in view of the databases of those systems being mainly based on the data of third-country nationals, concerns have been raised over fairness, potential systemic discriminatory practices, and biased outcomes. The new methods for swifter border checks, the Entry/Exit System, the interoperable database, and the more innovative systems turning EU's borders into digital spaces, focus rather on its strategy of becoming a fortress with strong borders unattainable to those less-privileged and reaching digital sovereignty than exercising its integrated border management and internationally protecting those in need.

The shared authority over migration where Member States retain the primary role has proven ineffective, especially in situations where people's lives are at stake and fundamental human rights and shared EU values are not being respected. Although the EU has the power to intervene when it is needed - for example in instances of pushbacks violating human rights and European principles -, it rarely does so. The situation is ever-so uncertain; in the upcoming weeks, the states of emergency in Lithuania and Poland will be taken down, which may create new power dynamics from that point on. Future research should explore the directions that the EU should take in terms of managing migration at its borders. In addition, there should be a space for establishing new power dynamics between the EU and Member States within the shared policy areas of external border management and migration, as the ongoing crisis has revealed that Lithuania, Latvia, and Poland are not staying within their competence and that their actions - as well as inactions - lead to human rights violations and suffering.

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Undermining European Governance: The Case of Post-Brexit UK's Golden Straitjacket

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✹

Abstract

The United Kingdom's decision to leave the European Union represents one of the most highly debated changes the EU has undergone. Given the great extent of the UK's former level of influence on European governance, this paper investigates post-Brexit's Golden Straitjacket negative repercussions on European democratic governance. Following the general trend of democratic backsliding, the ensuing arguments are put forward to demonstrate Brexit's detrimental effect on European governance: i) the UK's Golden Straitjacket has resulted in the rise of Eurosceptic discourse within the increasingly popular European populist parties, thus impinging on European democracy, and ii) the post-Brexit European power imbalance could lead to Franco-German dominance, which would hamper democracy. Additionally, this paper argues that post-Brexit UK's Golden Straitjacket has deepened political polarisation, therefore limiting European governance.

Keywords: Brexit, Golden Straitjacket, EU governance, democratic backsliding

Introduction

Following the 2016 referendum in which the citizens of the United Kingdom (UK) voted to leave the European Union (EU), the UK officially withdrew from the EU on the January 31, 2020.[1] As the UK is the largest EU financial exporter and London is regarded as Europe's economic centre, the UK's withdrawal has caused fundamental shifts in the operations, practices and purposes of EU democratic policies.[2] Given the UK's past influence on the EU due to its Great Power status, post-Brexit UK's inability to directly influence EU politics has engulfed the bloc in uncertainty.[3] Unsurprisingly, academic consensus has yet to be reached regarding Brexit's long-term repercussions for EU democracy.[4] While some regard Brexit as the first step towards the end of EU economic integration - what is regarded as the 'Bretton Woods compromise'[5] –, others view post-Brexit UK as proving that policymaking can be shifted by public referendums, thus enhancing people's trust in both national and EU democratic governance.[6] Therefore, given the fact that the implications of Brexit have become a point of contention between academics and politicians alike, this paper seeks to summarise the existent debate by applying Rodrik's understanding of the inherent tensions between hyper-globalisation, democratic politics, and the nation state.[7] As such, current events are presented in light of Rodrik's theoretical understanding of the inherent tensions between democracy, hyper-globalisation, and national self-determination.

Investigating the latter two elements in relation to democracy is particularly important, since according to the 2020 Freedom House report, global democracy has been declining over the past fourteen years.[8] Since post-Brexit UK is still considered an ideational leader, Brexit's repercussions for the existing trend of declining democracy need to be analysed. In other words, given the historical influence that the UK has had over EU political thinking, the impact that Brexit can have on EU democracy needs to be scrutinised. Therefore, this empirical paper investigates whether Brexit has encouraged the decline of democracy on an EU level, by asking the following research question: How has post-Brexit UK's inclination towards a Golden Straitjacket (i.e., market populism) influenced EU-level democratic governance?

To investigate this paper's research question, the concept of "Golden Straitjacket" needs to be first briefly defined. In short, the Golden Straitjacket is a potential policy orientation wherein a state limits their democratic political options in order to achieve deeper global economic integration whilst maintaining national self-determination. This paper employs Rodrik's[9] theoretical underpinning along with von Bogdandy's[10] and Stein's[11] definitions of democracy, national self-determination, and hyper-globalisation to analyse post-Brexit UK's tendency towards a Golden Straitjacket. Next, this paper argues that post-Brexit UK has had a negative influence on EU democracy by promoting both political polarisation and the historically influential Franco-German dominance. At last, the strength of the arguments supporting post-Brexit UK's possible negative influence on EU governance

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[1] van Kerckhoven, "Post-Brexit Leadership," 59.
[2] Price, "The Impact of Brexit on EU Development Policy," 1; van Kerckhoven, "Post-Brexit Leadership," 59.
[3] van Kerckhoven, "Post-Brexit Leadership," 60.
[4] Gastinger, "Brexit! Grexit? Frexit?," 1.
[5] Rodrik, *The Globalization Paradox*, 214.
[6] Ainsley, "People and Power," 475; Rosamond, "Brexit and the Problem of European Disintegration," 868.
[7] Rodrik, *The Globalization Paradox*, 50.
[8] Repucci, "The Freedom House Survey for 2019," 2.
[9] Rodrik, *The Globalization Paradox,* 68.
[10] von Bogdandy, "Globalization and Europe," 887-88.
[11] Stein, "The Great Trilemma," 298.

is tested. To this end, statistics proving the recent rise of societal trust in the EU's political institutions are presented. Nevertheless, the relevance of the latter facts is rebutted as constituting another instance of political polarisation between Europhiles and Eurosceptics. In its conclusion, this paper reasserts the UK's tendency towards market populism.

Theoretical Underpinning

Investigating the possible causes of EU democratic backsliding is crucial for halting this trend.[12] One less discussed potential cause is the increase of hyper-globalisation and national self-determination at the expense of democracy. Increasing economic integration and preserving national juridical sovereignty limits citizens' available political choices, leaving them to choose between what has been deemed as "Coke and Pepsi."[13] Since economic integration (i.e., hyperglobalisation) limits the economic policies available for a country, and given the importance of maintaining juridical independence, political parties (both the ruling party and its opposition) need to renounce their ideological claims in favour of more neutral and similar policies which allow for hyperglobalisation to continue. This demonstrates how democracy must be sacrificed in order to simultaneously maintain globalisation and national sovereignty. The core argument is that these three policies cannot all co-exist together. This interrelation is best explained by Rodrik's political trilemma: hyper-globalisation, democracy, and national self-determination limit each other.[14] More precisely, Rodrik claims that sustaining any two of the trilemma's elements creates pressure to restrain the third one.[15] Before explaining the trilemma further, this paper defines each of the three concepts.

First, this paper's starting point is perceiving national democracy as a form of governance that reflects the will of the majority by attaching equal weight to the preferences of all citizens.[16] Democracy presents the median voters' preferences and resembles Athenian democracy, with liberty and equality as core values.[17] However, given the size of most modern nation-states, individual rights and preferences are so diverse that they can be easily undermined by the 'will of the majority.'[18] Therefore, Madison's definition of representative democracy is favoured over its Greek counterpart, to ensure that all preferences are respected, thus avoiding the 'tyranny of majority.'[19]

Then, this paper embraces the concept of Westphalian sovereignty and thus conceptualises the nation state as having supreme power within its borders and reserving the right to be free from foreign intervention.[20] Based on this definition, national sovereignty is understood through legislative sovereignty. Therefore, nation-states' sovereignty presupposes that legislative outcomes (in areas distinct from economic policies) stem from internal deliberation and assessment.[21]

Lastly, Rodrik presents hyper-globalisation as deep economic integration on a global scale which ultimately results in the shrinking of national politics in favour of internationally

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[12] Repucci, "The Freedom House Survey for 2019," 2.
[13] Rodrik, *The Globalization Paradox*, 189.
[14] Rodrik, *The Globalization Paradox*, 200.
[15] Stein, "The Great Trilemma," 316.
[16] Stein, "The Great Trilemma," 308.
[17] Ebenstein and Ebenstein, *Great Political Thinkers*, 110; Stein, "The Great Trilemma," 308-9.
[18] Madison, "Federalist No. 10," 3.
[19] Madison, "Federalist No. 10," 4.
[20] von Bogdandy, "Globalization and Europe," 887.
[21] Winzen, "From Capacity to Sovereignty," 101.

imposed regulations.[22] In this sense, hyper-globalisation is the fusion of once separate national economic realms by insulating trade policy from national politics.[23] Applying this to the EU, this paper defines hyper-globalisation in terms of EU-level trade regulations, economic policies (e.g. the Economic and Monetary Union of the EU) and the laws passed by the European Parliament.

Rodrik claims that the three above-mentioned elements cannot coexist. On the one hand, democracy and national self-determination impede hyper-globalisation, as they prioritise citizens' preferred policies over internationally imposed ones. In other words, if the citizens of the state opposed one specific policy, yet that policy was favoured by the international community and represents the condition for continuing trade agreements with the country, the government has to choose from the three ensuing options: i) following democratic demands and prioritising national sovereignty, thus infringing on hyper-globalisation, ii) favouring hyper-globalisation and democratic policies and renouncing national sovereignty, in favour of internationally approved legislation, and iii) minimising hyper-globalisation (and thus being excluded from the international economic market) and enhancing national self-determination and democratic policies.

Therefore, only two elements of Rodrik's political trilemma can exist simultaneously, forming the following compromises: The Golden Straitjacket (national self-determination and hyper-globalisation), Global Governance (hyper-globalisation and democratic policies) and the Bretton Woods Compromise (national self-determination and democratic policies[24]). Given the highly interconnected nature of today's international affairs and taking into account the fact that international treaties have already been signed by the UK, this paper only engages with the first two options.

A Closer Scrutiny: The UK's Choices

Post-Brexit Britain and the Golden Straitjacket

In accordance with the 'Leave' campaign slogan (i.e., 'Take back control'), the main idea underpinning Brexit was to regain national self-determination, thus making the UK an 'independent country, in full control of its laws, its borders and money.'[25] Based on claims that the EU is controlling up to 79 percent of the UK's legislation, the Leave campaign has confirmed the importance of national self-determination. As the nature of Brexit thus suggests an inclination towards national self-determination, Rodrik's[26] political trilemma implies that the UK's available options for reaching a compromise are either renouncing democracy or hyper-globalisation (see Figure 1). Having established the UK's preference towards national self-determination (through the Brexit campaign slogans), one of the following two options would be available according to Rodrik's trilemma: favouring democracy and minimising hyper-globalisation or vice versa.

To understand the UK's preferred choice, the outcome of the 2020 EU-UK Trade and Cooperation Agreement needs to be analysed, to determine whether the UK has opted for a Golden Straitjacket - by renouncing democracy - or for a Bretton Woods Compromise - by renouncing hyper-globalisation. The importance of this agreement is twofold, as it represents

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[22] Rodrik, *The Globalization Paradox*, 214.
[23] Stein, "The Great Trilemma," 317; von Bogdandy, "Globalization and Europe," 888.
[24] Rodrik, *The Globalization Paradox*, 201.
[25] Gamble, "Taking Back Control," 1218-19.
[26] Rodrik, *The Globalization Paradox*, 62.

not only one of the first agreements to be reached, but it also plays a high significance both for the EU and the UK's economies. As the EU-UK Trade and Cooperation Agreement has set preferential trade agreements and ensured security coordination among the UK and the EU, it can be argued that post-Brexit UK employs both national self-determination and hyper-globalisation, thus opting for a Golden Straitjacket. Additionally, Rodrik has asserted that the UK's interest in the EU is predominantly economic, thus highlighting once again the UK's preference towards EU economic integration (i.e., hyper-globalisation), but not democratic participation in the EU, and corroborating its choice for a Golden Straitjacket.[27] Further proving the UK's main economic focus, the "Leave" campaign has been predominantly concerned with the economic impact of EU membership, with claims that the latter has minimised British economic growth.[28]
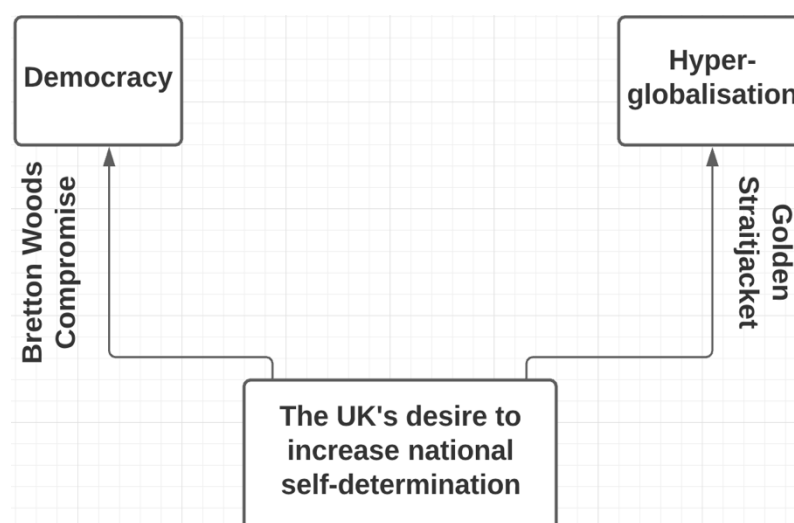

Figure 1. Applying Rodrik's Political Trilemma[29]: The UK's Two Options

While one might argue that the referendum to exit the EU was an act of democratic governance, the high rates of polarisation within the British public during the 2016 referendum suggests otherwise. On the one hand, as the difference between respondents who chose 'Leave' and respondents who chose 'Stay' constitutes less than 2 percent of the votes cast and since the two answer options are polar opposites, the outcome of the voting process has highlighted societal polarisation, which diminishes democracy. As polarisation has been recognized as one of the main threats to democracy, the UK's divisive referendum cannot be viewed as an emphasis on national democracy.[30] On the other hand, as the discourse employed in the 'Leave' campaign has been often deemed as populist and since populism is regarded as a threat to democracy, the UK's choice to leave the EU is once again undermining national democracy.[31]

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[27] Rodrik, *The Globalization Paradox,* 216.
[28] Mathieu, "Brexit," 43.
[29] Rodrik, *The Globalization Paradox*, 201.
[30] Pausch, "The Future of Polarisation," 2-3.
[31] Crewe, "Authoritarian Populism," 15-17.

EU and Global Governance

According to Rodrik, the EU represents a flourishing example of regional governance as it successfully combines hyper-globalisation and democratic governance.[32] Since EU-level rules and regulations have begun to undermine some national policies, it can be argued that EU countries have renounced national self-determination in favour of deep economic integration. For instance, starting from July 2020, all national rules and regulations regarding drone use within the EU were replaced by EU-level laws, thus creating a harmonised EU drone market.[33] Additionally, the European Parliament can be regarded as a means of achieving EU-level democratic governance, as EU parliamentarians are democratically elected and represent their countries' interests.[34] Therefore, the EU resembles Madison's representative democracy which encourages the rule of elected officials, representing the particular needs of their voters.[35] The resulting binding EU-level treaties and policies constitute the application of EU-level democratic governance, thus proving EU's inclination towards regional governance.

Brexit and the Destabilisation of EU Democracy

The Increase of Euroscepticism within Populist Discourse

Firstly, Brexit has correlated both with the increase of EU populist parties' popularity and with the high prevalence of Euroscepticism within populist discourse.[36] In line with the UK's endeavour to enhance national self-determination, a rising number of EU political institutions have highlighted the importance of one's national identity, while minimising or even renouncing the value placed on their shared identity as citizens of EU member-states.[37]

As some populist parties have regarded Brexit as a success, its example has been used as justification for pushing populist discourses even further.[38] Presenting the case studies of Germany, France, Italy, the Netherlands and Portugal, Pirro et al. conclude that Eurosceptic discourses in the above-mentioned countries increased following Brexit, thus proving the interrelation between the two. In the case of Germany, Alternative for Germany (AfD, a German right-wing party) has become the second largest opposition party in the country's national parliament, arguing for 'the complete dissolution of the EU into a confederation of sovereign and independent states.'[39] The party's radical proposal is reminiscent of Margaret Thatcher's 1988 Bruges Speech, during which she stated that the ideal future for the EU would be a 'willing and active cooperation between independent sovereign states.'[40] In particular, the AfD's manifesto for transforming the EU into a confederation paves the path for Germany's possible choice of a Golden Straitjacket, where national sovereignty and economic integration (i.e., hyper-globalisation) would prevail. As this paper has demonstrated that the Golden Straitjacket is post-Brexit UK's preferred strategy, the UK's ideational influence on German discourse is emphasised. Since Germany is one of the EU's founding countries, the

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[32] Rodrik, *The Globalization Paradox*, 67.
[33] Agapiou, "Drones in Construction," 9-10.
[34] Kaid, *The EU Expansion*, 33.
[35] Madison, "Federalist No. 10," 3.
[36] Taggart and Szczerbiak, "Putting Brexit into Perspective," 1196.
[37] Taggart and Szczerbiak, "Putting Brexit into Perspective," 1196-97.
[38] Pirro, Taggart, and van Kessel, "The Populist Politics," 318.
[39] Arzheimer and Berning, "How the Alternative for Germany," 2; Kröhnert, "Contagious Euroscepticism," 31.
[40] Wallace, "Rescue or Retreat?," 52.

increase of Euroscepticism within German populist discourse poses a high threat to EU-level governance.[41] For this reason, it can be argued that post-Brexit UK's preference for a Golden Straitjacket undermines EU governance.

Post-Brexit Franco-German Bilateralism

Secondly, post-Brexit UK's inclination towards a Golden Straitjacket would result in a dichotomous EU dominated by Franco-German politics. According to Krotz and Schlid, Brexit's most likely outcome entails the re-emergence of the historically dominant Franco-German relation.[42] In essence, as France, Germany, and pre-Brexit UK were the three most influential EU Member States, post-Brexit UK's inability to directly influence EU policies would increase the prominence of Franco-German decision-making.[43] As pre-Brexit France and Germany were considered the 'inner circle of EU coalition-building,' Brexit further enhances their central position within EU governance.[44] As such, having only two 'network nodes' would hamper the democratic process (as the UK's role as a mediator is no longer fulfilled) of reaching EU-level consensus regarding complex issues.[45] For instance, the issue of EU foreign and security affairs has created a dichotomous approach to EU governance. On the one hand, French-supported policies entail a readiness to employ military means in order to pursue the EU's interests and values internationally.[46] On the other hand, the German approach proves to be steered by cautiousness and avoids military involvement.[47] Without the UK as a decisive power, EU governance is pressured into choosing one of the two sides, thus delaying the EU democratic process.[48] Therefore, it can be argued that post-Brexit UK's preference for a Golden Straitjacket is further limiting EU governance.

Examining a Counterargument: Increasing Trust in the EU or Political Polarisation?

Nevertheless, the European Commission's (EC) 2019 survey within all EU Member States has found that citizens' overall trust in the EU has reached its highest value since 2014, as trust levels within all twenty Member States have increased significantly.[49] Similarly, optimism about the EU's future has soared, along with societal preference for having the Euro as a single common currency.[50] Accordingly, it could be argued that rather than decreasing EU democracy, post-Brexit UK has had a positive impact on EU governance by enhancing citizens' trust in the EU's democratic institutions. Nevertheless, this apparent rise in EU citizens' trust in the EU is contradicted by the growing popularity of Euroscepticism within the increasingly influential populist parties (e.g., the aforementioned AfD). Due to these two conflicting trends and in line with the study of Wojcieszak and colleagues, political polarisation within the EU has attained dangerously high levels.[51] In other words, Brexit has

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[41] Caiani and Kröll, "Nationalism and Populism," 339-40.
[42] Krotz and Schlid, "Back to the Future?," 1176.
[43] Krotz and Schlid, "Back to the Future?," 1177.
[44] Krotz and Schlid, "Back to the Future?," 1178-79.
[45] Krotz and Schlid, "Back to the Future?," 1184.
[46] Krotz and Schlid, "Back to the Future?," 1184.
[47] Krotz and Schlid, "Back to the Future?," 1184-85.
[48] Krotz and Schlid, "Back to the Future?," 1185.
[49] European Commission, "Spring 2019 Standard Eurobarometer."
[50] European Commission, "Spring 2019 Standard Eurobarometer."
[51] Wojcieszak, Azrout, and de Vreese, "Waving the Red Cloth," 100-1.

intensified the divide between Europhiles and Eurosceptics, thus impeding the attainment of political consensus.[52] For instance, even if 87 percent of German respondents primarily identify themselves as EU citizens (at the detriment of their German identity), the previously described increase in German Eurosceptic populist discourse counters this trend, thus creating a polarised German society.[53] In short, even if post-Brexit UK has increased societal trust in the EU, the subsequent political polarisation is detrimental to democracy and thus limits EU governance.[54]

Conclusion

This paper investigated the repercussions of post-Brexit UK's preference for a Golden Straitjacket on EU governance. In highlighting the detrimental effects of employing a Golden Straitjacket, this paper centred around two arguments, ultimately underpinned by Rodrik's[55] definition of a political trilemma: i) post-Brexit UK's choice has inspired and increased Eurosceptic discourse within EU populist discourse, thus limiting EU governance, and ii) the UK's current inability to directly influence EU politics has resulted in a power imbalance which may lead to Franco-German dominance, hence delaying EU democratic decision-making. Additionally, despite the apparent increase in EU societal trust this paper argued that the divide between Europhiles and Eurosceptics is deepening, thus further decreasing EU governance. Therefore, it can be concluded that post-Brexit UK's inclination towards a Golden Straitjacket has negatively influenced EU-level democratic governance.

Nevertheless, the power relationships presented in this paper account for the reality of pre-pandemic Europe. As such, this paper's main limitation is that post-Brexit's influence on EU governance may have been moderated by the implications of the COVID-19 pandemic. Simply put, given the exogenous shock that the COVID-19 pandemic represents, its repercussions have affected all aspects of life, ranging from the economy to the medical system or international power relations. As far as the latter is concerned, access to vaccines and the disponibility and willingness to aid other Member States can shift alliances within the EU, thus influencing the outcomes of EU governance.

Accordingly, future research accounting for the COVID-19-induced changes needs to be conducted to offer a thorough depiction of post-Brexit UK's unmediated influence on EU governance. Additionally, the interpretation of the data from the EC's 2019 survey might be highly subjective, as it is contingent on respondents' personal appraisals. In other words, even if two respondents choose the same answer (such as: 'I trust the EU'), their levels of trust in the EU might differ significantly, as there is no objective means of substantively comparing their answers Therefore, further research is needed to establish a common framework of determining people's trust in the EU.

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[52] Wojcieszak, Azrout, and de Vreese, "Waving the Red Cloth," 100.
[53] European Commission, "Spring 2019 Standard Eurobarometer;" Kröhnert, "Contagious Euroscepticism," 31.
[54] Arbatli and Rosenberg, "United We Stand, Divided We Rule," 285.
[55] Rodrik, *The Globalization Paradox*, 74.

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A Founding Father of Europe: Konrad Adenauer's Role in the Construction of the European Union

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Abstract

The European Union as we know it would not exist without the postwar inspiration of its founding fathers, one of whom is Konrad Adenauer, the first Chancellor of West Germany. This paper studies the latter's contribution to the creation of the European Coal and Steel Community and to the first stage of the postwar European integration project. In a first part, it explores the historical atmosphere when the Great Powers made Germany the scapegoat for their social, economic, and political ills after the Second World War. Furthermore, it examines the establishment of the European Coal and Steel Community using the Schuman Declaration as a blueprint and the integration theories functionalism and neofunctionalism as explanatory models for the development of rapid yet steady economic integration during this period. The second part of this essay focuses on Adenauer's impact on these events by focusing on his personal and political formation and on German domestic and foreign policies, as well as on Adenauer's influence on modern Germany's pro-European identity. Intergovernmentalism, neofunctionalism's counterpart, is used as a tool to measure his and his fellow heads of governments' participation and significance in the strengthening of the European integration project.

Keywords: Konrad Adenauer, European Union, European Coal and Steel Community, European integration, Schuman Declaration

Introduction

After the Second World War, Europe was politically, economically, and socially devastated. To tackle this critical situation and to ensure lasting peace in the continent, European scholars, politicians, and writers came up with different proposals. Arguably, the most successful one was the Schuman Declaration, which constitutes the blueprint of this paper.[1] The proposal suggested the establishment of the European Coal and Steel Community (ECSC) and contained a practical plan on how to introduce efficient economic cooperation between France and Germany, and thereby, make a Third World War improbable.[2] In the beginning of the postwar period, European states identified Germany as the scapegoat for all their troubles. According to Wim van Meurs and colleagues, the objective after the Second World War was to keep the former German Reich economically stable so as to profit from its industry, but military neutral, in order to prevent it from becoming an dominant player in Western European affairs.[3] Nonetheless, as Thomas Risse and Daniela Engelmann-Martin concluded, Germany managed to undergo an extreme transformation and build itself into a trustworthy partner. It became one of the strongest advocates for European integration in the postwar period and rebuilt its reputation on the continent. In addition, it strengthened its foreign relations and revived its economy.[4] The most important actor in that transition was the first West German Chancellor Konrad Adenauer, a pragmatic democrat, a faithful supporter, and a founding father of the European integration process. The European Commission (EC) still refers to his persona as an example of dedication to the goal of a harmonious and united Europe.[5] Adenauer's biography *Konrad Adenauer and the European Integration*[6] is the anchor of this paper which aims to study the extent to which Adenauer's foreign and domestic policies influenced the initial stage of the European integration process.

This paper seeks to assess Adenauer's impact as an individual and as a politician on the initial stage of the construction of the EU. To do so, this paper also analyzes the extent to which one individual can influence this process. Therefore, it investigates whether the European Coal and Steel Community was a neofunctionalist or an intergovernmental project. The paper is divided into two main sections. Firstly, it gives an overview of the first stage of the European integration project, illustrating Monnet's and Schuman's plans for the European Community and the Schuman Declaration's successes and limitations for the European economic integration project. The second section shifts the focus to Germany's role in the process and Adenauer's vision for postwar Germany and Europe, his religious beliefs, his practical political ideology, and his ambition to create a new pro-European German identity. Moreover, the paper introduces relevant European integration theories to analyze whether the creation of the ECSC constituted a functionalist demand for closer European economic and political cooperation after the Second World War or an intergovernmental bargaining and a product of Adenauer's and other European leaders' rational decision-making. The paper therefore uses functionalism and intergovernmentalism as frameworks for analysis of the period.

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[1] European Union, "Schuman Declaration."
[2] European Union, "Schuman Declaration."
[3] Wim van Meurs et al., *The Unfinished History*, 28.
[4] Risse and Engelmann-Martin, "Identity Politics," 297.
[5] European Union, "Konrad Adenauer," 1.
[6] Konrad Adenauer Foundation Archive for Christian Democratic Policy, *Konrad Adenauer and the European Integration*.

Foundation of the European Integration Project

Postwar Historical Ambiance

Studying the extent to which Adenauer's vision of postwar Europe, and respectively of Germany, was an important factor in the initial stage of the European integration process requires situating the question in its historical context. After the Second World War, Germany was placed under foreign occupation, and by 1948, was divided into socialist Eastern and capitalist Western regions. As Wim van Meurs and colleagues argue, two factors which initiated a change of direction from hostility to cooperation among Western states were the Cold War and the German Question - the fear of Soviet communism expanding and of another German invasion. Because of these perceived threats, Western Europe demanded maintaining Germany's status as an industrial power that could benefit their region without facilitating its ability to produce tanks, airplanes and explosives, which it could use for initiating another war.[7] In addition, John McCormick outlined three urgent issues that European states had to address: ensuring economic reconstruction despite drained resources, appeasing the remaining hostilities between winners and losers - West and East -, and preventing the rise of nationalism as a potential trigger of future conflicts. The answer that European states found to all these issues was cooperation and integration. McCormick went further by pointing out the first steps, namely the implementation of the Bretton Woods system – the first European attempt at monetary cooperation –, the Marshall Plan – also known as the European Recovery Programme –, and the creation of a new international body, the Organization for European Economic Co-operation (OEEC).[8]

The ECSC and its Founding Fathers

A successful plan for economic and political cooperation among the states in those turbulent years was the proposal for the ECSC, also referred to as the Schuman Plan. The engineer behind it was Jean Monnet, head of France's postwar planning commission. His innovative approach to postwar policy making, "federalism by installments" – further known as the "Monnet method" –, advocated for federalism by stages, from economic to political integration.[9] McCormick argued that his ideas, which led to the proposal of the ECSC, were revolutionary, and that although the plan bears Shuman's name, it was Monnet's "brainchild."[10] Michael Sutton confirmed the statement, arguing that "it was the result of very unwelcome pressure applied to the government in Paris from Washington and, in response, imaginative thinking on the part of Jean Monnet."[11] Bernhard Vogel and Günter Buchstab remarked that the other two political figures who were involved from the beginning were France's foreign minister Robert Schuman and Adenauer. After Monnet received approval for action from their part, it was Schuman who, on May 9, 1950, presented the Schuman Declaration.[12]

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[7] Wim van Meurs et al., *The Unfinished History*, 28.
[8] McCormick, *European Union Politics*, 63.
[9] Wim van Meurs et al., *The Unfinished History*, 33.
[10] McCormick, *European Union Politics*, 67.
[11] Sutton, "Political Realism," 43.
[12] Konrad Adenauer Foundation Archive for Christian Democratic Policy, *Konrad Adenauer and the European Integration,* 10.

The speech introduces a project aimed at establishing peace and solidarity among European Union (EU) Member States (originally France, West Germany, Italy, the Netherlands, Belgium, and Luxembourg in the Treaty), and ensures reconciliation between France and West Germany through economic interdependence. It proposes that coal and steel production by these two countries "be placed under a common High Authority" - a supranational institution governed by experts. In the Declaration, this prospect of economic development was regarded as the "first step in the federation of Europe."[13] In addition, it was believed that it would establish control over the production of weapons, thereby making war between the two actors "not merely unthinkable, but materially impossible."[14]

The Treaty of Paris, which founded the ECSC, develops the organization's aims by creating a "common market for coal and steel," promoting "economic expansion, employment and better living standards."[15] Despite the noble facade of this establishment, Eline Poelmans argues that the idea behind it was to ensure that West Germany's coal and steel industries would not rise to their prewar capacity and to prevent it from falling under USSR control. Moreover, she suggests that Monnet's intentions were not altruistic but only practical in securing European interests, and France's individual benefit. She states that the plan to supply the French steel industry from the coal-rich Rurh region, part of the British occupation zone, would make the French industry grow, furthermore, because of Germany's industrial disarmament initiative.[16]

Functionalism and Neofunctionalism

Wim van Meurs and colleagues affirm that functionalism was a strategy to "effect unity in a stealthy manner." They argue that Monnet was the first to implement it in order to create a united Europe through cooperation in an essential sector like "heavy industry, agriculture or the military apparatus."[17] After the fast-paced development of the European integration process that emerged from the creation of the ECSC, European integration theorists Ernest Haas adds the concept of neofunctionalism as an explanatory tool. He builds his theory upon the functionalist method by complementing it with an effect of "spillover." The spillover effect posits that cooperation in a relatively unpolitical policy field would lead to more cooperation in other fields and would ultimately foster political integration.[18] McCormick describes neofunctionalism as "the theory that states are not the only important actors in the efforts to integrate, and that supranational institutions, interest groups and political parties also play a key role."[19] Therefore, for the purpose of this research, it could be concluded that according to this theory, Adenauer's actions regarding the European integration were limited due to other factors such as the role of the ECSC's High Authority and the clashing political party systems in Europe which put external pressures on him and on the process of constructing the early economic cooperation.

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[13] European Union, "Schuman Declaration."
[14] European Union, "Schuman Declaration."
[15] European Union, "Treaty," 6.
[16] Poelmans, "Changes," 7.
[17] Wim van Meurs et al., *The Unfinished History*, 33.
[18] Knor, review of *The Uniting of Europe*, 181.
[19] McCormick, *European Union Politics*, 19.

Germany's Journey is Adenauer's Journey

Adenauer's Place in German Politics

Adenauer is one of the founding fathers of European integration. His vision for modern Germany in the war and postwar period developed most Germany into 'a free and democratic society.'[20] He emerged a loser, but at the same time, a winner from the Second World War. The EC traced back his life's biography to outline his significant impact on the European integration project.[21] Adenauer became Mayor of Cologne at forty-one years old in 1917, determined to install "diligence, order, Christian morals and values into his fellow citizens." However, in the late 1920s, when the Nazi Party rose to power, he was dismissed, had his bank account frozen, and was arrested and incarcerated. After the war, he dedicated himself to the establishment of the Christian Democratic Union (CDU) "which he hoped would unify Protestant and Catholic Germans in one party." At seventy-three years old, past retirement age for most politicians, he became the first Chancellor of West Germany.[22] In fact, Adenauer was always convinced of the peace through unity thesis. His personal troubles during the war only increased his convictions. To support this argument, Bernhard Vogel and Günter Buchstab recall that on May 11, 1924, at the opening of the Cologne Fair, Adenauer argued that "an atmosphere of peace in Europe should be attained again and it seems that political economy must pave the way for it," effectively anticipating the 1950 Schuman Plan. Moreover, they recall his deep conviction that, in order for the United States of Europe to be created, there needed to be a change in European citizens' political education. The idea of the nation as the most important political notion in the decision-making process would need to be replaced with a model of larger-scale common benefit.[23]

As a Chancellor in New Germany: Foreign Policy, France, Europe

As the EC points out, Adenauer's journey significantly marked the direction of Germany's fate.[24] He suffered big social, economic, and political troubles during the two world wars and the years of adversary between his country and France. The EC argues that due to these experiences, he adopted the ideology of political realism and when Adenauer became Chancellor of West Germany, he initiated pro-Western foreign policy.[25] Thomass Risse and Daniela Engelmann-Martin state that Germany, after the Second World War, was ashamed of its Nazi past and nationalism radicalness, and therefore needed a new sense of identity to draw pride from.[26] A remedy for that was Adenauer's vision for postwar Germany. The authors establish that Adenauer condemned German neutrality during the emerging Cold War between the American and the Soviet blocs and that for him, security under the protection of the Western bloc was more crucial than reunification with East Germany. They outline that despite that, by 1955, the Federal Republic had ultimately recovered its national sovereignty and had regained its prestige in Western eyes. In addition, they explain Adenauer's actions

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[20] European Union, "Konrad Adenauer," 2.
[21] European Union, "Konrad Adenauer," 2.
[22] European Union, "Konrad Adenauer," 2.
[23] Konrad Adenauer Foundation Archive for Christian Democratic Policy, *Konrad Adenauer and the European Integration*, 7.
[24] European Union, "Konrad Adenauer," 1.
[25] European Union, "Konrad Adenauer," 2.
[26] Risse and Engelmann-Martin, "Identity Politics," 301.

as an attempt for a new German identity by condemning militarism, authoritarianism, and nationalism and embracing everything which Europe represented: peace, democracy, human rights, enlightenment, modernity, and Christianity.[27] Nonetheless, Michael Sutton concludes that "ecclesiastical influence played little or no part in the decisions taken in the immediate post-war decades," and despite the fact that the main constructors of the European communities were all devoted Christians - namely, Adenauer, Schuman, and de Gaulle -, they were driven by their practicality rather than by Christian upbringing and values.[28]

Ever since this modification of identity, Risse and Engelmann-Martin argue that "to be a "good German" means nowadays to be a "good European" and to wholeheartedly support European integration."[29] Martin H. Geyer further elaborates by suggesting that by the 1950s, Germans were aware that West Germany would never be the old German Reich again, and that they would therefore have to reconsider the idea of the German nation.[30] Moreover, Vogel and Buchstab confirm these arguments by recalling Adenauer's discourse at the German Bundestag in 1954, during which he proclaimed that European unity was a necessity for German security and freedom.[31] Risse, Engelmann-Martin, and the EC evaluate Adenauer's foreign policy as a success. They affirm that it was his merit that Germany entered "the emerging Euro-Atlantic community (NATO and the Organization for European Economic Cooperation)."[32] The EC praises his contribution to European integration by being a "'great proponent' of the ECSC and the EEC." The EU legislative body also recalls his achievement in alleviating Franco-German animosity with the signing of the Treaty of Friendship in 1963.[33] Furthermore, Eline Poelmans outlines Adenauer's successful domestic policy and confirms that since West Germany regained its political and economic independence, it became "the motor of Europe's economic revival."[34]

Intergovernmentalism

Wim van Meurs and colleagues state that in the case of intergovernmentalism, "cooperation between states was based on conferences and each kept its sovereignty."[35] Therefore, there did not exist a supranational institution which they were conferring decision-making rights to which determined the direction of integration. This theory is the counterpart of neofunctionalist theory. Hoffmann argues that state governments possessed legal sovereignty, political legitimacy, and the authority to direct the integration process.[36] Wim van Meurs and colleagues outline states' personal reasons to integrate with each other. Among those are the French ambition to modernize their colonies, the Dutch strategy to continue its trade and industry without its colonies, and the German goal to achieve economic revival, peace, and reunification.[37] According to intergovernmentalist theory, the German

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[27] Risse and Engelmann-Martin, "Identity Politics," 301.
[28] Sutton, "Political Realism," 45.
[29] Risse and Engelmann-Martin, "Identity Politics," 287.
[30] Geyer, "On the Road," 154-55.
[31] Konrad Adenauer Foundation Archive for Christian Democratic Policy, *Konrad Adenauer and the European Integration,* 12.
[32] Risse and Engelmann-Martin, "Identity Politics," 287.
[33] European Union, "Konrad Adenauer," 2.
[34] Poelmans, "Changes," 25.
[35] Wim van Meurs et al., *The Unfinished History*, 94.
[36] Morgan, review of *The European Sisyphus,* 874.
[37] Wim van Meurs et al., *The Unfinished History*, 25.

government and the other Member States' governments from the Inner Six were responsible for the development and the scope of the integration project.

Conclusion

This paper attempted to investigate the extent to which one of the EU's founding fathers, Konrad Adenauer, influenced the first stage of the European integration project which ultimately led to the creation of the EU as we know it today. It began with an overview of the historical atmosphere, and the political, economic, and social situation on the European continent and especially the former German Reich prior to the creation of the European Coal and Steel Community. It concluded that from an early stage, it became clear that lasting peace could be achieved only through European unity and not by restricting Germany's political independence and industrial potential. These realizations, together with intergovernmentalist negotiations between European national leaders, resulted in the establishment of the ECSC, which created a spill-over effect and gave a great stimulus to the European integration project. All actors in the creation of the institution had national interests behind the project and not all parties benefited equally. Even though the ECSC was Monnet's "brainchild," according to McCormick,[38] its implementation would not have been possible without the agreement of the French foreign minister Robert Schuman and the first West German Chancellor Adenauer. The motives behind Adenauer's approval of the Schuman Plan were traced back to the beginning of his political career, his vision for postwar German identity, and his decisive role at the negotiation table of the ECSC. The paper used functionalist and intergovernmental models of European integration to analyze whether states or the market needs and supranational bodies had the power to control integration's direction. Based on the examined facts, this paper indicated that Adenauer is legitimately considered one of the founding fathers of European integration, and a key figure in the creation and development of the ECSC, in view of his foreign policy supporting the West in the Cold War and regaining Western European states as partners, together with his determination to revive the German positive national identity, economy, and dominant political position. These findings could be used to highlight Germany's central role in EU politics and its pro-European sentiment.

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[38] McCormick, *European Union Politics*, 67.

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Identifying the EU: Manifold or Sui Generis?

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Abstract

The mysterious character of the European Union somehow manages to fit the criteria of multiple legal orders, but at the same time cannot seem to check all boxes of just one. EU enthusiasts and critics alike have attempted to classify the EU for decades, and their definitions have ranged from the common federative model to a political and economic organization. Indeed, the German approach considers it to be a Staatenverbund, a compound of states, and the French doctrine speaks of it as a federation of nation-states; while others argue that it is a multifunctional organization which merely extends the sphere influence of its precedents. The most common ways scholars define the EU's ambiguous nature are either an international organization or a federal super-state, none of which perfectly represent the EU's nature. As such, this paper explores these two categories and discusses the extent to which the EU fits into them respectively. It concludes that the EU does not fully resemble an international organization nor a federal superstate, but rather constitutes a 'one of a kind' legal entity, a *sui generis*.

Keywords: European Union, legal status, international organization, federation, sui generis

Introduction

The mysterious character of the EU somehow manages to fit many categorizations of legal orders, and at the same time none at all. The German approach considers it to be a *Staatenverbund*, a compound of states, the French doctrine talks about a federation of nation-states, and others argue for a multifunctional international organization which just extended the sphere influence of its precedents.[1] The most known approaches by scholars to pinpoint the EU's ambiguous nature are probably to call it an international organization or arguing for a federal super-state. After analyzing these conceptualizations, it can be assumed that the EU as an entity does not exactly match either of these labels, which is unique when comparing its powers and competences to similar governmental units.

After the European continent had seen two world wars and endured terrible destruction, European leaders decided to leave the war fronts behind and work together towards common goals of economic growth and prosperity. At the start of the European cooperative project, several economic organizations such as the European Coal and Steel Community (ECSC) and European Economic Community (EEC), known together as the European Communities, were established as a novel way of collaborating and communicating between European nations.[2] The idea of aligning interests and creating spheres to achieve common goals was crucial in post-war times, and like many of its kind, the EEC was at first established as an international organization in the pursuit of peace.[3] However, its increasing number of federal components already hinted at its potential development into a very new and unique legal entity.[4]

To this day, the European Union (EU) has not ceased to be in a constant phase of development. The very reason Jaque Delors called it "un objet politique non identifié" in 1985 was due to its habit of shape shifting between different legal orders, which some argue can potentially influence its legitimacy on the world stage[5]. Whether it can or should be categorized as one concrete legal entity or viewed as one of a kind due to its ambiguity, a *sui generis*, is the focal point of this paper. The Union generally sees itself as a 'new legal order' with certain special and unprecedented characteristics setting it apart from other entities.[6] It is important to study the EU's composition of competences in order to understand the benefits of it being either a 'known legal object' or rather a pilot project; the latter of which could help with regional integration matters elsewhere and in the future.

My analysis discusses the two most common approaches to categorize the EU, which is by comparing its similarities and differences to other legal entities. The analysis goes on to explain the complex and unique attributes which compose the EU's legal order, before considering advantages and disadvantages of finding a concrete label for the EU. This paper concludes with the thesis that contemporary EU is most likely an entirely new legal entity.

The EU as Federal State

Adding the EU to the list of federations can seem self-evident to some since its legal autonomy displays more than just one federal characteristic. Although a treaty between

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[1] Phelan, "What is Sui Generis," 378.
[2] Peročević, "European Union Legal Nature," 102.
[3] Peročević, "European Union Legal Nature," 102.
[4] Peročević, "European Union Legal Nature," 102.
[5] Phelan, "What is Sui Generis," 367.
[6] Odermatt, "Unidentified Legal Object," 217.

sovereign States connected through a non-autonomous center would rather qualify as confederation, this concept is less recognized since it disregards the EU principle of conferral (establishing that all competences are conferred voluntarily by the Member States to the EU).[7] A federation on the other hand works with this fundamental principle. It is founded on a treaty between regions or states or organizations who decide to confer certain powers to a supranational entity in order to achieve common objectives (Art. 4(1) and 5 (1),(2) TEU). The subjects of a federal legal system include not only the Member States but its citizens. This criterion sets the federation apart from the confederative model by allowing citizens to be the contractual partners of the federative constitution instead of merely issuing representatives.[8] Taking a look at the treaty provisions, the EU operates on a constitutional order using fundamental legal instruments imitating those of a sovereign state in which the legislative, executive and judicial branches of power are divided.[9] If one compares the EU bodies with national institutions, the Council of Ministers most closely resembles an upper chamber of parliament, the EP its lower counterpart, and the College of Commissioners a national executive council.[10] However, the division of powers in the Union also comprises hybrid-institutions like the European Commission (EC), which is the executive arm of the Union with competence that extends to the legislative by its right of initiative.[11] Moreover, the EC works as an independent body which has the right to hold Member States responsible for not abiding to its set out norms by bringing a case of non-compliance with EU law before the European Court of Justice. This distinctive feature of the EC does not align with the federative legal system or other legal regimes.[12] Additionally, EU Member States do not have the right of appeal to the CJEU in case national courts disregard the primacy doctrine, which adds to the list of non-indicative traits of a federal system[13].

Another factor that distinguishes the EU from a federation is the distribution of certain competences. Though it regulates the EU budget, the EU's abilities in terms of taxation are quite limited compared to those of sovereign states.[14] Moreover, the EU's internal and external defense strategy has not been developed as much as in modern day states. There is no recruited armed European defense force, and the European Agency for Law Enforcement cooperation (Europol) focuses mainly, as the name already indicates, on interstate cooperation in criminal matters. fInstead, the Union has put the Common Foreign and Security Policy in one of its centers of attention.[15] This field of policy allows the Union to operate autonomously as an international legal actor without deriving this competence from its Member States, which means that the EU as well as the Member States can independently enter into agreements with third countries on the same policy areas.[16] This, too, is a competence not associated with those of a federal state. The CFSP, enshrined in Title V TEU (Art. 24 in particular), is itself a *sui generis* within EU law because of its wide-ranging scope of competence: from the protection of human rights to strengthening international collaboration, from preserving global peace and international security to promoting democratization and the rule of law (Title V TEU). This paper gets back to examining the

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[7] Barnard and Peers, *European Union Law*, 205.
[8] Blankart, "The European Union," 100.
[9] European Union, "Your Gateway."
[10] European Commission, https://ec.europa.eu/info/index_en.
[11] European Commission, https://ec.europa.eu/info/index_en.
[12] Barnard and Peers, *European Union Law*, 201.
[13] Barnard and Peers, *European Union Law*, 201-3.
[14] Hlavac, "Less than a State," 7.
[15] Hlavac, "Less than a State," 8.
[16] Wessel, "The Dynamics," 131.

notion of autonomy shortly after discussing the possibility of classifying the Union as an international organization.

The EU as an International Organization

Many perceive the EU as an intergovernmental organization, consisting of both supranational and intergovernmental institutions that regulate mainly economic and political matters. However, unlike other organizations such as the World Health Organization (WHO) or the World Trade Organization, the Union does not entirely rely on intergovernmental collaboration between Member States.[17] The conferral of powers by its Members set out in Article 5 of the TEU gives the EU its supranational characteristics, the primacy of EU law being one of the most significant.[18]

One of these characteristics is the ability of an international organization's institutional bodies to adopt decisions which are to be implemented by its members, similar to the obligation of EU Member States to transpose European legislation into domestic law.[19] These decisions made by regular organizations, however, are mostly limited to technical policies and do not compare to the wide-ranging external competences of the EU, such as concluding international agreements and adopting new laws ranging from exclusive policy areas (such as the Common Commercial Policy) to internal market related issues (Art. 3 and 4 TEU; 216 TFEU). A common currency makes the EU a monetary Union with far reaching political and economic influences, which additionally speaks against it being merely an international organization.[20] The title of a European supranational organization was coined in the early decades of European Integration and served as a starting point for defining its nature[21]. Its use has however been steadily decreasing, partly because of its outdated hierarchical overtone, and partly because the term suranational failed to include certain intergovernmental elements (such as cooperation in the field of justice) introduced in the EU-founding Treaty of Maastricht[22].

The New Legal Order

As mentioned before, the EU itself does not identify as federation or organization, but rather as an entirely new legal order. To confirm whether the EU can be considered as such, it must first be established whether or not it owns legal personality, which is essential to determine the lawful rights and duties of legal actors as well as their standings to Courts. Since the Treaty of Lisbon came into force, Article 47 TEU establishes the EU's legal personality alongside Article 335 TFEU, thereby enabling it to engage with other international actors on equal grounds.[23] The Court of Justice of the European Union (CJEU) has famously outlined its "new legal order" in the past, for instance in paragraphs 157 and 158 Opinion 2/13 regarding the EU's accession to the European Convention of Human Rights: The Court deemed it necessary to clarify once more that "the founding treaties of the EU (…) established a new

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[17] Hlavac, "Less than a State," 10.
[18] Case 6/64, Costa v. ENEL.
[19] Barnard and Peers, *European Union Law*, 200.
[20] Hlavac, "Less than a State," 6.
[21] Barnard and Peers, *European Union Law*, 205.
[22] Barnard and Peers, *European Union Law*, 205.
[23] De Schoutheete and Andoura, "The Legal Personality," 5.

kind of legal order (...), its own constitutional framework and founding principles (...)," and "a particularly sophisticated institutional structure." But the fact that the EU possesses a legal personality alongside its self-perception of differing from other legal entities is not enough to conceptualize the EU as a new order. Rather, the EU's complex and flexible range of competences combined with its relational and systemic principles which were established over time is what points to it being a never-before-seen system within the realm of national and international legal orders.

From a constitutional viewpoint, arguably, the EU's founding documents are only formally labeled as "treaties" as they derive their character from international law,[24] whereas from a practical viewpoint they act as an autonomous constitution comprising a unique legal order through which the EU can enter into third party agreements and adopt legal provisions in the prospective field of competence.[25] In other words, the EU is based on treaties which themselves hold treaty-making power. This constitutional order is based on the premise that the EU is indeed based on a coherent, self-reliant system beyond the scope of international law.[26] This fact takes shape in many forms, for instance when the Council of the EU concludes international agreements in the framework of the CFSP (Title V TEU). This treaty-making power of the Union is another competence indicative of its international legal personality.[27]

While the fundamental principle of Autonomy of EU law is not clearly outlined in the Treaties, the Case law on this matter is clear. Two of the landmark judgements delivered by the CJEU in the 1960s generated two of the most fundamental principles which outlined the extent of competences of the EU: on the one hand, the principle of direct effect of EU legislation was established in *Van Gend en Loos* in 1963[28], and on the other, primacy of EU law over national law was set up in 1964 after the Court case of *Costa ENEL*.[29] The Primacy principle is a distinctive trait for which the EU differs from other legal entities of supranational or intergovernmental character.

What differentiates EU law from public international law is the fact that the former imposes an all-encompassing set of legal provisions based on these EU principles to be uniformly applied and transposed into the national legal systems of its Member States.[30] This means that the level of similarity between the Union and those of other legal entities, such as the ones discussed in this paper, can't be the sole reason for the *sui generis* theory. What concretely sets the EU apart from other domestic and international law categories is in fact the accumulation of unique competencies conferred by its sovereign Members, and which are based on a set of unique fundamental operating features such as the principles of Direct Effect and Autonomy of EU law comprised into one single legal order.

Risks and Merits

Perhaps the Union can be characterized by using the above-mentioned formulas such as supranational, intergovernmental or multifunctional organization, a federation, or simply a merger of many rather than something which can be clearly defined. Many legal scholars such as Charles B. Blankart and Jed Odermatt have analyzed the EU in comparative

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[24] Barnard and Peers, *European Union Law*, 192.
[25] Barents, *The Autonomy of Community Law,* 112.
[26] Odermatt, "Unidentified Legal Object," 231.
[27] De Schoutheete and Andoura, "The Legal Personality," 4.
[28] Case 26/62, Van Gend en Loos v Nederlandse Administratie der Belastingen.
[29] Case 6/64, Costa v. ENEL.
[30] Odermatt, "Unidentified Legal Object," 226.

perspective and tried to attribute its ambiguity to one or more legal entities.[31] And yet, its unique composition of intergovernmental and supranational elements combined into one legal entity often leads to concluding at a very unique legal character.[32] The added contradictory composition of legal concepts is definitive to its nature, which perhaps is the reason why the *sui generis* option is the more accurate name giving tool since it builds on a never-before-seen concept.

When it comes to categorizing the EU, the problem arises not with its internal structure and the application of EU law, but with the way it engages with the outer world. The existence of its legal personality permits this engagement, which is why the Union's judicial abilities are not questioned from a legal standpoint[33]. Being incomparable to others, however, comes with unexpected consequences as well as advantages. Obtaining a unique status means on the one hand building and evolving through trial and error, which does not necessarily imply a high level of legal stability. On the other hand, a new legal entity such as the EU is given the chance to develop new practices of intergovernmental cooperation to strengthen European and international alliance in political and economic matters. Being the only one of its kind also means standing alone in the legal universe, which can hamper self-improvement as no comparisons can be drawn to a predecessor. In turn, the Union finds itself in a constant state of adolescence whose completion is not anywhere in sight. What follows from this is that the EU is within what some have labeled as an unsatisfying, unhelpful, and unstable condition at best.[34] With legal ambiguity comes legal uncertainty, and although the EU has been legitimized as a global legal actor, some unanswered inconsistencies coupled with a lack of history in the EU system can potentially lead to dangerous loopholes. In the worst case, these loopholes can and will threaten to harm the EU's legitimacy on the world stage.

Conclusion

There is a deep intuitive desire of human beings to categorize the world in order to make sense of it. At the forefront of human development and innovation, no matter the field of practice, we created categories and assigned them to our findings in order to understand our existence. The goal of giving the EU a name instead of accepting its unprecedented nature derives from the wish for stability and safety in Europe, which dates back to post-war times at which point its purpose was created. Although the EU has some similarities with federal systems – such as a founding constitutional document, the sovereignty of Members, and the voluntarily conferred competences –, this description is not inclusive enough. Similarly, the EU does not quite qualify as an international organization; organizations such as the WHO are not as far-reaching as the Union with regards to competences in policy making and its broad political, legal, and economic presence on the world stage. When it comes to the question of the EU's legal character, perhaps considering it to be a *sui generis* is taking the "easy way out." However, it is also the only formula which can encompass every similarity and difference between the EU and other systems, while at the same time respecting its unique composition of features. An interesting question which should pave the way for further research is not *what* to categorize the EU as, but *how* to approach its unprecedented character in a way that is beneficial for all; internally for EU Member States and institutions, and externally for any international conduct involving the Union.

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[31] Phelan, "What is Sui Generis," 371.
[32] Phelan, "What is Sui Generis," 237.
[33] Wessel, "The Dynamics," 135.
[34] Odermatt, "Unidentified Legal Object," 226.

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The Rule of Law in Poland: A Comparative Analysis of the CJEU and ECtHR Judgements

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✳

Abstract

The Rule of Law crisis started in 2015 when the Law and Justice party won the parliamentary elections and became the ruling power in Poland. Since then, the party has brought about changes aimed at restructuring the Polish judicial system. For instance, a new disciplinary regime for judges was enforced by the Disciplinary Chamber of the Supreme Court. These 'reforms' have been criticised for eroding judicial independence and breaching EU law and values. This led to the delivery of several judgements issued by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). This paper considers the two recent judgements passed by the ECtHR and the CJEU, Reczkowicz v. Poland and C-791/19, Commission v. Poland, regarding the disciplinary regime for judges in Poland. This paper examines how institutional factors assigned to each court impact their jurisprudence on the disciplinary regime for judges in Poland. The two cases are summarised, and their underlying legal provisions - the Art. 6(1) ECHR, Art. 19(1) TEU and 267 TFEU - explained. Subsequently, the two judgements are compared, discussing the differences in the courts' rulings through the viewpoint of the two institutional factors, namely the objectives of the Courts and the scope of human rights protection. The main findings of this paper are the following: first, the ECtHR's objective is to remedy the violation of the applicant's right to a fair trial, while the CJEU aims to ensure the unity within the EU's legal order. Second, the variation in the scope of the human rights protection explains why the CJEU was unable to rely on the provision guaranteeing the right to fair trial, while the ECtHR could. By analysing the discrepancy between the two rulings, this paper contributes to the academic discussion on the role of European courts in enforcing the principle of judicial independence.

Keywords: Poland, rule of Law, European Court of Human Rights, Court of Justice of the European Union, judicial independence

Introduction

There is a general consensus that the principle of judicial independence is the cornerstone of the rule of law within the European Union (EU).[1] Maintenance of independent and impartial courts - which are the guardians of this principle - is therefore seen as crucial.[2] Thus, the introduction of a politicised disciplinary regime in countries such as Poland has been recognised as a threat to the European democratic order.[3] The Law and Justice Party (PiS), after it won parliamentary elections in 2015, introduced a series of 'reforms' within the Polish judicial system and, among others, amended the disciplinary regime for judges and established a new Disciplinary Chamber, which became responsible for enforcing punishments for judges.[4] It is thus argued that the EU is not merely an economic community, but a community of values, where democracy, rule of law, and the respect for human rights - as defined in the Article 2 TEU - are the 'EU's DNA.'[5] Nevertheless, the EU has been criticised for its passive attitude and 'doing its best to do as little as possible' by merely expressing concerns and engaging in meaningless dialogue with countries disrespecting judicial independence.[6] The Court of Justice of the European Union (CJEU), however, was one institution which escaped criticism and was recognised for providing a gradual interpretation of the meaning of the rule of law, judicial independence, or mutual trust.[7] Furthermore, the role of the European Court of Human Rights (ECtHR), in defining and protecting the principle of judicial independence, has also been largely recognised and approved.[8]

July 2021 brought two highly important judgments on the disciplinary regime within the Polish judicial system issued by European courts. The ECtHR ruled in the case Reczkowicz v. Poland, and the CJEU in the case C-791/19, Commission v. Poland. Hence, this paper attempts to answer the following question: How can institutional factors explain the differences in the jurisdiction of the ECtHR and CJEU on the disciplinary regime for judges in Poland? This paper uses a comparative law method to analyse the differences in the jurisdiction of the two European Courts, the ECtHR and the CJEU, on judicial independence. The analysis is organised around the two institutional factors, namely the Courts' objectives and the scope of their human rights protection. Considering the courts' ruling through the frame of these two variables and focusing on distinct characteristics of each allows for a more focused and precise explanation of the differences detected.

The role of the two courts in enforcing the principle of judicial independence has been a matter of previous academic research.[9] However, the jurisdiction of the two European courts regarding the judicial disciplinary regime and the scope of protection offered by them has not been yet analysed. Hence, such a comparative analysis constitutes this paper's contribution to the current academic debate.

This paper starts by describing the two cases at hand. Then, it outlines the legal basis on which each of the European courts relied. Following that, it provides a comparative analysis of the two judgements in relation to the relevant institutional factors. Finally, it proposes concluding remarks.

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[1] Lenaerts, "New Horizons," 30.
[2] Gajda-Roszczynialska and Markiewicz, "Disciplinary Proceedings," 452.
[3] Pech, Wachowiec, and Mazur, "Poland's Rule of Law Breakdown."
[4] Mezyk, "Member State's Lawlessness," 56.
[5] Bonelli, "From a Community of Law," 793-816.
[6] Pech, Wachowiec, and Mazur, "Poland's Rule of Law Breakdown," 18, 22.
[7] Kochenov, "Article 7 TEU," 170-71.
[8] Andrés Sáenz de Santa María, "Rule of Law."
[9] Andrés Sáenz de Santa María, "Rule of Law."

Cases

The first case, Reczkowicz v. Poland, concerned a Polish barrister who was suspended from her duties due to various breaches of the Code of the Bar Ethics as a result of disciplinary proceedings.[10] Her appeal at the last instance was dismissed by the newly established Disciplinary Chamber of the Supreme Court, which consisted of the judges appointed in the procedure involving the new National Council of the Judiciary.[11] The ECtHR examined whether the Disciplinary Chamber was a 'tribunal established by law' to determine whether the applicant's right to a fair trial under Article 6(1) ECHR[12] was breached.[13]

The second case, C-791/19, Commission v. Poland, regarded an infringement procedure brought by the European Commission (EC) on the basis of Article 258 TFEU[14] to the CJEU. The EC claimed that Poland's new Law on the Supreme Court and the Law on the ordinary courts introducing a new disciplinary regime for the judges violate both Article 19(1) TEU[15] and Article 267 TFEU.[16] The EC was concerned that (1) the content of the judicial decisions could constitute a disciplinary offence, (2) the Disciplinary Chamber was not an independent and impartial court, (3) disciplinary cases were not examined by a tribunal established by law, (4) the rights of defence of the accused judges were not guaranteed, and (5) the right of courts to ask preliminary questions to the CJEU was restricted by the threat of the disciplinary proceeding's initiation.

Legal Provisions

The two courts faced the same problem, namely, that the newly established disciplinary regime for judges organised around the Disciplinary Chamber had the power to impose disciplinary punishments on judges, whose independence and status of the tribunal established by law is questioned. However, in their judgments, the courts relied on different legal provisions. While the ECtHR relied on Article 6(1) of the Convention providing a right to a fair trial by an independent and impartial tribunal established by law, the CJEU considered the introduction of a disciplinary regime as an infringement of Article 19(1) TEU and 267 TFEU. Article 19(1) TEU requires Member States to guarantee effective judicial protection in the files covered by EU law, while Article 267 TFEU codifies the preliminary ruling procedure requiring judicial dialogue between the national courts and the CJEU in cases concerning interpretation or validity of the Union law. The CJEU, however, did not find the violation of Article 47 of the Charter of Fundamental Rights (CFR) a provision corresponding with the right to a fair trial guaranteed under Article 6(1) ECHR.[17] This divergence can be explained by institutional factors assigned to each organisation and its court.

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[10] Reczkowicz v. Poland, para. 54-55.
[11] Reczkowicz v. Poland, para. 56-58.
[12] Council of Europe, *European Convention*, Art. 6(1).
[13] Reczkowicz v. Poland, para. 179.
[14] European Union, *Consolidated Version*, Art. 258.
[15] European Union, *Consolidated Version*, Art. 19(1)
[16] Case C-791/19, Commission v. Poland, para. 1.
[17] European Union, *Charter*, Art. 52.

The Courts' Objectives

The two courts have important differences in their primary objective and function, which has implications on the way they treat cases and determine judgements. The ECtHR is an international court, entrusted by the contracting sovereign states with the task of ensuring that the collective set of legal norms protecting human rights and codified in the European Convention on Human Rights (ECHR) is observed in domestic legal systems.[18] The CJEU, on the other hand, is a general court of the EU responsible for the consistent interpretation of the EU law and ensuring effective judicial protection at the EU level.[19] This prime difference means that the ECtHR perceives the question of the disciplinary regime as a human rights violation, whereas the CJEU sees it more broadly as a threat and challenge to the legal order of the EU.[20]

In its judgement, the CJEU heavily relied on the provision of Article 19(1) TEU, which codifies the principle of effective judicial protection. This principle requires the observation and proper enforcement of EU law by national courts on a domestic level. As such, it should be seen as a material manifestation of the principle of sincere cooperation codified in Article 4(3) TEU. The principle of sincere cooperation constitutes a bedrock of European integration and facilitates the functioning of such mechanisms as mutual recognition. However, it heavily relies on mutual trust, without which effective cooperation is not possible.[21] The CJEU recognised that Article 19(1) TEU imposes an obligation on the Member States to guarantee the independence of all domestic courts, since they all may interpret or apply EU law.[22] Hence, the failure of Poland to ensure judicial independence due to the introduction of a new disciplinary regime not only violated Article 19(1) and the principle of effective judicial protection, but also undermined mutual trust and the Union's legal order. By finding the violation of Article 19(1) in line with the principle of the EU law primacy, Poland was required to halt national provisions violating the Union and retreat from its disciplinary reforms.

In the case Reczkowicz v. Poland, the ECtHR relied on the civil head of Article 6(1) ECHR. The applicant claimed that her right to a fair trial was violated since her disciplinary case was ruled by the Disciplinary Chamber, which was not a 'tribunal established by law.' The ECtHR stated in Guðmundur Andri Ástráðsson v. Iceland that the process of appointing judges is an inherent element of the 'tribunal established by law' and when great defects in the appointment process are present, such a court does not fulfil this requirement.[23] The ECtHR therefore clarified that Article 6(1) ECHR provides protection to applicants who were heard by wrongly appointed judges since their judgements are invalid, and awards them financial compensation to compensate for their damages. Nevertheless, as judge Wojtyczek stated in his concurring opinion, the judgement lacks clarity on its legal and political consequences both for the applicant and the Polish legal system.[24] Even though the Convention requires the State to provide reparation to a specific applicant and take actions to prevent new violations, the absence of clarity on this judgement's scope may 'exacerbate the existing problems in the domestic legal system.'[25]

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[18] Spano, "The Future," 475.
[19] Wouters and Ovádek, *The European Union,* 38.
[20] Dawson, "Fundamental Rights," 61.
[21] Koutrakos, "Institutional Balance," 29-30.
[22] Jelić and Kapetanakis, "European Judicial Supervision," 49; Reczkowicz v. Poland, para. 54.
[23] Jelić and Kapetanakis, "European Judicial Supervision," 56.
[24] Reczkowicz v. Poland, para. 2.2.1 – 2.2.2.
[25] Reczkowicz v. Poland, para. 2.3.

Scope of Human Rights Protection

In addition, the scope of human rights protection offered by the ECHR and the EU law plays an important role in explaining the different jurisdictions of the two courts. Despite the EU's commitment to comply with fundamental rights and adoption of the Charter, the protection of fundamental rights remains only one of the many objectives of the EU, rather than its main one. The role of human rights is significantly circumscribed within the EU's internal policies particularly due to the limited scope of application of the Charter.[26] Article 51 CFR maintains that the Charter only applies to the Member States when they implement EU law and emphasises that it neither extends the power nor competencies of the EU. The CJEU further defined that the Charter only applies where a situation is covered by EU law.[27] Consequently, the ability of EU institutions to monitor human rights compliance among the Member States is substantially diminished.[28] The finding by the CJEU of a breach of Article 19 TEU and Article 267 TFEU - and not of Article 47 CFR - is therefore caused by the limited scope of the Charter. Such violation would only be established if Poland was implementing a particular EU law norm during the reform of the judicial disciplinary system. Nevertheless, the CJEU still recognised the importance of Article 47 CFR by emphasising the relation between effective judicial protection and judicial independence.[29]

The scope of application of the Convention is stated in Article 32 ECHR, which maintains that the Court is limited in its jurisdiction to the human rights provided by the Convention. The ECHR provides a minimum standard of human rights protection, setting a common threshold, and allows the contracting parties to further expand it.[30] Nevertheless, the scope of the Convention relies on the two tools of interpretation established by the Court itself – the 'margin of appreciation' and the 'living instrument doctrine.'[31] The margin of appreciation provides room for flexibility in the interpretation and application of the convention rights for the contracting states, which limits the ability of the ECtHR to interfere.[32] The living instrument doctrine, on the other hand, allows the interpretation of the convention rights in consideration of the changing social reality to protect human rights more effectively. In the case at stake, the government claimed that the changes introduced in the process of judicial appointment fell within the scope of the margin of appreciation insofar as the domestic institutions were better suited to 'assess how the interests of justice and the rule of law would be best served.'[33] Nevertheless, the ECtHR considered the breach to fall outside 'the room for manoeuvre' and found the violation of the applicant's right to a fair trial.

Discussion and Conclusion

This paper provided a comparative analysis of two cases regarding the lack of judicial independence in Poland which received different judgements by the ECtHR and the CJEU, the two European courts. The comparative analysis demonstrated the impact of two main institutional factors on the jurisdiction of the courts. First, the differences in the courts'

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[26] De Burca, "The Road not Taken," 673, 681.
[27] Case C-617/10, Åklagaren v. Hans Åkerberg Fransson, para. 2.
[28] De Burca, "The Road not Taken," 674-76.
[29] *Case C-791/19, Commission v. Poland*, para. 58.
[30] Council of Europe, *European Convention*, Art. 53.
[31] Ita and Hicks, "Beyond Expansion or Restriction?," 44.
[32] Ita and Hicks, "Beyond Expansion or Restriction?," 41-42.
[33] Reczkowicz v. Poland, para. 196-197.

function resulted in the divergence of chosen legal provisions and final legal results. The ECtHR's objective was to remedy the violation of the applicant's right, while the CJEU's was to ensure unity within the EU legal order. Second, the variation in the scope of the human rights protection explains why the ECtHR determined the breach of the human rights provision while the CJEU did not. The ECtHR recognised that the right to a fair trial codified in Article 6(1) ECHR was breached and that this breach fell outside the scope of the 'margin of appreciation.' The CJEU, however, could not determine the violation of Article 47 CFR, which corresponds with the right to fair trial guaranteed by the ECHR, since the matter at stake fell outside the field of the Charter's application. Nevertheless, both courts recognised that the judicial independence in Poland is undermined and found that the currently operating disciplinary system for judges is to be blamed for that.

This paper has shown that the two courts fulfilled their primary, but distinct tasks in compliance with competences granted to them in treaties. The ECtHR recognised that the violation of the applicants right to a fair trial took place and requested the Polish state to provide her with just (monetary) satisfaction. Furthermore, in line with Article 46 ECHR, Poland is required to put an end to the breach by taking general measures in order to prevent similar violations from taking place in future and execute the judgement. As the court stated, the violation of Article 6(1) ECHR was the result of the examination of the applicant's case by the Disciplinary Chamber, which was not a tribunal established by law/[34] However, since the ECtHR did not indicate neither individual nor general measures, in line with the principle of subsidiarity, Poland can decide on measures it believes suitable. Nevertheless, despite this ambiguity, which judge Wojtyczek pointed out in his dissenting opinion, this ruling will allow every person examined by the Disciplinary Chamber to successfully argue violation of their right to a fair trial.

The CJEU found in its judgement of the case Commission v. Poland that the existing disciplinary regime undermines judicial independence and violates EU law, namely Article 19(1) TEU and Article 267 TFEU. Poland is required to comply with the CJEU's judgement due to its binding nature, and amend the national provisions, which violate the EU law, which consequently requires suspension of the Disciplinary Chamber. Should Poland disregard the judgement, the EC can request the CJEU to impose lump sum or penalty payment and through the financial means pressure Poland into execution of the judgement and compliance with the EU law.

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[34] Council of Europe, *Guide on Article 46*, 7.

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Perpetuating Poverty: The Gender Pension Gap

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✳

Executive Summary

The gender pension gap puts women at higher risk of poverty during their retirement years. This gap is a direct consequence of the gender pay gap which puts female workers in a disadvantaged position with regards to their income, benefits, and career opportunities. Wage inequalities between men and women in the European Union stand at approximately 14.1 percent while pension inequalities are at 29 percent. These percentages indicate women's disadvantaged financial position throughout the span of their lives, as well as prosperity-hindering implications that follow. Addressing this issue has long been on the European Commission's agenda. While various policies and laws have been implemented over the years, they have not had any significant successes in reducing these gaps. This proposal reviews previous policies such as the Directive on equal pay for equal work or work of equal value, the Communication on the gender pay gap, and the Strategy for Gender Equality, and assesses their shortcomings. Two alternative policy proposals to increase gender pay equality are then offered. First, this paper suggests imposing a mandatory parental leave for fathers, arguing that such a policy would remove prejudice concerning women's potential motherhood in job recruitment, thus ensuring female workers' equal entry point. Employers are wary of hiring women due to the stigma that still surrounds maternity leave - the presumption that businesses would be disadvantaged if their female worker chose to have a child. This is a widespread form of discrimination that predominantly targets women and impedes their career opportunities. Secondly, it recommends introducing pay transparency in the workplace, which would include the monitoring of pay differences between men and women through annual reports, thus ensuring employers' equal treatment of workers. Closing these pay inequalities would reduce the gender pension gap, allowing women a dignified retirement.

Introduction

Structural gender-based discrimination negatively and disproportionately affects women, who comprise about half the world's population.[1] The gender pay gap is an essential issue that if solved would contribute to balancing historical gender differences within society. Indeed, achieving pay equality would improve women's socioeconomic position in the workforce, which in turn would provide female workers with a dignified retirement by subsequently closing the gender pension gap.[2] Implementing policies that target pension inequalities therefore would result in a fairer society based on equality instead of stereotypes and prejudice. Furthermore, a resolution to the problem would positively affect businesses, their workers, and economic development by increasing efficiency and promoting a balanced workforce.[3] Employers would also see a decrease in the number of complaints and litigations that they have to deal with once gender pay equality is established.[4] Moreover, ensuring equal treatment in the workplace would surely become a motivating factor for women to develop their careers, in addition to granting them a secure retirement.[5]

This policy proposal provides an overview of European Union (EU) policies and actions, implemented to specifically target and reduce gender pay inequalities. An evaluation of their success is presented to contextualize the need for further reforms. The paper then introduces two main policy recommendations – namely, the implementation of a mandatory parental leave and the improvement of pay transparency. Potential drawbacks following the above-mentioned proposals are discussed to facilitate their assessment and possible application. All in all, the paper extensively analyzes the interconnection between gender pay inequalities, societal bias, and their manifestation into perpetuated female poverty.

Problem Statement

A major cause of the gender pension gap is the overrepresentation of women in jobs in lower-paid sectors.[6] This trend is often accompanied by higher-paying leadership positions, including those in otherwise female-dominated sectors, being occupied by men.[7] Women's workforce experience has been characterized by making less money than their male colleagues for the same amount of work, resulting in women's pensions being approximately 29 percent lower than men's in their retirement.[8] Elderly women are therefore more likely to find themselves at risk of poverty.[9] The gender pay gap is also largely perpetuated by women committing to part-time jobs or becoming unemployed to take care of their families and households.[10] This discourages employers from hiring female workers due to the predetermined assumption that they will eventually quit their jobs to pursue motherhood - one way in which "the glass ceiling phenomenon"[11] manifests itself. Traditional gender norms and stereotypes are foundational for women's domestic (unpaid) labor and hinder women's

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[1] European Commission, *2021 Report on Gender Equality*, 16.
[2] Bettio, Tinios, and Betti, *The Gender Gap*, 31.
[3] European Commission, "Closing the Gender Pay Gap."
[4] European Commission, *Tackling the Gender Pay Gap*, 9.
[5] European Institute for Gender Equality, *Institutional Transformation*, 10.
[6] Rubery, *Tackling the Gender Pay Gap*, 3-4.
[7] European Commission, *2019 Report on Equality*, 25-26.
[8] Eurostat, "One in Five People."
[9] Rubery, *Tackling the Gender Pay Gap*, 1.
[10] Buondonno, "The Gender Pay Gap," 7-8.
[11] Buondonno, "The Gender Pay Gap," 8.

career development and economic independence. Such gender prejudice and traditions, in addition to women's work and skills being undervalued, support the currently established gender inequalities - directly leading to pay discrimination and women becoming vulnerable to poverty in their retirement years.[12]

The gender pay gap ranges significantly between EU Member States, with female workers' hourly wages being on average 14.1 percent lower than those of their male colleagues.[13] The long-term consequences of pay inequality can be observed in retired female workers who receive approximately 29 percent less capital than their male counterparts to financially sustain themselves. This difference in pension income puts women at a disadvantage in their retirement since the majority of female retirees depend solely on pension resources.[14] Approximately 10 percent of elderly women cannot afford basic healthcare services and medication. Female retirees are thus often targeted by minimum income schemes, leading them to become victims of social exclusion and poverty; more than 20 percent of female retirees find themselves in that position - compared to 15 percent of male retirees.[15]

The COVID-19 pandemic has brought additional economic consequences for workers and businesses. Women's employment and pay, in particular, have been disproportionately affected during this period.[16] Their participation in the labor market has been largely affected by female-dominated sectors being closed down and by being pressured into remote work.[17] Women entering the digital platform economy bear no perspectives of financial stability because of the lack of formal contractual agreements, benefits, and pension schemes.[18] Furthermore, the pandemic has resulted in numerous female workers losing their jobs, with young women being twice as affected as young men, compromising their financial sustainability and future job opportunities.[19] During the pandemic, most female-dominated sectors have been ineligible for income benefits due to their fields of work lacking crisis-related job protection schemes. In contrast, most male-dominated spheres have been given access to such financial help and support.[20] Additionally, factors such as inaccessible childcare services and the predominantly remote work engagement have exacerbated women's participation in unpaid labor in the form of a "double burden of working and caring."[21] COVID-19's negative impacts on the workforce could affect workers' retirement resources, further perpetuating financial uncertainty.[22]

Current Policies

The European Commission (EC) has repeatedly stated that achieving gender equality in all its aspects is one of the main objectives of the Union's agenda.[23] However, the policies

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[12] European Commission, *2019 Report on Equality*, 1; European Commission, *Tackling the Gender Pay Gap*, 10.
[13] European Parliament, "Understanding the Gender Pay Gap."
[14] European Commission, *Tackling the Gender Pay Gap*, 5.
[15] European Commission, *2019 Report on Equality*, 23.
[16] Profeta, Calo, and Occhiuzzi, *COVID-19*, 7.
[17] Jepsen, "Good News."
[18] Sabanova, "It Is Time."
[19] International Labour Organization, *An Uneven*, 1.
[20] European Commission, *2022 Report on Gender Equality*, 24.
[21] Jepsen, "Good News."
[22] European Commission, *Tackling the Gender Pay Gap*, 1.
[23] European Commission, *Tackling the Gender Pay Gap*, 13.

designed and implemented to address this issue have been limited in scope and effectiveness.[24] The EU has declared its support of numerous actions aimed towards fighting income inequalities. Examples of such policies are the 1975 Directive on equal pay for equal work or work of equal value which has been revised several times since 2006. The European Parliament has called for the Commission's support towards reaching the Directive's objectives. One proposal has aimed towards an annual 5 percent reduction in the gender pay gap among Member States and a consequential closing of the gap by 2020,[25] but has not met the expected success. Indeed, gender pay inequalities stood at 13 percent in 2020.[26]

In addition, the EC has introduced a series of actions in 2007 in its Communication on the gender pay gap, calling for the "better application of existing legislation."[27] The nature of this proposal has been purely suggestive for all relevant stakeholders and was made neither binding through additional legislation, nor monitored to ensure implementation.[28]

The EU's ambitious Strategy for Gender Equality was designed to close the gender pay gap in the period of 2010-2015 by relying on "legislative and nonlegislative measures."[29] The Strategy had the following objectives: 1) fostering women's economic independence, 2) establishing equality of pay, 3) improving the gender balance in decision-making, 4) tackling gender-based violence, 5) promoting gender equality in the EU's external actions, and 6) dismantling gender roles and addressing gender through social, legal, and political channels.[30] The EC has followed up on the Strategy mentioned above with subsequent strategies, all targeting the same unresolved problem areas.[31] The most recent one is the Gender Equality Strategy 2020-2025 which applies "gender mainstreaming combined with targeted actions" as well as an intersectional approach to gender equality.[32] Systematic changes in the policy designing process that account for diverse gender and identity policy needs would allow for the objective to be attained.[33] In line with the Strategy, the Commission has proposed the introduction of binding pay transparency measures,[34] the characteristics of which are discussed in the following section.

The policies and initiatives discussed above constitute the EU's attempts to resolve gender inequality issues. A comparison between 2010 (when a majority of European actions were undertaken) and 2019 (an ending point of most policies introduced above) indicates that the gender pay gap has decreased by approximately 1.7 percent[35] while the gender pensions gap decreased by about 5 percent.[36] However, these decreases are insufficient and dissatisfactory in the long-term.[37] This paper therefore underscores the need for further policy reforms, two of which are suggested in the following section.

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[24] Rubery, *Tackling the Gender Pay Gap*, 4.
[25] European Parliament, *Equal Pay for Equal Work Legislation*, 1.
[26] Eurostat, "Gender Pay Gap Statistics."
[27] European Commission, *Tackling the Gender Pay Gap*, 13.
[28] Eurofound, "Commission Issues."
[29] European Commission, *Tackling the Gender Pay Gap*, 13.
[30] European Commission, *Strategy for Equality*, 2.
[31] Prpic, Shreeves, and Dobreva, *Promoting Equality*, 5-7.
[32] European Commission, *2022 Report on Gender Equality*, 2.
[33] European Commission, *2022 Report on Gender Equality*, 2.
[34] European Commission, *2022 Report on Gender Equality*, 11.
[35] Clark, "Gender Pay Gap."
[36] Eurostat, "Closing the Gender Pension Gap?"
[37] European Commission, *2022 Report on Gender Equality*, 2.

Recommendations

Mandatory Parental Leave

Building on the Work-Life Balance Directive's Paternity Leave Law, which is to be implemented by August 2022,[38] this paper proposes the introduction of a mandatory parental leave for fathers. During paternity leave, fathers should receive 100 percent of their regular pay. The suggested Directive would firstly promote men's involvement in the upbringing of the child, as their active participation is necessary in those early stages. This would contribute towards changing gender norms painting women as primary caretakers and men as solely financial providers. Secondly, by advancing the current paternal policy to include an obligatory period of leave, an equal entry point for new jobs would be created for both men and women. Currently, employers' decision to not hire women is often based on the conceptual bias that if she has a child, the business will lose an employee - as it is assumed that she will be the one taking care of that child once it is born or at the very least be incapacitated during pregnancy and shortly after birth.[39] If the Directive was to be implemented, this assumption would stand equally valid for both parents. Therefore, the initial obstacle of gender equality in the workforce would be - at least partially - overcome. Finally, employers would not experience financial difficulties insofar as the fathers' pay during paternity leave would be provided by EU Social Security Coordination Services in the particular EU Member State. In conclusion, introducing legal changes into the current Paternity Leave policies would put women in a better, more secure financial position that could narrow the gender pay gap, subsequently resulting in higher pensions for women. The Directive proposed in this paper would further facilitate the EC's pursuit of "Work-Life Balance" by establishing equal conditions for entering the workforce.

Nevertheless, a few limitations of such a proposal must be mentioned. The first drawback of introducing such a Directive would be that employers would have fewer workers throughout the duration of the mandatory paternity leave. This implies that businesses would need to replace employees taking parental leave for the time being, which would require additional effort from the employers to recruit professionals and familiarize them with their work environment, methods, and the like. The second drawback of implementing the Leave would concern governmental spending and the budget: as the state would be the one guaranteeing employees' salaries during their leave, it is crucial that the government prepares and evaluates the new spending it would face. This is not an easy calculation to make as it is difficult to predict how many parents would need to use paternity leave. Lastly, men may be hesitant to take time off work and take care of their children due to the imposed stereotypical gender norms around men being the providers of the family. However, establishing gender equality and "Work-Life Balance" has been a perpetual policy-objective for the EC. The benefits of providing fair working conditions for women and ensuring them a dignified retirement overpower the potential drawbacks outlined above.

Pay Transparency

Building on Article 157(3) TFEU, the Recast Directive, and the EC's latest introduction of binding pay transparency measures, this paper calls for an acceleration of the imposition of the Pay Transparency Directive.

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[38] European Commission, *2022 Report on Gender Equality*, 8.
[39] Young Women's Trust, "New Research Shows."

Under the Commission's current proposal, the Pay Transparency Directive will require the Member States to report on the effectiveness of the law after a period of eight years has passed.[40] This would delay the exchange of information between the Member States and the EU monitoring bodies. This process could be improved by requiring a comprehensive annual report by Member States which assesses the Directive's produced outcomes. An annual report would indicate how effective the Directive's implementation is. An expected obstacle to this proposal, however, is increased expenses on the Member States' side generated by the annual gathering of information and report creation.

The Pay Transparency Directive could be improved further by subjecting businesses of all sizes to it. Currently, the Directive applies to businesses with more than 250 employees, thus excluding small enterprises.[41] This creates uncertainty about the extent to which they are complying with the Directive and its gender equality objectives. Therefore, subjecting all businesses and enterprises to the Pay Transparency Directive would ensure employers' compliance with it, thereby facilitating a better monitoring of the Directive's effectiveness, protection of the employees, and balancing pay and pension inequalities. This proposal, however, may negatively affect small businesses due to increased costs around the formulation of the report. Smaller enterprises often have a limited budget and human capital, which may impose an obstacle to their compliance with the Directive. However, compliance with the EU's Directive on equal pay for equal work or work of equal value would prioritize workers' equality in treatment and pay over businesses' financial considerations.

Conclusion

This policy paper analyzed the gender pay gap as a determinant factor of the gender pension gap within the EU. It argued that this results in the heightened risk of elderly women being subjected to poverty in their retirement. After presenting an overview of the Directive on equal pay for equal work or work of equal value, the Communication on the gender pay gap, and the Strategy for Gender Equality concerning the issue of pay inequality, this paper evaluated the measures undertaken throughout the last decade, concluding that further policy reform is needed to close the gaps. This paper therefore introduced two policy recommendations to address the issue. First, it suggested the introduction of a mandatory paternity leave for fathers. An extension of the EU's Paternity Leave Directive, which is to be implemented by April 4, 2022, would remove stereotypical gender norms of childcare as a "female job," which restricts the recruitment of female employees. Secondly, this paper proposed a change to the EU's Pay Transparency Directive, suggesting that annual reports on the Directive's efficiency should be presented. Furthermore, extending the Directive's reach to small businesses would ensure that all recruiters are committed to establishing gender pay equality.

An evaluation of the drawbacks of the above-mentioned solutions was presented to assess the feasibility of the policy proposals. Gender pay inequalities and subsequent pension inequalities have been long-term priorities on the EC's agenda for years, but with little progress thus far. For this reason, this paper's recommendations tackled integral aspects impeding progress towards pay equality - namely, societal biases around female work and their perpetuation of poverty.

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[40] European Commission, *2021 Report on Gender Equality*, 2.
[41] European Commission, *2021 Report on Gender Equality*, 1.

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The EU Return Sponsorship Mechanism: Enhancing Trust, Solidarity, and Responsibility-Sharing among Member States at the Expense of Migrants' Human Rights?

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✳

Executive Summary

The return sponsorship mechanism proposed by the European Commission within the framework of the Asylum and Migration Management Regulation should represent a step forward in the creation of a permanent, solidaristic European Union approach to managing migration. Since its launch, however, the novel proposal has raised several concerns among both the potential benefitting and sponsoring Member States as well as civil society organisations. This paper identifies five overarching risks of the return sponsorship proposal, concerned with its political, ethical, and legal dimensions. In addition, it offers three recommendations to the Directorate-General for Migration and Home Affairs of the European Commission to enhance the return sponsorship mechanism while protecting migrants' human rights: 1) reinforcing the Commission's supervisory role, 2) sharing individual migrants' return programmes among Member States, and 3) continuing the promotion of alternative pathways to legalisation on humanitarian grounds.

Keywords: Return sponsorship, migration, asylum, European Union, solidarity mechanism

Introduction

With the launch of the New Pact on Migration and Asylum on September 23, 2020, the European Commission (EC) aimed at promoting a 'fresh start on migration' based on shared responsibility and enhanced solidarity among EU Member States.[1] Of the various measures proposed within the New Pact, the return sponsorship concept, which appears in the proposal for a new Asylum and Migration Management Regulation (AMR),[2] is the most innovative - yet controversial - one. The rationale of the return sponsorship mechanism is twofold: on the one hand, it seeks to propose a solution to the complicated question of responsibility-sharing within the European Union (EU); on the other hand, it reflects the Commission and Member States' long-term objective of increasing the number of migrants that return to their home countries from Europe. However, the uncertainty regarding the share of responsibility, the risk of new human rights violations towards migrants, and challenging implementation has raised concerns among Member States and civil society experts,[3] who saw return sponsorships as an 'instrument of high stakes, and potentially only low gains.'[4]

This policy paper offers a brief overview of the policy and financial context of the return sponsorship scheme. Secondly, it outlines five pivotal political, ethical, and legal concerns regarding the proposed mechanism. Ultimately, this paper proposes recommendations to strengthen return sponsorship programmes while simultaneously safeguarding migrants' human rights. These recommendations include (1) reinforcing the Commission's impartial, supervisory role in return sponsorship negotiations; (2) sharing individuals' return sponsorship among two (or more) Member States; (3) promoting alternative legalisation pathways for individuals who do not qualify for asylum status.

Background: Policy and Financial Context

The mandatory solidarity mechanism envisioned in the New Pact on Migration and Asylum allows Member States to flexibly choose how to contribute to the costs of asylum and migration in the EU. Defined in Article 55 (Paragraph 1)[5] of the Directive on Asylum and Migration Management, the return sponsorship scheme is one of the options available to Member States to fulfil their solidarity obligations. The support provided by the sponsoring Member State can take various forms ranging from counselling on return and reintegration for third-country migrants to supplying logistical, financial, and other material assistance through national programmes, leading and supporting dialogues with third countries, and organising the practical arrangements for the enforcement of return (Article 55, Paragraph 1). If the sponsoring Member State fails to complete return procedures within eight months (four months in situations of crisis), it will relocate the illegally-residing third-country national back

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[1] European Commission, "A Fresh Start on Migration."
[2] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 18.
[3] ECRE, "Joint Statement."
[4] Sundberg Diez, Trauner and De Somer, "Return Sponsorship."
[5] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 55.

to their own territory (Article 55, Paragraph 2).[6] Nonetheless, as clarified by the Commission, 'the current criteria for determining responsibility will continue to apply,'[7] de facto leaving unaltered the Dublin Regulation[8].

As noted by Milazzo[9] and Vosyliute,[10] the return sponsorship scheme is meant to offer a flexible solidarity option while fostering returns at all costs. Despite its attempt to find a compromise between the often-conflicting views of Member States, since its launch, the mechanism has been subjected to criticism both from the Visegrad countries, which have deemed it not restrictive enough,[11] and Southern border states, which, on the contrary, have advocated for mandatory relocation to remain the main solidarity tool.

As stated in Article 61 of the Directive on Migration and Asylum Management, the EU will provide financial support through the Asylum and Migration Fund, in compliance with Article 17.[12] However, the proposal does not envision sanctions or enforcement tools ensuring the compliance of Member States with the mechanism. Instead, it foresees the implementation of a corrective mechanism and a Solidarity Forum where sponsors that fail to provide the necessary support may seek to adjust their contributions.[13] Additionally, the Neighbourhood, Development and International Cooperation Instrument, of which 10 percent is to be allocated to migration-related issues under the proposed EU budget for 2021-2027, also plays a pivotal role in enhancing return rates through strengthening partnerships with third countries.[14]

The Political, Ethical, and Legal Risks of the Return Sponsorship Mechanism

The return sponsorship measure presents significant political, ethical, and legal concerns.[15] It risks long-term endangerment of migrants' well-being, the relations between the Member States, and Member State partnerships with third countries. Drawing on existing research, the five concerns presented in this section uncover the foreseeable limitations of return sponsorship programmes.

1.   Even though the return sponsorship mechanism has been designed to decrease conflicts between Member States in matters of responsibility-sharing,[16] the risk is that the existing

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[6] The transfer procedure shall take place in accordance with the standards set in Articles 57 and 58. European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 87-88.

[7] European Commission, *Communication from the Commission to the European Parliament and the Council on a New Pact on Migration and Asylum*.

[8] The Dublin Regulation (Regulation No. 604/2013) is an EU law which determines that the EU Member State through which an asylum seeker enters the EU is responsible for the examination of the asylum application.

[9] Milazzo, "Return Sponsorship," 2.

[10] Vosyliūte, "When Principles."

[11] Brzozowski, "In Brussels."

[12] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 89.

[13] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 83, Art. 52(4), 53(2).

[14] European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing the Neighbourhood, Development and International Cooperation Instrument*, 22.

[15] Vosyliūte, "When Principles."

[16] Milazzo, "Return Sponsorship," 2.

tensions will be replaced by unending discussions on return procedures. As highlighted by Sundberg Diez and colleagues, the intentional vagueness surrounding the terms and conditions of return sponsorship (and, to a greater extent, the mandatory solidarity mechanism) was meant to allow for room for manoeuvre by the Commission.[17] However, it could have a counterproductive effect. Indeed, the involvement of multiple actors in return procedures - i.e., the sponsoring state(s), the benefitting state(s), and the EU - risks complicating the sharing of responsibility and accountability, leading to the emergence of new tensions rather than the termination of old ones.

2. The new flexible solidarity mechanism, furthermore, risks decreasing material support for bordering EU Member States and leading to an imbalanced share of responsibilities among the various actors involved in the return process. As aforementioned, the new mechanism does not alter the fundamental tenets of the Dublin Regulation,[18] meaning that the external border state will remain responsible for first reception, pre-entry screening procedures, and the evaluation of all asylum applications submitted at the border.[19] Furthermore, while past ad hoc redistribution instruments[20] fostered the relocation of migrants across EU Member States, the return sponsorship mechanism considers redistribution a measure to be adopted if the sponsoring state fails to complete the return within eight months (four in situations of crisis) from the beginning of procedures. This means that the border state remains responsible for the individual migrant's practical wellbeing and bears the implied costs for at least the first eight months, in case the programme is not correctly implemented.[21]

3. Related to the latter consideration is the concern that returns will not take place as fast and efficiently as foreseen, thereby creating bottleneck situations in the border countries during periods of increased migration.[22] Third countries play a pivotal role in the efficient return and reintegration of migrants through various bilateral readmission agreements signed with individual EU Member States.[23] As emphasised by Cassarino, however, not all Member States can rely on the same partnership networks.[24] Given their colonial past and geographical location, some countries (such as Italy, France, and Spain that - as of 2020 - made up 70 per cent of the total EU readmission rate[25]) can count on deep-rooted relationships with countries of migrants' origin. Conversely, Member States that would be more likely to implement return sponsorship procedures (such as Hungary, Poland, and the Czech Republic) have a weaker partnership network with third countries. Although the Commission is trying to improve cooperation with third countries at the EU level[26] by

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[17] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 10.

[18] European Parliament and Council of the European Union, *Regulation (EU) No 604/2013*.

[19] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management*, 58, Art. 21.

[20] Such as the EU Pilot Project on intra-EU Relocation from Malta (EUREMA) between 2010 and 2021, or the two Relocation Council Decisions of September 2015. Wagner and Baumgartner, *Past, Present and Future Solidarity*.

[21] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 11.

[22] Karas, "Refugees at Border Bottleneck."

[23] European Commission, *Communication from the Commission to the European Parliament and the Council on Enhancing Cooperation on Return and Readmission*.

[24] Cassarino, "Readmission."

[25] Cassarino and Marin, "The New Pact."

[26] European Commission, *Communication from the Commission to the European Parliament and the Council on Enhancing Cooperation on Return and Readmission*.

proposing more negative conditionality[27] and more significant incentives, Member States remain reluctant to endanger their privileged bilateral partnership to pursue the EU agenda on returns.[28]

4. A further - and interlinked - challenge is the difficulty in matching the preferred contribution method of a sponsor state with the actual needs of a border state. As noted by Sundberg Diez and colleagues, this matching exercise would require a great degree of cooperation and coordination not only between Member States but also at the EU level.[29] For this purpose, the Commission created the novel role of Return Coordinator with the specific task of encouraging coherence between different national return policies and facilitating the dialogue between the sponsoring and border Member States.[30] The procedures, however, may be excessively time-consuming and politically sensitive as they rely on the development of relationships of mutual trust between the sponsoring and the benefitting Member States (as well as the third country involved in the readmission procedures). This could result in the implementation of ad hoc solutions instead of streamlining the negotiations at the EU level.

5. Finally, the overarching concern is the risk of new human rights violations for migrants involved in the return sponsorship process both within and outside the EU. As pointed out by the Platform on International Cooperation on Undocumented Migration,[31] by allowing Member States to choose the nationality of the migrants of whom they want to sponsor the returns, the EU Directive risks legitimising racial profiling and discrimination. This contradicts the objectives outlined in the EU Action Plan Against Racism.[32] Furthermore, the Pact presents the right to asylum as the principal way to gain resident status in the EU, with return sponsorship being the most viable alternative if the application is rejected. Instead of providing migrants with alternative residence permits on humanitarian grounds (such as the principle of non-refoulement, family life, or the best interest of the child), border states may decide to wait for the migrants to be relocated to the country of origin (through the return sponsorship scheme) or the sponsoring state, where they risk remaining in an irregular status.[33] Moreover, the involvement of multiple actors in the return process (as noted in Point 1) weakens safeguard and accountability mechanisms for the return result, making it more complex to identify the responsible actor in case of human rights violations.[34] As noted by Sundberg Diez and colleagues, this is further complicated by the lack of homogeneity in asylum recognition rates and safe countries for return among the various Member States.[35]

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[27] Negative conditionality refers to the use of enforcement and pressure – in the form of a reduction or suspension of benefits or imposition of sanctions – to obtain desired political changes or reforms.
[28] Cassarino, "Readmission."
[29] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 15.
[30] European Commission, "New EU Strategy."
[31] PICUM, *Recommendations on the RAMM*.
[32] European Commission, *Communication from the Commission to the European Parliament and the Council on a Union of Equality.*
[33] PICUM, *Recommendations on the RAMM*.
[34] PICUM, *Recommendations on the RAMM*.
[35] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 12.

Recommendations

Having outlined the main concerns regarding the return sponsorship mechanism and policy options promoted by the EC, this paper provides three policy recommendations that would ensure that migrants' human rights are protected throughout the procedures.

1. *Reinforcing the Commission's impartial, supervisory role in return sponsorship negotiations*: With the establishment of the Return Coordinator role responsible for overseeing return sponsorship negotiations between Member States (as discussed in Point 4 of the previous section), the EC would occupy a significant mediating position in the process and, therefore, should be impartial, honest and trust-worthy.[36] As stated by the Commission, the role's task is to bring coherence between the various national return policies and level the discrepancies between return rates and recognition of third countries of safe return among the Member States.[37] This is pivotal for a fair allocation of responsibility among the various actors involved in the process as well as the establishment and development of trust relationships between Member States.[38] As noted in the first section of this paper, the current proposal does not foresee the implementation of sanctions or enforcement tools if a Member State fails to comply with the mechanism. Although the Commission tends to hesitate to apply infringement procedures when it comes to politically sensitive issues, it shall commit to the timely and reactive implementation of such tools if a Member State refrains from providing the necessary support. Hesitancy and delay in doing so would transform the return sponsorship scheme (and, by extension, the entire solidarity mechanism) into ad hoc bargaining procedures that have been characterising existing relocation attempts since the early 2010s.[39] For instance, in April 2020, Hungary, Poland, and the Czech Republic were held responsible by the EU Court of Justice for failing to contribute to the 2015 emergency resettlement scheme. The judgement, however, had limited practical effects on the position of the three states as it came long after the end of the relocation mechanism.

2. *Sharing individual migrants' return sponsorship among two (or more) Member States, provided that the EU succeeds in maintaining its role as an impartial and trusted mediator among Member States*: The possibility of sharing an individual return sponsorship among various actors according to their strengths could implement faster and more efficient returns while ensuring the full respect of human rights and international regulations. For example, a Member State with stronger diplomatic relations with the country of origin (usually border states, such as France, Italy, and Spain[40]) could lead the readmission negotiations. At the same time, another state could provide for the practical aspects (such as transport and accommodation expenses) or support the migrant in the pre-departure and post-arrival phases. Even if a sharing of return sponsorship programmes would require greater coordination, trust, and commitment from the various national and supranational actors involved in the procedures, it would allow for more efficient deployment of sources that are necessary for the adequate assistance of the individual

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[36] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 11.
[37] European Commission, "New EU Strategy."
[38] Milazzo, "Return Sponsorship," 5.
[39] Sundberg Diez, Trauner and De Somer, "Return Sponsorship," 10.
[40] Cassarino, "Readmission."

migrant throughout the return and resettlement process, as recommended by the International Organisation on Migration.[41]

3. *Promoting alternative pathways to legalisation for people who do not qualify for asylum status but could be entitled to a residence permit on other grounds*: Although individuals applying for asylum status should be granted a fair, fast, and thorough assessment of their request, the EU and its Member States should continue to promote the regularisation of migrants' residence status through humanitarian channels (such as family ties, the best interest of the child, principle of non-refoulement) and not offer 'returns at any costs'[42] as the alternative to asylum status. In particular, this paper aligns with PICUM's recommendations to prevent a breach of migrants' fundamental human rights,[43] arguing that the EU should exclude children from the scope of Art. 55 of the AMR. Furthermore, individuals who are already in the EU territory should also be excluded from Art. 55, as relocation to the sponsoring Member State (in case of failure of the completion of return procedures within eight months), would eradicate them from the country in which they might have already established family, social, and economic ties and expose them to further discrimination and vulnerabilities.

Conclusion

The return sponsorship option proposed as part of the solidarity mechanism in the New Pact on Migration and Asylum is an attempt by the EU to compromise between the conflictual positions of Member States on migration policy. However, the vaguely described and ambitious proposal raises several concerns about human rights violations and the practical implementation of the programmes. This policy paper addressed the main ethical, legal, political, and humanitarian risks of the return sponsorship mechanism, highlighting the challenging supervising role that the Commission reserved for itself. Emphasising that the main priority is the humane treatment and wellbeing of the migrant involved in the process (including the pre- and post-return phases[44]), the paper suggested three policy recommendations to improve the return sponsorship mechanism: (1) the reinforcement of the Commission's supervisory role, (2) the sharing of individual migrants' programmes among Member States, and (3) the continued promotion of alternative pathways to legalisation on humanitarian grounds.

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[41] International Organisation for Migration, *A Permanent Solidarity Mechanism*.
[42] Milazzo, "Return Sponsorship," 2.
[43] PICUM, *Recommendations on the RAMM*.
[44] International Organisation for Migration, *A Permanent Solidarity Mechanism*.

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From Grexit to Grecovery: A Citizens' Initiative Addressing the European Commission

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✳

Executive Summary

This policy paper investigates the possibility of Grexit and proposes the implementation of an information campaign to decrease the likelihood of such an event. Fuelled by national dissatisfaction and a faltering economy, Greek Euroskepticism is rooted in both a lack of information regarding the EU's achievements and in historical grievances against one of the most influential EU Member States: Germany. This paper recommends the strategic placements of information posters in Greece, which would redirect citizens to EU resources, thereby increasing the latter's salience while maintaining a minimally intrusive approach – with limited backfire prospects. Importantly, this proposal would promote the advantages of EU membership, thereby reducing the national distrust in the EU, sustained by continual disinformation by the Greek media landscape. Given that no policy aiming at diminishing Greek Euroskepticism has been established thus far, this information campaign represents the first step towards addressing the threat of Grexit.

Introduction

"Wrong to be silent at an important moment" (Jean-Claude Juncker[1])

Thirty years after the Maastricht Treaty and twenty years since the euro was first introduced in the European Union (EU), populist discourse and actor name-blaming have started countering the EU's integration process.[2] Rising levels of national dissatisfaction and the increased ease through which misinformation is shared have resulted in the United Kingdom's unprecedented withdrawal from the EU, threatening the goal of an "ever closer union among the peoples of Europe."[3] Under the aegis of soaring distrust in EU democracy and high economic instability, the Grexit debate, which started in 2012, is ever present in citizens' minds, judging by the latest Eurobarometer results.[4] With almost 34 percent of the parties represented in the Greek Parliament being highly critical of the EU, and more than seven out of ten Greek respondents having a negative image of the EU, Greeks' levels of Euroskepticism are comparable to the feelings which fuelled the results of the 2016 Brexit referendum.[5]

This policy paper proposes proactive measures to counter the possibility of Grexit by suggesting a carefully planned information campaign aiming to shift Greek public sentiment towards the EU. Similar to the way in which the EU-level Erasmus+ project successfully manages to increase participants' pro-European attitudes by providing access to education, this policy proposal is set to increase the salience of the positive relation between Greece and the EU[6] by strategically placing posters in Greek public places. The proposed campaign's audience will consist of the Greek population (10.4 million citizens) as well as the 34.2 million tourists who visit the country yearly.[7] As Greek Euroskepticism is caused by both individual biases and the widespread lack of information regarding EU affairs, an information campaign will shift this trend.[8] Therefore, the proposed campaign represents an efficient and non-intrusive way of increasing EU integration, thus decreasing the chances of Grexit.

Problem Description

The Greek budget deficit has destabilized the country's economy and caused the highest rate of foreign debt to GDP in the EU.[9] Furthering the existent financial crisis, citizens' ever-increasing job dissatisfaction has resulted in the highest unemployment level in the EU.[10] As a consequence, 93 percent of Greek respondents view the national economy negatively, which has a detrimental impact on their overall productivity levels.[11]

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[1] As cited in Gotev, "Juncker Regrets."
[2] Petrakos and Sotiroiu, "Grexit and Brexit," 20.
[3] Cini and Borragán, *European Union Politics*, 8.
[4] Polychroniou, *The Greek Crisis*, 21.
[5] Pagoulatos, "The Remarkable Defeat," 56; Pagoulatos, "Greece After the Bailouts," 17.
[6] Willson, "The Financial Crisis," 13.
[7] As of 2019. See Tsiotas, Krabokoukis, and Polyzos, "Detecting Tourism Typologies," 113.
[8] Hobolt and Tilley, *Blaming Europe?*, 3.
[9] Eurobarometer, "Public Opinion;" Ozturk and Sozdemir, "Effects of Global Financial Crisis," 568.
[10] Eurobarometer, "Public Opinion;" Moris, Karachaliou, and Kontos, "Residency Training in Greece," 20.
[11] Eurobarometer, "Public Opinion;" Moris, Karachaliou, and Kontos, "Residency Training in Greece," 21.

Blaming Europe

As previous studies have shown, responsibility is generally misattributed in multilevel systems like the EU, often shaped by a lack of proper information or by individual biases.[12] More precisely, Euroskepticism has been positively linked with national dissatisfaction: the more dissatisfied with the national status quo citizens are, the less favorably do they view the EU.[13] Therefore, a trend has been observed between national discontent and EU-blaming. The case of Greece confirms previous findings, as accountability for the general national instability is placed within the realm of EU liability on two grounds: i) lack of information (or even the presence of disinformation) regarding EU affairs, and ii) individual biases against Germany's influence on the EU, which is particularly visible following Brexit.[14]

Coined the Greek "post-truth" era, current Greek reporting on EU affairs has often been criticized for being partial and misleading.[15] As the Greek populist movement has started sharing false information regarding the country's EU membership, distinguishing between truth and fabrications has become increasingly difficult.[16] As a result of being constantly subjected to misleading information, citizens' attitudes regarding the EU have been negatively influenced.[17] Building on the already existent discontent with the national economy, populist discourse has managed to present the EU as culpable of citizens' dissatisfaction.[18] Studies have shown that media reporting between 2009-2011 has presented a one-sided, biased portrayal of the Eurocrisis, further proving the high influence of media reporting on citizens' attitudes.[19] During the same time period, the number of Greek respondents who considered that Greece did not benefit from its EU membership doubled from 25 to 50 percent.[20] As such, it can be argued that the current Greek media landscape and citizens' lack of proper information has once again laid the foundation for EU-blaming and Euroskepticism.

In addition, the implementation of prolonged austerity measures has resulted in a fundamental restructuring of Greek social identities, while also reawakening former cleavages and discourses.[21] According to public opinion polls, one of the social biases which has been revived during the 2009-2015 period is represented by the reopening of wounds of World War II.[22] According to former Greek prime minister Theodoros Pangalos, "they [the Nazis] took away the Greek gold that was in the Bank of Greece, they took away Greek money and they never gave it back" and "Germany is a country with a catastrophic and unforgivable past."[23] Unsurprisingly, when describing the Greek financial crisis, most articles refer at least once to Germany or the German government.[24] As a result, 32.4 percent of Greek respondents associate Germany with the Third Reich and Nazism, with seven out of ten Greeks having a hostile attitude towards German political figures.[25]

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[12] Hobolt and Tilley, *Blaming Europe?*, 3.
[13] Kumlin, "Blaming Europe?," 408.
[14] Kumlin, "Blaming Europe?," 4; Petrakos and Sotiroiu, "Grexit and Brexit," 20; Polychroniou, *The Greek Crisis*, 21.
[15] Galanopoulos, *Populism*, 2.
[16] Galanopoulos, *Populism*, 2-4.
[17] Galanopoulos, *Populism*, 5.
[18] Kumlin, "Blaming Europe?," 407-9.
[19] Michailidou, "'The Germans are Back'," 103.
[20] Clements, Nanou, and Verney, "The Eurozone Crisis," 252.
[21] Michailidou, "'The Germans are Back'," 92; Galanopoulos, *Populism*, 5.
[22] Michailidou, "'The Germans are Back'," 93.
[23] As quoted in Michailidou, "'The Germans are Back'," 92; Tzogopoulos, "Time Running Out," 7.
[24] Michailidou, "'The Germans are Back'," 102.
[25] Michailidou, "'The Germans are Back'," 98.

Why Attitudes Towards Germany Influence Greek Euroskepticism

Following Brexit, the EU has been dominated by Franco-German bilateralism, with both countries significantly contributing to EU funds and shaping policies at the EU level.[26] In light of Greece's already existent bias towards Germany, the former's attitudes on the EU are therefore likely to be influenced.

According to the most recent EU-level social survey, Greece is the EU country with the lowest trust in the way in which EU democracy works.[27] Additionally, Greece is the only country where the majority of respondents has a negative perception of the future of the EU, while also feeling unable to influence national-level politics.[28] Often compared to Brexit, Grexit and Greek Euroskepticism have been regarded as "the first time disintegration in the EU became a true possibility," thus making it crucial for the EU to act.[29]
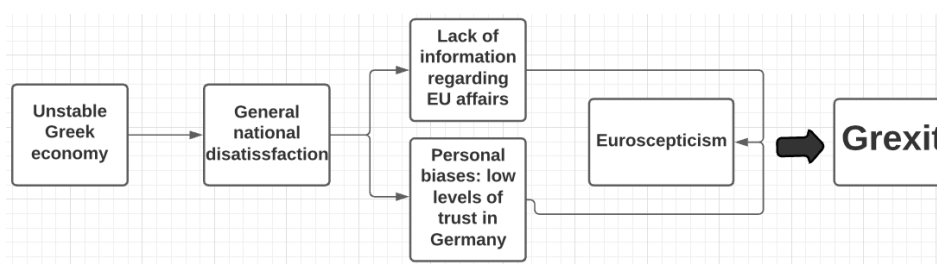
Figure 1. The Policy Problem

Policy Options

"No Policy" as the Policy

So far, the EU has yet to proactively engage with the Grexit debate, not having taken any issue-specific policy measure since 2012. According to scholars having compared and contrasted Brexit and Grexit, the EU seems to be repeating the same cycle.[30] After failing to implement policy measures to inform British citizens of the true benefits of EU membership, the EU has taken the same non-interference stance regarding Grexit, thereby highlighting that taking no policy measures to strengthen integration remains the EU's preferred policy option.[31]As former European Commission president Jean-Claude Juncker stated with regards to Brexit, "it was a mistake not to intervene and not to interfere, because we would have been the only ones to destroy the lies that were circulated round."[32] Therefore, the experience of Brexit demonstrates the inefficiency of the EU's approach of non-interference.

Greek citizens no longer consider themselves capable of influencing decision-making processes, thus feeling that their voices do not matter in the EU.[33] By choosing to not adopt

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[26] Krotz and Schild, "Back to the Future?," 1175.
[27] Eurobarometer, "Public Opinion."
[28] Clements, Nanou, and Verney, "The Eurozone Crisis," 252; Eurobarometer, "Public Opinion."
[29] Terzi, "Grexit and Brexit," 1-3.
[30] Terzi, "Grexit and Brexit," 2.
[31] Terzi, "Grexit and Brexit," 3.
[32] As cited in Gotev, "Juncker Regrets."
[33] Clements, Nanou, and Verney, "The Eurozone Crisis," 250.

any policy addressing citizens' concerns, the EU is proving that their worries are true: their voices are truly insignificant.

As Nyhan and Reifler demonstrated, political attitudes are persistent unless measures are taken to actively shift them.[34] In other words, misperceptions, false information, and personal biases are everlasting lest citizens actively engage with different perspectives.[35] By not tackling both people's concerns and disinformation shared through Greek media, the EU is indirectly contributing to future political outcomes, insofar as attitudes and self-efficacy are two of the three determinants of political behavior.[36]
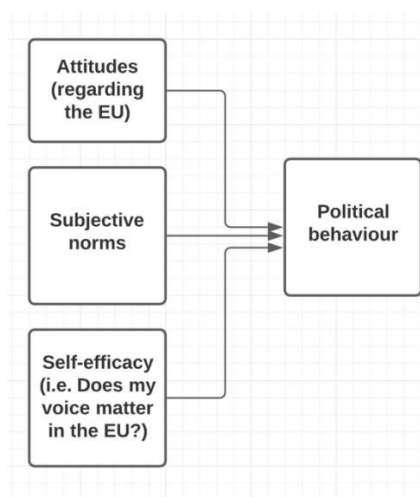
Figure 2. The Three Determinants of Political Behavior

Previous Policies: Too General to Influence?

While the EU has yet to take specific measures to counter Greek skepticism, EU-wide initiatives such as "Europe talks," "Renew Europe," and "What the EU does for me" aim at identifying existing societal problems and increasing the visibility of EU-supported progress in each Member State. Still, citizens often perceive the costs of participating in EU initiatives as too high for the possible payoff.[37] On the same note, Europeans are not familiar with the ways in which the EU operates and have been shown to not be aware of EU-wide campaigns.[38] As such, having a country-specific campaign promoting EU resources represents an innovative and cost-effective way of increasing engagement with such campaigns, whilst also informing Greek citizens about the actual implications of having joined the EU. Similarly, since posters represent minimally intrusive ways of promoting information and taking into account the fact that the EU's initiatives existed prior to the proposed campaign, the likelihood of Greek backlash is minimized. In other words, as this information campaign does not disrupt people's daily routines and since the proposed campaign requires minimal expenditures, the costs of protesting the campaign are increased for Greek citizens.

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[34] Nyhan and Reifler, "When Corrections Fail," 304.
[35] Peisakhin, "Long Run Persistence," 23.
[36] Ajzen, "The Theory of Planned Behavior," 182.
[37] Lund, Lidén, and Nyhlénet, "Who Talks," 130.
[38] Hadad, "The Geographic Distribution," 1097.

Recommendation: Improving the Salience of EU Resources

Since the official websites of the EU already provide extensive information on EU affairs and practical ways in which citizens can shape EU policies (e.g., through citizens' initiatives), the main goal of this policy proposal is to increase the salience of these features. In other words, this policy proposal aims to increase knowledge of the benefits of EU membership, thus influencing public perceptions and solidarity levels by countering the misinformation disseminated by Greek media.[39] Due to the website's user-friendly interface and the fact that the content is translated into twenty-four languages, the EU only needs to increase people's accessibility to and knowledge of its resources in order to shift public sentiment. In that regard, an information campaign through physical posters directing citizens to the EU's various official websites could help diminish the risk of Grexit.

Instead of investing in creating new websites which tackle the specific problem of Greek Euroskepticism, this proposal suggests guiding citizens to the various official websites of the EU for two reasons. Firstly, the existing websites already have options such as "What Europe does for me," which prove the benefits of EU membership not only for the nation-state but also for citizens. Secondly, maintaining the current facilities would not affect the experience of existing users of the EU's websites, as they would not be faced with the technical difficulties involved in shifting to completely novel resources.

Placing Physical Posters: The Only Step Towards Attitude Change and Increased Solidarity

As Ilic and Rowe have established, posters are very effective tools of knowledge transfer.[40] For this reason, poster campaigns have been used in all domains, ranging from sharing information about national elections to the current COVID-19 pandemic. Therefore, employing the use of physical posters to promote knowledge of the EU's websites represents the most reliable option to shift Greek public opinion.

Poster Placement: Supermarket Boards and Public Parks

According to Davis and Knowles, the more often people encounter the same poster, the higher the chance that they absorb its message.[41] Therefore, this campaign's posters need to be placed in areas that are visited the most frequently, so as to increase engagement with the campaign. Since extensive research during the current COVID-19 pandemic has proven that supermarkets represent the places with the most visitors, this information campaign is to be centered around Greek supermarkets.[42] More specifically, the proposed posters will be placed on the noticeboards of Greek supermarkets, where they will be observed every time citizens need to replenish their household supplies. Additionally, to increase even further the salience of the posters, they will also be placed on the notice boards found in Greek public parks. This placement became especially important during COVID-19 lockdowns, when public parks became the only places accessible for the large public.

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[39] Galanopoulos, *Populism*, 2.
[40] Ilic and Rowe, "What is the Evidence," 4.
[41] Davis and Knowles, "A Disrupt-Then-Reframe Technique," 197.
[42] Winton, "The Value of Labour," 4.

Poster Design: A Predominantly Blue Message

Since the color blue is common to both the EU and Greek flags, the design of the posters will be underpinned by blue hues. The European flag will constitute another distinguishing feature of this campaign, along with the existence of a scannable QR code leading to the relevant EU website. For instance, if the message of the poster states that "Your voice matters, start a citizens' initiative today," the QR code will lead to the EU webpage on citizens' initiatives.

Figure 3. First Example of Poster

This particular line will counter the feeling of being left out of EU decision-making processes, shared by 68 percent of the Greek population.[43] Conversely, messages[44] emphasizing the benefits of EU membership (such as "Greece: A member of the most-developed open marketplace") will guide citizens to the website section on the improvements that the EU has caused in their particular area.

Figure 4. Second Example of Poster

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[43] Eurobarometer, "Public Opinion."
[44] For more poster designs, see Appendix.

The Campaign's Effectiveness

Insofar as posters have been proven to be efficient means for sharing information,[45] adding the use of EU websites through QR codes would lead to even higher engagement levels, thus increasing the salience of the information shared.[46] As such, the campaign's factual effectiveness could be measured by comparing the number of users accessing EU web pages before and after the posters were placed. Additionally, attitude shift could be measured through the next Eurobarometer study, by comparing it with former Greek statistics. Therefore, testing the effectiveness of the information campaign would not require any additional resources. In other words, the only cost entailed by this proposal would be the one of designing and printing the posters themselves, as all other facilities (i.e., the EU websites and EU surveys) are already administered regularly. Additionally, Nysveen and Breivik have shown that the effects of information campaigns can be noticed within the first months following the start of the campaign, thereby predicting the campaign's immediate impact on the Greek population.[47]

Since the proposed information campaign would not change any national laws or policies - thus being minimally intrusive - and current Greek President Ekateríni Sakellaropoúlou has shown himself to be pro-European, this policy proposal assumes the support of 64 percent of the Greek political class, making up Sakellaropoúlou's supporters.[48]

In short, given the low material costs of this proposal and the simple way in which it could diminish Greek Euroskepticism, having an information campaign in Greece represents the most feasible and cost-effective policy aimed at addressing the threat of Grexit. Conversely, not taking any policy measures could have the same effect as in the case of Brexit, namely increasing Euroskepticism so much that Greece leaves the EU.
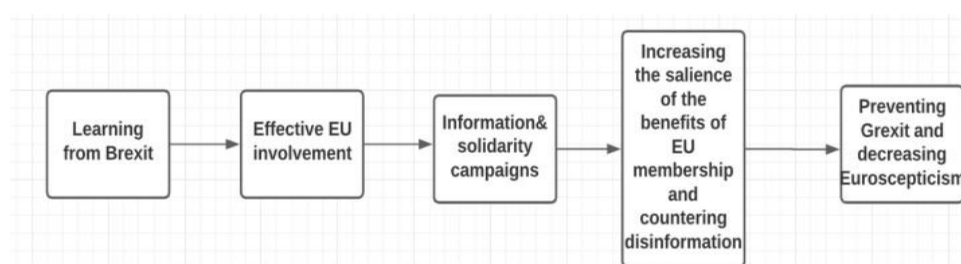

Figure 5. Expected Efficacy of the Proposed Model

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[45] Gobind and Upkere, "The Use of Posters," 740.
[46] Nysveen and Breivik, "The Influence of Media," 33.
[47] Nysveen and Breivik, "The Influence of Media," 34.
[48] Pagoulatos, "The Remarkable Defeat," 56.

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Operation Phoenix: Five Proposals to Help Amsterdam Rise from the Ashes of the COVID-19 Pandemic

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Executive Summary

Sustainable tourism is a challenge that Amsterdam urgently needs to tackle. Due to its worldwide popularity, the capital city of the Netherlands faces an influx of tourists every year, which reduces its liveability for Amsterdam residents. Amsterdam's city centre is overcrowded, littered, and noisy, while also being the sole beneficiary of the tourist economy from which other city districts do not benefit. Current policies either solely address the consequences of mass tourism affecting the centre of the city, or lack concrete implementation steps. The proposal introduced in this paper aims to kickstart the large-scale circulation of tourists within different parts of the city by introducing projects, events, and innovations which would decentralise the city's attractiveness. Such a policy would result in the wider dispersion of tourists throughout the city, thereby making space for local life in the centre. Operation Phoenix aspires to help Amsterdam rebuild after the shock of the COVID-19 pandemic and become more sustainable through a healthy circulation of people, money, resources, ideas, and fun.

Introduction

The current state of Amsterdam's visitor economy is not sustainable: the city centre, Amsterdam's beating heart, is overburdened with tourists, and the wealth that they bring is concentrated there, rather than shared equally among different parts of the city.[1] While mass tourism may boost a city's economic prosperity and vitality, Amsterdam's tourists also bring about a housing shortage, a monoculture of shops, noise disturbances, and littering. The COVID-19 pandemic, which saw a decrease of international visitors by roughly 70 percent,[2] presented Amsterdam with an opportunity to rethink tourism on a large scale. To improve the flow of people and resources and unclog the arteries that connect the separate parts of Amsterdam, this memo proposes strategic improvements to each of the five main districts which make up the city: the north, the east, the south, the west, and the centre. This proposal therefore suggests concrete steps to attain the goals of the Comprehensive Vision Amsterdam 2050 policy adopted by the Amsterdam city council in July 2021.[3]

Problem Description

Amsterdam's residents are currently being driven out from the heart of the city because of rising housing costs, the established visitor-targeted monoculture,[4] and the general disturbance caused by tourists.[5] The COVID-19 pandemic highlighted the uniformity of Amsterdam's economic structure,[6] which crumbled without tourists. It also showcased the emptiness of the city centre when tourist-free - ironically while Amsterdam was simultaneously dealing with a housing shortage.[7] Extremely high levels of tourism deteriorate the city environment with littering, public drunkenness, or raised noise levels, especially in most frequently visited parts, negatively impact Amsterdam's liveability.[8] At the same time, Amsterdam's other districts are crowded with tourists and yet the economic benefits of tourism primarily concentrate in the centre district. Last but not least, Amsterdam's population is expected to continue rising in the upcoming years.[9] Without changing the flow of people and re-structuring the city, this will surely exacerbate the aforementioned issues.

Policy Options

The municipality has already launched several initiatives aiming to make tourism in Amsterdam more sustainable.[10] The so-called City in Balance[11] forbids new tourist shops from setting up in the Centre District, along with large tourist groups and holiday rentals. While the City in Balance policy deals with existing issues in the most frequented part of the city; it fails to address the need to relieve the centre from overflow of people by relocating tourists.

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[1] Schlagwein, "How Amsterdam is Fighting."

[2] Moretti, van der Sterren, and Grimm, *Sustainable Urban Tourism*.

[3] City of Amsterdam, "Policy: Urban Development."

[4] McClanahan, "In Empty Amsterdam."

[5] Moretti, van der Sterren, and Grimm, *Sustainable Urban Tourism*.

[6] Moretti, van der Sterren, and Grimm, *Sustainable Urban Tourism*.

[7] Mendel Giezel, personal communication, April 19, 2022.

[8] Moretti, van der Sterren, and Grimm, *Sustainable Urban Tourism*.

[9] Population Stat, "Amsterdam."

[10] Moretti, van der Sterren, and Grimm, Sustainable Urban Tourism.

[11] City of Amsterdam, "Policy: City in Balance."

The We Live Here campaign,[12] which prompts residents of the Red Light District to inform its visitors about the damage to local life their behaviour may cause, faces the same shortcoming. The Enjoy and Respect campaign, introduced in 2018, alerts visitors about fines for antisocial behaviour in Amsterdam through internet sites, but does not tackle the aforementioned issue either.[13]

Problems engendered by mass tourism should be combated not only with preventative and restrictive measures, but also with innovative approaches that champion a more circular movement of tourists throughout the city. Therefore, the present paper supports an expansion of the Comprehensive Vision Amsterdam 2050,[14] which is rightfully focused on shifting Amsterdam to a polycentric model, which features more dispersed tourism and economic wealth. However, this vision lacks concrete steps of action. While Operation Phoenix fully endorses the willingness to invest in the different parts of the city, improve the reach of public transport, exercise rigorous greening, and combine living and working spaces; it contends that Amsterdam needs a specific plan for a better circulation of people throughout the city. This development should be undertaken under the framework of 'Urban Commons,' commonly used to address contemporary urban challenges,[15] which would involve the cooperation of local communities, the municipality, businesses, universities, and local nonprofit organisations,[16] while stressing the protection of the city's fauna and flora.

Recommendations

Escape to Amsterdam-Noord: The New Urban Artscape

Amsterdam-Noord has in recent years undergone rigorous development initiatives in order to create what is now often referred to as Amsterdam's 'creative district.'[17] In a city with a constrained housing market and severely crowded with tourists, a re-created Noord could provide much-needed space for living, working, and sustainable tourism. Amsterdam-Noord, and especially the NDSM-area, is already rejuvenating the city's profile while providing job opportunities for Amsterdam creatives and entertainment for all in the form of clubs, up-and-coming restaurants, Europe's largest flea market, and more. Yet there are concerns that Amsterdam-Noord may lose its authentic character and become gentrified in the coming years. Therefore, this memo recommends the development of a new art centre, which would strengthen the hip character of the North, while also providing daytime and nighttime attractions.

While the character of this new Urban Artscape would, as according to the Urban Commons approach, be determined in collaboration with all the key stakeholders, it could be envisioned as Amsterdam's version of Wynwood. Wynwood is a fifty-city-clock large art district in Miami, to which numerous street artists have been invited and paid to decorate the buildings and streets. Such an Urban Artscape approach could easily be adapted to fit with several of Noord's areas. The goal of such a project would be to create a bustling new art centre which would employ local artists and entrepreneurs, attract tourists away from the city centre, and let Amsterdam-Noord share in the wealth of the visitor economy.

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[12] We Live Here, https://welivehere.amsterdam/about/.
[13] Boztas, "Amsterdam Gets Tough."
[14] City of Amsterdam, "Policy: Urban Development."
[15] Foster and Iaione, "Urban Commons."
[16] Foster and Iaione, "Urban Commons."
[17] Smart Cities Dive, "Amsterdam-Noord."

Amsterdam-Zuid: Work Hard, Play Hard – Two Faces of the New South.

One of the main issues Amsterdam currently faces is that the large flows of people living, working, or seeking leisure, are not sufficiently circulating throughout the city. For instance, while the centre sees large numbers of tourists creating disturbances in the nighttime, the southern office district is merely catering to day-time business. This is a rather ineffective use of precious space as certain areas are overflowing with tourists while others are left empty after working hours.

In order to tackle this inefficiency, this paper proposes that some of the nightlife scene of Amsterdam be relocated to the Southern office district, by for example, subsidising night-life establishments in Zuid, using marketing to encourage tourists to visit Zuid for nightlife, and further facilitating a club-scene in Zuid by inviting entrepreneurs and alleviating any regulatory pressures (such as noise-control) that is currently deterring them. Such a move would generate rent subsidies for night-life establishments – restaurants, bars, and clubs – to set up their businesses. It would also involve an additional invitation towards creative entrepreneurs and artists to open up their shops and stands there, as the mere presence of night-life establishments might not sell itself. Thus, to further increase the attractiveness of the South as a nighttime location, a rebranding[18] of the surface by giving a stylish, glitzy grandeur to the district would help fortify the area with an inviting and hip atmosphere. This involves a restructuring of the physical infrastructure in Zuid to not only allow for night-life, but also to promote it – by repurposing locales to clubs, rejuvenating the district with decor such as lights and street art, and ensuring that there is night-time transport to and from Zuid. The anticipated outcome would be a more efficiently used Southern district with busy daytime offices and a bustling night-life scene, which would relieve city-centre locals from the current nuisance tourists bring.

The West's Stad-Haven: A Haven for Local and International Professionals Alike

Amsterdam's architecture could be seen as a microcosm of its character: the city's history as a bustling port and trading centre has made a mark on both its physical and cultural character. Architecture can also generate new sources of ideas and income. Implementing a pilot-project that showcases truly sustainable architecture could therefore serve as an attraction to tourists, especially business travellers, while providing a source of revenue for an underutilised part of the city, as well as be a source of inspiration for what the future of urban infrastructure and architecture could augur.

This paper envisions a further dimension of the development of Stad-Haven, in line with development projects already undertaken in the area. Building a modernistic, sustainable space which would integrate collaborative offices, incubation areas for sustainable start-ups, as well as conference venues for international and local businesses alike could provide some balance to an area in the West which mostly sees industrial warehouses and festival venues.

The building complex would merge various sustainable aspects. Firstly, it would be built from green materials such as compressed wood,[19] and incorporate smart solutions such as heat exchangers, which recirculate heat that escapes from the inside of buildings. In addition, the complex would be built in tandem with community gardens that would allow

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[18] Dai et al., "From Landscape to Mindscape," 1.
[19] Zastrow, "Crushed Wood."

for recreation and urban farming initiatives. 'De Ceuvel' project,[20] located in Amsterdam-North, could serve as inspiration for creative and sustainable solutions, allowing the Haven to use sustainable solutions while still aiming to serve business needs.

Food F-EAST: Enabling Amsterdam's Food Scene to Speak for Itself

Amsterdam should boast of its vibrant and diverse food-scene,[21] which not only incorporates food from all around the world, but also encompasses restaurants of all price levels. To enable Amsterdam to further develop and broadcast this key attraction to residents and tourists alike, all the while providing local urban gardens and farmers with another source of revenue, this paper recommends that Amsterdam's city council incorporates plans to host a biannual sustainable global foods festival on the currently developing Ijburg island. A week-long festival which could showcase local cuisines, agriculture, and food-entrepreneurs could not only bring new kinds of tourists to Amsterdam, but, if well-timed, could divert tourists away from the centre during the busiest seasons of the year. Additionally, a biannual festival could feature seasonal produce and futuristic, sustainable foods alike. A festival like F-EAST could also be an opportunity to launch Ijburg as a mini-centre for modern lifestyle, food, and culture, while allowing the other areas of Amsterdam to share in the wealth of the visitor economy. Just as Ijburg will be an extension of urban Amsterdam, the biannual F-EAST could be an extension of the Dutch sustainable agriculture industry in combination with Dutch food-entrepreneurs.

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[20] De Ceuvel, https://deceuvel.nl/en/.
[21] Evans, "A Culinary Guide to Amsterdam."

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Making Tourism in Amsterdam More Sustainable Through Decentralisation

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✳

Executive Summary

This policy memo addresses the lack of sustainability of Amsterdam's tourism industry. It provides a careful analysis of previous policies implemented by the municipality and attempts to explain their low effectiveness. It suggests that the 'We Live Here' project is executed on too small a scale to have sufficient impact, while the Comprehensive Vision Amsterdam 2050 requires more thought and eye for detail. Ultimately, it recommends that focusing on the decentralisation of the city would result in significant positive change in the character of Amsterdam's tourism industry, while maintaining its profitability. This would involve investing in neighbourhoods beyond the city centre and establishing attractive and sustainable sites geared towards permanent residents and located away from the tourist-dense areas. This policy would both improve the feasibility and the impact of previous policies to achieve a more sustainable type of tourism.

Introduction

Since the future will be urban for a majority of people, the solutions to some of the greatest issues must be found in city life. By choosing to act sustainably, we choose to build cities where all citizens live a decent quality of life and form a part of the city's productive dynamic, creating shared prosperity and social stability without harming the environment.[22]

Throughout the years, Amsterdam has become increasingly dependent on its tourism industry, much to the detriment of its residents.[23] Despite its unquestionable profitability, the tourism industry in Amsterdam has become a burden for the residents of the city. Issues like excessively crowded streets, large amounts of trash, noise disturbance, and inconsiderate behaviour from tourists have led to significant change in how the residents view what constitutes the city's main source of profit.[24] This begs the question of how Amsterdam can continue to develop its profitable tourism industry while ensuring its citizens fair living conditions.

Problem Description

Before exploring ways to make tourism in Amsterdam more sustainable, it is important to highlight the urgency of the matter. To gain a better understanding, a structural analysis of the problems that tourism causes Amsterdam is conducted.

From an economic perspective, the city centre is more reliant on its tourists than its residents when it comes to income and work opportunities. There is a form of interdependence between tourists and residents when it comes to job offers and income, where job creation or loss is highly dependent on tourism. Suddenly in the middle of a pandemic, when job security was one of the most important needs, a number of citizens found themselves in a dire situation due to the lack of job availability.[25] What further proves this one-sidedness is the fact that shops, buildings, and amenities in the centre are slowly changing to suit the interest of the tourists instead of the residents. An example of which could be the ever-growing number of souvenirs shops and fast-food restaurants. Moreover, the rising rents and high demand for housing drives residents of those areas away from the city centre, further encouraging tourists to occupy the centre.[26]

From a socio-cultural aspect, the landscape of the city centre has changed dramatically to the point where urban areas like the Red Light District have become irreversibly embedded in the tourism culture of Amsterdam, while still being inhabited. Through all this, the people most affected by the high levels of tourism are the residents of the neighbourhoods around attractive tourist sites, who not only lose the livability of their neighbourhoods because of all the visible cons like crowded streets, noise disturbances, and inconsiderate behaviour, but also risk their future because of the city's reliance on the tourism sector.[27]

However, what still remains the main reason behind Amsterdam's worsening tourism problem is the amount of profit the city makes from it.[28] It would be irrational to suggest that the city ignores the possible gains from this industry. Nevertheless, in light of the magnitude

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[22] United Nations, *Sustainable Cities*.
[23] Municipality of Amsterdam, *Begroting 2022*, 3.
[24] Gerritsma and Vork, "Amsterdam Residents," 91-92.
[25] Statista, "Number of Jobs."
[26] Savini et al., "Amsterdam in the 21st Century," 108.
[27] Gerritsma and Vork, "Amsterdam Residents," 96-97.
[28] Municipality of Amsterdam, *Begroting 2022*, 3.

of the current issue, it is clear that it needs to re-evaluate its stance and give more attention to the needs of the residents.

Policy Options

Several initiatives have been introduced to curb the rampant expansion of tourism in Amsterdam and the negative consequences that come along with it. Most of these initiatives have either underachieved or failed to achieve their goals. Introduced in 2009, the main goal of the 1012 initiative was to combat the crime present in the 1012 district as well as upgrading the district economically. The project aimed to take over the spaces previously occupied by tourist shops, coffee shops, and sex-work businesses and turn them into areas of culture and business meant to improve the quality of the district.[29] The project was characterised by its top-down approach, which ultimately caused its demise. Indeed, because of its lack of consideration for local actors such as residents, sex workers, and business owners, the changes made by the policy did not receive sufficient grassroots support and required vast amounts of resources from the municipality to remain operational.[30] As such, any new initiative tackling mass tourism should prioritise the input and participation of key local actors to ensure its solvency and stability.

Another policy that was introduced by the municipality is the Comprehensive Vision Amsterdam 2050 initiative, which, among others, aims to address Amsterdam's reliance on tourism. However, it also includes some fundamental inefficiencies. First, although its planned expansion of the public transport system would save time for commuters and make transportation more effective, this initiative could also address mass tourism by introducing cheaper ticketing options for specific destinations. Research shows that such measures significantly boost ridership and thus could be used as an incentive for tourists to explore parts of the city outside of its centre. Such an initiative could not only make transportation in the city easier but also prevent overcrowding in its centre. However, it is still crucial to turn other parts of Amsterdam into attractive destinations on their own, so that the massive cost of building new infrastructure that this policy entails is not wasted. In addition to this, by making more room for pedestrians in Amsterdam, the municipality might inadvertently increase incidences of noise complaints, along with the amounts of trash left on the streets.

The 'We Live Here' project is a third initiative that was implemented by the municipality to tackle mass tourism in Amsterdam.[31] The main idea of this initiative was to generate legislative change to protect owners and long-term residents living in high-density areas. Although it appears to be efficient in preventing and decreasing tourist troubles in the city centre, by making tourists aware of the fact that there are still inhabitants in the high-density areas, it is executed on a relatively small-scale, therefore creating no significant impact. This project would need to be greatly expanded to other crowded areas in order to broaden its reach and increase the benefits it generates. On top of that, the expansion of already 'quiet' zones, i.e., spaces where no commotion after a specific time of day is advised, would significantly and positively impact the wellbeing of Amsterdam citizens, while having a minor effect on the comfort of tourists.

The 'City in Balance' initiative is different from the previously mentioned policies proposed by the municipality to address mass tourism in Amsterdam.[32] With the aim of

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[29] Kooij, van Grondelle, and van Zon, "Project 1012."
[30] Kooij, van Grondelle, and van Zon, "Project 1012."
[31] We Live Here, https://welivehere.amsterdam/about/.
[32] Municipality of Amsterdam, *City in Balance 2018-2022*.

increasing the diversity of shops, banning holiday rentals, and minimising the number of new hotels in three neighbourhoods of the Amsterdam city centre area, the policy was proclaimed as a success.[33] This policy serves as a good basis for any new measure designed to deal with mass tourism in Amsterdam, in addition to combatting the housing crisis, if complemented by measures like rent control that will counteract against the out-pricing of residents by investors of holiday rentals.

Recommendation

This paper argues that decentralisation should be at the core of new policies addressing mass tourism in Amsterdam. Preventing the flow of tourists into Amsterdam is neither a viable nor a profitable solution. Thus, this paper recommends that existing policies Comprehensive Vision Amsterdam 2050, 'We Live Here,' and the 'City in Balance' be expanded. By investing in new urban centres, Amsterdam would have a unique chance of tackling two issues plaguing the city: its economic reliance on tourists, by creating new business opportunities accommodating residents instead of visitors; and the concentration of tourists in the city centre, by offering new destinations thus encouraging the dispersion of tourists throughout the city.

The implementation of this initiative would involve three phases. Phase One would follow the basic assumption of Comprehensive Vision Amsterdam 2050, i.e., fostering the sustainable development of existing neighbourhoods of the city,[34] and combining this policy with the 'City in Balance' initiative that prevents further increase of tourist flow.[35] In this way, new infrastructural development would be oriented towards residents - rather than tourists - whilst also creating and developing neighbourhoods that are self-sufficient and economically independent from tourism.

Phase Two would entail ensuring that those new community centres are able to sustain the resident population already present there. It is to be expected that if Phase One of the project succeeds, the newly developed areas will grow in value. To safeguard against negative processes resulting from the new development – such as traffic congestion and gentrification – that could increase the cost of living and outprice the existing residents out of their homes, measures like rent control, taxation of empty properties, and promotion of cultural activities connected to the local communities would make sure that these community centres are able to sustain themselves.

Lastly, Phase Three would focus on tackling what constitutes the main shortcoming of previous initiatives - their top-down approach. Establishing a platform with a bottom-up approach, that would be run by residents themselves, enables residents to give their input on the changes in their area and would be the first step towards fostering local support for the initiative. Additionally, in exchange for funding community activities and projects suggested by the residents, private business owners could receive more favourable lease contracts for spaces in and around new developments. Such a mechanism would incentivize public participation and grant the residents voice in how their communities are developed.

Implementing these three phases would enable the newly revitalised areas of the city to attract greater tourism movement. Moreover, tourists would no longer pose a danger to Amsterdam's culture and its citizens' wellbeing. All in all, tourism in Amsterdam would become more sustainable in the long run.

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[33] Municipality of Amsterdam, *City in Balance 2018-2022.*
[34] City of Amsterdam, "Policy: Urban Development."
[35] Municipality of Amsterdam, *City in Balance 2018-2022.*

Conclusion

This paper sought to address the issue of mass tourism in Amsterdam. It showed that decentralisation is crucial to render the tourism industry sustainable in Amsterdam. Indeed, considering that there are limits to influencing tourist movement, the focus of any policy addressing unsustainable tourism in Amsterdam should be on developing a strategy to spread them out among the many neighbourhoods of the city to prevent overcrowding tourism in the centre. The three-phase plan proposed in this paper would successfully transform the city's approach to tourism and improve the livelihood of its residents, insofar as it improves past policies implemented by the municipality in terms of scale and feasibility.

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The Green Circle: Sustainable In-City Ecotourism

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Executive Summary

Unsustainable mass tourism concentrated in the city centre of Amsterdam poses a threat to both the livability of residents and the environment. This issue is aggravated by unwelcome attractions, such as drugs, sex work, and party tourism, which drive tourists to Amsterdam. Because of this, several areas of the city are often perceived as family-unfriendly. On top of that, tourists and residents both suffer during summer, which not only involves increased numbers of tourists, but also higher temperatures and heatwaves in the city, catalysed by the limited number of green spaces. In light of these issues, the municipality has reacted by increasing tourism taxes, banning the construction of new services in the city centre, and transitioning the Red Light District into the Green Light District. As these policies have certain shortcomings, the present policy paper aims to address the issue at its roots. The approach proposed entails promoting alternative in-city ecotourism by developing the Green Circle - a flora-filled walking and cycling route surrounding the areas with high tourist density in Amsterdam. To aid its efficient implementation, this paper presents concrete ways of promoting this environmentally friendly, tourist-redistributing initiative.

Introduction

The quality of life of more than one-fourth of the residents of the city centre of Amsterdam is threatened by unsustainable mass tourism.[1] The city centre of the Netherlands' capital has become a hub of exclusive types of leisures, such as sex work, drugs, and partying, that residents often consider inappropriate and obtrusive. Consequently, this raises concerns about the safety and livability of the city.[2] Additionally, the business sector has become overly dependent on mass tourism, primarily concentrated in the centre of the city, through the overwhelming presence of the above-mentioned industries as well as hospitality facilities, which almost exclusively cater to tourists.[3] These factors further contribute to the unsustainable development of Amsterdam. It is necessary for the municipality of Amsterdam to act upon this matter by employing innovative initiatives. Considering the importance of sustainability in today's world, ecotourism is the solution to make the current and future generations proud of their city and their local government, and attract different types of tourists to the entire city rather than solely its centre.[4] Ecotourism aims to connect tourists with conservation and sustainable development. It is a form of tourism that is designed to channel revenues to enhance the livelihoods of people in local communities while preserving and improving nature.[5] Thus far, the primary methods to tackle this issue have included raising the tourist tax,[6] closing inappropriate hotels, restaurants, and cafés, and implementing image makeover initiatives, such as the Green Light District project.[7] Unfortunately, these initiatives have not been sufficient to combat the issue of unsustainable tourism in the heart of Amsterdam. Therefore, this paper recommends the creation of a Green Circle to reinforce the Green Infrastructure of the city and thoroughly and enthusiastically promote a more positive image of Amsterdam.

Problem Description

Congestion

Mass tourism continues to engender pressing issues for Amsterdam. Tourism was virtually absent from March 2020 to June 2021 due to the COVID-19 pandemic restrictions. Its recent return has led to the re-emergence of already familiar problems in the city. For one, tourism is heavily concentrated in the city centre.[8] Furthermore, a large share of it is considered a less than desirable kind of tourism.[9] Some consequences of these factors, such as overcrowding and littering, are a nuisance to Amsterdammers. Other effects, such as aggressive behaviour and excessive noise can drastically affect residents' quality of life, to the extent where locals file petitions calling for fixed quotas of tourists.[10] Residents feel unsafe and irritated, particularly when encountering tourists in the congested city centre.[11]

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[1] Gerritsma and Vork, "Amsterdam Residents," 91.
[2] Pinkster and Boterman, "When the Spell Is Broken," 458-59.
[3] Pinkster and Boterman, "When the Spell Is Broken," 458-59.
[4] Vincent and Thompson, "Assessing Community Support," 153.
[5] Stronza, Hunt, and Fitzgerald, "Ecotourism for Conservation?," 230.
[6] NOS, "Amsterdam Neemt;" Pretwerk.nl., "Forse Verhoging."
[7] Green Light District, "About Us."
[8] Goparoo, "Amsterdam Tourist Spots Heat Map."
[9] McClanahan, "In Empty Amsterdam."
[10] van Dantzig, "Amsterdam to Limit Tourism."
[11] Gerritsma and Vork, "Amsterdam Residents," 96.

Therefore, the residents of the city centre and those along the green structure and ecological passages surrounding Amsterdam are key stakeholders when considering a transition towards a sustainable tourism model, though Amsterdammers in other areas are also affected by these problems and should also be involved in any initiative aimed at resolving them. Moreover, business owners, particularly those outside of the city centre, are critical stakeholders as they stand to benefit from Amsterdam's multi-centred urban development plans. As such, since residents and businesses of the districts outside the centre would profit from initiatives which improve their neighbourhoods and work towards a multi-centric city, they are also important stakeholders. In sum, sustainable tourism must become the prevalent type of tourism experienced by Amsterdam and complement the transition to a multi-centred and thus a more equitable city.

Lack of Space for Sustainable Activities

Although public green space makes up 13 percent of Amsterdam, the city's parks are often crowded and noisy, especially in the city centre, as tourists and residents often seek to relax surrounded by nature.[12] Yet, family-friendly activities are also often found in already congested areas of the city, such as Artis, Hortus Botanicus, Nemo Science Museum, and the Vondelpark.[13] Moreover, the options for experiencing nature and biodiversity throughout the city are limited.[14] Tourists are advised to travel far outside of the city to experience Holland's natural heritage.[15] This highlights the need for a shift of focus towards ecotourism and the promotion of more socially, culturally, and environmentally sustainable activities. These factors are crucial in rebuilding Amsterdam's image as a green and family-friendly city.

Rising Temperatures

Amsterdam has been experiencing an increase in temperatures each year since the beginning of the twentieth century.[16] Climate change and urban planning have contributed to an imbalance of city temperatures relative to the vegetated sections throughout the city. In particular, the city centre is warmer than the surrounding rings, contributing to significant socio-economic repercussions during high-temperature spikes.[17] Consequences of heatwaves in cities include serious health risks,[18] increased violence and crime,[19] and less responsible decision-making. Ensuring a comfortable and cool city is crucial in creating a welcoming and safe city for both tourists and residents during the summer season.

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[12] World Cities Culture Forum. "% of Public Green Space."
[13] World Cities Culture Forum. "% of Public Green Space."
[14] I amsterdam, "Where to See Dutch Wildlife."
[15] I amsterdam, "Where to See Dutch Wildlife."
[16] Hikersbay, "Data Tables."
[17] AMS, "A Map."
[18] Maxouris, "This Is What Happens."
[19] Anderson, "Heat and Violence," 1.

Policy Options

The municipality of Amsterdam has implemented several policies over the years to mitigate the negative consequences of mass tourism,[20] which have had varied effects.

Market-Based Incentives

Raising the tourist tax has been one of the most straightforward policies enforced by the city of Amsterdam. As of 2020, the already existing 7 percent tax on top of the hotel room rate has been supplemented by a three-euro tax per room occupant,[21] making Amsterdam one of the most heavily tourist-taxed cities in Europe. The downside of this policy is that it does not engage with congestion and (noise) pollution caused by mass tourism and could result in issues of income inequality. Furthermore, this policy does not contribute to a better distribution of tourists across the city so that the peripheral areas, too, benefit from tourism. It is also not clear whether the additional three-euro levy is proportionate to the societal costs of tourism borne by city residents.[22]

Regulatory Initiatives

Furthermore, the municipality has made plans to ban new hotels and shops that cater to tourists from the city centre - one of its strongest policies combating the societal costs of mass tourism.[23] Legio hotels and souvenir shops aimed at receiving and serving tourists in the city centre have led to the neighbourhood's cultural erosion. As city residents have no interest in these venues and stay away from the crowds, these streets have been almost entirely yielded to tourists. Banning any further hotels and tourist shops from the city is a way to limit business dependence on mass tourism and congestion. Nevertheless, it does not address mass tourism itself.

In addition, no alternative cultural attractions have been sufficiently attractive to detract tourists from the more problematic dissipation usually enjoyed in areas such as the Red Light District. One such alternative cultural attraction has been the initiative to transform the Red Light District into a Green Light District to promote more harmonious tourism in the city.[24] With the help of an app, tourists are encouraged to walk through the old city centre of Amsterdam and explore its history and its ecological and innovative side, as well as meet sustainable entrepreneurs. This policy aims to transform the Red Light District into a representation of sustainability in Amsterdam and employ a "green makeover."[25] However, this policy maintains the city centre as the main cultural attraction. As such, the policy may not be as effective as hoped, as tourists take the route amidst the already congested streets and do not distribute tourism to less frequented parts of the city.

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[20] McClanahan, "In Empty Amsterdam."
[21] Doggrell, "Amsterdam Increases Tourist Tax."
[22] Doggrell, "Amsterdam Increases Tourist Tax."
[23] DutchNews.nl, "Amsterdam to Call a Halt."
[24] Green Light District, "Green Light Wandeling."
[25] Green Light District, "About Us."

Recommendation

Shedding light on the inefficiencies of past policies implemented in Amsterdam to tackle mass tourism serves to stress the need for tourism distribution to be further addressed. Initiatives like the Green Light District Initiative show that attracting a more desirable type of tourists is crucial. The city of Amsterdam could achieve this by encouraging alternative sustainable cultural attractions in the city's peripheral areas to spread the benefits of tourism to a wider range of businesses and alleviate the pressure on the city centre residents. These insights are the subject of the present policy proposal.

This paper proposes a new vision for tourism in Amsterdam: the Green Circle involves the development of a 'green' route as a new image and attraction for Amsterdam (see Figure 1). This route, which would surround the tourist-dense areas of Amsterdam, would be greened by native trees, climbing plants and wildflowers, making the circle an attractive place to spend time in for both residents and tourists. The Green Circle would constitute an effective policy option addressing mass tourism insofar as it would work towards sustainable tourism at multiple levels. Firstly, it would promote ecotourism over traditional forms of tourism in Amsterdam, acting as a more socially, environmentally, and culturally sustainable policy. Developing an in-city ecotourism model would provide several co-benefits for the cities' visitors, residents, and business owners, such as ecosystem services,[26] health benefits,[27] and improved neighbourhoods.[28] Secondly, since the Green Circle would involve urban development by creating additional green spaces and reinforcing Amsterdams' ecological passages and Green Infrastructure vision for 2050,[29] this plan would boost Amsterdam's overall urban sustainability indices and contribute towards already established policies in need of new vigour. Urban ecotourism has been successful as a form of sustainable tourism in several cities such as Nairobi, Mombasa, and Kisumu.[30] Lastly, because the Green Circle would focus on promoting tourism in the districts outside the city centre, in addition to diverting tourism from the centre, it would work towards turning Amsterdam into a multicentric city in line with the city's environmental vision for 2050.[31]

Creation of the Green Circle and Supporting Fora: The Green Circle as a Community Engagement Project

The redevelopment and greenification necessary to transform the areas outside the city centre and make them suitable for ecotourism could only be successful provided the relevant stakeholders are involved at the local level. Throughout the route, stakeholders should be incentivised through subsidies, brick and pavement trade-in programmes, capacity-building, and annual local green facade competition in order to have residents at the front and centre of the implementation of the Green Circle. Furthermore, local businesses along the Green Circle could gain affiliation status and be destination stops along the route. Businesses would be encouraged to participate by promoting the activity efforts and receiving subsidies for greening measures. While the creation of the Green Circle would show

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[26] Johnson and Geisendorf, "Are Neighbourhood-Level SUDS Worth It?," 195.
[27] Lee and Maheswaran, "The Health Benefits," 212.
[28] Sander, Polasky, and Haight, "The Value of Urban Tree Cover," 1646.
[29] College of Mayor and Alderpersons, *Amsterdam Green Infrastructure Vision 2050*.
[30] Okech, "Developing Urban Ecotourism," 1.
[31] Amsterdam2050, "Omgevingsvisie Amsterdam 2050."

results in three to five years, it requires immediate involvement of community stakeholders to gain support and momentum for the policy.

Promotional Component: A New Image for Tourism in Amsterdam

This initiative would promote newcomers' and residents' sense of place and connection with the underappreciated parts of Amsterdam, by encouraging them to interact with and experience biodiversity in the city. The route would be drawn along the ecological passages and green infrastructure, and would involve an intense greenification of sidewalks, facades, and pavements to create enough of an incentive to attract tourists.

The promotion of ecotourism would be a necessary action required to develop the Green Circle. Concrete steps would include diverting funds to promoting tours from locals, ecologists, historians, and university students. Next to that, promotion via displays at several family-friendly hotspots such as the Hortus Botanicus and Nemo Museum could help to make people aware of the Green Circle. Furthermore, online advertisements, newspaper articles, and physical advertisements in places like Schiphol Airport, hotels, and public transport systems could effectively increase awareness. Lastly, local businesses could act in collaboration with each other to promote the Green Circle as well. Although general maintenance costs of the flora and gentrification effects of greening neighbourhoods would need to be accounted for, the Green Circle would provide numerous positive externalities for people in Amsterdam. Ultimately, this policy would combat congestion in the city centre, improve livability for the city's residents, and distribute business patronage throughout the city of Amsterdam.
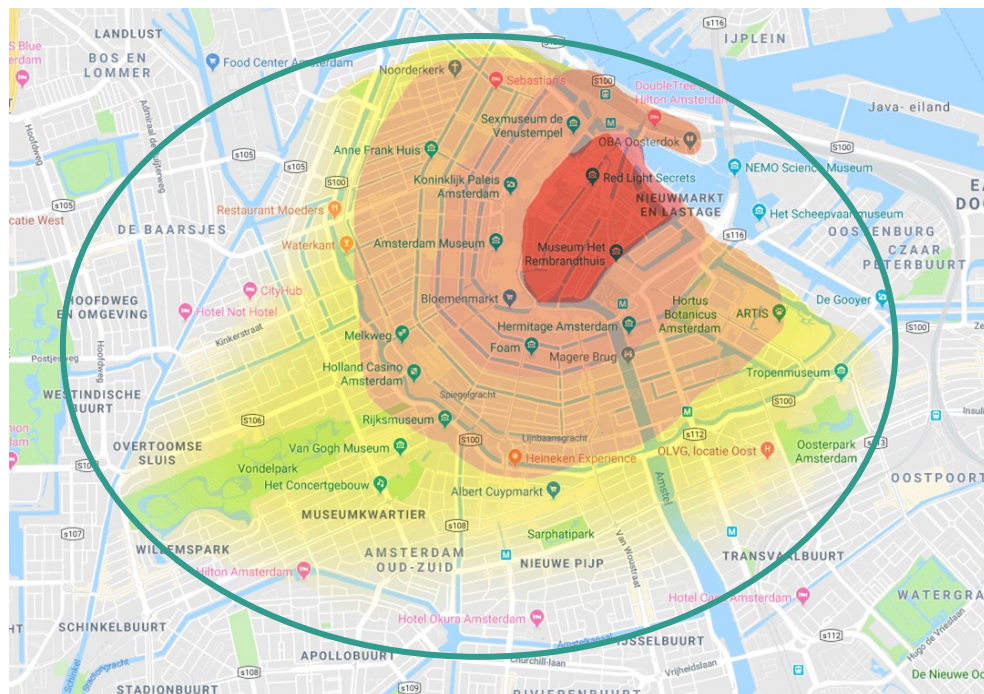

Figure 1. Map of the Proposed Green Circle Activity in Amsterdam

Conclusion

The acute problem of mass tourism cannot be allowed to continue in its current form. Numerous toxic side effects hamper the city's growth as a sociable, green, and attractive urban environment for its residents. This paper recommended the creation of a green walking and cycling route around the tourist-dense areas of Amsterdam, called the Green Circle, which would not only guide residents and tourists to spend time outside of the overcrowded city centre, but would also attract a more desirable kind of tourism to the city. The Green Circle therefore constitutes a promising avenue to decrease the negative externalities associated with tourism and to introduce more nature and biodiversity into the city. Its implementation would contribute to a more proportional distribution of tourists throughout the city, thereby creating a resident-friendly street environment and a brighter future for Amsterdam and its residents.

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