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# European Studies Review

Digital Gold Rush in Africa

E-democracy: a double-edged sword for European institutions

Digitizing Defence



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## **A Note from the Founders of European Studies Review**

One year ago, the European Studies Review started out as an ambitious but small project among a group of keen European Studies majors. Overwhelmed by the barriers of popular journals, yet driven by the desire to make young voices be heard, the European Studies Review was founded to provide a platform for the newest generation of Europhiles. Since then, the European Studies Review has expanded both in manpower and audience, and blossomed into the project it is today. From critical blog posts and think pieces to academic journal contributions, a small army of this planet's best and brightest have helped lift the ESR to the next level. The contributions have been diverse, as have our writers, and have encompassed themes that set out to explore the ins and outs of Europe's yesterday, today and future. With this edition, we wish to not only thank the hardworking team at the European Studies Review—which consists of a small legion of editors, writers, social media staff and coordinators—but also everyone who has read, shared and written for this journal. We intended to be a journal by students, for students—you have all helped us become so much more than that.

With this one year anniversary, we hope the European Studies Review is still in its infancy stage. We hope that from now on, this platform only continues to grow, to improve and take us places a year ago we couldn't have dreamt of. For that, however, there is work to do. And we look forward to getting there, together.

Don't let them tell us we are tomorrow's generation: our work starts today.

To many more years.

With our most sincere gratitude,

The Founders of European Studies Review



In February 1992 the twelve member states of the European Communities (EC) signed the Maastricht Treaty, establishing the European Union (EU).<sup>1</sup> One of the most famous aspects of the treaty are the so-called “convergence criteria”, better known as the Maastricht criteria.<sup>2</sup> These provisions were designed to regulate admissions to the Eurozone, with countries seeking to adopt the euro as their currency having to meet the Maastricht criteria, which prescribe norms for public debt, budget deficit, inflation, and more. Some of these criteria were later copied into the Stability and Growth Pact of the European Union (SGP), which was adopted in Amsterdam in 1997.<sup>3</sup> According to the EC, this pact is “a set of rules designed to ensure that countries in the European Union pursue sound public finances and coordinate their fiscal policies.”<sup>4</sup> In other words, it was designed to ensure macroeconomic stability in the EU. However, today many member states do not meet the criteria of the SGP. In March 2020, the European Council triggered the SGP’s so-called “general escape clause”, which allows for deviation from the rules in times of an EU-wide severe economic downturn.<sup>5</sup> However, that clause has to be deactivated and member states will have to adhere to the criteria again. But another “escape” might be on the way. What does the future hold for the SGP?

In order to ensure the stability of the Eurozone, the five “convergence criteria” were included in the Maastricht Treaty in 1992. Prospective member states are required to have a stable exchange rate, long-term price stability, stable long-term interest rates, manageable public debt, and a balanced budget. All of these criteria are specified in enormous detail. For instance, “stable long-term interest rates” are defined as average yields for long-term bonds no more than 2 percentage points higher than the average of the yields of the three EU member states with the lowest inflation.<sup>6</sup> Manageable public debt is defined as debt no higher than 60% of a country’s GDP. A balanced budget means a budget deficit of no more than 3% of GDP. Today, for existing EU and Eurozone members the criteria concerning public debt and the budget are most important. In 1997 these two Maastricht criteria were included in the SGP. This means that they also apply to

<sup>1</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01, October 26, 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>.

<sup>2</sup> *Ibid*, Article 140(1)

<sup>3</sup> European Commission, Stability and Growth Pact, accessed September 30, 2021, [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact_en).

<sup>4</sup> *Ibid*

<sup>5</sup> European Commission, European Semester Spring Package: Paving the Way for a Strong and Sustainable Recovery, *press release*, June 2, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2722](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2722).

<sup>6</sup> *Ibid* n1, Protocol 13



non-euro EU member states: at that time Denmark, Sweden, and the UK. Moreover, the criteria have to be met continuously, not only before joining the EU.<sup>7</sup>

There is a general escape clause that allows for deviation from the SGP's criteria when the "Union as a whole faces a severe economic downturn".<sup>8</sup> In March 2020, early in the COVID-19 crisis, the EC proposed to activate this clause with Council support. Based on economic forecasts, the EC expects the general escape clause to be deactivated by 2023, which would mean a return to "business as usual".<sup>9</sup> However, what is business as usual? Public debt levels have clearly increased since the outbreak of the crisis, but even before that many member states already failed to meet the 60% target.<sup>10</sup> As Table 1 demonstrates, in Q4 2019, before the crisis, 11 out of 27 member states had public debt levels higher than 60%, the levels of 3 of those even exceeded 100%. The EU average was 77.5%. By now, the Covid-19 crisis has added another 15 percentage points.



 GEO  TIME	2019Q4	2021Q1
European Union - 27 countries	77.5	92.9 <sup>(p)</sup>
Euro area - 19 countries (from 2019Q4)	83.9	100.5 <sup>(p)</sup>
Belgium	98.1	118.6 <sup>(p)</sup>
Bulgaria	20.2	25.1 <sup>(p)</sup>
Czechia	30.0	44.1 <sup>(p)</sup>
Denmark	33.6	40.7 <sup>(p)</sup>
Germany (until 1990 former territories)	59.7	71.1 <sup>(p)</sup>
Estonia	8.4	18.5 <sup>(p)</sup>
Ireland	57.2	60.5 <sup>(p)</sup>
Greece	180.5	209.3 <sup>(p)</sup>
Spain	95.5	125.2 <sup>(p)</sup>
France	97.6	118.0 <sup>(p)</sup>
Croatia	72.8	91.3 <sup>(p)</sup>
Italy	134.6	160.0 <sup>(p)</sup>
Cyprus	94.0	125.7 <sup>(p)</sup>
Latvia	37.0	45.7 <sup>(p)</sup>
Lithuania	35.9	45.6 <sup>(p)</sup>
Luxembourg	22.0	28.1 <sup>(p)</sup>
Hungary	65.5	81.0 <sup>(p)</sup>
Malta	42.0	59.0 <sup>(p)</sup>
Netherlands	48.5	54.9 <sup>(p)</sup>
Austria	70.5	87.4 <sup>(p)</sup>
Poland	45.6	59.1 <sup>(p)</sup>
Portugal	116.8	137.2 <sup>(p)</sup>
Romania	35.3	47.6 <sup>(p)</sup>
Slovenia	65.6	86.0 <sup>(p)</sup>
Slovakia	48.2	60.3 <sup>(p)</sup>
Finland	59.5	70.3 <sup>(p)</sup>
Sweden	34.9	40.3 <sup>(p)</sup>

Table 1: Government consolidated gross debt as % of GDP. Source: Eurostat<sup>11</sup>

<sup>7</sup> Council Regulation on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies, 1466/97, Council of the European Union Official Journal, July 7, 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997R1466&from=EN>; Council Regulation on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure, 1467/97, Council of the European Union Official Journal, July 7, 1997, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997R1467&from=EN>.

<sup>8</sup> Angelos Delivorias, The General Escape Clause Within the Stability and Growth Pact: Fiscal Flexibility for Severe Economic Shocks, PE 649.351, European Parliament, March 2020, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649351/EPRS\\_BRI\(2020\)649351\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649351/EPRS_BRI(2020)649351_EN.pdf).

<sup>9</sup> *Ibid*

<sup>10</sup> Eurostat, Government Finance Statistics, accessed September 30, 2021, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Government\\_finance\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Government_finance_statistics).

<sup>11</sup> *ibid*

It is clear that enforcement of the public debt and budget criteria has been a problem from the very beginning. In fact, when the euro was introduced in 1999, Belgium and Italy had a public debt ratio of over 100%, Greece of just under 100%, yet all three were admitted to the Eurozone despite this.<sup>12</sup> One might ask what signal this sends out? This careless handling of the convergence criteria at the very beginning of the Eurozone has been extended to the lack of enforcement of the SGP. The SGP has been revised several times in order to increase compliance, but to no avail. As Schout and Padberg observe, the extensive reforms have led to an overtly complex handbook of 200 pages whereby the continuous adding of overlapping rules, numerical targets, exceptions, escape clauses and flexibility requirements has obstructed compliance.<sup>13</sup> The result is that up until today, a member state has never been fined for non-compliance with the 3% and 60% rules.<sup>14</sup> In other words, EU countries have been able to pile up excessive debt with impunity.

Not only have member states not been disciplined by the EC, but European institutions have also facilitated debt incurrence. A recent example is the NextGenerationEU recovery fund, presented by the EC to mitigate the impact of the COVID-19 crisis. The fund consists of both grants and loans, and while most countries have decided only to take the grants, heavily indebted Italy will take €122.6 billion in loans within the NextGenerationEU framework,<sup>15</sup> adding another 6% to its public debt ratio. A second European institution facilitating debt incurrence has been the European Central Bank (ECB). Since the 2008 financial crisis, the ECB has engaged in quantitative easing (QE), which it has stepped up during the crisis. QE is the large-scale purchasing of government bonds by the ECB, financed through the printing of new money. The main effect of QE is that yields on those bonds decrease because of high demand, which is artificially created by the ECB. Whereas in perfect market conditions heavily indebted countries with limited economic growth will have increasing difficulties borrowing money, QE has resulted in diametrically opposing trends of public debt and yields. Graph 1 shows that yields on long-term government bonds for Italy have reached record lows in times of surging public debt. The contradiction is especially noticeable after 2008, when the ECB initiated QE. Similar developments have taken place in other heavily indebted countries, such as Portugal and Spain.<sup>16</sup>

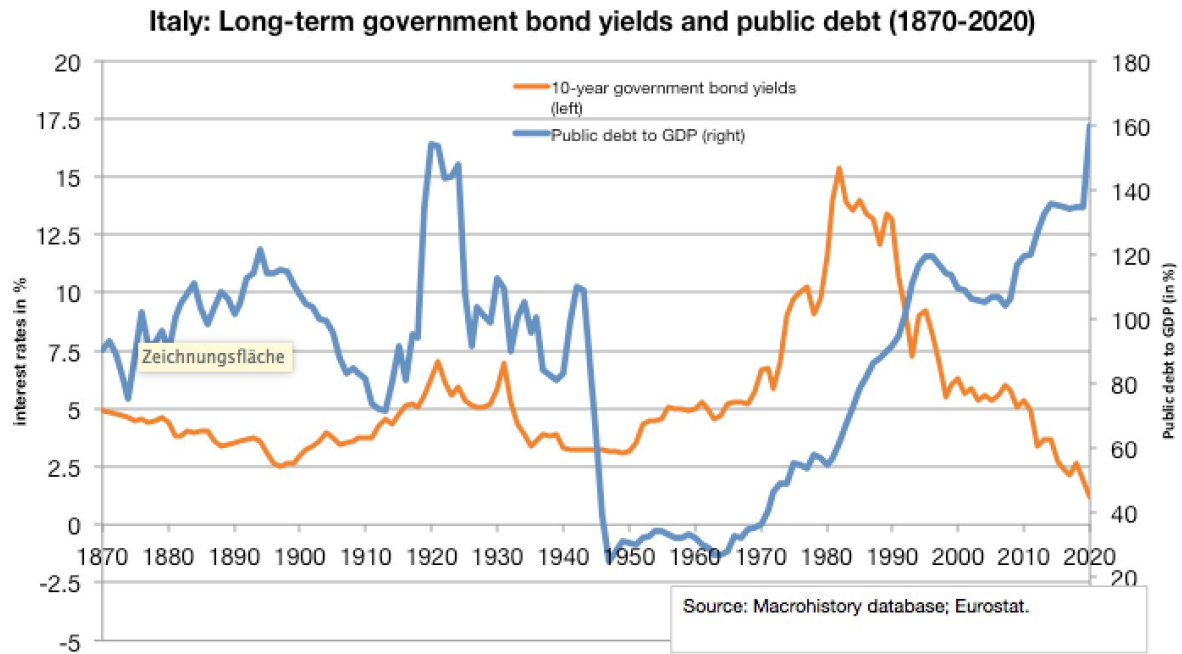
<sup>12</sup> André Sapir, High Public Debt in Euro-Area Countries: Comparing Belgium and Italy, *Policy Contribution*, no. 15, September 2018, [https://www.bruegel.org/wp-content/uploads/2018/09/PC-15\\_20183.pdf](https://www.bruegel.org/wp-content/uploads/2018/09/PC-15_20183.pdf).

<sup>13</sup> Adriaan Schout and Cathelijn Padberg, Monitoring and Enforcement in the European Union: Towards a Multilevel Subsidiarity-Based Independent Governance Model: The Case of the Stability and Growth Pact, *Policy Brief*, November 2019: 11, [https://www.clingendael.org/sites/default/files/2019-12/Policy\\_Brief\\_Monitoring\\_and\\_Enforcement\\_in\\_the\\_European\\_Union\\_november\\_2019.pdf](https://www.clingendael.org/sites/default/files/2019-12/Policy_Brief_Monitoring_and_Enforcement_in_the_European_Union_november_2019.pdf).

<sup>14</sup> *Ibid* n 12

<sup>15</sup> European Commission, Laying the Foundations for Recovery: Italy, *press release*, June 2021, [https://ec.europa.eu/info/system/files/italy-recovery-resilience-factsheet\\_en.pdf](https://ec.europa.eu/info/system/files/italy-recovery-resilience-factsheet_en.pdf).

<sup>16</sup> Yoruk Bahceli, Analysis: Money for Nothing - Portugal, Spain Borrow More, Pay Less, *Reuters*, December 3, 2020, <https://www.reuters.com/article/us-eurozone-bonds-spain-portugal-negativ-idUSKBN28D0R9>.



Graph 1: Long-term government bond yields vs. public debt ratio. Source: Philipp Heimberger, Economist at the Vienna Institute for International Economic Studies.<sup>17</sup>

The combination of monetary financing, including QE, and non-enforcement of public debt and budget criteria under the SGP has resulted in a *de facto* “soft budget constraint”, a concept coined by Kornai to describe the situation in centrally planned economies in Eastern Europe under communism.<sup>18</sup> A soft budget constraint is present “whenever the enterprise can extract *ex post* a bigger subsidy or loan than would have been considered efficient *ex ante*.”<sup>19</sup> In this case, however, it is not enterprises that extract subsidies from the government, but national governments that extract subsidies from the EU and the ECB. The effect is the same: the recipient can sustain imprudent financial policy with impunity. Particularly the QE program can be considered a breach of Article 125 of the Treaty on the Functioning of the European Union (TFEU), that rules out debt mutualization, although it depends on the interpretation of the article.<sup>20</sup> It is understandable that the EC and ECB try to help heavily indebted EU and Eurozone members so that they can pay off older debts and fund reforms of the public sector. Not doing so would be cruel. At current public debt levels, there is no easy way out. The problem was sown in 1999, and now it is too late to be strict. Greece is the prime example of how difficult, if not impossible it can be, to escape this vicious circle once debt levels have spun out of control.

In a recent informal Ecofin Council, EU ministers briefly discussed the future of the SGP in light of the probable deactivation of the general escape clause by 2023.<sup>21</sup> A number of countries would like to see stricter enforcement of the SGP after the current crisis. Eight member states together

<sup>17</sup> Philipp Heimberger, Due to Covid, Italy's Public Debt Has Jumped to ~160% of GDP, accessed September 30, 2021, <https://twitter.com/heimbergecon/status/1357974184568229889>.

<sup>18</sup> János Kornai, The Soft Budget Constraint, *Kyklos* 39, no. 1 (1986)

<sup>19</sup> Eric S. Maskin, Theories of the Soft Budget-Constraint, *Japan and the World Economy* 8 (1996): 125

<sup>20</sup> *ibid* n 1

<sup>21</sup> W.B. Hoekstra, Verslag Eurogroep En Informele Ecofinraad 10 En 11 September 2021, 21501-07-1783, Tweede Kamer der Staten-Generaal, September 24, 2021, [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2021Z16317&did=2021D35065](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z16317&did=2021D35065).

drafted a short paper on the future of the SGP, in which they stress that “sustainable public finances create confidence and fiscal space for political priorities and for dealing with future crises and challenges” and that “reducing excessive debt ratios has to remain a common goal”.<sup>22</sup> The signatories are the famous ‘Frugal Four’: countries that were critical of the NextGenerationEU recovery fund, namely Austria, Denmark, the Netherlands and Sweden, alongside Finland, Latvia, Slovakia and the Czech Republic. These are states with a relatively low public debt (see Table 1) and they want to simplify the SGP in order to facilitate “consistent, transparent and better application as well as enforcement of the rules”.<sup>23</sup> They stress that “new proposals [should] not jeopardize the fiscal sustainability of member states, the Euro Area or the Union as a whole”.<sup>24</sup>

The fact that these eight countries felt the need to publish a paper stressing the importance of fiscal discipline indicates that there are other member states that prefer a more relaxed fiscal policy. These countries are strengthened in their positions by publications such as the Bruegel paper on “a green fiscal pact” that was discussed in the Ecofin Council.<sup>25</sup> It advocates a “green golden rule that excludes net green public investment from the deficit and debt calculations under the EU’s fiscal rules.”<sup>26</sup> Regardless of the importance of the energy transition, such an arrangement could potentially open the floodgates of public debt even further. Tellingly, in response to the paper, Poland proposed to introduce a “golden rule” for military investments as well.<sup>27</sup> Could other exempted investments deemed of urgent public interest, such as digitalization come on the table as well.<sup>28</sup> For now, the Ecofin Council has agreed to continue discussions this fall. In the meantime, the EU is an indebted union, and the future of its public finances remain uncertain. However, even with the low public debt levels in several of the so-called New Member States, it is not unthinkable that the group of frugal states may slowly expand.

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<sup>22</sup> W.B. Hoekstra et al., Common Views on the Future of the Stability and Growth Pact, Government of the Netherlands, September 9, 2021, <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/09/09/common-views-on-the-future-of-the-stability-and-growth-pact>.

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> Zsolt Darvas and Guntram Wolff, A Green Fiscal Pact: Climate Investment in Times of Budget Consolidation, *Policy Contribution*, no. 18 (September 2021), <https://www.bruegel.org/wp-content/uploads/2021/09/PC-2021-18-0909.pdf>.

<sup>26</sup> *Ibid*, n 12

<sup>27</sup> Marc Peepkorn, Strengere Europese Begrotingsregels Staan Weer Voor De Deur, Maar Een 'Groene' Ontsnappingsclausule Lonkt, *Volkskrant*, September 12, 2021.

<sup>28</sup> European Commission, “Europe’s Digital Decade: Digital Targets for 2030,” accessed September 30, 2021, [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en).



## Introduction: Von der Leyen's vision

From the moment she outlined the political objectives for her term as Commission President, Ursula von der Leyen turned the spotlight onto gender equality as a “core principle of the European Union”<sup>1</sup>, establishing her Commission as one that is, in the words of Jutta Urpilainen (Commissioner for International Partnerships), “gender sensitive”.<sup>2</sup> Critically, von der Leyen called for violence against women to be made a criminal offence in the European Union. In her State of the Union address, she reiterated this call, adding that the law would apply “from prevention to protection and effective prosecution, online and offline.”<sup>3</sup>

Many MEPs commented that the move to add gender-based violence including violence against those in the LGBTQ+ community to the list of crimes under article 83(1) of the Treaty on the Functioning of the European Union (TFEU), alongside other “cross-border” crimes such as human trafficking and computer crime, was “long overdue”.<sup>4</sup> The recent crisis in Afghanistan is indicative of how widespread the problem of gender-based violence and inequality is.

## A matter of urgency

“It is time to act to include gender-based violence in the list of EU crimes, and to present a holistic and inclusive Directive to fight what is one of the most serious and persistent human rights violations in human history.”<sup>5</sup>

Such reactions from the European Parliament are not unreasonable. If anything, the move toward providing a legal basis for prosecuting such violence represents the bare minimum of what the EU should be doing to address gender-based inequalities. The European Commission has recently found that one in three women in the European Union has experienced physical and/or sexual

<sup>1</sup> European Commission. “Gender Equality Strategy: Striving for a Union of Equality.” Accessed September 26, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_358](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_358).

<sup>2</sup> European Commission. “Speech by Commissioner Urpilainen at the plenary session of the European Parliament on Report on Gender Equality in EU’s foreign and security policy.” Accessed September 26, 2021. [https://ec.europa.eu/commission/commissioners/2019-2024/urpilainen/announcements/speech-commissioner-urpilainen-plenary-session-european-parliament-report-gender-equality-eus\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/urpilainen/announcements/speech-commissioner-urpilainen-plenary-session-european-parliament-report-gender-equality-eus_en).

<sup>3</sup> European Commission. “2021 State of the Union address by President von der Leyen.” Accessed September 28, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_21\\_4701](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701).

<sup>4</sup> Parliament Magazine. “MEPs welcome Ursula von der Leyen’s announcement to legislate on violence against women.” Accessed September 26, 2021. <https://www.theparliamentmagazine.eu/news/article/meps-welcome-ursula-von-der-leyens-announcement-to-legislate-on-violence-against-women>.

<sup>5</sup> European Parliament. “Make gender-based violence a crime under EU law, MEPs say.” Accessed September 26, 2021. <https://www.europarl.europa.eu/news/en/press-room/20210910IPR11927/make-gender-based-violence-a-crime-under-eu-law-meps-say>.

violence, one in two has suffered sexual harassment, while one in twenty has been a victim of rape.<sup>6</sup> Alongside increases in domestic violence seen in member states such as France, the COVID-19 pandemic has not only highlighted, but also exacerbated the growth of gender and sexuality-based violence both offline and online.<sup>7</sup> Gender-based violence and the inequality it perpetuates has consequences for a multitude of different policy areas, from cyber security to migration policy. Gender-based violence costs the EU €366 billion a year.<sup>8</sup> Drafting laws to combat such violence is but a drop in the ocean toward tackling such a multi-faceted issue.

At the recent State of the Union debate, the Renew Europe speaker Dacian Cioloş expressed impatience at the lack of policy that has been coming from the current Commission, specifically in relation to the rule of law.<sup>9</sup> He did not specifically mention gender issues, but as such issues are a priority of the current Commission, the lack of legislative structure to penalize and prevent gender-based violence is a clear example of one area that has not been given the attention it deserves in policy until now. Without a legislative framework, the European Union cannot even begin to reach any substantial goals on tackling gender-based violence and indeed gender inequality. While the Council of Europe's Istanbul Convention represents a binding treaty focusing on combating gender-based violence, it is the *first* instrument to do so,<sup>10</sup> and the European Union has yet to formally accede to it. Disagreements arose in 2019, when six member states had yet to ratify the Convention, and Turkey formally withdrew from it. Furthermore, the Council of Europe cannot hold member states accountable for shortfalls in implementing the Convention.<sup>11</sup> The EU, however, can hold member states accountable for shortfalls in the latter stages of EU policy implementation. This would be a step in the right direction in a world where gender-based violence goes unreported and under-appreciated in many member states.

## **A sharper focus: Afghan women**

“Cooperation with any future Afghan government will be conditioned on a peaceful and inclusive settlement and respect for the fundamental rights of all Afghans, including women, youth and persons belonging to minorities...”<sup>12</sup>

“According to the figures published previously by the Afghan Ministry of Women's Affairs, over half of the women in Afghanistan reported physical abuse, while 17 per cent

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<sup>6</sup> Euractiv. “EU law on gender violence must cover all forms of discrimination, say MEPs.” Accessed September 26, 2021. <https://www.euractiv.com/section/non-discrimination/news/eu-law-on-gender-violence-must-cover-all-forms-of-discrimination-say-meps/>.

<sup>7</sup> European Institute for Gender Equality. “Covid-19 derails gender equality gains.” Accessed September 26, 2021. <https://eige.europa.eu/news/covid-19-derails-gender-equality-gains>.

<sup>8</sup> European Institute for Gender Equality. “Gender-based violence costs the EU €366 billion a year.” Accessed September 26, 2021. <https://eige.europa.eu/news/gender-based-violence-costs-eu-eu366-billion-year>.

<sup>9</sup> DW News. “Ursula von der Leyen addresses the European Parliament in her second State of the Union speech.” Accessed September 28, 2021. <https://www.youtube.com/watch?v=KREUxCY29U0>.

<sup>10</sup> Parliament Magazine. “EU leaders and MEPs condemn Turkey's decision to withdraw from Istanbul convention.” Accessed September 26, 2021. <https://www.theparliamentmagazine.eu/news/article/eu-leaders-and-meps-condemn-turkeys-decision-to-withdraw-from-istanbul-convention>.

<sup>11</sup> Parliament Magazine. “A legal basis for the Istanbul Convention.” Accessed September 26, 2021. <https://www.theparliamentmagazine.eu/news/article/a-legal-basis-for-the-istanbul-convention>.

<sup>12</sup> European Council. “Afghanistan: Declaration by the High Representative on behalf of the European Union”. 17 August 2021. Accessed October 21, 2021. Afghanistan: Declaration by the High Representative on behalf of the European Union



of them reported sexual violence. Besides, nearly 60 per cent of Afghan women were in forced marriages.”<sup>13</sup>

For the last few weeks, the international community has been reeling from the speed at which the Taliban took over Kabul and other parts of Afghanistan. Among the major concerns has been the status of women. Although Afghanistan is not a EU member state, the crisis serves to highlight how ubiquitous the threats to women are. News of women being told to leave their jobs and photos of women and girls desperately fighting for their hard-earned rights have dominated the discourse within the EU. Many women in Kabul have nothing to eat, no prospects of employment, and no status in society.<sup>14</sup> The Taliban represents oppression to them, as women are hindered from pursuing an education. They live in fear that such restrictions may escalate to violence against them. Josep Borrell’s declaration will not directly make their lives better. It serves as a reminder that a gender-equal world is still a distant reality.

The rights these women are being stripped of are human rights – the right to education, the right to employment. Women’s rights are human rights, the protection of which is a core value of the European Union. The loss of such rights is but a pitstop on the road to increased gender-based violence, and it risks showing the EU as a not-so-serious actor on tackling gender inequality, which inevitably leads to gender-based violence. Both inside and outside Europe’s borders, the gender inequality crisis has come.

### **Actions speak louder than words**

The crisis in Afghanistan was quickly met by condemnation from a number of European Institutions. While the European Parliament declared that “We must not turn a blind eye to a humanitarian crisis which will specifically affect women and girls in Afghanistan...”<sup>15</sup>, the European Council announced that [they] “are deeply worried about Afghan women and girls, their rights to education, work and freedom of movement. Afghan women and girls, as all Afghan people, deserve to live in safety, security and dignity...”<sup>16</sup> Gender-based violence is one of the problems many of the women are fleeing,<sup>17</sup> yet the reality in Europe is nowhere near perfect. While these statements are honorable, they merely show the *intention* to do something about the problem.

The EU has much to do within its own borders, let alone in Afghanistan or in any other third country. The domestic violence crisis that erupted during the pandemic exposed what the European Centre for Gender Equality calls “persistent under-funding of shelters and domestic

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<sup>13</sup> Schengenvisainfo news. “MEPs urge EU to Establish Special Visa for Afghan Women Seeking Protection.” Accessed September 26, 2021. <https://www.schengenvisainfo.com/news/meps-urge-eu-to-establish-special-visa-for-afghan-women-seeking-protection/>.

<sup>14</sup> RTE. “Women in Afghanistan fear the worst after return to Taliban rule.” Accessed September 26, 2021. <https://www.rte.ie/news/world/2021/0817/1241376-women-life-taliban/>.

<sup>15</sup> European Parliament. “Afghanistan Crisis: Safety of Afghan women and girls has to be a fundamental EU priority.” Accessed September 26, 2021. <https://www.europarl.europa.eu/news/en/press-room/20210816IPR10102/afghanistan-safety-of-afghan-women-and-girls-must-be-fundamental-eu-priority>.

<sup>16</sup> European Council. “Afghanistan: Joint Statement on the situation of women and girls.” Accessed September 26, 2021. <https://www.consilium.europa.eu/en/press/press-releases/2021/08/18/afghanistan-joint-statement-on-the-situation-of-women-and-girls/>.

<sup>17</sup> Ines Keygnaert and Aurore Guieu. “What the eye does not see: a critical interpretive synthesis of European Union policies addressing sexual violence in vulnerable migrants.” *Reproductive Health Matters* 23, no. 46, (November 2015): pp.45-55.

violence hotlines”<sup>18</sup> which has resulted in a lack of access to support for victims of gender-based violence. These services were deemed non-essential during the pandemic.<sup>19</sup> How can we protect women and girls if we consider support services “non-essential”? Legislation is but the first thing to cross off an ever-growing list of tasks such as improving support services, heavily penalizing perpetrators, enabling judicial cooperation and ensuring availability of education on the issue, and we should not stop with a few lines of legal text. Certainly, previous measures such as the recognition of barring orders in all member states and the 2012 Directive that establishes minimum rights for victims have only been small steps toward a solution.<sup>20</sup> Further legislation needs to be more comprehensive in the face of a problem that becomes more complex with each passing day.

### **Missing a piece of the “European Soul”?**

In her State of the Union address, von der Leyen spoke of the “European soul”, carved out of the experiences and values upon which the Union is based. Presumably she refers to the values of human rights, rule of law, peace and economic stability championed in the Lisbon Treaty, or indeed the willingness for cooperation and participation which has pushed the polity forward since the end of the Second World War. Gender-based violence directly hinders the ability of women to participate in society, and puts them in danger of harm, both physically and psychologically. The EU must show they are serious about gender-based violence to prevent this. Von der Leyen herself acknowledged in 2019 that women are needed in this challenging time, but without the means to defend their safety, we risk leaving them vulnerable, unable to use their talents, much less to contribute toward fighting pandemic-related challenges.<sup>21</sup> Gender-based violence is “a human rights violation and one of the most pervasive forms of gender-based inequality.”<sup>22</sup> One report by Reuters found that the EU is failing to deliver on badly needed gender equality policies, many of which incorporate the fight against gender-based violence.<sup>23</sup> Not protecting women is not good enough. It does not live up to the vision of women such as Simone Veil and Ursula Hirschmann who fought to realize the European project.

If the Union does not move quickly on providing more than just legislation to combat gender-based violence, it sells itself short on one of its most fundamental values. The so-called “European soul” will never be whole without women, many of whom are fighting for their basic rights, struggling on the frontline of the COVID-19 pandemic, or even feeling trapped in their own home by those they thought they could trust the most.

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<sup>18</sup> European Institute for Gender Equality. “Covid-19 wave of violence against women shows EU countries still lack proper safeguards.” Accessed September 26, 2021. <https://eige.europa.eu/news/covid-19-wave-violence-against-women-shows-eu-countries-still-lack-proper-safeguards>.

<sup>19</sup> European Institute for Gender Equality. “Covid-19 derails gender equality gains.” Accessed September 26, 2021. <https://eige.europa.eu/news/covid-19-derails-gender-equality-gains>.

<sup>20</sup> European Commission. “Ending gender-based violence.” Accessed September 26, 2021. [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence_en).

<sup>21</sup> European Commission. “Gender Equality Strategy: Striving for a Union of Equality.”

<sup>22</sup> European Institute for Gender Equality. “Gender Statistics Database.” Accessed September 26, 2021. <https://eige.europa.eu/gender-statistics/dgs/browse/genvio>.

<sup>23</sup> Reuters. “Auditors say EU budget failing to deliver on gender equality.” Accessed September 26, 2021. <https://www.reuters.com/business/auditors-say-eu-budget-failing-deliver-gender-equality-2021-05-26/>.

## Concluding remarks

“The EU must ensure that feminism is at the core of its external policy; the lived experiences of people, including gender and intersectionality, must be an integral part of the Union's work rather than an occasional add-on.”<sup>24</sup>

While the von der Leyen Commission has put the spotlight on gender-related issues such as gender-based violence, the announcement of the incorporation of a legal basis for tackling such violence is a mere steppingstone on the European Union's path to a more gender-equal society. Gender-based violence is, both “a cause and a consequence of gender inequality.”<sup>25</sup> Much remains to be done considering the increase in domestic violence during the pandemic, the legislation of which is the bare minimum we should expect from a Union that stands for human rights. The recent experience of Afghan women under Taliban rule is a stark example of what proceeds from abandoning women and backsliding on our responsibilities toward vulnerable groups. Honorable intentions aside, the EU can be and needs to be an actor in tackling gender-based violence in all its forms, ensuring that victims have a voice from prevention to justice. It is time for the “European soul” to honor the needs of the most vulnerable groups first and stand as a representative for those who have been deprived of their voice. There is much work to do.

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<sup>24</sup> Euobserver. “Time for EU to be a real ally of Afghan women.” Accessed September 26, 2021. <https://euobserver.com/opinion/152714>.

<sup>25</sup> European Institute for Gender Equality. “Gender-based violence.” Accessed September 26, 2021. <https://eige.europa.eu/gender-based-violence>.



## Introduction

Article 8 of the European Convention on Human Rights (ECHR), which enshrines a right to respect for privacy, family life, correspondence and the home subject to restrictions that are “in accordance with law” and “necessary in a democratic society,”<sup>1</sup> is notorious for its “undefined,”<sup>2</sup> “unruly”<sup>3</sup> and “elusive”<sup>4</sup> character. As the precise contours of Article 8 are so unclear,<sup>5</sup> the European Court of Human Rights (ECtHR) is tasked with interpreting its scope and application. Accordingly, case law under Article 8 has proven to be one of the richest areas of legal development in the ECtHR. This paper aims to characterise and subsequently defend the approach the European Court of Human Rights has adopted when it comes to interpreting Article 8 of the Convention. Part one will analyse the Court’s interpretation of Article 8 teleologically, focusing on the substantive outcomes of its interpretation and propose, in light of this, that the Court has adopted an expansive approach to the interpretation of Article 8. Part two will explore some of the criticisms that this interpretive approach has garnered and attempt to provide a defense for approaching interpretation in an expansive manner. It will be argued that whilst the overall approach of the Court to interpreting Article 8 is expansive in nature, several factors prevent the expansive approach to interpreting Article 8 from going too far in widening the scope of the Convention.

## An expansive approach – the gradual widening of Article 8 through judicial interpretation

Considered to be “one of the best-known principles of Strasbourg case-law,”<sup>6</sup> the vision of the European Convention on Human Rights as a “living instrument” can be traced throughout the jurisprudence of the ECtHR when it comes to its interpretation. This concept of the Convention as a dynamic instrument capable of adapting “in the light of present-day conditions”<sup>7</sup> often goes hand in hand with the Court’s commitment to making Convention rights effective, as opposed to “theoretical and illusory”<sup>8</sup> or a “mere mirage.”<sup>9</sup> The “living instrument” doctrine, in tandem with the principle of *effective* human rights protection, lays the foundation for the Strasbourg Court’s expansive approach to the interpretation of Article 8.

<sup>1</sup> Article 8 European Convention on Human Rights

<sup>2</sup> *Wright v Secretary of State for Health* [2006] EWHC 2886 (Admin) [2007] 1 All ER 825, per Burnton J.

<sup>3</sup> *ibid.*

<sup>4</sup> Suzanne Lambert and Andrea Lindsay-Strugo, 'Focus on Article 8 ECHR: Recent Developments' (2008) 13 *Jud Rev* 29

<sup>5</sup> *ibid.*

<sup>6</sup> Luzius Wildhaber, 'The European Court of Human Rights in Action' (2004) 21 *Ritsumeikan Law Review* 83, 84

<sup>7</sup> *Tyrer v. UK* 25, April 1978, Series A no 26 at para. 3.

<sup>8</sup> *Tyrer v. UK* 25, April 1978, Series A no 26

<sup>9</sup> William Schabas *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015) 33.

As Article 8 of the Convention forms part of a “living document” which must be rendered “effective,” the Court has approached the interpretation of this Article in a way that may be teleologically characterised as expansive. By rejecting formalistic interpretation in favour of the interpretation that results in effective rights protection,<sup>10</sup> the scope of Article 8 has been expanded to the point of incurring many positive obligations for member states. The case of *Marckx v Belgium*<sup>11</sup> heralded the beginning of the Court’s expansive approach to interpreting Article 8, as it was found to incur a positive obligation to shape a legal regime to allow an illegitimate child to lead a normal family life.<sup>12</sup> The case of *X and Y v Netherlands*<sup>13</sup> saw the protective reach of Article 8 interpreted as extending to a positive obligation to protect individuals from infringements of their rights by other private parties.<sup>14</sup> The Court took the opportunity in its judgment in *Axel Springer v Germany*<sup>15</sup> to affirm that the concept of “private life” is a “broad term not susceptible to exhaustive definition.” To this end, Article 8 has even be interpreted to the point of encroachment upon other rights expressed elsewhere in the Convention,<sup>16</sup> to the extent that the right to marry and found a family<sup>17</sup> and certain aspects of the right to a fair trial<sup>18</sup> have all been successfully litigated from the angle of Article 8 in the Strasbourg case law. Moreover, expansive interpretation of Article 8 has even enabled the Court to protect rights that were previously denied express protection under the Convention. The case of *Chauvy v France*,<sup>19</sup> for instance, affirmed that the right to protection for one’s reputation falls under the protective remit of Article 8.<sup>20</sup> The interpretive approach adopted by the Court in respect of Article 8, underwritten by the Court’s ambition to effectively interpret a “living document,” has undoubtedly been expansive in nature.

## A Defence of the Expansive Approach to the Interpretation Article 8

Whilst ambiguity, and hence interpretation, is inevitable in any legal text, many scholars perceive the Convention as granting upon the Court an illegitimately broad power of interpretive discretion.<sup>21</sup> Paul Mahoney has commented that the expansive approach the Court has opted for when it comes to interpreting the Convention, combined with the “open textured language” of Article 8, has resulted in the Court fashioning new state obligations under this Article and thus,

<sup>10</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>11</sup> *Marckx v Belgium*

<sup>12</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>13</sup> *X and Y v Netherlands*

<sup>14</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>15</sup> [2012] ECHR 227

<sup>16</sup> Bart van der Sloot, ‘Privacy as Personality Right: Why the Ecthr’s Focus on Ulterior Interests Might Prove Indispensable in the Age of “Big Data”’ (2015) 31 Utrecht Journal of International and European Law 25

<sup>17</sup> Ursula Kilkelly, ‘The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights’, Human rights handbooks, 2003.

<sup>18</sup> For example, in the case of *Van der Heijden v. Netherlands* App no 42857/05 (ECtHR, 03 April 2012) the obligation to testify against a relative or friend is approached from the angle of Article 8 ECHR.

<sup>19</sup> *Chauvy v France*

<sup>20</sup> Patrick O’Callaghan, ‘Article 8 ECHR as a General Personality Right’ (2015) 6 JETL 69

<sup>21</sup> George Letsas, ‘The Truth in Autonomous Concepts: How To Interpret the ECHR’ (2004) EJIL

“making new law.”<sup>22</sup> This is viewed by some commentators as democratically illegitimate because the decision of member states not to undertake certain human rights obligations at the time of the Convention’s ratification should be respected.<sup>23</sup> It is the opinion of some that the ECtHR should not be permitted to expand state obligations in the manner in which it does, as it is not a democratically accountable institution and thus may have the effect of thwarting the democratic decisions of signatory states.<sup>24</sup> Even judges of the ECtHR have flagged concerns to this end, with Judge Borrego, in the case of *Stec and Others v United Kingdom*,<sup>25</sup> opening that the ECtHR should not digress from the will of the state parties.<sup>26</sup> This issue has also reared its head in public discourse, as the media have heavily criticised the expansive interpretative approach of the ECtHR as an institution that is not directly accountable to the public.<sup>27</sup> The Court’s expansive approach to the interpretation of Article 8, which often gives rise to new state obligations, has been heavily criticised on the basis of democratic illegitimacy.

Although it is rare that an interpretive approach based on originalism is proffered as a solution to the democratic illegitimacy concern, Johannes Sturm has advanced an argument that the interpretation of Article 8 should be approached based on what was intended at the time of the Convention’s inception.<sup>28</sup> Whilst this is a view shared by Sir Gerald Fitzmaurice dissenting in *Marckx v Belgium*,<sup>29</sup> support for originalism as an alternative approach to the interpretation of Article 8 elsewhere is scant.<sup>30</sup> Rather, restrictive interpretation is often suggested as the solution to concerns about the Court’s expansive approach to interpreting Article 8.<sup>31</sup> It seems ironic that in the seminal case of *Golder v United Kingdom*,<sup>32</sup> which paved the way for expansive interpretation based on the principle of “effectiveness,” the United Kingdom put forward some of the definitive arguments for a restrictive approach to interpretation.<sup>33</sup> Described as the “alter ego”<sup>34</sup> of expansive interpretation, restrictive interpretation is associated with “extreme deference to the sovereignty of states,”<sup>35</sup> as the Convention is interpreted in such a way that imposes the minimum amount of obligations on states, thereby addressing many of the concerns associated with the democratic illegitimacy of expansive interpretation. As the following section will argue, however, within the context of Article 8, at least, expansive interpretation underwritten by the principle of effectiveness should continue to dominate the Court’s approach to interpretation.

<sup>22</sup> Paul Mahoney, ‘Marvellous Richness of Diversity or Invidious Cultural Relativism’, 19 Human Rights Law Journal (1998) 2.

<sup>23</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>24</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>25</sup> [2006] VI Eur Court HR 1162.

<sup>26</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights Cambridge Journal of International and Comparative Law (3)2: 508–531 (2014)

<sup>27</sup> J Slack, ‘Social Ties Keep Rapists in Britain’, Mail Online, 21 September 2011

<sup>28</sup> Sturm, ‘Das Straßburger Marckx-Urteil zum Recht des nichtehelichen Kindes und seine Folgen’, FamRZ (1982) S. 1150

<sup>29</sup> *Marckx v Belgium*

<sup>30</sup> Caroline Forder, ‘Legal Protection Under Article 8 ECHR: Marckx and Beyond’ Netherlands International Law Review / Volume 37 / Issue 02 / August 1990, pp 162

<sup>31</sup> Helfer, ‘Consensus, Coherence and the European Convention of Human Rights’, 26 Cornell International Law Journal (1993) 135.

<sup>32</sup> *Golder v United Kingdom*

<sup>33</sup> E Bates, The Evolution of the European Convention on Human Rights—From its Inception to the Creation of a Permanent Court of Human Rights (2010) 293–301.

<sup>34</sup> Michael Waibel, ‘Demystifying the Art of Interpretation’ [2011] The European Journal of International Law Vol. 22 no. 2

<sup>35</sup> Michael Waibel, ‘Demystifying the Art of Interpretation’ [2011] The European Journal of International Law Vol. 22 no. 2



The Court's expansive interpretive approach toward Article 8, underscored by an understanding of the Convention as a "living document" that should be interpreted with a view to "effectiveness," has been subject to criticism for widening the scope of the Convention and imposing state obligations to the point of democratic illegitimacy. It is submitted, however, that certain caveats to the Court's expansive interpretation of Article 8 prevent it from going too far in imposing state obligations and, on balance, Article 8 should continue to be interpreted based on the expansive approach.

Kay has contended that the Court now approaches the interpretation of "private life" under Article 8 so broadly that there are now "few grievances that cannot be accommodated to a claim of interference with this kind of interest."<sup>36</sup> Based on the Strasbourg case law, however, it seems that whilst it is broad in scope, Article 8 is by no means a "catch-all provision"<sup>37</sup> for interferences that do not fall under another Convention guarantee.<sup>38</sup> No matter how expansive its approach to interpretation, fundamentally, the Court is ringfenced by the text of Article 8 when it comes to its interpretation. For instance, the cases of *Evers v Germany*,<sup>39</sup> *Nicolae Virgiliu Tănase v. Romania*<sup>40</sup> and *Denisov v. Ukraine*<sup>41</sup> all provide illustrations of the Court refusing to interpret Article 8 past the point where it felt its parameters lay. This translates to limitations on the extent to which the ECtHR will impose state obligations. Whilst the Court may expansively interpret the text of Article 8, "it cannot revise the text or bend it to reach any result it wishes."<sup>42</sup> If the expansive interpretive approach of the Court is limited by the text of the Convention from the outset, this seems to tone down the normative legitimacy problem that has been flagged by some critics.<sup>43</sup>

Furthermore, the operation of the margin of appreciation works to balance out the Court's expansive approach to interpreting Article 8. It seems that when there is a lack of a European consensus on a particular issue, the Courts presses the brakes on interpreting the scope of Article 8 expansively<sup>44</sup> and is very slow to find a violation under Article 8.<sup>45</sup> This approach is highlighted in the case of *A, B and C v Ireland*,<sup>46</sup> in which two women brought a complaint under Article 8 against Ireland's prohibition on abortion. The ECtHR, in affording Ireland a wide margin of appreciation, found there to be no violation in this instance. Equally, in the case of *Rees v. The United Kingdom*,<sup>47</sup> the ECtHR did not find that Article 8 encompassed a right to change the gender

<sup>36</sup> RS Kay, *The European Convention on Human Rights and the Control of Private Law*, (2005) 5 *European Human Rights Law Review* 466, 477.

<sup>37</sup> Christoph Grabenwarter, *European Convention on Human Rights: Commentary* (Hart Publishing 2014)

<sup>38</sup> Christoph Grabenwarter, *European Convention on Human Rights: Commentary* (Hart Publishing 2014)

<sup>39</sup> *Evers v Germany*, At para 54 the Court affirmed that Article 8 does not guarantee the right as such to establish a relationship with one particular person.

<sup>40</sup> *Nicolae virgiliu tănase v. Romania*; The Court held, at para 128, that activities "which are of an essentially public nature" do not fall under the scope of Article 8.

<sup>41</sup> *Denisov v. Ukraine*; The Court held that Article 8 will only apply to a person's reputation in severe cases

<sup>42</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights *Cambridge Journal of International and Comparative Law* (3)2: 508–531 (2014)

<sup>43</sup> Shai Dothan, In Defence Of Expansive Interpretation In The European Court Of Human Rights *Cambridge Journal of International and Comparative Law* (3)2: 508–531 (2014)

<sup>44</sup> Bernadette Rainey, Elizabeth Wicks and Clare Ovey, *The European Convention on Human Rights* (7th edn Oxford University Press 2017) 64.

<sup>45</sup> YuvalShany, *Towards a General Margin of Appreciation Doctrine in International Law?*, 16 *EUR. J. INT'L L.* 907, 909-10 (2006).

<sup>46</sup> *A, B and C v Ireland*

<sup>47</sup> *Rees v. United Kingdom* 106 Eur. Ct. H.R. (ser. A) (1986)

on one's birth certificate, affording the UK government a wide margin of appreciation due to "the diversity of the practices followed and the situations obtaining in the Contracting States."<sup>48</sup> What is evidenced here is that the Court employs a wide margin of appreciation as a doctrine of deference<sup>49</sup> when asked to interpret sensitive and potentially controversial rights into Article 8's protective ambit. The margin of appreciation ensures that the notion of the Convention as a "living instrument" that must be rendered "effective" does not necessarily reign supreme in all instances involving sensitive issues of social policy. The operation of the margin of appreciation, which affords member states some leeway<sup>50</sup> and acts as a constraint on the discretion of the ECtHR,<sup>51</sup> balances out the Court's often expansive approach to interpreting Article 8 so that it does not become overly oppressive for member states.

Finally, when it comes to the expansive approach the Court takes in interpreting Article 8, it is worth noting that the ECtHR is politically strategic in its interpretation of the Convention and will avoid demanding more from member states than they are willing to offer.<sup>52</sup> In other words, even if the Court's interpretation of Article 8 is generally broad, the political dimension of judicial decision-making in the Strasbourg Court puts a real constraint on how expansive the Court is willing to be. First and foremost, the ECtHR wants to ensure that its judgments are complied with.<sup>53</sup> This political aspect to the operation and enforcement of European human rights ensures that any expansive approach the Court takes to interpretation is kept in check and not expanded too far.

## Conclusion

The understanding of the European Convention of Human Rights as a "living document," which is underscored by a general principle of rendering rights protection "effective," has laid the bedrock for the Court's expansive approach to the interpretation of Article 8. This approach has invited some criticism on the grounds of democratic legitimacy. Several aspects of the Court's approach to interpreting Article 8, however, including the limits of the Convention text, the operation of the margin of appreciation and the Court's political awareness of how its judgments will be received, have reigned in the expansive approach to interpreting Article 8. Thus, it is submitted that notwithstanding the democratic legitimacy concern, the ECtHR should continue in their expansive interpretation of Article 8.

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<sup>48</sup> Ibid at 9

<sup>49</sup> YuvalShany, *Towards a General Margin of Appreciation Doctrine in International Law?*, 16 EUR. J. INT'L L. 907, 909-10 (2006).

<sup>50</sup> Shai Dothan, *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights* 42 Fordham International Law Journal 765 (2019)

<sup>51</sup> Shai Dothan, *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights* 42 Fordham International Law Journal 765 (2019)

<sup>52</sup> Shai Dothan, *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights* 42 Fordham International Law Journal 765 (2019)

<sup>53</sup> Shai Dothan, *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights* 42 Fordham International Law Journal 765 (2019)



The digital sphere has taken over our daily life. Everything we need, from clothes to the weather report or reading your favourite European Affairs journal, is available at the click of a button on the OLED-screen of your smartphone. Life without the internet, and the devices that give us access to it, has become unthinkable for most of us. The same holds true for many people living on the African continent.

However, while most residents of Western countries have become accustomed to being connected to the internet wherever they go, a similar privilege is not granted to every citizen of the world.

A report of the International Finance Corporation (IFC), associated with the World Bank Group, stated that only 22% of the African continent has access to the internet<sup>1</sup>. It ranks the lowest out of all the researched groups, with the Arab states and Asia Pacifica coming second last with 44%, which is double that of Africa.

### **The Digital Silk Road and beyond**

Most people have become acquainted with the buzz word for China's global digital infrastructure plans: *'The Digital Silk Road'*<sup>2</sup>. Although many of the current digital projects fall under this idea, the engagement with Africa on digital Infrastructure long predates the concept.

Since the late 1990s, China has been building and investing in much of Africa's digital infrastructure. Studies identified 44 different Chinese ICT projects on the continent between the years 2000 and 2014, mostly in Nigeria, Zimbabwe and Ethiopia<sup>3</sup>. At the time of writing, China's Tech map showcased around 266 projects, ranging from 5G and data centers to surveillance infrastructure<sup>4</sup>. Furthermore, it is estimated that 70% of its 4G network was built by the Huawei company. This is especially important for Africa, where due to the high placement cost of fiber

<sup>1</sup> "Bringing Africa Up to High Speed." International Finance Corporation. International Finance Corporation, 2017. [https://www.ifc.org/wps/wcm/connect/NEWS\\_EXT\\_CONTENT/IFC\\_External\\_Corporate\\_Site/News%20and%20Events/News/CM-Stories/?WCM\\_Page.3b81816a-c80f-4a25-bfc1-fff6b84d4e83=5](https://www.ifc.org/wps/wcm/connect/NEWS_EXT_CONTENT/IFC_External_Corporate_Site/News%20and%20Events/News/CM-Stories/?WCM_Page.3b81816a-c80f-4a25-bfc1-fff6b84d4e83=5).

<sup>2</sup> Chimbelu, Chiponda. "Investing in Africa's Tech Infrastructure. Has China Won Already?" DW. Deutsche Welle, May 3, 2019. <https://www.dw.com/en/investing-in-africas-tech-infrastructure-has-china-won-already/a-48540426>.

<sup>3</sup> Arcesati, Rebecca. "China's Evolving Role in Africa's Digitalisation: From Building Infrastructure to Shaping Ecosystems." ISPI, July 29, 2021. <https://www.ispionline.it/en/pubblicazione/chinas-evolving-role-africas-digitalisation-building-infrastructure-shaping-ecosystems-31247>.

<sup>4</sup> "Mapping China's Tech Giants." Map. ASPI. International Cyber Policy Center, 2021. [shorturl.at/fkDNX](https://shorturl.at/fkDNX).

cables, data is seen as more reliable and cost-efficient<sup>5</sup>. Hence, mobile broadband is often the sole and best way for them to access the digital realm.

Throughout the years, the Chinese suppliers have not only gained experience about the countries, but also built relationships within them. Moreover, as the citizens have been using these companies as a cheap provider of internet access for years, they have become a household name, which they are not likely to switch from<sup>6</sup>. Winning the trust of the citizens will be a challenge for any provider who will try to enter the African market<sup>7</sup>.

Not only the citizens are of importance, as governments have been more than willing to receive a helping hand in the process of setting up their infrastructure and services. For instance, Senegal opened a Data Center outside the capital, which was financed with money from the Export-Import Bank of China. It goes further than just capital: the Kenyan government signed a contract with Huawei for a data center, smart city and surveillance project. Huawei's package includes a variety of e-government services, from elections to national ID and taxation systems. All in all, this digitization process will most likely strengthen the tax collection capacity and decrease corruption<sup>8</sup>.

The Chinese government has shown no sign of slowing down these investments. In a recent statement of China's Foreign Ministry, it was reaffirmed China's commitment to digital innovation on the continent<sup>9</sup>. This would not be structured as an aid project, but rather a joint cooperation. Recommendations and measures to help build a digital Africa will be outlined in a document for the China-Africa Cooperation Forum at the end of this year.

### **The catch-up of the West?**

In contrast to China's long-standing presence, the West has only recently started taking notice of the opportunities of the growing population in Africa and the accompanying increase in demand for broadband.

While Western governments were debating possible bans on tech firms like Huawei, a similar treatment has not been given to the African content. In Africa, the West has given little to no alternative for these same technology firms<sup>10</sup>. Nor has there been much aid to help African governments develop their own technological infrastructure. This is remarkable, as the European Union proclaimed in 2020 to have great ambition to strive towards a digital leadership status<sup>11</sup>. In 2017 it entered into an EU-Africa Cooperation platform to involve relevant stakeholders in policy

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<sup>5</sup> Hruby, Aubrey. "The Digital Infrastructure Imperative in African Markets." Atlantic Council, April 8, 2021. <https://www.atlanticcouncil.org/blogs/africasource/the-digital-infrastructure-imperative-in-african-markets/>.

<sup>6</sup> Xi, Jie. "Analysts: China Expanding Influence in Africa via Telecom Network Deals." VOA. Analysts: China Expanding Influence in Africa Via Telecom Network Deals, September 21, 2021. [https://www.voanews.com/a/economy-business\\_analysts-china-expanding-influence-africa-telecom-network-deals/6209516.html](https://www.voanews.com/a/economy-business_analysts-china-expanding-influence-africa-telecom-network-deals/6209516.html).

<sup>7</sup> Tugendhat, Henry. "The Evolving U.S.-China Tech Rivalry in Africa." United States Institute of Peace, May 5, 2021. <https://www.usip.org/publications/2021/05/evolving-us-china-tech-rivalry-africa>.

<sup>8</sup> Jie, "China Expanding Influence".

<sup>9</sup> "China, Africa to Accelerate Cooperation on Digital Industry Innovation: Ministry." Global Times. Global Times, August 25, 2021. <https://www.globaltimes.cn/page/202108/1232404.shtml?id=11>.

<sup>10</sup> Chimbelu, "Investing in Africa's Tech".

<sup>11</sup> Erforth, Benedikt. "A Pledge for a European Digital Strategy in Africa." Deutsches Institut für Entwicklungspolitik, February 8, 2021. <https://www.die-gdi.de/en/the-current-column/article/a-pledge-for-a-european-digital-strategy-in-africa/>

design and improve cooperation between public decision-makers and private actors<sup>12</sup>. Moreover, a EU policy under the name '*Digital4Development*' was accepted to support digital integration of the African continent under the watchful eye of the African Union<sup>13</sup>. Nevertheless, no concrete projects have taken form beyond fora and panels of discussion.

Despite the slow start, some large Western firms have tried to take their first steps into the African market. Google, for instance, opened its first Artificial Intelligence lab in Ghana. Its mother company, Alphabet, is even trying to get fiber cables to rural villages in an initiative called 'Project Taara'<sup>14</sup>. More notably, Facebook and other telecom partners launched the '2Africa Project', which is a plan to build 37000 kilometres of subsea cables that will interconnect 23 countries in Africa, the Middle East and Europe<sup>15</sup>. However impressive these private initiatives are, there is a clear lack of government involvement and support. Without any government-backing, the projects initiated by the Western world would miss out on an opportunity to impact that digital transformation of Africa on a more substantial level.

### **Rivalry or Co-existence?**

The dependency of the African continent on China for its network access and digitalization has been deemed by some scholars an avenue of political influence<sup>16</sup>. Although there was one allegation<sup>17</sup> that sensitive data from the African Union is stored in Shanghai, there has been no evidence to back up this claim. Nor has there been any other concrete proof that China is using its involvement in these digital projects as a method of espionage or influence.

Although the reasoning would be ungrounded, the fear of the Chinese government having access to data and a means of influence through 'backdoors' in their equipment may serve as a motivator for Western states to step up the competition in Africa. This could be beneficial to African countries, as they would have alternatives to Chinese-financed projects, while the consumer would possibly enjoy the internet at a lower cost due to the increase in players on the market. However, such a reaction from Western governments has not yet taken place.

The private companies, on the other hand, are eagerly participating in the digital gold rush. Many even handle a double standard when it comes to doing business in Africa. While working with Chinese vendors is almost seen as taboo in Europe as of now, French Telecom giant Orange sees no problem in entering into a partnership for the rollout of 5G with Huawei when it comes to

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<sup>12</sup> "Digital Transformation in Africa." Shaping Europe's digital future, September 16, 2021. <https://digital-strategy.ec.europa.eu/en/policies/africa>.

<sup>13</sup> Ibid.

<sup>14</sup> Hruby, "The Digital Infrastructure Imperative".

<sup>15</sup> Ahmad, Najam, and Kevin Salvadori. "Building a Transformative Subsea Cable to Better Connect Africa." Facebook Engineering, May 13, 2020. <https://engineering.fb.com/2020/05/13/connectivity/2africa/>.

<sup>16</sup> Jie, "China Expanding Influence".

<sup>17</sup> Made, Jan van der. "Chinese Tech, Ignored by the West, Is Taking over Africa's Cyberspace." RFI. RFI, July 22, 2021. <https://www.rfi.fr/en/science-and-technology/20210722-chinese-tech-ignored-by-the-west-is-taking-over-africa-s-cyberspace>.

projects outside of the Union<sup>18</sup>. The CEO of Orange, Stephane Richard, admitted that the Chinese invested when the European vendors were too hesitant<sup>19</sup>.

Only time will tell if the African continent will become the stage for another head-to-head between Western countries and the upcoming great power China. Either way, the Africans can count on a digital revolution sweeping across their lands soon, through which they will finally be connected to the vast amount of resources and entertainment that cyberspace has to offer.

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<sup>18</sup> Made, Jan van der. "Chinese Tech, Ignored by the West, Is Taking over Africa's Cyberspace." RFI. RFI, July 22, 2021. <https://www.rfi.fr/en/science-and-technology/20210722-chinese-tech-ignored-by-the-west-is-taking-over-africa-s-cyberspace>.

<sup>19</sup> Ibid.





Much has been written about the gap in economic development, albeit a narrowing one, between the Eastern and Western EU Member States. Before and after the accession of many Central and Eastern European nations to the European Union between 2004 and 2013, it has become clear that this region was not as fully interconnected both within itself and with Western Europe, largely due to a shared history behind the Iron Curtain. While certain European policy initiatives like the EU Cohesion Policy have been largely successful in addressing these issues and bringing the Central and Eastern European (hereafter CEE) Member States up to a more prosperous level of economic development, challenges remain, and the region still lags behind the Western half of the bloc in crucial statistics such as GDP and HDI.<sup>1</sup>

A 2014 report from the Atlantic Council summarized the situation succinctly: Central and Eastern Europe would need to accelerate the development of infrastructure networks that would bind together the economies of the CEE with the rest of the European Union.<sup>2</sup> On the recommendations of this report in 2015, Croatian President Kolinda Grabar-Kitarović and Polish President Andrzej Duda began to lay the groundwork for a large project concerning economic cooperation in the region. Soon after, the Three Seas Initiative (3SI) was established, bringing twelve EU Member States (these being Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia) together into an informal economic alliance organized at the presidential level. The alliance, named for its maritime borders on the Baltic, Adriatic, and Black Seas, had a primary goal: to secure increased foreign direct investment into the region and to work as a common group to further their economic aims. Representing 25% of the EU population and roughly 28% of its territory, the grouping, if successful, could prove to be a strong voice in future European affairs.<sup>3</sup>

### **Between the Seas, Between the Empires**

Despite its recent foundation, the 3SI is not an original concept, having been explored in many forms throughout Central and Eastern European history. Its roots can be traced back as far as 1569 to the Union of Lublin, which united the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania into a single entity: the Polish-Lithuanian Commonwealth. By 17th Century

<sup>1</sup> "The Three Seas Initiative Summit: European Commission Investments In Connectivity Projects". European Commission. 2018. [https://ec.europa.eu/info/sites/default/files/the\\_three\\_seas\\_initiative\\_summit\\_en.pdf](https://ec.europa.eu/info/sites/default/files/the_three_seas_initiative_summit_en.pdf)

<sup>2</sup> Koranyi, David, and Ian Brzezinski. 2021. "Completing Europe – From The North-South Corridor To Energy, Transportation, And Telecommunications Union". Atlantic Council. <https://www.atlanticcouncil.org/in-depth-research-reports/report/completing-europe-from-the-north-south-corridor-to-energy-transportation-and-telecommunications-union/>.

<sup>3</sup> Popławski, Konrad, and Jakub Jakóbski. 2020. "Building Closer Connections: The Three Seas Region As An Economic Area". Polish Economic Institute. <https://pie.net.pl/wp-content/uploads/2020/08/PIE-Three-Seas.pdf>.

standards, the Commonwealth was a largely decentralized state where power was vested more in the local nobility rather than a central authority such as a king. The power of the king was curbed through a system of elective monarchy. The Commonwealth was ahead of its time in many ways, even passing one of the most liberal constitutions for its time in 1791, establishing a limited form of democracy.<sup>4</sup> However, this was not to be, with the Polish-Lithuanian Commonwealth suffering three successive partitions of its lands in 1772, 1793, and 1795. Between 1795 and 1918, most of the nations that currently make up the 3SI were split between the German, Austrian, Russian, and to a lesser extent, Ottoman Empires. It was only in the interwar years that many of these countries found independence. With a shared history of oppression under powerful neighbors, it is no surprise that the 3SI's spiritual predecessor, the Intermarium, would be born.

The Intermarium, or *Międzymorze* (Between the Seas), was a proposal in the 1920s and 30s to unite the CEE region into a confederation that would oppose Soviet and later German aggression. Planned in large part by Polish statesman Józef Piłsudski, this multinational and multiethnic federation would, in theory, have acted as a strong political, economic, and military bulwark against Germany and Russia. With plans to unite the CEE region from Yugoslavia in the south to Estonia in the north, the plan mirrored the 3SI in many ways. However, the 3SI, as the 21<sup>st</sup> Century descendant of the Intermarium plan, focuses more on economics and multilateral cooperation as opposed to military matters or the establishment of a political union. Eventually, the plan would fall apart due to a lack of support in the other CEE countries, with many wary of Polish hegemony within the bloc.<sup>5</sup>

Both the Commonwealth and Intermarium remain of significant importance to the current Polish government, with President Duda recently referring to the Commonwealth period as the greatest time in the shared history of Poland and Lithuania.<sup>6</sup> Moreover, at the 2020 3SI summit in Krakow, the Polish President would also declare that the Poland of today is stronger than at any other point in its history since the 17<sup>th</sup> Century.<sup>7</sup>

### **From Dubrovnik to Sofia... and beyond?**

The first official 3SI summit between the leaders of the twelve BABS (Baltic, Adriatic, and the Black Sea) Member States would occur in Dubrovnik in August 2016. It was here that the Initiative came into being, with a joint declaration being issued on how the group would focus primarily on three issues: infrastructure, energy, and telecommunications.<sup>8</sup> This initial meeting has been followed by five annual conferences every year since, with the most recent 3SI summit taking place in Sofia, Bulgaria in July 2021.

Since the Bucharest summit in 2018, a list of Priority Interconnection Projects gets published annually. As of July 2021, the total number of interconnection projects under the Three Seas

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<sup>4</sup> Szymański, Leszek. 2021. "President Praises May 3 Constitution". The First News. <https://www.thefirstnews.com/article/president-praises-may-3-constitution-21663>.

<sup>5</sup> Ragsdale, Hugh. 2008. *The Soviets, The Munich Crisis, And The Coming Of World War II*. Cambridge: Cambridge Univ. Press.

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<sup>7</sup> Tilles, Daniel. 2021. "Poland Is Stronger Than At Any Time Since The 17Th Century, Says President Duda". Notes From Poland. <https://notesfrompoland.com/2020/09/11/poland-is-stronger-than-at-any-time-since-the-17th-century-says-president-duda/>.

<sup>8</sup> "Explainer: The Three Seas Initiative". 2018. Polandin. <https://polandin.com/39043636/explainer-the-three-seas-initiative>.

Initiative has reached ninety, grossing an estimated investment value of €180.9 billion or an increase of 112% in project value since the Tallinn summit of 2020. Other ambitious infrastructure projects, such as the Via Carpathia motorway connecting Lithuania to Greece, are also being planned. However, significant hurdles have yet to be overcome. Only 2 of the 90 projects have been completed, and while many are nearing completion, there are others that have not yet commenced due to a lack of funding.<sup>9</sup> Financing the projects has always been a key issue at the 3IS summits, and one solution has been the creation of the Emerging Europe Investment Fund, created in 2019 as the first formal instrument of the 3SI. It has been stated that this Fund will finance 9% of the projects, with the rest coming from national and European grants and revenue streams.<sup>10</sup>

### **The Three Seas and their Atlantic Ally**

An often-overlooked area of importance for the 3SI is its relations with the wider world and how it expands beyond the realm of economics and trade. While the Initiative remains an informal economic alliance for the moment, it would be remiss not to point out that the group's members often overlap with various military groupings. For example, 11 of the 12 3SI nations (excluding Austria) are NATO members, and within NATO, the Bucharest Nine (B9) group is composed of the 3SI, excluding only Austria, Croatia, and Slovenia. In fact, the B9 was formed at the initiative of President Duda alongside Romanian President Klaus Iohannis in a very similar timeframe to the 3SI, being unveiled in November 2015. Created in response to the Russian annexation of Crimea, the group seeks to harmonize regional preferences within NATO and to cooperate on military matters.

In many ways, it could be stated that the United States is the most ardent supporter of the 3SI outside of the CEE region. In November 2020, the U.S. House of Representatives unanimously passed a resolution supporting the 3SI.<sup>11</sup> Both the Trump and Biden administrations have shown a willingness to cut out Brussels as the intermediary and to deal with the CEE region directly through the 3SI and/or B9. In fact, President Trump went so far as to personally attend the second 3SI summit in Warsaw in 2017.<sup>12</sup> Rather than a return to the norm of dealing with Brussels, Paris, or Berlin as the spokespeople on behalf of Europe as a whole, Biden joined a B9 video conference in May 2021, as well as giving a speech at the 3SI Sofia summit earlier this year. The U.S. has also provided significant amounts of aid to the Initiative, giving \$300 million to the 3IS Investment Fund during the Trump administration. While this new evolution in the transatlantic alliance has come as a surprise to some, it is clear from the language used that both administrations view the 3SI to counter Russian and Chinese influence in the region. The United States has repeatedly opposed the construction of the Nordstream 2 pipeline, and the governments of the CEE region have largely backed America on this.

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<sup>9</sup> "8 Things To Know About The 3SI". 2021. Visegrad Insight. <https://visegradinsight.eu/8-things-to-know-about-the-3si/>.

<sup>10</sup> "The Three Seas Initiative After The Tallinn Summit: Progress". 2019. The Warsaw Institute Review. <https://warsawinstitute.review/issue-2020/issue-4-2020/the-three-seas-initiative-after-the-tallinn-summit-progress-with-unfinished-business/>.

<sup>11</sup> "Resolution Supporting Three Seas Initiative Unanimously Passes U.S. House Of Representatives". 2020. Three Seas Initiative. <https://3seas.eu/media/news/resolution-supporting-three-seas-initiative-unanimously-passes-u-s-house-of-representatives>.

<sup>12</sup> "Trump Trip To Poland Forces 3 Seas Summit Change". 2017. Fox News. <https://www.foxnews.com/world/trump-trip-to-poland-forces-3-seas-summit-change>.

## **Conclusion**

Despite the challenges ahead for the bloc, it is clear that the 3SI nations are gaining increasing levels of influence on a political, economic and military level. In many ways, it could be said that the CEE region is a closer ally to Washington than their counterparts in Brussels or London at this moment in time. With a thriving economy and growing political clout, perhaps the Three Seas will be able to go head-to-head with the Atlantic and Mediterranean countries of Europe sooner than one might think.



## Introduction

The latest security partnership between Australia, the United States and the United Kingdom known as the “AUKUS” partnership had taken most of the news space since its announcement on September 15, 2021. Numerous insights and analyses were published across different platforms pointing out various concerns from geopolitical tensions to the possibility of a nuclear arms race. The AUKUS security partnership as discussed in the media is well known by its two prominent features - its strategic implication against China and its technological advancement. The AUKUS partnership also caught the attention among European studies enthusiasts as it involved countries such as France in an area which has always been questioned by scholars and policy advisors – hard security.

The EU's actorness is a developing concept and a notable framework to study the European Union. To put in another way, “actorness” is similar to the concept of “agency”. It means the capacity and ability to act and convey policies, in this case by the EU, on an international stage. Historically, the EU's actorness was exhibited mostly in areas such as economic cooperation, governance norms, and crisis management. These are sometimes referred to as soft security dimensions. The EU, compared to other superpowers, has yet to further develop its hard security dimension such as military and defense collaboration. The AUKUS security partnership was formed with the capacity to create a stir on global political dynamics, therefore it is important to take a step back and reflect on how this security partnership may potentially affect the EU's presence in the international community.

This article aims to reflect on the EU' security actorness in the world. It will focus on the EU's security actorness and strategy in the Asia-Pacific and Indo- Pacific areas. This is because both the Asia-Pacific and Indo-Pacific are becoming a more significant geopolitical arena. AUKUS, will be taken as the main impact factor in this article while its strategic impact rests upon these two geopolitical regions.

## Introducing Actorness as a Theoretical Framework

The EU's actorness has a long history of how and why it was formed. The framework “actorness” itself supports the analysis of how the EU originated and how integration took place. Since it is still a developing framework, there are numerous interesting debates regarding the approach to the concept and the framework itself, which readers are encouraged to explore.<sup>1</sup> For this article, the

<sup>1</sup> Maria Loannou, “Theorizing the External Actorness of the European Union in Global Development Governance,” accessed September 24, 2021, <https://www.diva-portal.org/smash/get/diva2:1566429/FULLTEXT02>.

EU's actorness is referred to the capacity to use its values or norms in order to convey the policies or agenda to the international stage EU's security actorness is an act of agency in the arena of traditional or non-traditional security.

To understand the EU's actorness is to understand the EU's historical and political background. The most significant concept to acknowledge here is the concept of "security community" by Karl Deutsch. Security community is based upon the idea that shared values and norms, which could potentially create social identity, is possible and once established, it reflects long-term interests and trust<sup>2</sup>. In other words, if states (actors) can come together with certain shared norms then a strong sense of community can be established decreasing the likelihood of conflict and arms race.<sup>3</sup> There is a strong consensus that the EU's degree of integration is one of the deepest and most extensive in the world. From these internal experiences, the EU formed its actorness, how it presents itself in the world, by projecting its values and norms.

### **AUKUS Security Partnership Overview**

The main objective for the US and the UK in the AUKUS is to help Australia modernize its military capacity. The partnership's activities included acquiring "additional long-range strike capabilities for the Australia Defense Force" such as the Tomahawk Cruise Missiles, Joint Air-to-Surface Standoff Missiles (Extended Range), Long-Range Anti-Ship Missiles (Extended Range), Precision strike guided missiles as well as accelerating \$1 billion for a sovereign guided weapons manufacturing enterprise<sup>4</sup>.

The center of the global strategic stir rested upon the first initiative involving Australia's "nuclear-powered submarines" acquired with help from the US and the UK. However, since Australia already agreed on diesel-electric submarines order from France back in 2016, this particular partnership has made France feel betrayed<sup>5</sup> and it responded by recalling its ambassadors back from the US and Australia.

Besides the geopolitical partnership tensions, the concerns regarding "nuclear-powered submarines" and related technology also led to international distress. The nuclear-powered submarines possess two key disturbing features; its potential function as nuclear weapons and its military technological advancement. Although the Australian government clearly stated that it has no plans to use nuclear weapons with its submarines, the existence of the submarine's technological potential, is already enough to create an uncertain international security environment which could antagonize arms race and potentially cause a modern day war.

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<sup>2</sup>Emanuel Adler and Michael Barnett, *Security Communities* (Cambridge: Cambridge University Press, 1998).

<sup>3</sup> Simon Koschut, "Regional Order and Peaceful Change: Security Communities as a via Media in International Relations Theory," *Cooperation and Conflict* 49, no. 4 (January 17, 2014): 519–35, <https://doi.org/10.1177/0010836713517570>.

<sup>4</sup> "Australia to Pursue Nuclear-Powered Submarines through New Trilateral Enhanced Security Partnership | Prime Minister of Australia," [www.pm.gov.au](http://www.pm.gov.au), September 16, 2021, <https://www.pm.gov.au/media/australia-pursue-nuclear-powered-submarines-through-new-trilateral-enhanced-security>.

<sup>5</sup> "UK, US and Australia Launch Pact to Counter China," BBC News, September 15, 2021, sec. World, <https://www.bbc.com/news/world-58564837>.



## **AUKUS Partnership and EU's Strategic Relations in Asia-Pacific**

This particular partnership is also perceived as a strategic move by the United States to counter the rise of China in the global security balancing game. The pact has been referred to by the media as a “ganging up against China.”<sup>6</sup> Hence the international community, media, scholars and geopolitics enthusiasts are now anticipating to see how other nations would react to this particular partnership. As of this moment, some countries and blocs, such as China, DPRK and of course the EU, had already expressed their displeasure and still some others, such as certain Southeast Asian states, are under immersive stress regarding the geopolitical balance between the two superpowers. In short, the AUKUS security partnership had undoubtedly created a much more complicated strategic security environment in the Asia-Pacific.

Another point that can be observed from this partnership is the fact that the Australian government is willing to accept the consequences of the partnership at the expense of its relationship with France, and of course the EU, exhibiting that the EU is losing its political power in the Indo-Pacific strategic game. Although “the world no longer revolves around traditional security anymore,” the case of AUKUS demonstrates that the impact of such a partnership extends beyond military affairs and also affects international cooperation and diplomacy, as the pulling-back of ambassadors by France has exemplified. This particular scenario can also be observed in a communication by the Council – “The EU strategy for cooperation in the Indo-Pacific”<sup>7</sup>, published only a day after the announcement of AUKUS’ creation, which included the EU's agenda on global issue areas such as climate change, sustainable development, human rights and so on. The tension caused by this partnership will certainly jeopardize trust and the friendly collaborative atmosphere needed for peaceful cooperation.

During the past several years, the world had witnessed the EU's attempted engagement in Asia. More collaborative projects took place, some even showing EU member states such as Germany attempting to ease its usual normative prerequisites in order to form more opportunities for collaborations with countries such as China to support other areas of its agenda, which is mainly economic prosperity. The fact that France and Australia established a submarine deal before the creation of the AUKUS partnership is also evidence of EU's step in the Indo-Pacific strategic game in itself.<sup>8</sup> However, as the AUKUS clearly showed, the EU is now being pushed aside in this front and therefore, even if the EU does not lose its position in the world completely, much difficulty lies ahead for its future, its agenda and tasks.

## **Reflecting EU's Security Actorness in the World**

When reviewing the EU's role in the international community, it is oftentimes pictured as a saint. The question left to be considered now is - “But is it enough?” By enough meaning the ability to project the interests of the EU and its member states in the world. As seen from the case of the AUKUS partnership impact on France and the bloc mentioned above, the EU is moving towards

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<sup>6</sup> “‘Behaving like a Street Gang Boss’: How Chinese Media Reacted to US, UK, and Australia’s New Pact,” Firstpost, September 17, 2021, <https://www.firstpost.com/world/behaving-like-a-street-gang-boss-how-chinese-media-reacted-to-us-uk-and-australias-new-pact-9972461.html>.

<sup>7</sup> European Commission, “Joint Communication to the European Parliament and the Council the EU Strategy for Cooperation in the Indo-Pacific,” September 16, 2021.

<sup>8</sup> Mark Leonard, “Europe’s Problems with AUKUS,” The Strategist, September 30, 2021, <https://www.aspistrategist.org.au/europes-problems-with-aukus/>.

a direction which is disadvantageous to its own strategic interests in the world. And perhaps sooner or later, the bloc will lose its position as a great power in the world simply because it refuses to acknowledge the geopolitical shifts that are taking place.

The AUKUS strategic partnership, which is more than just a submarine deal between the three allies, demonstrates how the EU is already and will be further left out in the Indo-Pacific strategic game. It will complicate the EU's agenda in the way that it has to deal with all the tension while trying to tackle the global issues. Thus, this particular partnership is pressing us to acknowledge that the EU needs to reflect on its security actorness in the world by using lessons learned from the developments in the Asia-Pacific and Indo-Pacific strategic arena. The EU's security actorness is facing challenges. Without rethinking its strategy, the EU may lose crucial advantages in the long term.

### **Conclusion**

To conclude this article, an arms race should be avoided at all costs and the EU's presence in the area of hard security is not necessarily called for. Norms and values, which the EU has so long preserved and promoted are important and the EU should continue to protect them. Indeed, the EU has not fully utilized its capacity as a bloc in the international community in the same way as other superpowers have done or are doing, such as China. This, for sure, will in the long term bring more harm to the global security environment. Therefore, the EU needs to acknowledge and reevaluate its position and presence in the world and understand that the dynamics of world politics have changed. Global politics has become more aggressive and competitive. The EU needs to formulate a new and more complex strategy for its security actorness in the world.



Without an army nor a real common defence, the European Union has never been appointed as a military power. The foreign and defense policy is still exclusively a matter of the Member States, although the area is constantly evolving. Since 2016, there has indeed been movement, and the EU Global Strategy<sup>1</sup> represents its crucial facet. Strategic autonomy is mentioned as one of the key objectives in the document, and this gave rise to an intense political and theoretical debate on the possibility of a European army. From just a civilian power to a more martial Europe with its own army: is this just a myth?

### Is there a common foreign policy of the Union?

The Common Security and Defence Policy (CSDP)<sup>2</sup> is the core component of the Common Foreign and Security Policy (CFSP). Theoretically, it enables the EU to act as a global security actor with permanent political, military, and civilian structures. Steps forward have been made since the Treaty of Lisbon<sup>3</sup>: a permanent structured cooperation (PESCO)<sup>4</sup> in military affairs was launched in 2017; the European Defence Fund as well<sup>5</sup>; lastly, the EU has planned to make civilian and military missions more effective and efficient<sup>6</sup>. Yet, the Union still lacks defence capability. To clarify, this area has never been fully integrated. This means that the European Union has no jurisdiction to decide, but it is up to Member States. It is indeed the Foreign Affairs Council of the EU – made up of Member State Ministers responsible for Foreign Affairs, Defence and Development with the help of the High Representative and the European External Action Service - that discusses for a coordination of a European foreign policy. This serves not only as a clarification but should also start to give a clear signal of the factual obstacles towards a European army.

The European Union has military personnel and troops, nonetheless they are deployed by EU governments. There is therefore not a European army, but just an army of Europeans. The defence landscape is presented as fragmented, lacking coherence in several aspects, including defence

<sup>1</sup> European External Action Service, *EUGS Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, 2016. [https://eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf).

<sup>2</sup> European External Action Service, *The Common Security and Defence Policy (CSDP)* [https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp\\_en?page=1](https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp_en?page=1).

<sup>3</sup> Article 42.2 of the TEU provides for a common EU defence policy. However, it stresses the importance of national defences and the partnership with NATO.

<sup>4</sup> Council Decision (CFSP) 2017/2315, *Establishing permanent structured cooperation (PESCO) and determining the list of participating Member States*, 11 December 2017. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D2315&from=EN>.

<sup>5</sup> European Parliament, *First-ever EU defence industry fund to finance joint development of capabilities*, Press Release, 3 July 2018. <https://www.europarl.europa.eu/news/en/press-room/20180628IPR06812/first-ever-eu-defence-industry-fund-to-finance-joint-development-of-capabilities>.

<sup>6</sup> European External Action Service, *Military and civilian missions and operations*. [https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations\\_en](https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations_en).

development capabilities<sup>7</sup>, but recent events<sup>8</sup> have shown that the EU can no longer rely completely on NATO and thus on the U.S. to cope with crises in its own neighborhood and to defend itself. A lot of voices in Brussels have called for a military Union, able to reach the coveted strategic autonomy<sup>9</sup>. The question remains whether this necessarily implies the creation of a European army. International relations scholars are divided: on one side, a part of authors believes the EU could defend itself and challenge successfully some critical threats such as Russia<sup>10</sup>; on the contrary, others define the European military autonomy as an illusion<sup>11</sup>.

As a consequence, this article will delve deeper into the matter by exploring which are the principal arguments in favor or against a European army.

### **A European army: why now?**

The European Union is developing a *Strategic Compass for security and defence*<sup>12</sup> to be ready by March 2022, under the French Presidency of the Council. This Presidency could be a game changer to further the main current object of France within the Union: the autonomy from the U.S. Inspired by the 2016 Global Strategy, the Strategic Compass could represent the second phase. Why now?

“Time when we rely on others is past”, said German Chancellor Angela Merkel<sup>13</sup>. “NATO is brain dead”, added French President Emmanuel Macron<sup>14</sup>. In a changing geopolitical order, the EU is *de facto* facing more and more challenges and threats: the annexation of Crimea and the security crisis, Brexit, the Trump Administration, the increasingly critical role of non-state actors, the revisionists China and Russia. The security crisis requires the Union to become credible in providing protection, otherwise it will become irrelevant at an international level. The civilian and humanitarian power has worked until now, but in a rougher international environment many are asking for more.

The second reason for this new EU military impetus is linked to Brexit. The UK was indeed one of the strongest military actors in the Union, with the largest military budget. Moreover, the UK holds a permanent seat in the UN Security Council, and it has nuclear weapons. Brexit represents a loss for the EU in that sense. Right now, France remains the only Member State that has nuclear power. Implementing a European army could narrow existing military gaps between EU governments.

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<sup>7</sup> European Defence Agency, *Final report of the first full CARD cycle (2019-2020)*. <https://eda.europa.eu/publications-and-data/all-publications/annual-report-2020>.

<sup>8</sup> The Afghanistan withdrawal by the US has manifested, *inter alia*, Europe's defence vulnerability

<sup>9</sup> However, there is still much uncertainty concerning the meaning of the concept: autonomy as independence, strategic hedging, or responsibility? (See Fiott, Daniel, *Strategic autonomy: towards 'European sovereignty' in defence?*, European Union Institute for Security Studies, 2018).

<sup>10</sup> See, *inter alia*, Posen, Barry. R., *Europe Can Defend Itself*, Survival, 2020, 62:6, 7-34.

<sup>11</sup> Meijer, Hugo and Brooks, Stephen G., *Illusions of Autonomy: Why Europe Cannot Provide for Its Security If the United States Pulls Back*, International Security, 2021; 45 (4): 7–43.

<sup>12</sup> European External Action Service, *Towards a Strategic Compass*, 2021. [https://eeas.europa.eu/headquarters/headquarters-homepage/89047/towards-strategic-compass\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/89047/towards-strategic-compass_en)

<sup>13</sup> Euractiv, *Merkel: Europe can no longer rely on US to 'protect' it*, 11 May 2018. <https://www.euractiv.com/section/future-eu/news/merkel-europe-can-no-longer-rely-on-us-to-protect-it/>.

<sup>14</sup> The Economist, *Emmanuel Macron warns Europe: NATO is becoming brain-dead*, 7 November 2018. <https://www.economist.com/europe/2019/11/07/emmanuel-macron-warns-europe-nato-is-becoming-brain-dead>

In addition, an EU defense could also mean spending efficiently. Some studies estimate that, even though EU countries collectively are the second largest defence spender, because of duplication, overcapacity and barriers to procurement around 26.4 billion euros are wasted per year<sup>15</sup>.

Lastly, the initiative for strategic autonomy concerns the uncertainty about Europe's role within NATO. In 2019, the organization demonstrated that only five European countries spent more than 2% of their GDP on defence<sup>16</sup>. Many U.S. Presidents have loudly criticized EU Member States for not spending enough on security, asking for more burden sharing. The accusation is that of exploiting American defence and its offensive capability. Nonetheless, in case of a withdrawal from the U.S., the expert Barry Posen believes that the EU could have the capacity to defend itself. He states that the main current obstacle is that Europe has *decided* to not spend enough to bring its forces to their full potential. Consequently, Europeans could overcome their problems, that are mainly about readiness, if only they chose to do it<sup>17</sup>.

### **...and why not now?**

The first reason why the introduction of an army does not seem possible is the lack of internal coherence. Indeed, every Member States should support the decision to put the army into action, a unanimity that is extremely difficult to reach even in less problematic issues. Moreover, even if the unanimity is reached, another problem would arise, that of readiness: military issues frequently require a responsive policy making, something that is difficult to achieve for 27 states altogether. The EU includes, amongst its membership, different strategies and varied cultures. Some countries are more used to employing their military personnel; others believe that the EU was established in order to avoid military action that could happen again. Last, there are different perceived threats on the EU territory. For some States, the threat is the East; for others, it is the South; some governments focus their attention on the migration crisis, others on countering terrorism. This is what Meijer and Brooks have defined "strategic cacophony"<sup>18</sup>.

Even in this case, a relevant factor is represented by NATO, an alliance based on mutual assistance in which 25 out of 30 members are Europeans. In this sense, a European army would represent a "duplication" of NATO that may not bring benefit to the transatlantic relationship. The U.S. will certainly be seeking the disunity of the EU, and not an EU able to speak with a single voice with a strong role in the international arena. As a consequence, Europe's complete dependence on the U.S. means that the latter enjoys the power to maneuver most European decisions on security issues. For this reason, after the Cold War, every President has vetoed any attempts of the Union to become a more credible security actor. For example, if Obama stressed the importance of burden sharing within NATO, Trump has repeatedly opposed to any European defence project, such as PESCO. The White House is asking the EU to do more, but it has *de facto* said no to every autonomous project. This is because the US-EU relations have been and are based on a precise exchange: protection in return of compliance.

Last, the loss of sovereignty. Delegating the authority to make military decisions to a supranational institution represents the loss of a huge part of the traditional power of a state. This means that a

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<sup>15</sup> European Parliament news, *Defence: is the EU creating a European army?*, 4 May 2021. <https://www.europarl.europa.eu/news/en/headlines/security/20190612STO54310/eu-army-myth-what-is-europe-really-doing-to-boost-defence>

<sup>16</sup> NATO, *Defence Expenditure of NATO Countries (2013-2020)*, 21 October 2020. [https://www.nato.int/cps/en/natohq/news\\_178975.htm?selectedLocale=en](https://www.nato.int/cps/en/natohq/news_178975.htm?selectedLocale=en).

<sup>17</sup> Posen, Barry. R., *Europe Can Defend Itself*.

<sup>18</sup> Meijer, Hugo and Brooks, Stephen G., *Illusions of Autonomy*.

government should autonomously decide to give up to a fulcrum of this sovereignty. As some authors underline<sup>19</sup>, the lack of progress of integration in this area is mostly due to the reluctance of Member States leaders, as, in turn, the EU citizens have always generally supported an integration of defence policies.

### **The Europe's defence dilemma**

The EU has always been criticized for coming up short when it comes to military affairs and security. There is no doubt that some Member States have settled down on the idea of the U.S. as a security provider even on the European continent and neighborhood. Progresses have been made since 2016, and some voices have started to ask for a European army. However, opting for an army would mean the integration of the security and foreign policy area. As it was already pointed out, these decisions today are not taken in Brussels. Furthermore, for greater defence efficiency, more national sovereignty should have to be given up, in order to deepen European integration.

In conclusion, two different sets of factors occur. The first concerns the internal logistic problems (lack of capabilities and internal coherence, military expenditure, etc.). The second is related to the U.S., the most vital ally of the Union, which seeks its own interests by maintaining control. Overall, these points show that the debate concerning a European army is merely academic and hardly realistic. Stuck in a defence dilemma, however, the EU might prefer other options: an army is not the unique solution for implementing what Ursula von der Leyen called “the European Defence Union”<sup>20</sup> and for having a seat at the table of the big powers.

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<sup>19</sup> Schilde, Kaija E., Anderson, Stephanie B., Garner Andrew D., *A more martial Europe? Public opinion, permissive consensus, and EU defence policy*, European Security, 2019, 28:2, 153-172.

<sup>20</sup> European Commission, *2021 State of the Union Address by President von der Leyen*, 15 September 2021. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_21\\_4701](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_21_4701).





## Introduction

In recent years, the European Union has attempted to portray itself as a global leader in climate policy.<sup>1</sup> While progress has been made in the political sector through ambitious programs, such as the European Green New Deal,<sup>2</sup> the EU has struggled to reconcile this ambition with the need for an appropriately eco-centric legal framework. This article will posit that, in order to ensure there is adequate consideration of environmental protection, the EU should establish a new European Court of Environmental Justice. This ‘European Green Court’ will be suggested to be the most appropriate mechanism through which environmental accountability can be implemented within broader EU jurisprudence.

## Part I Standing in the Way of Environmental Control

One of the central justifications for the establishment of a European Green Court can be derived from the fact that the current approach to legal standing adopted by the Court of Justice of the European Union (CJEU), has proven insufficient to address the concerns of environmental activists. Standing is defined by the Directorate General for Internal Policies as the “*provisions (and their jurisprudential interpretation) regulating the identification of the (groups of) persons who are allowed to bring a claim before the EU courts*”.<sup>3</sup> Under Article 263 of the Treaty on the Functioning of the European Union (TFEU), Member States and the Commission have standing before the CJEU.<sup>4</sup> An individual, such as an environmental NGO,<sup>5</sup> must demonstrate that they have a direct and individual concern in the matter at hand.<sup>6</sup>

The strict nature of standing under EU law poses significant problems for those seeking to bring environmental litigation before the CJEU. It is unlikely that a State itself will take environmental cases to the CJEU, given they are often the perpetrator of the polluting event.<sup>7</sup> Should a State be willing to allow for accountability, there is no reason why it would not prefer for a remedy to be

<sup>1</sup> Sebastian Oberthur and Claire Dupont, ‘The European Union’s international climate leadership: towards a grand climate strategy?’ [2021] *Journal of European Public Policy*.

<sup>2</sup> Mario Pianta, ‘Rethinking the European Green Deal: An Industrial Policy for a Just Transition in Europe’ [2020] *Review of Radical Political Economics*.

<sup>3</sup> Directorate General for Internal Policies, *Standing up for your rights in Europe* (2012).

<sup>4</sup> Article 263 Treaty on the Functioning of the European Union.

<sup>5</sup> Marjaan Peters, *Judicial Enforcement of Environmental Democracy: a Critical Analysis of Case Law on Access to Environmental Information in the European Union* [2020] *Chinese Journal of Environmental Law*.

<sup>6</sup> Damian Chalmers, *European Union Law* (3rd edn, Cambridge University Press 2014) 423.

<sup>7</sup> Ludwig Kramer, ‘The EU Courts and Access to Environmental Justice’, in Ben Boer, *Environmental Law: Dimensions of Human Rights* (1st edn, Oxford University Press 2015).

provided via their national judicial process.<sup>8</sup> Thus, activists are left to demonstrate that the EU policy in question has a direct and individual impact, which is near impossible to prove in light of environmental protection being in the public, as opposed to private interest.<sup>9</sup> In *Greenpeace and others v Commission*,<sup>10</sup> the NGO in question was unable to gain standing to challenge the legality of Commission decisions to grant aid for the construction of two Spanish fossil fuel powered energy stations.<sup>11</sup> The CJEU declined to relax standing requirements where it could be demonstrated by the plaintiff that the challenge in question was in the public interest.<sup>12</sup> This was partially on the basis that, to do so, risked opening the floodgates to public interest litigation that could serve to overwhelm the CJEU.<sup>13</sup>

The uneven platform from which public interest standing is approached has long been criticised by various commentators.<sup>14</sup> Although, there have been some suggestions for reform,<sup>15</sup> such as the proposal of Advocate General Jacobs that “*individual*” be defined as where a matter has a “*substantial adverse effect*” on a person's interest,<sup>16</sup> there has been no attempt to modify standing to accommodate the importance of environmental considerations.<sup>17</sup> Unlike other Commission cases, such as those in relation to the free movement of goods,<sup>18</sup> the environment possesses significant health, social and cultural capital.<sup>19</sup> Consequently, a high degree of environmental pollution could risk permanent damage to EU citizens, should its need not be incorporated within an adequate legal framework.<sup>20</sup> Further, the reforms that have been proposed have been criticised for leaving open the possibility of a flood of litigation.<sup>21</sup> Thus, it is contended that an European Green Court, with a relaxed approach to standing, could side-step many of the current concerns. The specifics of this relaxed approach will be outlined in part III.

## Part II The Aarhus Convention - The Circumvention of International Obligations

Secondly, it is submitted that the current approach to environmental protection within EU law contravenes the Aarhus Convention. The Aarhus Convention outlines the obligations of international signatories to mandate and improve access to environmental justice.<sup>22</sup> It has been

<sup>8</sup> Charlotte Burns, ‘EU environmental policy in times of crisis’ [2020] Journal of European Public Policy.

<sup>9</sup> Francis Jacobs, The Role of the European Court of Justice in the Protection of the Environment [2006] Journal of Environmental Law.

<sup>10</sup> *Greenpeace and Others v Commission* (2006) Case C-321/95 P..

<sup>11</sup> Nicole Gerard, ‘Greenpeace and Others v the Commission - C-321/95P’ (1998) 7 Rev Eur Comp & Int'l Envtl L 209.

<sup>12</sup> *ibid.*

<sup>13</sup> *Stichting Greenpeace Council (Greenpeace International) and Others v. Commission of the European Communities* (1995) 1995 ECR II-2205.

<sup>14</sup> Steve Peers and Marios Costa, ‘Judicial Review of EU Acts after the Treaty of Lisbon’ [2012] European Constitutional Law Review and Albertina Albers-Llorens, ‘Remedies Against the EU Institutions after Lisbon: An Era of Opportunity?’ [2012] Cambridge Law Journal.

<sup>15</sup> Paul Craig, ‘Standing, Rights, and the Structure of Legal Argument’ (2003) 9 Eur Pub L 493.

<sup>16</sup> Opinion of Advocate General Jacobs in *Union de Pequenos Agricultores v Council* (2002) CASE C-50/00.

<sup>17</sup> Rosa Greaves, ‘A Commentary on Selected Opinions of Advocate General Jacobs’ [2005] Fordham International Law Journal.

<sup>18</sup> Lucas Bergkamp, ‘Private Party Standing and EU Risk Regulation’ (2016) 7 Eur J Risk Reg 557.

<sup>19</sup> Lucretia Dogaru, ‘The Importance of Environmental Protection and Sustainable Development’ [2013] Procedia -Social and Behavioural Sciences.

<sup>20</sup> Anthony R Zito, ‘Is the Trajectory of European Union Environmental Policy less Certain?’ [2019] Journal of Environmental Politics.

<sup>21</sup> Daniel Sarmiento ‘The Reform of the General Court: An Exercise in Minimalist (but Radical) Institutional Reform’ [2017] Cambridge Yearbook of European Legal Studies.

<sup>22</sup> Goda Perlaviciute, ‘Public Participation in Climate Policy Making: Toward Reconciling Public Preferences and Legal Frameworks [2020] One Earth.

made legally binding in the EU through the 2006 Aarhus Regulation.<sup>23</sup> However, the Aarhus Regulation takes a relatively conservative approach to the implementation of the Convention, which has subsequently resulted in insufficient protection of access to environmental justice.

According to Article 9 (3) of the Aarhus Convention, signatory members such as the EU must ensure that “*members of the public have access to administrative or judicial procedures to challenge acts and omissions by private parties and public authorities which contravene provisions of its national law relating to the environment*”.<sup>24</sup> Yet, as a result of the hard-line approach taken to standing,<sup>25</sup> members of the public find it impossible to challenge relevant parties at an EU level. In a similar vein, the Aarhus Regulation, which governs EU rules in relation to the Convention, only allows for cases to be taken against acts of an individual nature.<sup>26</sup> This means that EU Regulations and Directives are both excluded from any potential legal challenge using the Regulation.<sup>27</sup> The Aarhus Regulation also limits its scope to NGOs who meet detailed criteria,<sup>28</sup> as opposed to the public at large. The result is a chasm between what the Aarhus Convention mandates in relation to access to environmental justice, and what the Regulation does to narrow the scope of this access. The contravention of the Convention has been documented by relevant authorities.<sup>29</sup> In 2011, the Aarhus Compliance Committee identified that no member of the public had been able to challenge a decision or regulation in environmental cases before the CJEU.<sup>30</sup>

It could be argued that an effective implementation of the Aarhus Convention would remove the need for an European Green Court. It is submitted however, that effective reform of the Regulation has been made near impossible from both a legal and political perspective. Several cases taken before the CJEU have refused to widen the scope of the Aarhus Regulation or assess whether it complies with wider obligations of the Convention.<sup>31</sup> Interpretation of the Regulation has been made as narrow as possible to avoid any conflict with the existing rules on standing.<sup>32</sup>

In the meantime, the EU has committed to reform of the Regulation through political means.<sup>33</sup> Under a deal struck in July 2021, EU Member States agreed to widen the scope of the Regulation to include administrative acts requiring implementing measures.<sup>34</sup> The deal also seeks to broaden

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<sup>23</sup> Regulation (EC) No 1367/2006 .

<sup>24</sup> Mariolina Eliantonio, ‘The role of NGOs in Environmental Implementation Conflicts: ‘Stuck in the Middle’ between Infringement Proceedings and Preliminary Rulings?’ [2018] Journal of European Integration.

<sup>25</sup> Ioanna Hadjiyianni, ‘Judicial protection and the Environment in the EU legal order: Missing pieces for a Complete Puzzle of Legal Remedies’ [2021] Common Law Market Review.

<sup>26</sup> Regulation (EC) No 1367/2006 .

<sup>27</sup> Gor Samvel, ‘Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice’ [2020] Journal of Transnational Environmental Law.

<sup>28</sup> Regulation (EC) No 1367/2006 .

<sup>29</sup> Jan H Jans and Gertjan Harryvan, ‘Internal Review of EU Environmental Measures. It’s True: Baron Van Munchausen Doesn’t Exist! Some Remarks on the Application of the So-Called Aarhus Regulation’ [2010] Rev Eur & Ad L 53

<sup>30</sup> Gor Samvel, ‘Non-Judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice’ [2020] Journal of Transnational Environmental Law.

<sup>31</sup> Hendrik Schoukens, ‘Access to Justice in Environmental Cases after the Rulings of the Court of Justice of 13 January 2015: Kafka Revisited?’ [2015] Utrecht Journal of International and European Law.

<sup>32</sup> *ibid.*

<sup>33</sup> Jemma Slingo, ‘EU agrees to widen access to environmental justice’, *The Law Gazette* (July 2021) <https://www.lawgazette.co.uk/news/eu-agrees-to-widen-access-to-environmental-justice/5109198.article> accessed 23/09/2021.

<sup>34</sup> Christian Doleschal, ‘Revision of the Aarhus Regulation: A collective sigh of relief’, *The Parliament* (July 2021). <https://www.theparliamentmagazine.eu/news/article/revision-of-the-aarhus-regulation-a-collective-sigh-of-relief> accessed 23/09/2021.

the capacity of members of the public to challenge these decisions in Court.<sup>35</sup> While this is positive insofar as it at least acknowledges the current lack of compliance with the Aarhus Convention, the deal itself does not resolve the current impasse. Members of the public who wish to challenge environmental decisions, will need to prove that they either are directly affected by the decision in question, or obtain 4000 signatories from across 5 different EU member states.<sup>36</sup> Thus, access to justice remains limited to those who can either meet the existing standard for a direct concern, or who can marshal sufficient resources to market the challenge as an EU-wide campaign.

It is contended that these attempts to constrict the impact of the Convention illustrate the limited capacity of the present judicial system to accommodate environmental interests. By contrast, a dedicated European Court of Environmental Justice could operate using the Aarhus Convention as a foundational model for its jurisprudence. How this model would operate in practice will be discussed below.

### **Part III The European Green Court in Practice - Implementing an Environmental Court of Justice within EU Jurisprudence.**

Having considered the current flaws within the EU legal system, it is pertinent to examine how a European Green Court could rectify these problems, without compromising on the overall integrity of the CJEU.

Firstly, a European Green Court could utilise an eco-centric approach to standing.<sup>37</sup> This would involve plaintiffs being required to demonstrate that the concern in question is primarily an environmental matter. Instead of asking whether a direct and individual concern is present, the Court could enquire as to whether the environmental interests in the case outweigh all other interests, e.g. commercial considerations.<sup>38</sup> It is submitted that this keeps the existing model of standing in place for ordinary cases,<sup>39</sup> while allowing individuals the opportunity to challenge decisions that may have long-term effects on the climate. Thus, calls for reform of the present model can be separated from the pressing need for greater environmental accountability.<sup>40</sup>

Secondly, a European Green Court would ensure there is compliance with the Aarhus Convention. Instead of attempting to reform a flawed Regulation, the Court could seek direct implementation of the Convention. Concerned individuals would be granted access to this Court without any requirement to obtain signatures, and public participation in environmental justice could be achieved through widespread access to the Court. While there are some floodgate concerns, it is important to note that there is a difference between access to the European Green Court and a finding in favour of the plaintiff. A case would still have to be proven to have sufficient merit,

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<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> Patel, 'Expanding Past Genocide, Crimes Against Humanity, and War Crimes: Can an ICC Policy Paper Expand the Court's Mandate Prosecuting Environmental Crimes?' (2016) Loyola University Chicago International Law Review.

<sup>38</sup> Teall Crossen and Veronique Niessen, 'NGO Standing in the European Court of Justice - Does the Aarhus Regulation Open the Door?' (2008) 16(3) RECIEL 332, 333.

<sup>39</sup> Costas Kombos, 'Locus Standi of Representative Groups in the Shadow of Plaumann: Limitations and Possible Solutions' (2006) 47 Acta Jur Hng 373.

<sup>40</sup> Jonas J. Schoenefeld, 'Environmental Policy Evaluation in the EU: Between Learning, Accountability, and Political Opportunities?' [2019] Journal of Environmental Politics.

while litigation costs would remain a burden on the individual.<sup>41</sup> There is also no reason why a Court could not take a harsh approach to frivolous litigation, which in turn would deter spurious claims.<sup>42</sup> Green Courts that have been implemented at a national level, such as that of the Philippines,<sup>43</sup> have not been overwhelmed with cases.<sup>44</sup> While it is acknowledged that the EU has a far wider potential scope of litigants, it also has the capacity to draw on a diverse pool of expertise that can balance competing interests.<sup>45</sup> By drawing on this plurality of knowledge,<sup>46</sup> a Green Court can follow the lead of comparative jurisdictions to avoid overly burdensome litigation. Thus, floodgate concerns, while present, are both avoidable and surpassable through appropriate interpretations of relevant future cases.<sup>47</sup>

It could be argued that the establishment of a European Green Court would be impossible due to financial constraints. This can be refuted through an examination of the current EU focus on creating a just transition to a sustainable economy.<sup>48</sup> Billions have been pledged to assist Member States with environmental investment.<sup>49</sup> There is no reason why resources could not be identified to ensure that this economic development is accompanied with the implementation of an appropriate legal framework. Otherwise, the current gap within access to environmental justice will be exacerbated, as green considerations permeate all areas of policy.<sup>50</sup> The EU has made it clear that it can appropriate the resources it needs to combat the climate emergency,<sup>51</sup> and this can and should be reflected in its approach to environmental justice.

Taking the outlined approach into consideration, a European Green Court is both a plausible and practical means of overcoming the existing difficulties with access to environmental justice. While it would be somewhat radical to establish a specific court, it is not unprecedented at a national level,<sup>52</sup> nor is it out-of-kilter with existing EU policy on environmental matters.<sup>53</sup>

## Conclusion

In conclusion, it has been argued that, in light of the present failings of the CJEU's approach to environmental litigation, a dedicated European Court of Environmental Justice should be established. It is argued that this 'European Green Court' would sufficiently accommodate the social and legal obligation to provide appropriate access to environmental justice. This Court

<sup>41</sup> Damian Chalmers, *European Union Law* (3rd edn, Cambridge University Press 2014).

<sup>42</sup> Hendrik Schoukens, 'Access to Justice before EU Courts in Environmental Cases against the Backdrop of the Aarhus Convention: Balancing Pathological Stubbornness and Cognitive Dissonance?' in Christina Voigt, *International Judicial Practice on the Environment* (1st edn, Cambridge University Press 2019).

<sup>43</sup> United Nations Development Program, 'Environmental Justice, Comparative Experiences in Legal Empowerment' (2014).

<sup>44</sup> Hockman, 'The Case For an International Court For The Environment' (2011) ICE Coalition <https://static1.squarespace.com/static/56c0ae80ab48de4417bd17fa/t/56d5b71362cd94808b9040a5/1456846612833/The+Case+for+an+ICE.pdf> accessed 25/05/2021.

<sup>45</sup> Michael Blauberger, 'The European Court of Justice and its Political Impact' [2017] *Journal of West European Politics*.

<sup>46</sup> Herman Voogtsgeerd, 'The European Court of Justice and Legal Pluralism: The Case Law of the "Four Freedoms" and the Pluralist Construction of the Legal System of the European Community' [2004] *Governance and International Legal Theory*.

<sup>47</sup> Olaf Larsson, 'Speaking Law to Power: The Strategic Use of Precedent of the Court of Justice of the European Union' [2016] *Journal of Comparative Political Studies*.

<sup>48</sup> Irina Velicu, 'The Just Transition and its Work of Inequality' (2019) *Journal of Sustainability Science Practice and Policy*.

<sup>49</sup> Communication from the Commission, 'The European Green New Deal' COM/2019/640.

<sup>50</sup> Noam Chomsky and Robert Pollin, 'Climate Crisis and the Global Green New Deal' (1st edn Verso Publishing 2020).

<sup>51</sup> Katja Biedenkopf and Franziska Petri, 'EU Delegations in European Union Climate Diplomacy: The Role of Links to Brussels, Individuals and Country Contexts' [2019] *Journal of European Integration*.

<sup>52</sup> United Nations Development Program, 'Environmental Justice, Comparative Experiences in Legal Empowerment' (2014).

<sup>53</sup> Aleksandra Čavoški, 'Science and Law in Environmental Law and Policy: The Case of the European Commission [2020] *Transnational Environmental Law*'.

should adopt a relaxed approach to standing and can model its initial framework off the Aarhus Convention and comparative jurisdictions.<sup>54</sup> While a European Green Court would require an additional allocation of resources, this aligns to the broader economic focus of the EU on sustainable social models.<sup>55</sup> Consequently, a European Green Court would represent a progressive attempt to elevate environmental concerns onto an EU-wide legal platform.

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<sup>54</sup> Dennis Baldago, 'Promoting the Right to a Balanced and Healthful Ecology: Environmental Justice in the Philippines' (2012) Background Paper to the UNDP Workshop on Legal Empowerment and the Environment.

<sup>55</sup> Martin Calisto Frián, 'Analysing European Union Circular Economy Policies: Words Versus Actions' [2021] *Journal of Sustainable Production and Consumption*.





Since 2007, September 15 has been designated, as agreed in the context of the United Nations, as the International Day of Democracy. Indeed, after 2007, the international scenery underwent significant changes, following systemic societal and political transformations. The present global scene poses continuous challenges to democratic values and principles, and in the midst of these conflicting times, the European Union self-presents as a strong defender of democracy and human rights.

Democracy itself is a changing concept; adaptable, and malleable to transforming social circumstances. Thus, EU institutions are currently being confronted with the digital democratic phenomenon expanding continuously through cyberspace. Propelled mainly by the Covid-19 outbreak, digital democracy has the potential to redefine the whole democratic process and the complex relation between citizens and political representatives. However, external and internal threats take high advantage of the vulnerability of online democracy, risking a reversal of the trend.

### **Civic engagement in a digitalized world**

The rise of digital democracy, or *e-democracy*, globally reflects the transformations that are taking place in the real world in the XXI century. Physical social phenomena, face-to-face practices, conventional, standardized praxes gradually move to the online realm, where the immediate, synchronous nature of communication allows for a quick collection and exchange of opinions, in an interactive manner. Similarly, ICT resources enabled an adaptation of governance procedures to digital formats. Gradually, the quick proliferation of online platforms and the accessibility of technological and Internet devices prompted political and non-political representatives to transfer civic engagement practices to interactive online channels: social media, websites, forums, chats.

The potential of democratic digital initiatives was immediately evident. E-democracy has the capacity to boost civil participation to a greater extent, compared to traditional democracy,<sup>1</sup> eventually encouraging a radical transformation in terms of the citizen-state relationship. The immediacy of the interaction compensates for the perceived distance between citizens and decision-makers. Moreover, it contributes to increasing popular trust towards political elites.<sup>2</sup> As a consequence, in the course of the past decade, online platforms for democratic debate increasingly

<sup>1</sup> European Parliamentary Research Service, Gianluca Sguero, "Digital Democracy. Is the Future of Civic Engagement Online?," (2020), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646161/EPRS\\_BRI\(2020\)646161\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646161/EPRS_BRI(2020)646161_EN.pdf).

<sup>2</sup> Maia Kemp-Welch, "Digital Democracy: a New Life for Political Participation," *The New Federalist*, March 27, 2021, <https://www.thenewfederalist.eu/digital-democracy-a-new-life-for-political-participation?lang=fr>.

gained prominence in several countries internationally, allowing citizens to proactively share ideas and recommendations in relation to local and national projects.

Therefore, e-democracy *de facto* improves the efficacy of democratic processes as such and fills in the gaps shown by conventional forms of engagement, both at the national and international level, transferring traditional practices to more inclusive and engaging channels. It does so particularly in three different manners: shortening the distances between political elites and citizens; creating an environment of co-contribution enriched by both decision-makers and civilians; increasing the number and diversification of the parties interested and involved in decision-making processes.<sup>3</sup> This inclusiveness virtually creates the opportunity to remove -or at least decrease- potential barriers of socioeconomic and cultural character and reduces inequality, simultaneously leading to a decentralization of democratic practices. Furthermore, not only are e-platforms able to enhance the effectiveness of democratic procedures but also they represent an attractive and dynamic alternative to regular over-bureaucratized routines.

Adjusting democracy to the digital world is a natural consequence of advancing societies. It also enables a significant expansion of the group of potential engaging individuals, due to an exceptionally increased use of media platforms by EU citizens, particularly in the past ten years. A demonstrative instance of this is offered by the data collected in the context of the Standard Eurobarometer on Media Use.<sup>4</sup> More specifically, as of winter 2020/2021, 75% of the surveyed European citizens declared using the Internet every day or almost every day.<sup>5</sup> In addition, 52% of the respondents resorted to online social networks every day or almost every day.<sup>6</sup> Thus, according to the numbers, around ¾ of the European citizens can potentially engage in digital forms of democratic participation, irrespective of their ethnicity, gender, social class, education, or financial resources.

Emergent studies about the rise and development of digital democracy strongly emphasized the role of the phenomenon in encouraging a renewed participation of the European citizens in three forms: e-information, e-consultation, e-participation.<sup>7</sup> Thus, citizens take part in the whole democratic process, from information to effective decision-making and consequent influence on policy-making. Simultaneously, the political environment has accordingly transformed its praxes to conform to the new information collection processes. For instance, political campaigning is nowadays intensely enacted through social media and online tools of advertising as a response to the increasing use of digital channels to gather knowledge on socio-political events, particularly among the youth.

However, at the same time, the rise of e-democracy spread concern over the reliability of digital processes and possible risks for democratic practices, institutions, societies, and citizens themselves. These include, among others, threats to personal data and privacy, cyber-attacks aimed

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<sup>3</sup> European Citizens Action Service (ECAS), “Digital Democracy,” <https://ecas.org/digital-democracy/>.

<sup>4</sup> European Commission, “Standard Eurobarometer 94. Winter 2020-2021. Report: Media Use in the European Union,” April 2021, <https://europa.eu/eurobarometer/surveys/detail/2355>.

<sup>5</sup> *Ibid*, 21.

<sup>6</sup> *Ibid*, 24.

<sup>7</sup> European Parliamentary Research Service, Scientific Foresight Unit (STOA), “Study Summary: Prospects for E-democracy in Europe,” February 2018, 4, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603213/EPRS\\_STU\(2018\)603213\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603213/EPRS_STU(2018)603213_EN.pdf).

at boycotting voting procedures, diffused disinformation and misinformation, censorship, and hate speech. The vastness of the cyber world calls for precise actions to counter potential threats to civic engagement. This theme contributes to highlighting the discussion on the need for the establishment of a safe digital world.

### **A double-edged sword**

In the first days of December 2020, the European Commission disclosed the European Democracy Action Plan (EDAP)<sup>8</sup> to the public, to be implemented until 2023 to reduce the gap between citizens and political representatives and counter emerging extremist tendencies.<sup>9</sup> The related document<sup>10</sup> reiterated the crucial relevance of democratic values, the rule of law and human rights as the basic foundations of the European Union. With a strong focus on the necessity to reinforce democratic resilience, the EDAP underlines the commitment to preserving democratic standards not only within the EU territory but to protect them externally, at the global level, most notably by setting the right example, in a cooperative manner.<sup>11</sup>

Among the points in the outlined strategy, digital democracy was again underlined as an opportunity to engage civil society, particularly the young people, in the public debate. Nevertheless, the document simultaneously warned about the *side-effects* of the digital transition, namely increased and digitized attempts to weaken freedom of information and expression, the growing online disinformation, manipulation and forms of censoring, and the systemic risks of cyber-attacks. Thus, the need for a more targeted response to phenomena aimed at weakening democracy in the online world was expressed, through a strategy that goes beyond previously-enacted plans. The EDAP, therefore, outlined the intention of the European Commission to engage in actions aimed at guaranteeing a free public space, both online and offline, while encouraging participation.<sup>12</sup> The policy priorities mentioned in this context all revolved around the need to ensure free and fair electoral processes as, for instance, the urge to establish regulatory measures regarding online political advertising content was expressed. Similarly, the intention to implement intense safeguarding measures in favor of journalists and encourage transparency and media pluralism in the Member States was stated. Most notably, the plan highly focused on increasing and strengthening existing tools to fight the epidemic issue of disinformation. Finally, the European Commission commented on the legislative proposal of the Digital Services Act as an important regulatory instrument to be reinforced to tackle the aforementioned phenomena,<sup>13</sup> together with re-invigorated tools already available to the EU to defend the online world from external incursions.

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<sup>8</sup> European Commission, Press Release, “European Democracy Action Plan: Making EU Democracies Stronger,” December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2250](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250).

<sup>9</sup> European Commission, “Questions and Answers: European Democracy Action Plan – Making EU Democracies Stronger,” December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2251](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2251).

<sup>10</sup> European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: on the European Democracy Action Plan,” December 3, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A790%3AFIN&qid=1607079662423>.

<sup>11</sup> *Ibid.*

<sup>12</sup> European Commission, Press Release, “European Democracy Action Plan: Making EU Democracies Stronger,” December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2250](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250).

<sup>13</sup> European Commission, “Questions and Answers: European Democracy Action Plan – Making EU Democracies Stronger,” December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2251](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2251).

The EDAP, within the overall framework of the strategy for European democracy for 2019-2024,<sup>14</sup> was released following the most digitized electoral year for the European citizens, namely 2019,<sup>15</sup> and exceptionally increased popular turnouts in elections.<sup>16</sup> Among the priorities for the five-year period,<sup>17</sup> the European Commission again invoked a strengthening of democracy through the active participation of the Europeans. Most importantly, it highlighted the potential of the Conference on the Future of Europe. Furthermore, democracy through digital platforms was mentioned as a fundamental phenomenon in nowadays' society, however in need of cooperative action of protection from disruptive behavior.

Overall, digital democratic practices prove to be favorable for EU institutions for several reasons. Firstly, e-democracy provides the opportunity to partly restore trust towards the European Union and democratic processes in general, and increase public engagement in politics. As a fact, in 2019, 43% of the Europeans expressed dissatisfaction with the functioning of democracy in the EU.<sup>18</sup>

Secondly, by encouraging the diffusion of decentralized sources of information and options for engagement, digital democratic tools allow for civil activists, as well as political actors, to gain momentum within non-democratic, repressive, political contexts, therefore having the ability to pursue the democratic objectives strongly advocated by EU institutions.

### **E-democratic resilience**

The Covid-19 health pandemic indeed put democracy in Europe to a test, urging for changes to promptly adapt traditional processes to the digital world, to ensure the EU citizens the protection of their fundamental rights and freedoms even in times of crisis.

While a slow and -to a certain extent- controlled transition in favor of digitalization had already started in the increasingly technological and urbanized global society of the 2000s, the pandemic acted as a push factor for the phenomenon, forcing less up-to-date sectors to adjust accordingly. In most cases, debate, decision-making, and voting took place electronically and civic participation initiatives swiftly transferred to online communication platforms.<sup>19</sup>

Once again, even in the context of the emergency, digitalization acted as a stimulus for democratic engagement. As a matter of fact, on the basis of the data retrieved from the Special Eurobarometer

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<sup>14</sup> European Commission, "A New Push for European Democracy: Nurturing, Protecting and Strengthening our Democracy," [https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy\\_en#Highlights](https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy_en#Highlights).

<sup>15</sup> European Commission, "Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: Report on the 2019 Elections to the European Parliament," June 19, 2020, 17, [https://ec.europa.eu/info/sites/default/files/com\\_2020\\_252\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/com_2020_252_en_0.pdf).

<sup>16</sup> European Commission, "Questions and Answers: European Democracy Action Plan – Making EU Democracies Stronger," December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2251](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2251).

<sup>17</sup> Ursula von der Leyen, "Political Guidelines for the Next European Commission 2019-2024: A Union that Strives for More, My Agenda for Europe," [https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf).

<sup>18</sup> European Commission, "Special Eurobarometer 486. Report: Europeans in 2019," June 2019, 32, <https://europa.eu/eurobarometer/surveys/detail/2225>.

<sup>19</sup> Maya Gros and Norman Eisen, "Digitizing Civic Spaces amid the COVID-19 Pandemic and Beyond", *Brookings Institution*, March 9, 2021, <https://www.brookings.edu/blog/up-front/2021/03/09/digitizing-civic-spaces-amid-the-covid-19-pandemic-and-beyond/>.

for the year 2020,<sup>20</sup> 59% of the responding EU citizens consider electoral remote voting procedures as an incentive to participate during the Covid-19 emergency.

Nevertheless, the same historical period emphasized the vulnerable and fragile aspects of democracy, particularly online. Despite applauding the capacity of e-voting procedures to increase inclusiveness, a high percentage<sup>21</sup> of surveyed Europeans believed that electronic voting methods simultaneously show several disadvantages. To begin with, it was underlined how older citizens and people with disabilities have limited possibilities to take part in online democratic procedures. Secondly, citizens emphasized their concern towards security risks connected to electronic voting methods, most notably cyber-attacks and external manipulation.<sup>22</sup>

Indeed, despite fostering quick civic engagement processes through digitalization, the pandemic also created the circumstances for further external as well as internal threatening interferences, damaging practices and content, bringing specific issues to the fore. From a broader perspective, Covid-19 contributed to exacerbating the already precarious political systems and environments displaying non-democratic tendencies, particularly in terms of the rule of law compliance and respect for human rights, while at the same time affecting the daily lives of the European citizens. The latter phenomenon was partly enabled by a quick, perhaps sudden, shift to oftentimes unmediated and unmonitored digital platforms, and/or through the imposition of extreme restricting measures that violated privacy, freedom of information and expression, in the name of protection from the virus.

As confirmed by the answers collected through the Eurobarometer, Europeans during and after Covid-19 oftentimes had perceptions of being exposed to disinformation, divisive narratives, and political intimidation online.<sup>23</sup> Therefore, the European Democracy Action Plan, equally emphasized the need to enact proper measures to create a resilient digital and non-digital democracy able to endure crises and safeguard citizens given the specific national and international responses to them.<sup>24</sup>

## Conclusion

While the vaccination strategy and overall response to the spread of the virus are slowly allowing to restore conventional physical democratic procedures, a recommendation to integrate digital procedures to traditional ones is often made.<sup>25</sup>

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<sup>20</sup> European Commission, "Special Eurobarometer 507, Report: Democracy in the EU," March 2021, 34, [https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs\\_507\\_en.pdf](https://fronteirasxxi.pt/wp-content/uploads/2021/06/ebs_507_en.pdf).

<sup>21</sup> *Ibid*, 39.

<sup>22</sup> *Ibid*, 77.

<sup>23</sup> *Ibid*, 61.

<sup>24</sup> European Commission, "Questions and Answers: European Democracy Action Plan – Making EU Democracies Stronger," December 3, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2251](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2251).

<sup>25</sup> Rosie Beacon, "How Covid-19 Is Accelerating the Rise of Digital Democracy," *Tony Blair Institute for Global Change*, May 22, 2020, <https://institute.global/policy/how-covid-19-accelerating-rise-digital-democracy>.

The EU is confronted with threats to democracy on three different fronts: internally, externally, and in cyberspace. This does not, however, appear to discourage institutions to promote practices of online citizens' participation and interaction, which have so far proved to be extremely effective.

Indeed, the European Union democratic and digital strategies together comprise measures that, if efficiently implemented, will allow EU institutions to exploit the immense potential of the online world to develop, evolve, and strengthen democracy, inside and outside the European borders.





## What is neoliberalism?

According to Dag Einar Thorsen and Amund Lie, neoliberalism is “*an entirely new paradigm for economic theory and policy-making behind the most recent stage in the development of capitalist society*”.<sup>1</sup> It replaced Keynesianism as the dominant paradigm in economics in the period between 1945 and 1970. As opposed to Keynesianism, neoliberalism considers government interventions in the economy to be undesirable as the most efficient way to allocate resources is through market mechanisms.<sup>2</sup> Central banks were depoliticized and maintained a restrictive monetary policy in which lowering inflation became the official goal. The same logic was applied to budgetary policy as management of the national economy was shielded from political accountability, through mechanisms such as the debt ceiling in the United States or the Stability and Growth pact in the EU, in order to make governments more responsive to the discipline of market forces. Central banks no longer printed money to fund public debt, a principle known in the Keynesian period as monetary financing. This increased governments’ reliance on the financial markets. Only through sound economic policies - which equals no budget deficits, low levels of public debt and curbing the size of the state - could governments acquire favorable interest rates. As a consequence, market logic became a guiding principle in the organization of the state and public services.<sup>3</sup>

Since 1980, neoliberalism has not just been a framework for the national economy but for a new kind of globalization. Capital controls were abolished, which meant capital could move freely on a global scale, thereby disciplining governments with unsound economic policies. Exchange rates became flexible; world trade was increasingly liberalized, companies delocalized to countries with cheaper labor and huge global value chains emerged. Institutions such as the World Bank (WB) and the International Monetary Fund (IMF) proliferated neoliberalism through so-called structural adjustment programs (SAPs). Loans were offered to low-income countries through these programs in exchange for the implementation of neoliberal reforms.<sup>4</sup>

<sup>1</sup> Lie, Amund and Dag Einar Thorsen. “What is neoliberalism.” *Department of Political Science University of Oslo*, (2007). Accessed September 15, 2021. <https://www.academia.edu/download/57851509/neoliberalism.pdf>

<sup>2</sup> Lie, Amund and Dag Einar Thorsen. “What is neoliberalism,” *Department of Political Science University of Oslo*, (2007). Accessed September 15, 2021. <https://www.academia.edu/download/57851509/neoliberalism.pdf>

<sup>3</sup> Ostry, Jonathan, Prakash Loungani and Davide Furceri. “Neoliberalism: oversold.” *IMF eLibrary*, (2016). Accessed September 15, 2021. <https://www.elibrary.imf.org/view/journals/022/0053/002/article-A013-en.xml>

<sup>4</sup> Chorev, Nitsan and Sarah Babb. “The crisis of neoliberalism and the future of international institutions: a comparison of the IMF and the WTO.” *Theory and society* 38, (2009): 459-484. Accessed September 15, 2021. <https://doi.org/10.1007/s11186-009-9093-5>

## Neoliberalism in the EU before the pandemic

Although the European Union (EU) does not have any competences involving national budgets, it has a considerable impact on the fiscal policy of its member states which has been used to promote neoliberalism. The stability and growth pact (SGP) allows the European Commission to monitor member states and requires the latter to submit annual stability and convergence programs that present the country's expected fiscal development and compliance with the SGP rules. The SGP, created in 1997, ensures fiscal discipline by introducing limits on government deficits (3%) and public debt (60%). Non-complying member states risk facing an excessive deficit procedure, activated by the European Commission, which can eventually lead to economic sanctions.<sup>5</sup> The more recent European Fiscal Compact that amended the SGP and was signed in 2012 is even more strict and binds 22 member states. According to the treaty, national budgets have to be in balance or surplus, which needs to be supervised by an automatic correction mechanism and a national independent monitoring institution providing for fiscal surveillance<sup>6</sup>.

Unlike fiscal policy, monetary policy became an exclusive European competence through the European Central Bank (ECB) which was created in June, 1998 following the establishment of the Economic and Monetary Union (EMU).<sup>7</sup> The goals of its monetary policy were similar to those of the German central bank, the most important of which was the official goal to keep inflation “*close to but below 2%*”.<sup>8</sup> No longer was it possible for member states to implement an expansive budgetary policy through monetary financing.<sup>8</sup> The idea of monetary policy as an instrument for counter-cyclical macro-economic policies leading to higher inflation was abandoned. Instead, these decisions were depoliticized with a structural guarantee of low inflation. Consequently, central banks made a clear commitment to low inflation, which benefits capital instead of debt in order to stay attractive for investors on financial markets. The European Commission has always made it very clear that it considers price stability and fiscal austerity to be the most effective measures to promote growth.<sup>9</sup>

Furthermore, the EU seems to be biased towards (trade) liberalization as only its advantages are outlined on the EU's competition website. It would lower down prices, make national economies more competitive and offer the best conditions for consumers. Based on this assumption, the EU has advocated liberalization in services such as energy, telecommunication, transport and other general utilities. Market logics are presumed to be the most effective measures to promote growth.<sup>10</sup> This tendency does not remain limited to the internal market but is especially present in the EU's trade policy and its policy responses to crises. Numerous European policy documents and strategies outline the importance of trade liberalization. For example, in its Global Europe strategy of 2006, the Commission argues that “*rejection of protectionism at home must be accompanied by activism in creating*

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<sup>5</sup> European Commission, *EU economic governance: monitoring, prevention and correction: stability and growth pact*. Accessed September 15, 2021. [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact_en)

<sup>6</sup> European Commission, *The fiscal compact: taking stock*. Brussels, 2020. [https://libguides.ucd.ie/ld.php?content\\_id=450259](https://libguides.ucd.ie/ld.php?content_id=450259)

<sup>7</sup> European Central Bank, *History*. Accessed September 15, 2021. <https://www.ecb.europa.eu/ecb/history/html/index.en.html>

<sup>8</sup> European Central Bank. *Introduction*. Accessed September 15, 2021. <https://www.ecb.europa.eu/mopo/intro/html/index.en.html>

<sup>9</sup> Hermann, Christoph. “Neoliberalism in the European Union.” *Studies in Political Economy* 79, no. 1 (2016): 61-90. Accessed September 15, 2021. <https://doi.org/10.1080/19187033.2007.11675092>

<sup>10</sup> European Commission. *Competition and liberalization*. Accessed September 15, 2021. [https://ec.europa.eu/competition/general/liberalisation\\_en.html](https://ec.europa.eu/competition/general/liberalisation_en.html)

*open markets and fair conditions for trade abroad*". It confirms that *"progressive trade opening is an important source of growth and job creation"*.<sup>11</sup>

The EU's conviction of the need for activism in creating open markets was not influenced by the financial crisis of 2008; on the contrary. Even though unconditional freedom of capital and the world's interconnectivity were important reasons behind this crisis, the EU reacted by advocating even more trade liberalization. In 2009, the EU Commissioner for Trade Catherine Ashton stated that *"it is not enough to simply resist protectionism: we must also continue to open up markets to trade and investment"*.<sup>12</sup>

### **Policy actions during the pandemic**

During the pandemic, governments and the EU took unseen measures. The stability and growth pact's fiscal rules were suspended until 2022 using the general escape clause.<sup>13</sup> The temporary framework for state aid measures was adopted on March 19th, 2020 and loosened competition rules substantially until the end of 2022.<sup>14</sup>

Maybe the most historic decision was the creation of a new recovery instrument called Next Generation EU. The fund is worth 750 billion euros and is being financed by issuing common debt using the European Commission's strong credit rating. Repayment will happen between 2028 and 2058 by introducing additional resources such as the digital tax or the carbon border adjustment tax.<sup>15</sup> Even more historic is the introduction of a Keynesian-styled counter-cyclical fiscal policy by not only allowing but also enabling member states to heavily invest in infrastructure. The same logic applied to the SURE mechanism, which was created on May 19th, 2020 and offers loans to member states to help fund measures to preserve employment, such as temporary unemployment schemes. By May 2021, the Commission had issued bonds to fund SURE for the seventh time for a combined value of nearly 90 billion euros.<sup>16</sup>

In July 2021, the European Central Bank (ECB) published its new monetary policy strategy, which was the first review since 2003. While not changing its official goal of maintaining price stability, it did adapt its inflation target by making it less restrictive. The inflation target of *"below but close to 2%"* has been replaced by a clear 2% inflation target over the medium term, which allows for deviations to the downside but also to the upside in the short term.<sup>17</sup>

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<sup>11</sup> European Commission, *Global Europe: competing in the world*, COM (2006) 567 (Brussels: European Union, 2006). <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF>

<sup>12</sup> European Commission. "Catherine Ashton EU Commissioner for trade and investment: driving global recovery *Conférence de Montréal*." Press release, June 10, 2009. Accessed September 15, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_09\\_291](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_09_291)

<sup>13</sup> European Commission. "Coronavirus: Commission proposes to activate fiscal framework's general escape clause to respond to pandemic." Press release, March 20, 2020. Accessed September 15, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_499](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_499)

<sup>14</sup> European Commission. *Jobs and economy during the coronavirus pandemic*. Accessed September 15, 2021. [https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/jobs-and-economy-during-coronavirus-pandemic/state-aid-cases\\_en](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/jobs-and-economy-during-coronavirus-pandemic/state-aid-cases_en)

<sup>15</sup> European Commission. "Europe's moment: Repair and prepare for the next generation." Press release, May 27, 2020. Accessed September 15, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_940](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940)

<sup>16</sup> European Commission. "Commission disburses further 9 billion euros under SURE to seven member states." Press release, March 16, 2021. Accessed September 15, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1144](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1144)

<sup>17</sup> European Commission. "A new strategy for a changing world." Press release, July 14, 2021. Accessed September 15, 2021. <https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210714~0d62f657bc.en.html>

Even the EU's strong commitment to trade liberalization seemed affected by the pandemic. In March 2020, guidelines were issued to ensure a strong EU-wide approach to foreign investment screening. While keeping the internal market open for foreign investment, a more active search for risks posed by certain investments was introduced.<sup>18</sup> Against the background of supply shortages during the pandemic, especially concerning medical products, studies surfaced about reshoring global supply chains. This idea of attacking the architecture of neoliberal globalization became popular in a number of studies and was proposed by political parties across Europe.<sup>19</sup> However, unlike its other policies, the EU stayed committed to its pre-pandemic international trade policy. Some might say it even intensified.

### **A changing paradigm?**

It is clear that the EU has taken unseen measures in its fiscal, monetary and international trade policy. However, the question remains if these actions are the result of a paradigm shift or not.

Jan Orbie and Ferdi De Ville argue that neoliberalism has proven to be quite flexible and resilient. Not even the financial crisis of 2008 resulted in a paradigm shift. They agree that the EU has taken unseen measures but at the same time stress that the underlying neoliberal ideas such as an absolute belief in the benefits of free trade and economic growth have not changed. Indeed, export restriction mechanisms were introduced but only very limited and were seen as the last option. Other measures even reinforced neoliberalism as the European Commission has been a fierce advocate for the removal of trade barriers on medical products or a faster conclusion of a free trade agreement with the United States. Instead of coming up with new ideas, the EU co-opted concepts critical of neoliberalism such as sustainability, inclusion, resilience and gave them a technocratic interpretation.<sup>20</sup> The strength of this ideology clearly lies in its ability to present neoliberal solutions as the best response to crises. Such creativity ensures its survival and can at least give the impression of change while preserving its underlying assumptions.<sup>21</sup>

Although the ECB did not adjust its inflation target as much as the American Central Bank did, it made it more flexible. Inflation could now be higher than 2% over the short term. The stability and growth pact only remains suspended until 2022, but at the same time, the dizzying amount of public debt caused by the pandemic has sparked an intensification of the debate about the pact's restrictive fiscal rules. Member states such as France, Italy and Spain, not unsurprisingly states with high amounts of public debt, advocate to adapt fiscal rules to post-pandemic realities. Opposed to this are eight member states from the Austrian-led anti-debt club.<sup>22</sup> There is also the decision to

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<sup>18</sup> European Commission. *Guidance to the member states concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of the FDI screening regulation (EU) 2019/542*. COM (2020) 1981. Brussels, 2020. Accessed September 15, 2021. [https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc\\_158676.pdf](https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf)

<sup>19</sup> European Parliament. Directorate-general for external policies. *Post Covid-19 value chains: options for reshoring production back to Europe in a globalized economy*. Brussels, 2021. Accessed September 15, 2021. [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653626/EXPO\\_STU\(2021\)653626\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653626/EXPO_STU(2021)653626_EN.pdf)

<sup>20</sup> Orbie, Jan and Ferdi De Ville. "Will the COVID-19 crisis herald the end of neoliberal globalization and the European Union's free trade doctrine?." *UNU Institute on comparative regional integration studies*, (2020). Accessed September 15, 2021. <https://cris.unu.edu/impact-covid-19-crisis-eu-trade-policy>

<sup>21</sup> Šumonja, Miloš. "Neoliberalism is not dead – on political implications of covid-19." *Capital & Class* 45, no. 2 (2021): 215-227. Accessed September 15, 2021. <https://journals.sagepub.com/doi/pdf/10.1177/0309816820982381>

<sup>22</sup> Smith-Meyer, Bjarke. "Hopes of EU fiscal reform on the rocks after pushback from eight capitals," *Politico*, September 9, 2021. Accessed September 15, 2021. <https://www.politico.eu/article/eight-countries-led-by-austria-slam-calls-to-loosen-eu-fiscal-rules/>

issue common debt, to repay it with new resources for the European budget and to use it to fund unemployment benefits through SURE or massive (green) investment through Next Generation EU.

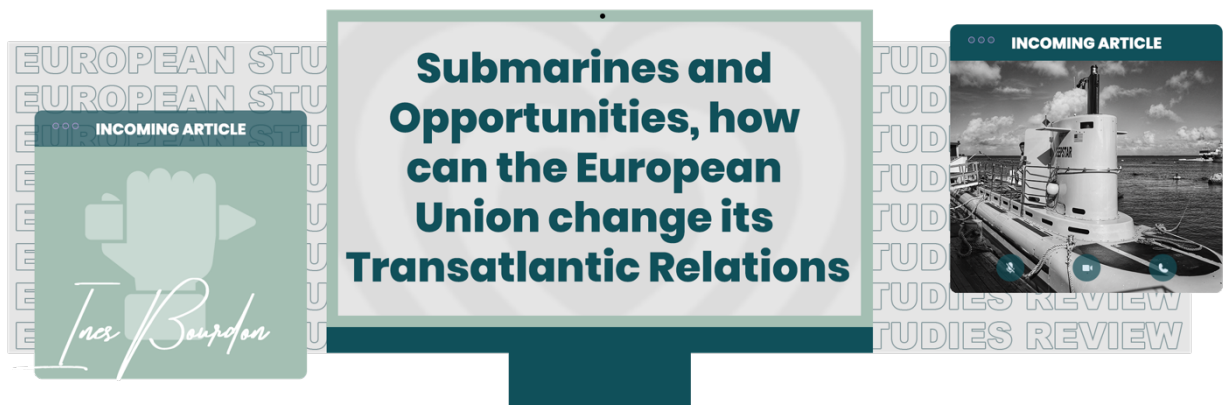
Less promising is the impact of the pandemic on the EU's international trade policy, which does not seem to be affected. On the contrary, as Jan Orbie and Ferdi De Ville argued, the EU's commitment to liberalize trade intensified, and the pandemic seemed a window of opportunity to push for more (neo)liberalization. In this regard, Vladimir Müller and Peter Terem analyzed a number of trade measures adopted by the EU due to the pandemic between the 1<sup>st</sup> of February 2020 and the 15<sup>th</sup> of September 2020. Only two were deemed protectionist of the twelve measures looked into, whereas seven were liberalising and three were neutral. Protectionism clearly was not the driving force behind EU trade policy during the first eight months of the pandemic.<sup>23</sup>

And still, it would be wrong to reduce all of the EU's policy responses to a neoliberal instrumentalization of the crisis. Measures were different compared to the ones taken during the financial crisis of 2008. Several historic and very brave decisions were made. However, as long as its underlying assumptions are not abandoned, neoliberal policies will continue to adapt and be used as a recipe for crises.

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<sup>23</sup> Müller, Vladimir and Peter Terem. "Globalization of EU trade policy in the COVID-19 era," *In proceedings of the 20<sup>th</sup> international scientific conference on globalization and its socio-economic consequences*, (2021). Accessed September 15, 2021. [https://www.shs-conferences.org/articles/shsconf/abs/2021/03/shsconf\\_glob20\\_01034/shsconf\\_glob20\\_01034.html](https://www.shs-conferences.org/articles/shsconf/abs/2021/03/shsconf_glob20_01034/shsconf_glob20_01034.html)





Mid-September 2021, France awoke to learn that its submarine deal with Australia had been revoked. Indeed, in an attempt to strengthen its partnership with the Pacific country and the United Kingdom and the United States of America announced a deal of their own to provide Canberra with such equipment.<sup>1</sup>

This American shortcut has strained the Western alliance<sup>2</sup> and raised two main questions. First, is the North Alliance Treaty Organization (NATO) still relevant? Both France and the USA are members of the organization. Thus, one could have expected Washington not to take away such a consequent deal from one of their allies. However, as shown by what subsequently transpired, it did not happen. Moreover, France recently signed a new defence pact with Greece, which includes a mutual defence clause.<sup>3</sup> This clause could be evoked in the event of an attack from a third country, even if this one is a NATO member. This certainly questions the significance of the organization in current times.

Another question highlighted by the submarine scandal - and new French-Greek partnership - is the strategic autonomy of the European Union (EU) in defence. The discussion started with the Trump administration, which was unfriendly to cooperation with Europe,<sup>4</sup> and is now brought back to the table by recent events.

This article aims to discuss how the recent events can be the kickstart of 'new' transatlantic relations and, by extension, the opportunity for the EU to develop its strategic autonomy in the defence sector.

### Discussing strategic autonomy

As trust in the White House decreased, the question of strategic autonomy rose once again in the Union. The tense relations showed Member states the necessity to increase 'European sovereignty' in sectors closely interlinked with the United States or, in other words, increase their strategic autonomy.<sup>5</sup>

The notion can be understood in three different ways.<sup>6</sup> The first being the idea of responsibility, meaning that the Union should have the freedom to conduct operations autonomously rather than dependently

<sup>1</sup> "In Submarines deal with Australia, U.S. counters China but enrages France" *The New York Times*, September 22, 2021. Accessed September 28, 2021. <https://www.nytimes.com/2021/09/16/world/europe/france-australia-uk-us-submarines.html>

<sup>2</sup> *Ibid.*

<sup>3</sup> John Irish. "Macron tells Europe to 'stop being naive' after France signs defence deal with Greece." Reuters, September 28, 2021. Accessed September 28, 2021. [https://uk.news.yahoo.com/greece-buys-three-french-frigates-085031681.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce\\_referrer\\_sig=AQAAAF1KBQzEEZ9KePNt7AASvL7YIXxiAFg64sS\\_89TaO-OB2QRdJYmRphy5O7gubfkxow4qL\\_3bF28KHIH8nYR5e5dCUuayfL7ULmdeG14XoDyXjqDTBUQ7R4W8Btac-rKnE6Ck8C7obuYzL6bHvx0dDBDM-tun7YyiWGJHNDsAJ0T](https://uk.news.yahoo.com/greece-buys-three-french-frigates-085031681.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAF1KBQzEEZ9KePNt7AASvL7YIXxiAFg64sS_89TaO-OB2QRdJYmRphy5O7gubfkxow4qL_3bF28KHIH8nYR5e5dCUuayfL7ULmdeG14XoDyXjqDTBUQ7R4W8Btac-rKnE6Ck8C7obuYzL6bHvx0dDBDM-tun7YyiWGJHNDsAJ0T)

<sup>4</sup> Maria Demertzis. "Strategic autonomy or strategic alliance?" bruegel, February 2, 2021. Accessed September 28, 2021 <https://www.bruegel.org/2021/02/strategic-autonomy-or-strategic-alliance/>

<sup>5</sup> Fiott, Daniel. "Strategic autonomy:: towards 'European sovereignty' in defence?", European Union Institute for Security Studies, November 1, 2018. Accessed September 28, 2021. [https://www.jstor.org/stable/resrep21120?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/resrep21120?seq=1#metadata_info_tab_contents)

<sup>6</sup> *Ibid.*, p.2



on the hegemon.<sup>7</sup> To obtain this, member states would need to increase their budget on defence and security in order to undertake missions without a third country's assistance. Another means to reach responsibility would be through the development of the European defence industry. However, this would be at the detriment of the relations with Washington.<sup>8</sup> Currently, many European countries are buying their defence supplies from the United States. Some perceive it as a way to strengthen their relation with the country while others are looking to ensure they dispose of the best equipment available.<sup>9</sup> Developing the European market would thus harm the transatlantic relations as Europe would grow as a competitor and withdraw as an American client.

Strategic autonomy is also defined as hedging. Strategic hedging (or hedging) should be understood as growing European defence capabilities in such a way that they would be able to assume the tasks currently conducted by American forces present in Europe.<sup>10</sup> If transatlantic relations were to continue to deteriorate, hedging would prevent the European defence system from collapsing as American forces withdraw. While keeping cordial diplomatic relations, Brussels could develop specific sectors that would help to improve the Union's system.<sup>11</sup> However, it is only a step toward emancipation.<sup>12</sup>

Finally, this notion can be perceived as emancipation.<sup>13</sup> The most extremes would consider emancipation as relying fully on all the capabilities produced and owned by European states to defend the territories and interests of the Union. More nuanced points of view will argue that emancipation can be the ability not to develop new dependencies to third countries, such as China.<sup>14</sup>

While some scholars defend the idea that the EU cannot reach strategic autonomy in the defence sector,<sup>15</sup> it can be held as an ideal to strengthen European member states' contribution to NATO. Indeed, if all European countries were to develop their industries and military capacities to reach some form of autonomy, it would increase their responsibilities in the organization and present them as more equal partners.

### Can PESCO be the key to change?

As highlighted by scholars, most European defence initiatives have struggled to be fully efficient.<sup>16</sup> One could attribute this lack of success to the difficulties of the Union to speak for all its members. Indeed, not all the twenty-seven states have the same positions and interests regarding the defence sector. It thus represents a challenge for Brussels to speak as one bloc, as the wide range of interests does not allow a strong common position. This multitude of voices and positions is not only a problem for the Union but also for NATO. As the organization wishes for strong coherence among its members, the EU's struggles are nothing but a problem.

In this situation, the Permanent Structured Cooperation (PESCO) appears as both an opportunity and solution for Brussels to coordinate its discourse while using most of its member states' capacities. Established in 2017, this initiative brings together twenty-five willing states looking to deepen

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<sup>7</sup> *Ibid.*, p.2

<sup>8</sup> Fiott, Daniel, *op. cit.*, p. 4

<sup>9</sup> *Ibid.*, p. 3-4

<sup>10</sup> *Ibid.*, p.4

<sup>11</sup> *Ibid.*, p. 4-6

<sup>12</sup> Howorth, Jolyon. "Autonomy and Strategy: What Should Europe Want?", *Security Policy Brief*, 110 (April 2019) : 2.

<sup>13</sup> Fiott, Daniel, *op. cit.*, p.6

<sup>14</sup> *Ibid.*, p.6

<sup>15</sup> Howorth, Jolyon. "Strategic autonomy and EU-NATO cooperation: threat or opportunity for transatlantic defence relations?," *Journal of European integration*, 40:5 (2018) : 526

<sup>16</sup> Major, Claudia. "The Role of Capabilities in the Transatlantic Defense Relationship", Carnegie, Octobre 30, 2019. Accessed September 28, 2021. <https://carnegieeurope.eu/2019/10/30/role-of-capabilities-in-transatlantic-defense-relationship-pub-80221>

cooperation in the defence sector in order to reach a full coherent range of capabilities for their operations.<sup>17</sup> It is governed by the Council of the European Union,<sup>18</sup> which also decides on the projects conducted by the initiative.

Major defended that said projects could allow PESCO to deliver consequential results if they were to be meaningful.<sup>19</sup> Moreover, it could also be the opportunity to shift the European repertoire of defence vocabulary to something closer to NATO's use.<sup>20</sup> Building mutual understanding would, without a doubt, bring close both institutions. However, it could also draw a weight between them.

In fact, one could point to the double standard of European discourse. Some states are praising NATO importance while pleading for an extension of the Common Defence and Security Policy's (CSDP) missions for the protection of European public and domestic security.<sup>21</sup> The past few years have witnessed the decline of NATO's influence, which has not been overlooked by some member states of the Union. Said states are also aware their two-ways position is not sustainable. To them, PESCO appears as insurance that if the North Atlantic Treaty Organization was to be blocked, they would still have a defence organization to rely on. However, such anticipations and schemes are creating competition between the institutions and thus enhance the pre-existing tensions.<sup>22</sup>

From a practical point of view, PESCO is not the initiative that will change the face of EU-NATO relations, but rather an element to make it evolve. The Union can learn how to be a sufficient security actor through the Permanent Structure and progressively ends its dependency to the United States.<sup>23</sup> Moreover, it is the opportunity for the EU to manage its regional issues, thus increasing its independence and alleviating American presence within the continent.<sup>24</sup> All of this, if it was to take place, would benefit the transatlantic relations and provide a new purpose to NATO.<sup>25</sup> It would also give a new dimension to the Union on defence issues. But this is yet to happen.

### **Conclusion: Toward independence in transatlantic relations?**

The Union has the keys to transforming its transatlantic relations and the purpose of its member states within NATO. The Permanent Structured Cooperation can be the tool to increase European strategic autonomy and achieve such changes. Yet, it would require some member states to clarify their position and give up their two-way stance. Nevertheless, as scholars have pointed, this is still to happen.

However, none will deny that the submarines crisis is the perfect opportunity for the Union to start working toward a certain strategic autonomy and a better cohesion in the defence sector.

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<sup>17</sup> "About PESCO", PESCO, Last accessed September 28, 2021, <https://pesco.europa.eu/>

<sup>18</sup> As established by the Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States

<sup>19</sup> Major, Claudia, *op. cit.*

<sup>20</sup> Howorth, Jolyon. "Strategic autonomy and EU-NATO cooperation: threat or opportunity for transatlantic defence relations?," *Journal of European integration*, 40:5 (2018) : 531

<sup>21</sup> European Parliament Think Tank. Mauro, Frederic and Federico Santopinto. *Permanent Structured Cooperation: national perspectives and state of play*. Study, Brussels, 2017, p.33

<sup>22</sup> *Ibid.*

<sup>23</sup> Howorth, Jolyon, *op. cit.*, p. 534

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*



Modern defense and military doctrine exists within a geopolitical environment that prioritizes big asset tactics like air superiority, nuclear armament and naval occupation.<sup>1</sup> This has led to the formation of two major actors in the World System, the United States and China.<sup>2</sup> Within this quandary, European militaries are struggling to keep pace with the rapid military developments of the two aforementioned counterpoles.<sup>3</sup> Although there is no singular solution with respect to increasing and sustaining competitiveness in European militaries, this article proposes digital transformation as a potential mechanism to increase and sustain European military development.

	Crowd	Community
Firm performance	Innovation contests	Brand communities
Societal impact	Grand innovation prize	Local crowdsourcing

*Fig 1.* The Typology of Digital Transformation Strategies Matrix highlights the evolution of an organization's digital maturity in relation to the perceived technological readiness required to be competitive within their field. Militaries are generally regarded as significant sources of technology innovation, but it is evident that in order to be effective, these technologies must be aligned behind a clear strategy of digitalization.

<sup>1</sup> Brosnan, A. Cox, F. Hemmingway, D. and Ren, L. (2021). 'Leveraging The Wisdom of Crowds: An Exploration of Open Innovation and Crowdsourcing as Mechanisms To Combat Terrorism-Related Challenges.' In *2021 Irish Academy of Management Annual Conference and Doctoral Colloquium*, Waterford, Ireland, August 25-26, p. 2.

<sup>2</sup> World Systems Theory presents international influence as the aggregate of a limited number of core actors like the United States and China who, through actions like military intervention, foreign aid, and other diplomatic efforts, exert influence over peripheral nations, thereby condensing the authority of individual nation states as actors within the overarching World System. In this paper, geopolitical poles are taken to mean China and the United States with Europe both as an aggregated geopolitical entity and as individual nation states being excluded from this category. C. Flint and C. Zhu (2019). 'The Geopolitics of Connectivity, Cooperation, and Hegemonic Competition: The Belt and Road Initiative.' *Geoforum*, Vol. 99, pp. 95-96.

<sup>3</sup> Kilbane, M. (2013). 'NATO and the Decline of European Military Power.' In *The American Political Science Association/ International Studies Association International Security and Arms Control/International Security Studies Section (ISAC-ISSS) Conference*, Washington DC, USA, October 4-6, pp. 5-6.

Digital transformation is defined as the process of leveraging digital technologies and resources to digitalize previously analogue processes.<sup>4</sup> When introduced and leveraged correctly, digital transformation has been shown to augment workflows and processes when implemented under a clear and aligned organization strategy (fig 1).<sup>5</sup> Herein lies the major contrast between digital transformation and traditional technology-centered innovation which has formed the cornerstone of military R&D and digital defense mechanisms in one capacity or another over the past century. Digital transformation is fueled by holistic people management through internal learning and innovation cultures, supported by overarching governance structures and the seamless integration of appropriate technologies.<sup>6</sup> As such, digital transformation adoption has generally been unsuccessful when attempted by monolithic organizations, particularly militaries considering the traditional hierarchical structures employed and their lack of clear incentive to turn a profit.<sup>7</sup> However, this article argues that the implementation of digital transformation could increase and sustain competitiveness in European militaries. The thesis will be developed through an evaluation of people, processes, and technology.

People have been presented as the primary actors during digitalization.<sup>8</sup> Academic discourse has largely described this as a top-down process with organizational leadership acting as the catalyst for enabling transformation.<sup>9</sup> In European militaries, the role of the Chief Innovation Officer should be filled by a senior military officer whereas the role of personnel managers should be carried out by non-commissioned officers.<sup>10</sup> To this effect, leadership plays a key role in enabling digital transformation to align a human-technology fit.<sup>11</sup> This is assisted through the leveraging of social capital or the sum of all tangible and intangible resources within a group.<sup>12</sup> In essence, European military leadership needs to support their subordinates beyond day-to-day operations in order to maximize the likelihood of successfully digitalizing operations but more importantly, to increase engagement and the impact of individual servicemembers to their military (fig 2).<sup>13</sup> The major difficulty in this regard is decentralizing unit hierarchies and to an extent, bypassing the chain of command associated with military organizational structures. This should be replaced with

<sup>4</sup> Z. Tekic and D. Koroteev. (2019), 'From Disruptively Digital To Proudly Analog: A Holistic Typology of Digital Transformation Strategies.' *Business Horizons*, Vol. 62, p. 687., Morakanyane, R. Grace, A. and O'Reilly, P. (2017). 'Conceptualizing Digital Transformation in Business Organizations: A Systematic Review of Literature.' *In 30th BLED E-Conference*, Bled, Slovenia, June 18-21, p. 438., J. Gray and B. Rumpe. (2017), 'Models For The Digital Transformation.' *Software & Systems Modelling*, Vol. 16, No. 2, p. 307.

<sup>5</sup> Image Source: Henriette, E. Feki, M. and Boughzala, I. (2016). 'Digital Transformation Challenges.' *In Mediterranean Conference on Information Systems*, Paphos, Cyprus, September 4-6, p. 5., M. Sousa and Á. Rocha. (2019). 'Digital Learning: Developing Skills For Digital Transformation of Organizations.' *Future Generation Computer Systems*, Vol. 91, p. 329.

<sup>6</sup> Brosnan. 'Leveraging The Wisdom of Crowds.' pp. 5-6., A. Hill. (2015). 'Military Innovation and Military Culture.' *The US Army War College Quarterly: Parameters*, Vol. 45, No. 1, p. 88.

<sup>7</sup> I. Mergel, E. Noella, and H. Nathalie. (2019). 'Defining Digital Transformation: Results From Expert Interviews.' *Government Information Quarterly*, Vol. 36, pp. 2-3., E. Dyundik, S. Golubev, A. Makhova and L. Gurtsoy. (2020). 'Development of Human Capital in The Military Industrial Complex of Russia in The Context of Digital Transformation.' *E3S Web of Conferences*, Vol. 217, p. 1.

<sup>8</sup> L. Li, F. Su and J. Mao. (2017). 'Digital Transformation By SME Entrepreneurs: A Capability Perspective.' *Information Systems Journal*, Vol. 28, No. 6, p. 1129.

<sup>9</sup> S. Nadakarni and R. Prügl. (2021). 'Digital Transformation: A Review, Synthesis and Opportunities For Future Research.' *Management Quarterly Review*, Vol. 71, p. 268., Tekic, 'From Disruptively Digital To Proudly Analog,' p. 685.

<sup>10</sup> G. Kane, N. Philips, J. Copulsky and G. Andrus. *The Technology Fallacy: People Are the Real Key to Digital Transformation*, 1st edn, (Massachusetts, MIT Press, 2019), p. 46.

<sup>11</sup> E. Beare, P. O'Reilly, J. McAvoy and J. Hayes. (2020), 'Employees' Emotional Reactions To Digitally Enabled Work Events.' *Journal of Decision Systems*, pp. 2-3, 9.

<sup>12</sup> Li, 'Digital Transformation for SMEs,' p. 1138., Dyundik, 'Human Capital in The Military Industrial Complex,' p. 2., H. Shaugnessy. (2018). 'Creating Digital Transformation: Strategies and Steps.' *Strategy & Leadership*, Vol. 46, No. 2, p. 21.

<sup>13</sup> Image Source: Beare, 'Employees' Emotional Reactions,' p. 11.

a hyperarchy that leverages expertise from individual personnel where applicable and offers individual units more autonomy in terms of how individual goals or objectives are broken down.<sup>14</sup> This contrasts with traditional military command structures.<sup>15</sup> However, such a development would enable the formation of an internal culture of innovation and learning.

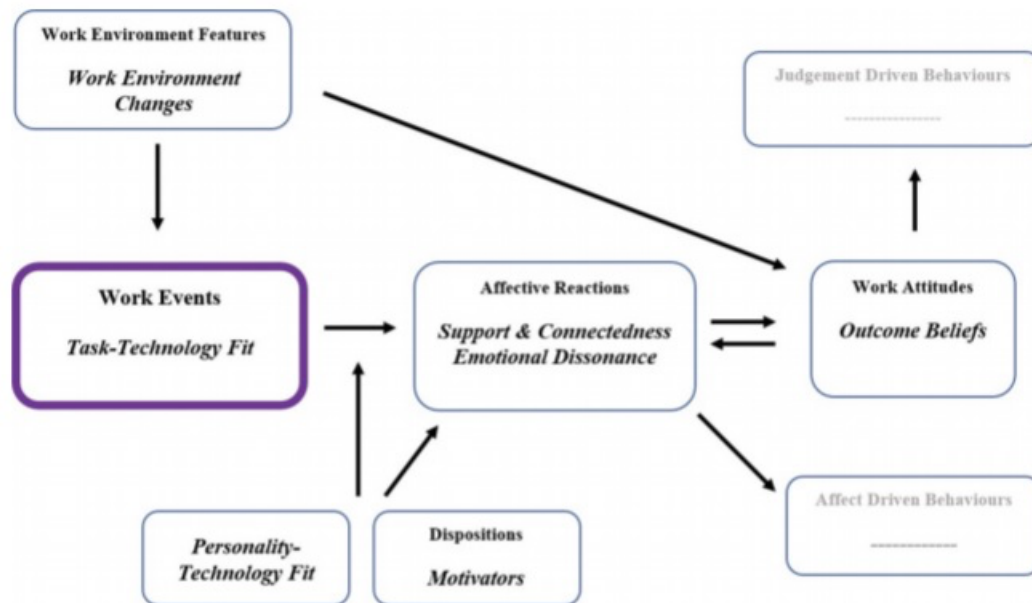


Fig 2. Emotional dissonance during digital transformation is a key concern for any organization. This necessitates the implementation of a task-technology and personality-technology fit by European military leadership in order to maximise the likelihood of success during digital transformation.

The benefits of an organizational culture of learning has been widely documented within the academy such as enabling greater employee autonomy and project understanding, augmenting a shared team vision and promoting knowledge sharing, a key component of narrowing the divide between European militaries and the geopolitical counterpoles.<sup>16</sup> Military leadership should encourage enlisted personnel and junior officers to dedicate time for enhancing individual skill development as opposed to solely focusing on collective unit proficiency.<sup>17</sup> As such, military personnel can be considered to be individual actors in the innovation process of the larger military organization and thus, contributing to an innovation culture.<sup>18</sup> Internal innovation cultures, when leveraged correctly, have been shown to stimulate organizational growth and change in addition

<sup>14</sup> S. Earley. (2014). 'The Digital Transformation: Staying Competitive.' *Data Analytics*, March-April 2014, p. 61., P. Guinan, S. Parise and N. Langowitz. (2019). 'Creating an Innovative Digital Project Team: Levers to Enable Digital Transformation.' *Business Horizons*, Vol. 62, p. 718.

<sup>15</sup> Dyundik, 'Human Capital in The Military Industrial Complex,' pp. 3-4.

<sup>16</sup> Sousa, 'Digital Learning,' pp. 327-328., L. Ivančić, V. Vukšić and M. Spremić. (2019). 'Mastering The Digital Transformation Process: Business Practices and Lessons Learned.' *Technology Innovation Management Review*, Vol. 9, No. 2, p. 39., Dyundik, 'Human Capital in The Military Industrial Complex,' pp. 2-4.

<sup>17</sup> Sousa, 'Digital Learning,' p. 328., Dyundik, 'Human Capital in The Military Industrial Complex,' pp. 3-4.

<sup>18</sup> S. Nadkarni and R. Prügl. (2021), 'Digital Transformation: A Review, Synthesis and Opportunities For Future Research,' *Management Quarterly Review*, 41, p. 237.







supporting organizational learning (fig 4).<sup>25</sup> This is becoming an increasingly important tool during digital transformation for organizations like militaries owing to the increasingly obsolescent nature of technologies and operations within a digitally disruptive military landscape, necessitating European militaries to facilitate innovation in both their processes and personnel to remain competitive.<sup>26</sup> A knowledge management system is much more than a repository of a militaries' previous project documentation, training modules or a pool of innovation concepts. Rather, the system serves as a tool to promote collaboration among distributed teams and enables learning for personnel from enlisted to senior officers, thus, promoting innovation and learning cultures.<sup>27</sup> This technology also ensures that knowledge is retained in-house when an internal stakeholder leaves the military, supporting the continuation of regular processes and operations.<sup>28</sup> Knowledge management systems support innovation by retaining useful insights for internal stakeholders that would traditionally be hidden behind silos of information, making this a key resource for militaries that are traditionally quite departmentalized.<sup>29</sup> Evidently, knowledge management is a major resource in promoting internal innovation and organizational learning with respect to digital transformation.<sup>30</sup> Therefore, the deployment of a knowledge management system should be a major consideration when a European military is digitalizing their processes. This process of digitalization can also be extended to automating workflows.

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<sup>25</sup> Image Source: J. Zhao, P. Pablos. And Z. Qi. (2012). 'Enterprise Knowledge Management Model Based on China's Practice and Case Study.' *Computers in Human Behaviour*, Vol. 28, No. 2, p. 238., C. Joe, P. Yoong and K. Patel. (2013). 'Knowledge Loss When Older Experts Leave Knowledge-Intensive Organisations.' *Journal of Knowledge Management*, Vol. 17, No. 6, p. 921., R. Ruggles. *Knowledge Management Tools*, 3rd edn, (London: Routledge, 2009), p. 3.

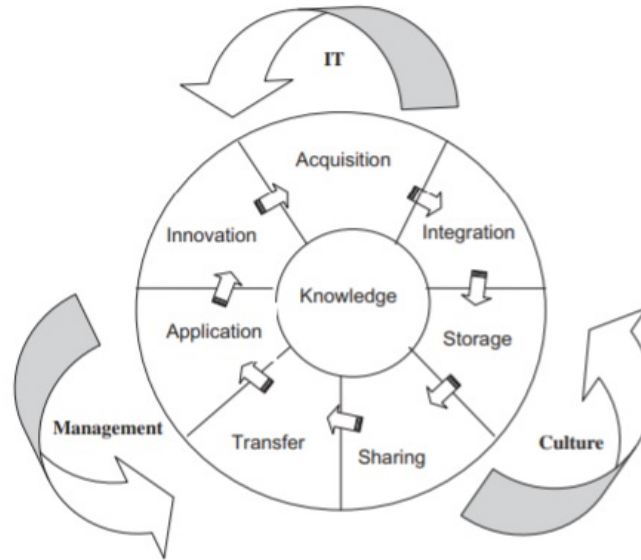
<sup>26</sup> S. Cabrillo and S. Dahms. (2018). 'How Strategic Knowledge Management Drives Intellectual Capital To Superior Innovation and Market Performance.' *Journal of Knowledge Management*, Vol. 22, No. 3, p. 629., A. Kianto, T. Andreeva and Y. Pavlov. (2013). 'The Impact of Intellectual Capital Management on Company Competitiveness and Financial Performance.' *Knowledge Management Research & Practice*, Vol. 2, pp. 120-121.

<sup>27</sup> Cabrillo, 'Strategic Knowledge Management,' pp. 625, 629.

<sup>28</sup> Joe, 'Knowledge Loss,' p. 921.

<sup>29</sup> S. Durst and I. Edvardsson. (2012). 'Knowledge Management in SMEs: A Literature Review.' *Journal of Knowledge Management*, Vol. 16, No. 6, pp. 880-881.

<sup>30</sup> C. Heavin and D. Power. (2018). 'Challenges For Digital Transformation: Towards a Conceptual Decision Support Guide for Managers.' *Journal of Decision Systems*, Vol. 27, No. 1, p. 40.



*Fig 4.* Knowledge management systems are tools to support the leveraging of internal innovation from inception to implementation. The process is facilitated by a synthesis of organizational management and culture with technology. It has been cited as a key educational tool in upskilling personnel within an organization and can bypass the traditional departmental silos that stifle innovation and learning in militaries.

The process of automation has revolutionized several industries but adoption has also been quite strained in a military context.<sup>31</sup> Artificial intelligence (AI) has streamlined workflows from a technological standpoint but militaries are seldom concerned with making a profit so labor cost has never been a major concern.<sup>32</sup> It should be appreciated that automation would not replace the role of humans within militaries rather, automation would facilitate military personnel to focus on more operation-specific tasks, supporting the leveraging of social capital and reducing operational costs.<sup>33</sup> This has also been shown to increase productivity among personnel and assist with promoting the aforementioned innovation culture among military personnel.<sup>34</sup> Thus, automation could be an effective consequence of digital transformation in terms of augmenting processes for European militaries seeking to sustain competitiveness. Further optimization may be assisted through the leveraging of big data.

Early developments in data analytical capabilities were spurred by military innovation in the past.<sup>35</sup> However, the use of big data in analyzing and optimizing operations and workflows in European

<sup>31</sup> P. Scharre. (2016). 'Centaur Warfighting: The False Choice of Humans vs. Automation,' *Temple International & Comparative Law Journal*, Vol. 30, No. 1, p. 153.

<sup>32</sup> Ibid.

<sup>33</sup> Cui, L. Huang, S. Wei, F. Tan, C. Duan, C. and Zhou, M. (2017). 'SuperAgent: A Customer Service Chatbot For E-commerce Websites,' *In Proceedings of the 55th Annual Meeting of The Association For Computational Linguistics-System Demonstrations*, Vancouver, Canada, July 30-August 4, p. 97., G. Westerman and D. Bonnet. (2015). 'Revamping Your Business Through Digital Transformation.' *MIT Sloan Management Review*, Vol. 56, No. 3, pp. 10-13.

<sup>34</sup> Morakanyane, 'Conceptualizing Digital Transformation.' p. 439.

<sup>35</sup> Michaelis, J. Tortonesi, M. Baker, M. and Suri, N. (2016), 'Applying Semantics-Aware Services for Military IoT Infrastructures,' *In 21st International Command and Control Research and Technology Symposium*, September 6-8, London, United Kingdom, pp. 1-2., X. Song, Y. Wu, Y. Ma, Y. Cui and G. Gong. (2019), 'Military Simulation Big Data: Background, State of the Art, and Challenges,' *Mathematical Problems in Engineering*, Vol. 2015, pp. 1-2.

militaries has never been particularly effective.<sup>36</sup> In this context, big data analytics is a blanket term to define the process of systematically analyzing datasets that are too large, complex or otherwise unfeasible for human or traditional data-processing applications.<sup>37</sup> This is an evolving field with several methodologies at the disposal of digitally maturing organizations. One example is the use of 'Internet of Things' (IoT) touchpoints to record near-constant streams of data to be cleaned and analyzed by AI to inform decision-making and provide recommendations on optimizing workflows (fig 5).<sup>38</sup> It would be unfeasible to expect human analysts to effectively query so many datapoints directly. Therefore, artificial intelligence is being increasingly integrated within this process to give leaders a constant, accurate and near-real time overview of progress during digital transformation and thereafter to inform decision-making.<sup>39</sup>

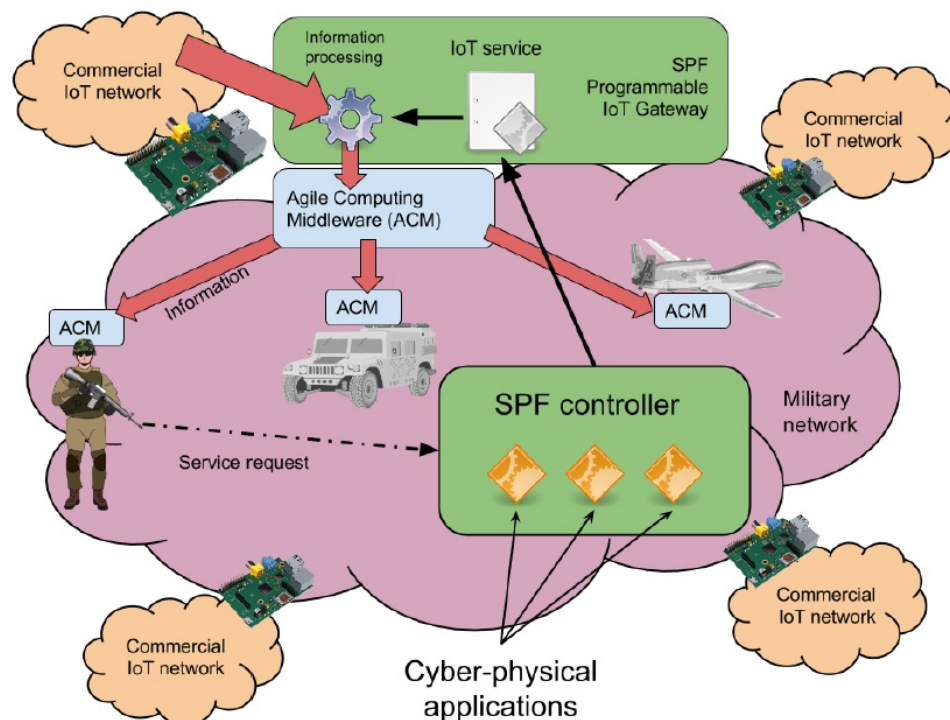


Fig 5. IoT refers to the interconnection of devices with embedded internet-connectivity that enable the sending and receiving of data. These devices can be configured by the military as touchpoints throughout their processes and operations to offer a potentially more cost-effective advantage over the aforementioned big asset doctrines employed by counterpoles.

<sup>36</sup> Ibid.

<sup>37</sup> C. Dremel, J. Wulf, M. Herterich, J. Weizmann and W. Brenner. (2017). 'How AUDI AG Established Big Data Analytics in Its Digital Transformation.' *MIS Executive Quarterly*, Vol. 16, No. 2, p. 82., I. Sebastian. M. Mocker, J. Ross. K. Moloney. C. Beath. and N. Fonstad. (2017). 'How Big Old Companies Navigate Digital Transformation.' *MIS Quarterly Executive*, Vol. 16, No. 3, pp. 198-199.

<sup>38</sup> Image Source: Michaelis, 'Military IoT Infrastructure,' p. 8., Brosnan, 'Leveraging The Wisdom of Crowds,' p. 24., Westerman, 'Revamping Your Business Through Digital Transformation,' p. 2., Ulas, D. (2019). 'Digital Transformation Process and SMEs,' In *3rd World Conference on Technology, Innovation and Entrepreneurship*, Istanbul, Turkey, June 21-23, p. 665., S. Berman. (2012). 'Digital Transformation: Opportunities To Create New Business Models.' *Strategy & Leadership*, Vol. 40, No. 2, pp. 16, 20., Shaugnessy, 'Creating Digital Transformation,' p. 24.

<sup>39</sup> J. Brock and F. von Wangenheim. (2019). 'Demystifying AI: What Digital Transformation Leaders Can Teach You About Realistic Artificial Intelligence.' *California Management Review*, Vol. 61, No. 4, pp. 126, 129., F. Kitsios and M. Kamariotou. (2021). 'Artificial Intelligence and Business Strategy Towards Digital Transformation: A Research Agenda.' *Sustainability*, Vol. 13, No. 4, pp. 7-8.

Presently, there are three levels of data sophistication at the disposal of organizations engaging in digital transformation from descriptive to prescriptive analytics (fig 6).<sup>40</sup> Advancements in data sophistication increase the complexity and cost associated with analytics so a predictive or prescriptive strategy may not be applicable to European militaries at present. However, the uptake in the use of IoT devices like wearable watches and vests in addition to smart device applications has made this process a degree more attainable.<sup>41</sup> This highlights the potential applications of technology in digitalizing European militaries to sustain competitiveness.

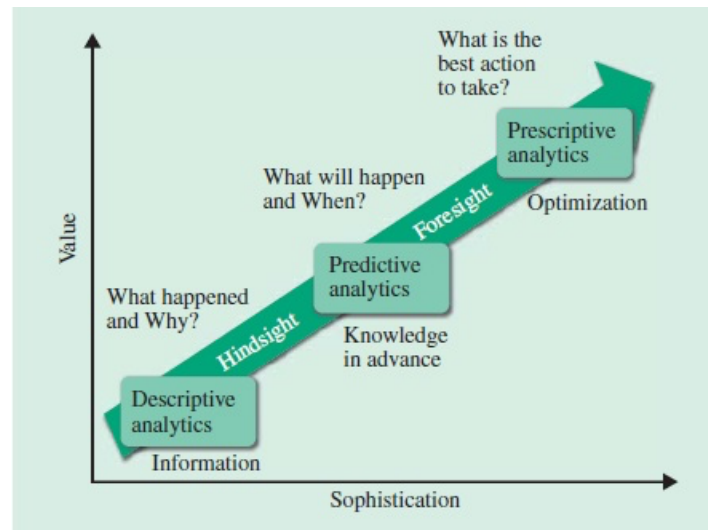


Fig 6. This visual highlights the levels of sophistication associated with data analytics. Descriptive analytics is the most feasible for the majority of organizations and refers to making decisions based on empirical data from past events. The academy has identified data analytics that requires foresight as more valuable to organizations by facilitating leadership to anticipate and prepare for upcoming events or targets based upon trends in the data. Big data analytics encompasses a powerful tool during digital transformation when paired with human intuition that may increase competitiveness in European militaries.

Technology plays a major role in all militaries, but the correct application of certain technologies may offer the edge required by European militaries to remain competitive with the geopolitical counterpoles. As implied above, technology needs to be synthesized with human resources in order to present value during digital transformation.<sup>42</sup> One of these is robotics which has served as a tool to support the automation of the vehicle manufacturing industry since the 1970s.<sup>43</sup> However, the development and deployment of robotics within industrial operations has become more sophisticated with the introduction of AI.<sup>44</sup> Robotic platforms are being increasingly used to automate tasks where humans are not particularly adept but have traditionally been used anyway

<sup>40</sup> Image Source: U. Dayal, M. Akatsu, C. Gupta, R. Vennelakanti and M. Lenardi. (2014). 'Expanding Global Big Data Solutions with Innovative Analytics.' *Hitachi Review*, Vol. 63, No. 6, p. 334.

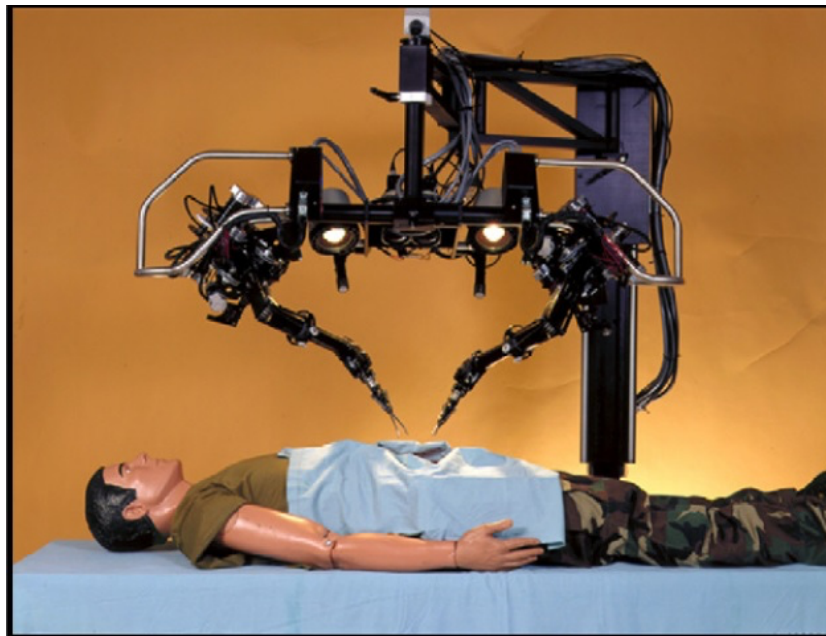
<sup>41</sup> Brosnan, 'Leveraging The Wisdom of Crowds,' p. 24.

<sup>42</sup> S. Roth. (2019), 'Digital Transformation of Social Theory. A Research Update,' *Technological Forecasting & Social Change*, Vol. 148, p. 92.

<sup>43</sup> Ulas, 'Digital Transformation Process,' p. 666.

<sup>44</sup> R. Goel and P. Gupta. 'Robotics and Industry 4.0,' In A. Nayyar and A. Kumar. (eds). *A Roadmap to Industry 4.0: Smart Production, Sharp Business and Sustainable Development*, 1st ed, (New York, Springer, 2020), pp. 167-168.

owing to a lack of a viable alternative.<sup>45</sup> This includes precision tasks like technology repairs, tasks with high performance standards like surgeries and operations taking place in dangerous or hazardous environments like industrial welding or ordnance disposal (fig 7).<sup>46</sup> These technologies are becoming increasingly reliable through remote updates by the manufacturer via the cloud in addition to leveraging neural networks to allow all robotic units to concurrently update their repository of data, minimizing the need for supervised learning within operations.<sup>47</sup> Cloud in this context refers to on-demand computing resources that can be accessed remotely without direct active management by the user. This would be beneficial to European militaries by allowing technicians to update software on all robotic units remotely which is a faster and more cost-effective method. Such developments enable human stakeholders to focus on innovation or high-priority tasks which has been presented as increasing productivity while lowering labor costs.<sup>48</sup> Therefore, robotics can be viewed as a technology that could potentially augment processes and operations in European militaries that may not have the manpower of the geopolitical heavyweights.



*Fig 7. Robotics are transitioning from machines to complete a singular purpose to increasingly more adept tools within many digitally maturing industries like militaries. Through AI enhancements, these units are becoming increasingly more suitable for tasks that require high quality and precision like surgeries. It should be noted that robotics **are** not replacing the role of humans so much as enabling them to supervise operations, potentially offering a degree more flexibility to European militaries.*

<sup>45</sup> Ibid.

<sup>46</sup> Image Source: T. Haidegger and Z. Benyó. (2007). 'Surgical Robotics for Long Duration Space Missions.' *Acta Astronautica*, Vol. 63, No. 7, p. 999., Joseph, A. Christian, B. Abiodun, A. and Oyawale, F. (2017). 'A Review on Humanoid Robotics in Healthcare.' *In The Fifth International Multi-Conference on Engineering and Technology Innovation*, Taichung, Taiwan, October 28-November 1, pp. 1-2., J. Trevelyan, R. Hamel and S. Kang. 'Robotics in Hazardous Applications.' In B. Siciliano and O. Khatib, (eds). *Springer Handbook of Robotics*, 1st edn, (New York, Springer, 2016), p. 152.

<sup>47</sup> Pousttchi, K. Gleiss, A. Buzzi, B. and Kohlhausen, M. (2019). 'Technology Impact Types for Digital Transformation.' *In 21st IEEE Conference on Business Informatics (CBI)*, Moscow, Russia, July 15-17, p. 489., Gupta, 'Robotics and Industry 4.0,' p. 166.

<sup>48</sup> Morakanyane, 'Conceptualizing Digital Transformation,' p. 439.



In conclusion, the geopolitical influence of European nations from a military perspective and how they can sustain competitiveness with the counterpoles is a quandary with no singular solution. This article has highlighted the potential value of introducing digital transformation to European militaries in order to increase competitiveness through optimizing people, processes and technology based upon empirical observations from the academic literature. The key findings have been presented below:

- The development of an organizational culture supportive of change and innovation through integrated learning opportunities and governance structures that encourage input based on merit as opposed to solely rank or authority.
- The ideation and implementation of a clear and aligned organizational strategy that leverages digital resources to address military challenges and support the aforementioned innovation culture.
- The deployment of a knowledge management portal to be used as; a repository of organizational information, a learning device for military stakeholders at all ranks, a resource for optimizing decision-making and negating the influences of departmental silos in European militaries.
- The intelligent deployment of automation on appropriate workflows and processes within a military in order to increase productivity, reduce operating costs and maximize social capital.
- The leveraging of data analytical capabilities, supported through the use of IoT technologies, AI and neural networks where appropriate to identify painpoints in military processes and to reduce the dependency on analog or intuition-based analysis.
- The introduction of robotic units to perform activities where human stakeholders are not particularly adept like precision, dangerous, high performance or repetitive tasks.

The article's analysis was limited by access to military-specific data, necessitating future primary research to be undertaken to understand the potential impacts of introducing digital transformation to non-digitally native European militaries.



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