

THE STATE OF THE EUROPEAN UNION

Reforming Europe in a time of war



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FUNDACIÓN ALTERNATIVAS AND FRIEDRICH-EBERT-STIFTUNG

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Translation by Ann Marie Bohan, Kit Cree, Tim Gutteridge and Richard Preston.

Thanks to Rodrigo Castellanos y Tabea Hädrich

Designed and printed by Lúa Ediciones 3.0, S.L.
Avenida de Burgos, 39, 1.º izq. 28036 Madrid
616 722 687

ISBN: 978-84-126580-1-9
Legal deposit: M-5767-2023

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Introduction

The war in Ukraine makes reform of the European Union more necessary than ever

Russia's unjustified invasion of Ukraine in February 2022 has opened a new phase in the history of Europe. This change or *Zeitenwende* as Germany Chancellor, Olaf Scholtz, has dubbed it, has created an unprecedented political disturbance, which has led some countries, such as Germany, to redefine their role as actors on the European and global stage. In his now famous speech to the Reichstag on 27 February 2022, three days after the start of the war, he stated: "Europe is our framework for action. Only when we understand that, will we prevail over the challenges of our time. (...) We stand for peace in Europe. We will never accept the use of force as a political instrument. We will always advocate the peaceful resolution of conflicts. And we will not rest until peace in Europe is secured. And we are not alone in this – we are joined by our friends and partners in Europe and worldwide. Our greatest strength is our alliances! It is to them that we owe the great fortune our country has enjoyed for over thirty years: Living in a unified country, in prosperity and at peace with our neighbours. If we want the last thirty years to be more than a historical exception, then we must do everything we can to maintain the cohesion of the European Union, the strength of NATO, to forge even closer relations with our friends, our partners and all those who share our convictions worldwide. I am utterly confident that we can succeed in this. Because rarely have we and our partners been so resolved and so united."

Above and beyond any considerations regarding the war, we need to be aware that tomorrow always comes around sooner than we expect: the next elections to the European Parliament are not far off. In May 2024, the European Parliament will be elected directly for the tenth time in its history. After the Conference on the Future of Europe, this is the next great test for supranational democracy. What is the situation of the EU in 2022? Is it stronger, richer and open to reform?

During the more than 60 years of the EU's existence, there has really only been one great reform, that which occurred in the 1990s and found expression in two internal events – the Maastricht Treaty, which created the euro as a single currency, and the huge expansion towards the east) – and one external event – the fall of the Soviet Union

and the end of the Warsaw Pact. The impact of these changes was so significant that it gave rise to a vision of a Europe that would be a powerful political player, and from this arose the need to undertake another set of far-reaching reforms, which would be designed and implemented during the opening decades of the 21st century.

However, this didn't happen. It was prevented by a series of crises – the Great Recession of 2010–12; Brexit, from 2017 onwards; the Covid-19 pandemic, with its implications both for health and for the economy; and, in 2022, Russia's war against Ukraine, which caused massive disruption for the whole European continent. The EU's economic policy response to the first of these challenges, was misguided while it failed to meet the other challenges with determination and unity. And this challenge was also faced by the rest of the world, which suffered from the resulting impact on growth and consumption.

The EU reacted to the financial crisis with a policy of budgetary rigidity, which only succeeded in lowering the living standards of millions of people, and closing thousands of businesses. Fortunately, the response both to Covid-19 and to the economic impact of the pandemic was the exact opposite. In other words, Keynesian investment policies, implemented by the European Central Bank through the large-scale purchase of public debt, and coordinated action to develop and secure vaccinations, driven by the Commission with the agreement of the European Council. With Next GenerationEU (NGEU), the EU has implemented the largest economic stimulus package (700 billion euros) in its history, an initiative that involves a level of solidarity beyond anything seen before. And, in response to Russian aggression, the EU unanimously adopted an unprecedented package of sanctions.

Russia's war against Ukraine has prompted the EU to take further steps towards autonomy through its reaction to the energy, food and inflation crises. Not only has the EU launched proposals designed to secure European energy sovereignty; even more importantly, it has done so with a degree of unity hitherto unknown in its history. This will undoubtedly result in something that would have been unthinkable just a few years ago: the attribution to the EU of competencies in systemic policies on energy supplies and consumption for households and businesses.

This reform has been essential for decades, as much of the EU depends on Russian gas. But it is the impact of the war that has driven moves to create a European energy strategy, with Brussels leading joint measures to prevent dramatic rises in the prices of petrol, gas and electricity, and the profound damage this would inflict on Europe's economies and its citizens. This is one of the reforms studied in this Report.

Linked to the above is Europe's ecological transition to neutral atmospheric CO₂ emissions by 2050. The best way to address the energy crisis that has been exacerbated by war in Ukraine is to make a firm commitment to renewables and to support the circular economy. At the same time, reform designed to deliver sustainability in the face of climate change has not happened, due to the war. This still needs to be consolidated as a key reform of Europe in the 21st century.

And the same is true with respect to the Social Europe that is so desirable. In reports of past years produced by the Friedrich Ebert Foundation (FES) and Fundación Alternativas, we have insisted on arguing for the need for a European minimum salary, decent European pensions and a European health system to effectively address issues such as ageing populations or chronic illnesses. Indeed, this has been one of the defining features of these institutions' reports on the State of the European Union. And now we can see a route to a Social Europe: a Europe whose necessity was already apparent and which has been further highlighted by the war; a Europe which we must make a reality once the war is over.

The social policy directive proposed by the Commission for approval by the Council and the European Parliament does not attempt to unify minimum wages. That would be impossible. But it does propose a range in proportion to the average salaries in each country. This represents clear progress towards a social pillar within the EU, something which is not covered in the Treaties, which leave this issue in the hands of Member States. And it is vital that we continue to insist on a Europe that protects the well-being of its citizens. This is something we do once again in this Report.

Migration and asylum policy must also form part of a Social Europe. A migration and asylum pact has been a key demand for decades, but one that has been impossible to achieve because the treaties require unanimity to adopt decisions at EU level. The emigration of hundreds of thousands of Ukrainian families, who have been accommodated without limits in every country of the EU, has broken the barrier to immigration erected by some Member States. It is time to move towards a genuine migration and asylum pact on a continent that needs immigration to sustain its welfare states.

It is not enough to attract immigrants. We have to ensure that they remain in the EU. This is a structural phenomenon. The International Organization for Migration estimates that there are 272 million migrants in the world (3.5% of the global population). Of them, 41.3 million are refugees (figures from prior to the Ukraine war). We need to establish inclusive legislation. Because the levels of immigration in Europe are falling, and this is a serious threat given the population declines in countries such as Italy and Spain.

Alongside migration and asylum, the other major initiative – mentioned by Chancellor Olaf Scholz in his recent speech in Prague – is fiscal reform. Any ambitious policy on investment, social support, intervention in the gas market, industrialization, or defence and security, can only be funded through taxes. But this is another sphere in which a unanimous vote is required in the Council of the European Union. In light of the war and its impact, nothing less is to be expected. And there should now be a consensus in the EU regarding windfall taxes on energy companies and a minimum corporation tax rate of 15%.

However, none of the above is likely to be possible without the most difficult – and most necessary – EU reform of all. This, of course, is institutional reform: specifically, treaty reform to legally enable all the political reforms that are covered in the chapters of this Report on the State of the European Union.

Such reform has the consensus of the European Parliament (it was the main subject of the Conference on the Future of Europe) but still lacks the support of the European Council.

This Report argues for treaty reform to enable, for example, decisions or agreements on foreign and security policy to be taken without a requirement for unanimity. If we aspire to see the EU expand by admitting current candidate countries, and other countries in regions such as the Balkans – something that has been given greater urgency by the war – then it is essential that agreement with a very wide range of support cannot be paralysed by the government of a single Member State. This idea has been endorsed in recent months by political leaders such as Emmanuel Macron, Mario Draghi and Olaf Scholz.

The German Chancellor made very specific proposals in this regard in his speech in August 2022. These included extending the spheres in which decisions are taken on a majority rather than a unanimous basis in the Council, establishing a new equilibrium in the composition of the European Parliament and, without changing the rule of one Commissioner per country, argues that the internal organization of the Commission should be more efficient.

However, it is also important to note that reform has been rejected by the governments of the smaller countries.

Without tackling what we might call the second major reform of the EU, which includes the areas mentioned above, the EU cannot become what has been termed a ‘geopolitical Europe’. If it fails to take that step, Europe will become a second-rank political actor on a global stage dominated by the United States and China, and in a context of increasing polarization.

We are witnessing a change of paradigm and the start of a new era of globalization, and this is why it is particularly important for the EU to understand the position of its allies and, above all, of its partners. A survey conducted in Latin America, commissioned by the Friedrich Ebert Foundation (FES) in 2022 (<https://data.nuso.org/es>) found that Latin American societies prioritize human rights, democracy, welfare and the importance of the environment. It also revealed that Europe’s soft power is very attractive to Latin America: people prefer Europe to any other non-Latin American partner. Europe is seen as an influential actor in the future, one that is committed to human rights, peace, the environment and the struggle against poverty.

Our objectives include European integration, cohesion and solidarity. This means that the EU must develop and implement systematic policies in areas such as foreign affairs and security, economic policy (there is still no genuine economic union), ensuring primary public goods, and protecting the values of democracy, freedom and the Rule of Law. An EU of 33 or more Member States needs this reforming impulse. It is vital to situate democracy and citizens’ participation at the heart of reforms, to increase the legitimacy and effectiveness of EU decision-making, as was stated in 2021 in the consultations for the Conference on the Future of Europe.

The need for a major reform preceded the Ukraine war, but war has made it the number one priority for the EU of the future.

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The Conference on the Future of Europe: an inadequate approach that will have to be corrected in the implementation phase

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Recommendations

- Russia's war of aggression against Ukraine demands a unified response from the European Union, and Treaty reform is essential for that.
- Following the Conference on the Future of Europe and, particularly, the European Parliament petition of 4 May and 9 June 2022, there is a clear need for a third European Convention, with the aim of reforming the Treaties.
- Given that this convention has not been called under the French Presidency and this situation does not seem likely to change under either the Czech or Swedish Presidencies, neither of which are particularly in favour of it, it will fall to the Spanish Presidency in the second half of 2023 to tackle the difficult and important question of how Convention can alter some aspects of the Treaties of the European Union, in particular overcoming the requirement for unanimity in the Council.
- Strengthening the role of organized civil society following the final session of the Conference on the Future of Europe (2 December) and balancing its role with respect to citizens.
- Promoting the participation of organised civil society in the European Convention.
- There was a big omission in the Conference on the Future of Europe with regard to the role of the EU in the world, including the lack of any reference to the need to strengthen the strategic relationship between the EU and Latin America.

General considerations

I draw no pleasure from the fact that events have confirmed the predictions I made in the chapter I published in the 2021 Report on the State of the European Union, titled *How can participation in the Conference on the Future of Europe be improved for organised civil society*

and citizens? In that article, I considered the problems of the Conference on the Future of Europe and argued that, *"it is clear that there are two major imbalances: on the one hand, between the representatives from institutions and from citizens and civil society, as there are 273 of the former and 88 of the latter; and, on the other hand, the imbalance between the citizen representatives, of which there are 80, although chosen at random, and representatives from civil society, of whom there are 8."* (Aldecoa 2021:35).

In this chapter, I will examine the operation of the Conference on the Future of Europe, where the excessive role of citizens who have been chosen at random, which could have been the principal virtue of the Conference, has instead become its main defect, as it has been the reason for its failure to achieve its initial objectives, which were simply to generate proposals for improvements from the different sectors involved. It also failed to establish clear strategic guidelines, and these in the end were watered down into 39 general proposals and 300 specific measures which, in some cases, are contradictory, such as the proposed direct election of the President of the European Commission by universal suffrage.

However, it is still early to evaluate the application of some positive aspects included in the conclusions of the Conference on the Future of Europe as both the European Commission and the Council have committed themselves to their implementation. Perhaps the most important effects of the Conference on the Future of Europe and its conclusions are the two resolutions adopted by the plenary session of the European Parliament on 4 May and 9 June, in which it called upon the European Council to call a European Convention in application of article 48.2. This proposal, which is separate from the 39 measures, entails reform of the Treaties, but remains incomplete as no decision was taken at the European Council of 23 and 24 June 2022, under the French Presidency. Indeed, this possibility is not even mentioned.

The excessive role of citizens chosen at random in the operation of the Conference on the Future of Europe

On 16 July 2019, the new President of the European Commission, Ursula von der Leyen, responded to this initiative – one that had been supported by European civil society and by us through the European International Movement and the National Councils in May 2019, and by European political parties – to hold a Conference on the Future of Europe that should *"bring together citizens, including a significant role for young people, civil society and European institutions as equal partners"* and would be *"open to Treaty change"* (Von der Leyen, 2019).

It should be noted that, in the composition of the Conference on the Future of Europe, civil society was under-represented (only eight official members, to which can be added the 27 representatives of national events, including me, and the civil society of each of the Member states), while there was over-representation of random citizens (80) European and national institutions (European Parliament (108) national parliaments (108) Council of the EU (54) European Commission (3: Dubranka Suica, Vera Jourova and Maroš Šefčovič; Committee of the Regions (30) and Economic and Social Committee (18)), to which the can be added the social representatives (8).

The operation of the Conference on the Future of Europe has been even more unequal and further removed from the initial words of the President of the European Commission, who spoke of an "equal basis". This is because citizens exercise influence through the proposals developed by the four citizens' panels, each consisting of 200 randomly selected members (800 citizens in total).

Furthermore, the Plenaries and Working Groups were based entirely on the four reports presented by the citizens. As a result, the other "four pillars" of the conference – that is, the European and national institutions, and representatives of national events – were restricted to completing the proposals of the Citizens'

Panels, without the possibility of eliminating or opposing any of these proposals.

This meant that the Conference on the Future of Europe moved further away from this “equal basis”, exacerbating the inequality that existed from the start as a result of the composition described above. It is not acceptable that randomly selected citizens should have a near monopoly on the capacity to initiate proposals, to the exclusion of representatives of the other pillars. This represents a big missed opportunity to undertake a necessary rebalancing of this system, one that has its origins in Athenian notions of democracy but which is starting to influence French academic doctrine.

The Conference on the Future of Europe has operated primarily through the Citizens’ Panels, which have been almost exclusively responsible for putting forward the proposals that were reflected in the conclusions, and also provided the basis for seven plenary sessions, and for the thematic proposals developed by the nine Working Groups.

Citizens’ Panels

Much of the effort of the Conference on the Future of Europe focused on the Citizens’ Panels, consisting of 800 members, supposedly chosen via a random mechanism, one third of whom were younger than 25.

These Citizens’ Panels were divided, in turn, into four thematic panels with 200 members each, as follows: “Stronger economy, social justice and jobs / Education, culture, youth and sport / Digital transformation” (Panel 1); “European democracy / Values and rights, rule of law, security” (Panel 2); “Climate change and the environment / Health”, (Panel 3); “EU in the World / Migration” (Panel 4).

Each of the panels drew up a series of conclusions which then provided the basis for the Plenary and Working Group discussions. In this respect, it should be noted that in some instances citizens were not very receptive to the suggestions of the other pillars of the conference.

Plenaries

During the 11 months of the Conference on the Future of Europe, a total of seven plenary sessions were held, with the final session being responsible for approving the conclusions of the Full Conference, subject to review by the Board, on 29 and 30 April. The plenary sessions were somewhat unevenly distributed over time, with the majority of them being held in 2022, and only two sessions in 2021 (in May and December), while the third of the sessions scheduled for 2021 had to be postponed due to the deteriorating health situation. The remaining five sessions were thus held in the first four months of 2022.

One of the weaknesses of the process was the fact that the plenary sessions of the Conference on the Future of Europe (from the third session on) were based on the agreements and proposals of the four Citizens’ Panels, and the initiative lay almost exclusively with citizens. In addition, they were not prepared to substantively reform or modify their proposals, with the result that the other pillars and the other members of the Conference on the Future of Europe did not play the role envisaged either in the initial proposal or in the procedural rules for the conference approved in May 2021 and modified in June. In other words, citizens had a prominence which went beyond what had been established in the initial proposal.

The first plenary session was held on 17–18 July and consisted exclusively of a presentation of most of the registered members, without the participation of randomly selected citizens, as the random selection process had not yet been held. The second plenary session took place almost three months later, on 22–24 October. The third session was held on 17–19 January, by which time the health situation had improved markedly, making it possible for participants to attend in person.

Both initially and subsequently, there were significant discrepancies in the method and operation of how the Plenaries were conducted, both from a doctrinal perspective and from the perspective of the different stakeholders involved with respect to some themes. Perhaps the most important of these, in our view, is the

underrepresentation of civil society, discussed below. The key shortfalls are as follows: a) composition; b) working method; c) over-representation of institutions; d) excessive *sui generis* participation of citizens; e) absence of principal participation of young people.

The underrepresentation of civil society and limited role of other pillars

In the 2021 Report, we highlighted the over-representation of citizens in the composition of the Conference, and this year we have found that its operation has been even worse, as citizens chosen at random have exercised too much leadership, and the representatives of the other pillars have had a real role far below their weight.

Civil society was also underrepresented, although this was compensated for, in part, by the participation of 27 representatives of organized civil society and national events, with the result that there were ultimately 34 represents of civil society, compared to the 80 citizens chosen at random. However, this representation remains insufficient, as the randomly selected citizens had the right to initiate action which the others lacked. By the same token, the Plenaries of the Conference on the Future of Europe allocated them more time for there interventions, so that there was no balance between the representatives of organized civil society and the citizens' representatives.

The unequal operation of the nine Working Groups

After the second Plenary, a new working mechanism was established, involving nine Working Groups, whose chairs were directly appointed by the Board of the Conference on the Future of Europe, as follows: two from the European Commission, two from the European Parliament, two from the National parliaments, two from the Council of the EU, and one from the Presidency of the European Youth Forum.

These Working Groups are: Climate change and the environment (Group 1), Health (Group 2), A stronger economy, social justice and jobs (Group 3), EU in the

world (Group 4), Values and rights, rule of law, security (Group 5), Digital transformation (Group 6), Democracy (Group 7), Migration (Group 8) and Education, culture, youth and sport (Group 9).

The operation of these groups was very unequal. In some, such as democracy (8) or digital transformation (6), the citizen representatives were flexible and accepted significant changes to their proposals, such as the transnational lists or the *Spitzenkandidaten*. However, in other groups, such as EU in the world (4), in which I was a participant and whose workings I discuss below, they were completely inflexible when it came to suggestions and proposals not contained in their report, arguing that they had not been approved and voted on and thus could not be taken into account.

Russian aggression against Ukraine prompts a new phase in the Conference on the Future of Europe

The Russian Federation's aggression against Ukraine, a country associated with the EU, is the largest military invasion on the European continent since the Second World War. Although there are no official figures, there are now estimated to have been almost 100,000 deaths, of which some 80% are young people; with approximately three times that number of wounded. In addition, there are more than 15 million displaced people, of whom 8 million are internally displaced, 6 million are refugees in other countries, and almost half a million appear to have been forcibly transferred to the Russian Federation.

Following the Russian Federation's invasion of the sovereign state of Ukraine on 24 February, the perception of the Conference on the Future of Europe changed substantially. Two Ukrainian representatives attended the fourth Plenary of the conference, and High Representative Josep Borrell addressed the Plenary of 11 March from the Versailles Summit.

The EU offered a coordinated response, with unlimited political support from the 27 Member states, through

seven packages of sanctions adopted to date, some of which are unprecedented. At the same time, the volume of Official Development Assistance has increased, with the provision of economic and, indeed, military support, something that was not expected. This initially took the form solely of defensive weaponry but now encompasses the very latest armaments of every kind, including helicopters and even airplanes.

In the Plenary of the Conference on the Future of Europe and in the various Working Groups, there were calls for the greatest possible level of support for the Ukraine, and for increased sanctions. This situation highlights the need to reform the political model of the EU, which necessarily entails treaty reform, to enable more agile decision-making, granting more competencies to the High Representative, and expanding the competencies of the EU.

This brought the issues of the scope of reforms and the need to deepen the European project as a whole to the fore. It was clear that the invasion was not just an attack on Ukraine, which is an associate of the EU, but was also aimed at the EU as a whole: its values, its democracy, its lifestyle, its freedoms, its Rule of Law, the whole EU project, the welfare state, shared sovereignty.

As a result, at the Plenary of the Conference on the Future of Europe, held on the following day, 12 March, I proposed the adoption of a joint declaration expressly condemning Russia's aggression against the Ukraine, setting out the reasons noted above. However, despite broad support, for procedural reasons related to parliamentary practice, the declaration was not formalized, even though there was complete consensus and explicit agreement.

Since the invasion, four more Plenaries have been held, on an almost fortnightly basis, with the fourth session taking place on 10–12 March, as the February Plenary had once again been postponed because the Citizens' Panels had been unable to meet and were therefore unable to continue with their work.

The atmosphere of the subsequent Plenaries (fifth, sixth and seventh) was completely different, with greater

cohesion between all the members of the Conference on the Future of Europe, including the Polish representatives of all tendencies. Even the harshest critics of the process of advancing the EU softened their attitudes.

The fifth Plenary took place on 24 and 25 March, and a first draft of the proposals in the Working Groups was drawn up. The sixth session occurred on 7 and 8 April, before the Easter holidays, and the Working Groups presented their almost definitive conclusions, all of which were based on the Citizens' Panels, as no other option was permitted. Finally, the seventh and last Plenary took place on 28–30 April, and draw up the final conclusions of the Plenary, which were approved on the 30th and submitted to the Board of the Conference on the Future of Europe for its consideration and approval.

As a consequence of Russia's war of aggression against Ukraine, the EU's role in global politics has grown. And this means that we need not only to consolidate the political and diplomatic aspects of the EU but also to undertake a thoroughgoing reform in all aspects, something that requires a third European Convention to be held, strengthening the EU model on a more federal basis.

It's important to highlight the paradoxical situation that has arisen from Russia's war of aggression against Ukraine, in which Ukraine has borne the individual burden of legitimate defence and the EU and its Member states have borne the collective burden. In particular, it is important to note the granting of Temporary Refugee Status in application of the 2011 Directive (automatically granting refugee status to more than eight million Ukrainians in various countries), the supply of humanitarian aid, and the fact that large numbers of war-wounded are being cared for in neighbouring countries. To which can be added both the support from civil society and the large-scale supply of armaments.

Further support has been provided through the application and creation of the Reconstruction Fund and, above all, the most effective system has been the application of seven packages of economic and political sanctions, which have had the effect of gradually isolat-

ing the Russian Federation and significantly restricting its economic capacity. In addition to the surprising military support, with the supply of both defensive and offensive weaponry via the European Peace Facility, a parallel international organisation whose first action, despite the name, has been the supply of armaments.

Receipt of the conclusions of the Conference on the Future of Europe by the Presidents of the European institutions on 9 May

The Conclusions of the Conference on the Future of Europe were presented to the three presidents of the European institutions – Ursula von der Leyen, President of the European Commission; Roberta Metsola, President of the European Parliament; and Emmanuel Macron, President of the Council of the European Union – in the presence of the three co-presidents of the Conference on the Future of Europe – Guy Verhostadt, MEP, Dubravka Suica, Vice-President of the European Commission, and Antonio Costas, President of Portugal, representing the Council of the EU, as Portugal held the Presidency of the Council when the Conference was inaugurated.

Many of the speakers compared the military parade held in Moscow to celebrate Victory Day (9 May) to mark the Soviet defeat of the Nazis – presided over by Vladimir Putin and with the latest military hardware on display – with the European festival to commemorate 72 years of the Schuman Declaration, a celebration of democracy that was both representative and participatory: representative as it was attended by the leaders of the three EU institutions, and participatory because it included representatives of civil society and citizens, remembering and celebrating the beginnings of the European federal project, and opening a new era in the deepening of that project.

What does this new era consist of? Firstly, the three presidents of the European institutions and the representatives of citizens and civil society argued for the need

to deepen the model of the EU as a whole by calling a new European Convention. This call reiterated the resolution of the European Parliament on 4 May 2022. The French President, Emmanuel Macron, announced that, if there was a simple majority in the European Council, that is, the support of 14 Member states, then the European Council of 23 June – the last to be held under the French presidency – would issue such a call.

These announcements met with an enthusiastic response in the Plenary, with numerous interruptions and rapturous applause, expressing a warmth of emotion that is precisely what has been lacking in the European project. It is often said that nobody falls in love with a Treaty or a Constitution but, rather, with the symbols that represent it, and that was the case here, as everybody sang the EU hymn, the Ode to Joy, performed by a young orchestra and sung in Miguel Ríos's Spanish version. Afterwards, many of the participants were able to greet the speakers in person, without restrictions of any kind. In other words, participatory and representative democracy were able to mingle.

The invasion of Ukraine was discussed in all the debates, giving expression to European support of the heroism of the Ukrainian people. The EU is also affected by this situation, and it reaffirmed that Ukraine is not alone and that the EU will intensify its economic and humanitarian support, strengthening sanctions, announcing an embargo on the joint purchase of fossil fuels, and strengthening the use of legal measures to condemn the crimes against humanity and war crimes that have been committed since the start of the invasion.

Arguably, the most ambitious and daring proposals came from President Macron, who declared that we must dream and act on a grand scale and that, as Europeans, it falls on us to set a new path, one that must be commensurate with the great challenges we face. This will require a united, ambitious, sovereign Europe. He proposed the creation of a redesigned European political community, consisting of a new political space incorporating all Europe's states, including those that have recently left the EU and certainly including Ukraine, others in eastern

Europe, and even Switzerland and Norway, establishing a confederate relationship.

The Conference on the Future of Europe has thus had the effect of strengthening the EU as a federal model, through the 39 proposals and 300 measures presented to the institutions by the Plenary, and which will be followed up over the coming months. The President of the Commission, for her part, undertook to review the application of these measures and proposals in her annual State of the EU address in September. And the institutions agreed to call a European Convention to strengthen the current union, without ruling out the possible expansion to include some of the Balkan states, so long as the European Council decided to do so by a simple majority.

Finally, the door was opened to the creation of a new confederate European Political Community of all European states who wish to strengthen the European project, following on from the initiative of French President François Mitterrand more than 30 years ago. However, on my return from Strasbourg, it was clear to me that Spanish public opinion remains completely indifferent to these developments, ones that probably mark the start of a new era in European political construction, and I can only hope that this indifference subsides and that Spain can take its rightful role in this process.

The European Parliament's request to call a European Convention (4 May and 9 June)

As noted above, the European Parliament passed two resolutions, on 4 May and 9 June, calling on the European Council to organise a European Convention. Since the start of the new political cycle in May 2019, the European Movement International and our Spanish Federal Council have been arguing for the need to address Treaty reform through a third European Convention along federal lines, in accordance with the positions of other members of civil society, the European Parliament and some Member states such as, for example, the German 'traffic light

coalition', which reflected this position in its government agreement, and the Italian government at the time.

On 9 June 2022, the Plenary of the European Parliament approved a resolution proposed by the Committee on Constitutional Affairs asking the European Council to call a European Convention to reform the EU's constituent treaties, with 355 votes in favour, 148 against and 48 abstentions. This resolution, put forward by S&D, Renew Europe, the Greens and The Left in the EU, was supported by most of the political parties, including the EPP, which lent its support following acceptance of an amendment.

This confirmed the Resolution adopted by the European Parliament a month earlier, on 4 May, which obtained a higher number of votes (453) representing more than 60% of MEPs. The second Resolution requires application of article 48 of the Treaty of the European Union, which covers the foundation of the EU and the articles of the Treaty of the EU and the Treaty on the Functioning of the EU that the Convention would need to revise.

For this third European Convention to actually be called, it is necessary for the Council or the European Council to decide by simple majority to accept the European Parliament's proposal. In the debate in the European Parliament, the question was raised as to whether there were 14 Member states in favour of calling a European Convention and it was understood that, if this number did not exist, then it would be necessary to wait for the Czech Presidency to reach the threshold and, if that were to happen, to hold the vote.

It should also be noted that the governments that have stated their opposition represent small states, accounting for less than 10% of the EU's total population. Moreover, of the 13 Member states that appear to have come out against the Convention, based on a public letter, three of them have already distanced themselves from this stance, moderating their position and clarifying that they are not necessarily against the Convention but are, rather, opposed to certain proposed reforms that might entail, for example, abandoning the principle of unanimity.

This means that, given that the five main political groupings are in favour of the proposal and it is only the far right, including their Spanish allies, who voted against it, it was to be expected that, at the last European Council to be held under the French Presidency, on 22 and 23 June, the establishment of a third European Convention would finally be approved. However, the resolution was not passed and would have to be discussed in September, under the Czech Presidency of the Council of the EU.

A bucket of cold water at the European Council of 23 and 24 June

The European Council was held in Brussels on 23 and 24 June. The final meeting under the French Presidency had been long awaited, in particular because it had to resolve the formal request by the European Parliament (in application of article 48.2) to call a European Convention, which had been formulated on the two occasions noted above.

The big surprise was that, of the seven points of the conclusions of the European Council, only point six made reference to the Conference on the Future of Europe. But it made no reference to the request itself. As a result, it remained unclear what would happen with the request to call a European Convention, and the conclusions did not even state if the matter would be carried over to the next European Council in September, under the Czech Presidency, thus creating great uncertainty.

This uncertainty was, if anything, further heightened by the fact that the first of the Council's conclusions address Europe in the broad sense, referring to Macron's proposal regarding a European Political Community, clarifying the meaning of this, but once again leaving the matter for the next meeting of the Council. Point two of the Council's conclusions refers to Ukraine, and "reiterates that [the Council] firmly stands with Ukraine and that the European Union will continue to provide strong support for Ukraine's overall economic, military, social and financial resilience, including humanitarian aid". It

also adopted the sixth package of sanctions, increasing pressure on Russia to bring an end to its war of aggression. And it set out a proposal to provide an additional 9 billion euros of macro-financial assistance, along with proposals to support the reconstruction of Ukraine.

Particularly noteworthy is point three of the conclusions, which grants Candidate Country Status to Ukraine and the Republic of Moldova and is prepared to grant it to Georgia once the priorities specified in the Commission's opinion on that country's membership application have been addressed. Point four expresses the EU's full and unequivocal commitment to the EU membership perspective of the Western Balkans and calls for the acceleration of the accession process. However, while the EU's continuing commitment to expansion makes the need to deepen the EU even more pressing, this process remains in abeyance.

With respect to the Conference on the Future of Europe, the only reference to this is that it has represented an exceptional opportunity to enter into dialogue with European citizens, once again ignoring civil society. And point 29 stresses the importance of ensuring that "citizens" are informed of the follow-up to the proposals made in the Report of the conclusions of the Conference on the Future of Europe. At no point does it say anything regarding the two requests of the European Parliament to call a European Convention.

Conclusions: the need for Treaty reform, which is further exacerbated by the commitment to expansion at the June Council

Despite all this, reform of the Treaties of the European Union is essential. This reform needs to be implemented soon, and certainly before the expansion process continues. Indeed, there should be no further expansion without internal consolidation. However, in the European Council of 23 and 24 June, which made no mention whatsoever of the European Convention or Treaty reform, there was

a firm commitment to accelerate negotiations with the expansion countries and particularly with the Balkans, following the granting of candidate country status to Ukraine and Moldova, and holding out the possibility for Georgia. If this acceleration occurs with respect to the adhesion of new members, then it should also occur with regard to deepening the European process at the internal level.

In my opinion, it is clear that the role of the randomly selected citizens' representatives has been excessive, and this has had repercussions on the operation and drafting of the conclusions of the Conference on the Future of Europe. But above all I would argue that the fundamental problem of the Conference on the Future of Europe has been its lack of impact on public opinion and wider society, particularly in some countries, such as Spain.

I believe that this is not just down to errors of political communication by the European Commission but also to the structure of the Conference on the Future of Europe itself, as the other sectors involved – the European Parliament, national parliaments, Committee of the Regions, Economic and Social Committee, social stakeholders – gradually lost interest in it and ceased to participate when they saw that their capacity for influence was very limited.

This meant that it was citizens' representatives who were the driving force of the Conference on the Future of Europe, but they lacked the capacity to disseminate the progress made by the conference and there was no structure that could have helped them in this task. This situation is very different to that of the other sectors of the Plenary of the Conference on the Future of Europe, which already have solid communication structures, but these were not deployed because these sectors did not feel satisfied with the outcomes or committed to them.

Finally, it is important to note that the Treaty reform requested by the European Parliament through a call for a third European Convention was not addressed during the French Presidency in the first half of the 2022, or the Czech Presidency in the second half of the year and

does not seem likely to be tackled under the Swedish Presidency, either (first half of 2023).

In the State of the European Union address on 14 September 2022, the President of the European Commission also called for a third European Convention. In the debate which followed, the majority political groups endorsed this objective, and identify a number of reasons for the need to hold a convention and undertake treaty reform.

It will therefore fall to the Spanish Presidency in the Council of the EU, in the second half of 2023, to tackle the difficult task of treaty reform through a European Convention. And this task is made even harder by the fact that we are still suffering from Russia's war of aggression in Ukraine, in which the EU is playing a vital role. If the EU is to be more effective, it must move beyond the unanimous decision-making system, and this is essential if new sanctions are to be approved and in order to address defence and security issues.

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Social Europe: Retaining the status quo during the pandemic, avoiding new disparities

Björn Hacker

Contrary to early assumptions, the social effects of the pandemic in the EU did not prove to be as serious as was initially feared. The reason for this is that, compared to the euro crisis, a significantly different style of crisis management came into play. This time, the focus was on a joint response and on supporting the states that were suffering most from the pandemic. However, looking at the social and employment indicators, the problems of vulnerable groups stand out. Added to this are the inequalities arising from previous economic crises that continue to persist in regional socioeconomic development. The special focus on groups and regions that are particularly socially disadvantaged remains highly relevant, even after the COVID-19 crisis, in the emerging double transformation – decarbonisation and digitalisation – of the European economy and in the face of the energy policy challenges brought about by the war in Ukraine.

This report first discusses socioeconomic development during the pandemic. It then moves on to focus on the link with social and territorial inequality in the EU on the basis of a study on disparity published by the author (see Hacker, 2021) in which the EU Member States of Estonia, Finland, France, Germany, Italy, Romania, Spain and Sweden are used as examples. The report concludes with a discussion of the items that need to be on the EU's social policy agenda up until 2030.

Highs and lows of the European economy during the pandemic

Following the sharp collapse of -5.9 percent (euro area: -6.3 percent) in the growth rate of gross domestic product (GDP) in the EU in 2020 compared to the previous year as a result of the measures taken to fight the COVID-19 pandemic, the economy did recover in 2021 despite further temporary lockdowns. GDP in both the EU and the euro area grew by 5.4 percent and thus restored a large part of the economic output that had been lost in 2020¹. However, the emergence of new virus variants in some cases led to further restrictions on movement and trade in various regions of the world. Due to the more transmissible Omicron variant, which spread faster than previous virus variants, and partial lockdowns in some EU countries, economic growth proved to be very weak in the last quarter of 2021 (EU: 0.5 percent; euro area: 0.3 percent). The European Commission therefore expected further catch-up effects in 2022, amounting to a 4 percent increase in growth for both the EU and the euro area (European Commission, 2022a). This positive forecast was based on overcoming the COVID-19 pandemic; it had not taken into consideration the geopo-

¹ All data from Eurostat unless otherwise indicated.

litical and consequently also economic tensions arising from the Russian war of aggression that has been waged against Ukraine since 24 February 2022. In view of the consequences of the war in Europe but also the supply bottlenecks caused by pandemic-related lockdowns in other parts of the world – for example, as a result of China’s zero-COVID strategy – the Commission reduced its growth forecast for 2022 to 2.7 percent for the EU and for the euro area. It points out that up to 2 percent must be interpreted as a carry-over from the particularly robust rebound in growth that occurred in the second and third quarters of 2021 (European Commission, 2022b). This shows, however, that the EU will not be able to return to its pre-crisis level of economic growth.

Instead, new problems have emerged with the Russian invasion of Ukraine: the sanctions imposed by the West on Russia and Russia’s suspension of oil and gas deliveries caused an explosion in energy prices in the first half of 2022. The price pressure affects industry, making goods and intermediates more expensive. It also affects the propensity to consume of private households, which have to contend with high energy costs and higher food prices. The Commission estimates that inflation will hit 6.8 percent in 2022 (euro area: 6.1 percent), although there will be significant differences within the Community. Countries that are heavily dependent on Russian energy and/or the temporary suspension of supply from Russia – Bulgaria, Czechia, Estonia, Lithuania, Poland – expect price increases of 11 percent, while the estimated inflation rate is expected to remain below 5 percent in France, Malta, Portugal and Finland. However, given the rapid increase in energy prices, these forecasts are subject to considerable uncertainty: in June 2022, the Harmonised Index of Consumer Prices was already estimated to be 8.6 percent in the euro area; in the Baltic states, inflation of around 20 percent compared to the previous year’s value is expected.

Growing concern about the cost of living led to a rebound in the household savings ratio in 2022, following a significant increase in consumer spending in 2021. Together with an expected drop in investment as a result

of the European Central Bank’s increasingly restrictive interest rate policy as a means of fighting inflation, this holds out the prospect of economic stagnation. Because of the uncertainties surrounding the geopolitical tensions arising from the war in Ukraine, this could lead to a recession. In light of the price increases, there are concerns of a spillover into wage development, potentially resulting in a self-perpetuating wage-price spiral into stagflation. Even if labour costs in the EU have recently increased, a rise in wages and salaries of 3.8 percent in the first quarter of 2022 compared to the same quarter in the previous year (euro area: 3.3 percent) shows mainly the catch-up effects of a reverse trend that prevailed during the pandemic.

Safeguarding employment

Despite the economic uncertainties, the labour market in the EU performed very well. The EU’s courageous decision at the start of the pandemic to temporarily suspend the Stability and Growth Pact in order to allow Member States implement comprehensive support measures to stimulate macroeconomic demand and the Community financial support it provided to establish short-time work schemes within the framework of the SURE instrument (Support to mitigate Unemployment Risks in an Emergency) helped to ensure that the labour market did not succumb to the same negative trend as GDP. With the recovery in GDP at the end of lockdown in 2021, the labour market was also re-energised: in Q4 2021, the unemployment rate in the EU was lower than it had been before the crisis (6.5 percent compared to 6.7 percent in Q4 2019). It fell to 6.1 percent in May 2022 (euro area: 6.6 percent). This coincided with an increase in the employment rate to 74.5 percent by Q1 2022 (euro area: 74.1 percent) – here also the EU could move on from the crisis-related collapse. The youth unemployment rate also fell sharply: while it still stood at 17.6 percent in the EU in May 2021, within a year it had dropped by four percentage points to 13.3 percent (euro area: 13.1 percent).

One particularly positive development is that the rates of unemployment and youth unemployment fell in every single Member State. This is especially significant in those states that had already suffered for a long time from the consequences of the euro crisis between 2010 and 2016. While Greece (12.7 percent in April 2022) and Spain (13.1 percent in May 2022) were the only EU countries to post double digits, these are low compared to the previous year (-4.2 percentage points in Greece; -2.3 percentage points in Spain). Even more impressive is the drop in youth unemployment in both countries: down 10.9 percentage points to 36.8 percent in April 2022 in Greece; down 10.5 percentage points to 27.1 percent in Spain in May 2022. In comparison, only Italy, Romania, Slovakia and Sweden still have a youth unemployment rate that accounts for more than 20 percent of its working population between 15 and 24 years.

Overall, therefore, the labour market proved to be extremely resilient as it weathered the COVID-19 pandemic. Nevertheless, the crisis affected certain groups more than others: young people, part-time employees, self-employed people, women with children and employees with a low level of education, among them many migrants, were disproportionately affected by job losses (European Commission, 2021). The decline in youth unemployment was accompanied by a fall in the rate of young people not in employment, education or training (NEET), although this fall took effect very slowly in some Member States. It shows only a muted drop of -1.8 percentage points to 12.1 percent in Q1 2022 compared to the same quarter in the previous year. Nevertheless, it is a step in the right direction. The picture is more negative when it comes to long-term unemployment: at 2.5 percent in the EU in Q1 2022, the rate remained the same as it had been at the start of the pandemic. However, efforts to reduce long-term unemployment are making extremely slow progress. Compared to Q1 2021, the rate fell by only 0.3 percentage points. This is also due to stagnating or even rising rates in more than a third of Member States.

Despite the generally positive trend on the labour market, the increase in inactivity during the pandemic

in some sectors and among some groups of employees has led to problems for those wishing to change jobs or return to the workforce. Existing inequalities were aggravated as the pandemic accelerated the dichotomy in the labour market: one group has relatively secure jobs and was or is in a position to work from home, whereas another group is in precarious employment and during the crisis had to bear a higher economic and health risk. As positive as the effects of the short-time work schemes were, they nevertheless also reinforced this division, as they were first and foremost aimed at people employed in professions that were not crucial during a pandemic, e.g. traditional office jobs (ETUI/ETUC, 2021: 45ff.). The pandemic has essentially held up a magnifying glass, showing what can be expected on the labour market as the European economic system undergoes two major transformations – digitalisation and decarbonisation. The EU could play a role in the reallocation of jobs to knowledge-intensive and 'green' industries and in the provision of support for particularly vulnerable groups in order to prevent the entrenchment of the labour market dichotomy and the resulting inequalities.

Protecting vulnerable groups will be a challenge

The COVID-19 crisis did in part put an end to the protracted process of overcoming the social upheaval resulting from the global financial and economic crisis as well as the euro crisis and its management. By the beginning of 2020, improvements could be seen in a whole array of social indicators. A buoyant labour market, which meant a higher disposable income for many households, was the key factor in this upswing. This subsequently led to a reduction in income inequality, the deprivation rate and the at risk of poverty or social exclusion rate in many Member States, as well as a decrease in the proportion of children at risk of poverty and the working poor. Countries like Greece and Portugal that were particularly impacted by the effects of austerity policies

implemented during the euro crisis reported significant positive changes in their social indicators (Social Protection Committee, 2021: 23f.).

Following a collapse in disposable household income in Q2 2020, the short-time work schemes and social security systems quickly balanced and stabilised the situation. Special programmes, top-up benefits and extended eligibility for existing social welfare benefits in many Member States also helped, for example in relation to sick pay, unemployment benefit, minimum wage, parental leave and child benefit. Similarly, an increase in social expenditure was reported in all Member States at the start of the pandemic. The impact of social protection and inclusion policies was clearly illustrated by the crisis.

The lagging indicator of at risk of poverty or social exclusion remained relatively stable in the EU in 2020. A moderate increase of 0.4 percentage points to 21.5 percent was recorded compared to 2019 (euro area: an increase of 0.8 percentage points to reach the same value), although the rate fell in the majority of Member States. The at risk of poverty or social exclusion rate continues to be distributed highly unevenly across the EU: while it is at less than 15 percent in Czechia, Slovakia and Slovenia, the rate exceeds the EU value of 21.5 percent in Romania, Bulgaria, Greece, Spain, Italy and the Baltic states. It affects 94.7 million people in the EU as a whole. The vulnerability rate among children under the age of 18 increased by 1 percentage point to 23.8 percent in the EU; in the euro area, it increased by 1.5 percentage points to 24.2 percent – more than 19 million children in the EU are at risk of poverty or social exclusion. People with disabilities face also a higher risk compared to the total EU population: 28.6 percent of them are at risk of poverty or exclusion.

As in the case of labour market performance, the pandemic has made it clear that the majority of Europeans are well protected thanks to the social security systems and the rapid and comprehensive response to the crisis at Member State and European level. However, it has also become evident that certain groups are not afforded this resilience to crisis situations or are afforded only limited

resilience. In addition to children and people with disabilities, migrants from non-EU countries are particularly affected by poverty or social exclusion: at 40.5 percent in 2022, the vulnerability rate among this group was almost double what it was among the EU population.

Better protection for this and other vulnerable groups in the EU is therefore a high political priority. After all, the double green and digital transformation of the economy will mean that these groups will be under further pressure as a result of restructuring and will need support in the form of education, retraining or further training. This begins with the digital skills that were needed to make it possible to work from home during the pandemic; these skills were not sufficiently available in all age and social groups. However, this also affects public welfare for children and social protection for single parents, part-time employees and people who are not adequately prepared to participate in the labour market because they are early school leavers or have a migrant background and who are often among the groups particularly affected by economic crises. One area in which the exposure of vulnerable groups is particularly apparent is in the social costs of the energy transition, which are being increased by the war in Ukraine: 34 million people in the EU are already affected by energy poverty (European Commission, 2022c), given the sharp increase in prices and the rapidly growing trend in 2022. There is a risk that exclusion will become embedded and will spread to groups that hitherto managed to weather the crisis situation.

Regional socioeconomic disparities in the EU

During the euro crisis, the dangers of an asymmetric crisis management policy that relies primarily on austerity became clear. Some of the Member States that were severely affected by that crisis had not managed to achieve once again pre-crisis levels of economic growth and social welfare by the time the pandemic began in 2020. Ultimately, there was a widening of divergences between the EU Member States in terms of socioeconomic devel-

opment. The famous wealth gap between east and west was joined by a divergence between northern and southern European States, which was believed to already have been overcome. The European goal of cohesion therefore does not apply to the Member States as a whole. Even at an early stage of its existence, the European Economic Community (EEC) had set itself the goal of eliminating regional inequality. The aim of the six founding states is outlined in the preamble of the 1957 Treaty establishing the EEC in which they vowed to: ‘strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions’. The regional socioeconomic situation is thus to the fore, yet shows major disparities across the continent and also within many Member States.

Per capita income is considered to be a key indicator in measuring social inequality from a territorial perspective. A case study that examined eight EU Member States (see Hacker, 2021: 12ff.) established the following in the year before the start of the pandemic: in terms of per capita income in purchasing power parities (PPP), the wealthiest regions in Europe in 2019 (with over 90 percent of EU GDP per capita) included the whole of Sweden and Finland; all of southern and western Germany except for the administrative district of Lüneburg and the metropolitan regions of Berlin, Leipzig and Dresden in eastern Germany; northern and central Italy, except for Umbria; northeastern Spain, Madrid and the Balearic islands; southwestern and southeastern France, Île de France, Pays de la Loire and Alsace; and the capital region of Bucharest. They all score above the European average, in some cases far above the average, such as Hamburg (195 percent), Upper Bavaria (173 percent), Île de France (177 percent), Stockholm (166 percent) or Bucharest (160 percent).

The areas with below-average per capita income, albeit with widely varying fluctuations, are: the whole of Estonia; large swathes of eastern Germany; all of central France and many areas in northern France as well as Corsica; northwestern and southern Spain, the

Canary Islands and the North African enclaves of Ceuta and Melilla; all of southern Italy, Sardinia and Sicily; and all regions outside the capital in Romania. Particularly far from the European average are the Italian regions of Sicily (58 percent), Calabria (56 percent), Campania (61 percent) and Puglia (62 percent) and the three southern regions and two northern regions in Romania (between 44 and 64 percent).

It is striking that the regions around the national capitals perform better than many regions in small towns and rural areas; also worth noting is the very distinct unequal distribution of wealth in Germany (east-west), Italy and Spain (north-south) and France (centre-periphery). If the data on per capita income is considered over time and filtered for significant changes (± 10 percentage points), we see a sharp decline compared with the pre-crisis level of 2008 (see **Table 1**) in all but three regions in Spain and Italy but also in all but one region in Sweden and in more than half of all Finnish regions. The situation improved considerably in the years following the end of the euro crisis in 2015 for the two Scandinavian countries and for Italy and Spain, as the downward trend could be halted in most regions (see column 3). The remaining regions with declining GDP per capita between 2015 and 2019 are all regions that maintained high income levels even after the most recent decline: Bremen (144 percent), Hamburg (195 percent), Rheinessen-Pfalz (110 percent), the Åland islands (116 percent), Stockholm (166 percent) and western Sweden (115 percent). However, there were no significant improvements in the income situation of most of the regions considered here over these four years: except for the administrative district of Braunschweig (2019: 146 percent), this remains the case for six out of eight regions in Romania, which is catching up economically (see column 1). Instead, stability prevails. A prime example of this stability can be seen in the 22 French regions, none of which display either striking upward or downward mobility in recent times. In both the longer and shorter term, Germany stands out: here also very few regions show drastic changes in per capita income (see column 2).

Table 1. No. of NUTS 2 regions with marked changes in GDP per capita.

Source: Eurostat/own calculations.

Countries: No. of NUTS 2 regions	(1) 2019 Improvement of 10 or more percentage points compared with 2008/2015	(2) 2019 Improvement or deterioration of a maximum of 9 percentage points compared with 2008/2015	(3) 2019 Deterioration of 10 or more percentage points compared with 2008/2015
Germany (DE): 38	4 / 1	30 / 34	4 / 3
Estonia (EE): 1	1 / 0	0 / 1	0 / 0
Spain (ES): 19	0 / 0	3 / 19	16 / 0
France (FR): 22	- / 0	- / 22	- / 0
Italy (IT): 21	0 / 0	3 / 21	18 / 0
Romania (RO): 8	8 / 6	0 / 2	0 / 0
Finland (FI): 5	0 / 0	2 / 4	3 / 1
Sweden (SE): 8	0 / 0	1 / 6	7 / 2

Looking at the overall picture back to 2008, apart from all Eastern European regions, the only regions that succeeded in improving their income positions significantly were Upper Palatinate (2019: 126 percent), Upper Franconia (114 percent), Berlin (123 percent) and Braunschweig (146 percent) (see column 1). The reasons for this cannot be identified across the board. This also applies to the few regions not losing (but also not gaining) in the period under review since 2008: Galicia (2019: 82 percent), Castilla y León (86 percent) and Extremadura (67 percent) in Spain; South Tyrol (155 percent), Puglia (62 percent) and Basilicata (75 percent) in Italy; southern Finland (99 percent), northern and eastern Finland (93 percent); and Övre Norrland (115 percent) in Sweden, for which no clear pattern of development emerges (see column 2).

Double social and spatial dualism

When socioeconomic differences are examined more closely at regional level, a clear dualism emerges between successful regions in and around cities that are integrated into global value-added chains and outlying regions that have either not been able to cope with struc-

tural change and suffer from the phenomenon of deindustrialisation or are highly rural and dominated by the agricultural economy. The transition to a service economy has promoted the formation and strengthening of regional centres in and around large cities that are responsible for a large part of the nation-wide economic momentum and value creation. This is where comprehensive educational opportunities (particularly opportunities for higher education) are concentrated, often in historically evolved structures – and where there is a variety of employment opportunities and a steady demand for labour shaped by economic activity. Here, infrastructure, public services and social benefits are usually well developed and life appears to be worth living and full of opportunities. The catchment areas of large and medium-sized cities are the biggest winners of the urbanisation process: in the respective country comparison, per capita incomes are highest on average and social problems are lowest. The drivers of economic momentum in the metropolises are modern industries integrated into global value chains, a knowledge-based service sector in the fields of finance and insurance, information and communications, and corporate and public service providers. Here, the transformation of the economic sectors and the acquisition of influence in the new European and global competitive

order that emerged in the last 30 years was achieved in an exemplary manner, mostly on the basis of existing foundations, for example in the form of university traditions and long-established companies.

The situation is completely different in peripheral regions: no large conurbations have emerged here; people live in small towns or in rural villages. However, rural regions are divided into those with traditionally average socioeconomic working and living conditions and those that have already fallen behind. The peripheral regions usually have a special economic history. They are areas that have seen a sharp decline in once important industries, such as mining in Germany's Ruhr region and textile manufacturing in Estonia's northeast, and obsolete industries in Romania's border regions, Italy's southern regions, France's northeast, and Germany's eastern states. In some relatively poor regions of Spain, Sweden and Romania, it is the loss of importance of agriculture as both a value-added sector of the national economy and, with the effects of automation and mechanisation, as a major employer. In these regions in Sweden, after manufacturing and agriculture, the public sector has also been sidelined as an important source of demand for labour since the 1990s. In the peripheral and less urbanised areas, far removed from the national average and even further from the prosperous metropolitan regions, educational opportunities are few and far between; in particular, university attendance is often not possible due to a lack of nearby institutions. Well-paid employment opportunities are therefore scarce, and infrastructure and public social services were either never comprehensively developed or are oversized reminders of better times that incur high upkeep costs. This is especially true in view of the low revenues of the public sector in line with the lack of economic momentum. At the same time, rising social costs, due to unemployment, an increasing risk of poverty and an aging society, are problems from which younger people have long since turned their backs in search of better prospects in other parts of the country.

There is almost nowhere in the peripheral regions that has managed the leap into service societies with-

out strong urban centres. This is not the case in areas with a high share of tourism activities, such as the Mediterranean regions of Spain, France and southern Italy, as well as national parks and wilderness conservation areas in northern Scandinavia. However, tourism is a double-edged sword: while it offers good employment options, the services demanded here fall into the service sector rather than the knowledge sector and are correspondingly low paid. Moreover, apart from city breaks, tourism is highly seasonal and has a limited impact on improving living conditions and economic momentum. During the pandemic, the certainty of temporary high employment had been shaken by restrictions on mobility and travel.

In view of the divergences between economically developed centres that are fit for modern service societies and global competition and peripheral regions that are less able to cope with structural change, we can speak of a double spatial and social polarisation. For the peripheral regions, a repetitive vicious cycle is evident: with the disappearance of industrial centres, without a designed transformation, what remains is only a concentration on the low-wage service sector, such as in tourism and/or agriculture. Low growth and poor educational opportunities lead to an exodus of well-educated and especially younger people, leaving the elderly and less mobile people behind. High unemployment often occurs in the context of disappearing industries; in agriculture and the service sector, employment is more erratic and in the case of tourism it is often seasonal. Local authorities are then quickly overwhelmed in the face of oversized, decaying infrastructure, the lack of higher education and employment opportunities that cannot be quickly remedied, the fight against unemployment and, as a result, rising poverty or social exclusion, in addition to the expanded needs for social and health services for older residents. Growing social and infrastructural maintenance expenditures and dwindling tax revenues are increasing public debt, with the result that urgently needed public investments cannot be made. Thus, no new economic momentum develops; in the long run, the municipality or county cannot

withstand the deterioration of social and infrastructural living conditions. This, in turn, makes the regions even more unattractive; those industries that are still left then finally relocate, and the exodus of people important for igniting new economic strength continues to increase.

Social policy agenda to 2030

European policy activities have recently focused on operationalising the NextGenerationEU fund, worth EUR 750 billion of Community debt, which was agreed in summer 2020. The centrepiece of this package is the Recovery and Resilience Facility (RRF), which will make grants and loans available to Member States on a project-related basis. Socioeconomic indicators are crucial in determining the level of funding provided, as is a detailed application by the Member State. The project descriptions, which most countries submitted to the Commission in 2021, include minimum quotas of projects relating to climate neutrality and the digital transition; countries were also mindful of the implementation of the European Pillar of Social Rights, proclaimed in 2017. The Member States were urged by the Commission to revise their Recovery and Resilience Plans (RRP) before these were approved by the Commission and Council. The first tranches were then disbursed in summer 2021. The European Semester acts as an instrument of coordination and surveillance to guarantee the management and monitoring of the Recovery and Resilience Facility between Member State and supranational level.

It is still too early to be able to assess whether the principles of the European Pillar of Social Rights have been given sufficient consideration within the framework of the Recovery and Resilience Plans or how they stand in relation to the priorities governing the green and digital transition. This will be an important task for the future, where the key question will be whether a new balance can be worked out between economic and social targets, or whether the old asymmetry of EU policy coordination will be continued in the innovative crisis instruments. With regard to the Eu-

ropean Semester, various social policy actors are already hopeful of a realignment of governance structures. This is based (1) on a reduced role for budget policies in the area of coordination due to the comprehensive infrastructural plans for the green and digital transition and the suspension of the Stability and Growth Package until the end of 2023; and (2) on the Commission's focus on social targets as announced in the Action Plan for the implementation of the European Pillar of Social Rights with the declaration at the Social Summit in Porto in May 2021 (Vanhercke and Spasova, 2021). In the Action Plan, which was approved by the Council in June 2021, the Member States undertook to achieve the ambitious targets by 2030. EU-wide, this should mean (1) an employment rate of at least 78 percent among 20- to 64-year-olds; (2) the annual participation of at least 60 percent of all adults in training courses; and (3) a reduction of at least 15 million in the number of people at risk of poverty or social exclusion. At the Council meeting of the employment and social policy ministers in June 2022, the Member States presented additional national targets for implementation in the three policy areas. From an aggregate view, these slightly exceeded EU requirements with regard to employment rate (78.5 percent) and poverty reduction (down by 15.6 million) but fell short of the target for adult learning participation (57.6 percent) (European Commission, 2022d).

Thanks to massive joint investment and support programmes during the pandemic, the EU succeeded in rapidly heading off the crisis on the labour market and in household income, thus distinguishing itself as a reasonably successful crisis manager – the difference with the austerity policies of the euro crisis is notable. In particular, the measures taken by the EU to safeguard employment should serve as a role model for future economic crises. The temporary instrument of short-time work schemes (SURE) could be continued within the broader framework of an EU unemployment reinsurance scheme.

Reducing social inequalities and supporting people who are particularly affected by precarious working and living conditions in the challenges that they face is now the responsibility of regulatory and coordinating Europe-

an social policy. In particular, this entails strengthening resilience in times of economic crisis, as is also reflected in regional development: economically developed centres may be more dependent on global economic fluctuations and initially more affected by the collapse in economic output than regions where the exposure and potential to be hit by a recession is low. However, while businesses hit in already stagnant regions and the accompanying rise in unemployment are difficult to repair, economic momentum in metropolitan areas that are structurally sound ensures that the crisis is quickly overcome. Viewed over time, the structurally weak regions thus lose more as a result of the economic slump than the structurally strong ones. It can therefore be assumed that the major economic crises of recent years have deepened the socioeconomic divisions from a territorial perspective also. In particular, the social consequences of the various crises – such as rising unemployment and a higher risk of poverty or social exclusion – can only be combated with considerable difficulty in less dynamic places. Here, the people affected see their only chance of changing their own situation in emigration, a decision that leads to new polarisations in the medium term, even in the metropolises.

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Europe's moment of truth on its way to the moon.

The EU's energy and climate policies are put
to the test. The result could be a genuine
Energy Union

Claudia Detsch

After the financial and euro crises and the coronavirus pandemic, the next moment of truth is approaching for the European Union. When meagre gas supplies have to be shared in winter, it will become clear as to whether Europe is capable of a truly European moment. Intra-European solidarity will be severely tested in the coming months. If we succeed in jointly cushioning the hardships and protecting both the population and industry, the current emergency plans could lay the foundation for further development into an Energy Union. There is no alternative to this if we are to position the European economy innovatively and competitively on the world stage in terms of a far-sighted structural policy, with a cutting-edge infrastructure and forward-looking industries.

However, if we don't succeed, in autumn there threatens a fatal round of mutual accusations and recriminations. Intra-European solidarity and joint efforts would fall by the wayside. The consequences for the EU would be catastrophic. Putin's plan would have succeeded, he would have used his war in Ukraine to simultaneously shoot the EU to pieces. It would be left weakened and vulnerable to further attacks for the foreseeable future. The EU prides itself on being at its best when it is under

pressure. If this is true, then we are going to face a real push towards integration. And it will be fuelled by a turnaround in energy policy.

In the future, committed and self-confident energy diplomacy will be needed externally, as will reforms internally. The structure of laws and responsibilities between the European Union and the Member States should be fundamentally rethought and reshaped. At the end of this process there must be a genuine 'Energy Union'. In the future, Europe's independence and sovereignty in terms of energy policy should once again set the course for common policy. This was the case in 1951 with the Treaty establishing the European Coal and Steel Community (ECSC) and in 1957 with the Treaty establishing the European Atomic Energy Community (EAEC).

The Importance of Russia for Europe's Energy Supply

Until now, we have assumed that energy policy should be guided by a strategic triad of objectives: security of supply, climate protection, and competitiveness. In

many countries, however, the markets were strongly geared towards competitiveness. Accordingly, governments and companies have relied on cheap Russian pipeline gas. There was a lack of strategic alignment in energy policy.

And thus, in the summer and autumn of 2022, the primary goal in Brussels and the capitals of the Member States is to reduce dependence on Russian natural gas. Unlike coal and oil, there is only a limited amount of timely replacement available from alternative providers. In the past, there was a lack of coordinated European energy policy. Consequently, at present, past negligence must be made up for under massively more difficult conditions. The intensive coordination of the Member States that is now necessary is not easy, because energy policy has so far largely been left up to the Member States themselves. Accordingly, they are positioned very differently. This is particularly evident with the current Achilles heel – the supply of natural gas.

Natural gas is supplied to Europe mainly via pipelines from Russia, Norway, North Africa, and Azerbaijan. Before the war in Ukraine, Russia was Europe's most important energy supplier, accounting for 41 per cent of natural gas imports. Natural gas enters to Europe via several main pipelines, such as Nord Stream 1, Yamal-Europe and Brotherhood. The rest is supplied from Norway, North Africa, Azerbaijan, and as liquefied natural gas (LNG) through LNG import terminals.

However, the degree of dependency on Russian gas varies greatly between Member States. Central and Eastern Europe are heavily dependent on energy supplies from Russia. Slovakia, Hungary, the Czech Republic and Bulgaria, for example, are almost entirely dependent on Russia. Before the war, Italy and Germany got about half of their natural gas from Russia. The Iberian Peninsula, on the other hand, is barely connected to the rest of Europe via gas and electricity lines and is therefore much less vulnerable in this situation.

The massive conflict between short-term needs and long-term goals

In addition to coal, many European countries are turning to the use of LNG in the current emergency in order to become independent of Russian natural gas. When compressed, LNG can also be delivered by tankers of liquefied gas from more distant countries. LNG now covers 9 per cent of demand. By 2030, this is expected to increase to 30 per cent. Poland, Spain, France, Belgium, Italy, Portugal, Greece, Great Britain, and the Netherlands are already planning to commission LNG terminals that can handle ships and there are likewise plans to regasify the LNG. On 20 March, Germany decided to speed up the construction of two LNG terminals, primarily to ensure the supply of gas from Qatar.¹

This is where the investments made in the European gas transport networks over the past decade are now paying off. Newer pipelines can be operated reversibly, i.e. flow in two directions. This means that Poland, for example, can now be supplied via the LNG ports in the North Sea and reduce its dependence on the traditional east-west pipeline.

In the short term, there is realistically no alternative in the EU to this expansion of LNG use and to falling back on the use of coal-fired power plants. At the same time, it is enormously important that the revival of fossil energy actually only apply to the current emergency; otherwise the climate policy goals will move further off into the distant future. Thus the task is to secure the supply now for the fragile present, while at the same time not prolonging the necessary bridge to the post-fossil age. European Member States must now build up logistics and infrastructure to quickly become independent of Russian gas, while ensuring that this infrastructure can continue to be used in the hydrogen age.

In the future, Europe can and must make greater use of the economic and geopolitical power it possesses as

¹ Available at: www.ipg-journal.de/rubriken/europaeische-integration/artikel/die-chance-in-den-truemmern-5973/

a social market economy with 450 million consumers. In addition, better use must be made of existing synergy effects. We need new and stronger intra-European alliances when developing new sectors of industry and production. Cooperative ventures in battery production or green hydrogen can only be the beginning.

The establishment of the EU Energy Platform in April 2022 is encouraging in this respect. This platform is intended to coordinate the voluntary joint purchase of gas, LNG, and hydrogen. This bundling of demand aims at improving the negotiating position with third countries in order to keep prices affordable and to secure the energy supply. Here, too, the priority is to get away from dependence on Russian gas. Many experts and politicians compare this initiative to the EU's previous experience in jointly procuring vaccines against COVID-19. In terms of structure, the European Commission has also launched an internal task force to support the EU Energy Platform, along with additional task forces to be set up at the regional levels. So far, the South-East Europe and the Central-Eastern regional task forces have been officially established. Regional task forces for North-West and South-West Europe and the Baltic States are to follow.

Boost or death blow for the European Climate Policy?

In terms of climate policy, it is currently difficult to assess what impact the war in Ukraine and the energy policy emergency will have in the medium term. Will the turbo of the European energy transition finally be ignited and the path to a climate-neutral future be embarked upon? After all, the oil crisis of the 1970s also brought a boost in environmental innovation. Or will the revival of coal finally put an end to hopes that the Paris Agreement, with its goal of limiting global warming to 1.5 degrees, will be enforced?

It is difficult to say right now how the Russian attack on Ukraine will ultimately actually affect climate change and the energy transition. At the moment, strangely

enough, both are emerging. Suddenly, even notorious sceptics such as the Polish government are singing the praises of renewable energies. Germany's liberal finance minister is even talking about "freedom energies". At the same time, coal-fired power stations are being stoked up again and the global fossil lobby is triumphing over their new bonanza.

This tension can also be observed at the EU level. On the one hand, there is an urgent need to implement the recently adopted REPowerEU plan, which aims to end Europe's dependence on Russian fossil fuels and accelerate the green transition. On the other hand, the 'Fit for 55' package still needs to be adopted. As part of the European Green Deal, the EU has set itself the binding target of becoming climate-neutral by 2050. As an intermediate step, it wants to reduce its emissions by at least 55 per cent by 2030. The applicable climate, energy, and transport-related legislation is to be adapted to the new reduction targets through the Fit for 55 package. The package also includes a number of new initiatives that ultimately follow the same goal of accelerating energy transition and contribute to the achievement of the climate-neutrality target.

The proposal to revise the Renewable Energy Directive is of central importance. According to it, the share of energy from renewable sources in the overall energy mix is to increase to at least 40 per cent by 2030. The current energy efficiency target at EU level is to be raised from 32.5 per cent to 36 per cent for final energy consumption and to 39 per cent for primary energy consumption.

In the area of the planned energy transition, the failures of the past are hitting Europeans with full force. The expansion of renewables has been neglected in many Member States; the fossil-fuel lobby has done a great job for itself. The desired ramping-up of the energy transition is now lacking two key inputs: raw materials and experts. These shortfalls are also likely to make it difficult to implement the Fit for 55 package. In order to do so, it is important to take massive countermeasures in the future. And in the social sector, too, there is a need to keep up with the speed of the proposed climate and energy reforms.

Climate and Social Policy as Two Sides of the Same Coin

Comprehensive reforms in the climate and energy sectors have a significant impact on social issues, for better or for worse, depending on how they are designed. There is now widespread agreement on this fact, even in Brussels. However, the social aspect is often not yet adequately addressed in EU legislation. Nevertheless, awareness of social issues and political risks has increased in recent years. In this sense, in the summer of 2022, the Council adopted a recommendation for a fair transition to climate neutrality. According to it, the people most affected by the climate-neutral restructuring of the economy are to be supported. The Member States are also called upon to give greater consideration to employment policy and social aspects of climate-neutral conversion in the future. Tax and social systems are to be fairer, in particular by shifting the tax burden away from the labour factor. However, there has been a lot of ‘should’ but very little ‘must’: the Member States are not legally obliged to implement these measures. As is so often the case, these are only recommendations.

However, at the same time there has also been progress. In June, for example, the European Parliament passed legislation to set up a Social Climate Fund (SCF). It is intended to help those most at risk of energy and mobility poverty to bear the higher costs of the energy transition. The SCF is directly linked to the European Emissions Trading System 2, which includes buildings and transport. The European Emissions Trading System (EU ETS) has been the EU’s central climate instrument since 2005. To date, the aim has been to reduce greenhouse gas emissions from the participating energy sector and energy-intensive industry and, since 2012, of intra-European air traffic.

The current expansion of emissions trading was to initially include all emissions – private and commercial – from trade and transport. But in the first half of 2022, criticism grew. In view of rapidly increasing energy prices, the members of Parliament balked at imposing fur-

ther burdens on the population. Therefore, initially only commercial buildings and commercial traffic are to be included. Private households and private transport are to follow in 2029.

This compromise convincingly illustrates the dilemma in which European parliamentarians currently find themselves. In order to achieve the 1.5 degree target, transport and housing should have been comprehensively included in emissions trading as a matter of urgency. In contrast to industry, emissions in the transport and buildings sector have hardly fallen in recent years. A steering effect via a gradual increase in the price of CO₂ would therefore be thoroughly desirable. However, the justified fear of the economic and social consequences caused by a further price increase made such a step seem politically risky and socially insensitive.

The Social Climate Fund is intended to redistribute more of the revenue from the auctioned allowances to poorer Member States, and in particular, to low-income households and affected micro-enterprises. According to current planning, the fund has a term of eight years. It will come into force in 2024. By 2027, the fund’s financial volume is expected to be around €16.39 billion; by 2032, the amount could rise to €72 billion. However, whether this sum will actually be reached depends on the next EU budget negotiations as well as on the question of whether private transport and buildings will also be included in the ETS in the future.

In order to gain access to the SCF, Member States must submit national social climate plans. In addition, they must also match the funds with an equal amount from national resources, including national revenues from the ETS 2 for road transport and buildings. The funds can be used for temporary direct measures to stabilise income, such as reducing energy taxes and fees to counteract the increases in transport and heating prices; and investing in building renovation, renewable energy, and the shift from individual travel to public transport, car-pooling, car sharing, and active transport such as cycling. Measures can include tax incentives, vouchers, subsidies, or interest-free loans. Moreover, in the national social cli-

mate plans, Member States will have to define which actions and investments are to be financed, the estimated costs, as well as milestones and targets. The Commission will then evaluate these plans. They will be approved only after a positive assessment of their relevance, effectiveness, efficiency, and coherence. The financial allocation will be disbursed only after the agreed milestones and goals have been achieved. However, many civil society and trade union actors fear that the stated amount mentioned will not be sufficient.

It's about the workers, stupid

In the debate over a fair design of the energy transition and industrial reorientation – the so-called just transition – the focus in Europe so far has been on the jobs that are in danger of being lost, for example in the coal sector or the automotive industry. Certainly, there must be support for these employees affected by structural change. However, in recent years we have paid too little attention to preparing the labour market and employees more comprehensively for the upcoming energy and industrial transition. As a result, we are now suffering in many countries from a shortage of skilled workers in many areas relevant to climate and energy policy, such as in the skilled trades, which are basic for energy-related renovation, and in energy consulting. In addition, in the future many jobs will be constantly changing in view of ecologization and digitisation; however, in Europe we have not made sufficient provisions for either education, apprenticeship or training-on-the-job.

The lack of qualified workers can slow down the entire energy transition. It is true that the EU as little say in labour market policy, as it is up to the Member States to shape it. But the EU can and must nevertheless act through incentives, offers, and pressure. And national governments must also devote greater attention to the issue. Companies need to know that investing in ecological projects and the training of the relevant specialists are worthwhile. And there needs to be a jobs offensive

explicitly aimed at women in order to create enthusiasm about working in the energy and climate sector. In the EU, just 19 per cent skilled workers in the IT and communications sectors are women. The proportion of female graduates in science, technology, engineering, and mathematics (STEM) is 33 per cent. Without qualified workers, the energy transition cannot be achieved – and certainly not accelerated.

In view of the decentralisation of energy production, small and medium-sized enterprises (SMEs) have a central role to play in the implementation of the energy transition. The EU is pursuing the ambitious goal of 90 per cent of SMEs achieving at least a basic level of digital intensity by 2030. However, many Member States are still a long way from achieving this. According to the European Commission's Digital Economy and Society Index (DESI), the best EU countries (Denmark, Finland, Sweden, Netherlands) are world leaders when it comes to digital performance, almost on par with the top-ranked US. Many other Member States are at best somewhere in the middle. It is urgent that an even greater divergence in digital development be prevented.

Energy remains at the heart of geopolitics

The energy transformation thrives on the application of new technologies. Value is no longer primarily achieved through a scarce resource, but through the use of technologies. Europe currently has advantages in technology leadership. These are in danger of being lost if other world regions establish more pragmatic regional value chains. Accordingly, it is important for Europe to involve neighbouring regions more closely in the future.

Energy has always shaped global geopolitics. This is not likely to change in the future. However, it will then be more regional, fragmented, and heterogeneous. Numerous armed conflicts in recent decades have been fought over access to fossil fuels – above all oil, the lubricant of the capitalist world economy. It may be that these international conflicts will decrease at some point. On

the other hand, internal conflicts over the use of water, land, and energy sites are likely to increase.

International energy relations are becoming much more heterogeneous. Compared to the fossil age, the energy world is becoming more regional. There are dangers inherent in this. Existing geo-economic rivalries and geopolitical fault lines around the world could intensify.

This also applies to the West itself. We are currently experiencing a West that is largely united in terms of security policy. However, it is divided on energy policy. The US is energy rich by any measure. Europe, on the other hand, will continue to be dependent on imports, and then of electricity from renewable sources and of hydrogen. In addition to the US, China is also expected to be among the winners of the energy transition. The People's Republic is rich in the metals needed for this transition, the so-called rare earths. And with foresight, it has built up and secured massive processing capacities.

If Europe wants to implement the energy transition quickly and relatively cost-effectively, it must engage with China and simultaneously reduce its vulnerable dependence. At the same time, the EU must be extremely careful not to become collateral damage to the growing tensions between China and the United States. The Europeans are in a difficult position, which has recently worsened dramatically because of the Russian war of aggression. The signs are increasingly pointing to competition – for added value, for raw materials, and for rare earths. Only by working together will Europe be able to keep up and assert its own interests.

Without raw materials, the desired energy transition is not possible. Accordingly, the raw material policy remains a core geostrategic issue. The Europeans are in a poor position when it comes to raw materials. Existing deposits have often not been mined for reasons of cost; importing was simply cheaper (and also less of a burden on the environmental balance sheet). But imports also create dependency – and hence, vulnerability. Here, too, the war in Ukraine and the resulting sanctions are exacerbating existing supply shortfalls.

There are alternatives to Russia as a source, in Africa and Latin America for example. So the industry need not fear a standstill – but it does have reason to fear higher costs. In addition, Ukraine is one of the few countries outside China with significant deposits of rare earths. This is one of the reasons why the EU included the country in the Alliance for Batteries and Raw Materials last summer. The aim is to become less dependent on China. Therefore, the diversification and securing of raw material sources as well as the development of its own deposits will have to be pursued in Europe with absolute vigour in the coming years – for the sake of the climate and security.

The power grid as the real network of power

Another major construction project for Europe is in the electricity sector. Electricity is not only central to energy policy: its importance is also growing in foreign and security policy. The energy transformation makes increasing electrification necessary. Worldwide, the share of electricity in the energy mix will grow accordingly. In the EU, the demand for electricity could increase by 40 per cent by 2050. International networking must be intensified in order to transport electricity efficiently and over longer distances. In synchronous power grids, security and prosperity are shared. The European power grid therefore urgently needs to be optimised, modernised, and expanded in order to meet this requirement. And the connection to the neighbouring regions must also be expanded.² Power grids are a question of geopolitical positioning. China has already understood this, as shown by the Belt and Road Initiative.

The spatial dimension of the grid thus increasingly follows the logic of linking ideal locations for renewable energies efficiently and in an integrated manner with the load centres. Due to the growing volatile generation of

2 Available at: www.swp-berlin.org/en/publication/geopolitik-des-stroms-netz-raum-und-macht

electricity from sun and wind, interventions in grid operation will multiply. Overall, the technical challenges for the security of system operation will increase. The institutional, regulatory, and market framework for joint system operation will have to be further adapted. Digitisation is also becoming more important in order to reliably and efficiently control the electricity grid and electricity trading. But digitisation also adds to vulnerability.

Europe's concentric circles

Europe faces an enormous challenge with regard to its cohesion. This also applies to the different rates at which the hydrogen economy is being expanded. Member States in southern Europe can now play up their locational advantages. Italy and the Iberian Peninsula are likely to become regional energy hubs and thus attain central importance for the European energy infrastructure. Greece is also in an important geopolitical position, as the eastern Mediterranean will host key energy corridors from Egypt and the Gulf States to Europe.

In the case of pure hydrogen, as with gas, geographic proximity and the pipeline distance are determining factors. The construction of this hydrogen infrastructure can be thought of in concentric circles, similar to the development of the electricity grid, comprising the EU plus neighbouring countries and regions: Great Britain, Norway, the Baltic Sea region, the Mediterranean region, and Ukraine after reconstruction. With regard to derivatives and liquefied, compressed hydrogen, more distant countries such as Chile, Australia, South Africa and the Gulf States are also in a good position, because transport by ship is possible. Europe should focus primarily on those potential partners who play by the same rules, and accordingly give preference to democratic states where this is possible. In the renewable energy world, such advantages can be exploited - in contrast to fossil energies.

Europe depends on creating a level playing field for electricity and hydrogen together with other major markets. It is therefore important to seek like-minded part-

ners to move forward together in shaping those markets. The EU needs to prepare for a much more protectionist and fragmented world that will negatively impact value and supply chains. And at the same time, it has to master the challenge of not furthering this development, but of acting cooperatively.

Getting the silent majority on board

However, Europe must also become more cooperative and open internally – otherwise there is a risk of trouble. Populist attacks and growing social polarisation do not stop at the energy transition. On the contrary, climate policy threatens to become the next ideological battlefield. The decisive factor for the success of the energy transition is the silent majority. To win them over, it is not enough to merely shoulder the burden fairly. The energy transition must also offer something to this majority and involve them. The barriers to the electricity market for small, local players and energy cooperatives must be eliminated; up to now, large capitalist players have been systematically given preference.

In addition, there is a need for early, informal involvement of the local population which is easily accessible and transparent, rather than procedures in which one can only get involved once the die has long been cast. Rural regions must benefit more. And cities should also make their contribution so that rural areas do not shoulder the burden alone. Through cooperatives, locals become prosumers - consuming producers and producing consumers. They contribute to the development of their region, the profits remain where the electricity is generated, and the energy transition is fuelled – if cooperatives didn't already exist, they would have to be invented for the energy transition. Now it is necessary to remove the hurdles in their way – and prevent new ones from being created at European and national level.

There is a need for extensive local contact points for interested, committed, and concerned people on site. There, they should find help with planning, for example,

the energetic renovation of their houses or the founding of local cooperatives. They should be networked with experts and craftsmen in the area and receive help through the jungle of possible financial support. Such contact points already exist in Europe – so far, however, primarily in wealthy, administratively well-positioned municipalities. But they are needed everywhere, they must be well staffed and financially equipped, and they must be able to act quickly.

The need for coherence and solidarity

The European Union is committed to fair competition. And the question of which subsidies and grants the European states are allowed to provide in their countries is decided at the European level. But if, for example, the limits for requiring a Europe-wide tender are set very low, then this slows down the implementation of small and medium-sized energy projects. And state aid policy must also allow leeway to support important projects. National and European regional and structural policy, research and technology policy, and the promotion of small and medium-sized enterprises must be used more consistently than in the past, as tools for the energy transition.

The energy and industrial transition in Europe must finally be thought of as a whole, and implemented consistently. Up to now, financial and administrative funding opportunities have been created in one place while new hurdles have been set up elsewhere through contrary regulations. Examples can be seen in the discrimination of decentralised energy projects of small and medium-sized entrepreneurs and cooperatives. The current draft for the green taxonomy also contains corresponding hurdles for smaller and decentralised projects. Therefore, in the future, an examination of all projects and legislative initiatives with regard to their climate policy significance and their role in the energy transition should be made mandatory.

Is climate-neutral conversion Europe's 'man on the moon moment', as Commission President Ursula von der

Leyen described it? That sounds right, and quite aptly describes the challenge and its epochal nature. But getting to the moon calls for cooperation. In order to undertake this European project and at the same time secure our energy and, along with it, our prosperity, we will need to work together and bring all our power to bear on this. It will only work with solidarity, cooperation, and everyone pushing in the same direction. The goal must remain a European Energy Union that integrates sustainable technologies across borders. We will therefore also need to take each other at our word in order to tackle the systematic restructuring of our energy systems and our economy, while not losing sight of the goal of climate protection.

In this sense, the EU emergency plan agreed by members at the end of July is an important signal. The plan calls for a voluntary 15 per cent reduction in national consumption between August and March, compared with average consumption over the same period in the past five years. If not enough is saved and there are widespread supply shortages, an alarm with binding savings targets can be triggered in the EU. While it is unlikely that the savings target of 45 billion cubic meters of gas originally planned by the Commission can be achieved under the current regulation - the chairman of the International Energy Agency, Fatih Birol, mentioned the target of 20 per cent that Europe would have to save in order to prevent a major crisis in winter – it is still an impressive move.

It is also appropriate that the German government is aiming for a higher national savings target than 15 per cent. After all, the plan is widely perceived as a solidarity mechanism in favor of Germany because the country is much more vulnerable than other member states. Although the heavy dependence on Russian natural gas is not a purely German problem, but rather a Central Eastern European one, Germany is strongly in the focus of this debate in Europe.

Failure of these joint efforts would have sent a devastating signal internally and externally. Putin is clearly aiming at a rift within the EU. That is why it is so important that there was an agreement. The task now is to

cushion the social and economic impact of the massive price increase. At the same time, greater financial incentives to save energy would also be necessary vis-à-vis citizens and industry.

List of Abbreviation

DESI	Digital Economy and Society Index
EAEC	European Atomic Energy Community
ECSC	European Coal and Steel Community
EU ETS	The European Emissions Trading System
LNG	Liquefied Natural Gas
SCF	Social Climate Fund
SMEs	Small and Medium sized Enterprises
STEM	Science Technology Engineering and Mathematics

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Politics in Europe: elections, changes and trends

Carlos Carnero and José Candela

Deciding in turbulent times

In March 2020, the Covid-19 pandemic triggered a period of global uncertainty and political, economic and social complexity that is still going on today. Indeed, it is not possible to predict when and how we shall return to a stability worthy of the name.

The disease dealt a sudden, swift and brutal blow, leaving an irremediable trail of loss of human life and suffering, and led to an economic and social crisis different to the one we now call the Great Recession.

This time, the problems did not arise from the excesses of finance capitalism, nor did they manifest themselves in the now famous risk premiums. The cause here lay in an exogenous factor that had brought economic activity to a standstill for months, disrupting production, consumption, employment, saving and global supply chains.

Because of that, and because of the lessons learned a decade ago, the response of governments was to steer clear of austerity and embrace Keynesian-style counter-cyclical policies, prioritising the role of the public sector in securing the goals of reviving economic activity and stemming the rise of unemployment.

It is fair to say that the European Union (EU) response to the crisis was particularly effective, with positive results across the board. The suspension of the Stability and Growth Pact, the creation of such innovative instruments as *NextGenerationEU* and joint debt issuance to fund it, among other decisions, would mark a turning point

between the two crises experienced by Europeans in the first 20 years of the 21st century.

The recovery of growth, the preservation of the framework of production and the protection of employment from the second half of 2020 through to early 2022 are testimony to the success of the European policy.

However, we must add that the global disruptions caused by the pandemic have eventually reared their head, particularly in the shape of rampant inflation, which has hit heights not seen for decades.

Inflation that has compounded the third major blow to the EU in just two years: the war in Ukraine. This has slowed the economic recovery that had been proceeding apace and brought major energy supply problems.

In addition, the inflation caused by the war has eased the return to the field of play of the economic hawks, who favour combating the phenomenon with sharp, swift interest rate hikes and a reversion to austerity, even at the expense of a recession and the consequent disappearance of businesses and jobs.

In the landscape shaped by the Keynesian policies mentioned above, the EU has enjoyed a political stability that has allowed the pro-European parties to maintain their ascendancy, averting, with some far from insignificant exceptions, the rise to power of anti-European and far-right alternatives.

In other words, the solid response to the pandemic and the economic and social crisis has ensured the normal functioning of democracy in extremely grave and

unfamiliar circumstances, averting social unrest and its exploitation by those who openly question European values to one degree or another.

National politics in the EU is extraordinarily diverse, and this is surely a virtue, not a vice. Within that diversity, over the course of 2021 and 2022 the great mass of citizens continued to lend their support at the polls to the majority political alternatives on the left, right and in the centre.

While it made by no means negligible gains, the far right failed to take power in France and illiberal governments have gone down in number, holding their ground with renewed vigour in Hungary, but falling in Slovenia.

However, the very notable exception was Italy, where a hard-right party won more votes than any other in the snap elections of 25 September, making Giorgia Meloni the president of the Council of Ministers. This brings a large measure of concern and possible instability to the whole of the EU. Concern that extends to Sweden, where despite victory for the Social Democrats the far right is now the second-largest party in parliament, proving essential to the forming of the conservative government and breaking the traditional “cordon sanitaire” agreed by the rest of the parties.

At the same time, it is true the business of national politics in the EU is probably more complex than ever, as illustrated by the large number of coalition governments or parliamentary minorities that remain in power thanks to confidence and supply arrangements of varying degrees of commitment.

In any event, until the fall of Mario Draghi, the eurozone’s four biggest economies were run by pro-European governments, firm champions of democracy and the values that make us who we are. This might appear so natural that we undervalue it, but one only needs to imagine Marine Le Pen in charge of France or see Giorgia Meloni leading Italy to grasp its importance.

Reality has borne out that the EU, that is, the values, liberal democracy and social market economy it embodies, are not only the most effective tool for solving society’s problems, but also for doing so in a sustainable manner.

In one way or another, with some exceptions, the elections and forming of governments we have seen in 2021 and early 2022 make it clear the mass of European citizens are of that same opinion, and they demonstrated this at the ballot box.

However, if the Union, national governments and the central banks fail to find a measured response to the economic consequences of the war in Ukraine, one with social content, we cannot rule out that a recession induced to contain inflation will end up validating the saying about the remedy being worse than the disease and that such a shift will ultimately benefit the extremists who are not in power today, but who could succeed in taking it (or already have done, in the case of Italy).

In a world where ideas appear to dissolve all too easily, we should not forget that political decisions are taken by men and women in material conditions provided, created by themselves. No matter how strong the EU is, getting it wrong at a time like this could have profound consequences that end up shifting the majority political balances towards radicalised or nihilistic responses that would have a direct impact on the welfare architecture we have built with great effort and consensus over decades.

The political correlation of forces in the EU member states

An unequivocal answer to the question which European political force is in the majority in the Union surely makes little sense, for various reasons.

True, the existence of European political parties is increasingly evident, their presence illustrated above all via the respective groups in the European Parliament, yet it is also true there are clear policy differences between their national members.

In addition, as we shall see below, the predominance of government coalitions of various types in most countries tends to dilute the political programme of the majority party in the deals struck to form and maintain them.

Still, if one thing can be noted it is that the much-proclaimed decline of European social democracy has failed to materialise.

Which might lead us to a second conclusion: its return has led to the recovery of a quite equal balance between the left, centre and right across the governments, similar to the one existing in the EU institutions.

While it will always be contentious to dryly classify the political orientation of the national governments, we could make an initial approximation of groupings as follows:

- **Left:** Spain, because both parties that make up the government are indisputably in that camp. However, we might also add, on the sole basis of ideology, those of Denmark and Portugal, where the governments have Socialist prime ministers.
- **Centre-left:** Denmark, Finland, Germany, Malta, Portugal and Slovenia, if we take into consideration that they all have Socialist prime ministers. All the same, their programmes are moderate or in some cases drawn up in coalition without the participation of clearly recognised right-wing parties.
- **Centre:** Austria, Belgium, Bulgaria (at the time of writing this chapter, with a caretaker government and elections held on 2 October), France, Luxembourg and Romania, because they are led by conservative or liberal heads of government.
- **Centre-right:** Croatia, Cyprus, Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, the Netherlands, Slovakia and Sweden (with an agreement on parliamentary support with the far right), in a space defined by the absence of socialists and the preponderance of the right, be it conservative or liberal, in a government formed by one party or in coalition.
- **Right:** Italy, on the one hand, and Hungary and Poland, the two Eurosceptic and illiberal governments in the EU, on the other, alongside which it would be entirely mistaken to place single-party conservative governments such as those of Cyprus and Greece, which are resolutely pro-European.

Better together than alone: the preference for government coalition in the EU

The figures leave no doubt: coalition is the preferred government formula in most EU member states.

Whether it is because of the need to form strong governments with a broad electoral, parliamentary and political base in the face of the economic and social emergency, the conviction that a cross-ideological approach aids stable government or because of the parties' own weakness, there are coalitions in a large majority of countries.

- **Government coalition:** Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark (that was the Socialist Democrat prime minister's intention at the time of writing), Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, and Sweden.
- **Single-party government:** Cyprus, Estonia, Greece, Malta and Portugal.

Of all the coalitions, only one (Spain's) is formed exclusively by leftist parties, while the rest -following the groupings in Section 2 of this chapter- are centre-left, centre, centre-right or right-wing.

Among the coalitions listed, there are three that could certainly be considered merely token, either because of the utmost proximity or the relationship of existential dependency between the parties that make them up, with one holding indisputable hegemony: those of France, Hungary and Poland.

Meanwhile, there is no grand coalition, that is, formed by the two largest parties in a country, one from the left and the other from the right, as in the German or Austrian tradition.

However, we can see that some coalitions could be classified as national unity governments, given their declared programme goals (tackling an exceptional situation) and the broad range of participants from all corners of the political spectrum.

We should also differentiate between the governments, be they in coalition or single party, with a parliamentary majority (in some cases thanks to external support arrangements) and those that are in a minority, namely:

- **Majority:** Austria, Belgium, Croatia, Czech Republic, Denmark (probably, if the prime minister's intention of reaching an agreement with other parties moves forward), Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden (thanks to parliamentary support formalised in an agreement with the far right).
- **Minority:** Bulgaria (where a snap election had been held, but no government had been formed at the time of writing this chapter), Cyprus, Estonia, France, Ireland and Spain.

The situation in many countries, of course, is fluid. In Spain, for instance, the government does not have a formally established majority via written agreements, but it is proving capable of assembling one on almost every vote, which affords it parliamentary stability.

Elections and forming governments in EU member states in 2021 and 2022

Below we list which countries held elections and/or formed a government in the last two years:

- **Austria:** a new government was formed in December 2021 with the participation of the People's Party and the Greens.
- **Bulgaria:** a government was formed in December 2021 comprising centrists, Socialists and Christian Democrats; a snap election was held on 2 October 2022, won without securing a majority in parliament by former conservative Prime Minister Boiko Borisov's Citizens for European Development of Bulgaria party (GERB). No government had been formed at the time of writing.
- **Cyprus:** elections in May 2021 resulting in the continuation of the one-party, Christian Democrat government in power since 2013.
- **Czech Republic:** elections in October 2021 and the forming of a government in December that year, made up of Eurosceptic conservatives, Christian Democrats and greens.
- **Denmark:** snap elections on 1 November 2022 with victory for the Social Democrats, an absolute majority for the leftist bloc and certain re-election for the acting prime minister (who has expressed her desire to govern in coalition with the rising Moderates party).
- **Estonia:** one-party liberal government formed in January 2021.
- **France:** presidential and legislative elections in April, May and June 2022. A government was formed around President Emmanuel Macron on 4 July with the participation of liberals and social democrats
- **Germany:** elections took place in September 2021 and a three-party government comprising Social Democrats, Greens and liberals was formed
- **Hungary:** elections in April 2022 and the forming of a government in May with the Eurosceptic nationalist right and Christian Democrats
- **Italy:** a government was formed in February 2021 under the presidency of the independent Mario Draghi comprising right-wing nationalists League, the populist Five Star Movement, centrists Together for the Future (a splinter group from the Five Star Movement), the socialists of the Democratic Party, the Christian Democrats of Forza Italia, the liberals of Italy Alive and eco-socialists. The government collapsed in July 2022 and a general election was held on 25 September, with victory for the far right (the party to garner more votes than any other) and the forming of a right-wing government made up of Brothers of Italy, League and Forza Italia.
- **Malta:** elections in March 2022 resulting in the continuation of the single-party Labour government.
- **Netherlands:** elections in March 2021 and the forming of a government in January 2022 with conservative liberals and centrists and Christian Democrats.
- **Portugal:** elections in January 2022 resulting in the continuation of the one-party Socialist government in March.
- **Romania:** forming of a government in November 2021 with Social Democrats, Christian Democrats and the Hungarian minority
- **Slovakia:** formation of a government in April 2021 with Christian Democrats, conservatives, nationalists and liberals.

- **Slovenia:** elections in April 2022 and the forming of a government on 1 June comprising eco-liberals, socialists and eco-socialists.
- **Sweden:** elections in September 2022 and the forming of a centre-right government in October with the parliamentary support of the far right.

We would like to point out the political denominations attributed to each party mentioned in the above list try to follow their alignment in the European Parliament. However, the unique characteristics of each national party always make strict classification open to debate in certain cases.

Conclusions: an exemplary democracy

It is not for us to make recommendations in this chapter. But we certainly can draw some conclusions:

1. The European political landscape is extraordinarily varied in national terms, which responds more to the dynamics of each country than to community dynamics, however influential these may be.
2. Although the severe turbulence triggered by the pandemic, the economic crisis and the war in Ukraine have yet to spark global systemic movements in the European political landscape overall, they have indeed had an influence on governments and parliaments of certain member states: Italy and Sweden, though we must underscore in both cases the rise of the far right is largely a product of domestic political factors.
3. The overall balance of political forces in general terms still gravitates around four big families: conservatives, socialists, liberals and greens, as is the case in the European Parliament, not forgetting the significant advance of the far right in countries such as Italy, France and Sweden.
4. That means that in both the European Council and the Council of the European Union the traditional majority pro-European political affiliations (Christian Democrats, Socialists and Liberals) retain a near monopoly on decision-making. Without doubt, the rise of the far right to the presidency of the Council of Ministers in Italy introduces a far from negligible new factor, the practical consequences of which we shall have to determine in the coming months.
5. The same could be said of the European Commission if we take into consideration the political inclination of its members, without forgetting the specific nature of the College of Commissioners, of course.
6. Eurosceptic and illiberal governments like those of Poland and Hungary remain in power (though clear differences have arisen between them over the war in Ukraine), without the capacity to determine the European agenda.
7. However, we must be very much aware that any exacerbation of the economic and social consequences of the war in Ukraine (low growth, inflation, problems with supply, unemployment) could cause serious problems for the EU and for the governments of the member states, in the shape of instability. Beyond a majority unity in defence of international law and European values in the face of the Russian invasion, the extent of society's resilience to a slowdown in the recovery, first, and a recession, after, will likely have a direct impact on governments.
8. At present, the capacity to strike agreements among the parties is a product of the parliamentary arithmetic for forming a government in many EU countries, but it should extend to a broader consensus in the face of the challenges ahead.
9. Isolated issues aside, democracy in the EU continues to set an example in terms of its functioning and effectiveness, though there is always room for improvement.
10. That democracy must be protected from any distortion in the rule of law in a member state of the Union, not only through its constitutional checks and balances, but also from the EU institutions, as the Commission is doing in compliance with its functions, with the support of the European Parliament.

All of which can be summed up in three major trends: the strength of European democracies, the in-

creasingly difficult containment of the far right -which has pierced through directly in Italy and indirectly so in Sweden- and the resistance -though far from easy- of social democracy.

Yet one major issue remains: the real consequences for the governability of the EU of the forming of a government in Italy headed by Meloni's far right with

the participation of Salvini's populists and the right of Berlusconi.

Note: this chapter drew on the authors' own sources of information and material from the Barcelona Centre for International Affairs (CIDOB) and the Elcano Royal Institute.

The shortfall of the European migratory and asylum policy

Paloma Favieres

It seems paradoxical that after several attempts to address a migratory and asylum policy announced back in 2015, seven years later this report is still analysing what happened to these proposals and the present and future situation brought about by lack of drive and progress in the most relevant matters.

In the midst of negotiations, the invasion of Ukraine demonstrated that there is another way of addressing the matter, based on a framework of solidarity and shared responsibility, a million miles from the decisions taken when thousands of refugees arrived in 2015.

The response from European Union Member States to increasing arrivals in 2015 once again demonstrated the need to set up a protective and effective Common European Asylum System. It also showed that we are painfully far from achieving this. The legislation and guarantees have not been harmonised, which means that asylum seekers and refugees are treated differently by each State. Furthermore, we witnessed Member States' lack of solidarity or shared responsibility in crisis situations.

There have been several attempts to reform this common European asylum system (CEAS). None of the documents proposed in 2015 and 2016 by the European Commission to move this matter forward was approved during Jean-Claude Juncker's term of office, which ended on 30 November 2019. Although the European Parliament and Council reached a political agreement on several of these proposals, no agreement was reached on the reform of the Dublin Regulation and the Regulation on Procedures. On the other hand, in 2018, the Commission proposed a rework of the Return Directive

that achieved partial agreement from the Council in 2019.

In this context, the European Commission presented a New Pact on Migration and Asylum in September 2020. This New Pact reworked several former proposals by suggesting that agreements should be reached on negotiations that were already gaining ground and proposing new elements with a view to resolving urgent questions on migratory policy and European asylum that had arisen over the last few years.

The proposals in this New Pact on Migration and Asylum have been debated in the European Council and Parliament since their publication, without reaching any type of substantial agreement, except in relation to the European Union Agency for Asylum (EUAA) and the Blue Card for highly qualified workers. In 2021, the European Parliament and Council did manage to agree on new rules for entry and residence of highly qualified workers from outside the EU by virtue of the review of the EU Blue Card Directive.

The Blue Card agreement was a key objective for the Commission regarding the New Pact on Migration and Asylum. The new system brought in efficient rules to attract highly qualified workers to the EU, including more flexible admission conditions, improved rights and the chance to move and work more easily between EU Member States. The European Parliament and the EU Council should still formally confirm that political agreement by adopting the EU Blue Card Directive. Once the Directive has been formally adopted, the Member States will have two years to transpose the regulations to their national legislation.

In addition, on 9 December 2021, the Council finally adopted the Regulation creating the EU Agency for Asylum, which aims to improve how the EU's asylum policy is applied by converting the current European Asylum Support Office (EASO) into an agency in full right. The proposal for the European Commission pact maintained the 2016 proposal on the Regulation on the EU Agency for Asylum and the debate on this issue was revived. The Presidency of the Council and the European Parliament reached a provisional agreement on 29 June 2021. The Council formally adopted the Regulation on 11 November 2021. The Agency's objectives focussed on optimising how the Common European Asylum System worked, improving the operative and technical assistance it provides for Member States and targeted greater convergence regarding how international protection applications are assessed. The new Agency is therefore the second legislative proposal to be applied within the New Deal, following agreement on the EU Blue Card Directive in May 2021.

Negotiations on the remaining legislative proposals roll on in the European Parliament and Council.

- The proposal for Regulation of the European Parliament and Council addressing situations of crisis and force majeure determines a Migration Governance framework (EU-wide and national), includes the Dublin Regulation and determines a response mechanism for solidarity in the case of migratory pressure and for arrivals after Search and Rescue. The solidarity mechanism implies relocation, return sponsorship and/or developing skills such as tools to let Member States show their solidarity. Agreements are sought on major issues, such as among the numerous amendments presented by different political groups on the Dublin Regulation, including the relevance of "entry criteria" and the solidarity mechanism determined in the Regulation. The aim was to determine a position for the European Parliament before the summer of 2022.
- The modified proposal of the European Parliament and Council Regulation determining a common procedure for international protection focussed on a new selection procedure, selection criteria for asylum seekers that will be channelled towards the border asylum procedure; time frames for border asylum and return procedures, the obligation involved; fiction of non-entry; detention and flight risk; right to an effective appeal; suspensive effect of the appeal and guarantees of fundamental rights. Member States are still divided on the compulsory nature of the border procedure.
- Proposal for a regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders (pre-screening). The main points of this Regulation refer to the fiction of legal entry, the control mechanism, the reasons for detention, the relationship between screening and the Directive on reception conditions and legal appeals.
- Proposal to modify the Eurodac Regulation. The most controversial questions revolve around the use of biometric data, personal data protection and the regime that is applicable to so-called "security flags", and the role of EU agencies. Positions differed between the conflicting stances from Eastern Member States, more focussed on screening issues and Mediterranean Member States, more interested in solidarity mechanisms.
- European Parliament and Council Regulation Proposal regarding the situations of crisis and force majeure in the field of migration and asylum. The Crisis Regulation plans for a system beyond the migratory presence with the possibility that the Member State under crisis pressure—in consultation with the EC—diverges from the regular asylum tradition, which can lead to extended border procedures and further solidarity mechanisms, particularly relocation. It also outlined arrangements for the case of force majeure, specifically longer time frames to register applications, for the paperwork to determine the responsibility of an asylum-seeker and to transfer these applicants to the responsible Member State, and to apply the solidarity measures undertaken by the Member State affected by the Regulation.

The current situation therefore demonstrates that Member States are facing major challenges, but this requires consensus concerning blockages on issues such as the definition and scope of solidarity mechanisms, the border procedure and the application of pre-screening, the position of countries that are on the front line of arrivals and that require a balance between solidarity and shared responsibility, all from a protection framework which requires maximum respect for fundamental rights.

Various countries maintain their different stances on procedures and solidarity. In this respect, Spain and other countries on the European Union's southern border have opposed several of the proposed measures, deeming that these measures do not resolve questions on the division of responsibilities and the principle of solidarity that were raised in the 2015 crisis, and they do not reflect the southern countries' interests.

In the last meeting in February 2022, the Home Affairs and Migration Ministers from Spain, Italy, Greece, Cyprus and Malta backed a common strategy, in line with the "step by step" focus backed by the French President of the European Union, that allows gradual progress, respecting the principles of responsibility and solidarity, to support actions that boost the exterior element of the migratory policy, in line with the Spanish hypotheses and conclusions from the European Council meetings in June, October and December 2021 so that *"Prevention in origin and transit countries should be a real cornerstone for the European Pact on Migration and Asylum."*

In June 2022, these countries met up once again, asking that the French Presidency's solidarity proposal be used to help border countries and that agreements should be reached on relocation. At this meeting, they once again supported the Pact's gradual approach.

The French Presidency of the Council expressed its intention to drive negotiations on reforming the Schengen Borders Code and the new Asylum and Migration Pact. President Macron proposed a "gradual approach" or "progress in stages" to unblock the New Pact, adapting any front-line elements of the Pact where political agreement was easier. This is contrary to the "package

approach" that the European Parliament backed in negotiations during the previous term of office. Spain, Italy, Greece, Cyprus and Malta (MED5) defended a common position to follow the gradual focus proposed by the French Presidency. They agreed to allow this "gradual progress" as long as it respected the principles of responsibility and solidarity and supported actions on the external dimension of the migratory policy and strengthening European partnerships with the main countries of origin and transit for migrants. The French Presidency hoped to come to an agreement between March and June 2022.

On 10 June 2022, after the Council meeting, some agreements (or some heads of terms) were forged to set up the "step by step" agreement, specifically regarding the Regulation on the *pre-entry screening* mechanism, Regulation on EURODAC and on the solidarity mechanism. Many countries emphasised that this was the first time they were really talking about solidarity and making a commitment to it. However, there seemed to be no tangible development, and any progress in operations (specifying commitments defined by Member States) would come from subsequent meetings with the Commission. In this way, adoption of the negotiation mandates on the two aforementioned regulations will be formalised shortly.

Regarding the proposal for relocation, 12 countries have committed to setting up relocation systems (including France and Germany). Countries that do not accept relocation will have to provide direct economic support to the most affected countries, without involving a European fund. A large majority of Member States are in favour of this first stage of approving the Pact relating to the external dimension (solidarity and responsibility) and they have warmly received the flexibility of the mechanism and the fact that relocation is not the only instrument of solidarity. Some countries such as Austria, Hungary and Poland are against the French Presidency's proposal. For Austria, this proposal sends out all the wrong signals to people traffickers.

Some proposals were received after the Council meeting. The French Presidency wishes to get at least

10,000 people relocated every year, until a more permanent system can be established. For the time being, according to EU diplomatic sources, Germany has committed to receiving 3,500 people, France 3,000 people and Portugal and Ireland 350 people each. The government of Luxemburg committed to relocating migrants but has yet to provide any figures. Cyprus, Greece, Italy, Malta and Spain have super-imposed relocation on their agreement regarding other aspects of EU asylum reforms (security, external borders, etc.).

In turn, the Council adopted a general approach to the Schengen Code, and so continues its negotiations with the European Parliament. The Parliament has also adopted its own position on the topic, in other words, the positions of both parties have remained fixed. The content of the internal border system reform points towards the following main aspects: 1. The fight against instrumentalization of migratory flows; 2, Management of external borders in the case of health crises, 3. Reintroduction of internal controls and promotion of alternative measures. Regarding the fight against instrumentalization of migrants, the general focus highlights that the affected States can take measures to limit entry and preserve security in their own territory, that might include building fences along their borders, as one example. Each State can choose to undertake this construction, in fact, some Member States have already decided to do it.

From 1 July onwards, France passed the baton on to the Czech Republic, which took over the EU Council Presidency for the next six months. Among its achievements, France has called for a political direction to be taken with the "Schengen Council", better management of our borders with revision of the Schengen Borders Code and improved management of migratory flows towards Europe.

In this context and following the invasion of Ukraine, negotiations were interrupted in the light of the largest exodus of refugees since World War Two.

The response from the European Commission was immediate. On 2 March 2022, the European Commission proposed to activate the Temporary Protection Directive

to offer fast, effective assistance to persons fleeing the war in Ukraine. The Commission also presented operating directives to help national border guards effectively manage arrivals at Ukrainian borders. On 3 March 2022, the EU ministers (Council of Justice and Home Affairs) unanimously agreed to establish a temporary protection mechanism in response to the large number of displaced persons from Ukraine.

Execution Decision (EU) 2022/382 of the Council, on 4 March 2022, established the existence of a massive affluence of displaced persons from Ukraine as a consequence of an armed conflict in the sense of article 5 of the Temporary Protection Directive (TPD - Directive 2001/55/CE) and with the effect of introducing temporary protection.

Subsequently, the European Commission published operating directives to help Member States apply the Temporary Protection Directive on 21 March. It particularly emphasised minors, the need to immediately designate a legal tutor or representatives for unaccompanied children and teenagers, guarantee free circulation and help repatriate anyone who does not have the right to remain in the EU.

In turn, on 23 March 2022, the European Commission (EC) published a report containing a series of measures to help Member States cover the needs of people who are fleeing, protect children, provide access to education, access to healthcare, access to employment and access to accommodation and housing. A Solidarity Platform was also set up to bring together Member States and EU agencies to coordinate support for any Member States that require it.

An extraordinary meeting of the EU Home Affairs Council was held on 28 March 2022, The EC presented a 10-point Action Plan to coordinate people throughout the EU who were fleeing Ukraine: setting up a European platform for registration, European transport coordination measures, support to improve Member States' reception capacity, developing contingency plans for medium-long term reception, creation of common solutions to protect children, approval of a plan to detect

any possible signs of trafficking, European-level coordination of the support for Moldova, coordination with contacts from international partners (USA, UK, Canada), addressing the security threats derived from the war in Ukraine and providing States with sufficient economic and material resources. Finally, it should be mentioned that as well as private economic support emerging to respond to the consequences of this crisis, several lines of European financing have been set up for this purpose such as CARE (Cohesion Funds).

Spain's response to the application of the Council's decision on TPD, regarding people who might access temporary protection, included persons displaced from Ukraine from 24 February onwards and Ukrainian residents who were in Spain when the conflict broke out and have not been able to return. Furthermore, both cases include Ukrainian nationals living in Ukraine and nationals of third countries living in Ukraine (with a valid legal residence permit: permanent or student), with their families, who cannot return to their country of origin, and Ukrainians who were already living in Spain although illegally.

In addition to this procedure to access the documentation, state and regional authorities are coordinating to respond to the flows of arrivals. Some primary reception and primary welcome centres for Ukrainians, CREADE, have been opened in Madrid and Alicante. These centres perform the initial reception and orientation process, emergency housing is provided; care and documentation; and they are derived to reception resources. The CREADEs have registered 72,566 people, up to 15th July. Furthermore, the reception network has been extended from 9,000 places to around 21,000 places. Regarding the arrivals: although it is difficult to quantify this figure, it is estimated that 130,160 persons have arrived from Ukraine (130,071 of these people already have temporary protection).

The immediate response and the measures adopted contrast with the situation in 2015 when each country chose to act in their own interests, even with unilateral measures such as closing their national borders. In

their summits, the European Council and the EU Council demonstrated this separation, difference in policies, lack of coordination and disagreement. The victims of this disagreement, the lack of joint response from the 28 states at that time, were the refugees. On 13 May 2015, the European Migration Agenda was adopted, which involved two packages of measures at the end of May and in early September. Its proposals included relocation of asylum-seekers from Greece and Italy and resettlement of refugees from third countries. Greece became an enormous refugee camp, with immediate and unprecedented consequences in the recent history of Europe.

Back then, CEAR activated the Temporary Protection Directive to award temporary protection in the case of massive affluence of displaced persons and as a way of encouraging a balanced effort among the Member States. However, there was no qualified majority in the Council to be able to come to an agreement, and they only agreed on relocation of asylum seekers from Greece and Italy, with a poor degree of compliance from most states and refusal from the Visegrád group of countries and resettlement of refugees from third countries.

The Johansson Commission highlighted the conviction and unity of all states on this occasion, considering it a challenge to receive more than one million people who might have left Ukraine in these first few days, although it alleged that the EU was "in a better position than in 2015 and decisions were made in record time."

Consequently, CEAR wonders how many deaths might have been avoided in the Mediterranean and how much suffering, damage, suicide and desperation might have been spared in those terrible 'camps of shame' on Greek islands such as Lesbos.

Today, we are proud to see how the focus of the European Union response to people fleeing Ukraine matches its foundational values, although we still feel **impotent and indignant** when we see that, unfortunately, **the same treatment is still not being given to others** in very similar circumstances.

Consequently, now is the time to assess the reception and protection experience offered to people fleeing

Ukraine, to demonstrate to the European Union and its Member States that there are two ways of managing migratory asylum policies: one which is dreadful, causing death, suffering and not actually stopping people who need to flee from arriving while lining people traffickers' pockets; and another effective, human way that manages arrivals, reception and protection much more agilely, positively and efficiently, without criminalising refugees, who have experienced misfortune enough to be forced to leave everything behind and flee their homes.

The European Union's management of the crisis in Ukraine in terms of reception and protection demonstrates the urgent need for there to be a change in the focus of migratory and asylum policies, as soon as possible. To date, these policies have mainly highlighted security-based aspects, iron-clad control of borders and

trying to stop people arriving, even though it has been demonstrated that this focus is unsuccessful, erratic and unkind.

Consequently, we should highlight this experience to demand that these best practices should be transferred to build a common focus, prioritising solidarity and shared responsibility from all member countries. The institutional message to whoever was fleeing and needed shelter was key to generate a feeling of empathy with Ukrainians, leading to a spectacular show of citizen solidarity.

Opening the borders of the surrounding countries, solidarity from other States, evidence that if there is political intent, the response will not just be focused on the emergency, so developing instruments from the Pact should be laying the foundations for a joint structural migratory and asylum policy.

The Rule of Law Situation in the European Union

Francisco Fonseca Morillo¹

Introduction

“The rule of law is fundamental to a stable, resilient, fair and democratic political, economic and social environment across the EU. It is essential to a well-functioning Single Market and to the Union as a whole. It is also a reflection of Europeans’ aspirations and values, enshrined in Article 2 of the Treaty. (...) A vibrant, forward-looking EU transitioning to a greener, more digital and more socially just society needs to continue being built on firm foundations. The Russian invasion of Ukraine is a reminder of the pressure on our cherished EU values. Protecting our citizens and their rights needs a determined and consistent defence of the rule of law across the EU”.

This conclusion, expressed in the European Commission’s third annual report on the Rule of Law in the European Union, sums up perfectly the central role that respect for the values of Article 2 of the Treaty on European Union (TEU) plays in the EU’s political, legal and economic landscape², an importance that is likewise confirmed by European citizens themselves, 82% of who said so in the last Eurobarometer on these matters³.

And within these values, respect for the concept of the rule of law, which has been embodied in nation states

through time not always in a uniform manner and with particular characteristics, has on an EU level an identity of its own common to all the Member States, based on three fundamental ideas: the principle of legality; effective judicial protection; and the guarantees enshrined in legal certainty.

The collective defence of the rule of law in the EU forms part of the Union’s central agenda and is crucial for citizens and businesses, committing all public powers to adjusting their action to the rule of law and individuals to obtaining an effective remedy from impartial and independent tribunals regarding their rights and legitimate interests, to which end regulations and legal acts must conform to the requirements of generality, predictability and prohibition of acting arbitrarily⁴.

The rule of law in the EU is our specific way of struggling for law, paraphrasing Von Ihering, at a time when democracy and its values are being subjected to processes of erosion resulting from nationalisms and populisms that are finding growing electoral support. Faced with this situation, we cannot renounce the law in favour of peace, because it is “contrary to the very essence of law; if (...) it should prevail, law itself would be destroyed since it preaches fleeing before injustice, while law only exists by resisting it”⁵.

1 Tenured professor of Public International Law at the University of Valladolid and Director of the Institute of European Studies at the Uva.

2 Communication from the Commission on the rule of law situation in the European Union of 13.07.2022. COM(2022) 500 final, p. 32.

3 Eurobarometer 508 on values and identities of EU citizens (2021).

4 Martín Rodríguez, Pablo: *El Estado de Derecho en la Unión Europea*. Madrid 2021, p. 25.

5 Von Ihering, Rudolf: *La lucha por el derecho*. Buenos Aires 2018, p. 24.

Reasons for taking action

The concept of the rule of law is not exclusive to the EU, it is a concept of universal validity, as every member state of the United Nations recognised at the World Summit in 2005, under the section “Democracy, human rights and rule of law” and, on a European level, we have a complete “check list” drawn up by the Venice Commission in 2016⁶.

In addition, the EU, in this context, applies this concept in its partnership and cooperation agreements with third states as a shared commitment to democratic principles, human rights and the rule of law, a commitment that results in the promotion of these principles in multilateral fora and in mutual coordination in the advancement of these principles in international relations⁷.

Having said that, how has our *acquis* on the subject been constructed?

The reference to the values of democracy, respect for fundamental rights and primacy of the rule of law have implicitly formed part of every advance in the political construction of the EU, as such important milestones as The Hague Summit of 1969 or the solemn Declaration of Stuttgart of 1983⁸ demonstrate, yet we had to wait until the Treaty of Maastricht in 1992 for this to be enshrined in the current Article 2, just at the birth of the European Union with an explicitly political purpose, making respect for them a *condicio sine qua non* to become a member of the EU, as appears in the current Article 49 of the TEU.

It was the intention of the drafters of the Treaty of Maastricht to have a “Magna Carta” of values common

to all the states and to the EU itself. It would serve programmatic purposes rather than as a series of principles that would require specific and regulated protection in the club of the most advanced democracies on a global scale, beyond the need to carry out an in-depth “screening” of how the countries of Central and Eastern Europe recently incorporated into the European family after the fall of the Berlin Wall and the candidates for EU accession conformed to these values⁹. However, reality soon began to demonstrate that there had to be a binding mechanism that allowed sanctioning cases where the values of Article 2 of the TEU might be breached.

This was the origin of Article 7 of the TEU, introduced in its present form in two phases. First, in the Treaty of Amsterdam in 1997, when a mechanism of sanctions was established in the event of the “determination of the existence of a serious and persistent breach by a Member State of the values mentioned in Article 2”; and, second, with the addendum in the Treaty of Nice in 2001 adding the current Paragraph 1 of Article 7 with the clear purpose of blocking the drift towards a breach of Article 2, as it consists of determining “the existence of a clear risk of a... breach”.

If an infringement procedure was incorporated into the Treaty of Amsterdam as a kind of nuclear option that would never come to be used, because it stands as a deterrent in itself, the forming of a coalition government in Austria in late 1999 with the participation of the far-right and populist party FPÖ, raised the issue that a populist and, to use a current term, “illiberal” drift was not just a theoretical exercise but a situation that could actually arise in any state. And in the face of such an event the infringement mechanism devised in Amsterdam did not provide a solution, since there was no “serious and persistent” breach, but a “clear” risk. That is why those who drafted the Treaty of Nice considered it essential to create a preventive mechanism not bound by the shackles of

6 Both references appear in the document by the Venice Commission of the Council of Europe: *The Rule of Law check list*. Strasbourg 2016.

7 See by way of example Article 6 of the Partnership Agreement on Relations and Cooperation Between the EU and its Member States, of the One Part, and New Zealand, of the Other Part, concluded on 5 October 2016 and entered into force on 21 July 2022, following the deposit of the final instrument of ratification. BOE 27 July 2022, p. 107414.

8 To follow the course of this aspiration towards European Political Union, a fundamental reference continues to be, Truyló y Serra, Antonio: *La integración europea*. Madrid 2000.

9 This resulted in the so-called Copenhagen criteria, determined by the European Council in 1993 and today incorporated into Article 49 of the TEU. Riches, Christopher and Pamowski, Jan: *Copenhagen criteria*. <https://www.oxfordreference.com/view>.

unanimity that would block the drift towards a breach, in the belief that it would suffice.

And, indeed, during the first decade of the 21st century it seemed that this “nuclear deterrent” was enough. However, as in the story by Monterroso, “the dinosaur was still there”. And one of the consequences of the financial crisis of 2008 was a return among part of public opinion to nationalism and identity as opposed to global cosmopolitanism, as well as to the perception of a wider social gap in terms of inequality¹⁰.

Faced with this drift, over the last 10 years the EU has equipped itself with a **“tool box”** designed to furnish the concept of the rule of law in the EU with its own protection, with full respect for identity and national traditions, but ensuring respect for the common values. Without a global vision of their own, our values and interests would be in jeopardy, both from the viewpoint of the EU’s own constitutional model, in which one can only be a party if the values of Article 2 are respected, and of the cohesion and functioning of our single market in a space without borders. As European Commission President José Manuel Durão Barroso said in his annual State of the Union address to the European Parliament in September 2012: “We need a better developed set of instruments, not just the alternative between the ‘soft power’ of political persuasion and the ‘nuclear option’ of Article 7 TEU”¹¹.

The tools available

The EU has equipped itself with a more complete set of instruments over the last few years, as can be seen in these infographics (**Figures 1 and 2**)¹², combining **promotion (1), prevention (2) and response (3)**.

Apart from certain specific programmes, such as the cooperation and verification mechanism, or the support for structural reforms, or the financial support for civil society organisations, in the second decade of the 21st century two tools of a horizontal nature have served to take a very precise picture of the mechanisms of judicial independence in the states that enabled safeguarding the principle of effective judicial protection and the battle against corruption: the European Semester, which since 2011 has included specific recommendations on justice systems and the fight against corruption as necessary for economic growth; and the Justice Scoreboard, which since 2013 has logged comparable data on legal and business operators’ perception of the independence, quality and efficiency of national justice systems¹³.

Clearly, all these tools form part of what in 2012 President Barroso called “the soft power of political persuasion”. However, given the intrinsic difficulties of employing Article 7 of the TEU if persuasion fails to work, as its implementation depends on unanimity, prompting agreements and political coalitions of interests, on 11 March 2014 the European Commission, in its role as “guardian of the Treaties”, took a step towards a “firm hand” with the adoption of a **Rule of Law Framework** via the previously mentioned Communication. The Commission can activate this Framework “in cases where the mechanisms established at national level to secure the rule of law cease to operate effectively, there is a systemic threat to the rule of law and, hence, to the functioning of the EU (...). In such situations, the EU needs to act to protect the rule of law as a **common value of the Union**”¹⁴. This Framework was the response to debates in the Council and in the European Parliament over the course of 2013, inviting the Commission to take action.

The Rule of Law Framework is used to activate a process prior to the triggering of Article 7 TEU, allowing

10 Castellá Andreu, Josep M. and Simonelli, Marco A. (editors): *Populism and Contemporary Democracy in Europe*. Cham 2022.

11 Cited in the Communication from the Commission 11.3.2014 (COM (2014) 158 final) A new EU Framework to strengthen the Rule of Law, p. 2.

12 https://ec.europa.eu/info/sites/default/files/116_1_194503_rol_toolbox_factsheet_en.

13 Communication from the Commission 27.3.2013 (COM(2013) 0160 final) The EU Justice Scoreboard A tool to promote effective justice and growth.

14 See note 11, p. 5.

Figure 1. Promotion of the rule of law & Prevention of problems



Figure 2. Response



the Commission to engage in dialogue with the state where there are threats of a systemic nature, based on the principle of loyal cooperation and via a structured exchange in three phases: an initial one of preliminary assessment on the part of the Commission, followed

by a formal opinion in which the state in question is asked to carry out a series of changes and which concludes with a set of formal recommendations issued to it by the Commission. If they are not satisfactorily met on time by the state, they allow the Commission

to request the launch of Article 7 of the TEU¹⁵. The following infographic describes this process in more detail (**Figure 3**)¹⁶.

Unfortunately, this mechanism soon ceased to be a theoretical tool with the forming of the Law and Justice party government in Poland in late 2015 and its attacks on the independence of the judiciary following the adoption of the law that changed the composition of and method of appointment to the Constitutional Tribunal, as well as the duration of the terms of its President and Vice-President.

The Commission triggered this new framework in January 2016 and, given the lack of progress in the dialogue and in following the Commission's recommendations on the part of the Polish government¹⁷, on 20 December 2017 the Commission formally proposed to the Council the launching of an infringement procedure against Poland in accordance with the provisions of Article 7.1 TEU "determining that there is a clear risk of a serious breach of Article 2". The proposal was based on two points: on the one hand, the absence of an independent and legitimate monitoring of constitutionality and, on the other, the adoption by the Polish parliament of new legislation pertaining to the judiciary, which raised serious doubts about judicial independence, thus posing a systemic threat to the rule of law in Poland¹⁸.

Currently, this procedure continues to languish in the Council, despite being formally launched and with several "hearings" already having been held with the Polish government, as Article 7.1 requires, in the face of Hungary's position of opposing it in return for a similar reciprocal stance on the part of Poland, given that, in parallel, on 12 September 2018 the European Parliament adopted a Resolution, proposing to the Council the launching of an Article 7.1 procedure against Hungary, based on systemic attacks on judicial independence, corruption and conflicts of interest, and violations of various fundamental rights¹⁹, which also remains ongoing in the consultation phase with the Hungarian government²⁰.

Moreover, in view of this situation, the Commission has refrained from launching the procedure in other possible cases, to be precise, against Malta and Romania in 2018, which has led a good part of observers to describe it as "a framework devoid of substance"²¹.

The Commission was aware of the limits of this Framework as "pre-Article 7" action on launching it in 2014, should there be a lack of political will in the Council to trigger the article²². It was intended to be a preventive dialogue that would allow the Commission to "bolster its position and case" in a strategy of "name and shame", leaving the door open to addressing specific situations that might be tackled via infringement procedures and procedures of control over the use of

15 And all in spite of the doubts of the Council's legal service about the Commission's capacity to launch a "pre-Article 7 procedure", considering it *ultra vires*. See Louis, Jean-Victor: *Respect de l'état de droit et protection des finances de l'Union*. Cahiers de Droit Européen 2021 n° 1, p.5. As the author himself mentions, in parallel to the "Framework" in the strict sense of the term, in December 2014 the Council decided to establish an annual dialogue of its own on the rule of law among all the Member States, a dialogue that lasted until 2019, when, in the face of the lack of consensus among the states, the dialogue was suspended.

16 See note 12.

17 Commission Recommendation (UE) 2016/1374 of 27 July 2016 regarding the rule of law in Poland. OJEU L 217 of 12.08.2016, p. 53. This recommendation contains a comprehensive and chronological monitoring of how this first application procedure of the Rule of Law Framework was carried out.

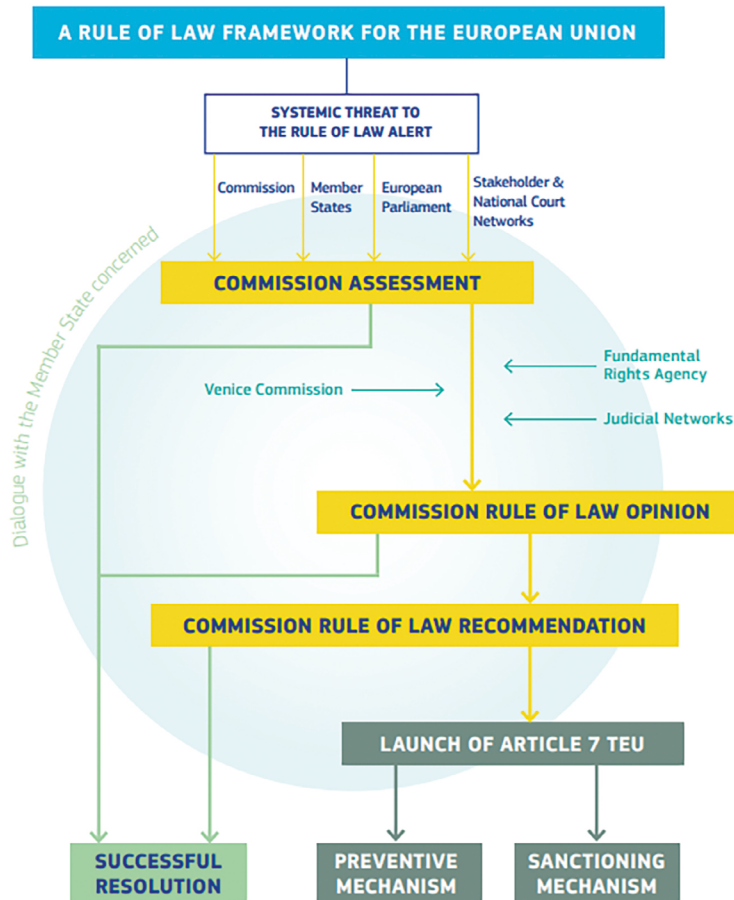
18 Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017) 0835 final of 20.12.2017).

19 European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131 (INL)). OJEU C 433 of 23.12.2019, p. 66.

20 For a detailed analysis see: Waelbroeck, Michel et Oliver, Peter: *La crise de l'état de droit dans l'Union européenne: Que faire?* Cahiers de Droit Européen 2017, p.329.

21 For a good inventory of the limits of the EU's "tool box" on this matter, see in particular: Maurice, Eric.: *Protecting the check and balances to save the Rule of Law*. European Issue n° 590, 06/04/2021, Fondation Robert Schuman.

22 For a more detailed analysis of its use as an instrument of soft law, but one that is inadequate if the "repeat offender" state refuses to cooperate and/or remedy see: Kochenov, Dimitry y Pech, Laurent: *Better late than never? On the Commission's Rule of Law Framework and its first activation*. Journal of Common Market Studies 2017, p. 1062.

Figure 3. A rule of law framework for the European Union

European funds, in an extensive interpretation of the concept of protecting the financial interests of the EU.

Thus, the EU's tool box **for responding**, where prevention and warning are not enough, has incorporated, along with the specific procedure of Article 7 TEU, in pursuit of, to use President Barroso's words from 2012 again, having suitable "nuclear option" instruments:

- an ambitious policy of judicial review by the Court of Justice of the EU to prevent or sanction threats or breaches brought about by the action of the institutions of a state that is contrary to the proper functioning of the principles of the rule of law at national level and

- a new system of budget conditionality covered by the need to safeguard the EU's financial interests when the effective legal protection of those interests is in jeopardy because of attacks on the independence of national judicial systems.

However, before entering into an analysis of the two, it would be good to first make mention, even if chronologically it was introduced later, of the so-called **Rule of Law Mechanism** that complements the idea underpinning the Rule of Law Framework, since it does not consist of a structured bilateral dialogue between the Commission and a state suspected of threatening the values of Article 2 TEU, rather it establishes negotiated

and multilateral cooperation between European institutions, governments, parliaments and national judiciaries, as well as with civil society, through a yearly cycle steered by the Commission.

This Mechanism was proposed by Commission President Ursula Von der Leyen in her opening statement to the European Parliament on 16 July 2019: “Threats to the rule of law challenge the legal, political and economic basis of how our Union works. Ensuring the respect of the rule of law is a primary responsibility of each Member State (...) Strengthening the rule of law is a shared responsibility for all EU institutions and all Member States. [...] I will ensure that we use our full toolbox at European level. And I support an **additional comprehensive European Rule of Law Mechanism, with an EU-wide scope and objective annual reporting** by the European Commission. The monitoring approach will be the same in every Member State”²³.

This Mechanism, on a yearly basis, has existed since 2020²⁴, is divided into 27 chapters structured around four pillars, and follows the outline displayed in the infographic below (**Figure 4**)²⁵, basically consisting of an initial phase in which the Commission sends written questionnaires not only to the state powers, but also to civil society (1); based on the replies received the Commission organises visits to all the states (2); and finally it writes up its annual report on the rule of law, with, for the first time in 2022, a series of recommendations for the states (3).

True, this Mechanism, like the Framework, has been designed as a preventive instrument and it includes no formal obligation for the states to follow up on the recommendations gathered in the annual report. However, it represents added value with regard to the Framework,

as it is not a procedure that can be seen as preparation for triggering Article 7 in a bilateral dialogue, rather it is a multilateral dialogue that seeks to take the most precise picture possible of the positive and negative developments on safeguarding the rule of law in the EU states, supporting the efforts of the states, underscoring the positive developments and identifying where improvements must be made.

Moreover, this Mechanism aims to become a successful example of “peer evaluation” as the European Semester already is, focusing on the rule of law situation and, through the recommendations, on a fundamental methodological instrument, in extreme cases, to trigger the new response mechanisms that, apart from a hypothetical use of Article 7, enable sanctioning the offending state: via the judicial review of alleged infringements of the values of Article 2 TEU and through the new financial conditionality mechanism.

Returning to the two instruments that the EU has available to it to target and sanction action at national level that prevents the rule of law from functioning properly on a domestic level, thus impacting the EU as a whole, the Commission, as the guardian of the Treaties (Article 17.1 TEU), and the Court of Justice as guarantor of respect for the law in the interpretation and application of the Treaties (Article 19.1 TEU), have become the two main battering rams that, despite initial scepticism over their powers to intervene, have breached the barrier of respect for “national identities and their fundamental structures, political and constitutional” (Article 4.2 TEU).

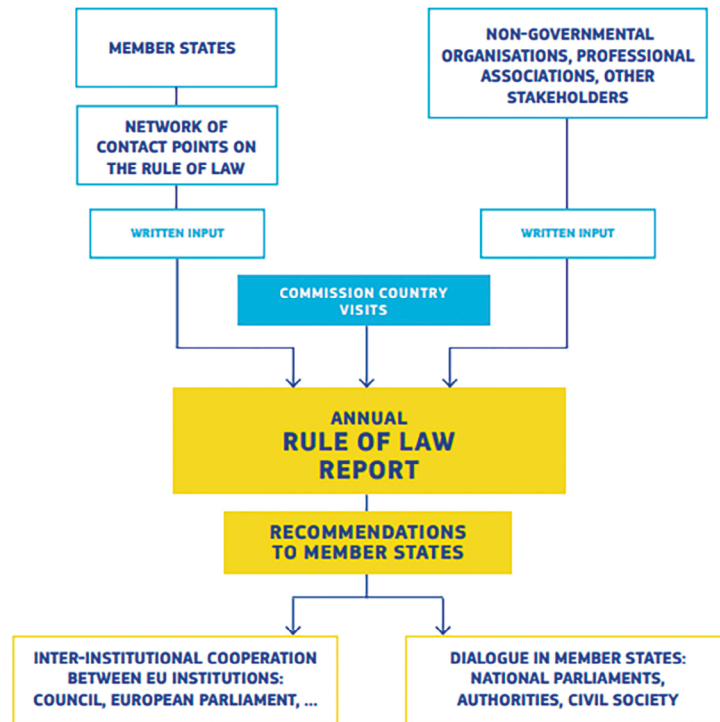
With regard to the establishment of a policy of **judicial review by the Court of Justice of the EU** to prevent or sanction threats or infringements caused by the action of the institutions of a state that are contrary to the proper functioning of the principles of the rule of law at national level, the starting signal was the Court of Justice judgment of 27 February 2018 on the request for a preliminary ruling C-64/16²⁶, relative to whether the salary reduction measures applied to Portuguese mag-

23 Von der Leyen, Ursula: *A Union that strives for more. My agenda for Europe. Political guidelines for the next European Commission 2019-2024*. Strasbourg 2019.

24 Communication from the Commission (COM(2020) 580 final of 30.9.2020: *2020 Rule of Law Report. The rule of law situation in the European Union*.

25 See note 12.

26 Judgment *Associação Sindical dos Juizes Portugueses*. (EU:C:2018:117).

Figure 4. How the european rule of law mechanism works**HOW THE EUROPEAN RULE OF LAW MECHANISM WORKS:**

istrates by unilateral imposition of other constitutional powers or bodies were contrary to the principle of judicial independence.

In this judgment, by declaring the matter admissible the Court made an interpretation of Articles 19 TU and 47 of the Charter of Fundamental Rights, based on the premise that it falls to the national courts to provide effective legal protection in the areas covered by EU law, including respect for the values of Article 2 TEU, and that for this judicial protection to be effective, it is essential to preserve their independence, which means: "... that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever (...) it is thus protected against external interventions or pressure liable to impair the

independent judgment of its members and to influence their decisions"²⁷.

With this ground-breaking interpretation, it could be no surprise that, based on it, the Commission decided to open a fresh channel with regard to the protection of the rule of law against Poland through infringement procedures (Article 258 and 260 TFEU), alleging the failure by Poland to fulfil its obligations as far as respect for the values of Article 2 TEU were concerned, owing to changes in the law enacted on the judiciary that, by undermining its independence, affected the obligations that rest with Poland by virtue of the Treaties. In a way, it was the bullet in the chamber, following the absence of progress

27 C-64/16, paragraph 44. An excellent analysis of this line from the Court of Justice can be found in Campos Sánchez-Bordona, Manuel: *La protección de la independencia judicial en el Derecho de la Unión Europea*. Revista de Derecho Comunitario Europeo 2020, n° 65, p. 11.

in the Article 7.1 procedure against Poland launched in December 2017 and which was already enunciated in the Communication of 2014 on the Rule of Law Framework as a complementary channel.

Thus, on 15 March 2018 the Commission brought an action on the grounds of nonfulfillment against Poland for the reduction in the retirement age for judges of the regular courts (C-192/18) and the assignment to the Minister of Justice of the discretionary power to extend (or not) their judicial function beyond the age of retirement, followed by another action on 2 October 2018 over the lowering of the retirement age for the judges of the Supreme Court and the assignment to the President of the Republic of the discretionary power to extend (or not) their judicial function beyond the age of retirement (C-619/18).

Of the two cases, the Court gave priority to the latter for procedural reasons, ending in the judgment of 24 June 2019²⁸, where the Court rejected the arguments of the Republic of Poland, which claimed that the controversial national rules bore no relation to EU law, with the Court arguing instead that the Polish Supreme Court may be required to settle matters linked to the application or interpretation of EU law and that, therefore, it is subject to the demands of effective legal protection already explained in the case of the Association of Portuguese Judges. In this respect, the judgment emphasises the issue of the perception of litigants, which requires dispelling “any reasonable doubt as to its neutrality with respect to the interests before it”²⁹. In conclusion, the Court ruled against Poland for failure to fulfil its obligations to respect Article 2 TEU; as it also did in case C-192/18³⁰.

The outcome of this case law reprehending Poland and declaring the legislation on lowering the retirement age of judges and the discretionary power over extensions of judiciary tenures to be contrary to EU law, apart from being confirmed once again as far as the discipli-

nary procedure for judges is concerned by the judgment of 15 July 2021 in Case 791/19³¹, has led to several requests for preliminary rulings being lodged by Polish judges and in the face of which the Court of Justice has been consistent in its responses, also adding a direct attack on the composition and method of appointment of the Disciplinary Chamber of the Polish Supreme Court in charge of hearing matters relating to the compulsory retirement of magistrates, considering that in its powers and because of how it is appointed the Chamber does meet the requirements of being an independent and impartial court, with abundant support from European Court of Human Rights case law³². In addition, this case law has been consolidated in relation to other preliminary references, from Romania in particular³³.

And, finally, this development of case law has culminated with case C-204/21 in which the Commission has launched a fresh infringement procedure after considering that the new legislation introduced in 2019 modifying the powers of the Disciplinary Chamber of the Supreme Court does not conform to the case law laid down primarily in the previously mentioned 585/18 (A.K./National Council of the Judiciary). Case 204/21 is still sub judice, but the Court has given a further twist to the EU’s response capability by imposing, via an edict from the Vice-President of the Court on 14 July 2021, interim measures consisting of the suspension of the application of the legislation modified in 2019 and, following Poland’s failure to comply, via a new edict from

31 Judgment *Commission/Poland* of 15 July 2021 C-791/19 (EU:C:2021:596).

32 See in particular the judgments *A.K./National Council of the Judiciary and C.P. and D.O./Supreme Court of Poland* in the accumulated matters C-585/18, C-624/18 and C-625/18 (EU:C:2019:98) of 19 November 2019; *A.B. and e.a./National Council of the Judiciary* of 2 March 2021 C-824/18 (EU:C:2021:153). Also the judgments *W.Z./SCAP-TS* of 6 October 2021 on compulsory transfer of judges C-487/19 (EU:C:2021:798) and *W.B. & X.A./Prokuratura Krajowa* of 16 November 2021 on secondment of judges 748/19 (EU:C:2021:931).

33 For an excellent run-through of all this anthology of case law see: Ulloa Rubio, Ignacio: *La primacía del Derecho de la Unión en materia de Estado de Derecho: un repaso a la jurisprudencia del TJUE sobre la independencia judicial*. La Ley. Unión Europea nº 104, June 2022, p. 1.

28 Judgment *Commission/Poland* C-619/18 (EU: C:2019:531).

29 C-619/18, paragraphs 74, 85 and 86.

30 Judgment *Commission/Poland* C-192/18 (EU:C:19:924).

the Vice-President on 27 October 2021, it has imposed on it a daily penalty payment of 1 million euros since 15 July 2023³⁴, a penalty that continues to be enforced awaiting correct implementation of the judgment by Poland, deducting the amounts from the financing of funds and programmes of the EU budget allocated to Poland.

In the year 2021/2022 we have seen that the EU has specific weapons to respond to threats or attacks against the values of Article 2 TEU. And here the new **budget conditionality** regulation stemming from the need to protect the EU's financial interests when effective legal protection is in jeopardy because of attacks on the independence of national judicial systems, and which is the latest instrument in the EU's "tool box", has been fundamental.

Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget³⁵, the legal basis for which is Article 322 TFEU, had been proposed by the Commission on 2 May 2018, when it presented its legislative proposals for the Multiannual Financial Framework 2021-2027³⁶. The rationale for this proposal appears on the first page of this Communication, where it states: "Effective respect for the rule of law is a prerequisite for confidence that EU spending in Member States is sufficiently protected (...) Considering the link between the respect for the rule of law and mutual trust and financial solidarity amongst Member States of the European Union, and that control mechanisms cannot be effective unless supported by an effective application of administrative and legal control and remedies in the case of wrongdoing, existing obligations to ensure effective control systems should be supplemented by measures to ensure respect of the rule of law".

Therefore, "In order to protect the Union's financial interests from the risk of financial loss caused by generalised deficiencies as regards the rule of law in a Member State, the European Union should be granted the possibility to adopt appropriate measures in such cases".

This Regulation was adopted by ordinary legislative procedure following lengthy negotiations, chiefly with Poland and Hungary, and addressing the initial doubts of the Council's legal service over whether the Commission was not acting *ultra vires* in order not to apply the Article 7 TEU procedure³⁷.

Despite certain reservations, and focusing basically on the fact that it is a measure for guaranteeing that EU funds are invested in the intended purpose: improving the lives of the people who live and work in the EU countries, and it is not, as the proposal of 2018 intended, an instrument to be applied in cases of generalised deficiencies as regards the rule of law in Member States, this Regulation is without doubt the most innovative instrument the EU has to be able to respond to threats against and breaches of the values of Article 2 TEU, especially after the Court of Justice judgment of 16 February 2022 dismissing the actions for annulment against Regulation 2020/2092 brought by Hungary and Poland³⁸.

I base this on the rationale of a system in which, as stated in points 7,8 and 9 of the Regulation: "respect for the rule of law is an essential precondition for compliance with the principles of sound financial management enshrined in Article 317 of the Treaty on the Functioning of the European Union (TFEU) (since) sound financial management can only be ensured by Member States if public authorities act in accordance with the law (...) and are subject to effective judicial review (where) the independence and impartiality of the judiciary should always be guaranteed..."

34 Orders C-4204/21 R (EU:C:2021:593) and C-204/21 R (EU:C:2021:878), respectively.

35 OJEU L 433 of 22.12.2020, p. 1.

36 COM(2018) 324 final. *On the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*.

37 For a detailed analysis of these negotiations see: Louis, Jean-Victor: op. cit., p. 7 and ss.

38 Judgments in the cases 156/21, *Hungary/European Parliament and Council* (EU:C:2022:97) and 157/21 *Poland/European Parliament and Council* (EU:C:2022:98).

In addition, the Regulation is furnished with a definition of what is understood by the rule of law in its sphere of action: “The rule of law’ refers to the Union value enshrined in Article 2 TEU. **It includes the principles of legality** implying a transparent, accountable, democratic and pluralistic law-making process; **legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection**, including access to justice, by independent and impartial courts, also as regards fundamental rights; **separation of powers; and non-discrimination and equality before the law**. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU (Article 2.a.)”.

With regard to the functioning of the conditionality mechanism established in the Regulation, this is not the place for a comprehensive review, for which I refer to the recent work by Alberto DE GREGORIO MERINO³⁹, rather I would simply like to highlight four points:

- **Circumstances that enable its activation.** According to Article 4.1, these circumstances are: the breach of one of the principles of the rule of law (laid down in Article 3: independence of the judiciary, arbitrary decisions by public authorities, or limiting the channels of legal remedies); and that they affect or seriously risk affecting the sound financial management of the EU budget in a sufficiently direct way.
- **Criteria on the measures to adopt.** These measures, which according to Article 5 may consist of the suspension of payments or commitments, of disbursement of instalments already approved, or of the suspension of programmes, must be adopted, as regards their size and importance, in accordance with the criterion of proportionality determined in light of the real or potential impact, their duration and the gravity of the breaches of the state in question (Article 5.3)

- **Protection of the final beneficiaries of programmes or funds.** This was one of the most controversial subjects of the negotiations, but as Point 19 states: “It is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of breaches of the principles of the rule of law”. Article 5.2 of the Regulation resolves the issue by establishing that when a measure is imposed on a state, its authorities are still responsible for ensuring the fulfilment of the financial obligations towards final recipients or beneficiaries.
- **Procedure for adopting measures.** According to Article 6 of the Regulation, this begins with a written notification sent by the Commission to the state concerned, setting out the factual elements and specific grounds that have led it to find that the conditions set out in Article 4 are fulfilled, following which it enters into a dialogue with the authorities of the state for a maximum period of three months. If the Commission ultimately concludes that the required circumstances exist and that the state has not proposed remedial measures, it submits a proposal for an implementing decision to the Council, after giving the state an extra month to conform, an implementing decision that the Council must adopt by qualified majority within a maximum period of three months⁴⁰.

We can conclude by stating that this Regulation has been the object of highly complex compromises and the establishment of a great many formal requirements in order, above all, to avoid the threat of Poland and Hungary vetoing the Regulation determining the Multiannual Financial Framework, which, in accordance with Article 312 TFEU, requires the unanimity of the Council.

Proof of that were the decisions adopted by the European Council in its meeting of 10 and 11 December 2020, reflected in the conclusions under the heading “Multiannual Financial Framework and Next Generation

39 De Gregorio Merino, Alberto: *El nuevo régimen general de condicionalidad para la protección del presupuesto de la Unión*. Revista de Derecho Comunitario Europeo 2022, nº 71, pp. 11 and ss.

40 These measures shall be lifted following the same procedure as for their adoption, in accordance with Article 7 of the Regulation.

EU”⁴¹. They take note of the Commission’s decision to develop and adopt guidelines on the way in which the Regulation must be applied, as well as a methodology for carrying out its assessment, in close consultation with the Member States. In addition, in the event of the presentation of an action for annulment, as was the case in view of the bringing of separate actions by Hungary and Poland on 11 March 2021, it was decided that the guidelines would be finalised after the judgment of the Court of Justice⁴².

It was the bringing of separate actions for annulment by Hungary and Poland⁴³ alleging: the lack of an appropriate legal basis; that the use of Article 322 TFEU was purely instrumental to circumvent the procedure laid down in the Treaties, that is, Article 7 TEU, thus exceeding the powers conferred on the EU and infringing the principle of legal certainty, that led to the possible application of this Regulation being suspended throughout 2021, until the Court of Justice flatly rejected the allegations of the two applicant states on 16 February 2022⁴⁴.

Because of that, following the judgment of the Court, which is not open to appeal, not just procedurally but also from the point of view of legal foundation, this Regulation can now become a binding and operational instrument for ensuring that infringements of the rule of law do not go unpunished in the EU for political reasons and understandings between states. If the Court of Justice has spent years fully performing its function as guarantor of respect for Union law with the consolidation of a case law that sets the limits of the political noncompliance of the states on matters relating to the infringement

of the values of Article 2 TEU, this Regulation will allow the institutions to assume their responsibilities applying our well-known “community method”.

The situation in 2022

To conclude this study, 2022 can be considered the starting point for a much more proactive policy with more appropriate instruments to defend the rule of law resolutely and coherently in the EU.

In this respect, three developments in the institutional life of the EU must be the elements that mark this change of course in 2022:

- The implications of the judgment pending from the Court of Justice on Case 204/21, Commission/Poland.
- The development of the budget conditionality mechanism following the Court of Justice judgment of 16 February 2022 dismissing the actions for annulment brought by Hungary and Poland.
- The implementation of the recommendations to the states in the third annual report on the Rule of Law in the EU of 13 July 2022.

On the first point, little more can be said on the resolve shown by the Court when it comes to imposing a penalty payment on Poland with retroactive effect from 15 July 2021 of 1 million euros a day. Awaiting the final judgment, anticipated in the first quarter of 2023, this demonstrates that we have an effective weapon and a consolidated case law to impose penalties for breaches of the values of Article 2 TEU, even though it has procedural requirements in keeping with the concept of “fair and impartial trial” and it limits its effects to the specific case being judged.

However, it is no accident that on 15 July this year (that is, two days after releasing the annual report on the rule of law in the EU) the Commission should have opened two infringement proceedings against Hungary at the Court of Justice for discriminating against LGBTIQ people and for restricting the freedom of the

41 EUCO 22/20.

42 For an expansion of this political decision by the European Council see: LOUIS, Jean-Victor: *op. cit.*, pp. 15 and ss.

43 See note 38.

44 For further expansion, apart from the previously mentioned article by De Gregorio Merino, Alberto, see the commentary by Fernández Rozas, José Carlos in his blog: <https://fernandezrozas.com/2022/02/16/mecanismo-de-condicionalidad-que-supedita-el-acceso-a-la-financiacion-de-la-union-al-respeto-por-parte-de-los-estados-miembros-de-los-principios-del-estado-de-derecho-stj-gs-16-febrero-2022-asunt/>

media and the right of Klubrádió to use the radio spectrum⁴⁵, alleging Hungary's direct failure to fulfil its obligations regarding the protection of the values of Article 2. True, the Commission has referred Hungary to the Court in around a dozen cases over the last 10 years for infringing European rules on, for example, non-discrimination, failure to respect the freedom to provide services in the field of education, or for being contrary to the principles on matters of migration policy, but unlike in the case of Poland this is the first time that the Commission has targeted Hungary directly for breach of Article 2 TEU.

As far as the application of the financial conditionality mechanism is concerned, the Court judgment of 16 February upholding the legality and proportionality of the mechanism established by Regulation 2020/2092, it introduces a kind of macro-conditionality by recalling that "compliance by a Member State with the values contained in Article 2 TEU is a condition for the enjoyment of all the rights deriving from the application of the Treaties"⁴⁶.

And its effects have been felt at once, since on 27 April this year the Commission adopted the guidelines and the methodology for applying the Regulation, in accordance with the commitments undertaken with the European Council in its session on 10 and 11 December 2020, taking into consideration the judgment of the Court⁴⁷ and, pursuant to Article 6.1 of the Regulation, finding reasonable grounds to open the conditionality procedure, it sent Hungary formal notification of the factual elements and specific grounds on which it based its findings. Currently, the Commission is in discussions with the Hungarian authorities, based on its observations/responses to the findings of the Commission, over how to find a satisfactory solution for both parties, without

which the Commission should submit a proposal for an implementing decision to the Council with the appropriate measures.

With regard to the annual report on the rule of law in the Union 2022⁴⁸, this third report maintains the methodology and structure introduced since the first report in 2020, that is, 27 chapters resting on four pillars.

Based on a qualitative assessment of the positive and negative developments relative to the 2021 report, this year the report contains certain new features, covering fresh topics such as public service media outlets (1); and includes a review of the most relevant European Court of Human Rights case law as regards the rule of law (2).

However, the most important new feature consists of including a series of specific recommendations for each of the EU states, with the declared objective of helping the states in their efforts to undertake reforms, underscoring positive developments and pinpointing necessary improvements. This will enable, in the next report in 2023, an assessment of the implementation of the recommendations.

How are the main recommendations set out?

Justice systems reforms⁴⁹

The report notes that justice system reforms with a view to strengthening judicial independence were at the heart of the Union's political agenda in 2021-2022. In this respect, there were significant reforms as far as the composition and powers of judiciary governing bodies were concerned; in the improvement of the selection procedures of judges and in the strengthening of the autonomy of the prosecution services. In addition, there was also a positive development regarding the efficiency

45 Available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_22_3768

46 Point 144 of the judgment. See De Gregorio Merino, Alberto: op. cit., pp. 19-20.

47 C(2022) 1382 final *Guidelines on the application of the general regime of conditionality regulation*.

48 COM(2022) 500 final of 13 July 2022 previously mentioned.

49 Pages 5 to 10 COM(2022)500 final.

and quality of justice (greater digitalisation and greater ease in accessing the justice system).

However, causes for concern of a structural nature persist regarding the independence of justice systems and the autonomy of prosecution services.

In this respect, the report has highly critical recommendations for Poland and Hungary regarding the lack of independence of the national councils for the judiciary and over the appointment of judges, noting more qualified criticism in other countries such as Belgium, Ireland, Slovakia and Portugal, or Spain (particularly regarding the delay in the renewal of the CGPJ [General Council of the Judiciary]). Other criticism is aimed at Malta, Greece, Austria and Lithuania over the appointment of judges in higher courts.

Regarding the independence and autonomy of the prosecution services, the greatest criticism is levelled, once again, at Poland and Hungary, accompanied by Slovenia. Spain is recommended not to make the end of a government's term of office coincide with that of the Prosecutor General⁵⁰.

Rules regarding the battle against corruption⁵¹

The report underscores how, despite the improvement in national plans and legislation to combat corruption, recognised, for instance, in Transparency International's Corruption Perceptions Index, the public's perception continues to be that corruption is a cause for serious concern (among as much as 68%)⁵².

In particular, the report notes as a major cause for concern that the periods of investigation and trial for corruption remain very long (particularly in Malta, Czechia and Spain), while more serious still is the absence of investigations and the application of dissuasive sanctions (Poland, Bulgaria, Greece and Hungary).

⁵⁰ Page 7.

⁵¹ Idem Pages 10 to 17.

⁵² <https://www.transparency.org/en/cpi/2021>

Media pluralism and media freedom⁵³

The report states that, as the disinformation war shows, the preservation of media freedom and pluralism is crucial for safeguarding our rule of law, and to this effect it is necessary to improve the security and working conditions of journalists, paying particular attention to media ownership, transparency as regards the distribution of state advertising and conflict of interests; and including public service media in this assessment for the first time. In this field, the countries with the most critical level of risk and which receive specific recommendations are Bulgaria, Greece, Hungary, Malta, Poland, Romania and Slovenia.

Institutional checks and balances⁵⁴

The report notes a positive development as regards the improvement in the quality of the legislative process in the large majority of states, and in the national systems of institutional counterbalances (constitutional courts, human rights institutions and ombudspersons and other independent authorities), as well as a conducive environment for the work of civil society organisations.

The report includes a series of improvements in this area, such as the need to have a formal national framework for the consultation of stakeholders (particularly in Cyprus, Malta, Greece, Luxembourg, Slovakia, Hungary and Romania); or the improvement of observance of European Court of Human Right judgments (underscoring that in the last 10 years and on average among the 27 states around 40% of the Strasbourg court's judgments have not been implemented)⁵⁵.

In conclusion, this report has enormous potential to secure debates between the European institutions

⁵³ Idem pages 17 to 22.

⁵⁴ Idem pages 22 to 26.

⁵⁵ According to the figures gathered in the joint report by the European Implementation Network and Democracy Reporting International: *Justice delayed and Justice denied: non implementation of European Courts Judgments and the Rule of Law*. April 2022.

Figura 5. Recommendations to Hungary**Hungary**

In addition to recalling the obligation to comply with the rule of law-related rulings of the ECJ and the rule of law related infringement procedures referred to in the country chapter, the concerns raised under the conditionality regulation, the relevant concerns raised in the Article 7 TEU procedure initiated by the European Parliament, and recalling the relevant country-specific recommendations under the European Semester, it is recommended to Hungary to:

- Strengthen the role of the National Judicial Council, while safeguarding its independence, to effectively counter-balance the powers of the President of the National Office for the Judiciary.
- Adapt the rules related to the Kúria to remove judicial appointments outside the normal procedure, to strengthen eligibility criteria for the Kúria President, and to strengthen control by judicial bodies over the Kúria President, taking into account European standards, and to remove the possibility of reviewing the necessity of preliminary references, in line with EU law requirements.
- Adopt comprehensive reforms on lobbying and revolving doors, and strengthen the system of asset declarations, providing for effective oversight and enforcement.
- Establish a robust track record of investigations, prosecutions and final judgments for high-level corruption cases.
- Introduce mechanisms to enhance the functional independence of the media regulatory authority taking into account European standards on the independence of media regulators.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Adopt legislation to ensure fair and transparent distribution of advertising expenditure by the state and state-owned companies.
- Remove obstacles affecting civil society organisations.

Figura 6. Recommendations to Poland**Poland**

In addition to recalling the need to address the serious concerns relating to judicial independence, in particular those set out in the Article 7 TEU procedure initiated by the Commission, as well as the obligation to comply with the rule of law related rulings of the ECJ and the rule of law related infringement procedures referred to in the country chapter, the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system and the checks and balances, and recalling the relevant country-specific recommendations under the European Semester, it is recommended to Poland to:

- Separate the function of the Minister of Justice from that of the Prosecutor-General and ensure functional independence of the prosecution service from the Government.
- Strengthen the existing integrity rules by introducing lobbying rules and a standardised online system for asset declarations of public officials and Members of Parliament.
- Ensure independent and effective investigations and prosecutions, address the broad scope of immunities for top executives and abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases.
- Ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Ensure a more systematic follow-up to findings by the Supreme Audit Office and ensure a swift appointment of the College Members of the Supreme Audit Office.
- Improve the framework in which civil society and the Ombudsperson operate, taking into account European standards on civil society and Ombudsinstitutions.

Figura 7. Recommendations to Spain**Spain**

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Spain to:

- Strengthen the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government, taking into account European standards on independence and autonomy of the prosecution.
- Proceed with the renewal of the Council for the Judiciary as a matter of priority and initiate, immediately after the renewal, a process in view of adapting the appointment of its judges-members, taking into account European standards.
- Continue efforts to table legislation on lobbying, including the establishment of a mandatory public register of lobbyists.
- Address the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases.
- Ensure adequate resources for the national audiovisual media regulatory authority to strengthen its operations, taking into account the European standards on the independence of media regulators in particular as regards resource adequacy.
- Pursue work to strengthen access to information, in particular via revision of the Law on Official Secrets.

and the national authorities, as well as with civil society organisations, to discuss the implementation of the recommendations, particularly because they seek in a transparent manner to provide a picture of the rule of law situation in the 27 states with no intention of drawing up black-and-white lists, rather providing an opportunity to improve together. There is room for improvement in every one of the 27 states and this will contribute to the

EU's legitimacy. By way of example, attached below are the lists of recommendations to the two most problematic countries: Poland and Hungary, as well as the one referring to Spain (**Figures, 5, 6 and 7**)⁵⁶.

In addition, this "picture" of the situation is an exceptional tool for pursuing a policy of prosecution of infringements and adopting sanctions in the framework of the protection of the EU's financial interests.

⁵⁶ Annex to the Communication COM(2022) 500 final: *Recommendations to the Member States*.

Lessons learned from the war in Ukraine

José Enrique de Ayala

The illegal, illegitimate and criminal invasion of Ukraine by Russia, and the war that ensued, is the most severe infringement of international order and the greatest threat to European security since the end of World War Two, and it will doubtlessly have extremely important repercussions on the future geopolitical configuration, not only in Europe but also globally. Although the Kremlin has qualified it as a “special military operation” because there has been neither an official declaration of war nor any mobilisation in Russia, it has clearly become a medium-high intensity war, conventional so far, with a strong influence from new aspects such as cyber warfare and a wide use of satellite warfare and information warfare. In addition, indirect intervention from many other countries in favour of Ukraine has extended the conflict to the economic, energy and food sectors, with very serious repercussions in Europe above all, although also felt throughout much of the rest of the world.

Nothing can justify or lessen the responsibility of the Russian leaders, led by President Vladimir Putin, for this unjustified attack - displaying very high levels of cruelty - against a sovereign country whose borders have been officially recognised on several occasions. First and foremost, this action should be condemned, with no conditions or appeasements. However, it is a good idea to study the origins and circumstances that have led to this situation, and the mistakes made by all parties involved, at various levels, to learn lessons that will stop us falling into the same trap in the future and help us to seek a solution to this terrible war that seems to be stretching on with no sign of peace on the horizon, and that might lead to very dangerous escalations.

The Geopolitics

The 20th century was dramatic for Europe. Destroyed by two world wars that were above all - specifically the first - European civil wars, subsequently amplified, and suffering a third - cold - war that divided it into two opposing blocks, thereby adding dependency on the two powers within that bipolar world. The end of the cold war was a turning point, a historical milestone when anything was possible, including reconciliation and a new security order that covered the entire continent, including the Russian giant. Even before the dissolution of the Warsaw Pact and the Soviet Union itself, Mikhail Gorbachev - its last president - had proposed the concept of the “Common European Home”, a security environment that would also include the USA and Canada, according to the familiar formula “from Vancouver to Vladivostok”. Gorbachev went so far as to propose the dissolution of the Warsaw pact and NATO and the creation of a new European security architecture, that would be based on the Conference on Security and Cooperation in Europe (CSCE). Some European leaders, such as French President François Mitterrand or the Swedish Prime Minister Olof Palme supported this idea, but the USA was against it, although it promised to boost the CSCE’s role - destined to become a permanent organisation in 1994 (OSCE), with a more political slant than NATO. Faced with the imminent conclusion of the Cold War, this was perhaps the greatest missed opportunity to create a common framework on the continent to avoid future tensions,

although it might not be the formula spelled out by the Soviet president.

When the question of German reunification was raised in 1990, to get Moscow on board, it was agreed that NATO would not be expanded into East Germany. Although the conversations revolved around Germany, many leaders from the United States, Germany and other European countries assured Gorbachev and other Soviet leaders that they would not lay claim to any strategic advantage, and that NATO would not expand eastwards. There was great controversy around what was actually said during these conversations, although in December 2017, the Digital National Security Archive at The George Washington University published 30 American, Soviet, German, British and French declassified documents on line¹ regarding German reunification, which make it clear that Western leaders at the time made a succession of guarantees regarding Soviet security and the non-expansion of NATO to Gorbachev and other Soviet civil servants throughout the process, in 1990 and 1991. It is also clear that the famous, much-discussed guarantee from the US Secretary of State, James Baker, in his meeting with Gorbachev on 9 February 1990 that NATO would expand “not one inch eastward” really existed.²

However, although these informal conversations might encourage the Soviet leaders to believe that NATO would not expand, in no case would these words really prevent enlargement given that nothing was put in writing, never mind signed, and therefore there was no binding agreement. After the Soviet Union was dissolved, Russia was substantially weakened politically, economically and militarily, under the presidency of Boris Yeltsin. This led Russia to sign the Budapest Protocol in 1994 that recognised Ukraine’s borders, even though Crimean authorities had requested support from Moscow to secure their independence, in exchange for Ukrainian nu-

clear disarmament. In 1997, in a similarly weak position, Russia signed the Founding Act with NATO on Mutual Relations, Cooperation and Security, where no mention was made of future expansion, although it did cover military deployment encompassing possible new members. This led to Russian accepting the first enlargement of the Atlantic Alliance in 1999. Russia also had to stand by helplessly during wars in the former Yugoslavia, watching its traditional ally, Serbia, suffer defeats including NATO bombing its capital, Belgrade, and the illegal secession of Kosovo.

In 2002, the Russia-NATO Council was set up to address common security issues. Its implementation heralded a period of very positive cooperation in several areas such as tackling proliferation (regarding Iran for instance), the fight against terrorism, logistical cooperation for NATO’s mission in Afghanistan, the fight against drug trafficking and industrial and aerospace cooperation. This initiative, the closest that Russia has ever come to a common security project with NATO, did not prevent a second, larger enlargement of the Alliance in 2004, in this case with strong reservations from Moscow, particularly because it included the three Baltic States, once part of the Soviet Union and directly bordering Russia, and they were home to significant Russian minorities who were effectively left behind.

Justified or not, Russia was totting up its grievances and it accused NATO or the “West” in general of acting unilaterally without considering Russian concerns or interests. In February 2007, Vladimir Putin gave an important speech to the Munich Security Conference in which he wondered against whom NATO was progressively expanding and what had happened to the guarantees made by Western countries after the dissolution of the Warsaw Pact, mentioned in the speech by the NATO Secretary General, Manfred Wörner, in Brussels on 17 May 1990, where he stated that: “The fact that we are ready not to deploy NATO troops beyond the territory of the Federal Republic gives the Soviet Union a firm security guarantee.” Putin let it be known that Russia was no longer prepared to passively accept an allied expan-

1 Available: https://nsarchive.gwu.edu/briefing-book/russia-programs/2017-12-12/nato-expansion-what-gorbachev-heard-western-leaders-early#_edn1

2 Available: <https://nsarchive.gwu.edu/document/16117-document-06-record-conversation-between>

sionary policy that it considered detrimental for Russia's security. However, a little over a year later, in April 2008, the final statements of the NATO summit in Bucharest included the agreement that Ukraine and Georgia - also former members of the Soviet Union and home to significant Russian or Russian-speaking minorities - would become NATO members, although a deadline for their membership was not approved.

Nevertheless, Russia made a further attempt to resuscitate a pan-European security agreement. In June 2008, Dmitri Medvedev, President of Russia at the time (as the constitution prohibited a third term for Putin, then head of the Government), gave a speech in Berlin proposing a new security treaty in Europe, that would cover the whole Euro-Atlantic community including Russia, to prevent confrontation and take a bold step beyond the Cold War and the unipolar world that emerged from the demise of the Soviet Union. Medvedev went so far as to draft the treaty, that he sent to the capitals involved, NATO, the EU, and the OSCE in November 2009, but it was already too late.

In August 2008, the President of Georgia, Mikheil Saakashvili, launched a military operation to take back control of the pro-Russian Georgian regions of Southern Ossetia and Abkhazia, *de facto* independent since 1992, immediately countered by Russia, sending troops to invade the Caucasian country and restoring the situation in nine days. It was the first time that Russia had intervened directly by force in a former Soviet Union country, to defend Russian minorities, and it was the point of no return in Moscow's strategy concerning its immediate environment as, although troops had previously been sent to Transnistria, in Moldova, they were (and are) there officially as peace-keeping forces and have never actually fought.

In Ukraine, Viktor Yanukovich, known for his proximity to Russia, was elected president, in 2010, in democratic elections. At the time, relations with Russia were very good. In late 2013, the signing of the European Union Association agreement was suspended, despite negotiations stretching back to the previous year, because this

hindered significant economic relations with Russia. This led to the so-called Maidan Revolution, which forced him from power with a coup d'état, given that he was removed without the majority vote in the Supreme Council of Ukraine, or Rada, as required by the Constitution in force. Part of the pro-Russian or Russian-speaking population, majority in the East and South of the country, felt attacked by the new government, which even went so far as to prohibit use of the Russian language. They refused to accept this and rebelled. The rebellion failed in some places, such as Járkov or Odessa, but triumphed in part of the Donbas region - with varying degrees of undercover support from Russia, in terms of weapons, supplies and "military volunteers", where the secessionists proclaimed the People's Republics of Donetsk and Luhansk, and in the Autonomous Republic of Crimea - also with Russian military support from the Sebastopol bases acting under no military insignia, that joined the Russian Federation by means of a referendum that has not been recognised by the international community.

The Donbas rebellion led to a military confrontation between Ukraine and the secessionist provinces. In September 2014, Ukraine, Russia and the self-proclaimed Donetsk and [Luhansk People's Republics signed the](#) Minsk Agreements, under the auspices of the OSCE, in order to establish a ceasefire but it was not successful. This failure meant that in February 2015, Germany, France, Russia and Ukraine, the so-called Normandy Format, signed the Minsk II Agreements that planned to restore Ukraine's authority over the secessionist territories, after a political process that included a reform of the Ukrainian constitution and a specific law to give them autonomy plus an amnesty with a few exceptions. Pressured by the nationalists, the Ukrainian government refused to comply with the political part, alleging that they had signed the agreements under pressure and that these agreements undermined their sovereignty, and it was prepared to recover its entire territory by force. In turn, Russia carried on providing weapons and volunteers to the secessionists. Military clashes have continued in the region ever since, providing Russia's main excuse for

the invasion of Ukraine which it launched on 24 February, two days after recognising the independence of both republics. The current war clearly began back in 2014. Russia has always considered Ukraine crucial, not only for security reasons but also politically and historically, and it is not prepared to just let it go into the West's sphere of influence.

Stability has evaded Europe since the end of the cold war. In addition to the matter of the Western Balkans - still not completely resolved - after successive extensions of NATO, five post-Soviet countries remain: Belarus, Ukraine, Moldova, Georgia, Armenia and Azerbaijan, differing vastly from each other, that the EU has offered to help through the Eastern Partnership, without a clear security strategy, leading to various tense episodes. The geopolitical approaches that were applied in Europe from 1990 onwards were not successful. Neither NATO's attitude to make the most of the fall of the Soviet Union by expanding throughout Europe and marginalising Russia, nor Russia attempting to maintain its prior influence in its close geographic surroundings, have led to more stability and more security in the continent. It would be fair to say that more increasingly-serious conflicts have ramped up to the current war in Ukraine. There is no other lesson to learn here other than cooperation and dialogue, resolving conflicts by putting forward reasonable and viable proposals, are always preferable to confrontation, even for the side that considers itself to be superior at a given time. Geopolitics require a very accurate assessment of the cost-benefit ratio and a broad view of the future. Not all leaders possess that on every occasion.

Much has been said about what we might call the "Versailles trap", that would push a country beaten in war, subjected to excessive pressure and humiliation in its defeat, to become aggressive again and try to recover its lost status as soon as it possibly can. In fact, the Treaty of Versailles, that brought World War One to a close in 1919, subjected Germany to conditions so hard that they led - along with other reasons, such as the repercussion of the financial crash of 1929 - to the fall of the Weimar Republic and the rise of Nazism, that in turn led to World

War Two. The end of that war brought a radically different strategy: support was given to the State created in West Germany by the allies, the Federal Republic, and it was politically and economically integrated. This led to total reconciliation and the creation of the European Communities and subsequently the European Union. As the heir and main country of the Soviet Union, Russia was the great loser in the Cold War, but it did not receive the help to recover and integrate that Germany did in the 1950s. Economically, it had every opportunity - squandered by the colossal corruption of the Yeltsin era - but in political and security fields it was relegated to become a mere spectator of what was happening in Europe, without seriously considering its interests or concerns. Altogether, this created resentment, particularly in more nationalist sectors, so conflict could be predicted when the country recovered part of its strength. This is a lesson that should never be forgotten: the loser should not be humiliated, because these strong feelings can lead to violence, even against their own interests.

The Strategy

The first parameter in any strategy is ultimately how we wish this situation to end. Once decided, we must assess whether it can be achieved with our own resources despite opposition from our adversary, considering all the conditioning factors and variables in the surrounding area. Only after this step can specific and successive goals be outlined.

Regarding Russia, it is not easy to determine the initial ultimate goal of the "special military operation" launched by the Russian government on 24 February. Possibly only the Russian General Staff and Putin's closest political circles might be aware of his real intentions and his strategic approach has possibly been changing as operations have progressed. It has been speculated that the Russians intended to invade Ukraine entirely and set up a sympathetic government in Kiev. However, this analysis is not well founded, the Russian troops

available - between 150,000 and 200,000 - made such an ambitious goal impossible at that time as this would have required eight- or ten-times greater manpower. Occupying a country with over 600,000 square kilometres, and a mainly hostile population, would have required the kind of military and economic capacity that Russia can only dream about right now. The same goes for setting up a puppet government in Kiev, because this would have required the aforementioned occupation, as a regime of this type could only be sustained while the country was occupied.

So, what was the point of attacking in the north and putting pressure on the capital Kiev? And why did they abandon this line of action? Let's take a look. It is likely that the Russian General Staff planned that their initial offensive, and threat to the capital, would cause the Ukrainian military to collapse quickly and with it, cause a political crisis that would bring Ukrainians to change their own government, in favour of someone who could forge agreements with the invader and stop the fighting before the subsequent destruction and brutality would make this absolutely unfeasible. This would doubtlessly have been the ideal situation for the Kremlin, which attacked the capital but did not want to destroy it from the air as it surely could have done, so as not to rule out any chance of an agreement. The attempt to swiftly bend Ukraine's will failed, a strategic error that cost many Russian lives and a great deal of equipment, doubtlessly due to poor analysis by the formerly prestigious Russian military intelligence.

Maybe there was an additional intention: luring the Ukrainian war machine towards the capital region, to give the Russians greater freedom to act in the east and the south of the country, where other offensives had been launched. Nevertheless, early in the invasion each of these lines had its own commander, causing an enormous shortfall in coordination between them. In any case, Ukraine put up strong resistance to this first onslaught. There was no collapse, no crisis and Western support - which began to arrive almost immediately - made it possible to foresee a stalemate situation in the

north and around Kiev, locking down as many Russian troops as Ukrainian, with no sign of victory. This did not suit Moscow, so it tacitly admitted its mistake and abandoned this line of action to concentrate its efforts on the Donbas region - officially the cause of their intervention - and other territories in the east and south that would allow it to create a security area under its control between Ukraine and Russia. If Russia could not rip the Kiev government from its Western influence, it would at least divide the country and weaken it, annexing part or at least creating a zone under its influence, comprising the territories with a Russian-speaking majority which had traditionally belonged to Imperial Russia or part of them.

Precisely one of the most important aspects at the time of writing is how far the Kremlin's territorial ambition might go in Ukraine. In other words, the ultimate aim of its plan B, for lack of a better name, once it did not manage to get Ukraine to capitulate quickly. It is clear that the Russians' priority is the Donbas territory - meaning the provinces (oblasts) of Luhansk and Donetsk - whose occupation they will complete over the next few weeks or months unless there is a drastic turn of events in the tactical situation in favour of Ukraine. The question is whether that will be enough, plus part of the provinces of Zaporizhzhia and Jerson that they already occupy and that they use to link up with Crimea, or whether they will want to occupy all these provinces, and even beyond, moving on the important cities of Járkov in the north and Odessa in the south, both majority Russian-speaking with a historical ties to Russia. The latter would demand a much greater effort and it is doubtful that the Russian offensive would achieve this right now, at least in its current format and in any case, this would take a long time.

In the case of Ukraine, there was no other strategy than resisting the attack and attempting to involve Western countries - particularly the USA - as much as possible in the war, in the hope that their help and foreseeably wearing down Russia would help them through the offensive to recover lost ground. As mentioned, a strategy has to be realistic and perhaps this one is not. Sooner or later, Kiev must come to the negotiating table

because defeating Russia, in the terms that the Ukrainian (and other European) governments would like, is highly improbable.

Regarding NATO and the European Union, it was clear from the outset that they were not going to condone Russia's attack but nor would they get involved in a direct confrontation with the world's greatest nuclear power. Their strategy has consisted of backing up Ukraine - sending weapons, economic support, military intelligence, consultancy and cyber-capability - and weakening Russia by means of financial, economic, commercial and personal sanctions, providing as many as six successive packages as the war has gone on. The first of these lines of action was remarkably successful and has allowed Ukraine to resist the Russian attack so far, although losing significant land. The second has been less effective so far.

Russia has stood up better than might have been expected to the unprecedented tough Western sanctions, and it has been kept afloat with exceptional measures and support from other countries, fundamentally China, in financial aspects, and by attempting to diversify its imports and exports, although with limited results as yet. After an initial crash, the rouble is now stronger than it has been over the last few years and its reserves are increasing as the price of fuel goes up, despite the western blockade. Economic analysts believe that both inflation, close to 17%, and the drop in the Gross Domestic Product, close to 10%, will become more moderate. However, unemployment is rising significantly, and the shortage of technological components is a tough setback for many Russian businesses, including the arms industry and other essential equipment for warfare.

As might be expected, the sanctions have rebounded on the countries that imposed them, particularly in Europe. The inevitable rise in fuel costs, plus certain supply chain issues, have made inflation rocket and caused a rise in interest rates at the central banks that is going to come down hard on economies, particularly the weakest. European countries have tried to free themselves from dependency on Russian fossil fuels - basically gas, as coal

and oil can be obtained elsewhere, but they need time. If Russia cuts off its gas supply, many countries will fall into a recession, including Germany, that will bring down all the other EU countries with it.

Furthermore, a problem has occurred with exporting Ukrainian and Russian grain, and fertilizers from the latter, that might cause an unprecedented famine in some countries, particularly in Africa, although it does seem that this issue is being resolved. Here, the problem is that the Western countries could not convince the victims that Russia was the guilty party in the food crisis, as most of these countries blamed the sanctions.

In short, the Western strategy consisted of causing economic collapse in Russia, which would prevent it from carrying on with the war and, if possible, would bring about a social and political crisis that would topple the current regime. It is not easy for this to happen, at least in the medium term, as the Russian population is used to holding out under precarious conditions while it is also fed partial information and official propaganda from the regime. On the contrary, it is more likely that the Western population - living in a democracy - will make its discontent felt as living conditions worsen, and this will detonate political crises. This strategy is thereby becoming a sort of stand-off to see who can outlast the other and this has a random or uncertain component, which is not welcome in a solid, well-founded strategy.

Finally, the last essential aspect of a strategy - as well as setting clear and realistic objectives - is to know how to finish the action, in the case of both success and failure. Generally, only when one of the contenders - or both - realises that it is not feasible to meet their proposed objectives are they ready for peace. While both believe that victory is within their grasp, the chances of negotiation are drastically reduced. This is what is currently happening in the war in Ukraine and makes us think that objective-setting and planning has not been ideal on either side. Prolonging the war without any chance of a decisive victory for either side makes no sense at all.

The Tactics

Another subject that has aroused interest among military analysts is how an army such as in Ukraine, theoretically very inferior, has stood up so well to Russian attacks and continues to see them off. There are many factors in play to help this happen, and not only deny the Russian forces their quick victory, but also inflict significant losses on them, although this is still hard to quantify, in terms of troops and material.

The Russian land army has many shortfalls and weaknesses. Part of its equipment has been poorly maintained or has become obsolete. In the field of communications, for instance, they have sometimes had to use unprotected systems or even commercial networks, which has allowed the location of units and high-ranking officers to be pinpointed - and possibly destroyed. The defence budget, approximately the same as for the United Kingdom and slightly higher than for Germany or France, has been channelled into the aerospace sector, and the latest missiles, strategic weapons in other words, and this war has laid bare the significant weaknesses of both the army and the navy. Logistical issues have proved to be a very serious vulnerability for the Russian army in these operations, particularly when supply lines were stretched as in the northern offensive and around Kiev, and no military action is possible without logistics. Perhaps Russia chose to concentrate on the east of Ukraine, in addition to the reasons mentioned above, to simplify logistics.

There are also clearly fewer Russian troops. President Zelensky declared in May that 700,000 Ukrainian soldiers were actively defending their country, and this figure could now be much higher, close to one million. Russia has kept a force of around 200,000 in the war, although this figure may have risen by another 50,000 or 60,000 soldiers over the last few months. The proportion is an exactly representation of classic figures for attack and defence, although in favour of Ukraine. It is widely known that all Ukrainian men aged between 18 and 60 have been called up, either to fight or as auxiliary forces, for support or as reserves, and we are talking

about over 12 million people, although of course not all of them have weapons or military training. Russia has not carried out any type of mobilisation, as it is not officially at war, but it has recruited volunteers - offering high pay and administrative benefits, it has employed experienced fighters from Chechnya, and brought in some troops from other countries such as Syria and the like, which always causes command difficulties.

There is another enormously important aspect to this type of war, which is to question the motivation for anyone taking part in it, the morale of the fighters, or the will to win, as people like to call it. The Ukrainians are defending their land, their homes, their properties, their families, and their motivation to fight is so much greater than for the Russian soldiers, who have been sent to a war far from home. Most of them probably have no idea why Ukraine is being liberated or any great desire to liberate it, and many of them are only there for the money or other benefits as mentioned above. It is not unusual that, under equal conditions, people with an existential interest in winning succeed. However, some fighters on both sides have been ideologically radicalised and some - Russian as far as we know - have committed unacceptable atrocities.

Nor is Russia superior in terms of equipment or materials, except regarding missiles, and its navy and air force. The use of cruise missiles such as Kalibr or ballistic missiles such as the Iskander-M, even some hypersonic missiles such as Kinzhal, not only in the area of operations but throughout the country, has allowed the Russians to keep up the pressure and balance out other Ukrainian advantages. However, numbers are limited, and they might already be scarce, as they are beginning to use anti-aircraft S 300 missiles for land attacks. In any case, missiles can help, but are not decisive in land combat. As for the Navy, they have hardly been able to demonstrate their superiority as there has been no naval combat: Ukraine has not taken the battle to the sea. Furthermore, Russian ships cannot get near the coast for fear of being reached by Ukrainian missiles, as happened with the Moskva, the flagship of the Black Sea

fleet. Even more surprising is the slim advantage that Russia is obtaining from its greater air power, apart from never having used strategic bombing raids, perhaps for political reasons. Let's not forget that at the start of the war the Russians had ten times more fighter bombers. The Russian air force has never managed to gain the air supremacy that seemed extremely likely. Although it has obtained high degrees of superiority depending on the region, a few Ukrainian planes have continued flying and, above all, they have not been capable of wiping out all the Ukrainian air defences, particularly the earth-to-air missiles, such as the Stinger that, although only used at low altitude, are sufficient to prevent air support close to the land-based units, that is occasionally decisive and has barely been used by the Russian forces.

It is exactly this employment of sophisticated weapons supplied by Western countries - not only during the war but since 2014 - that has allowed Ukraine to hold out until now. Alongside the aforementioned Stinger, there is the magnificent Javelin, a portable anti-tank weapon that is so extraordinarily effective that some analysts have gone so far as to predict that armoured vehicles will no longer be used in land combat, although this would only be applicable to certain tactical scenarios, such as urban combat or large columns close to cities. There is also the highly effective Turkish Bayraktar TB2 drone that has been used against armoured vehicles as well. In any case, these weapons - just like other anti-aircraft or anti-tank weapons supplied to Ukraine - are merely defensive. They cannot be used to attack, although they can help of course. Kiev has requested weapons with greater reach and power with the idea that they can reverse the situation, such as Patriot anti-missile batteries or against high altitude planes, that have not been supplied so far. The arrival of multiple launch rocket systems, such as HIMARS - with a 80 kilometre range, has allowed the Ukrainians to attack facilities and stores in the Russian rear-guard in the occupied zones, but what Kiev wants are the ATACMS missiles, with a 160 km range, that can be launched from the HIMARS system or from the M142 that they also have, as well as planes and tanks.

An entirely separate section could be written on other Western supports, less prominent but none the less essential for Ukraine. In the West, thousands of people are working on the war in cyberspace, both defensive and offensive, particularly in the Baltic States, although as the Russian side has high capacity - including the use of civil groups that have been working independently for years with certain ties to the security services, there is some balance in this field. The West is clearly superior in the field of intelligence, particularly using satellites. Practically any movement of Russian forces, planes or ships can be monitored, and its players located in real time. This information is immediately sent to Ukraine and has given them some key victories, including sinking the Moskva, or destroying mobile control posts with high ranking officers. Furthermore, Western intelligence and operations specialists provide continuous support for Ukrainian decisions. On the other hand, the enormous media and propaganda work carried out by Western countries is no less important as it has managed to gain approval from the majority of the population for actions to support Ukraine, in all countries involved, and even a significant change in the perception of an alliance such as NATO in countries that had never been particularly keen such as Sweden or Finland.

Finally, it is necessary to talk about ground tactics, that have differed vastly on either side. Russia attempted a classic ground war from the beginning, with armoured units seeking to beat the opposing forces and subsequent occupation of the land. Ukraine refused this type of combat, that might damage it and chose another type of operation, more like guerrilla warfare, small units attacking the Russian columns, particularly the logistics, making the most of the aforementioned weapons without presenting a direct battle although wiping out sufficient enemy manpower to slow down or even stop their progress. Resistance has been instigated above all in cities, where the attacker loses any advantage, even at the cost of many civilian lives. For instance, tanks are extraordinarily vulnerable to Javelin-type weapons in urban settings, as we said before, these remain decisive in

open country. The result is that the war is developing into successive fights from one city to another, preceded by artillery preparations that cause enormous destruction. This Ukrainian tactic has been very useful, as we said, to slow down the Russian offensive but it would not work at all for a counter-offensive to recover lost ground, which would require direct confrontation.

All wars begin - at least on one side - by using the same tactic that finished the previous war, even holding similar equipment, although this logically depends on the time that has passed between these wars. This was the case of Russia in its invasion of Ukraine, that it approached like its war against Germany in World War Two. In this case, the circumstances are very different, and the Russian General Staff are surely learning that either they must adapt to new tactics and new weapons being used by Ukraine, or their difficulties on the ground will take a drastic turn for the worse.

The second lesson for Moscow to learn would be that it might not be the best idea to dedicate most of its budget to its Navy and intercontinental missiles that are never going to be used, to the detriment of modernising the land army, when its interests are above all in its immediate geographic surroundings, where only land forces can claim its objectives.

As for the Ukrainian government, it must see that, despite its superiority in many aspects, despite massive support from the West, despite its enthusiasm - conveniently stimulated by certain countries to the benefit of their own interests - and the heroics of its fighters, it has not been possible to stop the Russian offensive and over 20% of their land is currently occupied, without great prospects that the Ukrainians might recover this ground under their own steam, or that Russia might suffer economic or political collapse in the short or medium term that would radically change the game. In these conditions, tackling the situation realistically, including accepting an unfair loss of territory in exchange for peace, would not be a betrayal of those who have already been sacrificed, but a relief for others whose future sacrifice would not make much sense without reasonable perspectives of victory.

The Future

At this point, it should be mentioned that this analysis was written in July 2022, because the situation is so uncertain and changing in the operation zone that by the time it reaches its hypothetical reader, the facts may have changed or entirely refuted the prospecting that we aim to provide here based on the current data and situation.

Any prospective analysis should begin by evaluating how and when the end of the war might happen, and this is extremely difficult to predict right now. It is possible that Moscow intends to return to the negotiation table when it has managed to occupy the territory that it considers fair or necessary, if it manages to do that. However, it is more likely that Kiev will reject this while it believes that it can claw back this territory. Furthermore, some Western governments might be encouraging them to believe that this is feasible, because it is in their interest for the war to continue, making Russia as weak as possible.

Is there any chance that Ukraine might be able to turn this situation around? Let's take a look. Until now, Ukrainian forces have above all worked on stopping Russian progress and to do that - as we said - the tactics that they used and the weapons they received are highly appropriate. Only in the last few days have we seen a Ukrainian counter-offensive in the south, in the provinces of Jerson and Zaporizhzhia, partially occupied by the Russians, making the most of the arrival of the new long-range weapons that we mentioned earlier. However, to be able to launch a proper offensive, that will make it possible to recover lost ground, Ukraine would firstly require a minimum degree of air superiority, and then sufficient armoured and mechanised infantry units. To do so, it would need to receive planes and tanks from Western countries. Some Ukrainian pilots are already being trained in the USA and it has not been ruled out that this equipment will be delivered to the Ukraine in the future, although it is unclear whether this would be enough. In any case, Ukraine has something in its favour if the war goes on for longer: Russian material and its capacity to replace it are limited, above all considering the shortage

of technological components due to sanctions, while the material that Ukraine might receive could be unlimited, particularly from the USA.

In any case, many - not all - Western countries would like to see Russia weakened, but not destroyed, because a wounded beast can be very dangerous. In other words, like the French President Emmanuel Macron, they do not wish for "humiliation". If the balance of strength were to shift and Russia felt that its territory was in danger - including Crimea - it might use tactical nuclear weapons to defend itself, which could get out of control. It is highly unlikely that this might happen, above all because Russian territory is not going to be attacked, and the Kremlin cannot risk all-out war when it has everything to lose. The most likely scenario is that there will be a ceasefire in a few months, maybe in the winter, and peace talks can begin. As Russia is not going to withdraw from the territory that it is currently occupying and Ukraine is not going to accept any loss of land, the situation will stagnate, and it will remain to be seen if the ceasefire holds or if fighting breaks out again and how intensely. In any case, non-peace of this type, an unacceptable situation for Kiev, would not make it possible lift the sanctions on Russia and so Europe would continue to suffer from the severe repercussions that these sanctions inflict on its economy.

Globally, the West's isolation of Russia would send the latter running into the arms of China, the only country to have declared its support (alongside Belarus) although with certain reservations. Consequently, there would be two opposing blocks: one made up of the USA and the EU, plus a few sympathetic Asian countries, in other words a NATO+, against another block formed by China and Russia. This may lead to a new bipolar world in which the Global South, India, South-East Asia, Africa, Latin America, the countries that have never supported sanctions against Russia and that have enormous mineral resources, would voice an opinion and it is possible that they might not find in favour of the West. This does not seem to be the best scenario for the EU, that has no security issues with China, and, as during the Cold

War, it would find itself subject to decisions made in Washington, not only regarding security but also politics and economics.

Conclusion

The war was not started by Ukraine, NATO or the EU. Russia started it by infringing all international legality and the treaties and agreements that it had signed. It is clear that it had no right to make an attack like the one it launched, and nothing can justify it, as we said back at the start. However, without questioning the responsibility of what Putin and his circle of power has brought about, it is plausible that this war is the indirect consequence, at least partly, of a poor resolution to the end of the Cold War that condemned Russia to a marginal role in the European security architecture, instead of integrating it - not only economically but also politically and in the field of security - into a common project that covers the whole continent. At that point, the European Union did not yet exist, nor therefore the Common Foreign and Security Policy, and the European Communities lacked decision-making instruments or capacity to design a new paradigm for European security, beyond decisions made in Washington. It is difficult to know if this "common home" that Russia requested on several occasions would have worked or if this was simply Moscow playing for time to recover from the collapse of the Soviet Union, but it is true that the scheme was not attempted, beyond the unequal NATO-Russia Council that was not, of course, Moscow's objective.

The second mistake was NATO's declared intention to let Ukraine and Georgia become members, as approved in the Bucharest summit in 2008, although no date was set. All the allied foreign ministries knew that Ukraine could be a "casus belli" for Russia, for historical, geopolitical and political reasons, including the matter of the minorities, but no attempt was made to negotiate neutrality with Russia that might be an appropriate solution for a country with diverse historical origins and which will

be what is adopted now in all likelihood. Ukraine was not pressured to comply with the Minsk II agreements that would have led to a federal state that Moscow would have had to accept, but military support was reinforced making Kiev believe that it could recover all its territory. Nor were security guarantees given to Ukraine to endorse this attitude or while its entry into the Atlantic Alliance was in progress. In short, on the one hand Russia was being told that Ukraine would align with the West, because that was its right, and that it would be even more hostile to its Russian neighbour, but at the same time, it was stating that NATO/the West would not come to its defence. It was practically an invitation.

The Kremlin responded to these strategic errors with an even larger one. With interventions in favour of the Russian or Russian-speaking minorities, in Transnistria, Abjasia, South Ossetia and finally, in 2014, in the Donbas and Crimea, including annexing the latter territory, the Russian regime already hinted that it was feeling strong enough again to forego an unlikely pan-European security architecture, and it proposed a unilateral, illegal and interventionist policy in its immediate surroundings, without concern for the consequences, which were not particularly severe at that time. By attacking Ukraine, it has crossed all the red lines and it has come up against a solid, unified reaction, not without certain difficulties, from NATO, the EU and allied countries, that is going to hit Russia's economy hard, and sentence it to isolation for decades, unless there is a radical change of regime in Moscow that does not look very likely. NATO was weakened by Donald Trump's presidency and the chaotic withdrawal from Afghanistan, but it has been revitalised to once again become the undeniable benchmark in European security, to the point that it is highly likely to welcome two countries that have remained neutral so far: Sweden and Finland. If there was any chance that Ukraine might take an amicable position concerning Russia in the future, this intervention has destroyed it, strengthening the country's pro-European identity to the detriment of the segment of the population closest to Russia. This might have consequences in other countries close by.

The EU was their main business partner, both for exports and imports and it will no longer be so. All bridges have been burned and it will be enormously difficult to rebuild them. The possibility of pacific economic cooperation that offered so many advantages to both sides has gone up in smoke, without the political or territorial gains objectively representing minimum compensation for damage to Russia's economy and its international position that it is suffering and going to suffer in the next few years. As much as Ukraine was very important, as much as its leaders thought it was a good idea to recover the military power role, everything points to that fact that Moscow - perhaps considering the precedents - did not properly evaluate the intensity and the scope of the Western reaction.

Russia's second mistake was not defining its strategic goals properly in this intervention. Was this about the neutrality and the demilitarisation of Ukraine and containing NATO as Putin mentioned in his letters from December 2021? Or about defending pro-Russians in the Donbas against attacks from Kiev? Or about using any legal statute it could to grab a substantial part of Ukrainian territory? Or about dominating all of Ukraine and imposing an allied regime that would break its ties with the West? Russian military operations in Ukraine might fit with almost any of these goals, perhaps with the exception of the last one for which greater manpower would have been required. However, it seems, at least so far, that the ultimate goal is not guiding operations, but is subject to their result, which is always a bad strategic plan as it is impossible to plan the use of resources and set realistic intermediate goals. As the Hispanic-Roman philosopher Seneca said, there is no favourable wind for the sailor who does not know where to go.

In turn, the EU can learn many lessons from this war. The first, that it cannot trust - as Germany has done regarding gas - a country whose regime is not transparent or democratic, even if it claims to hold elections, because its reactions can be unpredictable. The second, that forming strong commercial and economic ties with this type of country is not a sufficient guarantee as it has clearly chosen to sacrifice its economy in favour of

its political-military dominance in the region. The third, that economic sanctions are not decisive to vanquish an assailant, not even to stop the conflict, at least in the short or medium term, with very tough consequences for those imposing them. The fourth, that in a conflict set out by the Kremlin as a stand-off with the USA, leader of NATO, and therefore, the West, it is Europe that loses, suffering the toughest economic consequences, that severely affect its population.

This leads to the most repeated and debated lesson learned: the EU cannot postpone the much-heralded goal of its strategic autonomy any longer, on pain of becoming the scenario in which other powers resolve their differences. We are of course referring to energy autonomy - based on the diversification of imports and fast development of renewable energy - that has been demonstrated to be essential, but also financial, economic, industrial and technological, including the cyber-security and satellite fields that are now proving to be so decisive in this war. In the military field as well, it is essential to create a European Union of Defence that in normal conditions will make it possible to guarantee the security of Europeans against any attack or coercion. Naturally, when lining up against the country with the most nuclear weapons, the USA's dissuasive capacity is essential and therefore NATO is the field in which collective defence should be guaranteed. However, this

must be the exception, and in fact it already is because, as we mentioned, use of this type of weapon would also be exceptional. The Russian government disregarded the EU when it made its demands to the USA and NATO in December 2021, and later only individually to the European capitals because it considers them dependent on Washington with no decision-making capability of their own. This situation cannot go on. The EU has to grow up and become strong enough to create an insurmountable obstacle to the Russian attack, or from anywhere else, without always having to go running to the USA that will logically decide what is best for its own country and will always prioritise its own interests.

And, finally, maybe the most important lesson learned in this war and, more in general in the last decade, is that Europe will never be secure with a stable perspective while Russia is not part of a broad security agreement that is acceptable for all parties, including the states in the EU's Eastern Partnership, that includes renewed measures of trust and control of weaponry, based on the indivisibility of security and respect for the sovereignty of all states. The coexistence of Europe and Russia is inevitable and perhaps this cannot come about with the current regime, given that it takes two to tango. However, if the Russian regime does not change, this must be attempted again when the war in Ukraine finishes or is extinguished.

Spain at the helm of the European Union in stormy times: For an ambitious agenda for the Council Presidency in 2023

Mercedes Guinea Llorente

Europeans and a tumultuous 2022: multiple crises and the demand for a European Union that works better

It is impossible to describe 2022 and the years that have preceded it as anything other than tumultuous for the EU, its Member states and its citizens. In autumn 2022, we have been dealing with Russia's invasion of Ukraine, with its horrific humanitarian consequences: death, injury, destruction and the threat to the security and stability of Europe and the world.

This aggression personifies all the evils that the European Community was originally established to combat. It represents a return to barbarism, disdain for humanity, for dignity, for rights, the negation of the right of neighbouring states to exist, and a mockery of international law and international institutions. It justifies any behaviour in terms of power. It represents the return of nationalism as an exclusive ideology, one that denies the other,

and leads to the most extreme consequence of all: war. The ghost that Europe thought it had vanquished after the Second World War, through the process of European integration, has returned to haunt us.

Europeans are experiencing the first effects of the food, energy and economic crises that have been unleashed by the conflict, with their severe social impact on the lives of individuals and families, and on the business sector. Over recent weeks, we have become aware that these crises are also affecting the political stability of our Member states. We have looked on, powerless, as the far right has played a key role in polls in countries such as Hungary, Italy and Sweden, which will greatly complicate both the operation of the EU in general and the political response to Russia.

Furthermore, this turbulence comes at an already difficult time, when Europeans are still trying to recover from the devastating impact of the 2020 pandemic, implementing the *Next Generation* programme, and facing

up to the profound adaptations required to undertake the ecological and digital transitions. Member states are also divided by internal issues, such as the need to implement a global migration policy which is both practical and is consistent with the values we claim to respect, debate about fiscal rules, and the delicate issue of respect for democratic values by all our Member states.

Even without the war, the international context is a challenging one: evolving towards a multipolar system, with increasing competition between big states and with a tendency towards deglobalization, which means that Europeans will have to adapt our policies in search of “open strategic autonomy” (Cagnin, Muench *et al.*, 2021). Ever since the foundation of the EU, we have been committed to promoting our values of democracy and human rights, international law, multilateralism and the creation of international institutions, and we have not yet found a place in the current international framework.

Over the last two decades, Europeans and the EU have not had a single moment of political, economic and social stability and tranquillity, and we have instead had to adapt to a situation in which crises have become our new normality, what has been dubbed a “permacrisis” (Zuleeg, Emmanouilidis and Borges de Castro, 2021). European citizens, aware of this challenging environment, increasingly expect the EU to protect them from the impact of these crises on their lives, whether that be the war in Ukraine, COVID or another economic crash (European Commission, 2022).

This is the same diagnosis that can be drawn from the results of the Conference on the Future of Europe, which brought citizens together with representatives of institutions, with the aim of strengthening the EU’s democratic legitimacy. There is only one way to interpret the proposals contained in its final report: European citizens expect the EU to respond to their needs and problems but, to achieve this, they expect the EU’s policies to be redefined to make them more effective and more aligned with their values (CoFoE, 2022). However, if it is to satisfy these expectations, the EU cannot continue within the

current constitutional framework but needs, instead, to undergo profound reform, as advocated by the Parliament and the European Commission.

In an EU in “crisis management mode” and with several Member states governed by Eurosceptic political parties or relying on such parties for support, the task of improving the EU’s operation by revising its constitutional basis – the Treaties – does not appear to be viable. It is important to note that Treaty reform is an extremely rigid and complex political process, as it is subject to a “double lock” (Guinea Llorente, 2008), requiring the unanimous support of the twenty-seven governments to approve the reform, and the ratification of all Member states through their internal constitutional procedures.

But we also agree with Professor Mangas that the Eurosceptic message of the populists is finding a response among citizens in part due to failures in the operation of democracy, and the lack of trust in institutions and their capacity to act and respond to new contexts (Mangas, 2021: 394). It is also important to recognize the role played by external support from illiberal governments in the form of disinformation. As a result, not doing anything is not an option, because unsatisfactory political outcomes simply feed populism. Something has to be done, and the Spanish Presidency has the job of dealing with this difficult scenario.

The EU needs to reform if it is to address the challenges it faces

The first point to remember is that the Treaties that provide the basis for the EU’s operation emerged from the work of the European Convention in 2003. Although it did not come into force until 2009, the Treaty of Lisbon simply introduced the principal reforms of the European constitution into the structure of the previous Treaties (Aldecoa and Guinea, 2008, pp. 61–77). This means that the current Treaties were drafted nineteen years ago, designed for an internal and international reality that was radically different to the current situation.

It is sufficient to note that this reform was conceived and drafted prior to expansion, based on the experience of an EU of 15 Member states rather than one trying to operate with almost twice that number. And now, with the European Council's promise of expansion to include Ukraine, Moldova and Georgia (European Council, 2022b: 11 and 13), we face the prospect of an EU with at least 36 Member states. At the same time, the multi-lateral international environment dominated by the West and its values and standards, and partially governed by international institutions and international law, no longer exists (Barbé, 2020: 349).

The Treaties were designed to cope with a different reality, and some parts of them are not applied because they have been rendered obsolete, with the gaps being filled by informal and sometimes haphazard solutions. This is true with regard to everything relating to Economic and Monetary Union, with the Treaty maintaining the fiction that all Member states will join the euro, or for ordinary, legislative procedure which is so slow and complex that it has been set aside in favour of trilogue or tripartite meetings. And this is without mentioning the large number of issues where action is taken despite the lack of any express legal basis in the Treaties.

The Treaties do not allow us to confront many of the challenges we currently face, as the most recent crises have demonstrated. The political will and consensus between states and institutions have made it possible to find solutions outside the Treaties by approving secondary legislation and using informal instruments or even other international treaties. This approach characterised the response to the financial and economic crisis, giving rise to economic governance, or the COVID pandemic, during which the boundaries of the Treaty competences were ignored in order both to combat the pandemic and to implement the recovery fund through the issue of EU public debt.

Prioritising solutions over the application of rules can be dangerous, as demonstrated by the Ruling of the German Constitutional Court of May 2020, which found that, in purchasing bonds, the European Central Bank had exceeded its competences (Maduro, 2020). In

any case, if we want to continue arguing that we are a democratic system based on the Rule of Law, we have to cease to act on the basis of exceptionality and instead revise the Treaties so that all European political actions are contained within the parameters of legality.

Moreover, the political demands we have faced in 2022 require that we address this reform as a matter of urgency. In March, the European Council rapidly responded to the consequences for the EU of the war in Ukraine, in its triple dimension of energy, the economy and defence, implementing an action plan known as the Versailles Agenda (European Council, 2022a). The objectives agreed and the measures to implement for 2030 are adequate, necessary, urgent and very ambitious, but now that it is time to implement them through legislation, obstacles have started to appear. In all three cases the EU has very limited competences or decisions are subject to unanimous approval by the Council, which slows down decision-making and permits vetoes in defence of national interests or even of spurious ones. And in the spheres of the economy and defence, there is no link to the European Parliament's decision, a democratic deficit that is difficult to justify.

It is important to stress that unanimity is one of the EU's key political vulnerabilities, which prevents it from acting autonomously as it enables an external state to control European political decision-making from outside through the use of Trojan horses. There is solid empirical research showing how powerful external states cultivate one or more Member states with the aim of ensuring that they veto any Council decisions that could be inconvenient (Orenstein and Kelemen, 2017). We have to be very clear, then, that unanimity is the Achilles heel of the EU. And it is only going to become more difficult to maintain the necessary unity of 27 member states against Russia as more problems emerge.

The other political process which ended in 2022, the Conference on the Future of Europe, also implicitly calls for reform of the legal and constitutional basis of the EU. European institutions agreed, when they called this short-lived institution, to follow up its recommendations

(CoFoE, 2022). Of its 49 proposals and the associated measures deriving from them, as many as 18 cannot be implemented without Treaty revision, as the General Secretariat of the Council has recognised (General Secretariat of the Council, 2022: 7–8).

The European Parliament is of the same opinion, and has argued that the recommendations of the Conference necessitate reforms, stating that it: *“Acknowledges that the conclusions of the Conference require Treaty changes, inter alia, concerning the simplification of the EU institutional architecture, more transparency and accountability in the decision-making process and a new reflection on EU competences”* (European Parliament, 2022a: 12). And this process of Treaty reform, in its view, can only be conducted through a Convention (European Parliament 2022b: 12).

More recently, the President of the Commission, Ursula von der Leyen, in her annual speech on the State of the Union, also backed the need to “renew the European promise” and to “improve the way in which we do and decide things” by holding a new European Convention to reform the Treaties (Von der Leyen, 2022).

For all of these reasons, although it is clear that it is difficult to undertake truly successful institutional reform due to the urgency and gravity of the crises that surround us, this urgency should not allow us to forget how important and necessary such reform is. In autumn 2022, as we write these lines, it is time to reflect on the fact that the EU needs strong leadership to address its limitations with courage. And that is why, as it takes on the Presidency in 2023, we call on Spain to face up to this challenge and provide the political drive the EU requires.

Spain leading the European project: why Spain has to lead an ambitious agenda

I believe that the Spanish government needs to be aware of its historic responsibility, of the need for an ambitious agenda for its Presidency and a proactive position which can deepen the European integration project, improve the operation of the EU as a whole, and strengthen its interna-

tional role. The Spanish Presidency must assume this leadership for three reasons: because the preceding Presidencies cannot do so; because its status as a large, pro-European state not only permits but requires it to do so; and because the European political cycle necessitates this approach.

The Czech and Swedish Presidencies

The Czech Presidency, of July to December 2022, focused its agenda on addressing the challenges caused by the war, which was inevitable given the current situation. However, in September it also conducted a series of consultations with Member states regarding their support for a formal Treaty revision to implement the proposals of the Conference on the Future of Europe, which culminated in a debate in the heart of the Council (Czech Presidency, 2022).

It found that seven states would be in favour of reform, fifteen do not see the need to revise the Treaties to implement the proposals of the Conference on the Future of Europe, and five are ambivalent, prepared to go with the majority. (It goes without saying that Spain is in the pro-reform group.) As a result, the Council of General Affairs agreed to continue with discussions to see what suggestions could be implemented without touching the Treaties, for example using passerelle clauses to overcome the need for unanimity on a case-by-case basis (Czech Presidency, 2022).

Nor does the Swedish Presidency, in the first half of 2023, seem likely to have the political will to promote a deepening of the EU. Like the Czech Presidency, due to its geographical situation, Sweden has above all prioritised ensuring that the EU focuses all its political energy on its response to the Ukrainian conflict. This concern is, if anything, increasing in light of the sabotage (presumed to be of Russian origin) of Swedish gas infrastructure (Oltermann, 2022).

It was not for nothing that, in May, Sweden and the Czech Republic signed a document which argued against undertaking immediate Treaty reform to implement the mandate of the Conference on the Future of Europe

(Bulgaria, Croatia *et al.*, 2022). Moreover, in light of the results of the elections of September 2022 (Swedish Election Authority, 2022), we cannot ignore the fact that the new Swedish government which will hold the Presidency will either include or be supported by the far right and is thus unlikely to be strongly in favour of integration.

The leadership of a large, pro-European state

The responsibility, then, falls to Spain, a country of sufficient size and influence, with a pro-European tradition, and the opportunity to establish alliances with other Member states and with institutions to lead change. Spain is the EU's fourth-largest Member state in terms of population, the second in size, and the fourth-largest economy in the EU and the Eurozone. This means it has significant weight in terms of power and representation. Moreover, it is a member of all the integration areas, making it part of the EU's core. After Brexit, there were calls for Spain to fill the vacuum in political leadership vacated by the United Kingdom, one that Italy was unable to fill due to its own political instability. However, this expectation was not fully realized.

Since it joined in 1986, Spain has been a pro-European Member state, with its political parties and public opinion traditionally supporting the federal political project of European integration (Fernández Pasarín and Morata, 2020). This position, however, has begun to change in recent years with the appearance of a political party, Vox, which declares itself to be openly intergovernmental when not overtly Europhobic (Vox, 2018). Spanish public opinion has also shifted, with support for more integrationist approaches falling in the wake of the 2008 crisis, although recently this trend has begun to reverse.

As a Member state, Spain has experienced two very different stages in its role within the EU (Guinea Llorente, 2019). The first, from its entry until 2004, and coinciding with the governments of Felipe González and José María Aznar, was characterised by a firm desire to lead the European project, and this was given expression in

the various Spanish Presidencies. However, these governments promoted two distinct models for the EU: a federal model favoured by González and an intergovernmental one favoured by Aznar. These two sub-stages were also characterised by Spain's participation in solid, stable coalitions to lead the project. Under González, with France and Germany; and under Aznar, with the United Kingdom and Portugal. In both cases, however, there was a strategic political project and the determination to put Spain at the centre of the EU, making it an indispensable partner in any European negotiations and consensus, using all the resources at its disposal.

Since 2004, however, the country's political profile has diminished, when Spain ceased to aspire to lead an overall political project and instead limited itself to negotiating specific issues, focusing on the immediate context and defending its national interests. Nor did it form part of stable coalitions. Since 2004, a lack of either a strategic focus or proactivity have restricted Spain to negotiating the different dossiers it has been responsible for at any given time, without making radical proposals or advocating a change of model. There has been a shift, then, from a strategic policy to a tactical approach. Spain's negotiating capacity, however, continues to reflect its power, with notable successes in issues it deems to be of vital importance, such as the negotiations over the Spanish rescue (Guinea Llorente, 2017: 546–547), the various budget negotiations or, more recently, those regarding the *Next Generation* programme. We would like Spain to return to a strategic policy, to the ambition of shaping the future of the EU, to once again being a central state.

The European political cycle accompanies the Presidency and demands proactivity

Spain will lead the EU in the six-month period prior to the elections to the European Parliament in May 2024. The legislative agenda means that Spain will be responsible for mediating the conclusion by the Council of many of

the key dossiers for this legislature, including one that is of particular interest to us: reviewing the fiscal rules or the Stability and Growth Pact.

But the fact that the legislature is nearing its end means that the EU must present voters both with tangible outcomes of its governance and with an inspiring project that demonstrates it has understood the desires and preferences of its citizens. Otherwise, the future of all Europeans is threatened by the possibility that general disillusionment delivers a majority at the ballot box to Eurosceptics, producing an ungovernable European Parliament. The actions of the Spanish Presidency are key both in ensuring that the EU can present itself at the polls with an inspiring project, and to give the upcoming elections a trans-European dimension.

With respect to the first of these challenges, it will be the responsibility of the Spanish Presidency and of the Belgian Presidency that follows, to bring a clear political project to the elections, one that looks to the future, and shows itself capable of addressing the present and future needs of EU citizens. This can only be achieved in cooperation with the institutions. It can be done if a reform process has been launched, but also with a grand political declaration along the lines of the Solemn Declaration on European Union at Stuttgart (European Council, 1983), showing that Member states, together with EU institutions, are determined to ensure that the European project works.

With respect to the second dimension, the Spanish Presidency can also play a key role in supporting a democratisation of the EU elections by Europeanising them. It is also possible that the Presidency will culminate in the European Parliament initiative to reform the European Electoral Act, calling for shared electoral rules and a transnational constituency supporting a single European list for each political party, with a nominated lead candidate (European Parliament, 2022c). The Parliament proposals reflect the demand of the Conference on the Future of Europe regarding the institutionalisation of the practice of *Spitzenkandidaten* and transnational lists (CoFoE, 2022: 81). These are of key importance if we are

to connect citizens to European elections and generate Europe-wide political debate, as we argued in last year's Report (Guinea, 2021).

Approving reform of the European Parliament Electoral Act may prove very complicated, as it requires unanimity in the Council. The Parliament proposal is still very vague, in so far as it does not establish either the size of any transnational list or whether there has to be some kind of distribution of positions between nationals of Member states. This would be a logical step to ensure that citizens of all Member states identify with the list and with the political project being advocated. The Spanish Presidency will play a central role in building consensus and firming up decisions, mediating between Member states. And, in the case of the Council's failure to reach agreement, it may seek to promote a tacit political commitment among its other European partners to respect the *Spitzenkandidat* system, as happened in 2014, providing a central element for European voters to put a face to their vote when they go to the ballot.

Conclusions: for a Spanish Presidency of the Council of the EU in 2023 which works to strengthen the integration project

Presidencies, and their agenda in particular, are usually prepared some time in advance, with the aim of reflecting and giving considered expression to the political priorities to be promoted. At the same time, they must reflect current issues in the EU and the agenda of events. In the case of Spain's Presidency of the Council, it is particularly difficult to undertake this preparation in a calm and considered manner, given the uncertainty generated by the conflict in Ukraine and the energy, economic, political and social crises deriving from it.

It would be logical to expect Spain to use its Presidency to promote those issues that have been a constant in its time as a Member state: developing the European citizenship statute, cohesion, the Mediterranean, and relations with Latin America. However, the combination of

pressing issues and the EU's ongoing agenda should not lead to the need for reform being overlooked.

With July 2023 only months away, we still do not know if the context will allow the major operation of Treaty revision to be launched. The Spanish Presidency has to read the political situation intelligently and dynamically to extract maximum benefit from a volatile, changing context, one that will surely be very demanding and which requires an ambitious response from the EU.

Based on these political conditions, Spain must define its position and strategy, seeking to argue for a formal revision of the Treaties led by a Convention or proposing concrete solutions linked to the management of specific issues, on a case by case basis. The first route would entail an ambitious reform, capable of adapting European political and institutional structures to enable the EU to react and to adopt joint decisions in the face of developments, in a legitimate, democratic manner. The second solution should be seen as provisional, as it is neither the most democratic nor the most effective, but we may nevertheless have to settle for it for the time being.

If Spain is to have the capacity to influence and lead change in the EU, it requires at least three things: a strategic reform project; the strength and capacity for action which depend, in turn on two factors – the political will to exercise leadership and the internal stability and strength of the government; and, finally, to construct alliances with other European centres of power.

It is important to identify an objective for reform, one that is motivating and that can be sold to the more reluctant Member states and then to their citizens, anticipating substantial improvements in the operation of the EU and its political outcomes. To guarantee this strength and capacity for action, the Spanish government must put all its energy and political capital into the European agenda.

Internal stability and strength as national elections approach may appear difficult to achieve, but the best response in this situation would be to seek to reach an agreement with the opposition with respect to the Presidency programme, in order to present it as a policy of the

Spanish state, holding it above the political fray during an electoral period. Finally, to successfully implement any ambitious reform, whether total or partial, it is vital to form coalitions with Member states and institutions as a platform for seeking to convince others, unblocking resistance and building a consensus position.

Recommendations

The Spanish Presidency must consider reform of the EU as a central goal: a major formal revision of the Treaties, if the context allows it, with limited adaptations, agreed case by case, if no other solution is possible.

Because of its timing, the Spanish Presidency will be key in presenting European citizens with an inspiring project when they go to the ballot box in May 2024. This means that delivering more transnational, more democratic European elections is a priority.

To guarantee the success of its initiatives, the Presidency must work on a project and a strategic approach and invest all its political capital in building coalitions and consensus with EU institutions and other Member states.

Because the Presidency coincides with national elections, the Spanish government should agree its agenda for the Presidency with the main opposition party and others, with the aim of making it a State policy, raising it above the political fray and seeking to ensure its success.

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The European Union on the global stage. European strategic autonomy

Christos Katsioulis

European security is in tatters and the European Union is (again) trying to find its role. That could somehow summarise the situation after the unprovoked Russian war against Ukraine brought the reality of major interstate war back into the European neighbourhood. The first impression was rather clear: the hope, that the Union might be able to achieve “strategic autonomy” and align its status as an economic superpower with more robust capabilities in the realm of security and defence, experienced a major blow. Whilst Washington and London reacted decisively and NATO was revitalised as the main defence for Europeans, the EU struggled. But that might be a premature assumption, based on very recent events. Strategic autonomy for the EU is still in the books after Russia attacked Ukraine, however, under the new conditions, there are still a few obstacles to overcome.

To examine these obstacles, there will be first a look at the concept of Strategic Autonomy and the developments towards achieving that in the EU up until the war. In a second step, the focus will be on the situation of the EU in security and defence before the outbreak of the war. The last part will concentrate on the changes war has triggered and delve into the possible repercussions for a strategically autonomous European Union after the Russian war against Ukraine.¹

The concept of Strategic Autonomy

The idea of being autonomous or acting autonomously has been used in a rather inflationary manner throughout Europe in the last years. From the purely defence aspects of the matter – building a European army – to the more broadly defined issue of supply chains in a post-pandemic world (Fabry and Veskoukis 2021), strategic autonomy seems to be the way forward. Mauro (2021) describes it thus as an “obscure object of desire”, pointing towards the vagueness of the term. Because to attain analytical clarity and help define clear political aims, strategic autonomy needs to be specified and applied to the issue at hand: security and defence. Here again, there is no clear agreed meaning available. Instead the debate of the last years show, that there are different understandings around. That leads too often to parallel monologues and serial misunderstandings, since the participants of the debate concentrate on different aspects of autonomy (see also the wonderful example of the debate between Emmanuel Macron and Annegret Kramp-Karrenbauer provided by Mauro 2021: 6ff).

But not only politicians diverge in their understanding of Strategic Autonomy, academia and think tanks also take different routes in approaching the subject. For the

1 1. It has to be noted at this point, that this article has been finished in September 2022. Developments after that date cannot be taken

into account, although they might have important influence on how the EU develops.

purpose of this paper, there are three levels that need to be taken into account and three functional definitions, that are helpful in understanding the different dimensions of Strategic Autonomy. The three levels inside the European Union are the political, the institutional and the functional level (Grevi 2019: 10). That means, that to achieve Strategic Autonomy, the EU needs politically a common understanding of the main goals not only on paper, but also in practice, which would entail a high level of trust between the member states or even the “sense of shared destiny” (Grevi 2019, 10). Sven Biscop (2022) describes this, from a different angle as a mindset shared by the member states. On a second level the EU needs a set of institutions that can foster this common mindset and create processes for the EU to act on its political will. These institutions would need to provide efficiency, legitimacy as well as flexibility. The third level entails capabilities of the EU to act autonomously and implement its decisions. That would mean the provision of adequate economic and military resources (See for all three levels of Strategic Autonomy: Grevi 2019: 10).

These three levels look at the internal preconditions and processes necessary for the EU to achieve Strategic Autonomy. However, there also needs to be a definition of the ambition of the concepts in terms of what it should aspire to achieve in security and defence. Looking at the development of the strategic debate in Europe, there are three aspects of European Strategic Autonomy, that need to be differentiated (for all three aspects of Strategic Autonomy, see Mauro 2021). First, there is the ambition to provide international crisis management. This stands at the beginning of the Common Security and Defence Policy and marks the aim of the EU to deal autonomously with crises in its neighbourhood. It thus describes the lowest level of ambition. Secondly, there is Strategic Autonomy understood as military independence. This is a later definition of the concept, that was introduced into the strategic debate in the past ten years and found its way into the Global Strategy of the Union (EEAS 2016). It aims at providing security inside and outside the EU as well as an autonomous and competitive European defence technological and industrial

base. Politically the latter concept was directed at least by some towards the United States, aiming for a more autonomous EU form NATO and the US (Borrell 2020). Third, the latest and broadest understanding of Strategic Autonomy is the above described rather indiscriminately used autonomy in the broader sense. As the High Representative for the CFSP, Josep Borrell, himself acknowledged in an aim to clarify the concept: “...the stakes of strategic autonomy are not limited to security and defence. They apply to a wider range of issues including trade, finance and investments.” However, the High Representative was rather clear, that this might prove unhelpful and tried to redirect the debate to the narrower sense of security: “Since then, strategic autonomy has been widened to new subjects of an economic and technological nature, as revealed by the Covid-19 pandemic. However, the security dimension remains predominant and sensitive.” (Borrell 2020)

The focus on security will guide the following parts of this chapter, since it allows for a clearer analysis of the achievements of the EU towards Strategic Autonomy as well as the potential for further developments. We will therefore concentrate mostly on crisis management, with only a glance at military independence, always bearing in mind the political, institutional as well as the functional dimension.

Strategic Autonomy in practice?

The idea for a European Union was conceived in times of war and conflict. The “peace project” of a cooperation between former war parties like Germany and France seemed to be the right way out of the chaos of successive world wars, that had coined the first half of the 20th century. Over time, the rationale of peace became more and more the pathos-laden part of grand speeches, whereas other aspects like democracy (at first) and then the promise of prosperity became the drivers of EU integration. However, questions of security became salient again, after the end of the Cold War, when the Yugoslav wars reminded Europeans, that war in Europe was still a

reality. These wars, and the realisation, that the Europeans were unable to deal with such crises in their imminent neighbourhood without the United States and NATO, were the main catalysts for bringing the dimension of foreign and security policy into the European integration process. Without even being mentioned, the first definition of Strategic Autonomy, which is still of value today, can be found in the declarations of the EU Council on Cologne 1999: “The Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises without prejudice to actions by NATO” (EU Council 1999). This was the starting point for a rapid succession of institution-building and goal-setting for the European Union. The results were, in loose order, the post of the High Representative for Foreign and Security Policy, The European External Action Service, various strategies for foreign and security policy, as well as ambitious goals for European capabilities. The latter started with the rather high-aiming Helsinki Headline Goals 1999 of being able to deploy around 50 – 60.000 troops in 60 days and keep this engagement for a year. Since this was difficult to achieve, in 2004 the EU created the Battle Groups, smaller units of 1500 personnel to be deployed within days, a concept, that was ready by 2007. However, the Battle Groups have never been deployed, due to “... issues relating to political will, usability, and financial solidarity...” (EEAS 2019).

The above-mentioned selective examples of the EU’s action in security policy show, there is a pattern in this field: The institutional framework is built up with considerable speed and diligence, the capabilities, to be provided by the member states lacks behind, and political will seems rather scarce. The preconditions for a more clearly defined political direction, such as mutual trust between the member states as well as a sense of shared destiny, were never really fulfilled. Both clashed mostly with the different perceptions of the relationship with NATO and the United States on the one hand and the question of how to deal with Russia on the other hand (Mauro 2021: 5, Retter et al 2021: 3)). That hasn’t prevented the EU from

implementing a series of missions in its neighbourhood as well as especially in Africa (for a full overview of EU missions, see EEAS 2021). However, despite the aim for “a stable world and a safer Europe” (EEAS 2021), one cannot overlook the fact, that the world at large, but especially the European neighbourhood has become more and more unstable during the build-up of a more autonomous Europe. The wars in Georgia, Ukraine, Armenia and Azerbaijan, the ongoing conflict in Syria with active participation of Russia and Turkey, as well as the conflict zones in the Middle East and below the Sahel bear witness of this worsening of the situation. Even before the Russian war against Ukraine, this would have been important drivers for an intensified effort towards European strategic autonomy.

Another political driver for these efforts were the United States themselves. Already under President Obama, the focus of Washington shifted towards the Pacific, nudging for a more assertive and stronger role of Europe on its own continent. During the presidency of Donald J. Trump in the United States, the pressure piled up considerably. His contempt towards the European Union, disregard of NATO, and more generally rather transactional approach to foreign policy, reminded Europeans of the fragility of their reliance on Washington (Kaminski 2022, Grevi 2021: 15). But even under Joe Biden, the US-president with a strong transatlantic orientation, there came this awkward moment, where Europeans were made clear, how much they were dependent on the interests and decision-making processes in Washington. During the chaotic evacuation from Afghanistan, the coordination between allies was more than sub-optimal.

Whereas the realities seem to push for more Europe in security policy, the sovereigns in Europe, meaning the electorate, is more reluctant. Popular opinion is rather divided on the question of strategic autonomy. Even before the war, most citizens included in a poll on security policy in Europe were rather in favour of an intensified cooperation between NATO and EU. The idea of a more autonomous role of the EU from NATO garnered only marginal support (Katsioulis et al 2022: 29). Even in Italy, the most supportive country included in the poll, only

32 per cent of respondents favour either increasing or complete independence from NATO. The same indifference applies to the 'totem' of Strategic Autonomy, the European Army. Only in France, a slight majority of 53 per cent supported the build-up of a European army, whereas in Germany, Italy or Poland these numbers range slightly above 40 per cent (Katsioulis et al 2022: 30).

So, in light of electoral indifference, but despite clear substantial incentives for Europe to get its act together, the capacities of the European Union member states, that are still the founding block of any EU capacity, have more or less shrunk (Biscop 2022: 4). This was due to decreasing defence budgets in many EU member states, not only making their ambitions towards European capacities seem vain, but also their promises towards NATO (21 EU member states were NATO members in 2021). This lack of capacities available for the EU was amplified by Brexit. The United Kingdom was, together with France, the member state with the strongest military capabilities and experiences. Although London had been rather reluctant in pressing ahead with EU security policy, thus contributing mainly to the lack of political will, it had nonetheless provided two individual Battle Groups additionally to its military and strategic expertise.

To sum up, since the idea for Strategic Autonomy of the EU came about, there was a paradox development. The demand for security provided by Europe grew due to a worsened security situation in the European neighbourhood and an increasingly distracted or absent United States. But the supply was nowhere to be found. Whereas institutionally the EU was making considerable progress, capacities were not available, and – even more crucially – there was no political will to act.

Strategic Autonomy in light of the Russian war against Ukraine

The Russian War against Ukraine is a turning point in European history, or a "Zeitenwende" as the German Chancellor Olaf Scholz described it just a few days after

the beginning of the war in a seminal speech to the Bundestag (Scholz 2022). It bears thus also important repercussions for the Strategic Autonomy of the European Union. It changes the context in which the security policy of the EU needs to develop, the urgency of addressing the issues of lacking capabilities as well as the rationale concerning partners. Some of the determining factors for strengthening European Strategic Autonomy, according to Retter et al [Rand] (2021: IV) have been considerably altered since the unprovoked Russian war against Ukraine.

On the political level the war brings first the threat perceptions of EU member states closer together. With Russia being an aggressor and violating international law in a blatant way, the previously rather diverse threat perceptions, especially between the Eastern and Western members of the Union (Katsioulis 2022: 22), will converge considerably. Thus, one of the major factors influencing the development of Strategic Autonomy will be more favourable for progress. This could be already be observed, when the question of sanctions against Russia was put on the table. Never before, could the EU decide in such a swiftly manner about a sanctions regime, that will have considerable effects not only on Russia, but also European societies at large. But the common conviction, that there needs to be a clear signal towards Moscow prevailed and helped overcome political differences. Secondly, the perennial apple of discord, meaning the competition between EU and NATO, can be set aside, at least for the medium-term. This discord has for many years stood in the way of political unity inside the EU and thus prevented progress in decision-making as well as capacity-building (Ondarza/Overhaus 2022: 5). The war has in some way revitalised the Atlantic Alliance and made clear, that it serves a specific and very necessary purpose in Europe: territorial defence still relies on NATO and thus the support of the United States.

There is a third political change, the war has brought about. Both, EU and NATO have been strengthened considerably. The Danish population voted in a credendum to

opt-in the European Security and Defence Policy, ending its outsider status that lasted for decades. This shows also, that popular opinion on EU security policy might have changed after the Russian attack and traditional political stances can be changed. The same applies to NATO, where Sweden and Finland, two countries that traditionally were neutral, have joined the alliance in light of their revised threat perception. Last, but not least, the cooperation between EU member states and the United Kingdom has improved. Although Brexit and the ensuing debates had for some years poisoned the waters between London and the EU, the war showed the necessity for cooperation and introduced a sense of shared destiny at least in light of a common adversary.

On an institutional level, the war revealed the Janus-headed principle of the EU decision-making-process. As described above, the Union was able to impose considerable sanctions on Russia in a swift manner, when the political momentum was opportune and all member states agreed. That made for an even more impressive reaction, since the Russian government obviously was not anticipating such a decision supported by all member-states. However, when the imminent shock about the aggression subsided and political considerations came into play again, the problems of unanimity came to the fore again. As long as individual member-states can bend decisions their way to serve short-term political aims or even influence electoral deliberations, the EU won't be a force to be reckoned with on the international level. This is not new insight, but the need to change this, has become far more imminent. The German government for example as renewed its aim, to introduce qualified majority voting into the security policy of the EU and others are supporting this. This seems still unrealistic, bearing in the mind the importance the veto has especially for smaller member states of the EU. But it could lead to a renewed effort of building a grouping inside the EU, that shares not only the threat perceptions, but also how to mover forward from them, perhaps in form of a Permanent and Structured Cooperation (PESCO) to proceed. This would be a

vanguard towards a more integrated European security policy, side-lining the unanimity principle. The political pressure of the war, could thus lead to differentiated levels of integration in the EU according to overlapping strategic cultures following the example of the EUFOR Crisis Responses operation Core (Biscop 2022: 9).

The war has also brought change on the level of capabilities. Since the shock about interstate war on the border of the European Union has brought the focus back on national defence capabilities, some major decisions have been taken. What obviously stands out, is the decision of the German government to invest € 100 bn in its defence budget over the coming years and permanently spend more than 2 per cent of GDP for that purpose (Scholz 2022). Although the German defence budget had already been raised since 2014, this injection of major resources will make the country the biggest defence spender in Europe, by a considerable margin. Other member states have also decided to invest more in armaments. This will change the capabilities of European member states in the foreseeable future, allowing them to shoulder more responsibility in NATO and provide more capabilities for the EU.

However, the more profound change, this investment initiative will be able to bring about, is a stronger integration of European armies. With the investment decisions taken at a similar time, there is a chance to align at least the procurement of more costly material and thus make use of scale effects for the benefit of budgets all over Europe. At the same time, many European member states have emptied their depots of older weapon systems to support the Ukrainian army in their effort to defend themselves against the Russian attack. Taken together, this offers the opportunity to build interoperability into the different European armies from the beginning by procuring systems together, making use of the new financial instruments the European Union is providing for defence and ending the existing systems of a multitude of arms systems, that have been used in the different European armies, making cooperation and common operations nearly impossible. With these efforts combined with the

enhanced role of the European Commission in defence, there is a chance for consolidating and integration European defence in the coming years (Puglierin 2022: 5)

The German government has already pledged to use the additional spending to enhance the European dimension. This has been clear from the very inception, with the chancellor outlining in his initial speech, that the funds would be used not only to buy American weapon systems like the F-35, but also the Future Combat Air System, a European platform. This has been underlined further in the following months (BMVG 2022) and could be the seed for making the EU capable of acting autonomously in the future.

Apart from the changes on the political, institutional and capabilities level, the war has helped clarifying the aspirations of European Strategic Autonomy. It has become clear, that the more ambitious level of reaching independence in security and defence is currently not achievable, nor does any member state aim in this direction anymore. The Russian aggression has introduced a healthy dose of pragmatism into the European debate and thus helps focus the efforts towards realistic and necessary aims. The debate on EU and/or NATO, that has been conducted in a sometimes ideological fashion, is over. The real question seems to be rather: how much Europe in NATO. This takes into account the necessary strengthening of European capabilities, as well as the pivot towards the Pacific, that is happening in the United States, despite the current war in Europe. However, there are still a number of synergies between NATO and EU, that have not been used sufficiently. The new Strategic Compass of the EU, that was revised in light of the Russian aggression, is showing this as a direction for a European Union, that is more flexible, effective and nimble (Puglierin 2022: 4)

Concluding, it becomes clear, that the Russian war against Ukraine has not only shattered fundamental security assumptions in Europe, but also challenged the European Union to sharpen and deliver on its ambitions towards Strategic Autonomy. Before 2022 the security ambitions of the EU had been consisting of a highly am-

bitious institutional set-up, that was lacking political will and especially the means to act on the aspirations. The current decisions by a number of European governments will allow for a closing of many of the capability gaps in the coming years. The way, in which these investments will be implemented, will be the first litmus test of Europe's ability to get its act together. Should the chance be seized and the EU help its member states in integrating their militaries better, the Union will be in a far better position to act in security policy. And action will be required in two directions. First, the necessity to shoulder a heavier burden inside NATO will put the European pillar to the next test. Nobody expects Europeans to replace the United States fully, especially their nuclear umbrella over the Alliance, but in the realm of conventional forces, Washington will expect a bigger European footprint. That goes for the current administration and even more for so, if there would be a change in government after the next presidential elections in 2024. Second, Europe will be needing to deal with crisis management in its neighbourhood for the foreseeable future without much support of the US. Although the current war overshadows this issue, the many hotspots surrounding the European Union need attention and possibly even stabilisation.

A European Union, that is capable of fulfilling these ambitions would finally put flesh to the bones of the promise of Strategic Autonomy, that is now nearing 25 years of age. Since then, the world has changed fundamentally and with it the meaning of this sometimes blurry, sometimes politically contested concept. But what hasn't changed is the need of the European Union to supplement its economic weight with an accordingly heavy footprint in security policy. The Russian war has just been the latest reminder, that the much-quoted mismatch between the economic giant and military dwarf, who is by the way constantly distracted by internal infighting, is still reality and needs fixing. Because, if the EU cannot achieve the ability to act in an increasingly chaotic and confrontational environment, it risks becoming the playfield for other actors – that would be the opposite of Strategic Autonomy.

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Above and beyond any considerations regarding the war, we need to be aware that tomorrow always comes around sooner than we expect: the next elections to the European Parliament are not far off. In May 2024, the European Parliament will be elected directly for the tenth time in its history. After the Conference on the Future of Europe, this is the next great test for supranational democracy. What was the situation of the EU in 2022? Is it stronger, richer and open to reform?

Without tackling what we might call the second major reform of the EU, which includes the areas mentioned above, the EU cannot become what has been termed a 'geopolitical Europe'. If it fails to take that step, Europe will become a second-rank political actor on a global stage dominated by the United States and China, and in a context of increasing polarization.

Our objectives include European integration, cohesion and solidarity. This means that the EU must develop and implement systematic policies in areas such as foreign affairs and security, economic policy (there is still no genuine economic union), ensuring primary public goods, and protecting the values of democracy, freedom and the Rule of Law. An EU of 33 or more Member States needs this reforming impulse. It is vital to situate democracy and citizens' participation at the heart of reforms, to increase the legitimacy and effectiveness of EU decision-making, as was stated in 2021 in the consultations for the Conference on the Future of Europe.

The need for a major reform preceded the Ukraine war, but war has made it the number one priority for the EU of the future.