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# REVIEW OF European & Transatlantic Affairs



# Introductory Remarks

## 1. 1. Letter from the Editor-in-Chief

Sabrina Sussman  
Editor-in-Chief

It gives me great pleasure to introduce the Fall 2021 issue of the Review of European & Transatlantic Affairs.

European Horizons seeks to give young people a voice in shaping the future of Europe and transatlantic relations, incubating innovative policy ideas through our publications, conferences, and chapters. RETA provides a platform for students to connect to each other, our partner organizations, academics, and policy makers, enabling them to develop ambitious suggestions for improving the transatlantic relationship and European policy.

Our last issue was published following unprecedented change destabilizing our world and our institutions. The United States experienced a fraught and contested election, a rise in conspiracy theories and extremism, and an attack on the Capitol as a result of anti-democratic processes sowing discord and distrust in the American system of democracy. With Hungary and Poland continuing to challenge the human rights conditions supported by the European Union, Eastern Europe's deepening ties with autocratic leaders fan similar concerns on the other side of the transatlantic relationship. Globally, grassroots movements against vaccinations, elections, and public institutions are working against democratic reform movements.

Despite these, we also witnessed an outpouring of support asserting democratic values and inspiring hope in the future of the transatlantic partnership. Activists have fought against human rights abuses, racial inequity, and attacks on civil society, while reframing our ideas of how to address institutional issues. Citizens responded to widespread struggles with efforts towards mutual aid, supporting neighbors and small businesses. Mass mobilization of public health resources funded the research and creation of a vaccine at remarkable speeds, setting the stage for global recovery. Governments have taken steps to reduce the spread of dangerous misinformation and election interference. This issue of the Review of European & Transatlantic Affairs explores these and other ways we can begin to rebuild our threatened political institutions with an eye towards a better future, keeping in mind the democratic norms the European Union and the United States value so highly.

Sabrina Sussman is a recent graduate of the Johns Hopkins University, where she studied international studies and economics, as well as environmental science and French. She has interests in security policy, the transatlantic relationship, Sino-American relations, and Arctic policy. Sabrina served as the Director of Publications for European Horizons, and as the Co-President of European Horizons at Johns Hopkins. She is passionate about policy research as a form of political engagement and education.



# Promoting Democratic Norms

## 2. 1. Running head The effects of terrorist attacks on liberal democracies

SUBMITTED BY

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### ABSTRACT

Terrorism has changed over the years. The recent wave of terrorist attacks targeted at (Western) liberal democracies has evoked extensive responses from governments of the countries under attack. These responses differed in certain respects, but contain several similar elements. By comparing two recent case studies, namely post 9/11 United States and France after the bloody 2015 attacks in Paris, this essay shows that while the two Presidents used different methods, their responses to the terror attacks both involved the expansion of executive authority. Furthermore, both responses showed a worrying degree of illiberal and, in some cases, authoritarian practices leading to the violation of liberal democratic values and core elements. This essay therefore concludes that we should be wary, not just of terror attacks, but maybe even more so of our response to them.

“I ask you to uphold the values of America, and remember why so many have come here. We are in a fight for our principles, and our first responsibility is to live by them”.<sup>1</sup>

“In these difficult moments, we must — and I’m thinking of the many victims, their families and the injured — show compassion and solidarity. But we must also show unity and calm”.<sup>2</sup>

## I. INTRODUCTION

Terrorism has been an existing phenomenon for many years. However, the recent wave of terrorist attacks, associated with Islamic extremism, is largely focused on targeting Western liberal democracies and their core values.<sup>3</sup> The response to recent terrorist attacks on democratic countries has differed in many ways across countries and does not remain uncontroversial. This essay aims to analyze how the response to large terrorist attacks on democratic ‘soil’ has affected the liberal democracy of the affected country. Two case studies will be compared for this analysis. First, the reaction to (arguably the most notorious) terrorist attacks on the 11th of September 2001 in the United States will be discussed by examining the response of the Bush administration and the change in public discourse and popular culture. Then, the French response to the 2015 Charlie Hebdo and November 13th attacks is evaluated by investigating political and societal consequences of the attacks. By outlining the political and legal measures taken by the respective governments this essay aims to elucidate how responses to terrorism can erode the adherence to liberal democratic values. First, the concepts and theory used for the analysis of the cases will be outlined. Then each case study will be individually explained and analyzed. According to the analysis I will then compare the responses to terrorist attacks in France and the United States, using the existing literature, and formulate a conclusion.

## II. THEORETICAL FRAMEWORK

### 2.1 TERRORISM

A broad analysis of the development of terrorism and how terrorism is understood is beyond the scope of this paper. However, to comprehend the

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1 George W. Bush, ‘Address to the Joint Session of the 107th Congress. Speech’, (Washington, 2001, September 20).

2 François Hollande, ‘Address to the French People. Speech’, (Paris, 2015, November 13).

3 Bernard Manin, ‘The Emergency Paradigm and the New Terrorism: What If the End of Terrorism Was Not in Sight?’, in *Les Usages De La Separation Des Pouvoirs*, ed. by S. Baume and B. Fontana (Paris: Michel Houdiard, 2008).

implications of terrorist attacks it is crucial to outline what is understood as terrorism. A popular definition of terrorism describes it as “the substate application of violence or threatened violence intended to sow panic in a society, to weaken or even overthrow the incumbents, and to bring about political change.”<sup>4</sup> However, contemporary societies do not face a single terrorism, but multiple kinds originating from different ideologies and origins.<sup>5</sup> Furthermore, terrorist threats today more often than not originate from non-state actors.<sup>6</sup> Although these non-state attacks have historically been less lethal than state terrorism they still succeed in instigating fear and crisis in society.<sup>7</sup> While acknowledging that there are many different terrorist organizations with origins in different ideas or ideologies, this essay will focus on two recent attacks both committed by different jihadist organizations adhering to Islamic extremism on liberal democracies. The two cases were selected based on the fact that both attacks were recent, targeted at liberal democracies and provoked a clear response from the government.

## 2.2 LIBERAL DEMOCRACY

In this essay democracy is defined as “a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives”.<sup>8</sup> A liberal democracy is then understood as a democracy in which minority rights and civil liberties are constitutionally protected.<sup>9</sup>

## 2.3 SEPARATION OF POWERS

The idea of the separation of powers is most often attributed to Montesquieu, who wrote that “in every government there are three sorts of powers: the legislative, the executive in respect to things dependent on the laws of nations, and the executive in regard to matters that depend upon the civil law”.<sup>10</sup> The three branches are also referred to as the legislative branch, ex-

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4 Walter Laqueur, ‘Postmodern Terrorism’, *Foreign Affairs*, 75 (1996), 24.

5 *Ibid.* p. 25.

6 Paul Wilkinson, *Terrorism Versus Democracy: The Liberal State Response*, 3rd ed. edn (London: Routledge, 2011), p. 6.

7 *Ibid.*, Laqueur, p. 34.

8 Philippe Schmitter and Terry Karl, ‘What Democracy Is . . . And Is Not’, *Journal of Democracy*, 2 (1991), 4.

9 Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism in Europe and the Americas : Threat or Corrective for Democracy?*, (Cambridge Cambridge University Press, 2012), p. 13.

10 Charles de Secondat Montesquieu, *The Spirit of the Laws*, (New York: New York : Hafner, 1949), p. 151.

ecutive branch and judiciary branch.<sup>11</sup> The legislative branch is concerned with the ratification of laws, the executive branch is in charge of national security and the judiciary branch punishes criminals and solves legal arguments between citizens.<sup>12</sup> Montesquieu argues that the branches should be independent from one another in order to ensure that tyranny is avoided as he believes that “when the legislative: and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty”.<sup>13</sup> Founding Father of the American Constitution James Madison builds on Montesquieu in number 47 of the Federalist Papers stating that “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny”.<sup>14</sup> In number 51 of the Federalist Papers, Madison proposes a system of checks and balances so that each branch can keep the others in check and thus ensure the balance between the three branches.<sup>15</sup>

## 2.4 UNITARY EXECUTIVE THEORY

Unitary executive theory is an American legal theory based on the Constitution which emphasizes the power of the executive branch.<sup>16</sup> The Unitary Executive Theory is often associated with Alexander Hamilton who argues in The Federalist Papers 70-72 that unity in the executive branch is safer for democracy as it enables people to extend the accountability of the President.<sup>17</sup> Although different interpretations of the theory exist, the main premise holds that, based on the separation of powers and Article 2 of the American Constitution, the executive power is vested in a single officer.<sup>18</sup> This officer, the President, is argued to possess extensive authority and exclusive responsibility.<sup>19</sup> This means that, according to supporters of the unitary executive theory, the Constitution endorses a unified executive branch in which all people working in the branch answer to the President, and are

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11 Ibid.

12 Ibid.

13 Ibid. pp. 151-152.

14 Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (C. R. Kesler, Ed.), First Signet Classics printing. edn (New York, New York : Signet Classics, 2003), p. 298.

15 Ibid. p. 317.

16 Jeremy D. Bailey, ‘The New Unitary Executive and Democratic Theory: The Problem of Alexander Hamilton’, *The American Political Science Review*, 102 (2008), 453.

17 Ibid. p. 457.

18 Stephen Skowronek, ‘The Conservative Insurgency and Presidential Power: A Developmental Perspective on the Unitary Executive’, *Harvard Law Review*, 122 (2009), 2075.

19 Ibid.

subservient to his or her opinion.<sup>20</sup>

Adherents of unitary executive theory often present two main arguments, often referred to as the “democracy claim” and the “managerial claim”, to prove that their theory is in accordance with constitutional democracy.<sup>21</sup> The democracy claim implies that, as the President is democratically elected to be a representative of the entire American people, the unitary executive theory allows the people to govern themselves and therefore satisfies the requirements of democracy.<sup>22</sup> The managerial claim holds that a powerful and strong President is more efficient and coordinated than modern regulatory government, which means that the executive branch will be better able to oversee the vast (inter)national policy apparatus and align it with the interest of the people.<sup>23</sup> However, the unitary executive theory and its claims are heavily disputed, which will become evident in the analysis of the 9/11 case study.

## 2.5 EMERGENCY STATE

Whereas the unitary executive theory supports a permanent expansion of the President’s authority, the emergency state consists of a temporary measure to increase the authority of the executive branch in response to an emergency.<sup>24</sup> A state is entitled to declare an emergency state in case of “a public emergency which threatens the life of the nation, and which is officially proclaimed”.<sup>25</sup> A public emergency refers to “an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed”.<sup>26</sup> The emergency state allows for the temporary deviation from higher order norms as described in the Constitution.<sup>27</sup> These deviations may have a procedural character, meaning a change in

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20 Ibid. p. 2077.

21 Cynthia R. Farina, ‘False Comfort and Impossible Promises: Uncertainty, Information Overload, and the Unitary Executive’, *University of Pennsylvania Journal Of Constitutional Law*, 12 (2010), 373.

22 Ibid. pp. 373-374.

23 Ibid. p. 374.

24 Manin, p. 23.

25 Richard B. Lillich, ‘The Paris Minimum Standards of Human Rights Norms in a State of Emergency’, *The American Journal of International Law*, 79 (1985), 1073.

26 Ibid.

27 Manin, p. 23.

the institutional decision-making process, or a substantive character, regarding the content of emergency measures.<sup>28</sup> There are, however, certain requirements to ensure that the emergency state does not allow for severe infringement on individual rights, such as “The Paris Minimum Standards Of Human Rights Norms In A State Of Emergency” and several international human rights treaties.<sup>29</sup> Minimum requirements for a state to fulfill include, among others, freedom from discrimination, freedom from torture, right to liberty and right to nationality.<sup>30</sup>

## 2.6 AUTHORITARIAN AND ILLIBERAL PRACTICES

In her article “What authoritarianism is ... and is not: a practice perspective”, Marlies Glasius argues for a move away from defining authoritarianism and illiberalism merely in the context of regimes, and instead proposing a classification based on authoritarian and illiberal practices which can be attributed to (democratic) governments, people and corporations.<sup>31</sup> Practices are understood as “patterned actions that are embedded in particular organized contexts”.<sup>32</sup> An authoritarian practice, according to Glasius, is an active practice by a political actor focused on accountability sabotage to the people by disabling access to information and/or disabling their voice.<sup>33</sup> An illiberal practice can be described as “a pattern of actions, embedded in an organized context, infringing on the autonomy and dignity of the person”.<sup>34</sup> While illiberal and authoritarian practices often go hand in hand, they can also exist independent of each other, and be executed by liberal and democratic governments and organizations.

## III. ANALYSIS OF CASE STUDY

### 3.1 POST 9/11 UNITED STATES: ERODING LIBERAL DEMOCRACY AT HOME WHILE SPREADING IT ABROAD

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28 Manin, p. 25.

29 Lillich, p. 1072.

30 Ibid. 1075-1081.

31 Marlies Glasius, ‘What Authoritarianism Is ... and Is Not: a Practice Perspective’, *International Affairs*, 94 (2018), 523.

32 Ibid.

33 Ibid. p. 526

34 Ibid. p. 530.

On the 11th of September 2001, 19 members of Al-Qaeda hijacked four airplanes targeting various important landmarks of the United States. Two of the airplanes flew into the both towers of the World Trade Center in New York City, killing 2823 people in the towers and aircraft. The third airplane crashed into the Pentagon, killing 189. The last hijacked airplane, which is suspected to have aimed to crash into the Capitol or the White House, crashed to the ground in rural Pennsylvania, taking the life of 45 people.<sup>35</sup>

The 9/11 attacks constituted a traumatic experience for the United States, and a grave shock for the rest of the world. The Bush administration was faced with the difficult task of formulating an appropriate response to the sheer terror that had shaken the nation. Nine days after the attacks, in an address to the joint session of Congress, President George W. Bush declared that “On September the 11th, enemies of freedom committed an act of war against our country”.<sup>36</sup> In that same speech Bush declared a so-called “War On Terror” stating that “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated”.<sup>37</sup> While remarkable, this approach in itself does not pose a significant danger to liberal democracy. However, the way the Bush administration went about this war has several pitfalls.

In order to enable the government to implement the policies required for The War On Terror the Bush Administration and their associates made frequent use of the unitary executive theory. In several memoranda written by legal advisors to the Bush administration the unitary executive theory was used to argue in favor of granting the President sole and extensive power to respond to terrorism.<sup>38</sup> The Yoo Memorandum, named after writer John Yoo, consisted of the main claim that the President has full control over foreign and military powers in the event of a terrorist threat.<sup>39</sup> Two other critical memoranda concerned the treatment of detainees and suspects of terrorist activity. The so-called Detainee Memo concluded that, as the President has the sole power to suspend and continue treaties, Bush had the right to temporarily suspend the Geneva convention about the prisoner of war status.<sup>40</sup> A memo strongly related to this is the Gonzales or Tor-

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35 T. Templeton and T. Lumley, ‘9/11 in Numbers’, *The Guardian*, (2002, August 18).

36 Bush, p. 66.

37 *Ibid.* p. 68.

38 David Schultz, ‘Democracy on Trial: Terrorism, Crime, and National Security Policy in a Post 9-11 World’, *Golden Gate University Law Review*, 38 (2008), 213.

39 *Ibid.* p. 215.

40 *Ibid.* p. 216.

ture Memo which states that the use of torture is in accordance with the Convention Against Torture, as long as it is not performed purely for the sake of inflicting severe mental or physical suffering.<sup>41</sup> Furthermore, the memo argues that even if the use of torture would violate the law, it would be unconstitutional to limit the presidential war-making powers.<sup>42</sup> The last memo, The Wiretapping Memo, was written after it was exposed that the Bush administration spied on American citizens without court-approved warrants.<sup>43</sup> The Memo defended the Presidents' use of surveillance by arguing that the President has the authority to engage in searches without warrants for foreign intelligence purposes.<sup>44</sup> It can be concluded that the Bush administration used the unitary executive theory to justify and enable the actions taken in light of the War on Terror. However, many of these actions, such as the wiretapping of citizens and the use of torture, are in violation of the rule of law, human rights and civil liberties.<sup>45</sup>

An important policy response to 9/11 concerned intelligence information. The USA PATRIOT Act, realized on the 26th of October 2001, was an important step towards increasing the authority of law enforcement and intelligence agencies.<sup>46</sup> Aimed at making it easier to detect domestic terrorism, the law further facilitated the use of intelligence information by crime control officials.<sup>47</sup> However, by disproportionately concerning immigrants and foreign visitors the Patriot Act can be said to have had a stigmatizing effect.<sup>48</sup>

Another controversy regarding American intelligence operations initiated after 9/11 is the covert wiretapping of international telephone and email conversations without legal warrants, ultimately resulting in the spying of American citizens.<sup>49</sup> According to the classification of Marlies Glasius this clearly constitutes an illiberal practice which infringes on the privacy and autonomy of individuals.<sup>50</sup> Furthermore, after the introduction of the

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41 Ibid. p. 221.

42 Ibid.

43 Ibid.

44 Ibid. p. 222.

45 Alison Brysk, 'Human Rights and National Insecurity', in *National Insecurity and Human Rights Democracies Debate Counterterrorism*, ed. by Alison Brysk and Gershon Shafir (Berkeley: University of California Press, 2007), pp. 1-13.

46 Schultz, p. 210.

47 Ibid.

48 Ibid. p. 211.

49 Ibid. p. 2008.

50 Glasius.

Patriot Act, the Bush administration restricted access to printed, government and scientific information leading to the erosion of free speech and the quality of democratic dialogue.<sup>51</sup> The disabling of access clearly constitutes an authoritarian practice and is not in line with democratic thought.<sup>52</sup> Whereas the government has increased their ability to gather information about the behavior and background of individuals, they simultaneously decreased the ability of the people to inform and express themselves and become critical citizens.<sup>53</sup> Furthermore, using the frame of war, people who voiced their critical opinion of the War on Terror were often considered betrayers of the country.<sup>54</sup> This amounts to an authoritarian practice as it focuses on disabling critical voices.<sup>55</sup> In a way one could conclude that the 9/11 terrorist attacks fulfilled their main purpose - the erosion of liberal and democratic values – by provoking a response by the American government which effectuated just that.

### 3.2 FRANCE AFTER 2015: LIBERAL DEMOCRATIC VALUES AND PERMANENT EMERGENCIES

In January 2015, the French satirical magazine Charlie Hebdo was the target of a terrorist attack by two radicalized Muslims, ending in the murder of 12 people.<sup>56</sup> The attack was inspired by cartoons the magazine had published, depicting the prophet Mohammed.<sup>57</sup> Later in 2015, France was again the target of terrorism, when 137 people were killed by jihadists in various coordinated attacks in Paris.<sup>58</sup> In a speech after the November attacks, French President Francois Hollande referred to the event as an act of war.<sup>59</sup>

Shortly after the November attacks, Hollande announced a national emer-

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51 Paul T Jaeger and Gary Burnett, 'Information Access and Exchange among Small Worlds in a Democratic Society: The Role of Policy in Shaping Information Behavior in the Post-9/11 United States', *The Library Quarterly: Information, Community, Policy*, 75 (2005), 475.

52 Glasius.

53 Jaegar & Burnett, p. 475.

54 Michael L. Butterworth, 'Ritual in the "Church of Baseball": Suppressing the Discourse of Democracy after 9/11', *Communication and Critical/Cultural Studies*, 2 (2005), 109.

55 Glasius.

56 Eva Połońska-Kimunguyi and Marie Gillespie, 'Terrorism Discourse on French International Broadcasting: France 24 and the Case of Charlie Hebdo Attacks in Paris', *European Journal of Communication*, 31 (2016), 569.

57 Ibid.

58 Michael S. Neiberg, "'No More Elsewhere": France Faces the New Wave of Terrorism', *The Washington Quarterly*, 40 (2017), 25. Hollande

59 Hollande.

gency state, which would eventually end up lasting two years.<sup>60</sup> The state of emergency temporarily increases the authority of the executive branch, allowing for “the creation of zones of protection and security; the imposition of curfews, traffic stops, and searches; house arrest for individuals whose activity was deemed dangerous; and administrative searches”, as well as the large-scale collection of digital data.<sup>61</sup> Under the emergency state 4469 administrative searches, 754 house arrests, and the closure of 19 religious spaces were carried out.<sup>62</sup> It was indicated that many of the measures taken were unrelated to the 2015 attacks.<sup>63</sup> Even though executive power was expanded, there was still a limited degree of judicial review, which was later criticized for only performing a posteriori reviews.<sup>64</sup> The main issue with the French emergency state, however, concerns the temporal element. By continuously extending the state of emergency, exceptional measures are increasingly normalized in society leading to a distorted view on the liberal democratic state.<sup>65</sup> This argument is also supported by Manin who argues that “Short duration is a necessary condition for emergency measures to be consistent with constitutional values”.<sup>66</sup> However, the terrorist threat posed by Islamic extremism is unlikely to disappear soon based on the historical pattern of terrorism, the organizational structures of networks as Al Qaeda and the advanced use of technology by terrorists.<sup>67</sup> This would indicate that the emergency state is an inappropriate response to modern terrorism. In the case of France, the termination of the emergency state was enabled by the adoption of a new counterterrorism law which contained elements from emergency legislation and brought them into regular law, creating so-called permanent emergencies.<sup>68</sup>

There were a few more problematic elements to the French response. Shortly after the November terror attacks, President Hollande announced his aim to make it easier to denaturalize citizens who were involved in an attack against the nation, even if they were born in France (but only if they also

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60 Myriam Feinberg, ‘States of Emergency in France and Israel – Terrorism, “Permanent Emergencies”, and Democracy’, *Zeitschrift für Politikwissenschaft*, 28 (2018), 496.

61 *Ibid.*

62 *Ibid.*

63 *Ibid.*

64 Feinberg, p. 501.

65 *Ibid.*

66 Manin, p. 33.

67 *Ibid.* pp. 30-32.

68 Feinberg, p. 497.

possess another nationality).<sup>69</sup> This means that this measure would only affect those who were born in France but enjoy an additional nationality, or those who gained the French nationality through acquisition.<sup>70</sup> This differentiation can be considered problematic, as it generates a principle of unequal citizenship in which the right to national identity is conditional for some and irrevocable for others.<sup>71</sup> Depriving a French-born citizen or new national of their nationality takes away the fundamental rights that come with personal identity.<sup>72</sup> Denaturalization is therefore problematic, considering the principle of discrimination and human rights. Another policy by the French government targeted pro-jihad websites.<sup>73</sup> While this is, in principle, a proportionate response to the increasing online activity of terrorist organization, the definition of a terrorist website provided by the French government is too blurry, risking extensive censorship which could constitute an authoritarian practice.<sup>74</sup> Even though the French response to terror seems less radical than the American one, the unusually long state of emergency normalized the use of exceptional measures and led to a distortion of civil liberties and liberal democratic values.

#### IV. CONCLUSION

As can be derived from the analysis of the case studies, both the French and American government responded to terror by increasing the authority of the executive branch. However, the respective responses differ in the method by which authority is extended. While the prolonged emergency state in France is considered slightly more legitimate than the Bush administrations' usage of unitary executive theory, both approaches are questionable when it comes to the protection and conservation of civil liberties and liberal democratic values. As the nature of terrorism has changed, so should our responses. Future research should therefore focus on trying to establish possible responses to terrorism attacks which provide effectiveness and security, while simultaneously harboring liberal democracy and its values. This paper nevertheless implies that, even though terrorist attacks are deemed threats to liberal democracy, perhaps the real danger lurks in

69 Marie Beauchamps, 'Perverse Tactics: 'Terrorism' and National Identity in France', *Culture, Theory and Critique*, 58 (2017), 48.

70 *Ibid.* p. 49.

71 *Ibid.*

72 Olivier Duhamel, 'Terrorism and Constitutional Amendment in France', *European Constitutional Law Review*, 12 (2016), 4.

73 Amanda Goodman, 'Blocking Pro-Terrorist Websites: A Balance between Individual Liberty and National Security in France', *Southwestern Journal of International Law*, 22 (2016), 229.

74 *Ibid.* p. 231, Glasius.

how we respond to them.

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# 2. 2. The EU and Turkey’s handling of the refugee crisis

## A past, present, and future

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### I. INTRODUCTION

The concept of asylum was first noted in Article 14(1) of the Universal Declaration of Human Rights, which states “Everyone deserves the right to seek and enjoy asylum from persecution.”<sup>1</sup> The resulting legal framework established by the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol originates directly from this statement. In addition to the Convention and Protocol, nations have developed regional laws and standards for asylum. Many believe that the most far-reaching developments have come from the European Union (EU), which in 1999 created the Common European Asylum System (CEAS). However, recent research has highlighted the EU and its member states’ disjointed response to the 2015 influx, which saw the entry of over one million asylum seekers into Europe—mainly from Afghanistan, Syria, and Iraq. Criticism peaked when the EU, concerned with being overburdened, signed a restrictive, unorthodox bilateral migration agreement with Turkey.

Turkey was regarded by the EU as a safe third country, and pursuant to international law, the safe third country concept entails that “the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.”<sup>2</sup> However, there’s doubt as to whether Turkey meets the criteria for effective protection; especially considering the difficulty for refugees, namely Syrians, to access and maintain an adequate standard of living. With Turkish state authorities being unable to meet Syrians’ basic needs – combined with the significant barriers that refugees experience in achieving self-reliance, the reality is that Ankara is failing to provide an environment where individuals are guaranteed the ability to live in dignity. Poor camp conditions, lack of mental health services, high unemployment rates, limited educational opportunities, no

1 UN General Assembly. “Universal declaration of human rights.” (217 [III] A), Paris, 1948.

2 European Commission Migration and Home Affairs. “Art. 38 of Directive 2013/32/EU Recast Asylum Procedures Directive.” 2013

path to citizenship, proliferating gender-based violence, and racism all contribute to Syrians being denied their fundamental rights.

To account for this, this paper explores how the EU and Turkey have handled and continue to handle the wave of refugees entering their borders. The first section of the paper will explore the EU's initial response to the crisis as well as its current reforms and the limitations to those reforms, especially within the context of a proliferating right-wing political climate. The second section focuses on Turkey's history with the Arab World, which identifies the legacy that informs how the country approaches migration governance, specifically integration. It also enquires as to why Ankara has not integrated Syrian refugees and highlights Turkey's current treatment of its Syrian refugee population. The third section will offer policy recommendations that will hope to address the limitations of migration management explored in the first two sections.

## II. DISCURSIVE LIMITATIONS

Before we explain and critically evaluate the management of refugees by the EU and Turkey, it is important to note that though we are employing the term 'refugee crisis' - the subject of our paper - it has many conceptual limitations as well as dangerous and dehumanising implications. The concept 'crisis' invokes a sense of urgency and chaos, extreme difficulty, and immediate danger. Though an exhaustive and etymological analysis of 'crisis' can be produced for the reader to illustrate our point, it simply does not take much more than one's own intuition and brief introspection to come to the conclusion that 'crisis' is associated with such connotations. These connotations are followed by the subsequent 'heavy-handed' response that is entailed by the use of the term, such as sending in the military or treating refugees in the rushed, disposable and often violent manner in which we know crises are often (mis-)handled.

We can see the consequences of such discourse in Austria, Croatia, Denmark, Estonia, Latvia, Lithuania, Hungary and Slovenia's building of fortified barriers for security and territorial reasons. Human Rights Watch calls attention to the fact that many EU governments are shifting back towards a control-oriented and securitised border control policy which aims primarily to rapidly deport individuals, side-lining humanitarian and normative concerns. This is reflected in member states' practices of building physical fences, abysmal detention conditions, the resettlement plan rendered obsolete, the extremely slow and selective process of granting refugee status to a very small number and accounts of brutal assaults by border police. This has led to a 'chronic imbalance' between human security and state security, with human security being blatantly disregarded. We will continue to employ the term as it is part of the discourse in which this phenomenon is situated in, but we are aware of its troublesome linguistic consequences and

thus we do briefly urge a re-evaluation of how we are thinking and speaking about refugees.

### III. THE SYRIAN REFUGEE CRISIS: A BRIEF BACKGROUND

In 2011, a series of anti-government protests known as the Arab Spring spread across the Arab world, starting successfully in Tunisia and stalling in Egypt and Syria. In Syria, protests were met with government sanctioned violence that would unfold into a civil war.

What started as impassioned protests calling for democratisation and respect for human rights and freedoms against Bashar-al-Assad's regime's heavily unpopular autocracy - motivated by sectarian discontent and proliferating socioeconomic problems – swiftly escalated into a full-blown war between the Syrian government and a plethora of anti-government rebel groups.<sup>3</sup> Strategic, logistic and militaristic support from Russia, Iran and China has led to prolonged conflict, involving regional actors, proxy wars and the largest humanitarian and refugee crisis of our time.<sup>4</sup>

The Syrian Civil War not only shook the Arab world in both its inception and the events that continue to take place within since 2011, but it also became a critically important issue for Turkey and the EU. The humanitarian crisis that ensues within Syria and the refugee crisis that has run parallel in neighbouring countries and its ex-Euromed partner, the EU, have made the situation in Syria pressing and urgent for the entire international community. The Syrian crisis also facilitated the paradoxical rapprochement of EU-Turkey relations, followed by its subsequent deterioration as both sides failed to reach mutual understanding and cooperation.<sup>5</sup>

Turkey quickly became involved in 2011, due to its proximity to Syria as a neighbouring country but also due to its geopolitical aspirations for regional power. Turkey was in favour of the opposition forces' aims and severed ties with the Assad regime.<sup>6</sup> The EU also had strategic concerns, with instability in the MENA region carrying the potential to bleed out into Europe. The EU, though hesitant at first, initially adhered to its normative principles of propagating democratic values, human rights and freedom and thus adopted a condemning and critical foreign policy against the Syrian regime. However, the EU also increasingly had security concerns, with the war in Syria attracting fighters from Europe. Perhaps even more

3 Laub, Zachary. "Syria's Civil War: The Descent into Horror." Council on Foreign Relations. Accessed January 11, 2021.

4 UNHCR. "Syria Emergency". Accessed on 5 January 2021.

5 Benvenuti, Bianca. "The Migration Paradox and EU-Turkey Relations." *Istituto Affari Internazionali* 17 (2017): 1–23.

6 D'Alema, Francesco. "The Evolution of Turkey's Syria Policy", IAI Working Papers 17/28 (October 2017)

pressing for Europe was the infiltration of Islamist terrorists into Europe's porous borders, amongst the influx of refugees.<sup>7</sup> This led to a shift to a far more pragmatic and internal security-focused policy regarding the Syrian crisis.

Since 2011, more than half of Syria's pre-war population of 22 million have been tragically displaced by the ongoing violence.<sup>8</sup> Over 16 million Syrians in and outside of Syria require humanitarian assistance.<sup>9</sup> More than 6.1 million Syrians have been internally displaced whilst another 6 million have sought refuge outside of their country's borders.<sup>10</sup> Over half the total Syrian refugee population, 3.6 million, reside in Turkey whilst more than 1 million have made the dangerous journey to Europe.<sup>11</sup> Syrians are now the largest refugee population in the world, with no end in sight to the conflict and Syria still too unsafe for refugees to return home.<sup>12</sup>

#### IV. EUROPE'S INITIAL RESPONSE TO THE CRISIS

European migration policy has informally existed since the beginning of the 20th century and is defined as any form of regulation and management of the movement of people towards the EU common territory and across member states' internal borders.<sup>13</sup> It can be broken down into three realms: intra-EU migration by EU citizens, third country national regular migration into and within the EU, and irregular third country national migration into and within the EU.

It is widely commented that the CEAS faltered under the pressure of the 2015 migrant influx, where close to one million refugees arrived to European shores and over 4,000 lives had been lost during the journey. Main critiques included the disproportionate burden on the southern states, notably Greece and Italy. In 2015, Greece recorded 472,754 maritime arrivals and it is estimated that approximately 4,500 migrants and refugees are crossing into Greece every day.<sup>14</sup> The number of migrants to have arrived in Italy by boat in 2015 passed 50,000 with individuals

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7 Nas, Çiğdem. "The EU's Approach to the Syrian Crisis: Turkey as a Partner?". *Uluslararası İlişkiler* 16, no. 62 (2019): 45-64.

8 Laub, Zachary. "Syria's Civil War: The Descent into Horror." Council on Foreign Relations. Accessed January 11, 2021.

9 Yilmaz-Elmas, Fatma, Mustafa Kutlay, Hamdi Firat Buyuk, and Ozgur Gumus. "EU-Turkey Cooperation On 'Refugee Crisis': Is It On The Right Track?". *International Strategic Research Organization*, no. 22 (2016): 3-29.

10 UNHCR. "Syria Emergency". Accessed on 5 January 2021.

11 Laub, Zachary. "Syria's Civil War: The Descent into Horror." Council on Foreign Relations. Accessed January 11, 2021.

12 Yilmaz-Elmas, Fatma, Mustafa Kutlay, Hamdi Firat Buyuk, and Ozgur Gumus. "EU-Turkey Cooperation On 'Refugee Crisis': Is It On The Right Track?". *International Strategic Research Organization*, no. 22 (2016): 3-29.

13 Ristelhueber, Rene. "The International Refugee Organization." *International Conciliation* 29 (April 1951):167.

14 Demiri, Nada Ghandour. "Refugee Crisis in Greece." Heinrich Böll Stiftung. October 2015

being rescued daily.<sup>15</sup> According to several NGOs, the current asylum system fails to ensure that member states adhere to common standards with respect to asylum seekers and creates conditions under which one member state can be held liable for the human rights violations of another, as declared by both the European Court of Human Rights and the Court of Justice of the European Union (see *M.S.S. v Greece and Belgium*).<sup>16</sup> In doing so, the Court has asserted the fact that the premise upon which the CEAS is based is no longer rational and has underlined the increasing need for a revamp of the European Union-wide migration regime.

The CEAS directives comprise the bulk of standards for national-level asylum policies: the Asylum Procedures Directive, the Reception Conditions Directive, the Qualifications Directive, the Dublin Regulation, and the EURODAC Regulation. These instruments establish baseline guarantees concerning the examination of asylum claims, the treatment of asylum seekers while they await a status determination, and standardized requirements for determining refugee status that must be provided by national governments.<sup>17</sup> Although the directives theoretically help to harmonize treatment of asylum seekers across the EU, each has been subject to robust criticism by the European Commission, human rights groups, and legal scholars, among others, for failing to set a high enough bar for minimum standards and thereby contributing to (rather than diminishing) disparities across member states. In 2011, EU member states collectively experienced a 59% increase in applications from Syrian nationals, an 85% increase in Egyptian applications, a 293% increase in Libyan applications, and a 911% increase in Tunisian applications.<sup>18</sup> However, Albania, Cyprus, Greece, Italy, Malta, Portugal, Spain - the peripheral member states that asylum seekers enter through first-registered an overall 87% rise in asylum applications from the previous year. This contributed to creating asymmetrical obligations for which the northern and eastern states have failed to compensate southern and western member states, and generated incentives for southern member states to employ controversial migrant interception measures. Consequently, the Commission proposed an ambitious recasting program in 2016 to introduce mandatory obligations for the member states together with the abolition of opt-out clauses and a full harmonization of both procedures and standards.

The revised Asylum Procedures Directive aims at fairer, quicker and better-quality

15 Scammel, Rosie. "Mediterranean migrant crisis: number of arrivals in Italy in 2015 passes 50,000". *The Guardian*. June 7 2015.

16 Langford, Lillian M. "The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity". *Harvard Human Rights Journal* 26 (2013).

17 Velluti, Samantha. "CEAS, Asylum-Seekers and EU Human Rights Post-Lisbon: Closing the Gaps in the European Protection Regime" In *Reforming the Common European Asylum System – legislative developments and judicial activism in the European Courts*. Springer Berlin Heidelberg: Imprint, 2014.

18 Juchno, Piotr. "Asylum Applications in the European Union." *Populations and Social Conditions*, (2007).

asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection for unaccompanied minors and victims of torture. The revised Reception Conditions Directive ensures that there are humane material reception conditions for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. The revised Qualification Directive clarifies the grounds for granting international protection and therefore will make asylum decisions more robust. It also improves the access to rights and integration measures for beneficiaries of international protection. The revised Dublin Regulation (Dublin II) enhances the protection of asylum seekers during the process of establishing the state responsible for examining the application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems and address their root causes. Lastly, the revised EURODAC Regulation improves the functioning of the EU database of the fingerprints of asylum seekers to make it easier for states to determine responsibility for examining an asylum application. It will also allow law enforcement access to this database under limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.<sup>19</sup> Nevertheless, in the various negotiation stages, most of the original drafts were watered down by amendments from the Council of Ministers.<sup>20</sup>

Until the operational deficits of the CEAS are addressed, namely the failure to take into account the disparate situations and widely varying capacities of member states in the processing of asylum claims, the disparate human rights compliance of the member states will continue to pose a threat.

Largely impacted by the disproportionate responses of the EU member states to the crisis, the pressure on the border EU states such as Greece and Italy by the influx of refugees and increasing far-right populism as a reaction to the refugee populations in Europe pushed the EU into negotiating with Turkey for a system that would ensure that the Syrian refugee situation would be dealt with as little disruption as possible. The result was initially the EU-Turkey Readmission Agreement signed on 16 December 2013, which included Turkey containing the Syrian refugees within its borders and retaining those who transited Turkey to arrive into the EU states within the Schengen area. A more detailed agreement was reached in October 2015, with the EU-Turkey Joint Action Plan. The plan pulled the date of the implementation of the Readmission Agreement to an earlier date and also stated that Turkey would receive humanitarian financial aid of 3 billion euros in return for Turkey preventing the entry of Syrian refugees into the EU and

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19 EU Business. "European Migration Policy". March 4 2015.

20 Velluti, Samantha. "CEAS, Asylum-Seekers and EU Human Rights Post-Lisbon: Closing the Gaps in the European Protection Regime" In *Reforming the Common European Asylum System – legislative developments and judicial activism in the European Courts*. Springer Berlin Heidelberg: Imprint, 2014.

providing improved living conditions for the Syrians that are under its Temporary Protection Scheme.

## V. EUROPE'S NEW DEVELOPMENTS

Europe continues its efforts to manage migration on a continent-wide basis. In September 2020, the European Commission unveiled its Pact on Migration and Asylum, which sought to streamline the EU migration system. The key pillars of the New Pact On Migration and Asylum include calls for greater solidarity across EU Member States with more fair sharing of responsibility, improved and quicker migration and asylum procedures, as well as appeals for the relocation of people with failed asylum applications. The Pact seeks to promote greater congruence of the migration management system across the disparate social, economic and political conditions of Member States. For these principles to come into effect, the European Parliament and Council now needs to translate the Pact into legislation which will require political agreement over its core principles. Consequently, the future composition of the European political spectrum is a highly relevant variable in the direction these policies actually take and in how compliant Member States will be in implementing them. The current context of the Covid-19 pandemic and declining support for far-right populist parties provides reason to hope that the right-wing rhetoric that has held such a sway over migration politics and discourses, may lose some of its traction. Lesser representation of extreme right-wing, anti-immigrant views across Member States and at the level of EU politics as well, indicates possibility for more constructive, solidarity-driven approaches to prevail.

## VI. EVALUATING THE NEW PACT IN THE CONTEXT OF EUROPE'S POLITICAL CLIMATE

Critics of the New Pact, such as Human Rights Watch, are somewhat more sceptical of the long-term impact it could have in reforming the current EU migration system. The diminishing importance of far-right voices may be too premature to call yet, and even if it were true, it would still require more centrist politicians to really garner momentum for radical reform. Indeed, there has been much criticism of the proposed Pact over its failures to comprehensively address current issues: there is no call for fundamental reform of the Dublin Regulation, no ambitious resettlement targets proposed and no indication of increased funding for improving search and rescue capacities.<sup>21</sup> This very much continues to leave the burden with border countries. A mere invitation for Member States to do more does not produce enough pressure for real action. There also remains a persistent trend in externalising responsibility for asylum, using development assistance, visa schemes and other tools to encourage cooperation with third countries to boost

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21 Human Rights Watch. "The Pact on Migration and Asylum". 2020.

security and migration control – in effect, offloading responsibility for intercepting migrants onto countries like Libya and Turkey. Renewed evaluations of current policies and proposals in the New Pact on Migration and Asylum must interrogate these challenges and, taking into account the presence of right-wing populist support, suggest true reform.

In the past few years, there has been an increasing focus on the rise of far-right populism in Europe, this wave of political sentiment manifesting itself very clearly in the Brexit referendum and Trump’s election in 2016. These events helped spread an explicitly right-wing rhetoric into popular discourse, providing ammunition for other movements across Europe already mobilising such language. A whole host of political parties and movements fall under the banner of right-wing populism, namely the National Front headed by Marine Le Pen, Matteo Salvini’s Five Star Movement, the German AfD, Vox in Spain and Viktor Orban’s party Fidesz. Social scientists theorised this wave of right-wing extremism as having swept across the whole of Europe. A key pillar of these far-right extremist parties is their nationalist promotion of anti-immigrant rhetoric, drawing on the post-9/11 securitisation of migration to paint refugees as a threat to national identity. Arguably, it was the disunity in how European leaders sought to respond to the perceived refugee crisis in 2015 which opened up a space in politics for the rise of these right-wing populist movements.<sup>22</sup> It was in this political climate on the 18th March 2016, that the European Council reached an agreement with Turkey aimed at stopping the flow of irregular migration from Turkey to Europe.

Given the success right-wing movements had in capitalising on the refugee crisis, many sought to gain further support through the disaffection caused by the current crisis: the Covid-19 pandemic. Several far-right groups circulated Covid conspiracy theories, blaming minorities for the outbreak of the pandemic and using racist rhetoric to scapegoat certain groups for spreading the virus. In Italy, Salvini took to social media to issue a torrent of propaganda against illegal migration, arguing that migrants crossing the Mediterranean are testing positive for Covid upon landing and that a surge in arrivals is undermining national efforts to tackle the disease. The Foreign Minister, Luigi Di Maio, painted the arrival of migrants during the pandemic as ‘a national security issue’. The AfD similarly embraced Covid-19 conspiracy theories in an attempt to cause instability for the German government and acquire support for themselves.

However, there is evidence to suggest these attempts largely failed as people turned to and rallied around their national governments. Arguably, the decisive factor pushing this drop in support has been the diminishing importance of immigration as a primary concern for voters. In the context of the global pandemic,

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<sup>22</sup> Samaras, Georgios. “Has the coronavirus proved a crisis too far for Europe’s far right outsiders?”. *The Conversation*, (2020).

people's key concerns have shifted towards health and economic security, away from migration issues. This climate has facilitated a renewed sense of trust in strong and assertive government action backed up by solid data and statistics, rather than the conspiracy theories pumped by extreme right parties. Indeed, the response of right-wing parties to the Covid crisis has certainly lost them credibility, their explicit, narrow, nationalist agendas seemingly irrelevant in the midst of a health crisis; perhaps the closure of borders and lockdowns has also simply pushed the issue of migration out of sight for the vast majority of national populations.

## VII. TURKEY'S RESPONSE TO THE CRISIS

Turkey's interference (amongst other nations) in the Syrian civil war against Assad has contributed to the intensity of the conflict, and one of the many reasons for such a course of action has been the Turkish ruling party Adalet ve Kalkinma Partisi (AKP: Justice and Development Party) and Erdogan's strategy of widening the influence of Turkey in the Middle East and presenting an image of their regime as the protector of oppressed Muslims throughout the world. Thus, Erdogan supported the opposition forces in Syria against Assad's regime and adopted an open door policy in 2011 to accept those being displaced from Syria to escape persecution; expecting that the Syrian president would be defeated. Yet Assad managed to stay in power despite strong domestic and international opposition, and the number of refugees arriving from Syria into surrounding nations such as Turkey, Jordan and Lebanon as well as Europe increased drastically. It was soon realised that the indirect consequences of the Syrian civil war would impact the world much more than previously predicted.

In order to fully understand the problems arising from the Syrian refugee crisis and its effect on EU-Turkey relations, it is important to first have an understanding of Turkey's asylum regime and its many flaws. Through analysing the factors influencing the development of Turkey's asylum regime over the years, we can observe how the vestiges of past asylum systems and external influences have contributed to the flawed system we see today, especially in its current rendition largely influenced by the EU and its CEAS.

The evolution of Turkey's asylum regime and views on international migration can be clearly charted from Turkey's origin till now. In the past, from 1923 to the end of the Cold War, Turkey's asylum policy was predicated upon issues of national security and identity, giving priority to migrants who could integrate more easily into Turkish society such as Muslim Turkish speakers and people from the Balkans.<sup>23</sup> Aiming towards a society predicated on homogeneity, the complete opposite of

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23 Bilgin, A. Asli and Arikan, Harun. "The CEAS and the Europeanization of Turkey's Asylum Policy after the Syrian Crisis". *European Review*, (2020):1-14.

the multiethnicity that caused the fall of the Ottoman Empire, Turkey maintained its geographical limitations on the Geneva Convention, considering only those from Europe as ‘refugees’, while others from non-European countries were required to be resettled out of the country.<sup>24</sup> This geographical reservation remains till today, and is the reason why Syrians in Turkey are not officially and legally considered as ‘refugees’.

Moving on to 1994, Turkey drafted its first asylum regulation in response to the mass influx of migrants precipitated by the end of the Cold War. Created with national security interests in mind, these strict regulations were not in line with international standards, resulting in the regulations being heavily criticised by the EU and other international actors.<sup>25</sup> This marked the start of the EU’s influence on Turkey’s asylum regime, which gained even more potency in 1999 as the EU officially granted Turkey candidate status in the EU in Helsinki. Through leveraging the opening of accession talks, the EU effectively catalysed the substantial reform of Turkey’s asylum regime, orienting it towards compliance with their standards of asylum procedures and human rights.<sup>26</sup> In the spirit of harmonisation, Turkey accepted the Turkish National Programme for the adoption of the *acquis*, which proposed a litany of legal and institutional reforms which would in turn improve the asylum regime to the EU’s standards.<sup>27</sup> Ultimately, this culminated in the adoption of Turkey’s first asylum law in 2013, the Law on Foreigners and International Protection (LFIP) and the Temporary Protection Regime (TPR) in 2014. Predicated largely on the EU’s asylum *acquis* which established the EU’s CEAS, the LFIP met almost all the demands of the EU, committing Turkey to treating asylum seekers in accordance with international standards, regardless of their country of origin. Most notably, the law emphasized a commitment to the principle of non-refoulement, which prevents asylum seekers from being returned to their country of origin even if they did not come from Europe. Unfortunately, these reforms were not solely beneficial for the potential asylum seekers in Turkey. The CEAS on which the LFIP was based, has flaws which were also adopted and co-opted by the Turkey asylum regime. This includes procedures such as the controversial accelerated processing and detention of certain asylum applicants.<sup>28</sup>

## VIII. TURKEY’S MANAGEMENT OF IT’S SYRIAN POPULATION

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24 Ibid.

25 Ibid.

26 Bürgin, Alexander and Aşıkoğlu, Derya. “Turkey’s New Asylum Law: A Case of EU Influence.” *Journal of Balkan and Near Eastern Studies* 19, no. 2 (2017): 121–35.

27 Bilgin, A. Asli and Arıkan, Harun. “The CEAS and the Europeanization of Turkey’s Asylum Policy after the Syrian Crisis”. *European Review*, (2020):1-14.

28 İçduygu, Ahmat. “Turkey’s Migration Transition and its implications for the Euro-Turkish Transnational Space” in *Global Turkey in Europe II: Energy, Migration, Civil Society and Citizenship Issues in Turkey-EU Relations*, ed. Senem Aydın-Düzgıt, et al. n.p.: Edizioni Nuova Cultura, 2014.

Even after the 2013 reforms, Turkey has continued to retain the geographical limitation clause of the 1951 Geneva Convention on refugees, meaning that Syrians residing in Turkey still do not fall under the legal category of ‘refugee’. Under the temporary protection regime, Syrians are afforded certain rights such as a right to health and education, similar to what Geneva affords refugees. However, they are still treated as guests, and under the TPR, Syrians require Turkish government-granted permits in order to be formally employed.<sup>29</sup> This has resulted in a vast majority of Syrians resorting to participating in the informal economy illegally, receiving paltry sums for their work which barely sustain the deplorable conditions they subsist under. In contrast, Article 24 of the 1951 Geneva Convention gives refugees the right to work, equivalent to the citizen of the host country.<sup>30</sup> Additionally, under Articles 11 and 12 of the TPR, Turkey reserves the right to terminate the TPR collectively or individually, increasing insecurity. This provision therefore allows Turkey to send Syrians back to Syria whenever it decides, even though it pledged itself to non-refoulement.<sup>31</sup>

In Turkey, Syrians looking for international protection were met with policies that only go halfway to secure basic rights, equal opportunities and long-term security, which discourages the public to see Syrian refugees as unequal and burdensome. Integration policies are therefore distinct from immigration policies which are defined as government statements of what it intends to do or not to do (including laws, policies, decisions or orders) in regard to the selection, admission, settlement and deportation of foreign citizens residing in the country.<sup>32</sup>

Syrian refugees are fully excluded from political participation.<sup>33</sup> In most cases, Syrians cannot vote or join political parties; consultative bodies are also generally weak, as is support for immigrant-led associations. Political participation is an important index in analyzing Turkish integration policy because inclusive policies help to close the gap between immigrants and citizens, and a strong dynamic emerges between policies and public attitudes. Inclusive policies are associated with higher levels of public trust, lower feelings of economic threat and a greater sense of a common civic rather than ethnic identity.

Additionally, since it is not legal for refugees to work in certain areas, the only alternative is to work illegally at low wages without any social benefits or rights. Between 750,000 to 950,000 Syrians are currently working in the informal sector with only about 15,000 Syrians having received the necessary formal employment

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29 Makovsky, Alan. “Turkey’s Refugee Dilemma”. Center for American Progress. Accessed 13 February 2021

30 Ibid.

31 Ibid.

32 Helbing, Marc. “IMPIC: A new and more comprehensive way to measure immigration policies.” Migration Data Portal. 2017.

33 Solano, Giacomo and Huddleston, Thomas. Migrant Integration Policy Index. 2020.

permits whereas almost one million work in the informal sector. For Syrian refugees to work freely, it is required that they should be a resident in Turkey for at least five years but given difficulties in gaining citizenship and the perception that their stay is temporary, this is almost impossible.<sup>34</sup> Labor market mobility is a critical index because they can allow immigrants to gain greater skills, an education, careers, and public acceptance. Moreover, under well-developed policies, the Turkish community would see Syrians as an economic opportunity rather than as a competition or threat, which is especially important considering that Turkey's unemployment rate just reached 15%.

Whilst the COVID-19 pandemic has been devastating for the entirety of Turkey, the outbreak has appeared to have disproportionately affected the Syrian refugees across different aspects of their lives. According to a study conducted in many of Turkey's major cities in 2020, 87% of the refugees reported that someone in their household lost their job because of the outbreak, 71% reported that they could not access health services, and 81% reported urgent unmet needs. Information dissemination has also been a problem, with only 84% of survey respondents answering that they had received information regarding the pandemic.

These extremely high percentages can be attributed to the fact that the Syrian refugees were already in preexisting precarious situations, with limited access to basic necessities and rights, crowded living quarters, poor sanitary conditions and food insecurity. Whilst the March 2016 deal and the accompanying Facility for Refugees in Turkey (FRIT) provides 1.5 million of the most vulnerable Syrian refugees with modest financial support, it is not comprehensive and is far from meeting the basic economic needs of all refugees. The massive economic downturn caused by the pandemic has therefore exacerbated an already fragile situation, causing many refugees to lose their jobs, for Syrian owned businesses to close down, and for desperate refugees to resort to increasingly dangerous ways to subsist. Under these harsh economic conditions, tensions between the host Turkish population and the refugees have also increased.

Erdogan's move of temporarily reopening Turkey's borders into Europe was not only a sign that the Turkish government was prepared to use their geopolitical advantages and status of a 'buffer zone' between Syria and Europe as a threat; but it also indicated a partial response to the increasingly hostile sentiments of the host Turkish community towards the Syrians residing with them. While the negative sentiments among the Turkish population did not emerge as swiftly and extremely as it did in a considerable number of the EU member states, it is slowly but surely becoming an issue that requires immediate analysis and attention.

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34 Koser Akcapar, Sebnem. "The Politics of Syrian Refugees in Turkey: A Question of Inclusion and Exclusion through Citizenship." *Social Inclusion* 6, no. 1 (March 2018).

The Turkish government is seemingly aware of the situation described above and has recently resorted to displaying their discontent with the EU's management of the cooperation by threatening the member states with opening the Turkish borders and sending millions flooding across them into the Schengen area - and to make good on their word, a temporary implementation of this threat was conducted in March 2020, which further destabilised relations with the European states.

Yet there is another element to what encouraged such a drastic action. Newspapers emphasise a separation between the Turks and the Syrians as 'us and them' by glorifying the Turkish society and culture as above the Syrians', and portraying the Syrian refugees as socio-economic burdens and asserting them as negative models corrupting the Turkish society.<sup>35</sup> The unrest within the Turkish public and the worries of Syrian settlers originate from more deep-rooted and long term problems within the Turkish society, and perhaps the most significant pathway for improving perceptions and relations between these communities will be through addressing and working to provide answers for these far reaching issues. The government especially emphasises the guest and host dynamic (what Erdogan has named *ensar* as the host and *muhacir* as the guest), and the objective of this is to promote the religious connection between Turks and Syrians both to prevent discontent within the Turks against the Syrians and to underline AKP's foreign policy of presenting Turkey as a neo-Ottoman nation that protects the oppressed in the MENA region. However, while this does largely persist, Erdogan is aware that the public is not satisfied, and his reaction is visible with his increased threats to Europe to open the Turkish borders to let Syrians into Europe.

Education is also a prominent and divisive issue - for both Syrians and Turks. For the Syrians, the lack of adequate education renders any efforts of integration significantly more difficult. For the Turkish, Erdogan's provision of free university education for Syrian students is seen as a great injustice by Turkish families and students who need to work much harder to get into university and at times are unable to do so due to financial difficulties.

In summary, Turkey's basic comprehensive approach is not yet fully favorable for integration, as policies only go halfway to secure basic rights, equal opportunities and long-term security for migrants, which in turn does not encourage the public to see them as fellow citizens. Under its national asylum regime, Turkey is required to admit the Syrians under its Temporary Protection Regime. However, the rights accorded to them are fewer than those with refugee status, and the protection given is much more precarious than that given to refugees, as Turkey has the prerogative to take the status away whenever it chooses. Considering the actions of Turkey thus far to act in its geopolitical interests, the wellbeing of the Syrian refugees is at stake.

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35 Onay-Coker, Duygu. "The representation of Syrian refugees in Turkey: a critical discourse analysis of three newspapers." *Continuum* 33:3, (2019): 369-385

The Turkish government needs to undertake this challenge and switch gears from policies driven by concerns of extending emergency humanitarian assistance and temporary protection to ones focusing on the long term to facilitate the possible eventual incorporation of the refugees into Turkish society.

## IX. POLICY RECOMMENDATIONS

Considering the present dilemmas observed and explored above in the EU and Turkey, we propose these policy recommendations as loose yet substantive suggestions that if incorporated in the EU and Turkey's migration management system, could ease relations between the two parties, deal with migration flows more efficiently and most importantly, uphold the rights of refugees which have for far too long been sidelined.

1. Develop a new communications strategy which highlights the contributions of Syrian refugees to Turkey's economy and society: this works toward allaying fears and reducing tensions between the Turkish locals and Syrian refugees. As mentioned earlier, by framing the Syrian refugees as key productive actors that can contribute positively to Turkey, integration is promoted and the refugees may have increased access to employment opportunities from sympathetic Turkish employers.

2. Extend trade concessions to Turkey's agricultural sector conditional on the formal employment of Syrian refugees: At the 2018 UN summit on migration and refugee movements, the Global Compact on Refugees proposed that major developed countries should extend trade concessions to countries hosting large populations of refugees. In line with this, the EU should extend trade concessions to Turkey's agricultural sector, especially considering that the sector employs sizeable numbers of Syrian refugees.<sup>36</sup> Presently, the agricultural sector of Turkey is recognized to have inadequate levels of domestic labour and skills due to demographic trends such as migration and ageing in Turkish farming populations.<sup>37</sup> At the same time, many Syrian refugees originating from rural parts of northern Syria have experience and the requisite skills required for farming. Syrian refugees are therefore a pool of labour that should be tapped into, to make up for the labour supply shortage in this sector. By pairing trade concessions with economic inclusion, the EU therefore incentivises Turkish businesses to hire the refugees, directly supporting their employment in Turkey and facilitating access.<sup>38</sup> Beyond this, as trade is a major engine of growth, the EU will also contribute towards Tur-

36 Kirişçi, Kemal. "How to Leverage Trade Concessions to Improve Refugee Self-Reliance and Host Community Resilience". Brookings (blog). 15 December 2019.

37 Korisci, Kemal. "How Trade Concessions Can Improve Refugee Self-Reliance". International Trade Forum, no. 2 (2020): 20–21.

38 Ibid.

key's economic and industrial growth, which will further their ability to support and host refugees in the near future.

3. Develop and maintain a more constructive dialogue between Turkey and the EU: Although diplomatic relations between the two actors have been strained due to the opening of Turkey's borders in March 2020, efforts have been made in 2021 to work towards rapprochement. In January, Erdogan and EU ambassadors attended a televised meeting in which Erdogan expressed Turkey's desire to open a new page in relations with the EU.<sup>39</sup> Taking a conciliatory tone and adopting a more diplomatic approach, Erdogan further suggested that updating the Turkey-EU deal would signify the beginning of a positive agenda for EU-Turkey relations.<sup>40</sup> Thus, there is potential for better dialogue and communication which should be taken full advantage of.

4. Focus on deep, structural debates regarding asylum and migration: the dampening of far-right anti-immigration voices have created a time in which there may be more political impetus to work towards a constructive reform of the European migration and asylum system. It is crucial to use this moment to address deeper, political and structural concerns relating to these matters, not just focusing on technical debates about policy implementation. Reconstituting the foundations of European migration policies away from a concern with the threat of irregular migration and incorporating more ethical and less dangerous language could serve as a basis for a truly common objective according to which states could work towards creating a progressively common EU asylum system.

5. Promotion of more substantive solidarity and ambitious resettlement targets: one of the pillars of the Pact is a renewed call for solidarity across Member States, however the solidarity mechanism proposed is currently too flexible. Steps towards more substantive solidarity across Member States must be made, both in terms of hosting responsibilities, and through alternatives focusing on contributions to improving reception conditions or asylum procedures in other states. More ambitious resettlement targets, especially for women and minors, should be instituted, rather than focusing energies on returns as is currently the case. This is particularly important in the context of Covid-19, as current EU reception facilities are overburdened, facing extra demands to provide health protection whilst running on limited administrative capacities. An increase in secondary migration from states of origin and transit states should also be anticipated given rising levels of poverty in the wake of the pandemic. Health concerns are a salient, transnational factor that evidently call for deeper, cross-border solidarity

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39 Al-Jazeera. "Softened Stance: Erdogan Promises to Put EU Ties "Back on Track"?" Accessed 13 February 2021

40 Ozkan, Berk. "EU Has Priority in Turkey's Agenda: President Erdogan". Anadolu Agency. January 9, 2021

6. Reform proposals linking asylum and returns procedures: the New Pact on Migration and Asylum suggests several links between asylum and returns policies, for example issuing rejections to asylum applications simultaneously with return decisions, minimising administrative delays between these processes. This proposition plays into demands for increased efficiency in border procedures, however it is not in the best interests of asylum applicants. The EU should revise these recommendations and instead focus more on safeguarding the fundamental rights of asylum seekers, such as the principle of non-refoulement which is at greater risk of violation in hasty returns decisions. Where returns are in question, greater accountability mechanisms should be implemented over these procedures, especially in Member States with a track record of Human Rights violations in the process of returns. More funding is also required for independent monitoring of Member States' implementation of returns procedures in line with asylum-seekers' rights.

7. Increase funding for safe and legal passage. Instead of continuing to externalise its borders and responsibility for asylum-seekers to third countries, the EU should provide safe and legal means for seeking asylum in Europe. The EU should take responsibility for asylum-seekers making perilous journeys across the Aegean and Mediterranean and increase funding for search and rescue capacities. Addressing structural debates and construing a common approach to the matter of search, rescue and disembarkation should be complemented by common funding for rescue boats. Enhancing legal pathways to asylum-seeking should be made a priority, ensuring safe passage especially for women and minors, and pushing for a commitment to family reunification across Member States.

## X. CONCLUSION

This paper has the potential to have substantive implications in policy and theory. As for policy, it will allow practitioners to decide whether national migration institutions have ceased to be operative and must be replaced or remodeled in advancement of future scenarios where evolving global conditions under which demographic transitions, climate displacement, and increased market demands prompt intensified flows. The creation of these new frameworks for migration governance will be a defining challenge of the 21st century, and the attitude of Turkey will be among the most important factors in determining the stability of migration in one of the largest transit regions. Secondly, it provides future guidance on how to conduct bilateral agreements by supplying context for why contentious bilateral agreements such as the EU Turkey Statement were regarded as violations of international standards. As for theory, this research explains why there has been an increase in far-right populism and anti-immigrant sentiment both in Europe and Turkey. This topic is increasingly salient not only for international relations, but also comparative and U.S. politics, as scholars attempt to

understand how national and international governments can strengthen the rule of law and provide migrants with security, justice, and equal opportunities that are crucial to breaking the cycles of violence, abuse and discrimination that lead to displacement.

In conclusion, this paper has aimed to be comprehensive, critical and evaluative in nature by both providing the history of migration in the EU and Turkey over the last decade as well presenting a summarised account of the current happenings in the domains of both parties. It also provides policy recommendations that aim to address some of the most pertinent issues: the living conditions and livelihoods of Syrian refugees in Turkey, the safe passage of refugees to Europe, the relationship between the EU and Turkey and improving discourse around this very important topic. In the end, we hope that this policy memo has been able to draw out a more hopeful vision of the future, after a bleak decade of conflict, loss and suffering.

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## 2. 3. The EU must change its course if it wants to prevent a nuclear Iran

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### I. EXECUTIVE SUMMARY

The conclusion of the JCPOA in 2015 was undoubtedly one of the most significant diplomatic achievements of the EU. However, pride in past achievements should not blur one's vision of the present. The EU should identify its stakes and interests in the conflict about the Iranian nuclear program and promote them more assertively. It is time for the EU to acknowledge the de facto failure of the JCPOA, work together with the incoming U.S. administration to renegotiate the JCPOA, fix its flaws, and reassess the EU's grand strategy towards Iran.

### II. OVERVIEW

Undoubtedly, the conclusion of the Joint Comprehensive Plan of Action (JCPOA) in 2015 marked a significant success for EU foreign policy. The agreement between Iran, the P5+1, and the EU aims to prevent Iran from obtaining a nuclear weapon by blocking both uranium and heavy water pathways through restrictions and inspections. In 2003, the E3 initially started the 12-year lasting negotiations after the revelation of a secret Iranian military nuclear program that violated the Non-Proliferation Treaty (NPT).

While formally still in place, the agreement is not fulfilling its purpose anymore. The U.S. unilaterally withdrew from the JCPOA on 8 May 2018 and imposed heavy sanctions against Iran. Furthermore, the U.S. introduced extraterritorial sanctions targeting non-US individuals and companies engaging in trade with certain Iranian actors.<sup>1</sup> These sanctions caused reluctance towards trade with Iran and hampered the expected economic benefits of the JCPOA for Tehran despite the EU's attempt to protect EU-Iran trade through the Instrument in Support of Trade Exchanges (INSTEX). In response, Iran ceased to comply with its obligations under the JCPOA in various areas. The International Atomic Energy Agency (IAEA)

1 Rezaei, Farhad (2019): Iran's Foreign Policy After the Nuclear Agreement. Politics of Normalizers and Traditionalists. Cham: Palgrave Macmillan, p. 69.

confirmed in November 2019 that Iran has resumed enriching uranium at the Fordow site. This marked another breach of the agreement after Iran had installed more efficient centrifuges in the Natanz facility, exceeded the permitted amount of enriched uranium and heavy water stocks, surpassed the permitted degree of enrichment, and unauthorizedly lifted restrictions in nuclear-related Research and Development (R&D). In a joint statement, the Foreign Ministers of the E3 and former HR/VP Mogherini declared Iran's action to be "inconsistent with the JCPOA's clear provisions" and expressed concern regarding the "regrettable acceleration of Iran's disengagement from commitments under the JCPOA." Following the assassination of General Soleimani, Iranian Foreign Minister Zarif announced on 5 January 2020 the final breach, declaring that the nuclear program "no longer faces any operational restrictions" while continuing to cooperate with the IAEA and signaling the possibility of returning to compliance if Iranian demands were met. The E3 (in January 2020) and Tehran (in July 2020) both triggered the Dispute Resolution Mechanism under paragraph 36 of the JCPOA, mutually accusing another of violating the agreement. The E3, however, decided not to risk the re-introduction of UN sanctions under UN Security Council resolution 2231 ("snap-back"-sanctions). After discussions between the parties, the mechanism was suspended without Iran returning to its obligations.

The current situation is dangerous, as Iran is only partially in compliance with the JCPOA and shortens its breakout time. In November 2020, the IAEA confirmed that Iran stores more than 12 times the amount of enriched uranium allowed under the JCPOA and described the Iranian explanation for uranium traces at an undeclared site as "not credible". Iranian uranium enrichment has surpassed pre-JCPOA levels. Moreover, the Iranian parliament has recently approved a bill to ramp up uranium enrichment even further.

However, the results of the 2020 U.S. presidential election open a window of opportunity for the EU. President-elect Biden already expressed his willingness to re-engage with Tehran based on the JCPOA as a "starting point", taking into account previously neglected issues as "Iran's human rights abuses, support for terrorism and ballistic missiles" and "destabilizing activities". The gap between EU and U.S. interests and strategy will be significantly narrower than under the Trump administration.

### III. MAIN ISSUES AT STAKE FOR THE EU

The prevention of an Iranian nuclear weapon has been the primary goal of European diplomats during the negotiations that led to the JCPOA. This objective remains a vital security interest of the EU as it is closely intertwined with the MENA region's security, stability, and economic situation. Instability and crises in its neighborhood have direct implications for the EU.

Saudi-Arabia and Egypt have long announced their intention to pursue nuclear capability if Iran would reach nuclear capability, thereby credibly backing up fears of a new arms race and nuclear proliferation in the MENA region. Additionally, further steps towards an Iranian nuclear bomb would increase the probability of an Israeli preemptive strike under the Begin Doctrine. The Iranian leadership has blamed the Israeli Mossad for the recent assassination of its leading nuclear scientist Mohsen Fakhrizadeh, which is likely to increase tensions in the near future further.

A nuclear Iran would likely pursue its regional goals in the Middle East more aggressively since nuclear capability would provide Iran with a stark deterrent against retaliation. This could include increased terrorist attacks against U.S., Saudi Arabian, and Israeli targets by Iranian proxies like Hezbollah and an even more substantial Iranian involvement in states like Libya, Syria, Iraq, and Lebanon. The stabilization of its neighborhood is a vital interest of the EU and the key objective of the European Neighbourhood Policy (ENP). However, a nuclear Iran or the perception of it becoming a real threat would destabilize the MENA region and is therefore not compatible with EU interests. The externalities of the destabilization of its neighborhood would pose various security challenges for the EU, including new migration movements towards Europe and terrorist threats. Additionally, a nuclear breakout of Iran would significantly undermine the NPT and the international security architecture.

Hence, it is clear that the EU has high stakes in the conflict about Iran's nuclear program and that the EU's interest lies in ensuring that Iran cannot obtain nuclear capability in the foreseeable future. In May 2020, the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission (HR/VP) Borrell and the E3 Foreign Ministers confirmed their commitment to upholding the JCPOA and described it as "a key achievement of the global non-proliferation architecture and currently the best and only way to ensure the exclusively peaceful nature of Iran's nuclear programme."

Recent developments, however, raise serious doubts about the validity of this statement. Given the situation described above, the JCPOA is currently not apt to ensure the peaceful nature of Iran's nuclear program. Iran is not fully complying with the JCPOA and shortens its breakout time, which creates a dangerous situation that runs against EU interests.

However, merely reinstating the JCPOA does not sufficiently guarantee a comprehensive resolution of the issue. It is necessary to widen the scope and consider a longer timeframe. Even if wholly implemented, the JCPOA's does not ensure the prevention of a nuclear Iran in the long term.

The main reason for this is the temporary nature of the nuclear restrictions. Arts. 1-12 of the JCPOA provide that the nuclear restrictions expire in several steps, with all nuclear restrictions being terminated in 2031. As Iran is allowed to extend its nuclear program in the meantime, the breakout time would be “near zero” in only 11 years from now, as former U.S. President Obama admitted. While iii. of the Preamble of the JCPOA states that “under no circumstances will Iran ever seek, develop or acquire any nuclear weapons”, Iran’s previous violation of the NPT shows that there is little reason to trust Tehran in this regard.

Another reason why the JCPOA may not ensure the prevention of a nuclear Iran is the lack of full disclosure of past Iranian military nuclear activities, which provides the foundation of estimating Iran’s breakout time. However, this vital element was left out in the JCPOA as a concession to Tehran. Consequently, uncertainty regarding the Iranian progress and fears of possible additional secret facilities remain. Accordingly, IAEA Director General Amano stated after the conclusion of the JCPOA that “we don’t know whether they have undeclared activities or something else. We don’t know what they did in the past. So, we know a part of their activities, but we cannot tell we know all their activities. And that is why we cannot say that all the activities in Iran is in peaceful purposes.” This uncertainty is particularly alarming given Iran’s past deception and denial efforts regarding its nuclear program. In 2005, Rohani openly stated his strategy of using the negotiations to gain time and divide Western powers for the benefit of the advancement of the Iranian nuclear program.

#### IV. POLICY RECOMMENDATIONS

From the analysis of the current situation and the issues at stake for the EU follows a three-step policy recommendation.

First, the EU should acknowledge that the JCPOA is currently not delivering. It must realize that the current EU strategy of upholding the JCPOA while Iran is not complying with its provisions under the JCPOA does not ensure the prevention of a nuclear Iran and has created a dangerous situation. While it was strategically wise to keep the JCPOA alive until the dusk of the current U.S. administration, it is now in the EU’s very interest to regain more control on the course of events. Therefore, the EU must adapt its strategy to recent developments to increase the probability of reaching its objectives.

In a second step, the EU must go beyond the mere reimplementing of the JCPOA in its original form. While a return of the JCPOA would be an improvement of the status quo, its mere reinstatement would be short-sighted for the reasons given above. Hence, the EU should quickly engage in discussions with the incoming

U.S. administration once it takes office in January 2021 and seize this window of opportunity to improve the strained transatlantic relations. A robust transatlantic coalition with harmonized interests should be built to renegotiate the JCPOA. The negotiations' objective must be an agreement that is not a bet on changing Iranian behavior in the future, but one that reliably prevents a nuclear Iran, not only in the short but in the long-term. To guarantee this, the nuclear restrictions must be valid for a more extended period, and all past military nuclear activities must be disclosed in order to calculate the breakout time accurately. Additionally, Iran's current high level of uranium enrichment in violation of the JCPOA must be rolled back as a first confidence-building measure. A comprehensive agreement must also address Iran's destabilizing foreign policy in the MENA region, its human rights violations, and its ballistic missile program. Given the importance of the nuclear program for Iran, this will not be an easy task, but a coalition of the EU, the U.S., and states of the MENA region, including Israel, Saudi-Arabi, Bahrain, and the UAE, is equipped with enough carrots and sticks to pressure Tehran back to the negotiation table and to withstand likely opposition from Moscow and Beijing. In this phase, the EU must show greater willingness to use its economic leverage against Tehran than it has in the past.

Thirdly, the EU should reassess its relationship with Iran. Given the incompatibility of Iran's human rights record, its sponsoring of and active involvement in terrorism (including on European soil), and its destabilizing foreign policy with the values and objectives of the EU laid out in Arts. 2 and 3 of the Treaty on European Union (TEU), the EU should adjust its policies towards Iran. Recent Iranian human rights violations include the suppression of anti-government protests in late 2019, in which Iranian security forces killed around 1,500 protestors, the execution of wrestler Navid Afkari, and the imprisonments researcher Fariba Adelkhah and human rights lawyer Nasrin Sotoudeh. While the EU criticized Tehran for the violent suppression of the 2019 protests, it did not draw political consequences. Iran's systematic human rights violations should have a more substantial impact on EU policymaking towards Tehran. Instead of acting "as protective shields" for its "Iranian partners" as former German Foreign Minister Fischer once described its role, the EU should start to treat Iran as the hostile actor it is towards the norms, interests, and values of the EU. The first step in this direction would be an increase in the EU's cooperation with the democratic civil society in Iran.



## 2. 4. More than a winter game

### How the EU can address the Uyghur crisis

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#### I. EXECUTIVE SUMMARY

Since 2014, the Chinese Communist Party (CCP) has been committing crimes against the Turkic Muslim Uyghurs in Xinjiang, including mass arbitrary detention, torture, enforced disappearances, as well as other human rights violations such as mass surveillance, cultural and religious erasure, family separation, forced returns to China, forced labor, sexual violence and violations of reproductive rights.<sup>1</sup> Currently, the situation has reached a critical level, with various human rights organizations and governments labeling this as a genocide.<sup>2</sup> Though late to respond to this humanitarian issue, on March 22, 2021 the European Union (EU), together with the United Kingdom, the United States (US) and Canada condemned the human rights abuses of the CCP regime by sanctioning four Chinese individuals and one Chinese entity via visa bans and asset freezes.<sup>3</sup>

We address this policy paper to the European Union, namely, the European Commission as we believe it should be the leader in safeguarding human rights in China. Given the EU's high regard for human rights protection, as well as its considerable economic relationship with China, it is uniquely placed to achieve more change on this front than other international players. Though the sanctions represent an important first step, the EU should continue to implement coordinated, credible, immediate and realistic punitive actions.

There are various policy options available to the EU, ranging from further employing the European Global Human Rights Sanctions Regime and other broad reach-

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1 Also spelled Uighur, Uygur or Uigur. In academia, it is usually spelled Uyghur. For consistency purposes, the latter spelling is employed for the rest of the paper., Break Their Lineage, Break Their Roots" (United States of America: Human Rights Watch, 2021).

2 Kashgarian Asim, and Rikar Hussein. "China's Plan in Xinjiang Seen as Key Factor in Uighur Crackdown." Voice of America, December 22, 2019. <https://www.voanews.com/extremism-watch/chinas-plan-xinjiang-seen-key-factor-uighur-crackdown>

3 Emmott Robin. "EU Envoys Agree First China Sanctions in Three Decades." Reuters. Thomson Reuters, March 17, 2021. <https://www.reuters.com/article/us-eu-china-sanctions-idUSKBN2B91DC>

ing economic sanctions to actions at the international level such as humanitarian intervention.<sup>4</sup> As one possible step among many, this policy paper recommends the boycott of the 2022 Winter Olympics in Beijing. Such a coordinated, international act can have one of the largest immediate economic repercussions, costing China billions of dollars.<sup>5</sup> Though unlikely to cause an immediate stop to the actions of the CCP against the Uyghurs, such an act would be a political, economic, and social hit to the CCP. We therefore urge the European Commission, as well as European Member States to take the necessary steps to coordinate an Olympics boycott.

This policy advice will be structured as follows. First, the policy context will be discussed, with special attention to the current situation of the Uyghurs as well as China's relationship with the EU. Second, the various policy options will be discussed. Finally, the policy recommendation of this paper will be explored in depth.

## II. POLICY CONTEXT

### 2.1 THE UYGHUR GENOCIDE

In order to provide an effective policy recommendation, this paper will first begin by providing relevant contextual details to illustrate the overall position of the Uyghur ethnic group in China, and how the Chinese government has painted the group as a scapegoat and target for restrictive and discriminatory policies.

The Uyghurs are a Muslim ethnic group located in North-western part of China. Up until the 19th century, the Han Chinese only accounted for 5% of the inhabitants in that area. When the Chinese government claimed the territory in 1949, the CCP implemented several policies that encouraged immigration of the Han to Xinjiang. As a result, 35% of Xinjiang's current population are Han, making them the second-largest ethnic group, after the Uyghurs.<sup>6</sup>

Though the Chinese government claimed the area in 1949, it was not until the 1990's that it tightened its grip on the region due to economic and ethnic tensions, as well as separatist notions exemplified through entities such as the East Turkestan independence movement which China labels as terrorist activ-

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4 It was via this instrument that the first set of sanctions were employed.

5 Shao Grace. "China Pours Billions into Infrastructure and Talent as It Readies for the 2022 Winter Olympics." CNBC. CNBC, February 6, 2020. <https://www.cnbc.com/2019/12/25/2022-winter-olympics-china-invests-billions-in-infrastructure-talent.html>

6 Zhang, J, X Zhou, Q Xing, Y Li, L Zhang, Q Zhou and B Tang. "Sudden cardiac death in the Kazakh and Han peoples of Xinjiang, China: A comparative cross-sectional study." *Medicine* 98 (2019): <https://doi.org/10.1097/MD.00000000000018126>

ity.<sup>7</sup> Following the World Trade Centre attacks in 2001, the CCP closely monitored the region and, especially, Uyghur culture and religious practices. More tensions arose in 2009 during the Ürümqi riots. To elaborate, following the rape of two Han girls, two Uyghurs were blamed, and beaten to death. The violence against two members of the minority caused a social media outcry, where students gathered outside the CCP's office in Xinjiang and demanded an independent investigation of the acts. The movement quickly transformed into riots in which the Uyghurs and Han took turns in chanting and assaulting each other openly on the streets. During the two-day riot, 194 lives were taken.<sup>8</sup> Many similar events occurred in the same tune.

Following Xinjiang and China's history, these events have added to the Chinese government's aversion toward non-Han ethnic groups. Consequently, in 2014 the CCP officially launched the "Strike Hard Campaign Against Violent Terrorism" in the Xinjiang region. The campaign frames the policies against Islamic religious practices as essential for national security and as a part of the global "war on terror" campaign.<sup>9</sup> Since then, Xinjiang transformed into what is now defined as a "surveillance state," where the Chinese government has been implementing mass and technologically-advanced surveillance on citizens.<sup>10</sup> The Xinjiang Integrated Joint Operations Platform controls the behavior of individuals through CCTV cameras, face recognition, DNA sampling alongside constant supervision of their online activities and communications (such as text messages or phone calls) to identify potential threatening behavior against the government.<sup>11</sup> The surveillance of Uyghurs is tailored to limit the groups' freedom of religion. This was made effective in combination with new legislation which prohibited "Islamic behavior" such as avoiding alcohol, growing a beard or covering one's face. The measures created a new school of thought in the region and beyond, where the Uyghurs' identity became heavily stigmatised.

Alongside mass surveillance, mass detentions of Uyghurs has been taking place since at least 2017, and estimates predict that one million people are currently de-

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7 Chung, Chien-peng. "China's war on terror": September 11 and Uighur separatism." *Foreign affairs* (2002): 8-12.

8 Michael Clarke. "Urumqi 2009 and the Road to Xinjiang Re-Education Centers." *The Diplomat*, July 11, 2019. <https://thediplomat.com/2019/07/urumqi-2009-and-the-road-to-xinjiang-re-education-centers/>

9 Uyghur Human Rights Project. "Repression Across Borders: The CCP's Illegal Harassment and Coercion of Uyghur Americans." Accessed May 28, 2021. [https://docs.uhrp.org/pdf/UHRP\\_RepressionAcrossBorders.pdf](https://docs.uhrp.org/pdf/UHRP_RepressionAcrossBorders.pdf)

10 Jacky Habib. "In Xinjiang, China, Surveillance Technology Is Used to Help the State Control Its Citizens." *CBCnews*. *CBC/Radio Canada*. Accessed May 29, 2021. <https://www.cbc.ca/passionate-eye/features/in-xinjiang-china-surveillance-technology-is-used-to-help-the-state-control>

11 *Ibid*.

tained.<sup>12</sup> Uyghurs are detained in the established Xinjiang Internment Camps, officially called Xinjiang Vocational Education and Training Centers.<sup>13</sup> Information on the activities and events taking place within the camps is limited, but individuals who were able to escape China's borders reported that people are forced to live in prison-like conditions.<sup>14</sup> Chinese authorities deny these claims, and state that their sole goal is to re-educate the Muslim detainees, which is already a human rights violation that works to curtail freedom of religion. However, researchers reported that the Uyghurs are forced to work for little or no pay, and detainees have witnessed children being separated from their families, women being forced to go on birth control, and acts of sexual abuse and rape.<sup>15</sup> These are all instances of direct violations of fundamental human rights.

On an international level, this continuing series of human rights abuses against the Uyghur minority perpetrated by the CCP has been recognized as genocide by multiple official institutions.<sup>16</sup> In 2019, the issue was raised by the United Nations Human Rights Council, where China's violations against Uyghurs was condemned by 22 states.<sup>17</sup> Nevertheless, China's operations were supported by 50 countries which issued a joint letter endorsing the policies and activities taking place in Xinjiang, while the CCP continued to deny all actions and deferred external investigation in the region.<sup>18</sup> Furthermore, in 2020 more countries condemned China's actions, and in 2021 several countries recognized the suppression of the Uyghur minority in the Xinjiang as genocide.<sup>19</sup>

Looking at the Uyghur genocide from a broader perspective, the CCP has strong economic interests to control the region and protect it against separatist and 'independence-oriented' movements.<sup>20</sup> Xinjiang is an important geographical

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12 Linzday Maizland. "China's Repression of Uyghurs in Xinjiang." Council on Foreign Relations. Council on Foreign Relations. Accessed May 29, 2021. <https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang>

13 Charlotte Gao. "Xinjiang Detention Camp or Vocational Center: Is China 'Calling A Deer A Horse'?" – The Diplomat. for The Diplomat, November 9, 2018. <https://thediplomat.com/2018/11/xinjiang-detention-camp-or-vocational-center-is-china-calling-a-deer-a-horse/>.

14 Ibid.

15 Chris Buckley and Austin Ramzy. "China's Detention Camps for Muslims Turn to Forced Labor." The New York Times. The New York Times, December 16, 2018. <https://www.nytimes.com/2018/12/16/world/asia/xinjiang-china-forced-labor-camps-uighurs.htm>, John Sudworth. "China Uighurs: A Model's Video Gives a Rare Glimpse inside Internment." BBC News. BBC, August 4, 2020. <https://www.bbc.com/news/world-asia-china-53650246>

16 Ibid.

17 Roie Yellinek. "The '22 vs. 50' Diplomatic Split Between the West and China Over Xinjiang and Human Rights." Jamestown, November 18, 2020. <https://jamestown.org/program/the-22-vs-50-diplomatic-split-between-the-west-and-china-over-xinjiang-and-human-rights/>

18 Ibid.

19 Nahal Toosi. "U.S., Allies Announce Sanctions on China over Uyghur 'Genocide.'" POLITICO. POLITICO, March 23, 2021. <https://www.politico.com/news/2021/03/22/us-allies-sanctions-china-uighers-genocide-477434>

20 Ibid.

link for the Belt and Road Initiative (BRI), functioning as a buffer zone between Asia and Europe. Many countries involved in the BRI are willing to disregard the Uyghur oppression because of the economic investment China is granting with the project.<sup>21</sup> Furthermore, it should be noted that Xinjiang produced 20% of the world's cotton, which was in turn used for products manufactured and distributed in countries worldwide.<sup>22</sup> For economic purposes, more than half a million Uyghurs in Xinjiang have been forced to pick cotton with no retribution, in slavery-like conditions. For these economic reasons mentioned, the grip on the region by the CCP remains strong and the oppression of the Uyghur minority continues as their attachment to the Xinjiang as traditional land could problematize the implementation of the BRI and economic benefits the land provides.<sup>23</sup>

Altogether, even if the information available about the Uyghur minority and the actions taking place within the region's borders is limited, the human rights issue highlights the need for immediate action to prevent further abuses from taking place. The deteriorating conditions of the Uyghurs demonstrates the need for new policy proposals, and for such reasons this paper seeks to present concrete suggestions for tackling the described issue.

## 2.2 EU-CHINA RELATIONS

Having explored the Uyghur issue within the Chinese context, this next section will consider EU-China relations in order to be better able to reflect on various policy options. This section will examine the two relevant aspects of the EU-China relationship, namely, economic relations and the struggle for human rights administration. The EU and China established diplomatic relations back in 1975.<sup>24</sup> Though the stance towards their economic relations remained more or less positive and stable, the EU's attitude towards addressing human rights in China has undergone many changes.

Since the establishment of their diplomatic relations, economics has been the main driver propelling EU-Chinese relations, despite clashing political views and

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21 The BRI is a global infrastructure development project initiated and developed by the People's Republic of China in 2013. The plan involves up to 70 countries and private organizations, and it seeks to develop efficient infrastructure for the connection of Europe and Asia., Cho Sungmin. "The Economics of Repression". *Journal of Indo-Pacific Affairs*. May 29, 2021. <https://media.defense.gov/2021/Mar/07/2002595033/-1/-1/1/CHO.PDF>

22 Guardian News and Media, December 15, 2020. <https://www.theguardian.com/world/2020/dec/15/xinjiang-china-more-than-half-a-million-forced-to-pick-cotton-report-finds>

23 Kashgarian Asim, and Rikar Hussein. "China's Plan in Xinjiang Seen as Key Factor in Uighur Crackdown." *Voice of America*, December 22, 2019. <https://www.voanews.com/extremism-watch/chinas-plan-xinjiang-seen-key-factor-uighur-crackdown>

24 EEAS. "Marking 45 years of EU-China diplomatic relations in a time of global crisis". *Delegation of the European Union to China*. May 6, 2020. [https://eeas.europa.eu/delegations/china/78510/marking-45-years-eu-china-diplomatic-relations-time-global-crisis\\_en](https://eeas.europa.eu/delegations/china/78510/marking-45-years-eu-china-diplomatic-relations-time-global-crisis_en)

ambitions for further power and recognition at the international stage. The “China model” under the authoritarian rule of the CCP is attempting to achieve the status of a hegemon, while the democratic EU is trying to establish itself as a serious actor on the international stage in terms of security and foreign policy.<sup>25</sup> Within this agenda, the EU has for the most part, at least rhetorically, prioritized human rights and their normativity above all.<sup>26</sup> The engagement between these two countries was possible given an assumption by the EU that “China would eventually liberalize its economic system and possibly even its politics.”<sup>27</sup> However, despite little change on that front, EU-China economic relations have flourished. Currently, the EU is China’s largest trading partner, and China is the EU’s second-largest trading partner.<sup>28</sup> In 2013, the EU and China began negotiations on the EU-China Comprehensive Agreement on Investment (CIA) which represented a greater leap into their partnership. Furthermore, they have found other opportunities for cooperation on issues like climate change and renewable energy.<sup>29</sup>

In earlier periods, it could be said that the EU prioritized human rights in its relations with China, such as in the years 1989-1997, when the “EU’s human rights policy towards China was characterized by a strategy of pressure and criticism in multilateral fora” such as sanctions, and coercive measures. However, the period between 1998-2009 illustrated a clear shift towards pragmatism, and seeking partnerships based on engagement and cooperation. Since 2006, the theme of cooperation, and concern for China’s human rights issues has been “significantly toned down.”<sup>30</sup> Still, the EU continues to engage in a human rights dialogue with China, seeking to promote local human rights’ credibility and foster the rule of law.<sup>31</sup> Nonetheless, despite such dialogues and occasional criticisms about the deteriorating human rights conditions in regions such as Tibet and Xinjiang, and the unfriendly treatment of human rights lawyers and related organizations, the

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25 Teresa Roque. “China: A Threat to Western Democracies.” *Observador*. Observador, May 9, 2020. <https://observador.pt/opinio/china-a-threat-to-western-democracies/>, E. Kirchner, T. Christiansen, K. Jørgensen, and Philomena B. Murray, eds. *The Palgrave Handbook of EU-Asia Relations*. Springer, 2016.

26 Ian Manners. “Normative power Europe: a contradiction in terms?” *JCMS: Journal of common market studies* 40, no. 2 (2002): 235-258.

27 “EU-China Relations - Towards a Fair and Reciprocal Partnership.” EPP Group in the European Parliament, March 10, 2021. <https://www.eppgroup.eu/newsroom/publications/eu-china-relations>

28 European Commission. “Countries and regions- China.” [ec.europa.eu/](https://ec.europa.eu/). Accessed May 31, 2021.

29 “EU-China Relations - Towards a Fair and Reciprocal Partnership.” EPP Group in the European Parliament, March 10, 2021. <https://www.eppgroup.eu/newsroom/publications/eu-china-relations-towards-a-fair-and-reciprocal-partnership>.

30 Wenwen Shen. “EU-China Relations on Human Rights in Competing Paradigms: Continuity and Change,” in *The Palgrave Handbook of EU-Asia Relations*, ed. Emil Kirchner, T. Christiansen, K. Jørgensen, Philomena B. Murray (New York: Palgrave Macmillan), 165-180

31 Press and information team of the Delegation to China. 2020. Statement of the EU Delegation in China on International Human Rights Day. [https://eeas.europa.eu/delegations/china/90295/statement-eu-delegation-china-international-human-rights-day\\_en#:~:text=The%20EU%20urges%20China%20to,righ%20defenders%20and%20their%20families](https://eeas.europa.eu/delegations/china/90295/statement-eu-delegation-china-international-human-rights-day_en#:~:text=The%20EU%20urges%20China%20to,righ%20defenders%20and%20their%20families)

EU has not taken any concrete action(s) against China.<sup>32</sup> As demonstrated by the European Commission Joint Communication to the European Parliament, the European Council, and the Council discussing the EU-China strategic outlook, the EU's strategic actions remain vague.<sup>33</sup> For instance, action point 1 of the document: "The EU will strengthen cooperation with China to meet common responsibilities across all three pillars of the United Nations - Human Rights, Peace and Security, and Development."<sup>34</sup> Although flexible in future applicability, it does not require the EU to go beyond closed-door dialogues and general calls to protect human rights in relevant regions. The EU-China 2020 Strategic Agenda and recent investment agreement further reinforce the ambiguity of a clear EU response to the Uyghur crisis in their lacklustre approach to such a topic.

However, with the start of the new decade not only the political but also the economic relationship between the EU and China visibly soured. This was first due to the lack of commitment of the CCP on its economic promises to the EU regarding the "opening up of the digital and agricultural markets, addressing overcapacity, and reining in industrial subsidies",<sup>35</sup> as well as CCP's actions in regards to Taiwan and Hong Kong.<sup>36</sup> However, the Uyghur crisis had the most decisive blow on their relations as in March 2021 the EU sanctioned China for the first time in three decades due to human rights violations using the European Global Human Rights Sanctions Regime.<sup>37</sup> Sanctions consist of travel bans and asset freezes, with persons and entities inside the bloc being prohibited from making funds available, either directly or indirectly, to those listed.<sup>38</sup> Specifically, the European Parliament targeted four Chinese individuals, officials in China working for the Xinjiang policies and the Xinjiang Production and Construction Corps Public Security Bureau, and those running detention centers in Xinjiang.<sup>39</sup> The EU was joined by the United Kingdom, the United States and Canada. While these are mainly symbolic and

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32 European Commission, JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL. JOIN(2019) 5 final. Strasbourg: European Commission, 2019, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf> (accessed January 8, 2020) European Commission. EU-China 2020 Strategic Agenda for Cooperation. 2013. <https://eeas.europa.eu/sites/eeas/files/20131123.pdf> (accessed January 7, 2020)

33 Ibid.

34 Ibid.

35 Lau, Stuart. "EU Slams China's 'Authoritarian Shift' and Broken Economic Promises." POLITICO, April 26, 2021. <https://www.politico.eu/article/eu-china-biden-economy-climate-europe/>.

36 "EU-China Relations - Towards a Fair and Reciprocal Partnership." EPP Group in the European Parliament, March 10, 2021. <https://www.eppgroup.eu/newsroom/publications/eu-china-relations-towards-a-fair-and-reciprocal-partnership>.

37 Emmott, Robin. "EU Envoys Agree First China Sanctions in Three Decades." Reuters. Thomson Reuters, March 17, 2021. <https://www.reuters.com/article/us-eu-china-sanctions-idUSKBN2B91DC>

38 Ibid.

39 European Parliament. "Chair's statement of 23 March 2021 on EU sanctions on human rights violations; Counter-sanctions by the PRC". March 23, 2021. <https://www.europarl.europa.eu/delegations/en/chair-s-statement-of-23-march-2021-on-eu/product-details/20210324DPU29209>

of relatively limited concern for the CCP, this decision has major diplomatic and geopolitical relevance for their relations.<sup>40</sup> China also retaliated with their own set of sanctions on individual members of European and national Parliaments, the European Parliament’s Subcommittee on Human Rights, the Political and Security Committee of the Council as well as researchers and think-tanks for “maliciously spreading lies and misinformation.”<sup>41</sup> This has resulted in a very negative view on China by European leaders, who have decided to suspend the signing of the CIA.<sup>42</sup>

Such actions clearly demonstrate that the EU is willing to make more aggressive and decisive moves towards China. As an institution that attempts to prioritize human rights on its foreign policy agenda, the EU can no longer ignore China’s actions against the Uyghurs. However, economic interests are still in the background and will likely prevent the EU from putting its full force into the issue. For this reason, efficient but realistic solutions to these violations need to be found. In the next part of the paper, policy options to the Uyghur genocide are proposed and a final policy recommendation is presented.

### III. POLICY OPTIONS

Taking into account the arguments made by the previous sections on the significant humanitarian crisis experienced by the Uyghur ethnic group in China, as well as the EU’s relationship with China this section will address current and potential policy approaches available to the EU.

#### Option 1. A More Systematic Implementation of The EU Global Human Rights Sanctions Regime

As mentioned briefly in the earlier section, the EU Global Human Rights Sanctions Regime is a framework which allows the EU and its Member States to target individuals and entities, both state or non-state actors, responsible for or involved in human rights violations or abuses all over the world.<sup>43</sup> The most concrete tool available to the Regime is the ability to “ban perpetrators from entering the EU, freeze perpetrators’ assets in the EU and prohibit any EU person from making funds and economic resources available to perpetrators.”<sup>44</sup> The Regime aims to enhance the EU’s role as an active player ensuring the protection of human rights

40 Ibid.

41 Ardissino, Elettra, and Eyck Freyemann. “China and Europe Are Breaking Over Human Rights.” *Foreign Policy*, March 29, 2021. <https://foreignpolicy.com/2021/03/29/europe-cai-china-human-rights-uyghurs-sanctions/>.

42 Xue Qing. “How China Is Losing Europe.” – *The Diplomat*, May 26, 2021. <https://thediplomat.com/2021/05/how-china-is-losing-europe/>.

43 “Questions and Answers: EU Global Human Rights Sanctions Regime.” EEAS. Accessed May 29, 2021. [https://eeas.europa.eu/headquarters/headquarters-homepage/90013/questions-and-answers-eu-global-human-rights-sanctions-regime\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/90013/questions-and-answers-eu-global-human-rights-sanctions-regime_en)

44 Ibid.

and addressing concerns and violations all over the world. The issues covered by the Regime are “genocide, crimes against humanity, torture and other cruel, inhuman or degrading treatment or punishment, slavery, extrajudicial, summary or arbitrary executions and killings, enforced disappearance of persons, arbitrary arrests or detentions.”<sup>45</sup> It was using this mechanism that the EU sanctioned Chinese officials in March in order to counter the mass detentions of Uyghurs and forced labor taking place in Xinjiang<sup>46</sup> The value of the EU Global Human Rights Sanction Regime, lies in the ability of the EU to economically and socially put pressure on the Chinese Government, as well as individuals and businesses to recognize and stop the current violations against the Uyghurs.<sup>47</sup>

Secondly, the EU Global Human Rights Sanctions Regime could initiate discussion and potentially force the CCP into a more conciliatory position. Through political diplomatic dialogue and multilateral partnerships, the EU could influence practices and interests in the region. It is an option for the EU to proceed further with the Global Human Rights Regime by sanctioning more individuals and entities, specifically expanding the net of sanctions to include beneficiaries to Uygher labor in other Chinese provinces. So far, however, the EU Global Human Rights Sanctions Regime resulted in limited efficacy.<sup>48</sup> Still, not only improvements within China’s borders have not yet taken place, but also effective (fruitful) diplomatic dialogue between the two entities about the matter is not occurring. Thus, the efficacy of the EU Global Human Rights Regime seems somewhat limited as a singular policy.

## Option 2. Wide-range Economic Sanctions

Since the early 2000s, the EU has opted for a targeted approach to sanctions such as through the European Global Human Rights Sanctions Regime, given humanitarian concerns. However, wide-range economic sanctions are also in its sanctions arsenal. This type of sanction is rarely general, but rather targets one or two strategic activities (e.g. sanctions against Russia that restrict EU exports of technology to Russian oil companies).<sup>49</sup> Economic sanctions have been proposed to control China’s economic and industrial reach and make the Uyghur issue more

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45 Ibid.

46 European Parliament. “Texts Adopted - Forced Labour and the Situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region - Thursday, 17 December 2020.” [europarl.europa.eu](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0375_EN.html). Accessed May 30, 2021. [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0375\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0375_EN.html)

47 Ibid.

48 Vincent Ni. “EU Efforts to Ratify China Investment Deal ‘Suspended’ after Sanctions.” *The Guardian*. Guardian News and Media, May 4, 2021. <https://www.theguardian.com/world/2021/may/04/eu-suspends-ratification-of-china-investment-deal-after-sanctions>

49 Russel, Martin. “EU sanctions: A key foreign and security policy instrument.” European Parliament briefing. May 2018. European Parliamentary Research Service.

salient in EU-China relations.<sup>50</sup> The impositions of sanctions by the EU on exports and imports coming from and to China would give the Union power to challenge the CCP and initiate internal change regarding the ongoing violations. For instance, the EU could consider sanctioning cotton imports from Xinjiang. This is something that has already been implemented by other countries such as the United States. This could have a major economic impact whilst it would work against forced labor in Xinjiang, meaning an actual, direct effect on some human rights violations could be achieved.<sup>51</sup> Although a generally reliable policy, there is a level of difficulty in mounting such sanctions. This has been shown in recent events such as the security law protests in Hong Kong where the EU was reluctant to impose general sanctions on China despite civil and humanitarian concerns about the new laws.<sup>52</sup> Altogether, it can be said that such reluctance is based on the EU viewing China as a necessary strategic partner. Such is made clear in the EU-China 2020 Strategic Agenda set out in 2013, and then reaffirmed in the European Commission Joint Communication to the European Parliament, the European Council, and the Council released in 2019.

### Option 3. International (Humanitarian) Intervention

Finally, the termination of the described abuses of the Uyghurs could be also enforced and established through an international humanitarian intervention. Nevertheless, strategies that would employ intergovernmental organizations and global humanitarian tools become less reliable, especially when studied as concrete action approaches. For instance, the Responsibility to Protect (R2P) framework is often proposed as an intervention framework based on its narrow focus on genocide, crimes against humanity, war crimes, and ethnic cleansing - all relevant focal points in the Uyghur case.<sup>53</sup> Nonetheless, such frameworks, and R2P specifically, rely on the approval of the United Nations Security Council (UNSC). China is a permanent veto member of the UNSC and has the staunch support of another veto power, Russia. With the United Kingdom no longer being an EU member, and other more pressing geopolitical issues being on the agenda, the EU represented through Germany is unlikely to succeed in generating international action through this avenue.

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50 Florian Eder. "EU Must Sanction Chinese Leaders Involved in Uighur Oppression, Say Legislators." POLITICO. POLITICO, July 24, 2020. <https://www.politico.eu/article/eu-china-uighur-hong-kong-oppression/>

51 The New York Times. "U.S. Bans All Cotton and Tomatoes From Xinjiang Region of China". <https://www.nytimes.com/2021/01/13/business/economy/xinjiang-cotton-tomato-ban.html?smid=wa-share>

52 Laura Trullols. "'China Is Necessary Partner, like It or Not,' Says EU's Top Diplomat." euronews, June 18, 2020. <https://www.euronews.com/2020/06/18/china-is-a-necessary-partner-like-it-or-not-says-eu-foreign-policy-chief>

53 Akbarzadeh, S and A Saba. "UN paralysis over Syria: the responsibility to protect or regime change?." *International Politics* 56 (2019): 536-550.

However, other international action, not necessarily through the UNSC does remain a possibility. For one, the EU could push its members and allies to create a commission of inquiry within the United Nations Human Rights Council that could investigate allegations of crimes against humanity and other human rights abuses against the Uyghurs. This commission could make recommendations on how to end abuses, identify responsible individuals, and call for appropriate reparations to the victims.<sup>54</sup> Though this option should be pursued, it will realistically do very little to change the actions of China, as United Nations General Assembly resolutions are non-binding.

#### IV. POLICY RECOMMENDATION

As discussed, effective and timely policies need to be implemented in order to efficiently stop the current abuses that are taking place in Xinjiang. The policy options considered are ineffective when applied independently, or do not ensure the long-term protection of the Uyghur minority. As such, an additional and final policy recommendation is proposed, which in turn seeks to provide a feasible solution to the issue considered. The recommendation urges the EU, and Member States, to take a systematic approach which begins with not participating in the 2022 Winter Olympic Games, set to be hosted by China. The non-participation of EU Member states is an effective method for the EU to economically, politically and socially sanction the CCP given the Games' political importance and the CCP's enormous investments.

The Olympics can and have often been adopted by countries to express their displeasure with the actions of host nations, to chastise said nations, or to bring certain issues to the forefront. The Olympics consist of international sport events taking place both in the summer and in the winter, in a two-year rotation. They represent a chance for athletes from all over the world to compete whilst representing one's own nation, and at the same time connect with other people from different backgrounds, nations, and cultures. Most importantly, the Olympic Games are an efficient tool towards garnering global publicity.<sup>55</sup> To some extent, they might even function as a propaganda tool used to distract citizens from problems and atrocities occurring internally in the host country.<sup>56</sup> The history of the games in fact highlights how, in the past, such occasions have been used to distract the international public from mass atrocities taking place within the host country's borders, thanks to the positive outlook the Games can provide.<sup>57</sup> Nevertheless, the

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54 "Break Their Lineage, Break Their Roots" (United States of America: Human Rights Watch, 2021).

55 Lianna Brinded. "Bread and Circuses:" How the Olympics Is a Propaganda Tool for Assimilation." Quartz. Quartz. Accessed May 31, 2021. <https://qz.com/1190089/winter-olympics-2018-how-the-olympics-is-a-propaganda-tool/>

56 Ibid.

57 Ibid.

Olympic Games have also been employed as a mobilization mechanism to raise awareness about certain issues. In previous Olympic games, countries disrupted the regular functioning of the events through boycotts or protests. Examples include: the 1948 London Olympics from which Germany and Japan were banned;<sup>58</sup> the 1956 Melbourne Olympics during which the Netherlands, Spain, Switzerland abandoned the games to protest the Soviet Invasion of Budapest, and Egypt, Lebanon, and Iraq boycotted the international event to protest the Israeli invasion of the Sinai Peninsula;<sup>59</sup> the 1976 Montreal Olympics during which all African countries boycotted the games after the Olympic committee refused to ban New Zealand for supporting apartheid in South Africa and also the boycott of the U.S team in 1980 during the Moscow Olympics after the invasion of Afghanistan by the Soviet Union.<sup>60</sup> The mentioned events demonstrate how the Olympics can be exploited by countries to bring awareness of a certain matter to the forefront of public attention, or to chastise other nations. For the mentioned reasons, the Olympic Games might be employed to raise awareness about the ongoing genocide targeting the Uyghurs especially since Beijing is the host of the upcoming Winter Games. Lawmakers from multiple Olympic countries such as the Netherlands, Canada and the U.S., have recently addressed implications arising from China hosting the next Olympics. Furthermore, they stressed that the organization of the event in Beijing should be annulled because of the country's repression against the Uyghur minority in Xinjiang, by them defined as genocide.<sup>61</sup>

Building on that, it is relevant to highlight the history of Olympic boycotts in China. Just before the Beijing Summer Olympics in 2008, protests erupted against the CCP's policies in Tibet. Nevertheless, the games continued as planned and no relevant interference sabotaged the events.<sup>62</sup> In context of the current Uyghur case, China has recently declared itself to be ready to face and counter any potential boycott, also due to the sanctions furthered by the EU through the Global Human Rights Sanctions Regime in early 2021.<sup>63</sup>

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58 Cydney Grannan. "7 Significant Political Events at the Olympic Games." Encyclopædia Britannica. Encyclopædia Britannica, inc. Accessed May 31, 2021. <https://www.britannica.com/list/7-significant-political-events-at-the-olympic-games>

59 Ibid.

60 Ibid., Walker, Ali, Eline Schaart, and Stuart Lau. "Critics Question China's Right to Host Winter Olympics." POLITICO. POLITICO, March 4, 2021. <https://www.politico.eu/article/china-beijing-2022-winter-olympics-human-rights-violations-uyghurs/>.

61 Martin Banks. "MEPs Lead Growing Calls for EU to Boycott Winter Olympics in Beijing." The Parliament Magazine, March 12, 2021. <https://www.theparliamentmagazine.eu/news/article/meps-lead-growing-calls-for-eu-to-boycott-winter-olympics-in-beijing>

62 Allegra Stratton. "Tibet Protesters Disrupt Olympic Flame Ceremony." The Guardian. Guardian News and Media, March 24, 2008. <https://www.theguardian.com/world/2008/mar/24/tibet.olympic-games2008>

63 Michael Pavitt. "China Promises Robust Response Should Beijing 2022 Boycott Threat Become Reality." Inside the Games, April 9, 2021. <https://www.insidethegames.biz/articles/1106414/beijing-china-foreign-ministry-boycott>

Furthermore, despite some nations supporting the idea, meetings between activists and the International Olympic Committee (IOC) demonstrated little support to boycott China by the Olympic organization. Such support by the IOC could be also relevant for a potential boycott furthered by the EU, but the neutral position of the IOC is anticipated. Moreover, citizens and athletes face risks in their willingness to boycott and mobilize when confronting the Chinese power. The CCP in fact declared itself prepared to arrest and punish everyone who seeks any level of unrest.<sup>64</sup> For these reasons, the boycott and any other actions, must be carefully planned and coordinated by the appropriate parties. Finally, this paper would like to note that a boycott of the Chinese Olympics could result in retaliation by China during the future games, leading to a Chinese boycott of the 2024 Paris Games and 2026 Milan Games, which entails a notable financial concern for the nations in question.<sup>65</sup>

Having acknowledged the mentioned considerations, it is additionally important to consider how to execute such a boycott. There are different tactics of engagement and mobilization for boycotts, and each different method employed can have various consequences and effects. Participants to the Olympic Games include participating/competing teams, political envoys that include key officials, and economic delegations. To illustrate, a political boycott can take two forms: a full boycott by officials and the competing team where the EU rhetorically and physically shuns the games, or a more subtle political boycott where competing teams join the games but are not followed by an envoy of officials can strongly impact and damage China.<sup>66</sup> The abolishment of the participation of EU Member States to the Beijing Winter Games would represent an efficient boycott which would take place through sporting teams but would hold strong political connotation and an economic effect. A unanimous decision by the EU to engage in boycotts, specifically with each Member State enforcing such a decision, would not damage the athletes themselves, but would mostly work to deteriorate the economic benefit that China is expected to gain from the event while advocating for the human rights issues taking place in the country. To put the economic risk into perspective, China invested a budget of 3.9 billion into the Winter Olympics, through the construction or renovation of infrastructures and facilities.<sup>67</sup> Given this, a boycott or the decision to annul participation in the Beijing games would create a major economic loss for the country, and in turn potentially motivate an increase in the compliance of international human rights norms

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64 Ibid.

65 Annabelle Timsit. "What Can a Boycott of the Beijing 2022 Winter Olympics Achieve?" Quartz. Quartz. Accessed May 31, 2021. <https://qz.com/1992888/what-can-a-boycott-of-the-beijing-2022-winter-olympics-achieve/>

66 Ibid.

67 Grace Shao. "China Pours Billions into Infrastructure and Talent as It Readies for the 2022 Winter Olympics." CNBC. CNBC, February 6, 2020. <https://www.cnbc.com/2019/12/25/2022-winter-olympics-china-invests-billions-in-infrastructure-talent.html>

by the CCP.

Significantly, this Olympics-related policy proposal would not directly and necessarily induce large-scale improvements for the conditions of the Uyghur minority in Xinjiang. Pragmatically, the boycotts advocated consist of further improvements for the resolution of the genocide being considered. As demonstrated, no action can directly persuade China to refrain from the abuses, but in turn the potential Olympics boycott might persuade the CCP to contain the abuses to a minimum. Still, in order to reach such aims, a coordinated move is a necessary requirement. If engaging in the boycott, the EU shall encourage other states such as the U.S. and Canada to also not participate in the Winter Games, as a unitary plan of action would be necessary to ensure the efficacy of the Olympics boycott. Overall, the Olympic Games represent an opportunity for the EU to impact China on an economic, social, and political level.

Altogether, although boycotting the Olympics represents an important political and economic sanction, the EU should not discard other sanctions that it could continue employing. For instance, sanctioning further individuals and entities. As noted earlier, expanding the net of targeted sanctions could be an effective policy. For one, those involved in the Xinjiang Production and Construction Corps (XPCC) [a state-owned economic organization] remain a key player in the forced labour, but an additional avenue of sanctions lies in any province officials and factory heads that benefit from the ‘transfer’ of Uyghur workers through the ‘Xinjiang Aid’ government policy which assigns said workers to factories in a range of supply chains.<sup>68</sup> As of now, reports indicate that 80,000 Uyghurs were transferred out of Xinjiang and assigned to 27 factories in nine Chinese provinces.<sup>69</sup> By systematically applying the Global Human Rights Sanctions Regime to a broader network of individuals, a greater impact can be achieved.

The first round of sanctions has shown a preparedness by the EU to chastise the CCP, but for the threat to be credible, there should be follow-through and consequence if the CCP does not respond appropriately. The novel approach of using the Olympics as a staging point, and applying wide-range sanctions in combination with the Global Human Rights Sanctions Regime is a first step towards building a resistance-foundation that can push back against Uyghur abuses.

## V. CONCLUSION

The ongoing atrocities taking place in Xinjiang which are targeting the Uyghur ethnic minority cannot be continued and should be addressed as soon as possi-

68 “China: 83 major brands implicated in report on forced labour of ethnic minorities from Xinjiang assigned to factories across provinces; Includes company responses,” Business and Human Rights Resource Center, March 1, 2020.

69 Ibid.

ble. Though a strong rhetorical statement, the recognition of the human rights violations of the Uyghurs as a genocide by many is not enough. Furthermore, though both at the EU and the international level, various types of sanctions against China have already been implemented, their current effect has been negligence and China remains motivated to advance its goals and plans in Xinjiang. All policy options considered suggest a potential for the safeguard of Uyghurs' human rights, but more concrete and unitary action needs to be pursued to denounce the abuse by the CCP. For this reason, the policy recommendation advanced in this proposal suggests the EU to boycott the 2022 Winter Olympic Games taking place in Beijing. Such a boycott would economically damage China while raising immense awareness on the ongoing genocide. In such a way, more compliance of the international human rights system might be achieved by China. If taking place, the boycott should not be expected to immediately ameliorate the situation of the Uyghurs. Rather, it would mobilize individuals, organizations, and countries to continue to fight for all people's justice. Together with the implementation of sanctions of the other policy options considered, the boycott would increase awareness about the conditions of the Uyghur minority and would help countries to effectively mobilize against China for the protection of human rights in Xinjiang.

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## 2. 5. A Gordian knot

### EU relations with Poland and Hungary

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European Horizons Cambridge Chapter

#### I. INTRODUCTION: RIGHT WING-POPULISM, RULE OF LAW BREACHES, AND POLITICAL INTERFERENCE IN THE MEDIA

In a speech delivered to the British Parliament during the debate on triggering Article 50 to withdraw from the European Union (EU) on the 31st of January 2017, Kenneth Clarke, then MP for Rushcliffe, delivered a fiery speech in support of EU membership. During the speech he stated: ‘After the surprising collapse of the Soviet Union, eastern and central Europe could have collapsed into its traditional anarchy, nationalist rivalry and military regimes that preceded the second world war. We pressed the urgency of bringing in these new independent nations, giving them the goal of the European Union, which meant liberal democracy, free market trade and so forth. We made Europe a much more stable place’.<sup>1</sup> There is certainly truth to this statement. The EU promoted democracy in countries like Poland and Hungary by making membership conditional on the achievement of democratic institutions and respect for the rule of law. However, the EU is currently struggling to protect democracy from erosion in countries that are already member states.

Eastward expansion changed the perception of the EU from simply a project of economic and political integration to a force for democratisation and human rights.<sup>2</sup> In order to accommodate previously authoritarian states in Eastern and Central Europe, the EU adopted the Copenhagen criteria prior to opening accession negotiations with them. These criteria require that states seeking EU membership achieve ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.’<sup>3</sup> They also require states to commit to the founding values of the EU: ‘respect for human dignity, freedom,

1 HC Deb 31st January 2017, 620, cols. 828-832, [https://hansard.parliament.uk/commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion(NotificationOfWithdrawal)Bill), accessed 3 January 2021

2 Burca, Gráinne de (2018) ‘Is EU Supranational Governance a Challenge to Liberal Constitutionalism?’, *The University of Chicago Law Review* 85(2): 337-368, pp. 337-338

3 European Council, ‘Conclusions of the Presidency’ (Copenhagen, 1993), [https://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/72921.pdf](https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf), accessed 3 January 2021, p. 13

democracy, equality, the rule of law, and respect for human rights'.<sup>4</sup>

Poland and Hungary joined the EU as part of the Eastern enlargement and both currently face Article 7 procedures against them. Article 7 of the Treaty of the European Union (TEU) is responsible for enforcing member states' commitment to democracy and the rule of law. It allows for the suspending of voting rights of an EU member state found in breach of these principles.<sup>5</sup> However, Article 7 cannot currently be used against Poland or Hungary because triggering it requires the unanimous consent of all member states, bar the one being investigated. The leaders of both countries have pledged to defend each other and veto any attempts to trigger the article.<sup>6</sup>

### 1.1 Threat to the EU's integrity

Democratic backsliding has had serious consequences for Polish and Hungarian citizens. In Hungary, in the wake of the coronavirus pandemic, Viktor Orbán has been granted the power to govern the country by decree and set aside any law.<sup>7</sup> In Poland, PiS has been violently cracking down on protests against a recent abortion ban.<sup>8</sup> It also has serious consequences for the EU. The situation in Poland and Hungary is a major challenge because the EU puts great emphasis on political conditionality. For countries to disregard the conditions on which they became member states raises an existential question for the EU. If the EU stands idly by as democratic institutions are being undermined by its own members, can it still claim to be a community of values?<sup>9</sup>

The rule of law crisis not only undermines the EU's claims to be a union of values but also seriously challenges the bloc's legal order. Attacks on judicial independence undermine the structure of EU governance as the bloc depends on the

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4 Consolidated Version of the Treaty of the European Union (2012) Official Journal of the European Union 55, C326: 13-45, p. 17

5 Ibid., pp. 19-20

6 Treck, Johanna, 'Hungary's Viktor Orbán pledges to support Poland against EU 'inquisition'', Politico, 22 July 2017, <https://www.politico.eu/article/hungary-viktor-orban-pledges-to-support-poland-against-eu-inquisition/>, accessed 3 January 2021

7 European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Hungary', p. 17

8 Dalton, Jane, 'Poland abortion crackdown: Hundreds protest in streets against ban on terminations on foetal defects', The Independent, 23 October 2020, <https://www.independent.co.uk/news/world/europe/abortion-poland-law-protest-demo-warsaw-foetus-police-arrest-b1253411.html>, accessed 3 January 2021

9 Pech, Laurent and Kim Lane Scheppele, 'Poland and the European Commission, Part III: Requiem for the Rule of Law', Verfassungsblog, 3 March 2017, <https://verfassungsblog.de/poland-and-the-european-commission-part-iii-requiem-for-the-rule-of-law/>, accessed 3 January 2021

cooperation of independent national judiciaries to enforce its law.<sup>10</sup> An EU-wide standard of rule of law is necessary for the implementation of European law, the protection of the rights of EU citizens as well as the rights of companies doing business in Poland or other member states. If there is no guarantee that the law will be implemented at an equal standard throughout the EU, then economic and political cooperation is hindered. Dutch courts have already stopped extraditing people to Poland due to concerns over whether they will receive a free and fair trial.<sup>11</sup> Furthermore, if the EU fails to live up to its commitment to the rule of law, it might invite other ‘aspiring autocrats’ throughout the bloc to follow in Poland and Hungary’s footsteps.<sup>12</sup> Finally, years of hailing Poland, Hungary, and other states in Central and Eastern Europe as ‘success stories’ of liberal democracy, free market economics, and European integration make this particular crisis even more problematic for the EU.<sup>13</sup>

## 1.2 Moving forward

Given the severity of the situation, this paper argues that the EU has to be more assertive in its approach to Poland and Hungary, potentially using funds as leverage. This could be a more effective way of enforcing the rule of law than the current procedures under Article 7. Both Poland and Hungary are net beneficiaries of EU funds. EU spending in Hungary amounted to 6% of the country’s GDP in 2018 while Poland is the recipient of over a third of the EU cohesion fund, altogether worth some EUR 63.4 billion.<sup>14</sup>

The paper will then move on to discuss whether a strong reaction by the EU towards Poland and Hungary might result in domestic backlash in both countries. Interestingly, support for EU membership is high in both Poland and Hungary.<sup>15</sup> This means there are possible costs for the governments of these countries of entering into conflict with the EU. However, there is a risk that in withdrawing

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10 Kelemen, R. Daniel, ‘The Assault on Poland’s Judiciary’, *Foreign Affairs*, 26 July 2017, <https://www.foreignaffairs.com/articles/poland/2017-07-26/assault-polands-judiciary>, accessed 3 January 2021

11 Schaart, Eline, ‘Dutch courts to stop extraditing Polish suspects’, *Politico*, 3 September 2020, <https://www.politico.eu/article/dutch-netherlands-courts-to-stop-extraditing-poland-suspects/>, accessed 3 January 2021

12 Kelemen, ‘The Assault on Poland’s Judiciary’

13 Bugarič, Bojan (2015) ‘A crisis of constitutional democracy in post-Communist Europe: ‘Lands in-between’ democracy and authoritarianism’, *International Journal of Constitutional Law* 13(1): 219-245, pp. 220-225

14 European Union, [https://europa.eu/european-union/about-eu/countries/member-countries/hungary\\_en](https://europa.eu/european-union/about-eu/countries/member-countries/hungary_en), accessed, 4 January 2021; Kołodziejcki, Marek, ‘Cohesion Fund’, *Fact Sheets on the European Union*, December 2020, <https://www.europarl.europa.eu/factsheets/en/sheet/96/cohesion-fund>, accessed 4 January 2021

15 Schulmeister, Philipp et al, ‘Parlamer 2018 Taking Up the Challenge: From (Silent) Support to Actual Vote’, Eurobarometer survey commissioned by the European Parliament (Brussels, 2018), p. 18

funds from Hungary and similar regimes, the EU loses the leverage it currently holds over these countries. Such action could prompt Hungary, and other similar regimes in the EU, to lose interest in EU membership and drift towards full authoritarianism.<sup>16</sup> Withdrawing funds is thus a ‘nuclear option’ that can only be deployed once and could potentially cause irreparable damage to the country concerned as well as the EU itself. There is also a threat that economic measures aimed at Poland and Hungary might strengthen these countries’ regimes. As an example this paper discusses the case of sanctions against the Haider coalition in Austria in 2000.<sup>17</sup> The framing of the debate on the rule of law in terms of national sovereignty by the Polish and Hungarian governments makes domestic backlash against the EU a real possibility.

New member states have been accused of implementing cosmetic rather than substantial changes to their laws in order to meet the criteria for accession to the EU.<sup>18</sup> In this context the suggestion made by the Dutch prime minister Mark Rutte of ‘founding an EU without Poland and Hungary’ should be taken seriously.<sup>19</sup> The paper will argue that the EU might not actually be better off without Poland and Hungary. Therefore, we face a Gordian Knot - a problem seemingly impossible to solve. Inaction undermines the EU but too assertive action could lead to backlash. However, ideas for reform, such as Macron’s 2017 proposal for a ‘multi-tier Europe’, are becoming more salient in the context of the rift between the EU and Poland and Hungary as well Brexit and Angela Merkel’s departure. The stage is set for an overhaul of the EU’s structure. The paper discusses how the EU should approach this crisis and how it might look at the end of it.

### 1.3 Background

The EU’s concern over the rule of law and democratic backsliding in the two Eastern European states has hardened its stance towards Poland and Hungary over time. The recent EU budget crisis exemplified the conflict of values between the EU and Poland and Hungary. On the 16th of December 2020 the European Parliament approved making access to EU funds conditional upon adherence to the rule of law. The proposed mechanism would allow funding to be cut when-

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16 Bozóki, ‘An externally constrained hybrid regime’, p. 1182

17 In 2000 the far-right FPÖ led by Jörg Haider entered the Austrian government as part of a coalition. In response the remaining 14 member-states issued diplomatic sanctions against Austria. The sanctions led to backlash against the EU in Austria and other states. The FPÖ is by now an established force in Austrian politics.

18 Šelih, Jasna, Ian Bond and Carl Dolan, ‘Can EU funds promote the rule of law in Europe?’, policy brief (Centre for European Reform, 2017), p. 8

19 Theuns, Tom, ‘Could we found a new EU without Hungary and Poland?’, EUobserver, 21 September 2020, <https://euobserver.com/opinion/149470>, accessed 4 January 2021

countries breach key principles.<sup>20</sup> Poland and Hungary attempted to derail the ‘money for rule of law’ scheme by vetoing the EU’s budget and coronavirus recovery fund. In turn, the EU has suggested excluding Poland and Hungary from the recovery fund and approving it for the remaining 25 member states.<sup>21</sup> Eventually a compromise was reached with Poland and Hungary agreeing to drop their veto in return for the possibility to challenge the new rule of law provisions in the European Court of Justice (ECJ).<sup>22</sup> Despite the resolution of the budget crisis, the question of future EU relations with Poland and Hungary remains unanswered. It is unlikely that democratic backsliding in Poland and Hungary will stop and therefore the challenge to EU values and institutions is far from over.

#### 1.4 Poland and Hungary - two brothers?

Since 2010 Hungary has been governed by the Fidesz party, led by prime minister Viktor Orbán. Its ideological counterpart Law & Justice (PiS) has governed Poland since 2015. Both parties are opposed to globalisation and cultural progressivism. Furthermore, they have adopted more statist and nationalist economic policies, rejecting austerity and instead focusing on welfare.<sup>23</sup> Orbán has styled himself as ‘defender of Christian civilisation against Islamic invasion’ and constructed a border fence on Hungary’s border with Serbia.<sup>24</sup> Since 2012 an organisation called Civil Unity (CÖF), which has connections to Fidesz, has organised ‘Peace Marches’, which are essentially pro-government demonstrations. Thousands of demonstrators marched the streets of Budapest and other large cities determined to ‘defend the government and the country from ‘colonization’ by international banks, speculators, and the EU’.<sup>25</sup>

The backlash against cultural progressivism in Poland is illustrated by the declaration of LGBT-free zones by a number of local governments. Such actions are en-

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20 European Parliament, ‘Parliament approves the ‘rule of law conditionality’ for access to EU funds’, press release, 16 December 2020, <https://www.europarl.europa.eu/news/en/press-room/20201211IPR93622/parliament-approves-the-rule-of-law-conditionality-for-access-to-eu-funds>, accessed 20 February 2021

21 Fleming, Sam and Mehreen Khan, ‘Brussels considers creating recovery fund without Hungary and Poland’, *Financial Times*, 2 December 2020, <https://www.ft.com/content/a9aeab13-541a-4668-959b-d9136fae2c03>, accessed 3 January 2020

22 France24, ‘EU reaches landmark budget deal with Poland and Hungary’, France24, 11 December 2020, <https://www.france24.com/en/europe/20201210-eu-reaches-landmark-budget-deal-with-hungary-and-poland-salvaging-covid-19-recovery-plan>, accessed 3 January 2020

23 Bugarič, Bojan, ‘Europe’s Nationalist Threat’, *The American Prospect*, 18 May 2016, <https://prospect.org/power/europe-s-nationalist-threat/>, accessed 3 January 2021

24 Kelemen, R. Daniel, ‘Europe’s Hungary Problem’, *Foreign Affairs*, 20 September 2015, <https://www.foreignaffairs.com/articles/europe/2015-09-20/europes-hungary-problem>, accessed 3 January 2021

25 Greskovits, Béla, ‘Rebuilding the Hungarian Right through Civil Organization and Contention: The Civic Circles Movement’, *EUI Working Paper* (Robert Schuman Centre for Advanced Studies, 2017), pp. 13-14

couraged by the PiS government. During the recent presidential election campaign Poland's president Andrzej Duda, who is affiliated with PiS, referred to LGBT as 'an ideology more destructive than communism'.<sup>26</sup> In fact, one of the contentions of the Polish government was that tying funds to rule of law conditions might be used for promoting progressive ideological policies in Poland.<sup>27</sup> In both Hungary and Poland the conflict with the EU is framed in terms of national sovereignty, with Brussels referred to as 'the new Moscow', alluding to both countries' history of Soviet domination.<sup>28</sup>

The primary point of contention between the EU and Poland and Hungary is the continued attack on democratic institutions in both countries. In Hungary, Orbán has created unequal conditions for political competition through systematic attacks on the judiciary, independent media and civil society.<sup>29</sup> The new Hungarian constitution, adopted by parliament on 18 April 2011, consolidated power in his hands.<sup>30</sup>

In theory, the new Hungarian constitution contains all the necessary provisions for checking the power of the government. However, appointments to key institutions, like the Electoral Commission and Media Authority, no longer require multi-party input. Under the new constitution, the president of the Constitutional Court is no longer elected by fellow judges but by Parliament, politicising the formerly independent court. The constitution provides for extraordinarily long terms for key state offices running through multiple election cycles and ensures that Fidesz retains its influence even after a potential electoral loss. Constitutional provisions for keeping the power of the government in check are almost entirely controlled by the ruling party.<sup>31</sup> The new constitution entrenches Fidesz loyalists in all relevant state institutions – the Constitutional Court, Budget Council, National Judicial Office, the National Bank and others.<sup>32</sup>

The Fidesz government has also weakened judicial independence and media free-

26 BBC, 'Polish election: Andrzej Duda says LGBT 'ideology' worse than communism', BBC News, 14 June, <https://www.bbc.com/news/world-europe-53039864>, accessed 3 January 2021

27 Shotter, James, Sam Fleming, Mehreen Khan and Michael Peel, 'EU seeks accord to end impasse on rule of law and budget', Financial Times, 9 December 2020, <https://www.ft.com/content/2aed869a-c1f0-4fd0-8e67-7974556e4d18>, accessed 3 January 2021

28 Shattuck, John (2018) 'The New Global Landscape: Illiberal Regimes and Movements', *Journal of International Affairs* 71(1.5): 15-22, p. 17

29 Bozóki, András and Dániel Hegedus (2018) 'An externally constrained hybrid regime: Hungary in the European Union', *Democratization* 25(7): 1173-1189, p. 1178

30 Bánkuti, Miklós, Gábor Halmai and Kim Lane Scheppele 'From Separation of Powers to a Government without Checks: Hungary's Old and New Constitutions' in *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law*, ed. Gábor Attila Tóth (Budapest: Central European University Press, 2012), p. 268

31 *Ibid.*, pp. 238-240

32 Bánkuti, Miklós, Gábor Halmai and Kim Lane Scheppele (2012) 'Hungary's Illiberal Turn: Disabling the Constitution', *Journal of Democracy* 23(3): 138-146, pp. 144-145

doms. The procedure for electing judges to the court has been changed so that it no longer requires multi-party input. Subsequently, Fidesz weakened the jurisdiction of the court and increased the number of judges of the court from 11 to 15, packing the court with judges favourable to them.<sup>33</sup> New constitutional provisions forced all judges over the age of 62 into retirement. The Venice Commission observed that this and the moratorium on the appointment of judges gave the newly elected President of the National Judicial Office the essential role in these appointments.<sup>34</sup> The creation of media conglomerate 'KESMA' through the merger of 470 government-friendly media outlets in 2018 is a notable example of how the press is being monopolised in Hungary.<sup>35</sup> Private media outlets in Hungary continue to face legal as well as informal pressures from the government.<sup>36</sup> The case of dismissal of the editor-in-chief of Index.hu, the most-widely read independent news media site, on 22 July 2020 typifies the pressures independent media in Hungary face.<sup>37</sup>

Poland has followed a similar pattern since PiS came to power in 2015. Prominent PiS figures publicly claim inspiration from Orbán's Hungary and the desire to recreate 'Budapest on the Vistula'.<sup>38</sup> Judicial reform, most notably concerning the Constitutional Tribunal, is the main issue raised against Poland by the Commission under Article 7.<sup>39</sup> For example, in 2018 new laws changed the appointment procedure for a majority of members of the National Council for the Judiciary (NCJ), the organ responsible for nominating judges. They are no longer chosen by their peers but directly appointed by Parliament (Sejm). Thus, the NCJ is now composed mainly of politically appointed members.<sup>40</sup> The recent acquisition of Polska Press, a publisher of 20 leading regional newspapers, by the state-run oil company

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33 Bánkuti et al., 'From Separation of Powers to a Government without Checks', pp. 254-255

34 European Commission for Democracy through Law (Venice Commission), 'Opinion on Act CLXII of 2011 on the legal status and the remuneration of judges, and on Act CLXI of 2011 on the organization and administration of the courts in Hungary', Opinion 663 (Strasbourg, 2012), pp. 27-28

35 European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Hungary', Commission Staff Working Document (Brussels, 2020)

36 International Federation for Human Rights, 'Hungary Democracy under Threat – Six Years of Attacks against the Rule of Law' (November 2016), [https://www.fidh.org/IMG/pdf/hungary\\_democracy\\_under\\_threat.pdf](https://www.fidh.org/IMG/pdf/hungary_democracy_under_threat.pdf), accessed 3 January 2021, p. 30

37 European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Hungary'

38 Buckley, Neil and Henry Foy, 'Poland's new government finds a model in Orbán's Hungary', *Financial Times*, 6 January 2016, <https://www.ft.com/content/0a3c7d44-b48e-11e5-8358-9a82b43f6b2f>, accessed 3 January 2021

39 For an overview of the Polish Constitutional Court crisis see: Sadurski, Wojciech (2019) 'Polish Constitutional Tribunal Under PiS: From an Activist Court, to a Paralysed Tribunal, to a Governmental Enabler', *Hague Journal on the Rule of Law* 11: 63-84

40 European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Poland', Commission Staff Working Document (Brussels, 2020), pp. 2-5

Orlen is seen as an attempt to expand the government's control over the media.<sup>41</sup>

The result of these 'reforms' is legal chaos and silencing of dissent. In Hungary, the conflict between the National Judicial Office (NJO) and National Judicial Council (NJC) threatened to undermine the legitimacy of the entire judicial system. The NJO is an organ established by the Fidesz government. The first president of the NJO was Tunde Handó, wife of József Szájer, the architect of the 2011 constitution and recently discredited close associate of Viktor Orbán. The NJC, on the other hand, is elected from among judges. Both organs are tasked with overseeing the operation of the courts.<sup>42</sup> In Poland, reforms to the Constitutional Tribunal initially resulted in its effective paralysis and then in its politicisation.<sup>43</sup> Similarly, Hungarian legislation on the media, NGOs and universities had the effect of driving dissenting voices, coming from the media, civil society and academia, out of the country.<sup>44</sup> The Polish government's plans to 're-Polonise' the media follow a similar logic.

## II. THE RULE OF LAW CONDITIONALITY - A REMEDY TO A PROGRESSING INEFFICIENCY OF THE EU LEGAL FRAMEWORK?

Throughout the last 20 years, the European Union has introduced various safeguard tools to prevent the resurgence of authoritarian tendencies in unconsolidated post-Soviet democracies. However, the established frameworks are not legally binding, instead relying on mutual trust, a fundamental tenet of the EU's cooperation culture. Breaching EU values leads to deterioration of this cooperation and the EU's general functioning. Autocratic governments in concerned Member States threaten the legal discipline within the EU.<sup>45</sup> On the 16th of January, 2020, the European Parliament adopted a resolution indicating that 'the situation in both Poland and Hungary has deteriorated since the triggering of

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41 DW, 'Poland: State-run oil company buys leading media group', DW News, 8 December 2020, <https://www.dw.com/en/poland-state-run-oil-company-buys-leading-media-group/a-55859592>, accessed 3 January 2021

42 Rozenberg, Joshua, 'Meet Tunde Handó', The Guardian, 20 March 2012, <https://www.theguardian.com/law/2012/mar/20/tunde-hando-hungarian-judges>, accessed 10 January 2021; Biró, Mariana and Zoltán Kovács, 'Controversial leader of Hungarian judicial administration is on her way to the Constitutional Court', Index, 28 October 2019, [https://index.hu/english/2019/10/28/tunde\\_hando\\_constitutional\\_court\\_fidesz\\_nomination\\_national\\_judicial\\_office/](https://index.hu/english/2019/10/28/tunde_hando_constitutional_court_fidesz_nomination_national_judicial_office/), accessed 10 January 2021

43 Sadurski, 'Polish Constitutional Tribunal Under PiS', p. 65

44 On the media and civil society see: European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Hungary', pp. 12-16 and p. 19; on the academia see the case of the Central European University in Budapest

45 Heather Grabbe, Stefan Lehne, 'Defending EU Values in Poland and Hungary', Carnegie Europe, 4 September 2017, <https://carnegieeurope.eu/2017/09/04/defending-eu-values-in-poland-and-hungary-pub-72988>, accessed 14 January 2021

Article 7(1).’<sup>46</sup> Following this observation, some might question the efficiency of the European legal framework (Article 7 [TEU] among other legal proceedings) to sustain a democratic order and suggest different alternatives, including financial conditionalities.

## 2.1 The assessment of currently operating legal framework

The aforementioned Article 7 (TEU) was supposed to restrain potential violations of the EU’s core principles. The three-step mechanism within this article involves a warning (Article 7[1]), which may lead to a suspension of rights of the accused Member State in case of still occurring, persistent and serious breaches. However, potential political consequences and their repercussions made Article 7 seem like a ‘nuclear option’ which could not be used in practice. Its sanctions mechanism requires unanimity within the European Commission, which is particularly difficult to achieve when two concerned Member States such as Poland and Hungary back each other. An unsuccessful implementation of the proceedings could make target governments feel untouchable and free to continue their undemocratic policies.

In 2014, the European Commission created a pre-Article 7 procedure – ‘a rule of law framework’. Although this was not legally binding, it established a dialogue with Member States, including an assessment and recommendation from the Commission.<sup>47</sup> Such recommendations help decide whether the alleged case of rule of law breach requires further legal steps, as happened in the case of Poland in 2016.<sup>48</sup> However, three hearings conducted by the Council in 2018 were not satisfactory for the European Parliament, whose members criticised their structure and demanded more decisiveness. Similarly, in 2018, the Parliament requested action by the Commission to prevent Hungary from violating judicial independence, media and citizens’ freedom, corruption, conflict of interest or rights of the minorities, but the Hungarian delegation denied the accusations.<sup>49</sup> According to the EP, ‘the failure by the Council to make effective use of Article 7 continues to undermine the integrity of common European values, mutual trust and the cred-

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46 European Parliament Pressroom, ‘Rule of law in Poland and Hungary has worsened’, 16 January 2020, <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>, accessed 14 January 2021

47 European Commission, ‘Communication from the Commission to the European Parliament and the Council’, COM/2014/0158, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0158>

48 Four recommendations of the Commission regarding changes in the Polish Constitutional Court, the Supreme Court, the National Council of the Judiciary and the ordinary courts faced a disagreement of the Polish government: 2016/1374, 2016/146, 2017/1520, 2018/103

49 European Parliament Pressroom, ‘Rule of law in Hungary: Parliament calls on the EU to act’, 12 September 2018 <https://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act>, accessed 14 January 2021

ibility of the European Union as a whole'.<sup>50</sup> Moreover, MEPs were not allowed to take part in the hearings organised by the Council and present their reasoned view, although they first initiated the preventive mechanism of Article 7.

Apart from the Article 7 proceeding, there are other legal mechanisms which aim to protect the rule of law in the EU. The infringement procedure of Article 258 of the Treaty on the Functioning of the European Union (TFEU) and the preliminary procedure of Article 267 (TFEU) have been partially successful in addressing a breach of the rule of law in Poland and Hungary.<sup>51</sup> For instance, in the case of the latter, the European Court of Justice decreed that the Hungarian compulsory retirement scheme for judges and legal professionals was illegal under the Equal Treatment Directive. However, the main worry of the legal observers was that the scheme had violated judicial independence.<sup>52</sup> In addition, there is a new independent alternative to current mechanisms – the European Public Prosecutor's Office (EPPO), which was launched at the end of 2020. However, the EPPO membership is voluntary, and – unsurprisingly – Poland and Hungary have decided not to participate. The main focus of EPPO concerns EU funds frauds, corruption and cross-border VAT frauds, and it aims to fill current holes in the judicial protection of EU funds and taxes.<sup>53</sup> The EPPO's effectiveness remains unclear, and its ability to supervise national judicial investigations is untested. Poland and Hungary would resist mandatory participation: officials have already expressed their concerns that 'it would mean intrusion upon the competences of their national prosecutor's offices' and 'it would be unconstitutional'.<sup>54</sup>

## 2.2 Rule of law conditionality - a better solution?

Current legal frameworks have been ineffective in addressing the undermining of the rule of law within the European Union. A potentially useful alternative may be designed by linking EU funds and the rule of law, which was discussed

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50 European Parliament, 'Resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary', 2020/2513(RSP), [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014_EN.pdf), accessed 10 January 2021

51 More information about a legal framework of various political and legal proceedings: Mańko, R. 'Protecting the rule of law in the EU - existing mechanisms and possible improvements', November 2019, European Parliamentary Research Service <https://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act>, accessed 10 January 2021

52 Case C-286/12 Commission v Hungary (Compulsory retirement of judges) – the first infringement case brought to the ECJ on the rule of law issue from: Mańko, R. 'Protecting the rule of law in the EU', November 2019

53 The EPPO brochure, [https://ec.europa.eu/info/eppo-brochures-0\\_en](https://ec.europa.eu/info/eppo-brochures-0_en), accessed 10 January 2021

54 Poland's opposition: PolandIn, 'European Public Prosecutor's Office: Poland stays out', PolandIn, <https://polandin.com/38326882/european-public-prosecutors-office-poland-stays-out>, accessed 10 January 2021; Hungary's opposition: Livia Pavelka, 'The Hungarian Perspective About The European Public Prosecutor's Office', IFAIR, <https://ifair.eu/2020/09/28/the-hungarian-perspective-about-the-european-public-prosecutors-office/>, accessed 10 January 2021

in the negotiations for the Multiannual Financial Framework 2021-2027 and the Next Generation EU – Covid-19 Recovery Plan.

Rule of law conditionality was considered by the Commission in 2018 and then commented on by the Parliament in April 2019.<sup>55</sup> Many groups responded positively to this proposal. The European Economic and Social Committee expressed their support for the proposal. Moreover, they suggested an extension of the conditionality to other EU values and principles, linked to the rule of law and Article 2 of the TEU, such as protection of fundamental rights and pluralist democracy. Similarly, the Committee of the Regions showed its approval and admitted that the new mechanism could be implemented more quickly and efficiently than the Article 7 TEU procedure. However, it expressed concern that the mechanism could give too much power to the Commission and be used as a political tool. Therefore, the Committee demanded from the Commission to set more transparent criteria for the proposed mechanism. On the other hand, opponents emphasised that such material sanctions might not turn out to be as efficient as predicted, and in reality, financial sanctions could polarise the European Union and damage economic convergence. Moreover, the Commission's proposal does not directly guarantee protection of final recipients of EU funds, and, in case of sanctions, the duty to make payments for eligible citizens is shifted to the national budget. Rafał Manko and Magdalena Sapala stress in their European Parliament Briefing that the line from the article 4(2) of the proposal: 'Unless the decision adopting the measures provides otherwise' might mean that end beneficiaries would not be protected at all and, in fact, would be effectively penalised for the policies of the Member State concerned.<sup>56</sup> Diverging perspectives were aligned and concerns allayed over a two-year negotiation process. The agreement on rule of law conditionality, though briefly threatened by a veto declaration from Poland and Hungary, was eventually passed in December 2020 and incorporated into the MFF 2021-2027 and the Recovery and Resilience Facility - a flagship element of the Next Generation EU.

According to the conclusions from the European Council meeting of December 2020, the rule of law conditionality is focused on eliminating financial fraud, corruption and conflict of interest, and protection of the Union's financial interest. Moreover, The European Council stresses a respect for Article 4(2) TEU in the application of the Regulation, which sustains 'national identities of Member States, their fundamental political and constitutional structures', and pro-

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55 European Commission's proposal: COM(2018)0324, <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-324-F1-EN-MAIN-PART-1.PDF>, accessed 10 January 2021; European Parliament's resolution: P8\_TA(2019)-349, [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0349\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0349_EN.pdf), accessed 10 January 2021

56 All examples and opinions from: Mańko, R., Sapala, M. (2020), 'Protecting the EU budget against generalized rule of law deficiencies', European Parliamentary Research Service

vides ‘the principles of objectivity, non-discrimination and equal treatment’.<sup>57</sup> This assurance will probably not dissipate the concerns of the Polish and Hungarian governments. However, the decision to veto would carry a high cost for both countries, particularly an exclusion from the EU recovery fund (the Commission suggested using the enhanced cooperation procedure).<sup>58</sup>

It is not evident that the new financial mechanism bears more benefits overall than already functioning legal and political procedures. In previous years, legal mechanisms were able to temporarily halt Polish and Hungarian undemocratic reforms, especially regarding judicial independence. However, the procedures were not effective enough to alter both countries’ political aims. The new Regulation, which has been in force since 1st January 2021, works under legal conditions introduced through a deal made in December 2020. Firstly, a simple case of breach is not sufficient to trigger the new mechanism – the case must have a direct and negative impact on EU’s financial interest, and other procedures such as the Common Provisions Regulation, the Financial Regulation or infringement procedures would not be sufficiently effective.<sup>59</sup> Secondly, any measures proposed by the Commission under the Regulation cannot be implemented until the guidelines for the procedure are finalised. Moreover, this can happen only after a judgment of the European Court of Justice, which additionally extends the whole process of triggering sanctions. Indeed, excessive time of this procedure was advocated by Viktor Orbán, especially in the light of the upcoming 2022 Hungarian parliamentary elections. The main question remains whether concerned Member States will take new procedures seriously and bear in mind potential future financial consequences of their current political activities, if the financial mechanism will be postponed for a long period.

It might be crucial to tie the rule of law to EU funds, because Member States with weak protection of rule of law and EU values are not capable of spending EU funds efficiently and attract investments in order to improve their economic growth.<sup>60</sup> The new conditionality requirements would be particularly effective at tackling corruption, a significant concern in Hungary and, to a lesser degree, Poland. It is essential to eliminate or at least reduce bribery, because corruption is used as a tool to run undemocratic governments. Thus, EU should use its funds as lever-

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57 European Council, General Secretariat of the Council, ‘European Council meeting (10 and 11 December 2020) conclusions’ <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>, accessed 10 January 2021

58 Financial Times, ‘Poland and Hungary will be losers from a budget veto’, Financial Times, <https://www.ft.com/content/28eea29a-7f8d-433f-b46a-faeb1b44c36c>, accessed 10 January 2021

59 European Council, General Secretariat of the Council, ‘European Council meeting (10 and 11 December 2020) conclusions’, paragraph 2(d) and 2(e), <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf>, accessed 10 January 2021

60 Šelih, Jasna, Ian Bond and Carl Dolan, ‘Can EU funds promote the rule of law in Europe?’, policy brief (Centre for European Reform, 2017)

age to stop funding autocratic governments' rule in concerned Member States. In 2019, Poland earned a score of 58/100 points in the Corruption Perception Index (CPI) and was ranked 41 out of 180 countries, whereas Hungary earned 44 points – one of the worst outcomes in the EU (70 position in the world ranking). Poor management of the EU funds and European projects has already led to financial punishment being imposed on the Hungarian government in 2018. Hungary was compelled to pay a '10% flat-rate financial correction' – which was equal to around 2% of Hungarian annual economic output.<sup>61</sup> However, the punishment did not alter the direction of Hungarian politics, as exemplified by the fact that the CPI for Hungary has even deteriorated since 2018.<sup>62</sup> The threat of the persistent loss of EU funding under the new rule of law conditionality should more effectively tackle corruption in both Hungary and Poland, and hopefully weaken autocratic moves of the governments.

### 2.3 Dependence of national economies of Poland and Hungary on EU funds

Such European sanctions could have a substantial impact on the economies of these two relatively poor countries. EU funds constitute a significant proportion of national expenditure for both countries. According to the Commission's data on European Structural and Investment Funds between 2014-2020, Hungary has received over 25 billion euros through nine national programmes – over 84% of its total cumulative budget. The most significant contributions were made towards 'Competitiveness of Small and Medium Enterprises', 'Network Infrastructures in Transport and Energy' and 'Sustainable and Quality Employment'. In 2019, the total EU expenditure on Hungary amounted to 6.2bn euros, whereas its total national contribution to EU funds was less than 1.1bn euros (overall operating budgetary balance was positive and equal to 3.67% of GNI).<sup>63</sup> The Cohesion Fund 2014-2020 was planned to fund reconstruction of 278 km of Hungarian railway, the building of 211 km of new roads, water supply improvement, better waste recycling or flood protection. Moreover, the European Regional Development Fund contributed to the construction of another 190 km of railway and 75 km of new roads as well as support of over 61,000 enterprises (including a plan of creating 1,650 new firms).<sup>64</sup>

Poland is even more dependent on EU funds, being the biggest net beneficiary of EU funding from 2014 to 2020, as well as being forecast to remain so in at least

61 Reuters Staff, 'Hungary accepts big penalty for mismanaging EU funds', Reuters, <https://www.reuters.com/article/us-eu-hungary-penalty-idUSKBN1XM23I>, accessed 10 January 2021

62 Corruption Perception Index 2018 for Hungary was 46 points – two points more than in 2019; <https://www.transparency.org/en/cpi/2018/results/hun>

63 Data from: European Commission, EU expenditure and revenue 2014-2020, [https://ec.europa.eu/budget/graphs/revenue\\_expenditure.html](https://ec.europa.eu/budget/graphs/revenue_expenditure.html), accessed 10 January 2021

64 More information on implementation and realisation of ESIF 2014-2020 (data by country) on: European

Commission, Cohesion Data, <https://cohesiondata.ec.europa.eu/countries>

until 2027.<sup>65</sup> In 2019, Poland was aided with 16.3bn euros in total, whereas its national contribution amounted to 4.2bn euros – the operating budgetary balance was also positive and equal to 2.40% of GNI.<sup>66</sup> According to D. Breznitz and D. Ornston (2017), EU funds in Poland were mainly focused on private Research and Development, because Poland is ranked among lowest in the EU on all measures of innovation, even in comparison to rather low standards of the Central-East-European region. Therefore, EU financial support is substantial to deliver productivity gains indispensable for Poland to converge with Western Europe (Krajewski, 2014).<sup>67</sup> EU funds in Poland supported almost 930,000 unemployed individuals and provided grants to over 56,000 new businesses. Over 54,000 nursery facilities were built, and 137,000 students were offered internships and apprenticeships. The Cohesion Fund and European Regional Development Fund contributed to the construction and reconstruction of almost 2,000 km of local and trunk roads, and over half a million people were taken under healthcare programmes.<sup>68</sup> It is hard to see how these programs would be possible without financial support from the EU.

## 2.4 The withdrawal of EU funds - further consequences

The suspension of EU funds for countries not abiding by national and EU law would represent an unprecedented EU effort to protect the rule of law. However, such a decisive step could cause political and economic backlash. The formal declaration that Poland and Hungary do not respect the rule of law has the potential to shake investor confidence in both countries. Although Poland is an attractive target for Foreign Direct Investments (FDI) due to its geographic position, relatively cheap labour and economic stability, the 2020 Doing Business ranking has already noted a loss in the Polish business climate position (Poland was ranked 40th out of 190 countries), caused inter alia by its relatively unstable political background. Political conflict within the EU could result in a reduction of German, French, Dutch or Luxembourgian investments (which constitute a majority of Polish Foreign Direct Investment), but it could free up space for South Korean, Chinese and American investors. Hungary has been much less attractive than Poland with regard to FDI – FDI inflows have only increased by 7% from 2010, compared to the 26% increase in Poland. Nevertheless, to some extent it is a strategic place for investments and additional conflict with European Union could cause a loss to

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65 Total allocation of Cohesion Policy 2021-2027 funds for Poland exceeds EUR 75bn (current prices). This is the highest sum planned for one Member State, and is followed by EUR 42bn for Italy: 2021-2027 Breakdown of Cohesion Policy allocations per Member State (current prices), [https://ec.europa.eu/info/files/mff-2021-2027-breakdown-cohesion-policy-allocations-member-state-current-prices\\_en](https://ec.europa.eu/info/files/mff-2021-2027-breakdown-cohesion-policy-allocations-member-state-current-prices_en), accessed 10 January 2021

66 Data from: European Commission, EU expenditure and revenue 2014-2020, [https://ec.europa.eu/budget/graphs/revenue\\_expediture.html](https://ec.europa.eu/budget/graphs/revenue_expediture.html), accessed 10 January 2021

67 Breznitz, D., Ornston, D. (2017) 'EU financing and innovation in Poland', European Bank for Reconstruction and Development

68 Polish Ministry of Development Funds and Regional Policy 2014-2020, European Funds in Poland, <https://www.funduszeuropejskie.gov.pl/>, accessed 10 January 2021

European investors and companies.<sup>69</sup> However, it would undeniably be Polish and Hungarian enterprises, citizens, public and private investments that would suffer most from the withdrawal of EU funds.

## 2.5 EU's successful leverage

If Polish and Hungarian governments prioritise citizens' well-being over their individual, autocratic goals, the EU funds would be a strong bargaining chip in the EU's struggle to promote the rule of law and could successfully leverage both countries to alter their political attitudes. Poland and Hungary, which are most likely to be affected by the rule of law conditionality, remain highly dependent on EU funds, much more than any other European countries. Polish and Hungarian governments should be aware that they will not be able to fund European expenditure from their national budgets. Beneficiaries affected by an implementation of the Regulation could blame governments' focus on undemocratic, individual goals, however, it is more plausible to say that propaganda mechanisms introduced by these governments would establish a convenient national narration that would turn people against the EU. Regardless of this potential backlash within concerned countries, the rule of law conditionality remains a key alternative to a current legal framework to deter Poland and Hungary from their undemocratic activities and it might play a vital role in strengthening the legal power and decisiveness of EU organs.

### III. THE 'BLAME GAME' - TACTICS FOR GOVERNMENTS TO TURN RULE OF LAW CONDITIONALITY TO THEIR FAVOUR

One concern regarding the implementation of rule of law conditionality is how the Polish and Hungarian governments would respond, as they could potentially turn it to their domestic political advantage. As already discussed, there are numerous issues with both the current and suggested methods of EU intervention in response to the current crisis. These include not only legal reinforcement issues or potential economic damage, but also counterproductive political and social outcomes. The following section describes and analyses the specific ways in which a backlash within Poland and Hungary could occur in response to a more assertive EU position.

The effect of Poland and Hungary's shared history of ideological oppression on their modern political scenes is a crucial reference point for this analysis. Research has shown that the tendency of governments to portray supranational institutions,

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<sup>69</sup> Analysis based on data from Nordea Trade Portal (<https://www.nordeatrade.com>), UNCTAD's 2020 World Investment Report ([https://unctad.org/system/files/official-document/wir2020\\_en.pdf](https://unctad.org/system/files/official-document/wir2020_en.pdf)), Doing Business 2020 (<https://www.doingbusiness.org/content/dam/doingBusiness/country/p/poland/POL.pdf>, <https://www.doingbusiness.org/content/dam/doingBusiness/country/h/hungary/HUN.pdf>)

such as the EU, as a threat to the national interest is especially strong in countries with a history of oppression.<sup>70</sup> This can be seen, for example, in the popular slogan ‘ulica i zagranica’ (‘through the streets and through the foreign countries’), which the Polish government uses to label the activities of the opposition that aim to remove the party from power.<sup>71</sup> This illustrates the tendency of the PiS government to portray foreign agencies as a threat to national success. A stronger EU position should therefore be assessed while bearing in mind those already existing tensions, which - if fuelled with sanctions - could result in the hardening of Hungarian and Polish governments’ positions.

### 3.1 The side effects of economic sanctions

To begin, it is important to assess not only to what extent economic sanctions are practically implementable, but also how desirable they are in the context of Poland and Hungary. The usual concern that economic sanctions have negative humanitarian and public welfare outcomes in general applies here.<sup>72</sup> As Poland and Hungary have some of the poorest living conditions and worst poverty rates among the EU states, the damage caused by a withdrawal of European funds should not be underestimated.<sup>73</sup> Sanctions also risk worsening inequality between member states. This was what concerned former Commission President Jean-Claude Juncker when he stated in 2017 that tying the rule of law to structural funds could ‘be poison for the continent’ and ‘divide the European Union’.<sup>74</sup>

### 3.2 Counterproductive political effects of EU intervention

But economic sanctions have more potentially dangerous outcomes. For example, they could actually give the national governments stronger arguments to portray the EU as the enemy of the national interest and to reject European authority. As such, intervention could help the Polish and Hungarian political elites avoid responsibility for the consequences of EU sanctions. On top of this, it would also help them blame the EU for the existing conflict. As a result, a ‘blame game’ between the two countries and Brussels could continue gathering steam and possibly help the PiS and Fidesz governments garner more support among their respective electorates, which in turn would give them an even stronger mandate to harden

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70 Mudde Cas, ‘In the Name of the Peasantry, the Proletariat, and the People: Populisms in Eastern Europe’ (2001).

71 Bartoszewicz Mateusz, ‘Komunikaty populistyczne na okładkach tygodników ‘NEWSWEEK POLSKA’ i ‘DO RZECZY’ – raport z badań pilotażowych.’ (2017)

72 Pape Robert, ‘Why economic sanctions do not work’, *International Security*, Vol. 22, No. 2. (Fall 1997), pp. 90-136.

73 EuroStat, *Living conditions in Europe* (2018) <https://ec.europa.eu/eurostat/web/products-statistical-books/-/KS-DZ-18-001>

74 Florian Eder, ‘Juncker: German plan to link funds and rules would be ‘poison’ (Politico, June 2017) <http://www.politico.eu/article/juncker-german-plan-to-link-funds-and-rules-would-be-poison/>

their positions about democratic backsliding.<sup>75</sup> In light of this scenario, a strong European response starts to appear rather counterproductive and there is a strong basis to claim that such a scenario is a possible one.

Assertive EU efforts to combat democratic backsliding have produced domestic backlash before. In 2000, the conservative Austrian People's Party (ÖVP) pledged to form a coalition government with Jörg Haider's right-wing populist Freedom Party (FPÖ).<sup>76</sup> Haider's xenophobic and anti-EU views seemed to present a possibility that fundamental democratic principles would be breached in Austria, should his party be included in the next government.<sup>77</sup> Concerns arose among the European community about the potential of democratic backsliding. The reaction was severe and on 31 January 2000, the Portuguese Council Presidency announced that EU-14 would put diplomatic sanctions on Austria.<sup>78</sup> These took the form of suspended bilateral political contacts between the EU-14 and Austria, and restrictions on Austrian ambassadors in EU-14 countries.<sup>79</sup> Though technically bilateral, it was clear that those measures were initiated by the EU as a whole.<sup>80</sup> Domestically, the intervention was regarded as illegitimate meddling with Austria's internal affairs and public support for the national government increased as it was seen as struggling to defend itself from the European sanctions.<sup>81</sup> Overall, the EU intervention did not only fail to achieve the expected results, but also increased the popular support for the ÖVP-FPÖ government which lasted for several years after the intervention.

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75 Schlipphak Bernd, Treib Olivier, 'Playing the blame game on Brussels: the domestic political effects of EU interventions against democratic backsliding, *Journal of European Public Policy*, 24:3, 352-365, (September 2016)

76 European Parliament resolution on the result of the legislative elections in Austria and the proposal to form a coalition government between the ÖVP (Austrian People's Party) and the FPÖ (Austrian Freedom Party) <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2000-0045+0+DOC+XML+V0//EN>, 3 February 2000 - Brussels

77 Anti-Defamation League, 'Joerg Haider: the rise of an Austrian extreme rightist' (2004)

78 There were 15 member states in 2000. We are using the form "EU-14" to refer to the 14 member states which threatened to put sanctions on Austria.

79 Portuguese Presidency, 'Statement by the Portuguese Presidency of the EU on behalf of 14 member states (31 January 2000)', available at [http://www.cvce.eu/obj/statement\\_by\\_the\\_portuguese\\_presidency\\_of\\_the\\_eu\\_on\\_behalf\\_of\\_14\\_member\\_states\\_31\\_january\\_2000-en-8a5857afc29-4f2d-93c9-8bfd90e40c1.html](http://www.cvce.eu/obj/statement_by_the_portuguese_presidency_of_the_eu_on_behalf_of_14_member_states_31_january_2000-en-8a5857afc29-4f2d-93c9-8bfd90e40c1.html) (accessed 20th December 2020)

80 Fallend Franz, Reinhard Heinisch, 'Collaboration as successful strategy against right-wing populism? The case of the centre-right coalition in Austria, 2000–2007'. *Democratization* 23(2):1-21. (2015).

81 A survey conducted 2 months after the EU-14 implemented these measures showed that large parts of the Austrian population rejected the 'sanctions' and stood firm to the ÖVP-FPÖ government (IMAS 2000). 2 years later, a survey revealed that the Austrian public continued to support the government. 69 % of respondents agreed that the ÖVP-FPÖ government had done a good job so far., For example, Haider accused the 14 EU partners of having double standards, reminding that there were no sanctions against Italy when the 'Communist Massimo D'Alema became prime minister in Italy in 1998' (*Die Zeit*, 2000).

This intervention illustrates the costs of implementing a stronger position in response to democratic backsliding in a member state. The counterproductive nature of the EU's actions resulted not only from weak legal grounds for their intervention, which problem the EU still faces despite 20 years of deepening and widening the European integration, but also from the sociological forces that came into play as the EU took a stronger stance. Schlipphak Bernd and Treib Olivier in their analysis of political rhetoric (2017) propose that, among other things, the so-called rally-round-the-flag effect influenced in the Austrian case.<sup>82</sup> It is a concept used in political science to explain a sudden increase of support for the political elite during times of crisis. Even though rally-round-the-flag effects have usually been observed during times of war, Schlipphak and Treib argue that a similar mechanism might be activated when a diplomatic event is framed as a crisis. Austrian leaders displayed some signs of this by, for example, framing the EU intervention as 'outrageous' and repeatedly referring to the threats to Austrian sovereignty. This explains the increased support for the government in the wake of EU intervention.

The Austrian case indicates that instead of becoming a point of reflection and causing the political elites to change their position, a reprimand from Brussels can actually encourage a government to harden its position on a given issue. If the EU's intervention met with such reluctance in a Central-European state, there is a basis to claim that implementing stronger measures against former Eastern bloc's countries with an objectively more extensive history of rule-of-law breaches will likely lead to similar outcomes.<sup>83</sup>

In fact, there have already been signs of the rally-round-the-flag effect in Poland and Hungary. In 2012, the European Commission launched three infringement proceedings against Hungary, alarmed with its judiciary and data protection reforms, as well as the independence of the National Bank of Hungary (MNB).<sup>84</sup> The Fidesz government reacted by employing the rhetoric of an external threat.<sup>85</sup> Orbán declared: 'we did not submit to the dictates of Vienna in 1848. We rose up against Moscow in 1956 and in 1990, and today we will not let anyone dictate

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82 Schlipphak, B. and Treib, O. (2017) explain: 'As citizens are more likely to follow the lead of their élites in situations framed as crises (Dinesen and Jaeger 2013), élites may be more than willing to state that there is an – externally induced – crisis that poses high risks to the country's population and that only they themselves can fight'

83 Schwartz Shalom, 'A theory of cultural value orientations: Explication and applications'. (2009) 109. 173-219.

84 European Commission 17.01.2012 - 'European Commission launches accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities as well as over measures affecting the judiciary' [https://ec.europa.eu/economy\\_finance/articles/governance/2012-01-18-hungary\\_en.htm](https://ec.europa.eu/economy_finance/articles/governance/2012-01-18-hungary_en.htm)

85 Varnagy Reka, 'Hungary', (January 2014) European Journal of Political Research (Political Data Yearbook) 52: 96–100.

to us from Brussels or from anywhere else'.<sup>86</sup> Cued by this rhetoric, the public's response was also largely critical of the EU as illustrated by the hundreds of thousands who attended pro-government demonstrations which blamed the EU for criticising Hungary and interfering in its internal affairs. Interestingly, while this has not led to a decrease in support of the EU among the Hungarian public, Orbán's government gained popularity in this period.<sup>87</sup> This shows that playing a 'blame game' on Brussels can be an electorally rewarding strategy for the party in government.

### 3.3 Twisting around

A question arises here, however: how is it possible that an intervention that was aimed at protecting the Hungarian citizens ended up being viewed as an attack on them? Research has shown repeatedly that when it comes to formulating evaluations of international actors such as the EU, the public largely relies on the cues from domestic political elites.<sup>88</sup> The fact that the public debates in both countries have been distorted by the propaganda platforms that both Polish and Hungarian governments have created using public media should be taken into account when trying to understand this paradox.<sup>89</sup> As Schlipphak and Treib explain, framing a cautious EU intervention in this way was possible because the Hungarian government was 'able to construe the intervention, first, as coming from "the outside", and second, as having a negative effect on the whole country' (p. 361). The authors also apply this explanation to the Polish government, which 'by frequently referring to German occupation (...) equalizes any criticism from European actors with what Nazi Germany did to the Polish nation during the Second World War'.<sup>90</sup> As evident from opinion polls and election results, both PiS and Fidesz thrive when they can construct a narrative of external threat which feeds the nationalist sentiments among their respective electorates.<sup>91</sup> So far, attempts at EU

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86 Orbán 2011, quoted in Batory Agnes, 'Uploading as political strategy: the European Parliament and the Hungarian Media Law debate', *East European Politics* 30(2): 230–45. (2014)

87 ESS 'European social survey round 4 data. Data file edition 4.3', Norwegian Social Science Data Services, Norway: Data Archive and distributor of ESS data for ESS ERIC. (2008), ESS 'European social survey round 5 data. Data file edition 3.2', Norwegian Social Science Data Services, Norway: Data Archive and distributor of ESS data for ESS ERIC. (2010), ESS 'European social survey round 6 data. Data file edition 2.1', Norwegian Social Science Data Services, Norway: Data Archive and distributor of ESS data for ESS ERIC (2012)

88 Anderson Christopher, 'When in Doubt Use Proxies: Attitudes to Domestic Politics and Support for the EU', *Comparative Political Studies* 31:569–601. (1998)zuk; Stoeckel Florian, Kuhn Theresa, 'Mobilizing Citizens for Costly Policies: The Conditional Effect of Party Cues on Support for International Bailouts in the European Union.' *JCMS: Journal of Common Market Studies* 56 (2) 446–61. (March 2018).

89 Żuk Piotr, 'One Leader, One Party, One Truth: Public Television Under the Rule of the Populist Right in Poland in the Pre-Election Period in 2019'. (August 2020)

90 Henley Jon, 'Polish press invokes Nazi imagery as war of words with EU heats up'

91 Closa Carlos, 'The politics of guarding the Treaties: Commission scrutiny of rule of law compliance.' *Journal of European Public Policy* 26. 1-21. (2018)

intervention have offered the two governments more opportunities to portray the EU as such a threat. Thus, there is a strong possibility that an increased assertiveness from the EU would increase this tendency.

### 3.4 'Money will reason with them'

So far, we have been referring to diplomatic sanctions or a stronger political position coming from the EU institutions, to show that a stronger stance on the democratic backsliding in Poland and Hungary might actually lead to a hardening of the governments' positions on the issue. However, using funds as leverage in these negotiations has been claimed to be effective precisely because of its potential to remove these problematic governments from power. A recurring theme, both in academia and in political discourse, is the belief that even if the national governments might not necessarily change their course of action directly as the result of a decreased European funding, such action could still lead to a positive domestic change by motivating the national publics to vote the problematic governments out of office. For example, Gabor Halmai (2018), Professor of Comparative Constitutional Law at the European University Institute, suggests:

'(...) why not consider the scenario that those regions and citizens taken hostage by their own elected officials, and who do not want to suffer due to the loss of EU funds because of their authoritarian leaders will stand up against such governments, and vote them out from government, provided that democratic elections still exist'<sup>92</sup>

Similar views have been expressed repeatedly by EU officials, who see the chance of tackling the illiberal agendas of Poland and Hungary in economic solutions. For instance, Vivian Reading, a member of the European Parliament and a former EU Commissioner for justice and fundamental rights, said that: 'This would be the most effective way to influence the behavior of a government like the Polish one – making a link with the money. It's the only thing they understand.'<sup>93</sup> On the surface, it would be plausible to claim that economic sanctions could eventually motivate the two electorates to vote their governments out of office, given that both nations display highly favourable attitudes towards the EU. For example, recent polls have shown that almost 90% of the Polish public declared support for the EU, including more than 80% of PiS voters.<sup>94</sup> When compared with the levels of support for the government (only 33% in a recent poll) and given that the EU

92 Halmai Gabor, 'The possibility and desirability of economic sanction: rule of law conditionality requirements against illiberal EU member states' European University Institute (2018)

93 Stearns, J. (2017). 'Europe's Eastern Rebels Expose Next Fault Line for EU Leaders', Bloomberg, 30 July 2017. <https://www.bloomberg.com/news/articles/2017-07-30/europe-s-eastern-rebels-expose-next-fault-line-for-eu-leaders>

94 CBOS, Komunikaty z badań ISSN 2353-5822 Nr 32/2020, Postrzeżenie Unii Europejskiej i jej instytucji (2020)

and the national government have similar levels of support in Hungary, this finding could suggest that a bigger proportion of the Polish and Hungarian citizens support the EU than their local governments.<sup>95</sup>

### 3.6 The Europhile paradox

But there are numerous issues with the assumption that this ‘money language’ will speak to the Polish and Hungarian publics and mobilise them to vote the two governments out of office. Firstly, the assumption that national publics form their opinions about governments and their struggles with the EU based on objective facts inherently flawed, as argued above. Beyond that, there is a clear puzzle: if both the Polish and Hungarian electorates are so pro-EU that they would stand by the EU in case of a stronger conflict, then how is it possible that they elected representatives whose actions counteract the laws and values of the institution that they are so supportive of? The following section will, therefore, analyse this ‘Europhiliness paradox’ before concluding whether increased EU assertiveness is more likely to increase Euroscepticism among Polish and Hungarian publics or to trigger domestic opposition strong enough to vote the two governments out of power.

Firstly, there are multiple issues with the conceptualisation of Euroscepticism and how it is measured. Using electoral results, for example, could lead to the faulty conclusion that levels of Euroscepticism are not alarmingly high in Poland in Hungary. Neither PiS nor Fidesz are explicitly Eurosceptic, especially when compared to the far-right parties such as Konfederacja or Jobbik. Both governments have maintained official support for EU membership. But as Roman Hlatky explains, this should not be automatically interpreted as a symptom of highly Europhilic attitudes. This is because, firstly, recent years have witnessed a growing trend across Central and Eastern Europe where mainstream parties have increasingly adopted Eurosceptic positions on various issues without being openly Eurosceptic. Secondly, the low proportion of voters opting for more radically Eurosceptic parties does not reflect the actual level of support for Eurosceptic positions because strategic voting plays an important role, especially in parliamentary elections where surpassing a threshold of inclusion is necessary.<sup>96</sup> A supporter of one of these Eurosceptic parties might make a strategic decision to vote for ‘a soft Eurosceptic alternative’ such as PiS or Fidesz, hoping that they will be more likely to form a government than the more radical option. Overall, PiS and Fidesz might have stronger Eurosceptic electoral bases than their manifestos might suggest.

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95 Leszek Rudziński ‘Sondaż: Niewielki spadek poparcia dla PiS. PSL poza Sejmem’ (2020) <<https://polskatimes.pl/sondaz-niewielki-spadek-poparcia-dla-pis-psl-poz-sejmem/ar/c1-15361857>>

96 Cox Gary, ‘Making Votes Count: Strategic Coordination in the World’s Electoral Systems’. New York: Cambridge University Press. (1997)

But this still does not explain why the Polish and Hungarian public come out as strong Europhiles in opinion polls. As Hlatky explains, there are several methodological issues with assessing Euroscepticism through opinion polls.<sup>97</sup> Surveys generally show how the public feels about the EU at a specific moment without explaining how these sentiments translate into vote choice. One possible explanation of this paradox could be the low salience of European issues among PiS and Fidesz's electorates - perhaps they prioritise other issues, such as national security or sovereignty, over their sentiments for the EU. But even more crucially, the public might be supportive of the EU as a whole (which is what opinion polls measure), but not of its values when taken individually. To illustrate that point, Hlatky conducted a survey experiment, in which a representative sample of Central and Eastern Europeans (Slovakians in this study) were asked about their attitudes towards the EU.<sup>98</sup> One of the two groups of participants was primed to consider the social purpose of European funding and whether 'these funds should be tied to the fair treatment of migrants, refugees, and Roma populations, and to how well a region represents European Values.' Hlatky found that the latter group turned out to be considerably more Eurosceptic in their answers.<sup>99</sup> This could suggest that when European Values such as minority social inclusion is taken into account, Eastern European citizens might not be as pro-EU as when they are asked about their general support of the EU.

It is then possible to argue that the pro-EU sentiment found in Hungary and Poland would be much lower if surveys specified support for the EU in the context of specific values, rather than asking about more general attitudes towards the EU as a whole.<sup>100</sup> This is particularly evident with regards to low support for the social inclusion of minorities. The causality is difficult to establish as we cannot be sure whether the government is actively setting the public opinion against these minorities, or just passively taking advantage of these already existing tensions. Nonetheless, the low levels of tolerance towards sexual, ethnic, and religious minorities in Poland and Hungary contradict the European Union's stand on these issues. And since both governments have been mingling the EU's stand on these issues with that on rule of law or human rights breaches, the public has been primed to also conflate and aggregate these issues together.<sup>101</sup> Overall, while Europhile on the surface, the two electorates display sceptical views towards some

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97 Hlatky Roman, EU Funding and Eurosceptic Vote Choice, *political Research Quarterly* 1–16 (2020)

98 'To what extent do you agree or disagree with the following statement: Slovak politicians have a responsibility to maintain a positive relationship between the EU and Slovakia'

99 This group was more likely to answer that Slovak politicians do not have a responsibility to maintain a positive relationship between the EU and Slovakia

100 Tesser Lynn, *The Geopolitics of Tolerance: Minority Rights Under EU Expansion in East-Central Europe* August 1, 2003 Volume: 17 issue: 3, page(s): 483-532, (August 2003).

101 Euronews with AFP, 'Hungary, Poland and Czech Republic 'oppose EU's new migration pact'' (24 September 2020) Available: <<https://www.euronews.com/2020/09/24/hungary-poland-and-czech-republic-oppose-eu-s-new-migration-pact>> accessed 14 January 2021

of the European values and Fidesz and PiS have been able to use this fact, which gained them enough support among these supposedly Europhile nations to stay in power. This gives even stronger grounds to the claim that when faced with a choice between the EU and the national government, a majority of the Polish and Hungarian citizens would support the latter.

This leads to a suggestion that a more coercive accentuation on performing the EU values, for example through fund withdrawal, is not likely to mobilise the Polish and Hungarian people to vote their governments out of office but will rather reduce support for the EU. Given that the level of acceptance of European values is already significantly lower in these states than in the rest of Europe, this could seriously damage the image of the EU among those populations. In effect, the unlawful actions of the governing parties might gain an even stronger mandate from the public, making their positions more legitimate, possibly resulting in further democratic backsliding.

### 3.7 Is there an alternative?

The previous points should not, however, lead to the conclusion that the EU should cease any disciplinary actions or turn a blind eye on the democratic backsliding in Poland and Hungary. Both countries agreed to a set of values when they applied for EU membership and even if there are limited legal mechanisms to hold them accountable to these promises, the EU - due to its long-term mission of promoting peace and the wellbeing of European citizens - should react to the rule of law breaches in its member states.<sup>102</sup> However, any such reaction should be initiated very cautiously and only after acknowledging the specific domestic circumstances, some of which we are analysing in this paper. In the case of Poland and Hungary, these circumstances include a long history of oppression from the Western empires, low trust in political elites in general, and other 'residues' of the communist regime in the political and social sphere, such as a relatively short tradition of democratic institutions.

Therefore, non-coercive measures, such as strengthening the rule of law and the state of democracy from the bottom-up seem like a good alternative. Schlipphak and Treib, for example, envisage 'an independent supervisory body that would be responsible for monitoring the extent to which member states respect essential principles of democracy, adhere to fundamental human rights, and respect the rule of law' (page 362). Unlike the Committee on Civil Liberties, Justice and Home Affairs (LIBE) in the European Parliament, such an independent institution would need to be organised and administered by domestic civic forces if it was to avoid the denigration the LIBE committee has suffered. The creation of this body would undermine the Polish and Hungarian governments' claims about the EU interfer-

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102 The EU in Brief (europa.eu) [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

ing with their nations' internal affairs. It would also provide the EU with a stronger mandate for any action taken to protect European citizens, since it would be answering the suppressed domestic groups directly at their call. Similarly, avoiding punishing the whole nation, as would be the case with economic sanctions, could also make it more difficult for the national governments to present the EU as an enemy. Yet another suggestion would be for the EU to focus more of its resources on long-term projects aimed at promoting the European values in the region. Increased funding for educational projects is perhaps the most obvious strategy here. However, none of these suggestions is inherently flawless and there are numerous issues with their implementation, including legal limitations (education being a national competency according to the European law) and the poor state of civil society in Poland and Hungary resulting from several years of populist rule.<sup>103</sup> It is clear that coming up with alternative solutions for this situation is not an easy task. Nonetheless, these issues should only encourage the European Union to open up the dialogue about creating innovative ways of dealing with this evidently worsening problem.

In conclusion, coercive methods, such as financial punishments, are not the best strategy to induce Poland and Hungary (both as nations and as governments) to change their current course of action. The backlash within the two countries is already evident. A more decisive European position provides the two national governments with stronger arguments to portray the EU as a threat to national interest. As a result, they gain enough electoral support to stay in power, which earns them an even stronger mandate to continue with their agendas, including breaching the rule of law or mistreating minorities. It is unlikely that adding pressure from the EU would eventually motivate the public to vote the problematic governments out of power, since - cued by the government's rhetoric - too much of the Polish and Hungarian public views the source of the problem to lie within the European Union, and not their national governments. Thus, economic sanctions are not any more likely to improve the situation than any other form of pressure. There are also strong grounds to claim that the two nations have not internalised many of the EU's values. Apparent widespread support for membership in the European Union rings hollow when the tensions around EU values are considered. Since the Polish and Hungarian governments have in the past shown that they are capable of instrumentalising these sensitive issues, there is a possibility that levels of trust and support for the EU are more fragile in those countries than opinion polls would suggest. If this trust keeps being abused by financial or diplomatic punishments, it might eventually lead to opposition to European institutions, and, in effect, more democratic backsliding. Thus, the decision about implementing more assertive measures should be made cautiously, bearing in mind the possibility of a backlash. Alternatively, the EU could also focus its expertise and resources

103 U. S. Helsinki Commission on security and cooperation in Europe. 2020. RESTRICTIONS ON CIVIL SOCIETY IN HUNGARY, Friday, February 28, 2020 <https://www.csce.gov/international-impact/ppublications/restrictions-civil-society-hungary>

on building long-term, sustainable relationships with the Polish and Hungarian public, in the hope of strengthening the state of the rule of law from within the two nations.

#### IV. LONG TERM PROSPECTS - AN EU WITHOUT POLAND AND HUNGARY? MULTI-TIER SYSTEMS? FEDERALISM?

The corruption of rule of law in Hungary and Poland, particularly when considered in tandem with the introduction of illiberal social policies in both countries, is deeply troubling to the EU. Given the potential negative effects domestically of linking rule of law to funding, it is important for EU member states to continue working on other solutions. While Poland and Hungary do benefit disproportionately from EU funds, they also offer important benefits to the EU in return, meaning that finding a way of correcting errant policy is much more desirable than is an EU without Poland and Hungary.

There are several long-term options for the EU to consider moving forward. This includes the possibility of moving towards EU federalism, which could allow the EU to ‘punish’ deviant states more easily and more seriously. Other options that have been considered are the institution of a multi-tier system, or even rebuilding the EU from the ground up. As discussed, the concept of linking rule of law and funding, with the specific aim of coercing Poland and Hungary, was considered at length in recent negotiations, but by mid-December 2020 a compromise deal was in place with the rule of law mechanism delayed and severely limited. Nevertheless, it remains an alternative to be considered whilst potentially more effective longer-term solutions are considered.

Poland and Hungary gain a lot more than they lose from their respective memberships of the EU, with both being major beneficiaries of EU funds. This makes clear just how much Poland and Hungary have to lose from either having funds removed from them due to rule of law breaches (as seemed increasingly likely before December 2020). With the distribution of EU funds in Poland and Hungary supporting regimes that are becoming progressively more authoritarian in character, the EU arguably has much less to lose from withdrawing funds or even membership than do Poland and Hungary themselves. However, it is important to remember what the EU continues to gain from the membership of Poland and Hungary. Powerful, affluent EU countries such as France and Germany benefit from the cheap labour and low business tax rates available in Eastern European countries. Poland and Hungary in particular provide both large markets for goods exported from Western Europe, and sources of cheap, convenient production. At the beginning of 2019, for example, Poland lowered some corporate taxes to as little as 6%. The economic argument is one of the reasons why the EU should and would hesitate before completely alienating these two countries.

## 4.1 An EU without Poland and Hungary?

More promising are longer-term solutions, each of which would in some way restructure the EU so as to prevent situations like this from occurring in future. Mark Rutte shockingly implied that the EU might be better off without Poland and Hungary, but how would this work in practice? Given that removing a state would require a treaty amendment, a unanimous vote would be necessary.<sup>104</sup> With both Poland and Hungary gaining disproportionately from EU membership, either state leaving the union consensually seems near-impossible. Furthermore, even if it were possible for them to be removed against their will, this would appear to go against the EU's core values. The EU is ultimately a project about states working together to reach goals and realize shared values – as is reflected in the very absence of a legal mechanism for expulsion. This course of action would instead mean actually rebuilding the institution, as Mark Rutte implied, with the majority of existing members leaving the EU via the Article 50 procedure and then convening to build a new supranational organisation.

There are three key problems with this option. Firstly, it would presumably be very hard to persuade all 25 other EU member states to not only take this radically aggressive action against Poland and Hungary, but to commit themselves to a process that would be incredibly time-consuming, politically difficult, and expensive. Secondly, this nuclear option seems unjust when considering the interests of Poles and Hungarians themselves, many of whom have actively opposed the autocratic actions of their governments. Were 25 of the 27 EU states to undergo Article 50 procedures, the remaining 'EU' of Poland and Hungary alone would become completely politically irrelevant and ineffective. Poles and Hungarians would lose important rights to travel and work in other states, would not have representation in the European Parliament, and would lose important protections such as that of EU labour law<sup>105</sup> – these seem ever more important at a time when undemocratic right-wing governments are unlikely to implement equivalent protections in national law. Thirdly, the EU has developed over time, with various treaties resulting from long and arduous negotiations making up the body of law that defines it today. It would be an unimaginably long and difficult process to try and recreate this intricate network of treaties, customary laws and bureaucracies, and doubtless, some states unhappy with features of the current system would take this opportunity to try and change it, further extending the degree of time and energy necessary.

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104 Polish Investment and Trade Agency, EU Funds. Available at [https://www.paih.gov.pl/why\\_poland/eu\\_funds](https://www.paih.gov.pl/why_poland/eu_funds), European Commission. Country Data for Hungary. Available at <https://cohesion-data.ec.europa.eu/countries/HU>.

105 Tom Theuns. 'Could we found a new EU without Hungary and Poland?' EU Observer. September 2020.

## 4.2 Multi-tier and multi-speed Europes

Another potential future that has been discussed is that of a ‘multi-tier EU’, with different states having different levels of rights and responsibilities and more flexibility being built into the system. As early as 1994, differentiation of interests between EU member states was a key concern, as noted in an influential paper published by two German MPs.<sup>106</sup> They proposed creating a ‘core’ of states which were willing to integrate further, allowing them to do so in a self-contained group without being blocked by the vetoes of other member states. The paper was mostly ignored, and the proposal gently refuted by all those who did address it. However, in recent years, similar ideas have gained traction again, partly due to the rule of law violations in Poland and Hungary. A 2017 European Commission paper laid out, as one of several potential futures for the EU, a scenario in which the EU ‘allows willing member states to do more together in specific areas... groups of member states agree on specific legal and budgetary arrangements to deepen their cooperation in chosen domains.’<sup>107</sup> In general the topic has been more and more frequently discussed, with French President Emmanuel Macron being a notable proponent, as disagreements between states on the future of the European project become more apparent.<sup>108</sup>

There are two distinct options within this: a ‘multi-speed Europe’ and a ‘multi-tier Europe’. A multi-speed scenario would continue with the concept of an integrated Europe as the end-goal towards which all states are moving. When smaller groups of states commit themselves to further integration, all other states consent to the spirit and goal of the cooperation, and presumably intend to commit to it themselves if and when they meet the criteria for involvement. This reflects Emmanuel Macron’s vision of a multi-speed Europe, with some ‘front-runners’ moving towards a more integrated Europe in the hope that other, more reluctant states, like Poland and Hungary, will eventually follow.<sup>109</sup> Conversely, a multi-tier Europe would be one in which groups of states are permanently differentiated. It consists in ‘opt-outs conceded to individual member states’<sup>110</sup> or in agreements made between smaller numbers of European member states that are considered in the spirit of the EU but are not monitored by EU institutions. It may, opponents fear, lead to a hierarchical EU with some states having markedly higher levels of privilege according to wealth and political compliance.

A flexible EU would preserve unity while enabling more cooperation for those countries with popular support for it. With respect to Poland and Hungary, it offers two main advantages. Firstly, EU states would have the option to exclude

106 Wolfgang Schäuble & Karl Lamers. ‘Überlegungen zur europäischen Politik’. September 1994.

107 European Commission. White Paper on the Future of Europe. March 2017.

108 Speech made by Emmanuel Macron in Berlin, November 2018.

109 Charles Grant. ‘Fast-forward to two-speed Europe’. Politico. November 2017.

110 Pierre Vimont. ‘Flexibility is not Europe’s Miracle Solution’. Carnegie Europe. June 2018.

deviant states from some arrangements. This would enable them to avoid damaging connections with these politically undesirable states in certain key issue areas. Secondly, the richest and most powerful EU states, such as France and Germany, would most likely enter into and dominate these smaller agreements. Because of their wealth and influence, these smaller, stricter, and more integrated groups would become highly desirable, potentially encouraging deviant states to pursue reform so as to increase their chances of gaining membership.

Of course this is not guaranteed, and is probably a far less effective method of influencing state behaviour than the more direct linking of funds to rule of law. Furthermore, the EU's economic integration is already fairly comprehensive, raising questions about what states such as Poland and Hungary would have to gain from making changes in order to be allowed access to these smaller 'core' groups. Flexibility is a guiding principle, rather than a policy: if and when it is implemented, the problem of deciding how to use it to solve the many issues that the EU currently faces still remains. Furthermore, aiming for a more flexible EU could also lead to various problems in the negotiations with Poland and Hungary. Historically, Central and Eastern European nations have been suspicious of flexibility, perhaps viewing it as 'as a trick to gradually lock them into a second-class zone',<sup>111</sup> and politicians in Poland,<sup>112</sup> and Hungary,<sup>113</sup> have reacted negatively to recent discussions of a possible multi-tier or multi-speed EU. Although, of course, most of the options the EU is currently considering involve forcing the hands of the Polish and Hungarian governments to some degree, going ahead with a plan deeply mistrusted by both nations seems likely only to worsen relations. In general, incorporating too much flexibility on issues of rule of law is problematic – it seems to compromise on some of the EU's core values. However, flexibility certainly offers many general benefits to EU member states and could offer a temporary solution while EU leaders continue to work together to solve this divergence. French diplomat Pierre Vimont summarises the situation effectively, arguing that 'seemingly deep divergence over what democracy means calls for clarification. In this context, flexibility can, at best, buy time'.<sup>114</sup>

### 4.3 Considering a federal EU

The EU's inability up to this point to influence domestic politics in Poland and Hungary has generally resulted from its lack of access to enforcement mechanisms. An attempt to develop towards a more powerful federal structure would give it the tools to take an assertive stance against deviant states. Indeed, EU leaders consistently, and usually positively, refer to extreme integration as a possible path for future EU development. This was another of the possible future scenarios

111 Pierre Vimont. 'Flexibility is not Europe's Miracle Solution'. Carnegie Europe. June 2018.

112 Speech made by Mateusz Morawiecki to the Sejm, December 2017.

113 Speech made by Viktor Orbán in a press conference, March 2017

114 Pierre Vimont. 'Flexibility is not Europe's Miracle Solution'. Carnegie Europe. June 2018.

outlined in the 2017 European Commission Paper, with states considering a scenario where central decisions are made supranationally and enforced rapidly.<sup>115</sup> This would give the EU authority to ensure correct democratic functioning at national levels, in the same way that nation-states have this authority at sub-national levels. It would also make oversight and enforcement practically far easier. For example, Jakab's proposal for a federal EU would create a bill of rights directly applicable to the domestic circumstances of member states.<sup>116</sup> This would actually make it easier for EU institutions to intervene in cases where governments violate the political rights of their populations, rather than simply sanctioning or expelling the deviant state. Thus, it is more appealing on a human level; the populations are put first rather than the problem simply being pushed out of the EU.

Considering the expansion of the EU's prerogative to make it further resemble a federal system opens up a wide variety of potential sanctions and other enforcement mechanisms. This is certainly exciting – however, it is not a 'quick fix' solution to rule of law violations in Hungary and Poland. Firstly, it would, of course, take a huge amount of negotiations to build up a federal system for the EU, as states consistently differ over the amount of integration and supranational authority they are willing to accept. Even if such consensus was achieved, the amount of time, money and expertise required for working on new law would also be more than significant. Federal structures could provide enforcement mechanisms to correct deviant state behaviour were they currently in place, but with the Polish and Hungarian governments sliding further towards right-wing authoritarianism, there is simply not time to negotiate this from scratch.

Secondly, as Bonelli argues in his 2018 paper, 'upholding constitutionalism requires an intervention in the social and cultural dimension too.'<sup>117</sup> Rule of law violations in Poland and Hungary cannot be understood as individual problems that can be easily corrected through sanctions or other legal mechanisms, but as symptoms of a possible greater divergence in values that must be urgently addressed. Federalism is an exciting option for the future, and problems such as those the EU is currently facing in Poland and Hungary are likely to recur in the future. For this reason, the EU should continue to pursue further integration as far as is possible. However, beginning to build a federal-style EU will not impact the urgent rule of law violations occurring in these countries for some time, and does not constitute in itself a solution to the problem.

## V. CONCLUSION - NO EASY SOLUTIONS, JUST TRADE-OFFS

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115 European Commission. White Paper on the Future of Europe. March 2017.

116 Andras Jakab. 'The EU Charter of Fundamental Rights as the most promising way of enforcing the rule of law against EU Member States'. October 2016.

117 Matteo Bonelli. 'A Federal Turn? The European Union's Response to Constitutional Crises in the Member States'. May 2018.

This paper has sought to delve into the complexities of the EU's interactions with Poland and Hungary, in order to uncover the roots of political illiberalism in their historical contexts and evaluate policy-responses from Brussels accordingly. First, our research highlighted striking similarities between the two nations' illiberal turn, ranging from shared ideological beliefs regarding multiculturalism, social tolerance and religion to the modus operandi applied to deconstructing rule of law and media pluralism. This analysis presented how far these regimes have come in instituting their rule and affirmed that their divergence from European norms of governance is by no means superficial. These illiberal governments have petrified deep rooted, structurally embedded alterations in the rule of law, exemplified by the relentless and uncompromising nature of their assaults on the judiciary. The recap of recent political confrontations between the EU and the two states, such as the Article 7 proceedings and the dissent around the 2021-27 multiannual financial framework updates the reader about the current state-of-affairs in the EU's relations with Poland and Hungary.

Next, our focus shifted to the assessment of the countermeasures enacted on Brussels's part against continued rule-of-law breaches in the two countries. The closer examination of formal legal proceedings within the framework of the Treaty on European Union, namely, revoking Article 7 among further procedures has revealed the complete incapability of the EU's legal mechanism system to prevent, restrain or effectively sanction the violations of the core European values enshrined in Article 2 TEU. The absence of legally binding legislation, and the unanimity requirement renders the legal instruments for pressurisation powerless, if the concerned governments do not show willingness to engage in serious dialogue voluntarily. These weaknesses paralyse even highly innovative solutions to the problem of corruption, such as the European Public Prosecutor's Office. Although the legal repercussions of rule-of-law violations remained marginal, the rule-of-law conditionality of EU funds offered a new tool to exert pressure on non-abiding governments. Our second section took detailed note of how the initial aims of a conditionality framework were watered down during negotiations to only include the abuse of EU funds, and later further compromised during a political gridlock and veto-threats on the 2021-27 European Multiannual Financial Framework and Coronavirus recovery fund in December 2020. Nevertheless, the potential withdrawal of funding from these governments could indeed pose a threat to these governments in the long term. The section elaborated on the economic dependency of Poland and Hungary on EU membership, and how corruption is essential to the functioning of illiberal governments. This inquiry concluded that the withdrawal of EU funds based on rule-of-law breaches could indeed significantly impact the concerned economies. Nevertheless, the application of such measures might harm the unassuming subjects of these regimes more than the governments which they target.

Although the rule-of-law conditionality could bear significant economic impact, the third section of the paper argued that such a step might not deliver the expected political results. Our retrospective approach aimed to expose that the narratives of foreign domination and exploitative interference from major powers have deep-rooted origins in the examined countries' histories, which can make these populations susceptible to the antagonisation of intergovernmental organisations. These paragraphs elaborated how illiberal rhetoric can portray the EU's mildest rule-of-law sanctions as direct threats to national sovereignty and can take advantage of social cognitive patterns such as the 'rally-round-the-flag-effect.' Subsequently, the paper reinterpreted the paradox of the apparent Europhile-ness of electorates which support political parties critical of the EU in Polish and Hungarian parliamentary elections. Deeper contextualisation indicated a more nuanced conceptualisation of support for the EU, with an interplay of flawed measurement methods in statistics, premature conclusions derived from the findings of surveys, and fundamental difference in political values underexplored by polling and research initiatives. A case study from Austria also backed up the concerns that the withdrawal of EU funds could further solidify the political legitimacy of the Orban and Kaczynski regimes. Instead, the paper puts grassroots initiatives and the civil sector in the forefront, alongside long-term activity in the field of education in order to resist the attempt of political denigration from governments more effectively, enhance the EU's legitimacy for interference and convey European values to upcoming generations.

The paper's final theme revolved around the prospects of the political interplay between Brussels, Budapest and Warsaw in the long run. The cost-benefit analysis from the perspective of both the EU 25 and Poland and Hungary identified a very clear economic incentive for the illiberal regimes to remain in the EU, being net financial beneficiaries and largely relying on the trade-opportunities ensured by the Common Market. Although the text highlighted major drawbacks of the two countries' EU membership from Brussels' standpoint, economic and commercial factors might shed doubt on the bona fides of governments arguing for side-lining the two nations in the EU. Poland and Hungary do not just offer a major market for Western-European goods, but also cheap labour and favourable tax regulations for the German, French and Dutch industry among others. Having identified different stakeholders' interests, the paper moves forward dismissing the proposal to expel Poland and Hungary from the EU as being unfeasible. Instead, the text assesses a more flexible solution, the concept of a multi-speed or multi-tier EU. Such arrangements could minimise tension, exclude deviant states from politically sensitive projects, yet still allow the two states to retain the privileges and preferential financial conditions of their EU membership. On more speculative grounds, the paper also introduces the idea of EU federalism, which is considered to have great potential, yet remains a mere promise of future synergies in the upcoming years.

Overall, the paper has demonstrated that the rule-of-law crisis in Poland and Hungary is an issue of long-standing historical evolution, the power of 21st-century populist movements, structural deficiency in the EU's legal framework, corollary humanitarian damages of economic countermeasures, tactics in mass politics and a myriad of conflicting interest. These are all paramount hindrances for any quick-fix solution of such a major political, economic and social gridlock. The paper's final conclusions are that the deviant governments of Poland and Hungary are indeed well established and structurally embedded in their countries; legal procedures bear scarce traction against them; economic countermeasures might have huge impact, but only on the expense of humanitarian priorities; on top of that, the withdrawal of funds is expected to act counterproductively in the political realm; and a move toward a multi-tier Europe could help mitigate tensions and provide a sustainable political framework in the long run.

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## 2. 6. A Haunting Spectre Russian Meddling in Western Elections

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European Horizons Cambridge Chapter

### I. INTRODUCTION

In the past few years, a new consensus has taken over the discourse on Russian foreign affairs: the Russians are here to undermine our democracies. In the wake of the 2014 Crimean crisis, and especially the interference campaigns of the 2016 US elections and the Brexit referendum of the same year, it became clear that Russia is both willing to and capable of using its cyber might to interfere in other countries' internal affairs. The following years saw the dawn of a new era, where expectations towards Vladimir Putin's government have undergone a profound shift. Nothing was impossible anymore; the Russian government is capable of anything. The Russian election interference campaigns of 2016-2017 gave momentum and credibility to the idea that Russia has created a masterplan to use its digital might to undermine the democratic processes of its perceived ideological adversaries, from the US to the countries of Europe. However, this idea might not have as much merit as it would first appear. Despite Russia's hawkish reputation in geopolitics, this masterplan is unlikely to exist; Russia is not coming for our democracies.

The presence of Russian interference in Western elections is well-established; nevertheless, the motives behind it remain somewhat obscure. The notion that Russia interferes simply to wreak havoc is an oversimplification, and it obscures more than it reveals. The Russian state, despite sometimes appearing ideologically driven in its foreign policy, is fundamentally pragmatic. Funding a system of hackers and trolls, and risking international sanctions solely for an ideological battle without tangible ends, would be out of character for Putin's Russia. This does not imply, however, that Russia will not interfere and spread disinformation to create chaos, but it suggests that more complex and pragmatic motives are at work. Russia, as all other states, aims to promote its geopolitical and economic foreign policy agenda abroad. In the cases of election interference, this directive manifests itself in the support for causes, organisations, and politicians who promote the Russian interest, knowingly or not.

A compelling example is the 2016 Brexit referendum. The coverage on the topic left the public with the impression that Russia interfered to tilt the vote towards Leave, as it understood that Brexit would ultimately weaken the United Kingdom, its ideological adversary. However, a more nuanced, and as this paper argues, more accurate approach would suggest, Russia interfered in order to distance the EU from the US, make the EU more pro-Russian, and amongst others, to push for sanctions relief. Sanctions were first adopted by the EU in the wake of the 2014 Crimean crisis, and have been periodically renewed ever since, causing great harm to the Russian economy.

The UK was America's closest ally within the EU and the most vocal, and most powerful Russia-sceptic in the bloc. Its opposition to sanctions relief contrasts with the positions of the French, German, and Italian governments in 2016, who took a more lenient approach to Russia. Russia did not interfere in the Brexit referendum solely to corrupt democracy, but to make the EU more pro-Russian by aiding the removal of Russia's strongest critic from the bloc. Similarly, Russia did not support Marine Le Pen, solely for the sake of helping a far-right, divisive, radical candidate's accession to power to undermine liberal democracy, but because Le Pen advocated for a wide range of pro-Russian policies, for instance, sanctions relief. Notably, far-right political forces which do not advocate for pro-Russian policies, like Poland's Law and Justice party, are not beneficiaries of Russian election meddling campaigns. Russia chooses whom to support and whom to attack neither based on ideology, nor an anti-democratic masterplan; but informed by cold, rational political calculations.

Making this distinction is crucial, not because Russia's actions are not clandestine or not ultimately damaging to the West and to democracies, but because misunderstanding their underlying motives will render us inept in countering Russia's efforts. The interest based approach presented below allows us to make predictions about the Russian government's behaviour. By buying into the idea that Russia interferes only for the sake of weakening other states and their democracies, we obscure patterns which could serve as a basis for making predictions about why, when, and how Russia engages in election interference. Russian capabilities and interests have been misinterpreted and overstated numerous times throughout the past century, including the famous 'missile gap' myth of the 1950s, where the United States believed that the Soviet Union possessed a much larger number of ICBMs than they did in reality.<sup>1</sup>

A more recent example is the case of the 'Gerasimov doctrine', a term coined by Mark Galeotti in 2013. The 'Gerasimov doctrine' intended to describe a new theory, a new blueprint of warfare as conceived by the Russian general, Valery Gera-

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1 Greg Thielmann, "The Missile Gap Myth and Its Progeny," Arms Control Association (2011).

simov.<sup>2</sup> The Gerasimov doctrine's novelty lies in the utilisation of cyber warfare, for instance, disinformation and fake news, or hacking of critical infrastructure. The term quickly acquired mythical significance after the 2014 Crimean crisis, as Russia seemed to apply the Gerasimov doctrine in Donbass and Crimea. The doctrine was apparently the perfect example to showcase Russia's new belligerent, zero-sum approach to foreign policy. Journalists and analysts were quick to apply the doctrine to other areas of Russian foreign policy and make farfetched conclusions about Russia's masterplan.<sup>3</sup> However, it was revealed that Galeotti conceived the Gerasimov doctrine based on a fundamental misinterpretation of Gerasimov's words. Instead of mapping out Russia's plan for hybrid warfare, General Gerasimov analysed what was already happening in the Middle East in 2013.<sup>4</sup> Galeotti's retrospective commentary (I'm Sorry for Creating the 'Gerasimov Doctrine') highlights the dangers and the realities of overstating and mystifying Russian foreign policy:

'Everywhere, you'll find scholars, pundits, and policymakers talking about the threat the "Gerasimov doctrine" — named after Russia's chief of the general staff — poses to the West. It's a new way of war, "an expanded theory of modern warfare," or even "a vision of total warfare." There's one small problem. It doesn't exist. And the longer we pretend it does, the longer we misunderstand the — real, but different — challenge Russia poses.'<sup>5</sup>

In accordance with Galeotti's warnings, this paper strives to deliver an account of Russian election interference which oversteps the preconceptions about Russia's masterplans, to uncover this real, but different challenge that Russia poses. As Winston Churchill famously proclaimed in 1939:

'I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma; but perhaps there is a key. That key is Russian national interest.'<sup>6</sup>

In keeping with Churchill's observations about the Russian national interest being the ultimate key in predicting and deciphering Russia's behaviour, the paper's first section sets out to explore the tangible, pragmatic interests which drive the Russian state to meddle in foreign elections, by accounting for the concrete interest which fuelled Russian interference in the 2016 US elections, the 2016 Brexit referendum, and the 2017 German and French elections. Building on

2 Molly K. Mckew, "The Gerasimov Doctrine," Politico (2017).

3 Герасимов Валерий, "Ценность Науки В Предвидении," VPK News (2013).

4 Mark Galeotti, "I'm Sorry for Creating the 'Gerasimov Doctrine,'" Foreign Policy (2018).

5 Winston Churchill, "The Russian Enigma," BBC Broadcast, (1939). /<http://www.churchill-society-london.org.uk/RusnEnig.html/>.

6 "Background to "Assessing Russian Activities and Intentions in Recent Us Elections": The Analytic Process and Cyber Incident Attribution," (Office of the Director of National Intelligence, 2017).

this interest-based approach, the paper's second section formulates advice on countermeasures intended to ward off Russian attempts to meddle in European and US elections. The paper develops recommendations, which can be utilised on the national level, as well as by European Union committees and the media. We dedicate this study to the recently founded Special Committee on Foreign Interference in all Democratic Processes in the European Union (INGE Committee), in order to facilitate their effort by providing context, and insight into the inner workings and intricacies of Russian election meddling in Western elections.

## II. UNITED STATES OF AMERICA

In its January 2017 report, the United States Office of the Director of National Intelligence identified, that Russian interference was, amongst others, aimed at discrediting Hillary Clinton and supporting Donald Trump.<sup>7</sup> As a professional politician, Hillary Clinton appeared as a particularly undesirable candidate to Russian leaders, not least because of her influence as US Secretary of State in mass protests in Russia in 2011 and 2012. Furthermore, her condemnation of Russia's parliamentary elections in 2011 clearly indicated her stance on Russian politics. She openly claimed that Russian people 'deserve to have their voices heard and their votes counted, and that means they deserve fair, free transparent elections and leaders who are accountable to them'.<sup>8</sup> She was also expected to be a hard-liner on Russia and would likely take a hawkish stance on Russian endeavours in Eastern Europe, particularly in Ukraine. Conversely, a Trump presidency, with Trump's explicit sympathy for Putin and scepticism for NATO offered an ample number of tangible benefits to the Russian government. Consequently, the Russian government engaged in a cyber interference campaign ran by the Saint Petersburg based Internet Research Agency, aimed at facilitating Trump's accession to power, whilst hindering Hillary Clinton's chances at presidency. Russian operated media platforms and malicious social media accounts disseminated messages favourable to Trump, spread denigrating claims about Hillary Clinton, and even organised pro-Trump rallies.

Even before the 2016 elections, Trump's views clearly indicated that his presidency would further Russian interests, and his actions following his inauguration only underpinned this claim. Donald J. Trump's neo-isolationist, Russia friendly, and NATO-sceptic policies not only happen to coincide with Russian geopolitical interests, but according to Yuri Shvets, former KGB operative, Trump's views and policies vis-à-vis Russia were heavily influenced by a KGB active measures campaign.<sup>9</sup> Shvets writes, that when Trump and Ivana visited the Soviet Union in 1987, Trump was fed KGB talking points and flattered by KGB operatives who floated

7 Michael Crowley and Julia Ioffe, "Why Putin Hates Hillary," Politico (2016).

8 David Smith, "'The Perfect Target': Russia Cultivated Trump as Asset for 40 Years - Ex-Kgb Spy," The Guardian (2021).

9 Craig Unger, American Kompromat (Dutton, 2021).

the idea that he should go into politics. As the former KGB operative recalls:

‘For the KGB, it was a charm offensive. They had collected a lot of information on his personality so they knew who he was personally. The feeling was that he was extremely vulnerable intellectually, and psychologically, and he was prone to flattery. [...] This is what they exploited. They played the game as if they were immensely impressed by his personality and believed this is the guy who should be the president of the United States one day: it is people like him who could change the world. They fed him these so-called active measures sound-bites and it happened. So it was a big achievement for the KGB active measures at the time.’

Upon his return to the US from the Soviet Union in 1987, Trump started an anti-NATO political campaign, arguing that the US should not pay for the defence of allies like Japan. According to Yuri Shvets’s testimony, the campaign was celebrated by the KGB as a successful example of an active measure intended to influence US politics.<sup>10</sup> As it was demonstrated by Shvets’s testimony, Trump openly criticised the North Atlantic Treaty Organization long before the 2016 elections. According to his views, the United States spends too much on NATO, and he would welcome the reduction of US involvement in the project. At its core, NATO is an anti-Russian military alliance; its downfall would only promote Russian geopolitical interests.

In terms of attempts at undermining NATO’s unity and prowess, Donald Trump lived up to Russian expectations. During the summer of 2020, the Trump administration indicated that it intends to withdraw 12,000 American soldiers from Germany, clearly signalling their stand in the question of NATO’s future.<sup>11</sup> In November 2020, the United States withdrew from the Open Skies Treaty, on Donald Trump’s initiative.<sup>12</sup> The treaty was ratified in 2002 by all NATO, and former USSR members. It allows all members of the treaty to operate legal surveillance flights. The treaty has a major effect on the security of Eastern Europe, as it allows a potential Russian invasion to be detected at a very early stage. Following the US withdrawal, the system will become dysfunctional, handing over the control to Russia. The decision to withdraw received stark criticism from the Ukrainian government, as without US aerial reconnaissance Ukraine’s eastern border is more vulnerable to Russian aggression. The effectiveness of the system was proven in 2014-2015, when US aerial reconnaissance, operating under the aegis of the treaty, provided the Ukrainian military with invaluable intelligence in its fight against Russian-backed separatists. The United States abandoning its leading role in NATO could jeopardise the status quo in post-Soviet states, and heavily

10 “Us to Withdraw 12,000 Troops from Germany in ‘Strategic’ Move.,” BBC (2020).

11 Thomas Dinanno, “United States Withdrawal from the Treaty on Open Skies,” (US Department of State, 2020).

12 Donald Trump, interview by Fox News, 2014.

promote Russian geopolitical interest.

In the case of the most high-profile geopolitical confrontation of the past decades between Russia and the West, the 2014 Crimean crisis, Trump, again, took Putin's side. He failed to condemn or even mention the annexation of Crimea after being asked in an interview about Vladimir Putin in April 2014, a mere month after the peninsula was overrun by Russia.<sup>13</sup> Instead, he congratulated Vladimir Putin on 'taking the mantle'. During his presidential campaign, going against the official foreign policy directives, he denied that Russian military was in Ukraine, undermining the narrative unity of NATO, lessening the effect of deterrence.<sup>14</sup> He repeatedly blamed the Crimean crisis on his predecessor, Barack Obama. Trump frequently repeated Kremlin talking points about Crimea.<sup>15</sup> He reportedly claimed that the people of Crimea predominantly speak Russian, therefore the annexation is rightful.<sup>16</sup>

Trump's support of Russia's geopolitical objectives in Ukraine has manifested itself not solely in words, but tangible action as well. Before the 2016 Republican National Convention, the Trump campaign worked to have military aid to Ukraine removed from its agenda.<sup>17</sup> In 2019, Donald Trump stalled \$391 million worth of military aid to Ukraine, already approved by Congress.<sup>18</sup> The aid included medical, as well as military equipment, amongst others the infamous Javelin missile, which posed the greatest threat to Russian proxies. During the impeachment proceedings of 2019, Trump repeated other Kremlin talking points on Ukraine, including uncontrollable corruption, improper ties between Ukrainian officials and the Obama administration, and allegations that Ukraine meddled in US elections.<sup>19</sup>

Other than NATO's military might, sanctions are the most powerful deterrence against Russian military adventurism. Sanctions ratified by the Obama administration have caused great hardship to the Russian economy since 2014, consequently challenging the leadership's political stability. Trump has been an outspoken critic of sanctions against Russia since he took office. In an interview with Wall Street Journal before his inauguration, he argued that the sanctions could

13 Eric Bradner and David Wright, "Trump Says Putin Is 'Not Going to Go into Ukraine,' Despite Crimea," CNN (2016).

14 Christian Caryl, "Donald Trump's Talking Points on Crimea Are the Same as Vladimir Putin's," The Washington Post (2018).

15 Alberto Nardelli and Julia Ioffe, "Trump Told G7 Leaders That Crimea Is Russian Because Everyone Speaks Russian in Crimea," BuzzFeed News (2018).

16 Josh Rogin, "Trump Campaign Guts GOP's Anti-Russia Stance on Ukraine," Washington Post (2016).

17 Eric Lipton, Maggie Haberman, and Mark Mazzetti, "Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion," The New York Times (2019).

18 Daniel Dale, "Fact Check: What Trump Has Been Getting Wrong on Biden and Ukraine," CNN (2019).

19 Peter Nicholas, Paul Beckett, and Gerald F Seib, "Trump Open to Shift on Russia Sanctions, 'One China' Policy," The Wall Street Journal (2017).

be withdrawn.<sup>20</sup> A bipartisan bill was passed in 2017 to introduce new sanctions against Russia. Trump has claimed that the bill contains ‘a number of clearly unconstitutional provisions’ and it ‘purports to displace the President’s exclusive constitutional authority to recognize foreign governments, including their territorial bounds’.<sup>21</sup> Furthermore, the Trump administration reportedly attempted to water down the language of the bill, in order to impose lesser sanctions.<sup>22</sup>

### III. UNITED KINGDOM

The United Kingdom holds a curious position in the discussion about Russian election interference. It was, according to the claims of the British government, the site of the first case of Russian election meddling in a Western country, when Russia allegedly interfered in the Scottish independence referendum of 2014.<sup>23</sup> Yet in spite of being ‘Ground Zero’, there is far too much we do not know about Russian election interference in the UK. As the Intelligence and Security Committee report has demonstrated, the British government and intelligence agencies failed to investigate Russian attempts of interference, consequently exacerbating the obscurities around the issue.<sup>24</sup> The Intelligence and Security Committee of Parliament Report on Russia published July 2020 writes that ‘witnesses have suggested that we would sit just behind the US and NATO in any priority list.’<sup>25</sup> The report goes on to write that this was owing not only to the UK’s ties to America, but also to the strong stance the country has taken against Russia, recounting that in the wake of the Salisbury poisoning, the UK was in the vanguard of the Western response that saw 153 Russian intelligence and diplomatic operatives ousted from 29 nations.<sup>26</sup> Moreover, before Brexit, the UK was the most outspoken critic of Russia in the European Union, further amplifying its importance from the perspective of Russian cyber interference attempts.

The United Kingdom’s role on the world stage is unique vis-à-vis Russia’s interests: a former EU member, a close ally to the USA, but also a safe haven for Russian money. This peculiar composition of factors makes the UK a vital player in Russia’s geopolitical endeavours. One of the most important factors which makes the UK unique is that unlike almost all member states of the EU, it is not reliant on Russian oil and gas. Russia only supplies six percent of UK’s crude oil and sixteen

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20 Anders Aslund, “Steve Mnuchin Has Some Explaining to Do,” Politico (2018).

21 Julie Hirschfeld Davis and Matt Flegenheimer, “White House Tries to Get G.O.P. To Water Down Russia Sanctions Bill,” The New York Times (2017).

22 Rachel Ellehuus and Donatienne Ruy, “Did Russia Influence Brexit?,” Center for Strategic and International Studies (2020).

23 Dan Sabbagh and Andrew Roth, “Russia Report Reveals Uk Government Failed to Investigate Kremlin Interference,” The Guardian (2020).

24 “Russia Report Hc 632,” (Intelligence and Security Committee of Parliament, 2020). pp.1-2

25 Ibid, p2.

26 Office for National Statistics, “Uk Energy: How Much, What Type and Where From?,” (2016).

percent of petroleum imports.<sup>27</sup> In contrast, approximately 50-75 percent of Germany's natural gas is imported from Russia.<sup>28</sup> This energy independence is partly the reason why the UK can allow itself to be Russia's starkest critic in Europe, and up until recently, in the EU. The criticism primarily manifests itself in the support for harsh sanctions imposed on Russia. Before its departure from the bloc, the UK called for more severe EU sanctions on Russia.<sup>29</sup> The continental states of the EU have been more lenient towards Russia concerning sanctions.<sup>30</sup>

This implies that the UK's departure from the block is favourable for Russia, as a motion for sanctions relief is more likely to receive unanimous support.<sup>31</sup> The UK being the starkest critic of Russia and the closest US ally in Europe, its removal from the European Union paves the way towards a less Russia-sceptic EU with one less link to the US. A compelling example for Russia's expectations of the post-Brexit power structure in imposing sanctions is Sergei Lavrov's reaction to the UK calling for sanctions months before its departure from the Union. Lavrov remarked: 'A country which is leaving the EU in the framework of Brexit is trying to dictate foreign policy to the EU itself. And now, as it turns out, London wants to dictate foreign policy on Russia in Washington.'<sup>32</sup> Lavrov's statement strongly suggests that Russia is expecting the EU's Russia-scepticism to subside after the removal of the UK from the bloc.

Alexander Baunov argues that Russia has two major concerns with the EU.<sup>33</sup> First, Russia considers the EU as an entity that is not fully independent, with a foreign policy that aligns too closely with that of the US. Second, the Russian government prefers bilateral relations with separate countries to dealing with the bloc as a whole. Bilateral relations give Russia more leeway and power in negotiations, whereas talks with Brussels might be more challenging. By distancing the US from the EU, and opening the UK to bilateral negotiations, the success of Brexit addressed both of Russia's concerns. Misha Glenny points out that besides sanctions relief, Brexit could prove beneficial to Russia in another field: intelligence.<sup>34</sup> The United Kingdom is the member of the Five Eyes intelligence sharing union, comprising of the US, Canada, Australia, New Zealand, and the UK. Until 2019,

27 Eurostat, "Eu Imports of Energy Products - Recent Developments" (2020).

28 William James, "Britain Presses for More Eu Sanctions against Russia," Reuters (2018).

29 George Friedman, "Germany Looks to Ease Russian Sanctions," Euractive (2016), Philip Pulletta and Francesco Guarascio, "Italy Pushes for De-Escalation as Eu Moves to Renew Russia Sanctions," Reuters (2018), Dan Alexe, "France Supports Cancelling Sanctions on Russia," New Europe (2016).

30 John E. Herbst, "Brexit Is a Win for Putin," Atlantic Council (2016).

31 DW, "Britain Urges Eu to Toughen Russia Sanctions," Deutsche Welle (2018).

32 Alexander Baunov, "A Multipolar Europe: Why Russia Likes Brexit," Carnegie Moscow Centre (2016).

33 Misha Glenny, "Why Would Russia Want to Interfere in British Politics?," Open Democracy (2020).

34 David D. Kirkpatrick, "Signs of Russian Meddling in the Brexit Referendum," The New York Times (2017).

the UK was also a member of Europol, the European intelligence agency. Before Brexit, the UK acted as a bridge between the two intelligence databases. By leaving the Union, the two agency databanks are no longer connected, jeopardising the flow of intelligence information between NATO countries, which could benefit Russia on the long run. Consequently, the Brexit referendum fell victim of a Russian campaign of election interference, with hundreds of thousands of Internet Research Agency linked Twitter accounts sharing pro-Brexit anti-EU messages leading up to the referendum.<sup>35</sup>

#### IV. GERMANY

Germany and Russia have always claimed to have had a ‘special relationship’ with each other since the end of the Second World War. Extensive business ties, the sizeable Russian minority in Germany, energy dependence, Germany’s historical responsibility for the atrocities of the Second World war, and Gorbachev allowing East and West Germany to unite all fostered the two countries’ close relationship. As Putin has remarked during his 2001 speech at the Reichstag: ‘Russia has always had special sentiments for Germany, and regarded your country as one of the major centres of European and world culture [...] Today’s Germany is Russia’s leading economic partner, our most important creditor one of the principal investors, and a key interlocutor in discussing international politics.’<sup>36</sup>

The German political elite was for long sympathetic towards the Russian leadership; Gerhard Schröder, former chancellor of Germany is a personal friend of Putin, and up until 2014, Angela Merkel was Vladimir Putin’s chief western interlocutor. After 2014, in the wake of the Crimea crisis and the downing of MH17, German-Russian relationships quickly deteriorated. Germany was forced to re-think its Ostpolitik, and a new, Russia-sceptic Germany has emerged, with closer ties to the United States. The new foreign policy doctrine has divided the German population: 64 percent of Germans believe that Russia is not a credible partner, however 33 percent would prefer closer cooperation with Russia.<sup>37</sup> This sizeable minority of pro-Russian Germans have presented Russia with an opportunity to interfere in German domestic politics, in order to tilt elections in its favour. Russian interference in Germany operates based on the same principles and as in France and the US: Support candidates which promote Russia’s interests and denigrate candidates which advocate against pro-Russian policies. Since 2014, the governing coalition has been increasingly Russia sceptic, taking the lead in securing EU support for far-reaching financial sanctions on Russia.<sup>38</sup> Lilia Shevtsova of the Carnegie Moscow Center notes that the major coalition parties along with

35 Angela E. Stent, *Putin’s World* (New York: Hachette Book Group, 2019). p.80.

36 *Ibid.*, p. 83.

37 *Ibid.* p.102.

38 Lilia Shevtsova, “Germany: When Will the Ostpolitik Finally End?,” Carnegie Moscow Centre (2013).

the SPD are unequivocally opposed to any future special relationship with Russia, even advocating for a new Ostpolitik which involves becoming closer to other Eastern European countries.<sup>39</sup>

The current SDP foreign minister Heiko Maas took a more hawkish stance on Russia than his predecessors. He, for the first time, admitted that cyberattack on the German foreign ministry originated in Russia, and has pledged to ‘keep up the political pressure on Russia’.<sup>40</sup> Consequently, the Grand Coalition of CDU – CSU – SPD rendered itself a target of Russian cyber-attacks and Russian attempts at harming its chances of re-election. Since the last elections, the Alliance 90/The Greens have emerged as an even more formidable critic of Russia than the Grand Coalition, hence finding themselves in Russia’s crosshairs. The Greens advocate for a policy which would harm Russia’s most fundamental interest in Germany: The Nord Stream 2. The pipeline construction project is not solely an economic project for Russia, but represents a vital geopolitical interest. The Nord Stream 2 would allow Russia to increase Europe’s energy dependency, and consequently its geopolitical leverage on the continent, and decrease its own dependency on Ukraine for gas transits.

Although it is nearing completion as of Q3 2021, The Greens have vowed to block the construction of the pipeline.<sup>41</sup> The prospect of The Greens being elected as a governing party represents a serious threat to Russian interest. Consequently, Annalena Baerbock, the party’s candidate for chancellor has been the victim of a denigration and defamation campaign on social media, which, amongst others, included fake images purporting to show her naked, and a photograph of her with George Soros, implying that she is a part of a Jewish conspiracy. Cem Özdemir, the party’s foreign policy expert believes that the attack originates in Russia, however, more evidence is needed to verify the claim.<sup>42</sup>

The AfD has emerged as Russia’s primary beneficiary of clandestine support, in the form of election interference. The AfD is far more interested in close relationship with Russia, with their party leader calling the War in Donbass an internal matter and rejecting any sanctions. Udo Hemmelgarn, an AfD member of the Bundestag, has called for Germany to support Russia and the Assad Regime in Syria. Erik Holm of the AfD promoted Nord Stream 2 in the Bundestag, frequently speaking in favour. In turn, the Kremlin has aided the AfD, most notably, with a disinformation campaign during the ‘Our Lisa’ case.

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39 Stent. p.108.

40 Diane Francis, “Germany’s Greens Vow to Block Putin’s Pipeline,” (2021).

41 Kate Connolly, “Suspected Russia-Led Cyber Campaign Targets Germany’s Green Party Leader,” (2021).

42 Constanze Stelzenmüller, “The Impact of Russian Interference on Germany’s 2017 Elections,” Brookings.

In 2016 a thirteen-year-old girl of Russian-German origin has disappeared for a day. After she has reappeared, she has claimed that she was sexually assaulted by three men, Middle Eastern migrants.<sup>43</sup> Despite the allegation promptly being disproven, Russia capitalised on the opportunity to denigrate the Grand Coalition and its migration policy, and to create political capital for AfD by amplifying anti-migration messages. Russian foreign minister Sergei Lavrov made a statement on television, accusing Germany of a ‘cover-up’ and of ‘whitewashing reality to make it politically correct’.<sup>44</sup> This led to mass demonstrations across Germany and garnered a response from the Russian embassy due to the girl’s Russian heritage. Notably, in the next elections in Kuehl, the city of the alleged crime, the AfD won 14% despite a long tradition of liberalism in the city.<sup>45</sup>

## V. FRANCE

The French case offers a very unique example of the dynamics of Russian election interference for two reasons. First, the 2017 French presidential elections featured three, overtly pro-Russian candidates, one of whom, Marine Le Pen of the National Front stood a real chance of winning. Le Pen’s policies and attitudes vis-à-vis Russia were much more explicitly supportive of the Putin government and its interests, than any other candidate’s in any of the examined elections. Despite the fact that Emmanuel Macron took a more lenient approach on Russia than other European leaders, he clearly emerged as the most unfavourable candidate to Russia, as the smear campaign of Russian state media has exemplified.<sup>46</sup> Second, the 2017 elections present us with the sole example of a successful effort in countering Russian interference. As Heather A. Conley of the CSIS notes: ‘The 2017 French presidential election remains the clearest failed attempt by a foreign entity to influence an electoral process in recent years.’<sup>47</sup> Although the reasons for Russia’s failure to influence the outcome of the election are not exclusively internal to France, this case study offers invaluable insight into best practices of fending off Russian election meddling attempts.

The 2017 elections offer a textbook example of Russia pursuing tangible interests in foreign elections, by interfering on behalf of candidates, who support policies favourable to Russia, and denigrating the other candidate whose election would hinder their interests. The most overtly pro-Russian candidate, and consequently the primary beneficiary of election meddling was Marine Le Pen, who led a campaign with a strong Eurosceptic message, as well as a general opposition the US-

43 Stent. p.104.

44 Simon Shuster, “How Russian Voters Fueled the Rise of Germany’s Far-Right,” *Time* (2017).

45 Reuters, “French Election Contender Macron Is Russian ‘Fake News’ Target: Party Chief,” *Reuters* (2017).

46 Heather A. Conley, “Successfully Countering Russian Electoral Interference,” *Center for Strategic and International Studies* (2018).

47 BBC, “France’s Marine Le Pen Urges End to Russia Sanctions,” *BBC* (2017).

led world order. Le Pen supported Russia's primary interest: sanctions relief. Le Pen visited Moscow in 2017 and gave a speech in the lower house of the State Duma, calling for the withdrawal of all western sanctions on Russia.<sup>48</sup> Le Pen has also endorsed Russia's most controversial geopolitical move, the annexation of Crimea. In an interview with a French television channel, Le Pen used a Kremlin talking point, which even Donald Trump would not repeat publicly: "I absolutely disagree that it was an illegal annexation: a referendum was held and residents of Crimea chose to re-join Russia."<sup>49</sup> Le Pen also advocated for French support to the Russia ally Assad Regime in Syria, labelling the latter "the most reassuring solution for France".<sup>50</sup> In the past, she also expressed a desire to form a trio of world leaders with Putin and Trump, saying that such a group 'would be good for world peace.'<sup>51</sup> She has urged France and Russia to 'unite' and 'work together' to save the world from globalism and Islamic fundamentalism.<sup>52</sup> It is clear that Le Pen would have supported virtually all of Russia's geopolitical ambitions if elected President.

As Nicholas Vinocur has written, 'Le Pen ... is one of Vladimir Putin's most vocal defenders in Europe.'<sup>53</sup> With Le Pen's election Russia would have gained a loyal ally in the heart of the European Union, which could have disrupted the bloc's unified action against Russia, and could have introduced a pro-Russian shift in EU policy. Consequently, the Kremlin was heavily involved in directly funding Marine Le Pen and her pro-Russia National Front, through several loans. In 2014, the National Front took out a €9.4 million loan from the First Czech Russian Bank to help fund their 2017 election campaign.<sup>54</sup>

Despite his relatively lenient, cooperative approach to Russia, Emmanuel Macron was always going to be the most problematic for Putin, hence rendering him the target of Russian cyber-interference. As James Nixey and Mathieu Boulègue of Chatham House argue: 'The French president was ostensibly the "least apologist" candidate of those running in the first round of the 2017 elections. Compared to the Russian-funded Marine Le Pen on one end of the spectrum, and the radical leftist Jean-Luc Mélenchon on the other, Macron seemed like a model of moderation. To the Kremlin, he must have been perceived as the least desirable candidate

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48 Tom Batchelor, "Marine Le Pen Insists Russian Annexation of Crimea Is Totally Legitimate," Independent (2017).

49 Andrea Rosa and Elaine Ganley, "French Far-Right Chief Calls Assad Solution to Syria Crisis," AP news (2017).

50 Marine Pennetier and Adrian Croft, "Syria Strike Brings Rare Criticism for Trump from France's Le Pen," Reuters (2017).

51 Cynthia Kroet, "Putin to Le Pen: Russia Won't Interfere in French Election," Politico (2017).

52 Nicholas Vinocur, "Vladimir Putin and France Unfriend Each Other," Politico (2016).

53 Gabrielle Tétrault-Farber and Richard Lough, "Le Pen's Far-Right Party Reaches Settlement on Russian Bank Debt: Court," Reuters (2020).

54 James Nixey and Mathieu Boulègue, "Chatham House," (2019).

for its interests, which is why they hacked the servers of his party'.<sup>55</sup> For instance, Macron has admitted that sanctions are ineffective in a conference when he was Finance Minister in 2016, but, unlike his competitors, only supported their withdrawal on the condition that the peace process in Ukraine advances.<sup>56</sup> However, unlike Le Pen, Macron has most oftentimes sided with the mainstream transatlantic narrative on Russia, and has expressed his support for the EU and the NATO. Macron's primary foreign policy platform was to strengthen the French-German alliance, joining Merkel in standing up to Putin and Trump.<sup>57</sup>

After his election, President Macron took a strong stance on Russia, and has proven that Russia's concerns about his presidency were not unfounded. During a press conference with Vladimir Putin, he has openly denounced RT and Sputnik as 'lying propaganda', said that France was prepared to use military force if Syria used chemical weapons again, and he assured Putin that he will be paying close attention to a recent wave of horrific violence against gay men in Chechnya.<sup>58</sup> Consequently, Macron became the target of Russian election meddling. On 5 May 2017, just hours before the election media blackout began, 21,075 of Macron's emails were leaked alleging tax evasion, offshore accounts, and electoral fraud.

The email leak quickly spread under the hashtag #MacronLeaks on several social media platforms and gained international media attention. An internet security firm has reported that the hackers attacking Macron's campaign appear to be the same people, who took part in the campaign against Clinton a year earlier.<sup>59</sup>

## VI. POLICY PROPOSAL: THE THREE-STEP PLAN

In order to create a systemic and robust approach to Russian meddling in electoral processes, a three-step plan is outlined in the following section (referred to as the '3P's'). This method is arranged as follows: preparatory work; prompt-response; and a post-operational phase. Building on existing frameworks and expanding current operations, this method aims to reduce the impact and presence of Russian attempts at election interference, while simultaneously building a network of trust and co-dependence within the EU and its Western allies.

### 6.1 Preparatory Work

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55 Rym Montaz, "Emmanuel Macron's Russian Roulette," *Politico* (2020), RFI, "Macron in Moscow: France Wants Russia Sanctions Lifted by Mid-Year," (2016).

56 Sarah Wildman, "French President Emmanuel Macron Just Went after Russia — to Putin's Face," *Vox* (2017).

57 BBC, "France's Macron Holds 'Frank Exchange' with Putin," (2017).

58 Nicole Perlroth, "Russian Hackers Who Targeted Clinton Appear to Attack France's Macron," *The New York Times* (2017).

59 National Intelligence Council, "Foreign Threats to the 2020 Us Federal Elections," (2021).

6.1.1 Between electoral cycles political parties and government agencies need to raise awareness about Russian interference, issuing public statements, condemning the act of interference, and clarifying, that an attack against the country's democratic system is a tangible possibility, supported by concrete precedents. As the Intelligence Community's report on the 2020 US elections argues, public and media awareness of the possibility of Russian interference, and government's increased communication about the issue is likely to have hindered Russian efforts by undermining the effectiveness of disinformation campaigns, and consequently contributed to the decline in the number and breath of attempts at interference.<sup>60</sup> Furthermore, moving the public discourse's focus from a domestic political quarrel to strengthening democratic resilience applies pressure on the likely beneficiary of the interference and creates a narrative to facilitate unity of the entire political spectrum. Additionally, publicising the possibility of interference might dissuade other powers from following Russia's example of interfering in elections.

6.1.2 Following the French example of the National Commission for the Control of the Electoral Campaign for the Presidential Election, and the National Cybersecurity Agency, political parties are encouraged, in cooperation with the EU, to create independent, administrative, and non-political committees solely responsible for overseeing cybersecurity and for informing politicians as well as party staff of the potential ways through which attacks can take place.

6.1.3 Increase the budget of current committees (INGE, Cybersecurity and Infrastructure Security Agency). Given that Russian 'troll farms' are being granted monthly budgets of \$1.25 million, the EU needs to increase its spending in order to tackle the volume of interference.

6.1.4 We advise the INGE and the Cybersecurity and Infrastructure Security Agency to establish a comprehensive database of pro-Russian actors, anti-Russian actors, and above all Russian interests, as showcased in the first section of the current paper, in order to be able to anticipate meddling. We recommend that the committees include the following sections in the database:

**Russian Interests:** List possible strategic, economic, and political interests of the Russian government in a given country which could serve as an incentive to interfere, as presented by this paper.

**Pro-Russian Actors:** List political entities, candidates, parties, and media, who, even unwittingly, support the interests determined in section 1. Entities recorded in this section are likely to become beneficiaries of Russian interference. Their financing and support should be subjected to close scrutiny, in compliance with

60 Elizabeth Dwoskin and Craig Timberg, "Facebook Takes Down Russian Operation That Recruited U.S. Journalists, Amid Rising Concerns About Election Misinformation," The Washington Post (2020).

applicable EU and national regulations. Social media disinformation campaigns should be expected to support them, or the causes they advocate for.

**Russia-Sceptic Actors:** List political entities, parties, media, and primarily candidates who show a Russia-sceptic attitude, or are against any measure which would benefit interests comprised in Section 1. These actors are likely to become the target of Russian interference. It should be expected that they will fall victim of hack-and-leak operations, kompromat forgery, defamation campaigns, and social media disinformation campaigns.

**6.1.5** Domestic laws need to remain up to date in order to incorporate newer forms of interference. For example, the UK's report on Russian interference pointed out how the Official Secrets Act was too outdated to provide any legal coverage.

**6.1.6** Government agencies and committees responsible for tackling cyber interference should facilitate information sharing with social media companies. The Intelligence Community's report on the 2020 US election notes, that 'proactive information sharing with social media companies facilitated the expeditious review, and in many cases removal, of social media accounts covertly operated by Russia and Iran. The comprehensive campaign by social media giants before the 2020 US elections to remove such sites exemplifies the potential of cooperation with social media companies.'<sup>61</sup>

## 6.2 Prompt Response

**6.2.1** Transparency with voters is encouraged. In light of the French example (En Marche's direct conversation with voters over Russia's interference), it has proven more productive to disclose interference rather than overlook it. "Naming and shaming" can lessen the effect of the interference campaign. By sustaining transparency and trust between the government and the voters it becomes harder for foreign actors to exploit the distrust of disenfranchised, alienated groups. This was explicitly Russia's tactic in the 2016 US Presidential election when they attempted 'to drive wedges into pre-existing cracks: the more polarized a society, the more vulnerable it is—America in 2016 was highly polarized'.<sup>62</sup>

**6.2.2** INGE and local committees should offset attempts at attacks by mirroring Macron's 'En Marche' example. When targeted, En Marche 'opted for a classic "cyber-blurring" strategy, well known to banks and corporations, creating false email accounts, and filled them with phony documents to create the obligation for them to verify, to determine whether it was a real account', ultimately damaging

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61 Disinformation, a Primer in Russian Active Measures and Influence Campaigns: Thomas Rid.

62 Adam Nossiter, David E. Sanger, and Nicole Perlroth, "Hackers Came, but the French Were Prepared," *The New York Times* (2017).

the credibility and slowing down the spread of the interference campaign.<sup>63</sup>

**6.2.3** The EU should encourage the creation of a ‘gentleman’s agreement’, where domestic parties are encouraged to come to agreements that will prevent the use of leaked information during electoral cycles. Particularly, in dialogue with the EU, the sensitivity of the information should be assessed, given the damage it could cause to the electoral process. Although these agreements would be key for preventing widespread paranoia, which would increase the benefits from the Russian side, it is unlikely to expect such informal agreements to always be made.

**6.2.4** The EU is encouraged to use the threat of sanctions, as well as their eventual implementation if needed. This is the most effective tool in keeping Russia at bay, given the recognised weak spot that sanctions have already created. Because interference is pursued in accordance with what is in ‘Russia’s interest’ it seems ill-founded for government-affiliated Russian agencies to pursue interference at the cost of their domestic political survival. The Intelligence Community report on the 2020 elections details, that it is likely, that sanctions have contributed to the decrease in Russian election interference activity.<sup>64</sup>

## 6.3 Post-Operational

**6.3.1** The national government and the INGE must launch an investigation immediately, akin to the Mueller investigations. It is beneficial for both national governments and the EU to create their own reports in order for cross-reference, accuracy, and accountability to be ensured. The media should be requested to publicise the issue, the report should be published as soon as possible. Based on the reports, national databases (6.1.4) should be updated.

**6.3.2** Host post-election cycle summits alongside the EU in order to share information regarding attempts at interference.

**6.3.3** If concrete evidence is unearthed, it should immediately be released and circulated to prevent a controversy similar to that in the UK. This demand to publicise the issue after elections is imperative from the perspective of limiting local pro-Russian political actors’ space for manoeuvre.

**6.3.4** Additionally, the media discussion of the Post-Operational stage offers an opportunity to show the acuteness of the issue, especially if it can be supported by the aforementioned state backed inquiries as evidence. This information should be used towards raising awareness, specifically by creating online campaigns replicating and showcasing what the recent attacks looked like in a simplified man-

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63 National Intelligence Council.

64 Aaron Blake, “The 10 Trump Actions Mueller Spotlighted for Potential Obstruction,” The Washington Post (2019).

ner. Towards this, traditional media outlets are encouraged to work alongside cyber-committees and the EU in order to dispel the public's perception of the media being biased in their selection of material and its analysis.

## 6.4 Limitations & Possible Hinderances

6.4.1 Although multiple independent investigations and enforcement projects were established immediately to counter Russian interference, they met resistance from incumbent political figures who had vested interest in Russian interference. These political figures might use their power and personal influence to obstruct investigations, implementation of mitigation measures, and downplay the significance of the interference. The prime example for this is Trump's efforts to make top intelligence officials publicly distance themselves from the investigation, his proposal to let Rosenstein publicly attack Mueller's alleged conflicts with himself in order to remove Mueller from investigation, his attempt to make Attorney General Jeff Sessions take up the responsibility of investigation, so that Sessions might protect him from potentially unfavourable results, and his effort to prevent the disclosure of further emails which might be used as evidence against him.<sup>65</sup> Similarly, political calculations also dictated the course of the UK report on the Brexit referendum. Even after the report was finished, its release was repeatedly postponed by the government until after the 2019 December general election. It was speculated that the report's coverage of the Russian donors' financial support for the Conservative Party might undermine the Conservative government in the forthcoming elections.<sup>66</sup>

6.4.2 Although the American government, as well as most European governments had experience fighting against Russian cyberattacks in the past, such as the American National Security Agency and the Cybersecurity and Infrastructure Security Agency, repeated Russian cyberattacks in the past few years have revealed that Russia has been quickly updating its strategy. Existing governmental bodies in the U.S. and Europe might not be as administratively efficient to catch up. For example, Russian interference in the 2016 Brexit election resurfaced questions about the adequacy of the Department for Culture, Media and Sport and the Electoral Commission to stand against non-conventional Russian interference. This was also compounded by the inadequacies of current legislation such as the Official Secrets Acts which fails to forbid foreign agents in the UK. Extensive cooperation between the central and state governments as well as between public and private agencies is required to countervail pervasive Russian cyberattacks.

However, this kind of extensive cooperation would necessitate some major changes which could face potential institutional and legal constraints. For example, it is

65 Paul Baines, "After the Russia Report: How to Protect British Democracy from Interference," *The Conversation* (2020).

66 "Assessing Russian Activities and Intentions in Recent Us Elections."

proposed that clear channels connecting central and regional governments could be established and more professional officials could be sent to state and local authorities to create branch offices against Russian cyberattacks. However, these organisational changes could be legally problematic particularly in countries valuing decentralization and the power of local authorities. Furthermore, it could be even more challenging for governments to cooperate with private enterprises such as social media giants which would raise public serious concerns about government censorship and personal privacy.

## VII. CONCLUSIONS

The paper delved into the controversial and complex issue of Russian election interference. The current research attempted to clear the air around a question surrounded by mystery, misinterpretations, and preconceptions. A multitude of readings arose in the past few years on why and how the Russian state interferes in Western elections, but a practical and profound understanding has proven to be somewhat elusive so far. This could be seen as a result of the relative novelty of the issue, considering that the first widely publicised and researched instances of election meddling occurred no more than 5 years ago with the 2016 US elections and the Brexit referendum. This implies a shortage of interpretative, and especially investigative inquiries into the issue. We have strived to address this problem by offering a new take: a fresh, albeit not radical approach to untangling the Russian cyber interference. We understood that the discourse of the topic, especially the non-academic rhetoric, oftentimes oversimplifies the issue by assuming that the zero-sum, realist approach is paramount, and Russia's foreign policy is, above all, nihilistic.

The present paper attempted to overcome this preconception of the nihilistic realism of the Russian state, whilst avoiding reaching relativist or apologist conclusions. Instead, we strived to subject election interference to scrutiny without preconceptions. We have assumed that interfering in elections should be understood in the wider framework of Russian foreign policy agenda serving tangible ends, and not as a standalone tool conceived to wreak havoc in countries seen as by Russia as her enemies. This approach not only offers a more comprehensive understanding, but allows us to demystify, and therefore decipher Russian election interference. Having examined the Russian interests driving the election meddling in the US, UK, Germany, and France, we have devised recommendations for the EU and the INGE committee, the Cybersecurity and Infrastructure Security Agency, governments, and the media on how to counter Russian attempts to interfere with the democratic process. The Three-Step Plan devised three stages of involvement: Preparatory work, Prompt-Response, and Post-Operational. We have assigned tasks and recommendations for each stage. Overall, the paper has demonstrated that Russia's interest in foreign policy might

not be as straightforward as it appears at first glance. A demystified approach which presupposes the Russian state's pragmatism leads to a more nuanced and accurate account of their meddling in Western elections, thus bolstering the democratic process.

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# European Policy Prize

## 3. 1. Addressing the crisis of the CEAS Toward a ‘Whole EU’ asylum approach

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### I. EXECUTIVE SUMMARY

Refugee movements to Europe continue, with economic and political pressures on countries of migration origin, transit, and destination further exacerbated by the COVID-19 pandemic. The Common European Asylum System (CEAS) and related initiatives, though cooperative efforts to more equitably distribute responsibility for asylum protections among EU Member States, have proven insufficient to address key collective action problems. The proposed New Pact on Migration as it stands will reproduce the weaknesses and injustices of its predecessors. Alternatives suggested by policymakers and academics include refugee quota or market systems and refugee “matching” systems, but these options either fail refugees by objectifying and commodifying them or fail states by neglecting to address the administrative challenges for ‘port of entry’ countries. Building on the Swedish model of refugee placement, we recommend decoupling duties of asylum processing and asylum granting at the national level within the European Union through a ‘Whole EU’ asylum model. Our proposal affirms free movement, migrant autonomy, and principles of distributive justice. It reiterates the European Union’s obligation as a supranational entity to ensure asylum protection, while recognising that these proposals are made within the existing political constraints of states.

## II. INTRODUCTION

Proclamations of a migrant or refugee “crisis” in Europe highlights the deficiencies of the current Common European Asylum System (CEAS). Initiatives that attempt(ed) to respond to immigration include the Dublin Convention (1990) and subsequent Dublin Regulations II (2003) and III (2013) and the New Pact on Migration (2020). However, the need for an equitable and sustainable CEAS remains due to the failure of these various attempts to harmonise European Union asylum policy.

Each initiative contains fundamental shortcomings and perpetuates injustices against migrants. First, the Dublin system was designed to harmonise the asylum process within the Schengen Area of free movement by “identify[ing] a single EU member state responsible for processing an asylum application”.<sup>1</sup> The Dublin system uses the concept of member state equality to assign responsibility.<sup>2</sup> In practice, however, EU Member States do not offer the equal opportunities, resources, and entitlements to asylum seekers and refugees.<sup>3</sup> ‘Port of entry’ countries or countries of arrival are responsible for an unequal share of processing asylum claims and granting asylum through an “accident of geography”.<sup>4</sup> Lastly, the inefficient, unjust, and unsustainable Dublin system “jeopardizes refugees’ rights” and violently curtails their freedoms.<sup>5</sup> As a result, the Dublin system incentivises the behaviours it was created to prevent, such as ‘secondary movement’ on the part of asylum seekers and refugees who understandably seek protection outside of countries of arrival that marginalise, detain, abuse, neglect or otherwise harm them, often through the production of deadly migration conditions.

The “crisis” on Europe’s doorstep is more aptly described as a ‘crisis of the CEAS’

1 Blanca Garcés-Mascareñas, “Why Dublin ‘Doesn’t Work’”, Notes Internacionales CIDOB, November 2015, [https://www.cidob.org/en/publications/publication\\_series/notes\\_internacionales/n1\\_135\\_por\\_que\\_dublin\\_no\\_funciona/why\\_dublin\\_doesn\\_t\\_work](https://www.cidob.org/en/publications/publication_series/notes_internacionales/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work); “EU Asylum Reform,” (European Council, November 15, 2017), <https://www.consilium.europa.eu/en/policies/migratory-pressures/eu-asylum-reform/>.

2 Garcés-Mascareñas, “Why Dublin ‘Doesn’t Work’”.

3 Henley Passport Index, “Henley Passport Index 2008 to 2019”, Henley Passport Index (Henley and Partners Research Department, January 5, 2021), <https://www.henleypassportindex.com/passport>; “Migration and Asylum | EPRS,” European Parliament, accessed January 19, 2021, <https://www.europarl.europa.eu/thinktank/infographics/migration/public/index.html?page=asylum-procedures>.

4 James Hathaway and Alexander Neve, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection.” *Harvard Human Rights Journal* 10 (2017): 115-211, <https://repository.law.umich.edu/articles/1622/>.

5 Garcés-Mascareñas, “Why Dublin ‘Doesn’t Work’”.

,which has failed to accomplish its goals of preventing ‘secondary movement’, harmonising reception conditions, and improving refugee protections through cooperation.<sup>6</sup> It is clear that creative and durable policy approaches are desperately needed to change the dysfunctional Dublin system and replace the proposed New Pact on Migration (NPM).

### III. PROBLEM DESCRIPTION

The collective action problems plaguing migration policy and the uneven distribution of asylum protection throughout the European Union result in a triple loss: for Member States, for asylum seekers and refugees, and for the European Union itself. A lack of sufficient support for the asylum systems in arrival countries results in overcrowded migrant camps rife with abuses that deeply harm—and sometimes kill—migrants and compromise the credibility of international law.<sup>7</sup> Political rhetoric drives under-resourced ‘local communities’ in Member States to believe the false proposition that migrants constitute a long-term net drain for the state despite evidence to the contrary.<sup>8</sup> State practices thus produce and exacerbate xenophobia and racism among citizens. Anti-immigrant sentiment has risen across Europe as a result, reproducing the injustices initiated by policymakers and generating major roadblocks in supranational negotiations critical to the functioning and survival of the EU.<sup>9</sup>

Meanwhile, migrants are excluded from opportunities in the formal economy that would allow them to work, live, and meet their needs as they await processing of their asylum claims. The expectation that Member States are responsible for granting asylum to all those deemed eligible within their borders, combined with the abysmal conditions in many arrival areas, quite sensibly encourages onward migration into neighbouring countries.<sup>10</sup> Countries of arrival, resentful of the unequal distribution of state responsibilities and unwilling or unable to sustain the demands on their bureaucratic systems, often neglect to engage in administrative

6 Natascha Zaun, “EU Asylum Policies: The Power of Strong Regulating States”. (Oxford, UK: Palgrave Macmillan, 2017), [http://eprints.lse.ac.uk/84489/1/Book\\_Palgrave\\_Zaun\\_Final\\_1.pdf](http://eprints.lse.ac.uk/84489/1/Book_Palgrave_Zaun_Final_1.pdf).

7 Vasileia Digidiki and Jacqueline Bhabha, “PERSPECTIVE EU Migration Pact Fails to Address Human Rights Concerns in Lesvos, Greece”, *Health and Human Rights Journal* 22, no. 2 (December 9, 2020): 291–96, <https://www.hhrjournal.org/2020/12/perspective-eu-migration-pact-fails-to-address-human-rights-concerns-in-lesvos-greece/>.

8 D’Artis Kancs and Patrizio Lecca, “Long-Term Social, Economic and Fiscal Effects of Immigration into the EU: The Role of the Integration Policy”, *JRC Working Papers in Economics and Finance* 2017/4 (2017), <https://doi.org/10.2760/999095>.

9 Alan Charlish and Marton Dunai, “Poland and Hungary Dig in over EU Budget Stand Off”, *Reuters*, November 18, 2020, <https://www.reuters.com/article/us-eu-budget-hungary-orban/poland-and-hungary-dig-in-over-eu-budget-stand-off-idUSKBN27Y0XP>.

10 Sergio Carrera et al., “When Mobility Is Not a Choice: Problematising Asylum Seekers’ Secondary Movements and Their Criminalisation in the EU”, *Centre for European Policy Studies* (December 20, 2019), <https://www.ceps.eu/wp-content/uploads/2019/12/LSE2019-11-RESOMA-Policing-secondary-movements-in-the-EU.pdf>.

processing of arrivals at the EU’s external border.<sup>11</sup> The resulting tensions among Member States threaten regional cooperation at a time it is needed more than ever to address public health crises, climate change, and the economic devastation wrought by COVID-19.

To overcome these challenges and properly address the failures of Europe’s asylum system, the EU needs a centralised CEAS that goes beyond a generic approach and instead addresses the individual needs and geographic realities of each EU Member State. Even more, the CEAS needs to include clear accountability structures and to remove incentives for states to free-ride. For the CEAS system to be sustainable and equitable for EU Member States and just for asylum seekers, a more innovative reimagining of the Dublin system is necessary.

#### IV. POLICY OPTIONS

Though arrivals to ‘port of entry’ countries in Europe have decreased steadily since their peak in 2015-2016, immigration rates remain substantial, and policymakers and academics have proposed several policies to address them.<sup>12</sup> Most recent is the New Pact on Migration (NPM), which seeks to address the gaps in the Dublin system by reimagining the CEAS. Specifically, the NPM holds similar, broad goals as the Dublin system, but claims to reimagine ways to accomplish those goals. The result is an updated but unacceptable one-size-fits-all CEAS that maintains similar structural problems to the Dublin system.

These replicative policy suggestions encompass border entry and registration, provision of the right to work for refugees, and restrictions on movement and travel, each of which is a core issue to the central problem of unequal distribution and resources. Both the NPM and Dublin system require asylum seekers to be registered in the EURODAC Database and fingerprinted at the port of entry.<sup>13</sup> The NPM adds that this process should be “completed within 5 days’ time” for each asylum seeker, after which time the asylum seeker will either receive an application for asylum or be deported.<sup>14</sup> However, the NPM neither details how the increased efficiency in time will occur nor acknowledges the administrative demands this process will continue to place on the most common EU countries of arrival.

Additionally, the NPM proposes continuing the Dublin system tradition of grant-

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11 Bouazza Ben Bouazza and Trisha Thomas, “Never Flagged as a Danger, Nice Attacker Traveled Unimpeded”, AP News (The Associated Press, October 30, 2020), <https://apnews.com/article/virus-outbreak-italy-tunisia-france-terrorism-e9f72edb04d23c9b66c05e589cfb536e>.

12 “Mediterranean Situation”, Operational Portal: Refugee Situations (United Nations High Commissioner for Refugees, January 18, 2021), <https://data2.unhcr.org/en/situations/mediterranean>”><https://data2.unhcr.org/en/situations/mediterranean>.

13 “EU Asylum Reform”.

14 “EU Asylum Reform”.

ing asylum seekers the right to work “no later than 9 months after lodging their application”.<sup>15</sup> However, the worst-case scenario of asylum seekers waiting nine months or longer without the right to work is a common occurrence under the Dublin system and would be perpetuated under NPM.<sup>16</sup> Lastly, the NPM aims to prevent ‘secondary movement’ of asylum seekers by reinforcing the Dublin system’s travel and reception condition restrictions and penalties for asylum seekers in the country of arrival while their application is reviewed.<sup>17</sup> In both the NPM and Dublin system, these restrictions and penalties are dangerously open to interpretation and manipulation that results in confusion and poor implementation at the individual level. More importantly, they permit a wide range of vicious state practices against migrants.

Some academics, sensing the profound limitations of what amount to barely discernible practical changes in recent decades, have proposed quota systems in which each state has a quota of refugees it must accept and can pay other states to take on a portion of its quota.<sup>18</sup> Such proposals are ostensibly made in the spirit of innovation to solve a seemingly intractable policy dilemma; the authors acknowledge the controversial nature of their suggestions but contend that a dubious solution is better than none at all. We disagree with this assertion on multiple counts. These proposals suggest a deeply disturbing commodification of human beings that also undermines wealthier states’ commitments to international refugee law. Even if they were desirable, there is good reason to think that such ideas would not work. Namely, the notion that states will buy into an “insurance” system, in which they agree to accept a minimum number of refugees in exchange for in-kind support if they experience a sudden increase in immigration, does not account for the short-term considerations of electoral politics in EU Member States.<sup>19</sup>

More promising policies have been outlined, however, that seek to engage with and improve the existing refugee regime rather than replace it altogether. One such proposal is a “refugee-matching system” that functions alongside either existing or new governance regimes in an attempt to more efficiently, equitably, and

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15 “EU Asylum Reform”. “Migration and Asylum | EPRS”.

16 “Migration and Asylum | EPRS”; UK EMN NCP.

17 “EU Asylum Reform”; Anja Radjenovic, “Briefing Secondary Movements of Asylum- Seekers in the EU Asylum System” (European Parliamentary Research Service, 2017), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS\\_BRI\(2017\)608728\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS_BRI(2017)608728_EN.pdf).

18 Peter Schuck, “Refugee Burden-Sharing: A Modest Proposal Fifteen Years Later?” in *Contemporary Challenges to the Nation State: Global and Israeli Perspectives*, Vol. III: The Nation State and Immigration: The Age of Multiculturalism, ed. A. Shapira et al. (Yale Law and Economics, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2478844](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478844); Johannes Himmelreich, “Asylum for Sale: A Market between States That Is Feasible and Desirable,” *Journal of Applied Philosophy* 36, no. 2 (October 11, 2017): 217–32, <https://doi.org/10.1111/japp.12289>.

19 Deborah Anker, Joan Fitzpatrick, and Andrew Shacknove, “Crisis and Cure: A Reply to Hathaway/Neve and Schuck,” *Harvard Human Rights Journal* 11 (1998): 295–310, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hhrj11&div=12&id=&page=>.

humanely place refugees with host countries.<sup>20</sup> A related model, already implemented at the national level in Sweden, places refugees according to distributive economic needs through geographic dispersal.

The ‘Whole Sweden’ policy model is designed to place asylum seekers across municipalities in the country. After arrival in the municipality, however, refugees are free to move or live elsewhere within Sweden.<sup>21</sup> This free movement is vital for both refugee freedoms and rights. Some refugees did move to larger cities after their initial ‘placement’, but many stayed. Given that the fundamental predicament of CEAS is how to design an asylum system that is just for refugees and asylum seekers and feasible for EU Member States, an expansion of such matching systems could provide the profound reimaging the CEAS needs while mitigating the ethical concerns and practical limitations of creating a new system altogether.

## V. RECOMMENDATIONS

Our proposed ‘Whole EU’ Model, inspired by the ‘Whole Sweden’ refugee placement model, entails decoupling the obligations of states to process asylum claims and state responsibility to provide asylum protections. Using this mechanism, Member States who do not process an asylum seeker’s application are more likely to act as the state who grants asylum. Importantly, this proposal is fundamentally distinct from the separation of asylum processing and asylum protection division proposed in some market-based systems and passed by the Danish parliament in June 2021.<sup>22</sup> We view such policies, in which European states would pay or otherwise arrange for countries outside of Europe to process asylum applications, as antithetical to refugee protection and in contravention of states’ international legal and moral obligations.

Our proposal instead affirms Europe’s moral and legal obligations to both process and grant asylum, proposing a decoupling of the two within the Common European Asylum System and EU legal frameworks. Our recommendations proceed from two premises, which have been stated previously but bear repetition for their importance.

First, there is an inequitable distribution of duties among states within the European Union to consider and process asylum applications and grant asylum pro-

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20 Will Jones and Alexander Teytelboym, “The International Refugee Match: A System That Respects Refugees’ Preferences and the Priorities of States”, *Refugee Survey Quarterly* 36, no. 2 (May 15, 2017): 84–109, <https://doi.org/10.1093/rsq/hdx004>.

21 Yitchak Haberfeld et al., “Selectivity and Internal Migration: A Study of Refugees’ Dispersal Policy in Sweden”, *Frontiers in Sociology* 4 (September 13, 2019), <https://doi.org/10.3389/fsoc.2019.00066>.

22 Reuters in Copenhagen, “Denmark Passes Law to Relocate Asylum Seekers Outside Europe”, *The Guardian*, June 3, 2021, <https://www.theguardian.com/world/2021/jun/03/denmark-passes-law-to-let-it-relocate-asylum-seekers-outside-europe>.

tections, in which some states assume fewer responsibilities and thus produce greater short-term administrative challenges for other states in providing asylum protections. Critically, this does not mean that the states that happen to receive greater numbers of arrivals due to geography or other factors assume greater responsibility. They instead engage in violent bordering tactics that include, among others, pushbacks, restrictions of entry channels, physical and digital securitisation of the European Union's external border, refusals to engage in maritime search-and-rescue efforts for migrants in distress, and the criminalisation of civil society organisations that with limited resources do so in their place. This inequitable distribution has thus transferred the human costs of state refusal onto migrants who navigate what migration scholar Maurice Stierl has called Europe's "carceral seascape" in the Mediterranean.<sup>23</sup>

Second, and following from the first premise, the European Union as a whole has an obligation to not only provide asylum protection but also to devise an equitable framework among states. Its failure to engage in what is commonly referred to as "responsibility sharing" necessarily produces states' abdication of their duties to migrants and asylum seekers and the appalling practices detailed above. We recognize that states that are more geographically proximate to the European Union's borders, such as those immediately north of the Mediterranean Sea, will likely continue to experience higher rates of immigration. This is in no small part due to the legal requirement that asylum seekers be physically present on European territory in order to claim asylum. We therefore propose a decoupling of asylum processing and granting in the European Union to ensure that all EU Member States fulfil their duties to provide asylum protection.

To make this decoupling possible, we propose utilising the EURODAC database to facilitate refugee placement through matching Member States and refugees based on mutual preferences. Member States would create a profile in EURODAC specifying their preferred refugee profile(s) and asylum seekers would express their country preference(s) during the initial asylum screening when their information is first entered into the EURODAC database. This detachment of the location of processing from assignment of the state responsible for formally granting refugee status will allow the countries of arrival to focus on efficiently processing asylum applications.

As proponents of a refugee matching system point out, a version of this system already exists.<sup>24</sup> Asylum seekers do engage in a degree of decision-making about where to apply for asylum, albeit within extremely limiting and oppressive constraints. States have an overwhelming amount of discretion in selecting which applicants receive asylum protection, which is evident in the variation in recognition

23 Maurice Stierl, "The Mediterranean as a Carceral Seascape", *Political Geography* 88 (June 2021): <https://doi.org/10.1016/j.polgeo.2021.102417>.

24 Jones and Teytelboym, "The International Refugee Match".

rates across the European Union.<sup>25</sup> The immense asymmetry of power between states and migrants means that this implicit ‘matching system’ creates deliberately precarious and often fatal outcomes for asylum seekers.

A more intentional system would not bridge the chasm between the interests of state policymakers and asylum seekers. A formal matching system would, however, facilitate a greater degree of choice for asylum seekers. In so doing, our proposal recognizes and affirms the need to incorporate a significant mechanism of choice for asylum seekers based in both principles of justice and practical considerations for settlement.<sup>26</sup> Furthermore, the simultaneous elevation of preferences and assurance of free movement upon granting of asylum both protects refugees’ “right to leave” and decreases the likelihood that they will choose to do so.<sup>27</sup>

Additionally, the ‘Whole EU’ Model draws on the call for a ‘mandatory solidarity’ mechanism to facilitate the equitable and sustainable placement of refugees under the jurisdiction of countries that are not subject to the same pressures as countries of arrival. Under this policy, asylum seekers would experience faster and more just asylum processing; Member States would equitably share the responsibility to provide protection; and the EU founding principle of cooperation takes its rightful place at the heart of the CEAS.

## VI. CONCLUSION

The ideas within this paper were initially conceived as a response to the following two invitations for policy proposals within the academic community of the European Institute at the London School of Economics and Political Science and a broader network of scholars of European policy:

- “What steps can the EU take to more effectively deal with the refugee crisis on its doorstep?”
- “What pioneering policy solution should the European Union employ to advance the European project and to build a more European Union in the decades ahead?”

To that end, we have proposed a reconfiguration of the Common European Asylum System according to a ‘Whole EU’ model, which separates responsibilities for processing and granting asylum within the European Union to ensure

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25 Eiko Thielemann, “Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU”, *JCMS: Journal of Common Market Studies* 56, no. 1 (December 28, 2017): 63–82, <https://doi.org/10.1111/jcms.12662>.

26 Matthew Gibney, “Refugees and Justice between States”, *European Journal of Political Theory* 14, no. 4 (May 25, 2015): 448–63, <https://doi.org/10.1177/1474885115585325>.

27 Gregor Noll, “Why Refugees Still Matter: A Response to James Hathaway”, *Melbourne Journal of International Law* 8, no. 2 (October 2007): 536–47, <http://classic.austlii.edu.au/au/journals/MelbJIL/2007/29.html>.

that Member States fulfil their obligation to provide asylum protection. We challenged the notion of a “crisis” of migration and reframed the European Union’s current immigration situation as a political crisis produced by ill-conceived and unjust policy. A more equitable distribution of these duties is required to ensure that states are able to feasibly process asylum applications on an administrative level. More importantly, however, this distributive change is urgently needed to prevent states from engaging in the relentlessly violent practices that characterise the European border regime and result in countless migrant deaths on an annual basis. We have proposed a formal “matching system” that accounts for both state and refugee preferences, which would decrease the incidence of ‘secondary movement’ while preserving the right to free movement within the European Union.

The nature of a policy proposal requires a certain acceptance of existing constraints and practical realities, including challenges of political feasibility. To conclude, however, the underlying assumptions of the above questions and our response merit reflection.

Underpinning our challenge to the notion of a migration “crisis” is the fact that a vast majority of refugees and asylum seekers never approach “Europe’s doorstep”, instead remaining in the Global South. The world’s wealthiest countries, many of them in Europe, are residence to a miniscule fraction of refugees and asylum seekers globally. Presenting immigration to Europe as a “crisis” serves, whether intentionally or unintentionally, to perpetuate what migration scholar Nicholas De Genova has identified as “nativist” narratives in European politics.<sup>28</sup> These narratives fuel the further securitisation of European borders and the production of its “illegality industry”, which is not only ineffective as a deterrence mechanism but also violates migrant rights and freedoms.<sup>29</sup> The emphasis on “responsibility sharing” within the European Union, which has been a central theme of this paper, neglects the reality that European states assume very little responsibility for the provision of asylum protections on a global scale.

A discussion of the merits of the European Union as a supranational political and legal project is beyond the scope of this paper. We believe that regional arrangements hold promise for international cooperation in response to forced displacement. Nevertheless, the question of the precise meaning of the “European project” remains. De Genova has posited that the political crisis surrounding immigration to Europe is in fact a “racial crisis” in which the figure of the migrant is presented as a threat to the “racial formation of whiteness” in the

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28 Nicholas De Genova, “The ‘Migrant Crisis’ as Racial Crisis: Do Black Lives Matter in Europe?” *Ethnic and Racial Studies* 41, no. 10 (August 21, 2017): 1765–82, <https://doi.org/10.1080/01419870.2017.1361543>.

29 Ruben Andersson, “Europe’s Failed ‘Fight’ against Irregular Migration: Ethnographic Notes on a Counterproductive Industry”, *Journal of Ethnic and Migration Studies* 42, no. 7 (February 9, 2016): 1055–75, <https://doi.org/10.1080/1369183x.2016.1139446>.

European context.<sup>30</sup> His intervention is instructive of the ways in which European immigration policy is entangled with Europe's colonial history and ongoing postcolonial present. Such interrogations of the "Europe" to which we refer are of urgent importance in policymaking today, as political commitments to white supremacy proliferate across the continent. This is not to say that supranational efforts to strengthen European cooperation cannot themselves serve as vital vehicles for justice and equity, but rather that they must be approached with a careful consideration of the ways in which appeals to Europeanism can mobilise nativist sentiments.

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30 De Genova, "The 'Migrant Crisis' as Racial Crisis".

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## 3. 2. Time to e-democratize the EU elections

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### I. EXECUTIVE SUMMARY

The European Union (EU) still carries the stigma of a democratic deficit. If often unjustified, it is embodied in the high obstacles mobile EU citizens face when casting their vote in EU elections. This is in stark contrast with a common narrative that portrays the free movement regime as the EU's main pillar to forge a political community of citizens united by equal rights. In most cases, EU-movers are discriminated against by the arbitrary enfranchisement policies of Member States, which make them ineligible to vote, or by the absence of remote voting methods, which leave them unable to vote. A solution to the latter problem is to introduce e-voting, which guarantees equal accessibility for all citizens and promises an increase in turnout, especially among EU movers. As mobility within the EU is set to intensify, digitalizing electoral procedures means to adapt to the changing lifestyles of EU citizens and make a step towards further democratization. Moreover, the rise of autocratic leaders contesting the integrity of election results calls for the adoption of a voting method that is transparent, safe and efficient – all requirements that e-voting meets.

### II. INTRODUCTION

Discussions concerning democratic reforms of the EU have attracted considerable attention in recent years. Proposals such as the introduction of transnational lists or a compulsory application of the Spitzenkandidaten Process to select the President of the European Commission (EC) have aimed to accentuate democratic representation for EU citizens. One aspect rarely noted in these discussions is the reform of the electoral laws governing the European elections, which are still organized according to 27 distinct electoral laws, with various thresholds, voting systems and election days.

This fragmentation presents a caveat for the input-legitimacy of the European Parliament (EP), especially with regard to the electoral participation of EU citizens not resident in their Member State of origin – the “EU movers”. The marginal

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share of EU movers (3-5%) to the overall population notwithstanding, they are symbolically referred to as “pioneers of European integration”, standing for a Europe in which Europeans are united through a common status and common rights.<sup>1</sup> While granted the right to vote in EU elections, both in their country of origin and residence, EU movers face considerable difficulties to make use of this right. For matters of definition, EU citizens participating in the EU elections of their country of origin are referred to as “non-resident citizens”, while EU movers participating in their country of residence are qualified as “non-citizen residents”. As each EU mover belongs to both categories, the differentiation highlights the separate barriers movers face when voting by one or the other option.

In countries of residence, movers struggle to familiarize themselves with administrative practices and voting registration deadlines, especially in the early years of their stay. As a result, for the 2014 EP elections, estimates suggest that around 95% of EU-movers did not vote in their country of residence.<sup>2</sup> Movers voting in their country of origin are constrained by electoral laws, such as the right of Member States to determine whether and under which conditions non-resident citizens are eligible to vote.<sup>3</sup> Moreover, voting from abroad entails significant costs, because several Member States do not offer any distance voting methods.<sup>4</sup> To correct this democratic shortcoming, this memo recommends MEPs to work towards an adoption of e-voting procedures, which will reduce the costs of participation and thus, increase the turnout of mobile EU citizens.

### III. PROBLEM DESCRIPTION

In general, two main factors influence voters’ participation in elections; their eligibility and, once eligible, their practical ability to vote. Concerning the eligibility to vote, it has been highlighted that several EU Member States disenfranchise their non-resident citizens. As of today, this is the case for Hungary, Ireland, Malta and Slovakia, where citizens abroad are unable to vote in EP elections without having a permanent residency in their country of origin. With regard to practical availability, the voting methods available to EU citizens residing abroad vary considerably: from 27 Member States, 18 offer personal voting at diplomatic missions, 15 postal voting, and only one Member State e-voting. In Czechia, Ireland and Slovakia, in-country voting on election day is the sole option for nationals with a permanent

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1 Adrian Favell and Ettore Recchi, *Pioneers of European Integration* (Cheltenham: Edward Elgar publishing, 2009), 9.

2 Lorenzo Ferrari, Gina Pavone and Orinaldo Gjergji, “The Europeans Left Out of the European Elections,” January 31, 2019, <https://www.europeandatajournalism.eu/eng/News/Data-news/The-Europeans-left-out-of-the-European-elections>.

3 Jean-Thomas Arrighi, et al., “Franchise and electoral participation of third country citizens residing in EU and of EU citizens residing in third countries,” Directorate-General for Internal Policies of the Union (February 2014): 1-145.

4 Alina Ostling, “Fair EU Synthesis Report: Electoral Rights for Mobile EU Citizens – Challenges and Facilitators of Implementation,” RSCAS/GLOBALCIT-PP (August 2019): 1-48.

residency.<sup>5</sup>

The extent to which these administrative hurdles impact the electoral participation of movers is revealed by a special EU post electoral survey, conducted among European expatriates by the EP in June and July 2019. For movers who abstained from voting in the 2019 EU elections, the reason most often mentioned for their abstention simply states that “it is too complicated to vote from abroad” (24%) – ranking before the reasons commonly given, such as lack of trust in politics (18%). Of the non-resident citizens who indicated to have voted in their country of origin, more than half reported to have faced one or several difficulties when casting their vote (54%), while nearly a quarter mentioned that polling stations were too far away from their place of living.<sup>6</sup>

Solving this issue is highly relevant for MEPs for three main reasons. Firstly, any increase in electorate turnout is of vital interest to the EU, especially in the case of EU movers, who tend to have a better knowledge about and hold a more positive image of the EU.<sup>7</sup> As a consequence, easier voting access for movers will not only result in an increase in overall turnout, but in the pro-European vote too.

Secondly, electoral participation without administrative hurdles is essential to make intra-EU labor mobility more attractive. In the EU, where labor market adjustments play an important part to absorb economic shocks in the absence of fiscal transfers, labor mobility is still considered too low for a well-functioning monetary union.<sup>8</sup> While voting-difficulties in EP elections are not the main reason for insufficient mobility, they still are an obstacle, especially for movers engaging in short-term, study- and project-related, migration.<sup>9</sup>

Thirdly, in countries where massive/widespread emigration threatens to deplete the ranks of the opposition – such as in Hungary, Poland and Romania – the costs of emigrating increase if emigrating comes with a de facto loss in electoral rights at

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5 European Parliament, “The 2019 Post-Electoral Survey – Among European Expatriates”, February, 2020, [https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/2019\\_post-electoral\\_survey\\_among\\_european\\_expatriates/en-post-election-expats-2019-report.pdf](https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/2019_post-electoral_survey_among_european_expatriates/en-post-election-expats-2019-report.pdf).

6 European Parliament Research Service EPRS, “2019 European Elections: National Rules Infographic”, April, 2019, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS\\_ATA\(2018\)623556\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/623556/EPRS_ATA(2018)623556_EN.pdf).

7 Ettore Recchi, *Mobile Europe - The Theory and Practice of Free Movement in the EU* (Basingstoke: Palgrave Macmillan, 2015).

8 Alfonso Arpaia et al., “Labour mobility and labour market adjustment in the EU,” *IZA Journal of Migration* 5, vol. 1 (November 2016): 1-21.

9 Anita Strockmeijer et al., “Should I stay or should I go? What we can learn from working patterns of Central and Eastern European labour migrants about the nature of present-day migration”, *Journal of Ethnic and Migration Studies* 45, no. 13 (January 2019): 2430-2446.

home.<sup>10</sup> Certain Member States exploited their autonomy in electoral law-making to make it difficult, if not impossible, for citizens living abroad to cast their vote. In Hungary, the law on the eligibility for voting in the EP Elections was changed in 2018, which, until then, has been conditional on registered residence in Hungary without exceptions. The law deliberately introduced contrasting voting procedures for different groups of emigrants: the residence requirement for Hungarian citizens residing outside the EU was lifted - 96,2% of Hungarians living in Serbia and Ukraine in 2018 voted for Orbán's Fidesz<sup>11</sup> - while it remained intact for Hungarians residing in the EU, who disproportionately favor the opposition.<sup>12</sup> The long queues in front of Romanian embassies at election day are another case in point, for which the governing Social Democratic Party was accused of deliberate filibustering.<sup>13</sup> The politically motivated disenfranchisement of EU movers should therefore be seen in context of the deterioration of the rule of law as observed in some of the EU's Member States.

#### IV. POLICY OPTIONS

In light of the manifold challenges, any reform should follow a cost-benefit analysis based on the prospect of reaching substantial improvements in movers' voter turnout and of further democratizing the European elections. Against this background, the challenges non-resident citizens face to participate in the EU elections are more difficult to tackle through policy design than those of non-citizen residents. Automatic repeated registration in the country of residence would certainly facilitate participation of non-citizen residents, and so would the placement of basic electoral information in multiple languages on the websites of national and local authorities. However, taking into consideration that abstentions of non-citizen residents are depending on factors going beyond administrative practicalities, such as their integration into the host society, this poses clear limits for policy action.

In the case of non-resident citizens, the obstacles are clear-cut, the instruments tangible, and imperatives to reform more urgent, as forms of short-term migration will become more frequent in the coming years.<sup>14</sup> In this light, disenfranchising EU movers due to residence in another EU Member State seems like a relic of

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10 Michael Miller and Margaret Peters, "Restraining the Huddled Masses," *British Journal of Political Science* 50, vol. 2 (March 2018): 403-433.

11 Szabolcs Pogonyi, "Hungarian citizens in non-EU countries get voting rights in EP elections," *Globalcit*, October 23, 2018, <http://globalcit.eu/hungarian-citizens-in-non-eu-countries-to-get-voting-rights-in-ep-elections/>.

12 Daniel Kelemen, "The European Union's Authoritarian Equilibrium," *Journal of European Public Policy* 27, vol. 3 (February 2020): 481-499.

13 Felicia Cretu, "The Romanian diaspora – a force to be reckoned with," *Euractiv*, May 28, 2019, <https://www.euractiv.com/section/eu-elections-2019/news/the-romanian-diaspora-a-force-to-be-reckoned-with/>.

14 Strockmeijer, "Should I stay," 2439.

times gone by. As enfranchisement remains within the competences of Member States, Member States are recommended to enfranchise all their citizens residing within the EU. However, since Member States did not answer previous calls by the EC to abolish the disenfranchisement rules for non-resident citizens in the EU, an infringement procedure (Art. 258 TFEU) based on a violation of the freedom of movement and residence before the Court of Justice could be envisaged.<sup>15</sup> Eventually, this could increase the EU's leverage, for example when arbitrary distinctions are drawn between non-resident citizens living in- and outside the EU.

While enfranchising would grant equal rights and thus eligibility to all EU movers, independent of their country of origin, more needs to be done to enhance non-resident citizens' practical abilities. In 2015, the EP initiated a reform of the EU's electoral law, proposing a bundle of common rules that would make the EU elections more European and democratic. In this context, the EP also deemed it necessary to allow postal, electronic and internet voting to increase the participation of all citizens, but especially of EU movers. While the resulting Electoral Act, adopted by the Council on 13 July 2018, brought certain improvements — such as enshrining the possibility of Member States to allow different forms of voting methods — it leaves many of the current disparities untouched.<sup>16</sup> Building upon the Electoral Act, an expansion of the number of voting methods available to the electorate abroad shall not only be possible but mandatory. This memo recommends that each Member State offers at least one option to vote remotely, optimally a combination of postal ballots and of e-voting. Voting remotely would reduce the costs of participation and cross out several other impediments. However, given the physical distances, postal voting can lead to new complications, such as delays in dispatch and late arrivals of voting envelopes.

The other option is e-voting, which is a new technology, yet rarely applied, will also bring about new uncertainties. Nevertheless, e-voting would kill many birds with one stone: Firstly, it would facilitate the voting process and increase convenience for mobile EU citizens to vote. Next to an increase in turnout, this would also eliminate an obstacle to free movement, particularly for short-term stays that timely overlap with the EU elections. Secondly, thanks to the technology's variability, e-voting is compatible with the framework of EU electoral law.<sup>17</sup> Within the confines of electoral law, a decentralized approach can be adopted in which Member States set up their own, compatible e-voting devices and EU institutions

15 European Parliament Research Service EPRS, “Disenfranchisement of EU citizens resident abroad. Situation in national and European elections in EU Member States,” June, 2015, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/564379/EPRS\\_IDA\(2015\)564379\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/564379/EPRS_IDA(2015)564379_EN.pdf).

16 European Parliament, “Reform of the Electoral Law of the EU,” November, 2019, <https://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-reform-of-the-electoral-law-of-the-eu/12-2019>.

17 Alexander Trechsel et al., “Potential and Challenges of E-Voting in the European Union,” EUDO Report for the EP AFCD Committee, May, 2016, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556948/IPOL\\_STU%282016%29556948\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556948/IPOL_STU%282016%29556948_EN.pdf).

take a coordinating role. This coordinating role would involve the Parliament's supervisory role to certify that the devices work reliably across the EU, as well as to prevent any abuses such as double voting.

Thirdly, implementing a continent-wide e-voting system represents a pioneering policy solution that can trigger positive spillovers for the digitalization of other administrative and policy domains. It will induce the application and improvement of cutting-edge technology such as blockchain within the EU. Fourthly, e-voting would help to distinguish the EU elections from national elections: voting in the EU elections means for citizens to be able to vote digitally, no matter from where and at what time on election day. This sets a new benchmark on the EU-level which will also feedback into the debates within Member States, heightening pressures to expand e-voting also to national elections, which in turn will benefit especially mobile Europeans. Finally, it is a highly popular reform: in the EC's public consultation on EU citizenship, 81% of participants mention that e-voting would make it easier for mobile citizens to vote in elections in their country of origin – compared to only 48% who indicated postal voting.

## V. RECOMMENDATIONS

This memo recommends the implementation of e-voting as the most promising policy to tackle the different challenges described. The proposal is not completely new, as studies have examined its advantages and drawbacks in more depth before.<sup>18</sup> However, against the background of increasing mobility and illiberal tendencies within the EU, the reform has become more urgent and valuable. To simplify electoral participation of EU-movers means to strengthen the EU's democracy and free movement regime.<sup>19</sup> In addition, the recent prolongation and contestation of postal votes in the US elections represent a scenario the EU must seek to prevent by using voting methods that are transparent, tamper-proof and tailored to the needs of our digital world.

Introducing a new technology in sensitive domains such as elections is never easy. Yet, controversies usually linked to e-voting have been mitigated: the digital divide in the EU is closing, as daily internet use has become more common. At the same time, e-voting is successfully tested in pilot programs in different Member States, such as Belgium and Estonia.<sup>20</sup> Lastly, the EU established itself as a pioneer to pro-

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18 Francisco Lupiáñez-Villanueva and Axelle Devaux et al., "Study on the Benefits and Drawbacks of Remote Voting," European Commission - Directorate-General for Justice and Consumers, 2018, [https://ec.europa.eu/info/sites/info/files/remote\\_voting\\_exec\\_summary\\_en.pdf](https://ec.europa.eu/info/sites/info/files/remote_voting_exec_summary_en.pdf).

19 European Parliament, "Steps to improve EU democracy ahead of 2024 elections," Press Release Plenary Session AFCD Committee, November 26, 2020, <https://www.europarl.europa.eu/news/en/press-room/20201120IPR92133/steps-to-improve-eu-democracy-ahead-of-2024-elections>.

20 Cynthia Kroet, "Internet voting on trial," Politico, May 22, 2014, <https://www.politico.eu/article/n-e-voting-ck/>.

tect democratic principles in the digital sphere with the Digital Services Act. It is time for the EU to not only regulate, but to apply digital solutions that strengthen its democracy. The Conference on the Future of Europe opens an opportunity window for MEPs to push for a pilot program that introduces e-voting across the EU in the 2024 European elections.

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# European Student Conference

## 4. 1. Facilitating Internal Pressure for Democratic Reforms in Belarus

SUBMITTED BY

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### I. EXECUTIVE SUMMARY

The conflict in Belarus poses a problem to the international world order because Belarus has become a testing group for what it means to topple an authoritarian leader in this new era faced with democratic backsliding and rising authoritarianism. Due to the critical location and importance to both the east and west, Belarus's movement towards democracy could have a domino effect around the world, already arousing solidarity with opposition groups in Hungary and Hong Kong. This policy proposal aims to generate ideas that result in the promotion of democracy and human rights without stirring increasingly tense relations with Russia.

### II. INTRODUCTION

The central policy problem in Belarus is how and if the European Union should go about defending human rights in Belarus. The three options for the EU to influence Belarus' behavior which will be discussed here are: detente and appeasement, condemnation and sanctions, and cutting Belarus off from the Swift international payments system. The incentives must be changed such that it becomes too costly for Belarus to continue to undermine democracy and human rights. Democracy has not been present in Belarus since the early 20th century, but now protestors have demanded it in the face of yet another clearly rigged election at the hand of Alyaksandr Lukashenka. The key issue for the European Union to achieve its goal is how to support the will of the people of Belarus without increasing tensions with Russia or putting protestors at risk of further harm. Thus far, the main methods of the EU against Belarus have been sanctions and statements of condemnation. With continuous escalation by Lukashenka, it is vital that the EU determine what next steps are the best for promoting human rights while maintaining national security.

### III. PROBLEM DESCRIPTION

Belarus broke away from the Soviet Union in August 1991, but since Alexander Lukashenka was elected president in 1993, Belarus has become uncomfortably close with Russia. In 1995, a referendum was held, making Russian a national language, changing state symbols to those akin to Soviet times, economically integrating Belarus with Russia, and giving Lukashenka the right to dissolve parliament.<sup>1</sup> In 1999, Russia and Belarus formed a Union State, making Belarus an unbreakable Russian ally.<sup>2</sup> Lukashenka filled his cabinet and parliament with his own allies and has repeatedly expressed his desire to reunify with Russia. The last three decades have witnessed numerous rigged elections followed by protests that were quickly quashed, and journalists that spoke out were hunted down by the secret police.

Lukashenka began softening his Russification policies after the invasion of Ukraine. This affront to the sovereignty of a former Soviet state spurred Lukashenka to enact more policies involving the protection of the Belarusian language and culture, slowly moving towards the EU. This was done due to Lukashenka's newfound fear of losing his comfy position as president of Belarus if the nation were absorbed by Russia. In early 2020, Lukashenka and Putin had a major quarrel over further integration of Belarus into Russia, prompting Lukashenka to make unpredictable moves such as buying Western oil and collaborating with NATO. However, the protests have pushed Lukashenka back towards Putin and the two

1 "Report on parliamentary elections in Belarus - 14 and 28 may 1995". OSCE Parliamentary Assembly.

2 Dieter Nohlen & Philip Stöver (2010) Elections in Europe: A data handbook, p252 ISBN 978-3-8329-5609-7

have returned to a cozy relationship.

Previous protests reacting to fraudulent elections have not had the longevity of those that continue after the 2020 elections, where protestors have a different fervor. Lukashenka's opposition, Sviatlana Tsikhanouskaya, is the wife of Sergei Cichanowski (Russian: Tikhanovsky), who was imprisoned when he attempted to run for office. With the invasion of Ukraine, the people of Belarus fear the loss of their independence to Russia. For over 30 years, Alyaksandr Lukashenka has been president of Belarus. On 23 May 2021, RyanAir flight 4978 was forcibly landed in Minsk as a bomb threat was called in. After the emergency landing, Belarusian authorities came on board and arrested opposition journalist Roman Protasevich who was traveling from Greece to Lithuania with his significant other, Sofia Sapega, who was also detained. Numerous nations have strongly condemned these actions. This further added fuel to the nearly year-long protests in Belarus.

#### IV. POLICY OPTIONS

The first policy option is detente and appeasement. With rapprochement on Belarus, the Common Foreign and Security Policy (CFSP) would be lifting all previous sanctions on Belarus and dropping any negative rhetoric against Minsk in order to improve ties with the political establishment of Belarus. Under the detente policy, the EU would utilize the European Neighborhood Policy (ENP) to resume the EU-Belarus Partnership Priorities (PPs) talks, EU-Belarus Coordination Groups, and provide financial grant assistance to the Belarusian economy. In this easing of relations, the CFSP would seek to diplomatically sway the Lukashenka government from Russia through financial incentives and improved dialogues. For instance, the European Commission provided a €24 million assistance package for the Belarusian people in December 2020.<sup>3</sup>

Solidarity with the Civil Society in Belarus: EuropeAid aims to fund projects to support civil society in Belarus, notably the protestors. One of the goals of this operation is to nurture a closer relationship with the citizens of Belarus, rather than Lukashenka himself to allow citizens to see the positive effects of democracy. However, the aid assistance program to the Belarusian people is unlikely to improve the lives of the Belarusian people and it would most likely not bring about democratic reforms in the region due to the authoritarian and hierarchical nature of the Belarusian political system. Corruption remains relatively high, with Belarus scoring 47/100 on the Corruptions Perception Index according to Transparen-

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<sup>3</sup> "EU Strengthens Its Direct Support to the People of Belarus." European Commission. European Union, 2020. European Union. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2309](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2309).

cy International.<sup>4</sup> Furthermore, this approach would fail due to the Realpolitik of Belarus. Because states prioritize national security over economic prosperity, it is unlikely that Belarus would shift its economic and social policies towards European interests as it would distance Minsk from Moscow. Furthermore, this approach would fail due to the Realpolitik of Belarus. Because states prioritize national security over economic prosperity, it is unlikely that Belarus would shift its economic and social policies towards European interests as it would distance Minsk from Moscow. Furthermore, detente has demonstrably failed to improve human rights and bring democracies in authoritarian regimes and, if anything, only empowered and legitimized the autocratic regimes on the global stage.

The second option is to publicly condemn and sanction Belarus in order to diplomatically isolate the Lukashenka regime. Sanctions are a vital part of CFSP policy because they are seen as a tool to be used when officials deem other actions too costly in terms of lives or currency. Sanctions are not a stand-alone policy, but rather a tool to impose a higher cost for committing an action or an attempt to prevent an unwanted action from taking place. In the case of Belarus, the tool of sanctions is used by the EU to punish and prevent human rights offenses, especially towards protestors. Sanctions have been instituted and walked back several times during Lukashenka's tenure, but as of 24 May 2021, 88 individuals and 7 entities are sanctioned by the EU, which has proved ineffective. While sanctions have been effective in crippling economies of recalcitrant powers, some regimes that are affected by sanctions are empowered in the short term as sanctions allow domestic elites to shift the blame for economic downturns on foreign powers. The goal of sanctions is for them to be as specific as possible, such that citizens are not affected as collateral. Due to the selectorate theory, the authoritarian government is not held liable to the people to the majority of the population with broad sanctions.

Additionally, targeted economic sanctions of elites have been unsuccessful due to Russia's support for Lukashenka's regime. However, sustained long-term sanctions have served as effective bargaining chips; because sanctions still inflict heavy damage on the targeted country, weaker economies may upset the public, facilitate internal pressure for structural changes, and turn the people against the regime, as shown by the case of Iran.

A third and more extreme action is to remove Belarus from Swift, cutting the nation off from engaging in international payments. This action has been taken once before to punish Iran in 2012 and help reinforce sanctions when negotiating the Joint Comprehensive Plan of Action. This extreme action would be a way to pre-

4 "Belarus." Transparency.org. Accessed June 6, 2021.  
Retrieved from: <https://www.transparency.org/en/countries/belarus>.

vent Russia from undermining western sanctions. Swift, based in Belgium, operates under the oversight of the Belgian government and therefore the EU as well. Swift is member-owned and claims to be “a neutral global cooperative,” but the European Union could impose sanctions on Swift if Swift refused. The shortcoming of this plan is that it is very extreme and therefore seen as a last resort. It would quickly demolish the Belarusian economy that would likely impact oligarchs and protestors alike. However, it is a faster method than sanctions or appeasement.

## V. RECOMMENDATIONS

It is recommended that the EU pursues a long term policy that largely utilizes the second option and keeps the third option as a bargaining tool. Cooperation with the Minsk establishment would only empower the regime that holds indefinite security ties to the Kremlin, and spreading liberal values and ideals in the region would be rendered highly unlikely by the Belarusian government given that democratic reform in Belarus would loosen Lukashenka’s hold to power and, in turn, Russia’s influence in Eastern Europe. Therefore, long-term targeted economic sanctions through the CFSP need to be placed onto Belarus with the cooperation of all EU member states and the United States in order to isolate the regime economically and diplomatically. While this may initially provide a target for the Belarusian elites to place the blame, it would act as a valuable bargaining chip for the EU to pressure Minsk into democratic reforms in the future in light of internal pressures for economic liberalization.

Continued verbal support for the democratic opposition led by Sviatlana Tsikhanouskaya in conjunction with sanctions is the most effective means of calming the present crisis. Proposing legislative resolutions of standing in solidarity with the Belarusian people and the political opposition through the European Commission would be the first step. The Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) would be used for further proposals of nation-wide sanctions on Belarus to the Council of the European Union. The Lukashenka regime is unsustainable after so many offenses and will no longer be an option in the eyes of the EU as a governing partner. By encouraging the grassroots movement in Belarus and providing material support for social media activists, the EU could accelerate the process of internal pressurization within Belarus to bring about substantial structural changes.

## 4. 2. Whitewashed Disinformation: Countering Information Laundering

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### I. EXECUTIVE SUMMARY

This memo provides a policy recommendation to counter information laundering efforts (IL) by malign foreign state actors. The most effective policy to address IL suggests that the CISA and the INGE, in cooperation with NGOs, establish and maintain a database cross-referencing the output of malign foreign media outlets and domestic media outlets to detect laundered information. With the help of the database, social media platforms can remove pieces of laundered information more effectively, and news media can avoid becoming an unwitting agent in IL. We recommend the implementation of this policy as it engages all stakeholders, provides an evolving, long-term solution, can be implemented as a supranational framework, facilitates transparency with voters, and empowers the public to verify their information.

### II. INTRODUCTION

The US Intelligence Community's report on the 2020 elections concluded that Russia's most recent election interference campaign relied primarily on laundering information by feeding disinformation to domestic news outlets.<sup>1</sup> Hostile information influence campaigns utilising IL can efficiently disseminate fake news stories, make them appear legitimate, and elevate them to the mainstream. The processes of distortion and further amplification give them a façade of legitimacy, allowing disinformation to influence public discourse and derail the mainstream media's narratives.

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1 National Intelligence Council, "Foreign threats to the 2020 US Federal elections," (2021).

### III. PROBLEM DESCRIPTION

The penetration of external information influence in a domestic media ecosystem is enabled mainly by interactions between foreign and domestic actors.<sup>1</sup> Malign foreign actors utilise the help of witting or unwitting domestic actors to spread disinformation, laundering their narrative through a more trusted and established domestic source, achieving the integration of the foreign narrative in the domestic media scene.<sup>2</sup> Domestic partners include accidental actors like domestic news media,<sup>3</sup> pro-foreign outlets<sup>4</sup>, proxies<sup>5</sup>, conspiratorial media and disclosers like Wikileaks,<sup>6</sup> and political players, e.g. Donald Trump.<sup>7</sup> Foreign-run intermediaries purporting to be domestic outlets are frequently used to mask the original source of the information, and feed disinformation to unwitting domestic agents.<sup>8</sup>

**Impact:** Conventional disinformation spreads on fringe/alternative media, targeting a vulnerable, but limited audience. In contrast, laundered information can reach a wider audience and appear credible.<sup>9</sup> IL sows discord more effectively than traditional disinformation by creating an illusion that trusted local actors advocate for divisive narratives, thereby polarising public discourse.

**Stakeholders:** Governments, social media, news media, civil society, and the general public are stakeholders in IL. IL decreases the public's trust in authorities and harms the credibility of news media and social media platforms. The general pub-

1 Belén Carrasco Rodríguez, "Information Laundering in the Nordic-Baltic region," Nato Strategic Communications Center of Excellence (2020). <https://stratcomcoe.org/publications/information-laundering-in-the-nordic-baltic-region/26>.

2 Kirill Meleshevich and Bret Schafer, "Online Information Laundering: The Role of Social Media," Alliance for Securing Democracy (2018). <https://securingdemocracy.gmfus.org/online-information-laundering-the-role-of-social-media/>.

3 Murtaza Hussain, "AN IRANIAN ACTIVIST WROTE DOZENS OF ARTICLES FOR RIGHT-WING OUTLETS. BUT IS HE A REAL PERSON?," The Intercept (2019). <https://theintercept.com/2019/06/09/heshmat-alavi-fake-iran-mek/>, Gordana Knezevic, "How I Accidentally Spread 'Fake News' And Learned From It," RadioFreeEurope (2018).

4 Dr Gordon Ramsay and Dr Sam Robertshaw, "Weaponising news: RT, Sputnik and targeted disinformation," THE POLICY INSTITUTE CENTRE FOR THE STUDY OF MEDIA, COMMUNICATION & POWER (2018).

5 Kanishk Karan et al., "Facebook removes Russian propaganda outlet in Ukraine," (2020). <https://medium.com/dfirlab/facebook-removes-propaganda-outlets-linked-to-russian-security-services-51f6e2f6b841>.

6 Boris Toucas, "Exploring the Information-Laundering Ecosystem: The Russian Case," Center for Strategic and International Studies (2017). <https://www.csis.org/analysis/exploring-information-laundering-ecosystem-russian-case>.

7 Joseph Zeballos-Roig, "Trump is parroting Vladimir Putin's talking points as he defends pulling US troops from Syria," Business Insider (2019), Julian E. Barnes, Eric Schmitt, and Maggie Haberman, "Trump Said to Be Warned That Giuliani Was Conveying Russian Disinformation," The New York Times (2020).

8 Meleshevich and Schafer, "Online Information Laundering: The Role of Social Media."

9 Toucas, "Exploring the Information-Laundering Ecosystem: The Russian Case."

lic is at the greatest risk, as IL has the potential to exacerbate existing societal tensions. Civil society may well be at risk as well if targeted by HIICs.

#### IV. POLICY OPTIONS

##### 1: Sanction Russia / China / Iran:

The US Intelligence Community's report on the 2020 elections claimed that sanctions likely have contributed to the decrease in Russian election interference activity.<sup>10</sup> Sanctions and respective legal frameworks are in place; therefore, this option provides the most commonly accepted and widely used solution. Whenever a foreign power is suspected of IL, sanction threats can exert pressure on the aggressor.

##### 2: Three-Pronged Cooperative Framework:

###### 2.1: Civil Society and Government Agencies

This option suggests that the INGE and the CISA, in cooperation with non-governmental organisations, establish and maintain a database for verification and monitoring purposes. Initially, the new database should collate information from existing databases, e.g. The European External Action Service's disinformation database, the Global Disinformation Index, Media Bias / Fact Check database, or the Media Ownership Monitor.<sup>11</sup> Afterward, the database should continuously be expanded. The database should contain domestic (EU and US) outlets which tend to support the agenda of hostile foreign states (i.e., Iran, Russia, China), or have already published laundered information, and foreign outlets from where laundered information originates.

As capacity increases, all domestic media could be monitored for the emergence of laundered pieces. The database should cross-reference the publications of monitored foreign and domestic outlets based on syntactic similarities, keywords, references etc. and flag likely laundered pieces. The database should aim to track laundered information throughout its lifecycle, from its conception on foreign, fringe sites (placement), through its spread to more trusted sources (layering) to its adoption by legitimate domestic media (integration), to provide a tool to disrupt the cycle at the second stage.<sup>12</sup>

Government agencies facilitate, fund, and coordinate the NGOs' efforts, whilst NGOs can work to expand the database. Additionally, this policy option recom-

10 National Intelligence Council, "Foreign threats to the 2020 US Federal elections."

11 EU vs Disinfo, "Disinfo database," (2021). <https://euvsdisinfo.eu/disinformation-cases/>, "Media Bias / Fact Check" <https://mediabiasfactcheck.com/>, "Global Disinformation Index," <https://disinformationindex.org/the-index/>, "Media Ownership Monitor," <https://www.mom-rsf.org/>.

12 Kirill Meleshevich and Bret Schafer, "Online Information Laundering: The Role of Social Media,"

mends that the government implement a formal mechanism for information-sharing with news media and social media platforms to improve the effectiveness of the database.<sup>13</sup> The information-sharing platform should also act as an early warning mechanism, notifying news outlets of the emergence of fast-spreading disinformation pieces.

## 2.2: Social Media Platforms

Based on the database, social media platforms should monitor sites of interest and flag, or remove news pieces that contain potentially laundered information, similarly to YouTube's policy on labelling news broadcasters.<sup>14</sup> The formal mechanism for information-sharing facilitates cooperation between government agencies, NGOs, and social media platforms.

## 2.3: News Media

The news media have great responsibility in countering IL. 'The third group of unwitting agents of 2016 were those journalists who aggressively covered the political leaks while neglecting or ignoring their provenance.'<sup>15</sup>

The news media should avoid becoming unwitting agents. Based on the database, news media have to verify their stories, which likely originate from laundered sources.<sup>16</sup>

Following the French example, the media should be publicly petitioned. Following the French example, the media should be publicly petitioned to not share laundered information, and if the legal framework allows, be held responsible if they publish laundered information.<sup>17</sup> Furthermore, it is advised that in cooperation with the government agencies, news media publicise the issue to raise awareness.

## 3: Increase the influence of education and democratic public media:

This is seen in Finland, where the state broadcaster YLE has considerable influence and provides educational material to citizens to debunk misinformation.<sup>18</sup>

13 Elizabeth Bodine-Baron et al., "Countering Russian Social Media Influence," RAND (2018). [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR2700/RR2740/RAND\\_RR2740.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2700/RR2740/RAND_RR2740.pdf). p.56.

14 Geoff Samek, "Greater transparency for users around news broadcasters," (2018). <https://blog.youtube/news-and-events/greater-transparency-for-users-around>.

15 United States Senate Select Committee on Intelligence, "Disinformation: A Primer in Russian Active Measures and Influence Campaigns," (2017). <https://www.hsdl.org/?view&did=802222>.

16 Toucas, "Exploring the Information-Laundering Ecosystem: The Russian Case."

17 Noah Arjomand, "INFORMATION LAUNDERING AND GLOBALIZED MEDIA — PART II: SOLUTIONS?," Center for International Media Assistance (2019), Heather A. Conley, "Successfully Countering Russian Electoral Interference," Center for Strategic and International Studies (2018). <https://www.csis.org/analysis/successfully-countering-russian-electoral-interference>.

18 YLE, "Yle's "troll factory" game unmask how fake news spreads via social media," (2019). [https://yle.fi/uutiset/osasto/news/yles\\_troll\\_factory\\_game\\_unmask\\_how\\_fake\\_news\\_spreads\\_via\\_social\\_media/10972974](https://yle.fi/uutiset/osasto/news/yles_troll_factory_game_unmask_how_fake_news_spreads_via_social_media/10972974).

In addition, contradictory sources are publicly scrutinised. Yet, this brings forth substantive concerns about the legal parameters around information transparency and discussions around individual rights.

## V. RECOMMENDATIONS

We recommend implementing solution #2, as it is a comprehensive framework that engages all stakeholders. IL must be addressed by several actors; solely leaving social media or governments the responsibility to stop disinformation potentially leads to accusations of censorship. Involving NGOs brings legitimacy by preventing the misuse of the database by political actors. Furthermore, while social media companies have control over their platforms, with an ability to filter out or identify suspect accounts and content, government agencies in cooperation with NGOs have the experience and the interest to establish a database.<sup>19</sup> The cooperative approach facilitates transparency with voters, which lessens the effect of disinformation, as exemplified by France's success at countering election interference.<sup>20</sup> Moreover, as the database gradually amasses information, machine learning algorithms could be implemented to make predictions about where laundered information originates from is published.

Unlike options #1 and #3, the three-pronged cooperative framework offers a long-term solution for the issue. Sanctions' effectiveness wanes over time and introduces economic-political tensions to the international arena.<sup>21</sup> Moreover, the 'attribution problem' is another significant drawback of sanctions – it can be challenging to definitively attribute a disinformation campaign to a certain country. Despite the importance of education campaigns, their reach is limited by the fact that universal participation outside public education cannot be ensured.

Moreover, the database doubles as a publicly available fact checking website. Although its primary use is by social media platforms and news media, the verification system should be available to all. The cooperative structure can be implemented within a supranational system. For instance, a cooperative framework between the INGE of the European Union and Cyber and Infrastructure Security Agency (CISA) of the US can seed the creation of an internationally recognised database, which greatly limits the reach of laundered information and disinformation globally.

19 Bodine-Baron et al., "Countering Russian Social Media Influence."

20 Ninon Bulckaert, "How France successfully countered Russian interference during the presidential election," Euractiv (2018). <https://www.euractiv.com/section/elections/news/how-france-successfully-countered-russian-interference-during-the-presidential-election/>, OECD, "Government at a Glance 2013," (2013). [https://www.oecd-ilibrary.org/governance/government-at-a-glance-2013/trust-in-government-policy-effectiveness-and-the-governance-agenda\\_gov\\_glance-2013-6-en](https://www.oecd-ilibrary.org/governance/government-at-a-glance-2013/trust-in-government-policy-effectiveness-and-the-governance-agenda_gov_glance-2013-6-en).

21 Richard N. Haass, "Economic Sanctions: Too Much of a Bad Thing," Brookings (1998). <https://www.brookings.edu/research/economic-sanctions-too-much-of-a-bad-thing/>.

Capacity will likely emerge as the primary issue. Governments have to allocate significant funds and organisational capacity to implement the solution. Implementing the solution in a supranational framework could mitigate the issue vis-a-vis capacity. Coordination between stakeholders can also be problematic. Colliding vested interests and bureaucratic hurdles can make the process more challenging. New legislation may be essential in providing a legal framework for the cooperation. The credibility of the database can be contested, especially by citizens who are most susceptible to disinformation. Lastly, involving different Non-Governmental Organisations and civil society can diversify the authorship of the database, improving its legitimacy.

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# 4. 3. Strengthening Transatlantic Ties Through Vaccine Diplomacy

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## I. EXECUTIVE SUMMARY

This policy memo provides an urgent and feasible solution to the growing division between the United States and the European Union (EU). The most efficient policy is to pursue greater cooperation over the proposed TRIPS vaccine patent waiver. This will demonstrate a unified commitment to global pandemic efforts, the ability to influence global health policy, and strengthen relations between the United States and the EU.

## II. INTRODUCTION

The COVID-19 pandemic has brought additional strain to the transatlantic alliance at a time when both the U.S. and the EU have faced a rise in protectionism. While both the U.S. and EU's vaccine rollouts have proved promising within recent weeks, major questions remain regarding "vaccine diplomacy" and global vaccine distribution. The emergence of new mutated strains of the coronavirus from countries with low vaccination rates like India has shown that timely vaccination of all countries is essential to ending the pandemic.<sup>1</sup> With neither the U.S. nor Europe taking a strong role in the onset of the pandemic, the current debate over equitable vaccine distribution could provide both powers with an opportunity to fill the leadership vacuum.

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1 Jim Reed, "Covid: Indian Variant 'Now Dominant' In The UK," BBC News, June 3, 2021, <https://www.bbc.com/news/uk-england-57287112>.

### III. PROBLEM DESCRIPTION

The COVID-19 pandemic has had detrimental effects on international trade and the global supply chain. Protectionism, more specifically, intellectual property protection, has been the biggest challenge in tackling the COVID-19 pandemic. President Biden continues to embrace the “Buy American” policy to counter China as a rising power in the global economy.<sup>2</sup> The U.S. and the EU also continue to have disputes over steel and aluminum tariffs imposed by the Trump administration.<sup>3</sup> Moreover, the transatlantic alliance has not united on whether to waive the patent protection for COVID-19 vaccines or not.

During the pandemic, the leadership roles of the U.S. and the EU have been called into question. Under the Trump Administration, the importance of and the need for international cooperation was absent, the biggest lapse of US leadership since World War II.<sup>4</sup> Adding to which, Trump announced the withdrawal from the World Health Organization in the midst of a pandemic. On the other hand, Ursula von der Leyen, President of the European Commission, has been criticized for the vaccine supply shortages in the European Union, which caused member states to seek vaccines from Russia and China without approval from the EU.<sup>5</sup>

Moreover, the United States and several European countries have been diverging on the TRIPS waiver, which was proposed to forgo certain intellectual property protections for COVID-19 vaccines.<sup>6</sup> The TRIPS waiver was originally proposed by South Africa and India in October 2020 and recently received endorsement from the United States. Currently, the European Union is willing to discuss supporting the proposal with its member states like France, Spain, and Italy, expressing their support.<sup>7</sup> Meanwhile, Germany, the EU’s biggest economy and home to BioN-Tech, rejected the proposal claiming it is not patent protection, and instead limits

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2 “Remarks by President Biden in Address to a Joint Session of Congress,” The White House (The United States Government), April 29, 2021,

3 Rajesh Singh and David Lawder, “Biden’s EU Trade Dilemma: More Pain for Harley, Distillers or Back off Metals Tariffs?,” Thomson Reuters, April 29, 2021,

4 “The Coronavirus Stress Test Is Just Beginning for the Transatlantic Alliance,” The German Marshall Fund of the United States, April 17, 2020, <https://www.gmfus.org/blog/2020/04/15/coronavirus-stress-test-just-beginning-transatlantic-alliance>.

5 Emilio Casalicchio and Jacopo Barigazzi, “New Global Vaccine Fight Follows Old Diplomatic Playbook,” POLITICO, March 26, 2021, <https://www.politico.eu/article/new-global-vaccine-fight-follows-old-diplomatic-playbook/>.

6 “Statement from Ambassador Katherine Tai on the Covid-19 Trips Waiver,” United States Trade Representative, accessed June 3, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-covid-19-trips-waiver>.

7 Giovanna De Maio, “EU Learns from Mistakes on Vaccines,” Brookings, May 20, 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/05/20/eu-learns-from-mistakes-on-vaccines/>.

production capacity and quality standards that cause vaccine shortages.<sup>8</sup> The U.S. and the EU need to reach a consensus regarding the TRIPS waiver to strengthen their transatlantic partnership and resume their leadership positions on the world stage.

#### IV. PROBLEM DESCRIPTION

The EU should affirm its commitment to the transatlantic relationship over its relationship with China in the form of strategizing a COVID-19 vaccine trade and investment agreement.<sup>9</sup> Such a trade agreement could emphasize the U.S.'s ability to provide more COVID-19 aid to underdeveloped countries within the EU, where such a deal would be most needed and would arguably have the greatest impact. The agreement would also provide solid footing between the U.S. and the EU during the early stages of the Biden administration and the uncertainty surrounding the German and French elections occurring over the next 12 months. Finally, the agreement would also demonstrate the EU's commitment towards multilateralism and international cooperation.

Another potential option for the US and the EU would be to establish a “pandemic preparedness club” among G7 member states.<sup>10</sup> A club of this nature would offer substantial benefits to those who join it, including funding and information sharing regarding best practices. However, the club would also be strictly voluntary by nature, thus preserving the integrity of member states' rights to privacy while simultaneously incentivizing large-scale cooperation.

One final option that the EU and US could pursue is greater dialogue surrounding the issue of the TRIPS Waiver for COVID-19 vaccines.<sup>11</sup> The EU and US have staked out opposing positions, with EU member states split on whether to waive intellectual property rights for COVID-19 vaccines and U.S. President Biden announcing his endorsement of the waiver. However, both have displayed solidarity in donating millions of vaccines through the COVAX program.<sup>12</sup> Such solidarity

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8 “Germany Rejects U.S. Proposal to Waive Patents on COVID-19 Vaccines,” Reuters, May 6, 2021, <https://www.reuters.com/business/healthcare-pharmaceuticals/germany-opposes-us-plan-waive-patents-covid-19-vaccines-2021-05-06/>.

9 Michael Greenwald and Michael Margolis, “Can Vaccine Diplomacy Shape a New World Order?,” Belfer Center for Science and International Affairs, December 2, 2020, <https://www.belfercenter.org/publication/can-vaccine-diplomacy-shape-new-world-order>

10 Anthony Dworkin, “Built to order: How Europe can rebuild multilateralism after covid-19,” European Council on Foreign Relations, April 1, 2021, <https://ecfr.eu/publication/how-europe-can-rebuild-multilateralism-after-covid-19/>

11 “Nearly 400 MEPs and MPs Join Chorus of Voices Calling for a TRIPS Waiver on COVID-19 Vaccines,” Human Rights Watch, April 27, 2021, <https://www.hrw.org/news/2021/04/27/nearly-400-meps-and-mps-join-chorus-voices-calling-trips-waiver-covid-19-vaccines#>.

12 David Meyer, “Europe joins the U.S. in pledging major vaccine donations to developing countries,” Fortune, May 21, 2021.

would therefore allow for a potential avenue of dialogue and cooperation between the world's current leaders in COVID-19 vaccine manufacturing and distribution.

## V. RECOMMENDATIONS

The U.S. and the EU should pursue greater cooperation over the proposed vaccine patent waiver. The recent endorsement of the IP waiver by the BRICS group shows the dominance of this position in the developing world.<sup>13</sup> Backing the proposal would be a way for the Biden Administration to show commitment to global pandemic efforts.

However, Biden's support of the proposal has strained relations with the EU. While some leaders of the EU have come out strongly against any waivers, others such as Emmanuel Macron have shown a willingness to consider the proposal.<sup>14</sup>

If they continue to have diverging positions, it could weaken the global leadership roles of both regions. The US may further sour an already strained relationship with the EU at a time that was optimum for reconciliation post-Trump Administration. If the EU is one of the few regions to show strong opposition to the patent waiver proposal, then it could see its influence on health policy diminish and may lose out on the moral high ground. The US and the EU should instead hold their own informal talks to find a common position to take to the WTO. Since Biden's announcement, there have been signs that some member states are considering the proposal. If the US can convince the EU to support the current proposal, or a modified proposal that addresses EU concerns, it will be able to prevent further straining of transatlantic relations while reaffirming its commitment to multilateralism.

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14 "Macron Says France Will Help Africa Make More COVID-19 Vaccines," *Aljazeera.com*, May 28, 2021, <https://www.aljazeera.com/news/2021/5/28/macron-says-france-will-help-africa-make-more-covid-19-vaccines>.

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