www.jcer.net

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Editors

Maxine David
Simona Guerra

ISSN 1815-347X

Contents

Contributors

Research Articles

Commentary

Book Reviews

Contributors

Maxine David *University of Surrey*

Gitta Glüpker *Koç University*

Simona Guerra *University of Leicester*

Miguel Haubrich-Seco *Charles University, Prague*

Sarah Kilpeläinen *University of Tampere*

Benjamin Leruth *University of Edinburgh*

Andrey Makarychev *University of Tartu*

Eleonora Poli *City University London*

António Raimundo *University of Minho*

Alexander Sergunin *St Petersburg State University*

Lena Sucker *Loughborough University*

Simon Usherwood *University of Surrey*

Zampia Vernadaki *University College London*

Colin C Williams *University of Sheffield*

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Effectiveness of EU Conditionality in the Western Balkans: Minority Rights and the Fight Against Corruption in Croatia and Macedonia

Gitta Glüpker *Koç University*

Citation

Glüpker, G. (2013). 'Effectiveness of EU Conditionality in the Western Balkans: Minority Rights and the Fight Against Corruption in Croatia and Macedonia'*, Journal of Contemporary European Research*. 9 (2), pp. 223-241.

First published at: www.jcer.net

Abstract

EU candidate countries must prove their respect for democracy and the rule of law to be eligible for EU membership. The Commission administers their accession processes following the principle of conditionality. This paper examines how domestic conditions and different aspects of the conditionality principle affect policy outcomes. It reviews the arguments made in the literature on EU conditionality and applies them to the policy areas of minority rights and the fight against corruption in Croatia and Macedonia. Both countries have been subjected to the Commission's conditionality while their democratic achievements differ substantially. Thereby, the two countries offer a fruitful ground to evaluate the lessons drawn from the 2004-07 enlargement. While previous studies have remained quite unclear about the relative importance of domestic and EU-related determinants of effective conditionality, I argue that domestic influences vary strongly across the researched policy areas. In comparison, the political-legal instruments of the Commission show clear impacts on policies in candidate countries. Material incentives offered by the EU are only effective within the early phases of the accession process.

Keywords

EU enlargement; conditionality principle; minority rights; corruption; Croatia; Macedonia

---

Enlargements belong to the milestones in the history of the European Union (EU). At the same time, they have become recurring events as after the application of more than 25 countries the only accession in sight is the Croatian one. Whether accession candidates practice the same values of liberal democracy as EU member states has been a pressing point of discussion among politicians and the European public for decades. In 1993, the European leaders established the Copenhagen criteria stating that 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities….' (European Council 1993: 1)

Candidate countries have to comply with a catalogue of demands which are regularly reviewed by the European Commission. The conditionality principle foresees support and progress towards accession only for candidates which conform to the EU demands. The years prior to the 2004-07 enlargement has clearly shown that the conditionality principle alone does not lead to the same results: candidates varied greatly in their responses to EU pressure for reforms. In regards to the concrete factors which shape the effectiveness of conditionality, there is a considerable amount of research based on the 2004-07 enlargements and on Turkey which suggests various determinants. They are either located in the field of domestic politics of the candidates or at the EU level.

This paper assesses the role of domestic and EU-related factors for effective conditionality in Croatia and Macedonia. It addresses how far the lessons from the 2004-07 enlargement are valid for recent candidate countries from the Western Balkans. Firstly, it presents a short literature review to identify proposed determinants for effective conditionality. The paper continues with a brief presentation of the selected cases, Croatia and Macedonia, and the policy fields of minority rights and the fight against corruption. The performance of Croatia and Macedonia in these policy fields is presented based on information from Transparency International, the Minority Rights Group International (MRGI) and the International Crisis Group. To start with, domestic determinants of effective conditionality are investigated. Secondly, aspects of the Commission's conditionality strategy which have been identified as relevant in the existing literature are analyzed in terms of their influence on the two policy areas in Croatia and Macedonia. While previous studies have remained quite unclear about the

relative importance of domestic and EU-related determinants of effective conditionality, I argue that domestic factors are strongly dependent on the respective policy fields. In comparison, the political-legal instruments of the Commission show clear impacts on policies in candidate countries. Material incentives from the EU are only effective within the early period of the accession process. Over time, they lose their influence on developments in the researched policy areas.

THEORETICAL FRAMEWORKS

The principle of conditionality serves as the basic guideline for the Commission which administers the applications for EU membership. Countries must fulfil the Copenhagen criteria and a set of enlargement principles to be eligible for pre-accession assistance (Kochenov 2008: 21). The eventual EU accession depends on the adoption of the *acquis communautaire* (Kochenov 2008: 39). In the case of non-compliance, the EU foresees limited responses: beyond the denial of rewards, the most severe effort is the suspension of the existing agreements (Schimmelfennig et al. 2003: 496). The conditionality principle was developed in reaction to the number and nature of candidate states in the 1990s and to the growing complexity of EU law (Kochenov 2008: 50). Its legal enforcement stems from a 1998 Council Regulation[1] which made the allocation of financial assistance dependent on progress for the application and enlargement criteria. Existing research on the EU's conditionality suggests that the prerequisites for its effectiveness are located both on the domestic level of candidates and on the EU-level. Belonging to those who emphasize the importance of EU-strategies, Dimitry Kochenov (2008) describes a hierarchy of legal-political instruments which vary according to their effectiveness. The Commission administers accession processes by evaluating the progress of candidates and allocating assistance to them. It selects the combinations of legal-political instruments to be employed and the degree of pressure to be exerted on candidates. According to Kochenov, the Commission's choice is crucial 'to bring about various levels of compliance' (Kochenov 2008: 79). If political representatives at the highest level articulated the "absolute imperative" for candidates to undertake reforms, this is most promising to result in the suggested changes. A lower level of pressure follows from the discussion of an issue in all documents related to the progress evaluation of the candidate country. An acknowledgement of the issue in the progress reports and under the short-term priorities of the accession partnership is a weaker way to press for changes. A still lesser effect can be expected from the treatment of the issue in the progress reports and the non-prioritized areas of the accession partnerships. The weakest pressure is created by the discussion of an issue in the progress reports only (Kochenov 2008: 79-80). In brief, Kochenov (2008) indicates that the relevance of the Commission's representative or the document who or which articulates the need for policy changes affect conditionality effectiveness.

Another factor related to EU strategies stems from the "reinforcement by reward" logic (Schimmelfennig et al 2003: 496). Schimmelfennig repeatedly argues that material incentives are crucial for democratization (2003 et al: 514; Schimmelfennig 2005: 828-829). Especially in domestic contexts which are unfavourable to liberal reforms, material incentives create a "lock-in-effect" that eventually leads to the establishment of liberal rules (Schimmelfennig 2005: 828-829; see also Vachudova 2005: 106-107). Thus, a second variable for the following analysis is the size of material assistance granted by the EU to candidate countries. Milada Anna Vachudova argues that the EU's "leverage" (Vachudova 2005: 4, 106) over candidate countries and the degree of domestic political competiveness determine compliance with EU expectations. Political competiveness is crucial because it delimits the room of national governments to evade a substantial compliance with EU demands to their own advantages (Vachudova 2005: 14). If the opposition has scrutiny over state institutions and if a political turnover through elections is possible, half-hearted reforms and rent-seeking are more costly for the government. In this context, a government will tend to conform to the EU's expectations. This logic

applies especially during political and economic transformations: following the breakdown of an old regime, the next ruling elite has vast influence on the new rules and multiple opportunities to gain advantages at the expenses of those who are excluded from government. If the first government originates from strong pro-liberal forces, an establishment of liberal democratic rules is more likely (Vachudova 2005: 13 - 17). As soon as political competiveness is in place, the reformation of the old communist party becomes important to uphold the competiveness for the future (Vachudova 2005: 19).

Consequently, Vachudova's work points at two pillars of political competiveness: a strong pro-liberal opposition at the outset of regime change and a re-orientation of the post-communist parties. Support for Vachudova's view on party orientations is provided by an argument of Schimmelfennig on party systems. He differentiates between liberal party systems where the major parties are all reform-minded, mixed party systems where a part of the major parties are reform-minded but others follow nationalist-authoritarian policies and anti-liberal constellations where all major parties reject liberal policies as expected by the EU. In the first case, a smooth transition to liberal democracy is performed due to the low political costs for the government; in the last case, transition does not materialize and EU conditionality remains ineffective. In the mixed constellation, a stop-and-go transformation is likely due to the struggle between the major parties' convictions. With some delay the above-mentioned "lock-in-effect" leads to the establishment of liberal rules (Schimmelfennig 2005: 828-829). Thus, the following analysis considers the political competiveness in candidate countries and the orientation of major political parties.

Finally, a determinant for effective conditionality can be derived from Franck Schimmelfennig, Stefan Engert and Heiko Knobel (2003). They point at the domestic costs of compliance for national governments: if the 'EU conditions negatively affect the security and integrity of the state, the government's domestic power base, and its core political practices for power preservation' (Schimmelfennig et al. 2003: 498), compliance will become less likely. The importance of the respective policy area in terms of public sensitivity and party politics constitutes a third domestic factor to be taken into account.

ANALYTICAL FRAMEWORK

This paper conceptualizes effective conditionality as the introduction of policy changes by candidate countries which were previously demanded by the Commission. Former studies have detected a number of factors which allegedly shape the effectiveness of conditionality. The research results are mostly based on case studies of countries of the 2004-07 enlargement and on Turkey. The question arises whether the proposed determinants are equally useful to explain the effectiveness of conditionality on more recent candidate countries and which determinants may the most relevant ones.

Comparing the cases of current candidate countries should give some insights in this matter. In order to examine the relation between the proposed variables and effective conditionality in depth, the analysis will be restricted to Croatia and Macedonia. These two countries share a similar past: they were both former SFRY (Socialist Federal Republic of Yugoslavia) members and experienced sudden regime break-downs. Both signed Stabilization and Association Agreements (SAA) with the EU in 2001. However, they followed quite different developments which resulted so far in substantially different outcomes. Croatia applied for EU membership in 2003. Macedonia followed one year later with its application. In 2004, Macedonia's SAA entered into force and Croatia received its status as a candidate. Due to deficient cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), Croatia's accession negotiations began only in October 2005. In the same year its SAA entered into force. Macedonia received the candidate status in December 2005. While Croatia is an acceding country

since January 2012 with the date of accession set for July 2013, the official negotiations with Macedonia have not begun yet.

Two policy areas have been chosen to analyze the effectiveness of conditionality on Macedonia and Croatia in depth: minority rights and the fight against corruption. This choice was made for three reasons: firstly, they are directly related to the basic expectations towards candidate countries formulated in Article 49 of the Treaty on the European Union (TEU): 'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union…' Article 2 TEU lists the 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. Secondly, the two fields were problematic on the accession agenda of both countries while, thirdly, they were not genuinely affected by particular problems which shaped the smoothness of the general accession process of Macedonia and Croatia respectively. If this study aimed at analyzing the overall effectiveness of conditionality, it should pay more careful attention to Macedonia's disagreement with Greece over its official name, Croatia's border dispute with Slovenia and the problematic cooperation of Croatia with the ICTY. By basing the study on two clearly delimited policy fields, the effects of these special issues on the dependent variable should be restricted to a minimum. Thereby, conclusions on the effects of the variables specified above are possible.

Recent accounts of established international organizations such as Transparency International, the Minority Rights Group International (MRGI) and the International Crisis Group will serve to evaluate the progress made in the areas of corruption and minority rights both in Croatia and Macedonia. The paper's emphasis lies on the period from 2001 marked by the signature of the SAAs. As the literature review has shown, the suggested determinants of effective conditionality either belong to the realm of domestic politics of the candidate countries or to the strategies that the European Commission employs. Regarding the first group of variables, three hypotheses could be derived.

> *H_1: The more competitive the political system of a candidate country is, the more responsive this country will be to reform demands expressed by the Commission.*

The Polity IV project of the Centre for Systemic Peace regularly evaluates political competiveness. The respective variable, labelled XRCOP, captures the competitiveness of executive recruitment for Croatia and Macedonia since 1991. Additionally, the frequency of turnovers in governmental coalitions in both countries since their independence is taken into account.

> *H_2: If all major political parties are supportive of the EU membership bid of their country and of the required policy changes, conditionality will be more effective. If the major political parties are divided over the question of EU membership, responsiveness to conditionality will be weaker and policy changes are less likely to occur.*

For this hypothesis, information on party orientations of the major parties in each country serves as a basis. It is difficult to evaluate party positions on corruption because an, at least rhetorical, consensus on corruption's turpitude is to be expected. Therefore, the analysis on this aspect will focus on the stance of the parties on the EU accession process in general and on minority issues.

> *H_3: The more sensitive required policy changes are for the perceived integrity of the state and the power preservation of the ruling party, the less responsive the government will be to the reform pressure exerted by the Commission.*

Sensitivity of required policy changes is the least measurable aspect of the following analysis. Information can be derived from works on party orientations and studies on

public opinion. Therefore, secondary literature and Eurobarometer surveys are employed to understand this dimension of effective conditionality.

Regarding determinants of effective conditionality which are related to the strategy employed by the Commission, two hypotheses are under scrutiny:

> *H_4: The more relevant the Commission document which pressures for policy changes in a candidate country, the more likely the targeted government will react.*

In order to evaluate the reform pressure exerted by the Commission, the SAAs for Croatia and Macedonia and their accession partnerships from 2004, 2006 and 2008 are analyzed regarding criticism on the fight against corruption and minority rights. The volume of criticism in each document and the attribution to short-term or mid-term in the accession partnerships is the main interest of this exercise. Additionally, an MRGI evaluation (Bokulic and Kostadinova 2008) of the consistency in Commission's progress reports on minority rights has been taken into consideration.

> *H_5: The amount of material assistance which the Commission allocates to a candidate country stands in positive relation to the responsiveness of the country.*

As it is difficult to attain figures from comparable records across different time periods and countries, figures from the year 2000 onwards will be taken into account. Additionally, it was impossible during the research for this analysis to determine the exact support for measures in the fight against corruption and for minority right; therefore, the overall yearly support from the main EU programs will be considered.

PERFORMANCE IN THE FIGHT AGAINST CORRUPTION

Transparency International's Corruption Perception Index (CPI) may serve as one of the most objective instruments to trace the development of Croatia's and Macedonia's performance in the area of corruption. Their scores from 1999 onwards, displayed in Table 1, show that corruption flourished in Croatia especially before 1998.[2] This happened due to a power vacuum following the SFRY's end which elites used to support their clientelist networks (Vachudova 2009: 46). From the beginning of Transparency International's observations on Croatia to until 2001/02, the country made initial progress. Then perceptions of corruption increased until 2006.

Table 1: CPI scores for Croatia and Macedonia (Transparency International 2010a; numbers in brackets present the country's position on the international ranking)

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Croatia	2.7 (74)	3.5 (51)	3.9 (47)	3.8 (51)	3.7 (59)	3.5 (67)	3.4 (70)	3.4 (69)	4.1 (64)	4.4 (62)	4.1 (66)	4.1 (62)
Macedonia	3.3 (63)	.	.	.	2.3 (106)	2.7 (97)	2.7 (103)	2.7 (105)	3.3 (84)	3.6 (72)	3.8 (71)	4.1 (62)

A clearly positive turn occurred between 2006 and 2007 when Croatia reached scores above 4.0. Both the major 2007 investigation "Operation Maestro" against the Croatian State Privatization Funds and a growing activity of the Office for the Prevention of Corruption and Organized Crime as a whole (European Commission 6 November 2007:

50) may have contributed to this change. Since 2009, Croatia kept a stable CPI score of 4.1 which belongs to its best CPI-evaluations. Nonetheless, this is still below the scores of most EU countries. Furthermore, an improvement of 1.4 points on a 10-point scale presents a rather small step for a period of more than a decade.

Table 1 also displays Macedonia's performance in the fight against corruption. The country initially scored better than Croatia (3.3) but during the ethnic crisis of 2000-2001, the situation deteriorated. From 2003 onwards Transparency International's assessments improved, and from 2004 to 2006 they marked stagnation (at 2.7); in 2010, Macedonia eventually caught up to Croatia with a score of 4.1. The Foundation Open Society Institute in Macedonia (FOSIM) suggests some explanations for the comparably high perceptions of corruption in Macedonia during the 2000s. The problems faced by business elites, citizens and state institutions during the liberalization process in the 1990s offered both opportunities and incentives for corruption at a low level (FOSIM 2004: 135); and weak administrative capacities played an important role in this regard (Vachudova 2009: 46). In Macedonia, on the level of "grand corruption" (Budak 2006: 38), it is claimed to be closely related to the ethnic situation. This link accounts for the increase of corruption between 1999 and 2003: the repression of Albanian societal segments from the SFRY-era onwards and the escalation of tensions in 2000-01 may have given the necessary incentives for using access to resources for particularistic interests (Hislope 2001).

In conclusion, Macedonia entered the 2000s with a perceived level of corruption comparable to Croatia. Then the situation in Macedonia deteriorated to an extent that Croatia, despite its own growth of corruption until 2006, performed steadily better than Macedonia. Only recently, the countries are both on the same level of corruption. This level constitutes their so far biggest achievement in the fight against corruption but is still below European standards.

PERFORMANCE IN THE AREA OF MINORITY RIGHTS

In Croatia, the biggest minority are ethnic Serbs. Their share of the overall population was 4.5 per cent according to the 2001 census. Bosnians constitute 0.47 per cent of the overall population. Albanians accounted for 0.3 per cent and citizens with Roma origin for 0.47 per cent (MRGI 2003: 4). Ethnic relations are mainly problematic between Croats and Serbs. In the SFRY, Tito's "policy of full ethnic equality" (MRGI 2003: 8) suppressed many ethnic tensions; they broke out with the declaration of independence by Croatia in 1991 against the preference of the Serbian SFRY leadership. In 1995, the Erdut agreement between the Croat government and the Serbian authorities regulated the future integration of Serbian communities into the Republic of Croatia. However, the agreement was not fully respected by Croat authorities (MRGI 2003: 10, 11). Additionally, the Roma in Croatia suffer from long-standing discrimination (MRGI 2003: 13). In the SFRY, poverty, social exclusion and the absence of a common standard language prevented their benefitting from the comparably generous Yugoslavian laws on minorities (MRGI 2003: 8, 13).

After the end of the Tudjman era, Croatia introduced a Constitutional Law on National Minorities in 2002. As the MRGI reported in 2008, 'Croatia has a generally good legal framework for the protection of minorities. However, implementation of this law has been patchy, often due to lacking political will.' (MRGI 2008) The dialogue between regional administrations with the Councils of National Minorities and the appointment of minorities to jobs in the state bureaucracy has improved. Notwithstanding, the private sector employment of Serbs and their representation rate in the bureaucracy remain low. Access to the judiciary and the enforcement of property rights following the wars of the 1990s remain problematic (MRGI 2008). The situation of the Roma minority continues to be problematic in all areas. A National Programme for Roma has been

introduced in 2003 but it 'has been extensively criticized for its lack of concrete input from the Roma community. As the Programme is also very poorly funded, it remains questionable whether it was conceived as a genuine attempt to integrate Roma. (MRGI 2008). In the education sector, agreements on common history textbooks were reached. The use of minority languages remains unsettled.

In Macedonia, the biggest minorities are Albanians (25 per cent) followed by Turks (4 per cent), Roma (3 per cent) and Serbs (2 per cent) according to the 2002 census (Republic of Macedonia 2005: 34). The main social cleavage consists in the ethnic separation between Macedonians and Albanians. Although Tito's ethnic policies applied to Macedonia as it did to Croatia, the Albanian community suffered from discrimination and repression in the 1980s (Hislope 2001: 11). After the independence of Macedonia in 1991, Albanians demanded their recognition as the second constituent nation of Macedonia. The introduction of Albanian as the official language, the right of education in the mother tongue on all levels, a proportionate public representation and greater local autonomy belonged to their further expectations (Hislope 2001: 34). In 2001, the ethnic divide escalated into an armed conflict between the Albanian National Liberation Army (NLA) and Macedonian security forces (Willemsen 2002: 734). The Ohrid Framework Agreement, signed in august 2001, settled the conflict and laid the foundation for a new coexistence of the two groups. In return for the disarmament of the NLA, the Macedonian state recognized Albanian as a second national language, agreed to a stronger representation of Albanians in public positions and to decentralization reforms.

According to a recent report by the International Crisis Group, the Ohrid Framework Agreement has been implemented but Albanians still think the process 'has been too slow and has not translated into a real commitment to create a multi-ethnic state in which they have equal decision-making power.' (International Crisis Group 2011: 14). Albanians have entered more posts in the bureaucracy but majorly for positions without authority (International Crisis Group 2011: 15). Reactive developments are reported for the education sector where a disagreement is ongoing about the revision of historical textbooks which, after an extension of parts on Albanian history, shortened these chapters in a 2008 revision (International Crisis Group 2011: 18). Regarding several uncompleted commitments from the Ohrid Framework agreement, the International Crisis Group finds that frustration and more radical political attitudes among Albanians are on the rise (International Crisis Group 2011: 20).

In summary, Croatia which looks back at a long ethnic war during the 1990s managed to settle most of the legal issues for minority rights at the beginning at the 2000s. At that point in time, Macedonia began to face ethnic conflict after having been historically less charged with ethnic violence. Guided by the Ohrid Framework Agreement, Macedonia undertook legal reforms. According to reports of international organizations, more substantive gaps in the guarantee of minority rights seem to remain in Macedonia than in Croatia.

DOMESTIC FACTORS AND EU CONDITIONALITY

> *H_1: The more competitive the political system of a candidate country is, the more responsive this country will be to reform demands expressed by the Commission.*

Political competiveness is one of the measures of the Center for Systemic Peace's Polity IV project. The project included both Macedonia and Croatia from 1991 onwards. Polity IV data distinguishes between selective, elective and dual modes for the recruitment of executive members. For the first category, examples are 'rigged, unopposed elections; repeated replacement of presidents before their terms end; recurrent military selection of civilian executives; selection within an institutionalized single party; recurrent incumbent selection of successors; repeated election boycotts by the major opposition

parties, etc.' (Center for Systemic Peace 2011: 21). In contrast, elective patterns of executive recruitment are defined as 'competitive elections matching two or more major parties or candidates.' (Center for Systemic Peace 2011: 22)

According to the Polity IV data, Croatia lacked political competition between 1991 and 1998. In those years, Macedonia's modus was categorized as dual, i.e. as a mix of competition with selective elements. While Croatia developed from a completely uncompetitive system during to 1990s over a dual system from 2000 to 2004 to a competitive system from 2005 onwards, Macedonia passed from dual to competitive as early as in 2002 (Center for Systemic Peace 2010). An additional look at the turnovers in government supports this observation; turnovers in government constitute a core element of Vachudova's concept of competiveness. The first change of political rule for Croatia occurred in 2000 when the post-communist party, the Social Democratic Party (SDP) came to power for the first time since the country's independence. It remained in power until 2003. Since then, the Croatian Democratic Union (HDZ) is in office. With the end of the Tudjman era in 2000, coalition constellations frequently changed. For Macedonia, the patterns of government coalitions support the argument based on Polity IV data that political competiveness has been slightly stronger than in the case of Croatia. Macedonia always had coalition governments unlike Croatia which was dominated by one party until 2000. Coalition constellations changed for the first time in 1996. Unlike Croatia's HDZ, the nationalist oriented Internal Macedonian Revolutionary Organization–People's Party (VMRO-DPMNE) remained in opposition during the first years.

In conclusion, Macedonia reached a high level of political competiveness three years earlier than Croatia. It experience with changing government coalitions is even longer. While anti-communist, nationalist forces dominated Croatian politics in the first decade after the SFRY's break-down, their Macedonian equivalent came to power seven years after the country's independence.[3] To estimate the influence of these developments on anti-corruption policies and minority rights, it is indispensable to look at the chronology of significant changes in the two policy areas and the rise of competiveness. The temporal comparison shows that the significant improvement of minority rights occurred both in Macedonia (2001-02) and Croatia (1990s and 2002-03) before political competiveness became manifest (2003 and 2005 respectively). Additionally, the perceived corruption in Croatia increased until 2006, unhindered by the greater competiveness.

> *H_2: If all major political parties are supportive of the EU membership bid of their country and of the required policy changes, conditionality will be more effective. If the major political parties are divided over the question of EU membership, responsiveness to conditionality will be weaker and policy changes are less likely to occur.*

Croatia's main political parties are the Croatian Democratic Union (HDZ), which represents an 'anti-communist umbrella group mobilizing on the basis of nationalist and populist appeals' (Jou 2010: 100), and the leftist Social Democrat Party (SPD) which emerged from the former communist party. Until the year 2000, Croatia stood under the dominance of the HDZ and its leader Franjo Tudjman. The Croatian sociologist Pusic describes the party's anti-democratic attitude from those years: 'Some of the nationalists who headed the HDZ had been persecuted by the communist regime, but that experience did not make them into democrats. Advocating democratic changes and implementing such democratic institutions as free multiparty elections helped them come to power, but democracy was not their goal or the focus of their program.' (1998: 116) Regarding Croatia's relations to the EU, the HDZ's position was mixed. On the one hand, the party demonstrated hostility, based on the alleged deficient EU support for Croatian independence and the EU's perception of Croatia as an Balkan country which was understood as exclusive to being European (Jovic 2006: 89) One the other hand, the

HDZ supported the EU membership perspective rhetorically (Haughton and Fisher 2008: 449).

Concerning the rights of minorities, the HDZ under Tudjman promoted a public discourse based on the alleged threat of various 'others'. In terms of minorities, these were the ethnic Serbs (Haughton and Fisher 2008: 441-442). Following Tudjman's death, the social democrat SDP won the 2000 general elections. The "reformed communists" (Jovic 2006: 86) opened a new narrative on EU affairs. They led away from the former hostility to an EU-friendly position. Policies were designed to improve the situation of minorities. Dejan Jovic argues that these changes were triggered by the emerging EU-membership perspective, observations on other EU candidate countries, and by the deterring development of non-EU candidate Serbia (2006: 92). Soon after, the failure of the government to extradite the military officials Gotovina and Bebetko (Jovic 2006: 97) to the ICTY created uncertainty over the SDP's commitment to Croatia's EU membership plans. A substantial shift in the political landscape occurred in 2003 with the HDZ's victory at the general elections. Some forces within the HDZ had identified a need for political realignment with the 2000 electoral setback. These forces, represented by the new prime minister Ibo Sanader, committed themselves to a pro-EU course and to cooperation with the ICTY (Jovic 2006: 88, 98). Sanader presented himself as a reformer who eschewed positive references to Tudjman, extremist coalition partners and who entered a government coalition with the Independent Democratic Serb Party (SDSS) (Jovic 2006: 88, 99).

In Macedonia, the political arena has been dominated since the country's independence by three major actors which are arranged along a communist-post-communist divide and along ethnic lines (Willemsen 2002: 731-732, 751-752). The Social Democrat Union of Macedonia (SDSM) remained in power after the break-up from the SFRY until 1998. It continued the moderate policies towards ethnic minorities in Macedonia that it had inherited from the SFRY era. From 2004 to 2006, the SDSM led a coalition government which committed itself to the EU accession process of Macedonia, submitting the country's application for EU membership in 2004 (Willemsen 2006: 93). It also initiated a number of relevant reforms required by the SAA. Generally, the SDSM is considered as the moderate alternative to the VMRO-DPMNE in a party system that is mainly divided over issues of nationalism and ethnicity (Willemsen 2006: 88, 95).

The second major party, the VMRO-DPMNE, distinguished itself as a hard-liner on ethnic and nationalist issues (Willemsen 2006: 84) during the 1990s under the leadership of its founder Liubčo Georgievski (Willemsen 2006: 95).[4] Georgievski led the first two VMRO-DPMNE governments from 1998 to 2002. He defended a model of ethnic partition of Macedonia opposed to the maintenance of ethnically mixed communities protected by the Ohrid Framework Agreement (Georgievski 2003 in Bieber 2004: 10). During his term in office, the widely peaceful coexistence of Macedonians and Albanians developed tensions which ended with the Albanian insurgence in 2000, bringing the country to the brink of civil war. The Albanian parties constitute the third strand in the Macedonian party system. Until 1998, the Party for Democratic Prosperity (PDP) represented the Albanian population in Macedonia. It complied with the policies of the SDSM, based on material benefit calculations (Hislope 2004: 18-19). From 1998 to 2002, the Democratic Party of Albanians (DPA) took over the representation of Albanians in the government. The DPA was less open to compromise with its coalition partner than its predecessor. It successfully demanded a number of pro-Albanian policies in the coalition agreement which later supported the NLA's insurgence (ibid: 20; Willemsen 2006: 84).

An important shift in the orientation of the VMRNO-DMPNE and the Albanian political segment occurred after the VMRNO's defeat at the 2002 general elections. Nikola Gruevski took over the party's presidency and initiated a political reorientation towards the centre, thereby leading away from the former nationalism and towards softer positions on minority rights (Willemsen 2006: 95). As for the Albanians, the less radical DUI won the elections and was included in the new government (Willemsen 2006: 96).

For the first time since the independence, all major parties joined a softened stance in ethnic issue in 2002, at least until recently. In 2011, International Crisis Group reported that despite the government's official commitment to Macedonia's EU accession process, a lack of reforms prevented the opinion of accession negotiations (International Crisis Group 2011: 2). In the area of minority rights, the VMRO-DPMNE conducted policies which hindered ethnic reconciliation, illustrated with projects which stressed Macedonian nationalism to an inappropriate degree (International Crisis Group 2011).

In conclusion, cross-party support for the EU accession process and for minority-friendly reforms emerged in Macedonia in a sudden step after the Ohrid Framework Agreement of 2001. In Croatia, a part of the political spectrum was supportive to the EU membership but in 2001, doubts arose whether any party was substantively ready to undertake the necessary actions for the accession process. Only in 2003 with the reorientation of the HDZ, both major forces in Croatia credibly supported both the EU accession process and, linked to it, the rights of ethnic minorities. Therefore, the initial hypothesis holds for Macedonia: following the reorientation of the nationalist VMRO-DPMNE in 2002, the situation of minority rights and the corruption levels improved. However, in Croatia's case the orientation of political parties seems meaningless: a common support for EU conditionality among the major parties occurred only in 2003. At that time, the major problems for minorities had already been resolved whereas corruption continued to flourish for some more years.

> *H_3: The more sensitive required policy changes are for the perceived integrity of the state and the power preservation of the ruling party, the less responsive the government will be to the reform pressure exerted by the Commission.*

In competitive systems, the relevance of political issues and the costs of policy changes for governments can be estimated most efficiently with opinion polls. The higher the public support for a policy is, the higher are the costs which a government pays for failing with the policy. Public opinion on EU-accession processes can be best measured with the Standard Eurobarometer surveys. Respondents are asked to indicate their position on the EU membership of their country. The following section assumes that political costs for conditionality responsiveness increase with the share of respondents who think that EU membership would be a bad thing for their country. Since October 2004, Eurobarometer surveys regularly reports whether Croatians consider EU membership a good or a bad thing for their country. "A good thing" has never gathered more than 35 per cent of respondents. Since 2008, less than a quarter of all interviewees were positive about EU membership. In comparison, the share of respondents who consider EU membership as a bad thing has risen from 24 per cent in 2004 to 37 per cent in 2009. In Macedonia, the share of supportive respondents has always accounted for at least two thirds of the survey sample. Nonetheless, since Macedonia's first participation in the Eurobarometer surveys in October 2007, the percentage of those who claim that EU membership would be a good thing decreased from 76 per cent to 66 per cent, to the benefit of both those who reject EU membership and those who are undecided. Compared to 24 per cent to 39 per cent of respondents who rejected EU membership in Croatia, the respective group in Macedonia has never gathered more than 9 per cent of all answers (European Commission 2012).

On minority issues and corruption, there are no comparable surveys for Croatia or Macedonia. However, the historical developments during the 1990s and 2000s which have been reflected in the sections above allow some assumptions. In Croatia, sensitivity for ethnic issues should be lower than in Macedonia due to the earlier settlement of its minority issues. As ethnic conflict has occurred more recently in Macedonia, the domestic costs for reforms about minority rights may be higher there. Regarding corruption in Croatia, Bejakovic observes that the SDP-led government in 2000 took for the first time a pro-active stance in the fight against corruption (Bejakovic 2002: 129). Additionally, public awareness on corruption should have grown with the opening of Transparency International's office in Zagreb in 2000. The organization launched a variety of measures

to inform the public on the subject (Bejakovic 2000: 150). At the same time, Croatia did not lack numerous media reports on corruption. However, people expected no consequences for the responsibles (Bejakovic 2000: 152). Therefore, a mid-level awareness on corruption which increased clearly around 2001 seems an adequate estimation of Croatian public sensitivity to the subject. This is supported by an analysis of the World Value Survey on Croatia from 1995 and the South East European Social Survey from 2003. The share of survey respondents who believed that almost all civil servants were involved in bribery and corruption had increased between 1995 and 2001 from 14.7 per cent to 23.4 per cent (Stulhofer 2003: 84).

For the Macedonian public sensitivity on corruption, a low awareness of the issue has been reported due to the ethnic issues in the country which attracted most of the public attention (Hislope 2004: 18). Secondly, Hislope argues that corrupt exchange patterns between coalition partners were the kit which kept the ethnically mixed governments together (2004: 6). In this light, domestic costs for anti-corruption measures were initially high in Macedonia. A stronger public awareness of its turpitude only developed after the settlement of the ethnic issues with the Ohrid Framework Agreement in 2001. An indicator for this development was the 2002 general election when the VMRO-DPMNE lost because its government was perceived as entirely corrupt. Consequently, the SDSM introduced anti-corruption measures and took a more active stance (Willemsen 2006: 94). Although it is difficult to compare the development of domestic costs of anti-corruption policies for the Croatian and Macedonian governments, it can be assumed that a rise of public sensitivity set in a bit earlier in Croatia than in Macedonia. Croatian executives and international organizations became active in this area at a time when Macedonia was dealing with a domestic ethnic conflict.

In conclusion, the three trends of public sensitivity on the EU accession process in general, on minority issues and on corruption should be weighed against each other. This is nearly impossible regarding the lack of respective surveys. However, it can be observed that both in Croatia and Macedonia, the costs for the governments to undertake changes in the areas of minority rights and corruption decreased due to the re-orientation of major parties, the beginning activities of international organizations and the shifting attention of the media away from ethnic conflicts to problems of corruption. In Macedonia, these changes set in with a delay compared to Croatia in both areas. A counter-tendency can be found for the recent years according to the Eurobarometer surveys. They indicate for both countries that the share domestic costs for general compliance with EU conditionality rises. These findings approve the initial hypotheses. More political outcomes in the researched policy areas were congruent with a lower sensitivity of the public and of the political parties in the area of ethnic issues and a higher awareness on corruption. Only the decreasing general support for EU membership found by the Eurobarometer surveys does not support this trend. However, this is a more recent trend which appeared years after the major reforms on corruption and minority rights had been introduced. Additionally, the general attitude may be less determining for government policies than the public opinion on the relevant policy issues.

EU-RELATED DETERMINANTS

> *H_4: The more relevant the Commission document which pressures for policy changes in a candidate country, the more likely the targeted government will react.*

The pressure which the Commission put on the candidate countries in the SAA and the Accession Partnerships from 2001 onwards has been analyzed for this paper by counting the number of different demands that were directed towards Croatia and Macedonia in the two policy areas in the documents (Publications Office of the European Union 23 June

2004, 22 September 2004, 22 July 2005a, 22 July 2005b, 04 February 2006, 25 February 2006, 16 February 2008, 19 March 2008). For Croatia, a multitude of 13 different questions were articulated over time regarding the 'fight against corruption'. Most of the issues which were raised once were taken over by later partnerships. Requirements towards improvement were mentioned in the SAA (European Commission, 28 January 2005, Article 4) and in the subsequent documents. Between 2004 and 2008, the number of demands increased from nine to ten. As Transparency International's CPI indicates improvements in Croatia since 2006, the Commission's conditionality strategy seems to be effective. However, Croatia's overall process towards accession compared to the high number of remaining deficiencies could put the effectiveness at risk on the long run: for a country that satisfies the Commission's expectations and to whom conditionality is applied consistently, it would be expected to have a broad range of demands in the beginning of the pre-accession process and a reduction of criticism over time. This is not the observation for Croatia in the area of corruption. Kochenov issued a similar diagnosis. He warned of a detachment of the Commission's monitoring from the advancement of the overall accession process (Kochenov 2008).

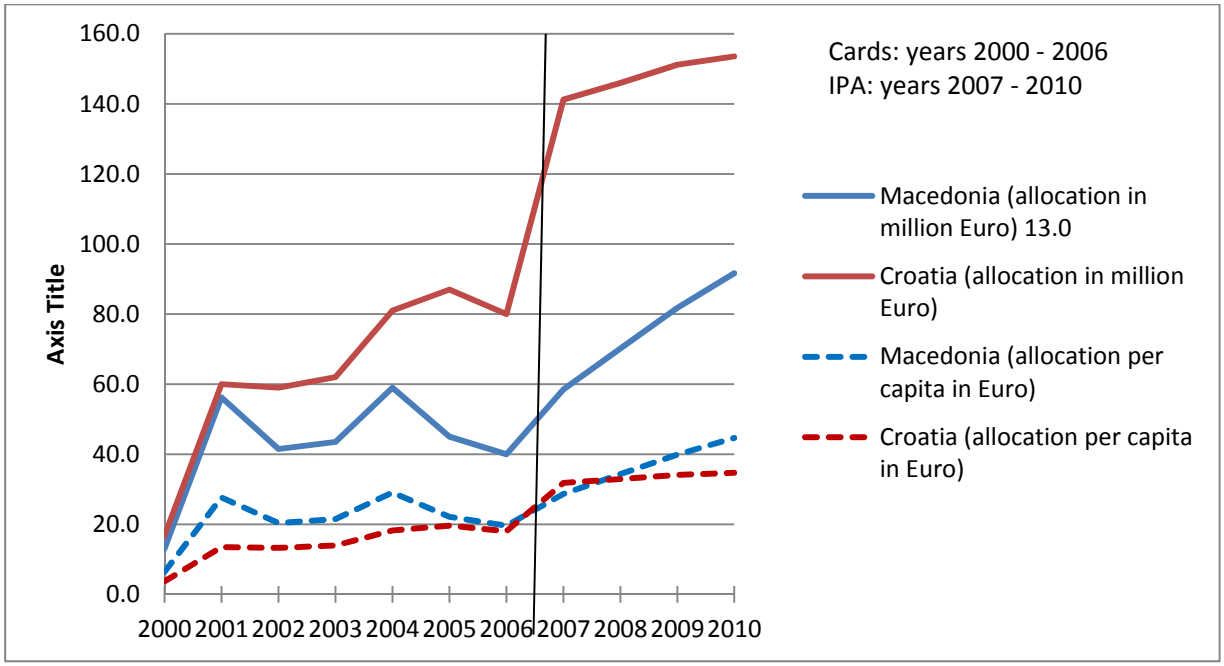
For Macedonia, the SAA from 2001 included the cooperation with the EU in the fight against corruption (Council of the European Union 2001, Article 78). Over time, the Commission expressed 18 concrete expectations in its accession partnerships. From 12 questions in 2004, their number sunk to nine in 2008. Simultaneously, short-term prioritized concerns decreased. As in the case of Croatia, the pressure via political-legal instruments seems effective for this policy area.[5] For policies on 'minority rights' in Croatia, the Minorities Rights Group International (MRGI) analyzed the Commission's progress reports in 2008. Regarding the variable of interest, the pressure along the hierarchy of legal-political instruments, these reports stand below the accession partnerships. The MRGI compared the reports' content with the observations by other international organizations and found that the Commission's reports lacked completeness and qualitative assessments (Bokulic and Kostadinova 2008: 19). This observation suggests that the Commission left a part of the reports' effectiveness potential unexploited through these inconsistencies as they suggested a lack of attention to the subject. An analysis of the higher ranking SAA and the Accession Partnerships shows similar patterns. While respect for minority rights was not covered by Croatia's SAA (European Commission 28 January 2005), the Commission expressed criticism in the partnership documents from 2004 onwards. Out of the 10 demands that were identified across the European Agreement and the two Accession Partnerships, once raised demands have been upheld in later documents. The increase from seven to eight issues from 2004 to 2008 and a particular rise of short-term priorities lead to the impression that Croatia did not fulfil the Commission's expectations so far. For the same time period from 2004 onwards, no particular improvements in Croatia's minority rights have been reported. This supports the impression from the regular reports that the Commission does not use this instrument's potential for effectiveness to its fullest.

Similar to Croatia, the MRGI criticized the Commission's progress reports on *Macedonia* for omitting relevant aspects of minority rights. The unnoticed issues which were found for Croatia are missing for Macedonia as well, but the list for Macedonia contains several additional elements (Bokulic and Kostadinova 2008: 24). These gaps in the reports are reflected by the SAA, the European Partnership of 2004 and the Accession Partnerships of 2006 and 2008. The SAA did not include any reference to the right of ethnic minorities (Council of the European Union 2001). The overall demands towards Macedonia have slightly decreased from eight in 2004 to seven in 2008; the short-term priorities doubled from three to six. As reported above, the situation of minorities in Macedonia deteriorated with the VMRO-DPMNE government which is in power since 2006. Against this background it seems that the Commission's criticism remains ineffective for Macedonia's minority rights.

H_5: The amount of material assistance which the Commission allocates to a candidate country stands in positive relation to the responsiveness of the country.

The following analysis relies on information from the European Commission on allocations from the programs CARDS (Community Assistance for Reconstruction, Development, and Stabilisation), PHARE (Programme of Community Aid to the Countries of Central and Eastern Europe, formerly Poland and Hungary: Assistance for Restructuring their Economies) and the IPA (Instrument for Pre-Accession Assistance) to Croatia and Macedonia since 2000.

Figures 1: CARDS and IPA allocations to Croatia and Macedonia (Central Office for Development Straty and Coordination of EU Funds 2009, per capita allocation calculated according to Eurostat 2012)



The CARDS program includes the main funds from 2000 to 2006 (European Commission 30 October 2010). Croatia was supported by CARDS until 2004; afterwards it shifted to pre-accession assistance from PHARE (Central Office for Development Strategy and Coordination of EU Funds 2009). In 2007, the Instrument for Pre-Accession Assistance was released (European Commission 14 February 2012, 02 December 2011).[6] Figure 1 presents the annual amounts from the CARDS program and from the IPA for each country.[7] The solid graphs displays the total annual figures while the dotted graphs represent the annual allocations per capita. For the given purpose, the overall tendencies of the graphs and the comparison between Croatia and Macedonia are relevant. For both countries, the allocations were strongly raised for 2001, the year when the SAAs were signed. In the case of Macedonia, the allocations declined following 2001 and then, together with Croatia's allocation, they reached a new climax in 2004. A divide in absolute figures between Macedonia and Croatia began in 2001, presumably with Macedonia's internal ethnic conflict and the consequently delayed accession path. Figure 1 shows that Croatia received up to 50% more annual allocations than Macedonia from 2007 onwards.

For the hypothesis on material incentives, a comparison of the allocation trends with the performance in the areas of minority rights and the fight against corruption is insightful. Following the increase of allocations to Croatia from 2002 to 2005 and Macedonia from 2002 to 2004, corruption levels in Macedonia and minority policies in both countries experienced the strongest improvements. Later on, however, lower allocations and new increases with the IPA's launch seem detached from the developments in the policy areas. This suggests that material assistance has an important effect in the initial phase when candidate countries are in the process of substantive improvements. Later on, material incentives loose their effectiveness. A reason for the failure of financial allocations to drive further improvements may lie in practical failures of the financial programs. For the area of minority rights, a MRGI report argues that 'neither the CARDS nor the IPA programs have succeeded in consistently addressing minority issues and supporting CSO [civil society organization] groups representing minority issues.' (Ferrari and Liaquat Ali Khan 2010: 3) Furthermore, the integration of minority groups into the planning and implementation of the programs was lacking, so that these often proved ineffective or not sustainable after the end of EU funding. Furthermore, the MRGI argues that many CSOs might not be able to apply for grants as their size exceeded the capacities of the groups or because linguistic barriers impeded an application (Ferrari and Liaquat Ali Khan 2010: 3). Addressing these weaknesses might enable the Commission to exert effective conditionality via material incentives over a longer time period.

CONCLUSION

The preceding sections have delivered an account of factors which influence the effectiveness of EU conditionality for democracy and the rule of law. Their role for the recent candidate countries Croatia and Macedonia has been tested in the areas of minority rights and anti-corruption policies. The results can be of particular use for further research on conditionality because they are based on recent experiences in the Western Balkans. This region bears a complex importance for the EU. With its policies, the EU tries to strengthen its global perception as an international actor and to compensate for its lack of influence in the region during the 1990s. Vachudova (2005) rightfully warns that the Western Balkans has the potential to discredit the entire logic of the EU's conditionality principle if the EU should fail here. While previous studies have remained quite unclear about the relative importance of domestic and EU-related determinants of effective conditionality, the results from the given case studies suggest that domestic factors determine effective conditionality differently across the researched policy fields. In comparison, the political-legal instruments of the Commission have a clear impact on policies in candidate countries. Therefore, they should be used as coherently as possible. This has not always been the case for Croatia. Material incentives provided by the Commission are only effective at an early stage of the process; later on their influence decreases.

To summarize the insights of this paper, political competiveness as suggested by Vachudova (2005) has been important for Croatia and Macedonia only to a limited extent for the researched policy areas. Minority rights significantly occurred both in Macedonia and Croatia before political competiveness became manifest. Additionally, perceived corruption in Croatia increased until 2006, despite the greater competiveness which had been evolved in the political system. The second hypothesis derived from Schimmelfennig's work on political orientations (2005) holds for Macedonia: following the reorientation of the nationalist VMRO-DPMNE and the SDSM in 2002, the situation of minority rights and corruption levels improved. However, in Croatia's case the orientation of political parties seems meaningless: a common support for EU conditionality by the major parties emerged in 2003. At that time, the major problems for minorities had already been resolved whereas corruption continued to flourish for some more years.

Among all domestic determinants, the domestic costs of compliance are found to determine effectiveness of conditionality the most. Major policy changes in the researched areas were congruent with a lower sensitivity of the public and of the political parties for ethnic issues and a greater awareness on corruption. Regarding legal-political instruments of the European Commission, this paper shows that these instruments are more influential in the area of anti-corruption policies than for minority rights. A lack of clear benchmarks in the area of minority rights which result from the fact that the Commission has no relevant competency towards the actual member states (Sasse 2005) is a possible explanation for this divergence. For material incentives offered to candidate countries, the results for Croatia and Macedonia suggest that they have an important effect in the initial phase when candidate countries are in the process of substantive improvements. At least in the areas of minority rights and the fight against corruption, later changes in financial allocations do not affect the policy areas anymore. Criticism from the minority rights sector suggests that this might be changed by improving the programming and application phases of financial programmes.

In conclusion, political competiveness, which was crucial for conditionality towards candidates in Central and Eastern Europe (Vachudova 2005), played a less prominent role in Croatia and Macedonia. Schimmelfennig's argument on party orientations (2005) could not be broadly embraced for the given cases either. The study reconfirms the special importance of domestic costs of compliance which governments face during the EU accession process. Effects of legal-political instruments employed by the Commission depend on the respective policy areas. Material incentives seem to make a difference at the initial phase of the accession process whereas they loose their importance later on.

***

[1] Council Regulation No. 622/98 Official Journal of the EU, L 85/1, 1998.

[2] The CPI has been published annually since 1995. Since 1999, Croatia and Macedonia have been included in the evaluation; Macedonia was not covered between 2000 and 2002. It is based on experts' surveys from a variety of independent organizations. It applies categories of 0 (for the most corrupt) to 10 (for systems clean from corruption). The figures in brackets indicate the global rank of the country whereby the number of assessed countries varies considerably between 1999 and 2010 (Transparency International 2008).

[3] Besides the insights on political competiveness, the analysis shows that Croatia departs from the typical path of liberal democratization as suggested by Vachudova (2005). Although the opposition to the communist regime won the first elections after the SFRY's breakdown, the new HDZ-government did not lead to a democratization of the country.

[4] The fact that all government coalitions, including those led by the VMRO-DPMNE, have so far included Albanian parties cannot be seen as an indicator for the parties' stances on ethnic issues. As Robert Hislope explains, the ethnically mixed coalitions were the result of corrupt exchange patterns between the parties to secure their material provision and political influence (2004: 6).

[5] Alternatively to real policy progress, the decreasing criticism could result from political constraints or simple ignorance of facts as Gwendolyn Sasse (2005) suggests, after examining the Commission reports prior to the 2004 enlargement.

[6] It was impossible to identify for this paper the exact sums which were particularly granted to anti-corruption policies and for minority rights as the respective documentation, if accessible at all, is dispersed. Therefore, the figures in Figure 1 include the overall financial assistance from CARDS and the IPA. Measures for the fight against corruption and minority rights issues were included in these programs.

[7] Before 2000, Croatia benefitted from the programmes PHARE and OBNOVA; however, for most the of the 1990s the country was suspended from PHARE assistance as it did not fulfil the requirements, inter alia in the area of minority rights (Republic of Croatia 2005, Sanader 1999: 8). In contrast, Macedonia received assistance from PHARE during the 1990s. It got additional funding from OBNOVA and ECHO (Delegation of the European Union to the Former Yugoslav Republic of Macedonia 2009).

REFERENCES

Bejaković, P. (2002). 'Corruption in Croatia. Institutional Settings and Practical Experiences', *Politička misao*, 39 (5), pp. 128–155.

Bieber, F. (2004). 'Institutionalizing Ethnicity in the Western Balkans. Managing Change in Deeply Divided Societies', *European Centre for Minority Issues Working Paper*, 19. Available at: http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN015487.pdf. Last accessed 6 March 2012.

Bokulic, S. and Kostadinova, G. (2008). *Pushing for Change? South East Europe's Minorities in the EU Progress Reports.* Minority Rights Group International, at http://www.minorityrights.org/6726/reports/pushing-for-change-south-east-europes-minorities-in-the-eu-progress-reports.html. Last accessed 12 July 2011.

Budak, J. (2006). 'Corruption in Croatia: Perceptions Rise, Problems Remain', *Croatian Economic Survey 2006*, pp. 35–68.

Center for Systemic Peace (2010). *Polity IV Annual Time-Series 1800-2010.* At http://www.systemicpeace.org/inscr/p4v2010.xls. Last accessed 8 March 2012.

Center for Systemic Peace (2011). *Polity IV Project: Dataset Users' Manual.* At http://www.systemicpeace.org/inscr/p4manualv2010.pdf. Last accessed 8 March 2012.

Central Office for Development Strategy and Coordination of EU Funds (2009). General Information. Available at: http://www.strategija.hr/en/funds/former-programmes/phare/test-article-copy-copy-copy. Last accessed 8 March 2012.

Council of the European Union (2001). *Stabilization and Association Agreement between The European Communities and their Member States of the one part, and the Former Yugoslav Republic of Macedonia, of the other part.* Brussels, 26 March 2001. Available at: http://ec.europa.eu/enlargement/pdf/the_former_yugoslav_republic_of_macedonia/saa03_01_en.pdf. Last accessed 6 March 2012.

Delegation of the European Union to the Former Yugoslav Republic of Macedonia (2009). *Past Assistance.* Available at: http://www.delmkd.ec.europa.eu/en/bilateral-relations/eu-assistance/past_ assistance.htm. Last accessed 7 January 2011.

DiePresse.com (05 July 2008). 'Neue Regierungskoalition in Mazedonien steht', Available at: http://diepresse.com/home/politik/aussenpolitik/396301/Neue-Regierungskoalition-in-Mazedonien-steht. Last accessed 23 March 2011.

Eurostat (2012). *Cpc_psdemoi*. Available at http://appsso.eurostat.ec.europa.eu. Last accessed 8 March 2012.

European Commission (28 January 2005). *Stabilisation and Association Agreement between the European communities and their Member States, of the one partö and the Republic of Croatia, of the other part.* Official Journal of the European Union, L26. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:026:0003:0220:EN:PDF. Last accessed 6 March 2012.

European Commission (06 November 2007). *Croatia 2007 Progress Report.* SEC(2007) 1431, Brussels.

European Commission (30 October 2010). *Statistics 2000 – 2006.* Available at: http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/cards/statistics2000-2006_en.htm. Last accessed 8 March 2012.

European Commission (02 December 2011). *The Former Yugoslav Republic of Macedonia - Financial Assistance.* Available at: http://ec.europa.eu/enlargement/candidate-countries/the_former_yugoslav_republic_of_macedonia/financial-assistance/index_en.htm. Last accessed 08 March 2012.

European Commission (14 February 2012). *Croatia – Financial Assistance.* Available at: http://ec.europa.eu/enlargement/acceeding-country/croatia/financial-assistance/index_en.htm. Last accessed 8 March 2012.

European Commission (2012). Eurobarometer Interactive Search System. Available at: http://ec.europa.eu/public_opinion/cf/showTable.cfm?keyID=5&nationID=28,32,&startdate=2004.10&enddate=2009.11. Last accessed 6 March 2012.

European Council (1993). *European Council in Copenhagen, 21 – 22 June 1993, Conclusions of the Presidency.* SN 180/1/93 REV 1.

Ferrari, H. and Liaquat Ali Khan, S. (2010). *EU Financial Assistance to the Western Balkans: a minority-focused review of CARDS and IPA.* Minority Rights Group International, at http://www.minorityrights.org/10375/reports/eu-financial-assistance-to-the-western-balkans-a-minorityfocused-review-of-cards-and-ipa.html. Last accessed 12 July 2011.

Foundation Open Society Institute – Macedonia (2005). *Macedonia and the Corruption. Situation and Challenges. Second conference, 10 November 2004.* Available at: http://www.antikorupcija.org.mk. Last accessed 10 January 2011.

Haughton, T. and Fisher, S. (2008). 'From the politics of state-building to programmatic politics', *Party Politics*, 14 (2), pp. 435-454.

Hellman, J. S. (1998). 'Winner Take All: The Politics of Partial Reform in Postcommunist Transitions', *World Politics*, 50 (2), pp. 203-234.

Hislope, R. (2001). *The Calm Before The Storm? The Influence of Cross-Border Networks, Corruption and Contraband on Macedonian Stability and Regional Security.* New York. Available at: Public Prosecution Office of Republic of Macedonia, http://www.jorm.org.mk/docs/The%20Calm%20before%20Storm-Robert%20Hislop.pdf. Last accessed 10 January 2011.

Hislope, R. (2004). How is Ethnic Peace Possible? Explaining Macedonia's Peaceful Decade. Paper Prepared for the Midwest Political Science Association's Annual Meeting April 15-18, 2004, Chicago, Illinois. Available at: http://citation.allacademic.com//meta/p_mla_apa_research_citation/0/8/4/1/8/pages84185/p84185-1.php. Last accessed 11 March 2012.

International Crisis Group (2011). Macedonia: Ten Years after the Conflict. Europe Report No. 212, 11 August 2011. Available at: http://www.crisisgroup.org/en/regions/europe/balkans/macedoni a/212-macedonia-ten-years-after-the-conflict.aspx. Last accessed 6 March 2012.

Jovic, D. (2006). 'Croatia and the European Union: a long delayed journey', *Journal of Southern Europe and the Balkans,* 8 (19), pp. 85-103.

Jou, W. (2010). 'Continuities and changes in left–right orientations in new democracies: The cases of Croatia and Slovenia', *Communist and Post-Communist Studies*, 43 (1), pp. 97–113.

Kochenov, D. (2008). *EU Enlargement and the Failure of Conditionality. Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*. The Netherlands: Kluwer Law International BV.

Minority Rights Group International (2003). *Minorities in Croatia.* Available at: http://www.minorityrights.org/1005/reports/minorities-in-croatia.html. Last accessed 12 July 2011.

Minority Rights Group International (2008), *World Directory of Minorities and Indigenous Peoples-Croatia:Overview*. Available at: http://www.unhcr.org/refworld/docid/4954ce1ec.html. Last accessed 6 March 2012.

Publications Office of the European Union (23 June 2004). *Council Decision of 14 June 2004 on the principles, priorities, and conditions contained in the European Partnership with the former Yugoslav Republic of Macedonia.* Official Journal L 222.

Publications Office of the European Union (22 September 2004). *Council Decision of 13 September 2004 on the principles, priorities and conditions contained in the European Partnership with Croatia.* Official Journal L 297.

Publications Office of the European Union (22 July 2005a). *Framework Agreement between the European Community and the Republic of Croatia on the general principles for the participation of the Republic of Croatia in Community programmes.* Official Journal L 192, Annex 1.

Publications Office of the European Union (22 July 2005b). *Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the*

former Yugoslav Republic of Macedonia, of the other part, on a Framework Agreement between the European Community and the former Yugoslav Republic of Macedonia on the general principles for the participation of the former Yugoslav Republic of Macedonia in Community programmes. Official Journal L 192.

Publications Office of the European Union (04 February 2006). *Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2004/518/EC.* Official Journal L35.

Publications Office of the European Union (25 February 2006). *Council Decision of 20 February 2006 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/648/EC.* Official Journal L55.

Publications Office of the European Union (16 February 2008). *Council Decision of 12 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC.* Official Journal L42.

Publications Office of the European Union (19 March 2008). *Council Decision of 18 February 2008on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC.* Official Journal L80.

Pusic, V. (1998). 'Croatia at the Crossroads', *Journal of Democracy,* 9 (1), pp. 111–124.

Republic of Croatia. Ministry of Foreign Affairs and European Integration (2005). *OBNOVA.* Available at: http://www.mvpei.hr/ei/default.asp?ru=616&sid=&akcija=&jezik=2. Last accessed 10 January 2011.

Republic of Macedonia. State Statistical Office (2005). *Census of Populations, Households and Dwellings in the Republic of Macedonia, 2002.* Available at: www.stat.gov.mk/pdf/kniga_13.pdf. Last accessed 6 March 2012.

Sasse, G. (2005). *EU Conditionality and Minority Rights. Translating the Copenhagen Criterion into Policy*. EUI Working Papers, RSCAS 2005/16.

Sanader, I. (1999). *Croatia's Course of Action to Achieve EU Membership.* ZEI Discussion Paper C59, at http://www.zei.de/download/zei_dp/dp_c59_sanader.pdf. Last accessed 9 January 2011.

Schimmelfennig, F., Engert, S., and Knobel, H. (2003). 'Costs, Commitment, and Compliance. The Impact of EU Democratic Conditionality on Latvia, Slovakia, and Turkey', *Journal of Common Market Studies*, 41(3), pp. 495-517.

Schimmelfennig, F. (2005). 'Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe', *International Organization*, 59 (4), pp. 827—860.

Stuhlhofer, A. (2004), 'Perception of Corruption and the Erosion of Social Capital in Croatia 1995-2003', *Politička misao*, 41(5), pp. 74–86.

Transparency International (2008). *A short methodological note.* Available at: http://www.transparency.org/content/download/36189/568652. Last accessed 7 January 2011.

Transparency International (2010a). *Corruption Perception Index.* Available at: http://www.transparency.org/policy_research/surveys_indices/cpi. Last accessed 7 January 2011.

Transparency International (2010b). *Corruptions Perceptions Index 2010 Results.* Available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results. Last accessed 7 January 2011.

Vachudova, M. A. (2005). *Europe Undivided. Democracy, Leverage & Integration After Communism.* Oxford: Oxford University Press.

Vachudova, M. A. (2009). 'Corruption and Compliance in the EU's Post-Communist Members and Candidates', *Journal of Common Market Studies*, 47 Annual Review, pp. 43–62.

Willemsen, H. (2002). 'Das politische System Makedoniens,' in W. Ismayr (ed.), *Die politischen Systeme Osteuropas*. Opladen: Leske + Budrich.

Willemsen, H. (2006). 'Former Yugoslav Republic of Macedonia: Persisting Structural Constraints to Democratic Consolidation', *Southeast European and Black Sea Studies*, 6 (1), pp. 83–101.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Between Europeanization and Domestic Influences: Portugal's Post-colonial Relations with Angola

António Raimundo *University of Minho*

Citation

Raimundo, A. (2013). 'Between Europeanization and Domestic Influences: Portugal's Post-colonial Relations with Angola', *Journal of Contemporary European Research*. 9 (2), pp. 242-260.

First published at: www.jcer.net

Abstract

This paper builds on the Europeanization literature to explore the impact of EU membership on Portuguese foreign policy towards Angola. The analysis is centred on trade issues, focusing on Portugal's accession negotiations and the reform of the Lomé Convention. Portugal is a small and open economy, with a colonial past in Angola. Trade is one of the most integrated policy areas of the EU, which has long and highly institutionalised relations with Africa. Preliminary results point to great evidence of Europeanization understood as national adaptation to the EU. However, the projection of Portuguese priorities onto the European level also received some support. History, cultural links and the presence of strong national interest groups appear to have limited the EU's impact on Portuguese preferences. Such findings give support to studies stressing the need to adequately account for domestic conditions, even in highly integrated EU policy areas and for smaller member states.

Keywords

Foreign Policy Analysis; Europeanization; European integration; Foreign policy; trade; interest groups

---

For many centuries Portugal's foreign priorities were oriented towards the Atlantic and its overseas territories. That general orientation was also the one adopted under the authoritarian *Estado Novo* (1933-1974), which deliberately distanced Portugal from European issues and emphasised its Atlantic and African "vocation". Following Portugal's transition to democracy and decolonisation in the mid-1970s, Europe became more important in Lisbon's external outlook. In particular, membership of the European Community (EC) came to be seen as the best way to anchor the newly born democratic regime and contribute to the country's modernisation. During an initial phase after its EC accession, in 1986, Portugal's general involvement in the Community was described as reserved and defensive. Yet, from the early 1990s Lisbon started to adopt a more active approach, including for foreign and security policy matters. Notwithstanding this broad trend of increased European engagement, traditional foreign policy priorities continued to occupy an important role for democratic and post-imperial Portugal. As a founding member of NATO, Portugal remained actively committed to the Alliance, as well as to a close relationship with the USA. Moreover, Lisbon kept its post-colonial relations high on its foreign affairs agenda. Relations with the former African colonies, in particular, continued to be valued for themselves, but also in view of the advantages they can bring to the other dimensions of Portugal's foreign policy. For instance, those countries have been among the main recipients of Portugal's bilateral aid and since very early Lisbon pushed for the creation of a community of Portuguese-speaking countries, which was finally established in 1996. Similarly to other former colonial powers, Portugal has also been a strong advocate of closer Europe-Africa relations, as illustrated by the bi-regional summits held during its EU Presidencies in 2000 and 2007.

This article explores the impact of EU membership on Portugal's foreign policy towards its former African colonies. More "Europeanist" views would predict the EU to play a crucial role for the foreign policy of a small state such as Portugal. Evidence has been gathered that decision-makers in small member states see the EU as the central forum for the delineation of their foreign policy interests (Tonra 2001: 263). Other studies indicate that the socialisation of foreign policy-makers stemming from European cooperation is more noticeable in smaller, rather than larger EU member states (Manners and Whitman 2000: 251). Thus, according to this broad perspective, the expectation is for Portuguese foreign policy to be mainly conducted through the EU foreign policy framework, and chiefly echoing common views and interests. More "state-centric" understandings would maintain that also small member states continue to have

substantial foreign relations "beyond" the EU. It has been argued that the EU has represented a means for both large and small member states to "rescue" their national foreign policies (Allen 1996). Henrik Larsen (2005) reminds us that the importance of the EU for the foreign policy of small members needs to be assessed across policy areas. Among other conditions, in policy domains where small member states have a specific expertise and credibility they can exert significant influence in the EU, rather than simply adapt to its joint initiatives (Wallace 2005). Therefore, following this second general perspective, even for smaller members significant parts of their foreign policy do not merely echo EU understandings and positions. In the far from abundant literature on Portuguese foreign policy, the prevalent opinion tends to emphasise its general "Europeanization" (Gaspar 2000; Magone 2004; Vasconcelos 2000). In a more specific way, José Magone (2000: 174-175) contends that even Portuguese "special relationships" are conducted in synergy with the EU. Writing in the mid-1990s and referring expressly to Portugal's relations in southern Africa, Álvaro Vasconcelos (1996: 271) prefers to emphasise the primacy of national dimensions in this particular domain. Along those lines, Miguel Santos Neves (1996: 138) argues that the EU's impact on Portuguese foreign policy towards sub-Saharan Africa was both limited and positive from Lisbon's perspective.

Considering the limitations of the existing literature this study aims to provide an updated, more detailed, and nuanced account of the subject under analysis. In order to better capture the EU's impact on the national level this article draws on the literature on "Europeanization", which in recent times has been increasingly applied to the domain of foreign policy (Graziano and Vink 2008; Wong and Hill 2011). Reuben Wong (2008) suggests that three dimensions of Europeanization can be useful to examine possible changes taking place in the foreign policy of an EU member state: national adaptation ("downloading" process); national projection ("uploading"); and identity reconstruction (socialisation of interests and identities). Building on that conceptualisation, the key question that structures the analysis is: "to what extent has Portuguese foreign policy been Europeanized"? More specifically, it is asked whether Portugal has been adapting its policies, projecting its national priorities or changing its preferences and identity due to a potential influence of the EU. The analysis focuses on trade issues in relation to Angola. External trade plays an important role for a small country and open economy such as Portugal. Moreover, as the largest and richer African colony, Angola was once considered the "Crown Jewel" of the Portuguese Empire. With decolonisation in 1975 and the effect of the Angolan civil war the economic links between the two countries decreased sharply, but both Portuguese authorities and civil society continued interested in promoting closer bilateral relations (M. E. Ferreira 2005). Portugal's high level of trade concentration in Europe and the return of peace in Angola in 2002 have increased the importance of this African market for its former metropolis (Seabra and Gorjão 2011). In turn, foreign trade has been one of the most effective foreign policy instruments of the EU, which is a major world trading power (Meunier and Nicolaidis 2011). Trade is also one of the more integrated EU policy areas where, differently from other domains, the Community can rely on strong competences and mechanisms (Woolcock 2010). Furthermore, the EU has long and highly institutionalised relations with Africa, which have traditionally privileged economic aspects rather than politics (Holland 2002).

The main argument put forward is that Portuguese policy was significantly Europeanized, with national actions in the domain of trade towards Angola displaying high levels of adaptation to common EU decisions and mechanisms. Simultaneously, Portuguese authorities remained very active within the EU trying to project its national priorities onto the supranational level and preserve a minimum of visibility to its own positions vis-à-vis its ex-colony. This outcome indicates that even in highly integrated EU policy areas and in the case of smaller member states the EU framework can provide opportunities for the promotion of national perspectives towards matters considered of "special interest". The article proceeds as follows. Firstly, a brief overview is provided on Portugal-Angola relations, focusing on trade aspects, which contextualises the

subsequent analysis. Secondly, the article considers the EU's impact on Portuguese policy by centring its attention on Portugal's accession process to the European Communities, dealing more specifically with the trade *acquis* of the Lomé Convention. Next, the analysis focuses on the intra-EU discussions for negotiating the 2000 Cotonou Agreement and the Economic Partnership Agreements (EPAs), which introduced important changes to the trade regime developed over 25 years under Lomé. Finally, the article closes with some conclusions.

BACKGROUND: PORTUGAL-ANGOLA RELATIONS

Portugal has a long and complex relationship with Angola, which has been driven by an intricate set of historical, cultural, economic and politico-diplomatic considerations. Those relations can be traced back to the 15th century when Portugal initiated its "Golden Age of Discovery", setting the basis for an Empire that over time included territories in virtually all continents (Newitt 2009). During a long period Portugal's presence in Africa was not very significant. Yet in the 19th century, with the loss of other territorial possessions and the European "scramble" for Africa, the continent grew more important for Portugal's imperial ambitions. The emphasis on the colonies was further reinforced in the 1930s under authoritarian rule. Angola was the largest and richest Portuguese African colony, including natural resources such as cotton, coffee, diamonds and oil. It was also the territory that received the greatest number of Portuguese settlers, attracted by the rapid economic growth experienced in Angola from the 1940s onwards and the "imperial mystique" promoted by the Salazar regime. In the 1950s Angola represented 14 and 5 per cent of Portugal's total exports and imports respectively, and around half of Portugal's overall trade with its colonies (*see* Table 1). However, by the 1960s changes in Portugal's economy and society were gradually moving the country's external orientation away from its colonies. Even though the colonies continued to be important suppliers of raw materials and critical markets for less competitive Portuguese goods, with the greater industrialisation and liberalisation of Portugal's economy, its trade relations became increasingly centred in Western Europe. Over this period, Europe (particularly France and West Germany) also became the main destination for the large flows of Portuguese emigrants. Growing international pressure for decolonisation and Portugal's protracted colonial wars (in Angola the conflict lasted from 1961 to 1974) put additional strains on Portuguese projects in Africa (Newitt 1981).

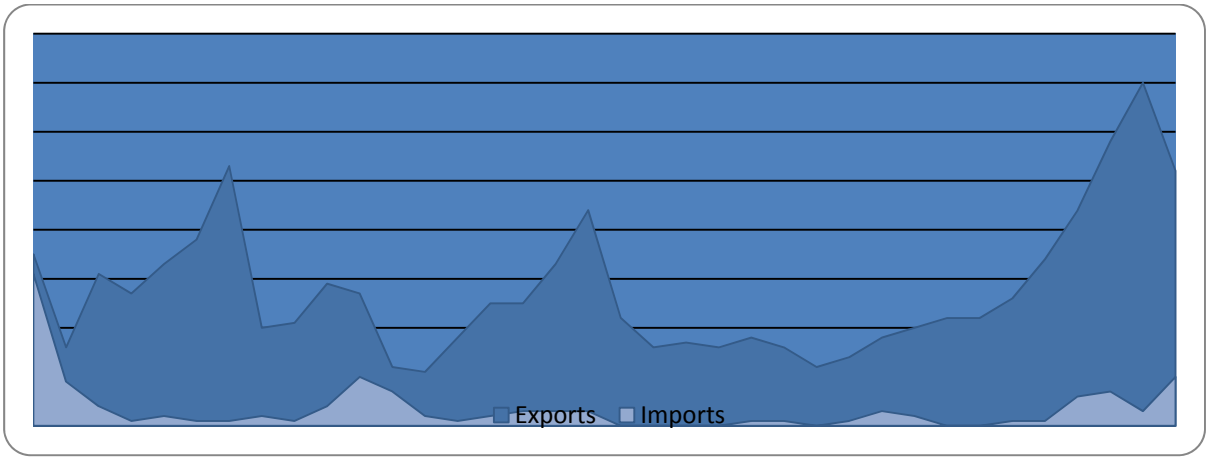
Table: 1: Portugal's trade with Angola in comparative terms (% of total)

	Angola		Total colonies	
	Exports	*Imports*	*Exports*	*Imports*
1930s	5.4	5.1	12.1	10.2
1940s	8.4	5.7	20.0	13.1
1950s	14.5	5.5	25.7	14.0
1960s	13.1	7.7	24.4	14.2
1970-3	8.9	8.0	18.0	12.1

Source: adapted from M. E. Ferreira (2005: 346).

The April 1974 military coup that overthrew the Portuguese authoritarian regime led to a swift process of decolonisation of its territories in Africa. Even if Angola was the case where the reticence from some Portuguese sectors to a rapid decolonisation was more visible, in less than one year Portugal signed an independence agreement with the Angolan movements. Subsequently, the bilateral relationship was complicated by several factors, such as the instability of the democratisation process in Portugal, the outbreak of civil war in Angola, and the Cold War context (MacQueen 1997). Adding to that, the exodus of Portuguese settlers, the adoption of socialist policies and the nationalisation of Portuguese goods by the Marxist-inspired MPLA regime in Luanda, as well as strong post-colonial tensions and resentment greatly affected the economic significance of those relations (M. E. Ferreira 2005). By the late 1970s some signs of reconciliation started to take place facilitated by diplomatic initiatives promoted by Portugal. This evolution also benefited from concessions made by the Portuguese authorities concerning financial disputes with Angola that had remained unresolved since independence (Venâncio and Chan 1996: 42-43). Several agreements in the economic domain were signed leading to a temporary increase in Portuguese exports (*see* Figure 1). Moreover, it was during this period that a joint commission was established to work as the main institutional mechanism for the bilateral relationship. Notwithstanding those elements of progress numerous difficulties persisted, namely related to continuing instability and strong political divisions in Portugal. In fact, if a broad consensus existed among Portuguese decision-makers and large sectors of society about the importance of rebuilding and promoting strong post-colonial ties with Angola, the specifics of the relationship remained for a long time a more divisive question in Portuguese politics, closely linked to the dispute of power between the two rival Angolan movements, MPLA and UNITA (Vasconcelos 1996: 278).

Figure: 1: Portugal's trade with Angola, 1975-2010 (% of total)



Source: Banco de Portugal. Author's calculations.

From the second half of the 1980s, the circumstances became more favourable for a more significant improvement in Portugal-Angola relations. In particular, Portugal's newly acquired European Community membership and the election of successive centre-right governments (1985-1995) brought greater clarification, stability and continuity to Portuguese initiatives and policies. At the same time, with the extreme difficulties in Angola resulting from civil war and the gradual Soviet disengagement from Africa, Portugal started to be seen by the Marxist MPLA regime as a useful means of strengthening relations with the West. Later, the fall of the Berlin Wall opened the door for an important Portuguese involvement in the Angolan peace process that contributed to upgrade the bilateral relationship. In effect, backed by Washington and Moscow

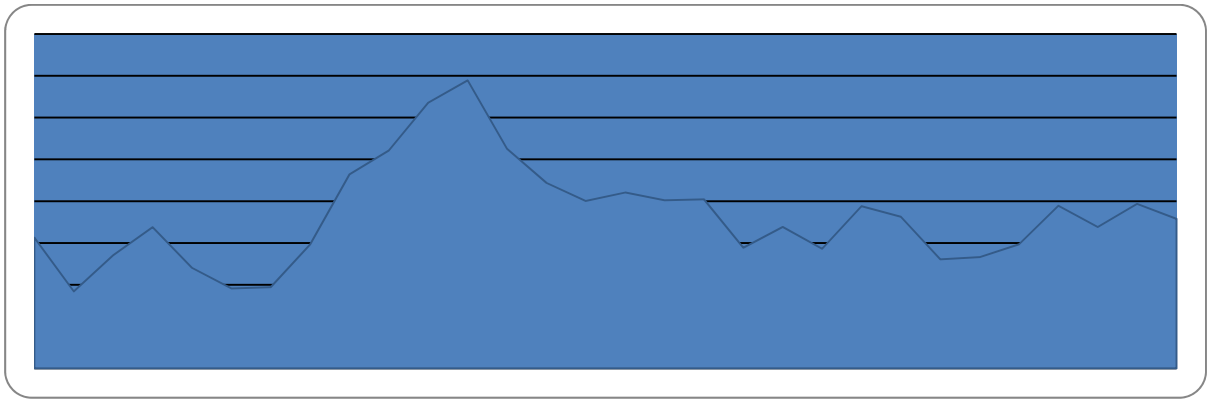
Lisbon's diplomatic efforts allowed it to play a central mediation role in the negotiations that led to the Angolan peace agreement (Bicesse Accords), signed in Portugal in 1991 (Venâncio and McMillan 1993). Over this period, Portugal's aid efforts towards Angola were also stepped up, both on a bilateral and multilateral level. Within the European Community, in particular, Lisbon pressed for greater support for the stabilisation and reconstruction of its ex-colony (Neves 1996: 157-158). Furthermore, new instruments were adopted to promote bilateral economic relations, including credit facilities for Portuguese companies and a scheme allowing Angola to pay its debt to Portugal through the supply of oil (M. E. Ferreira 2005: 356-357). Owing to these measures and the prospect of greater stability in Angola economic exchanges were boosted, especially Portuguese exports which increased from around one per cent of the country's total exports in 1987 to more than four per cent in 1992 (*see* Figure 1). This growing trend was disrupted by the restart of the Angolan conflict in late 1992.

With the failure of the Bicesse Accords Portugal stepped back from its mediator role, but continued to be involved in the Angolan peace process as an observer and contributing to the United Nations peacekeeping operations. By this stage, though, Lisbon's support became less significant for the Luanda regime, which in the new post-Cold War era had considerably reinforced its international links, while its internal rival, UNITA, was facing UN sanctions (Oliveira 2005: 60). Notwithstanding the enduring conflict, Portugal kept pursuing closer economic ties with Angola, which wealthy resources were also increasingly attracting other international actors. Results during this phase were, however, less sizeable than the ones Portugal expected. For instance, plans put forward in 1996 for a "debt-for-equity swap" and a bilateral agreement on mutual investment protection were subsequently abandoned or postponed. Moreover, attempts by Portuguese interests to upgrade their participation in the Angolan oil sector in the late 1990s were not welcomed by Luanda, in spite of all diplomatic efforts made by Lisbon at the highest level (M. E. Ferreira and Gonçalves 2009: 128). The military defeat of UNITA and ensuing end of the Angolan conflict in 2002 reinforced the already strong internal consensus in Portugal concerning its politico-diplomatic relationship with Angola. Additionally, Portugal's need to diversify its export markets beyond the EU area and the slowdown of its economy since the end of the 1990s, turned even more appealing the possibility to participate in the post-war reconstruction of the rapidly-growing oil-fuelled Angolan economy.

In this new context, Portugal has visibly sought to advance the bilateral relationship promoting new initiatives in different domains and increasing its political contacts with Angola (Seabra and Gorjão 2011). For its part, Luanda has arguably been less hurried to intensify the bilateral exchanges, but it has welcomed all diplomatic and economic support Portugal can provide for its development and growing international ambitions. To illustrate, between 2002 and 2010 Portuguese prime ministers visited Angola four times, while the Angolan president, in power for more than three decades, only made its second official visit to Portugal in 2009 (the first happened in the mid-1980s). During the last few years, Portugal has also been pressing more openly for the formalisation of a "strategic partnership" between the two countries, a mechanism Luanda has already established with Brazil, USA and China. At the multilateral level, there has been increased cooperation between Portugal and Angola within the Community of Portuguese-speaking countries (CPLP), greatly linked to the growing interest Luanda has shown towards that platform. Moreover, Lisbon has continued to play a role of "interlocutor" for Angola within the EU, for instance actively supporting an enhanced political dialogue between the Union and its ex-colony ("EU-Angola Joint Way Forward" process). Bilateral economic relations have also intensified since the return of peace in Angola. This was evident in the significant increase of Portuguese exports, supported by a series of credit lines (*see* Figure 1). Between 2002 and 2008 Angola moved from the ninth to the fourth position as the main destination for Portuguese exports (after Spain, Germany and France), becoming Portugal's main market outside the EU. Apart from that, despite a slight decline since the 1990s, Portugal has remained a top supplier of

Angola ahead of other important players such as the USA, China, Brazil, and South Africa (*see* Figure 2) (Banco de Portugal 2011: 31).

Figure: 2: Portugal's share of Angola's imports, 1981-2010 (% of total)



Source: IMF - Direction of Trade Statistics. Author's calculations.

Summing up, over the last three decades or so Portugal's relationship with Angola has improved gradually, highly constrained as it was by past legacies and the Angolan civil war. After Angola put an end to its long-lasting internal conflict, more decisive steps were taken to upgrade the bilateral relationship. Yet Portugal has always kept a close interest in its former colony, both at the elite and societal level. Specifically in economic matters, even if in recent decades Portugal's exchanges with Angola have only represented a small part of its overall trade, those exchanges become more significant when bearing in mind that they take place outside the competitive EU context. In fact, for many Portuguese companies Angola has remained an important market, where they have kept significant shares of specific sectors, very often taking advantage of historical, cultural or personal links. As asserted by some, those companies, together with other Portuguese interest groups, have represented a very influential and efficient lobby in shaping Portugal's policy towards Angola (Oliveira 2005: 62). Moreover, the broader role Angola (and the other Lusophone countries) allegedly plays for Portugal's foreign policy is often assumed as a justification for Portuguese authorities to support the reinforcement of bilateral economic ties. Portugal's post-colonial relations would represent a means to ascertain the country's diplomatic specificity and a "trump card" to reinforce its influence at the international level, particularly within the EU (Venâncio and Chan 1996: 6-9). Apart from that, recurrent flows of migration in both directions have helped to nurture cultural and personal ties between populations with a common language and a not so distant shared history. In fact, the idea of Angola as an "El Dorado" that could help surmounting Portugal's intrinsic limitations as a small power remained resonant over the years, especially among sectors of Portuguese society who had a direct experience of the Empire. Furthermore, Angola continued to occupy an important place in Portuguese national imaginary, especially in view of its association with Portugal's "glorious past" during the Age of Exploration (Cravinho 2005).

PORTUGAL'S EC ACCESSION PROCESS: THE IMPACT OF THE LOMÉ ACQUIS

When Portugal made its decision to join the European Community in the second half of the 1970s, its relationship with Luanda was far from unproblematic. As seen above, after decolonisation in 1975 Lisbon was interested in rebuilding on a new basis its historical ties with Angola, but those intentions were hindered by various factors, including the

eruption of the Angolan civil war, strong post-colonial frictions, and the divergent orientation the two countries came to follow in the Cold War divide. From the late 1970s, Lisbon authorities sought more actively to put forward new bilateral initiatives towards Angola, aiming in particular to promote Portuguese economic interests in that country. However, Portugal's political instability and serious economic difficulties until the mid-1980s meant that those initiatives were often far from consensual and significant. Mirroring those circumstances, the bilateral cooperation over this period had a low level of institutionalisation and effective implementation. On the European side, the Lomé Convention was the main mechanism through which the EC structured at the time its relations with the African, Caribbean and Pacific (ACP) group, which Angola joined in 1985. Rooted in the colonial legacies of some EU member states and established under a favourable context for the large ACP group, Lomé was at the top of the "pyramid of privilege" of the Community. Proclaimed as a "partnership of equals", the Lomé model followed a group-to-group approach and included an institutionalised dialogue, substantial aid assistance, as well as special trade preferences. More specifically, the EC granted preferential access to its market without requesting reciprocal liberalisation. Simultaneously, as a "mixed" agreement the Lomé Convention allowed a great say to EU member states, in contrast with simple trade agreements where supranational features are more present. Considering this general background, what was the impact of Portugal's accession to the European Communities on its relations with Angola?

National adaption to a useful acquis

Portugal's adoption of the Lomé Convention *acquis* was on the whole unproblematic. The lengthy accession negotiations (1978-1985) were mainly due to the simultaneous accession of Spain, whose negotiation process was far more complex than the Portuguese one. Moreover, the dossier of "external affairs" was not among the most difficult to close (Dinan 2004: 184). As put by a former Portuguese politician, Portugal had virtually no foreign policy at the time.[1] Apart from that, Portuguese interests groups had a limited involvement in the negotiation process, which was largely dominated by the political elite. In fact, Portugal's turbulent transition to democracy, including widespread nationalisations and the adoption of other socialist-inspired policies, meant that while civil society groups were weak the state came to occupy a strong presence in the Portuguese economy (Pinto and Teixeira 2004: 124). For Portuguese decision-makers the Lomé *acquis* was important primarily in view of the overall goal of EC membership. This was particularly the case during an initial phase, when domestic resistance and doubts over accession were more significant. In effect, following the overthrown of the long-lived right-wing authoritarian regime, Portugal went to a phase of great instability and uncertainties marked by a strong influence of the military and leftist movements. During those revolutionary years (1974-1975), despite all volatility pro-Soviet and chiefly "Third Wordlist" perspectives, favouring privileged relations with the ex-colonies, were largely dominant (Teixeira 2003: 114). Against this context, for the pluralist and pro-Western political forces EC membership came to represent a means to secure the stabilisation of Portugal's nascent democracy and the redefinition of its international orientation (Pinto and Teixeira 2004: 123). Thus, in order to more effectively pursue that goal the instrumentality of Europe and the Lomé Convention for Portugal's traditional ties in Africa were highlighted in the domestic debate.

When in 1976 the charismatic Prime Minister Mário Soares presented the objective of joining the EC as the main foreign policy priority of its minority government, much emphasis was put on the idea that such decision would not be detrimental to the relationship with the former colonies: 'Portugal is a European country and can only benefit from European integration, including for improving relations with its ex-colonies' (Portugal 1976a: 406). At the time, some former Portuguese colonies had started to move closer to Brussels and become part of the Lomé Convention. Such was the case with the smaller countries, but the picture was less clear for Angola (and Mozambique)

due to its links with the Soviet bloc. In any case, this development was not overlooked by the pro-European Soares government, which used it as an additional argument for justifying Portugal's EC accession:

> 'in the domain of economic and commercial exchanges any claim to privileged relations established exclusively on a bilateral basis seems difficult to be achieved, given that we are witnessing a move from those new African countries to become members of the Lomé Convention. This Convention does not allow special concessions to countries that are not full members of the European Community. Here lies one of the reasons for Portugal to integrate the Common Market, since until that happens Portugal will assume the role of a third country, being forced to witness the creation of privileged arrangements between the new Portuguese-speaking African countries and the European Economic Community.' (Portugal 1976b: 130).[2]

After the decision to join the European Community was made effective in 1977, the pre-existing internal misgivings gradually weakened and became secondary (J. M. Ferreira 1999: 42-44). The "European option" made initially by the centre-left Soares government was backed by all main political parties (except the Communists) and became part of a consensual general Western orientation. In view of the concentration of efforts in the EC accession priority, Portugal's post-colonial relations necessarily started to receive less political attention. Yet, the importance of those relations for the country's external outlook did not disappear.

As mentioned above, in the late 1970s Portugal began to adopt a more active stance towards its former African colonies, especially in relation to Angola. This bilateral activism was meant to be complementary to Portugal's EC accession goal. But in view of the country's political instability at the time, that general principle also incorporated some nuances with important internal corollaries (*see* Gaspar 1988). Ultimately, Portugal's bilateral initiatives (even if not always consequential) signalled an intention to preserve a voice in relation to its former African colony. To illustrate, as a result of a summit that represented a breakthrough in the bilateral *rapprochement*, Portugal and Angola signed a general cooperation agreement in 1978. Other initiatives followed, particularly in the economic domain. Thus, in 1979 the two countries signed several agreements in different economic areas, including a trade agreement comprising a "most favoured nation" clause. That same year a US$40 million credit line was open to support Portuguese exports, which was subsequently reinforced. By 1984 those credit facilities had reached a ceiling of US$130 million, at a moment when economic competition from other Western countries (such as France and Spain) was becoming more pressing (Rolo 1986: 167). The European Community added a further impulse to Portugal's initiatives towards Angola. Since the beginning of Portugal's EC accession process, Brussels had pointed out to the potential utility of Lisbon's historical links in Africa, and other continents, for the international role of the Community (European Commission 1978: 7). Moreover, as the EC was interested in strengthening its relations with the Frontline States (which included Angola), Lisbon increasingly linked strong ties with its ex-colonies in Africa to a reinforcement of its own position next to the Community (Venâncio and Chan 1996: 45).

Portugal's intention to play a specific role in the relationship between Europe and Africa became perceptible since the early stages of its EC accession process. Yet considering the intrinsic uncertainties of those negotiations and Portugal's enduring political instability, it was only in the final phase of the accession process that Lisbon's claim started to gain more grounds and clarity. As explained by the Portuguese Foreign Minister of the "Central Bloc" government (a coalition of the two largest parties), in early 1985, the role Portugal envisaged for itself in the context of Euro-Africa relations was that of a "privileged interlocutor" (Gama 1985: 312). Through accession Portugal would join the group of member states with historical links to Africa, such as France and the United Kingdom. But as a small and, therefore, more "equal" country Portugal could

bring in a distinctive contribution, not least for relations with Lusophone Africa.[3] Portugal's future participation in Community mechanisms was depicted as "adding value" to its national policy, but potential advantages for the EC and Africa were also officially underlined:

> 'Portugal's integration in the European communities will provide Europe with the Portuguese sensitivity to African problems and will give Portugal the support of community mechanisms to expand its African vocation. As a result, it will also provide Portuguese-speaking African countries with an ally and a friend within the community structures, balancing the game of influences which has been conducted there by other linguistic areas' (Gama 1985: 251).

This emphasis on reciprocal benefits indicates that Portuguese authorities were aware of the conditions involved in the bridging role Lisbon wanted to play in Euro-Africa relations, not least the need to strike a balance between its national goals and common Community objectives. By becoming a member of the European Community in 1986 Portugal had to adapt its trade relations with Angola to the *acquis communautaire.* Community instruments and procedures started to be applied to those relations as EC membership required the adoption of the *acquis* in full. Due to the Common Commercial Policy (CCP), Portugal adopted all Community external trade arrangements. Moreover, all Portuguese previous external links contrary to the CCP were abolished and future ones subjected to its rules, including the exclusive right for the Commission to offer and negotiate new trade agreements. Since Angola had joined the Lomé Convention in 1985 (Lomé III), this agreement became the framework for Portugal's trade relations with its ex-colony. Also, the "most favoured nation" clause inserted in the 1979 trade agreement between Portugal and Angola lost its potential benefits in relation to other European member states.[4] Nevertheless, Portugal's trade agreement with its ex-colony continued to be potentially advantageous vis-à-vis other countries outside the EC, as its content was not incompatible with the *acquis communautaire* (Álvares 1986: 201-3). In fact, owing to Lomé's non-reciprocal trade regime the main implications of Portugal's accession to the Convention concerned its imports from ACP countries. Yet, as seen above Portugal's trade with Angola was at the time very low, especially regarding imports.[5] Moreover, Portugal was allowed to only gradually open its market to ACP products over a seven-year transition period. Thus, in practical terms Community obligations had limited implications for Portugal's bilateral trade relationship with Angola. As bluntly put by a senior Portuguese diplomat referring to Community trade dispositions: 'Community rules are not as rigid as they seem; even the rules we need to abide by do not impede bilateral relations.'[6] In contrast, the participation in common mechanisms and resourceful programmes opened the possibility for Portugal to reinforce its enduring national preferences vis-à-vis Angola.

The potential opportunities for Portugal to project its national priorities started to materialise very soon. One of the consequences of Portugal's EC accession was the application of the Lomé Convention's sugar protocol, which imposed restrictions on Portuguese imports of cane sugar from ACP countries.[7] Although Portugal's former African colonies (especially Mozambique, but Angola too) were some of its traditional suppliers, they were not in the list of countries which continued to supply Portuguese refineries under the ACP-EC sugar protocol. In fact, long wars and decolonisation had severely damaged the production capacity of those territories.[8] Concurrently, the ACP countries were interested in supplying the raw sugar deficit of Portuguese refineries. Indeed, during the negotiations of Portugal's accession to the Lomé Convention the ACP group was against the introduction of a transitional arrangement and pushed for additional concessions for agricultural products, including for sugar.[9] After protracted negotiations that request was rejected in 1987, but the ACP continued to raise the issue in subsequent discussions (Xinhua, 15 May 1987). This situation gave Portugal the opportunity to make more visible the specificities of its position within the EC. In an interview published in early 1988 the Portuguese Secretary of State of Foreign Affairs,

Durão Barroso, said that '(w)ithin the European Community Portugal maintains a position of openness for sugar imports from ACP countries. (...) Angola and Mozambique are major potential producers of sugar and this is one additional reason to support a more generous position from the Community.' Further asked whether Portugal would revise previous arrangements in order to facilitate ACP exports, the response was that '(n)o decision has been made in that regard yet. Moreover, this is a complex question and we do not want to make decisions that are not acceptable at Community level' (Barroso 1990: 94). More broadly, Portuguese officials confirmed that during the negotiations of accession to Lomé, Portugal adopted a more flexible approach in relation to exchanges with its ex-colonies, which in any case were small.[10] This more "generous" stance vis-à-vis its former colonies and the ACP in general indicate that Portugal tried to assume a distinctive position among its EC partners. Portugal's efforts of differentiation would be a way to preserve some visibility and autonomy for its own position, rather than accept its full "Europeanization".

THE IMPACT OF THE COTONOU AGREEMENT AND THE EPAs

When the reform of the Lomé Convention started in the mid-1990s, Lisbon's relationship with Angola had relatively improved. By then Portugal could benefit from favourable domestic political conditions to pursue its largely consensual foreign policy goals. The same was applicable in the economic domain where despite greater liberalisation the Portuguese state continued to have an important presence, often favouring more protectionist views. Additionally, EC membership had contributed to bolster the country's international status. In a more specific way, Lisbon's role in the Angolan peace efforts in the early 1990s had helped to reinforce the bilateral relationship. Subsequent progress was constrained by the enduring Angolan conflict, but Portugal continued to push for closer bilateral ties, namely in economic areas. Meanwhile, at the European level Lisbon became a strong supporter of the EU-ACP partnership, with a particular focus on Africa and aid approaches. As mentioned before, the 2000 Cotonou Agreement introduced major changes to the EU-ACP relationship. Ideas of solidarity continued to permeate those relations, but globalist and liberal views gained more attention. In particular, Cotonou introduced a principle of trade liberalisation, where the uniform preferential regime of Lomé was to be gradually replaced by reciprocal arrangements. Greater "differentiation" between ACP countries and "regionalisation" of trade relations represented additional departures from the Lomé regime. Further, though a mix of trade and aid measures was maintained, the development focus of previous arrangements gave more room to market-oriented approaches. This was reflected in a larger role for the European Commission's Directorate-General (DG) for Trade in EU-ACP relations. Against this broad setting, what was the impact of the Cotonou trade innovations on Portugal's relations with Angola?

Between national adaption and policy projection

The reform of the Lomé Convention that led to the signature of the Cotonou Agreement was seen by Portuguese authorities as an important process. More than trade aspects per se, Portugal's concerns related to the potential political and aid implications of the reform. In the face of growing dissatisfaction towards the Lomé Convention since the early 1990s, Lisbon was interested in preserving a special relationship between the EU and the ACP, particularly with African countries. It was in that sense that in March 1996 Portugal had put forward the initiative of organising for the first time a EU-Africa summit (Gama 2001: 269-270). The debate on the future of Lomé was launched by the Green Paper released by the European Commission in November 1996. The document suggested four options to reform EU-ACP arrangements. A first option was to maintain the *status quo*, that is, a non-reciprocal trade regime underpinned by an overall

agreement with all the ACP countries. All other options recommended a liberalisation of the trade relationship in conformity with WTO rules. Thus, the second possibility was to integrate Lomé into the EU's Generalised System of Preferences, which would diminish preferential margins and reduce the partnership to its aid and political dimensions. A third alternative ("uniform reciprocity") consisted in a general EU-ACP Free Trade Agreement, extending reciprocity to all ACP countries after a transitional period. Finally, a fourth option ("differentiate reciprocity") involved a series of trade agreements between the EU and separate regional groupings of ACP countries (Holland 2002: 173-176). Subsequent discussions revealed three main cleavages among EU member states: "traditionalists" (who wanted to preserve the "spirit of Lomé") versus "revisionists" (who pressed for an all-encompassing revision); "social development-oriented aid supporters" versus "growth-oriented free market proponents"; and "trade sceptics" versus "free trade enthusiasts" (Elgström 2000: 187). In general terms, a "traditionalist", "pro-development aid" and "trade sceptic" perspective appears to have inspired Portuguese representatives during the negotiations.

From the beginning Portugal declared itself in favour of the reform, but in order to "revitalise" EU-ACP ties. Accordingly, in its opinion the positive aspects of Lomé ("contractual nature, predictability, dialogue and partnership") should be preserved. Another distinctive element of Portugal's stance was the support for a positive discrimination in favour of Least Developed Countries (LDCs) (Portugal 1997b: 101-102). These same elements as well as a critical view over following a primarily free trade approach in the forthcoming reform were buttressed by the Portuguese Secretary of State of Foreign Affairs, José Lamego, at the national parliament in January 1997:

> 'We do not want this framework of cooperation (Lomé model), which has existed for over 30 years, to be dismantled under the guise of a future reform. More differentiation needs to be introduced. However, we do not believe that the current cooperation framework, based on a partnership model, can be dismantled and replaced by a system of relations only in terms of a Generalised System of Preferences or of pure unfettered free trade. The economic vulnerability of our partners would not stand it.' (Portugal 1997c: 1264).

Among the preliminary written responses that the Commission's Green Paper received from the member states, Portugal's one was described as using some of the strongest language (Posthumus 1998: 11). The document, circulated in May 1997, clearly stated that Portugal would consider reviewing its involvement in EU-ACP cooperation if the reform did not minimally meet the objective of strengthening this relationship at all levels, favouring the ACP countries' development (Portugal 1997a: 6). Portugal's paper depicted the geographical coverage and trade arrangements of the partnership as interrelated matters (Portugal 1997a: 14). Whilst pointing to the fact that the decision was ultimately to be made by the ACP group itself, Portugal explicitly favoured maintaining the geographical set-up as it was (Portugal 1997a: 10). Regarding trade aspects, although no clear and definitive choice among the different options of reform was made, a preference for an "enhanced *status quo*" formula was indicated (Portugal 1997a: 12). As noted by some, in its initial response Portugal (together with France) was more optimistic than other member states about the possibility of obtaining WTO waivers to preserve the non-reciprocal regime of Lomé (Posthumus 1998: 5).

Following the consultation phase, in October 1997 the European Commission issued its policy guidelines for reforming Lomé, indicating a clear preference for the negotiation of economic agreements with regional ACP subgroups (European Commission 1997: 4). This was in line with Portugal's own position at this stage, as revealed by the following excerpt from the Portuguese Ministry of Foreign Affairs' 1997 report:

> 'the EU should move from the current unilateral concessions granted to the ACP to a regime of reciprocity (except for LDCs). Yet, this should be done in a measured and gradual manner in order to avoid disruptions. Focusing first on

> deepening regional integration processes that are under way in the ACP countries before moving to the requirement of reciprocity vis-à-vis the EU corresponds to the gradualism that we advocate.' (Portugal 1998: 128).

The Commission guidelines were subsequently expanded and formed an important basis for the negotiating mandate adopted by the Council in mid-1998 (Holland 2002: 178). In fact, the European Commission played an important role in the process, particularly DG Development as the directorate traditionally in charge of EU policies towards the ACP (Forwood 2001: 433-434). At the time, DG Development was led by Commissioner Deus Pinheiro, a former Portuguese Foreign Minister. The outcome of the internal EU negotiations was a compromise between different perspectives, but one that according to the assessment made by a high-level Portuguese politician was not so negative for Portugal.[11] On the one hand, a principle of trade liberalisation was introduced, replacing the non-reciprocal regime of Lomé. As put by a senior Portuguese official 'no member state was willing to pay the price for keeping an exception to WTO rules; nor were we!'[12] In any case, Portugal's stance on trade matters was closer to France, Belgium and Italy than, for instance, to the United Kingdom, the Netherlands and the Nordics (Forwood 2001: 428-429; Posthumus 1998: 4-5).[13] On the other hand, the trade liberalisation agreed by the Council did not include LDCs and was to be conducted gradually, through the negotiation of the so-called EPAs with different regional ACP sub-groups. Following the same Portuguese official, 'member states with closer ties with Africa ended up preferring the EPAs. So did Portugal, as that option preserves the EU relationship with the continent.'[14]

Even if an EU-ACP link was retained, the potential impact of trade changes on the overall partnership raised more concerns in Portuguese quarters. Some apprehension was already visible during the intra-EU negotiations described above, namely in the emphasis that Portugal put on the interdependence between the different dimensions of the reform. But it continued to be voiced even after the EPAs principle was adopted: 'the new economic and trade partnership framework cannot diminish or weaken the special relationship the EU has with the region (ACP)' (Portugal 1999: 134). More specifically, while backing the negotiation of EPAs Portugal was less comfortable with the new emphasis put on trade liberalisation in comparison to development approaches based on aid measures. Thus, in 1999 when the United Kingdom and the Netherlands broke away from the EU position, doubting about the EPAs feasibility, Portugal (and other seven member states) reaffirmed their adherence to the negotiating mandate (Forwood 2001: 435). Accordingly, in June 2000, when the negotiations of Cotonou were already concluded, Portuguese Secretary of State for Foreign Affairs Luís Amado, publicly raised questions about the availability of adequate instruments to support the setting up of EPAs and the possible effect of "disintegration" that greater liberalisation could produce in some regions, especially in Africa (Portugal 2000: 89-91). These concerns were not dissipated with the beginning of the EPAs negotiations. The EU mandate for those negotiations was based on a recommendation drafted by DG Trade, putting greater accent on trade objectives than on development aims (Elgström 2009: 458); the recommendation called for more autonomy for the Commission, as well as greater openness of both EU and ACP markets. Portugal appears to have pushed for a less flexible mandate for DG Trade and joined a more protectionist camp opposing full access to the EU market due to defensive interests in agricultural sectors (Sicurelli 2010: 97-98).[15] In the end, the mandate adopted by the Council in June 2002 watered down the full opening of European markets, while confirming a trade-centred approach for the EPA negotiations.

The negotiations of EPAs between the EU and the different ACP sub-groups revealed many difficulties. At least initially, EU countries in general showed little interest in the process. To illustrate, only three European ministers (including from Portugal) attended the first EU-ACP council meeting that took place after the adoption of the EU negotiating mandate (IPS 1 July 2002). Against this setting, DG Trade was left with great room for

manoeuvre and started to conduct the negotiations as if they were a pure trade negotiation (Elgström 2009: 459-460). Lisbon was critical of this primarily free trade approach. According to Portuguese officials, since the beginning Portugal stood for the creation of EPAs as tools for development. The way DG Trade handled the negotiations would have contributed to delay the process and, consequently, complicated Portugal's plans.[16] The negotiation between the EU and the Southern African Development Community (SADC) - which comprises Angola - was no exception to the slow progress of the EPAs. Indeed, after a late start in mid-2004 the EU-SADC EPA discussions were complicated by the inclusion of South Africa (Sicurelli 2010: 102). During an initial phase the country (the dominant economic player in the region) participated only as an observer.[17] In 2006 the SADC presented a proposal to include South Africa as a full party, but excluding Mozambique, Angola, and Tanzania (the so-called MAT).[18] Portugal (and other EU members) was against the exclusion of the MAT from the EPA process (Portugal 2008a: 114). Moreover, it pressed for the acceptance of South Africa to be subjected to specific conditions, allegedly for 'safeguarding the interests of the MAT countries' (Portugal 2008b: 110). Eventually, the deadline of end of 2007 for concluding the negotiations was not met. Instead of a full regional EPA, interim deals were initialled by some SADC countries. Angola was not one of them, but expressed the intention of joining later. Meanwhile, the country continued to benefit from a preferential access to the EU market through the EBA scheme, while gaining time to prepare the liberalisation of its economy.[19] In sum, while the trade changes introduced by Cotonou have not produced a significant impact on Portugal's relations with Angola so far, Lisbon was able to an extent to protect its own market and project an image of a pro-Africa partner.

CONCLUSION

Portugal's membership of the European Union led to an important Europeanization of its trade policy towards Angola. This impact was mainly translated in a national adaptation to the EU's influence, but also as the projection of national priorities onto the European level. Lisbon's legal obligation of adopting the *acquis communautaire* in full during the EC accession process was a powerful mechanism to produce national adaptation. More broadly, the importance accession came to represent for Portugal's main political forces, as a tool for democratic stabilisation and foreign policy reorientation, together with the new opportunities Community membership promised to create for Portugal's meagre and problematic relations with Angola, helped overcome domestic reservations over closer relations with Europe in Africa. Even if the instrumentality of EC membership was given great emphasis during this phase, more ideational factors favouring national adaptation might not have been completely absent. This is an aspect that deserves further investigation, as decision-makers with stronger European convictions may have had to conceal their beliefs in order to facilitate the process of accession. Yet, a possible identification with European ideas was not necessarily incompatible with own representations in relation to the ex-colonies. These continued very present among vast sectors of the Portuguese elite and society in general. The difference, however, was that with Portugal's EC membership the national and European side became more intertwined. In effect, through accession Lisbon transferred to the Community most of its powers in external trade matters, and EC instruments became a central framework for Portugal's commercial relations with Angola. In practical terms, the constraints on Portugal's bilateral relations with Angola resulting from accession were more limited, namely due to the low level of trade between the two countries.

The reform of the Lomé trade regime provided another good case for assessing the potential EU's impact on Portugal-Angola relations. The greater role commercial aspects came to occupy in EU-ACP discussions seems to have gone beyond Portugal's preferences, due to its traditional "trade sceptical" stance. Lisbon had to compromise its position in order to achieve the common goal of revising the partnership with the ACP. However, Portugal did not have major commercial interests at stake, being more

interested in the aid and political implications of the reform. Even if further research is needed on this point, Lisbon appears to have been able to protect its (limited) defensive interests, while showing more flexibility with regard to greater openness of ACP markets in general. In any case, the compromise outcome of the reform, including a "gradual", "regional" and "differentiated" trade liberalisation, did not move too far away from Portugal's interests. Notwithstanding the complications of the EU-SADC EPA negotiations, Angola remained linked to the process and as a LDC continued to benefit from a non-reciprocal regime. Thus, in practice the reform did not have major implications for Portugal-Angola trade relations so far. Simultaneously, the evidence above indicates that Portugal was able to project some of its preferences. This was the case in relation to the acceptance of the EPAs option, despite all the difficulties that followed. In that process Portugal appears to have benefited, among other factors, from the unanimity requirement for revising Lomé (as a "mixed" agreement), the similar position of other member states (such as France), and the support of DG Development. Apart from that, by putting forward proposals favouring the ACP (particularly LDCs, such as Angola) Portugal was able to draw attention to the specificities of its national position within the EU, therefore, favouring its interests in Africa.

Those findings provide a more detailed and nuanced picture than the one found in the existing literature on Portuguese foreign policy, described above. The evidence of national adaptation comes close to more "Europeanist" perspectives describing the EU as the central forum for the delineation of the foreign policy of smaller member states. Yet, evidence also revealed that such adaptation was not disconnected from an instrumental use of common mechanisms to pursue national objectives, along the lines of more "state-centric" understandings. This mixed outcome indicates that Portugal subscribed and showed commitment to common objectives, but also sought actively to shape EU policies according to its national views, especially in relation to its ex-colonies. Ultimately, this level of national agency can be related to the presence of important economic interests from Portuguese companies with influence over the official policy. That influence is likely to have been favoured by the strong historical and cultural links existing between Portugal and Angola. A complementary explanation is the more general role Angola (together with the other former African colonies) plays in Portuguese foreign policy, as a factor of international differentiation and influence. In effect, apart from the importance of those relations on a bilateral level, Portugal's post-colonial relations are often presented as a key trait of the country's diplomatic identity and a factor of leverage at the international level. The end of the Cold War, globalisation, increased European integration, successive EU enlargements, as well as the recent economic crisis in Portugal, seem all to have reinforced such relevance. The broader implication of those findings is the need to adequately account for national conditions, even in highly integrated EU policy areas and for smaller member states.

* * *

ACKNOWLEDGEMENTS

Earlier versions of this article were presented at the 5th ECPR Pan-European Conference on EU Politics (Porto, 23-26 June 2010), 11th UACES Student Forum Annual Conference (Bath, 29-30 April 2010) and at the 5th Portuguese Political Science Association Congress (Aveiro, 4-6 March 2010). The author thanks the participants for their feedback, particularly Manuel Ennes Ferreira. The author is also grateful to the two anonymous reviewers for their valuable comments and to all the interviewees. The largest part of this research was conducted in the context of a PhD programme funded by a grant from the Fundação para a Ciência e a Tecnologia (SFRH/BD/37088/2007).

[1] Author's interview (Lisbon, October 2010).
[2] All quotations in this article originating from non-English sources are the author's own translation.
[3] Author's interview with Portuguese diplomat (Lisbon, October 2010).
[4] Under Lomé dispositions Angola assumed an obligation of non-discrimination among EC members (*see* article 136 of Lomé III).
[5] Between 1978 and 1986 less than 0.4 per cent of Portugal's total imports came from Angola (Banco de Portugal, 2000).
[6] Author's interview (Lisbon, November 2010).
[7] With EC accession the annual amount of raw cane sugar Portugal was allowed to import from the ACP at a reduced levy was limited to a maximum of 75,000 tons, whereas in the past it used to import an amount of 300,000 tons. *See* article 303 of Portugal's Act of Accession to the EC (European Communities, 1985).
[8] Author's telephone interview with a senior official from the Portuguese Foreign Ministry (July 2011).
[9] As Lomé III was signed before Portugal's EC accession, the participation of this country (together with Spain) in the Convention had to be negotiated separately with the ACP.
[10] Author's interviews, Portuguese Foreign Ministry (Lisbon, November 2010).
[11] Author's interview (Lisbon, November 2010).
[12] Author's interview, Portuguese aid agency (Lisbon, November 2010).
[13] Author's interviews, Portuguese Foreign Ministry (Lisbon, November 2010).
[14] Author's interview, Portuguese aid agency (Lisbon, November 2010).
[15] Author's telephone interview with official from the Portuguese Foreign Ministry (July 2011).
[16] Author's interviews, Portuguese aid agency (Lisbon, November 2010) and Permanent Representation to the EU (Brussels, February 2011).
[17] The SADC countries that in 2004 started negotiating an EPA with the EU as full members were: Angola, Botswana, Lesotho, Mozambique (also a former Portuguese colony), Namibia, Swaziland and Tanzania.
[18] As LDCs those three countries benefited from the Everything-But-Arms (EBA) scheme, which the SADC proposal wanted to "contractualise" on a non-reciprocal basis in the EPA.
[19] Author's interviews with EU officials, DG Trade and DG Development (Brussels, January 2011).

REFERENCES

Allen, D. (1996). 'Conclusions: The European rescue of national foreign policy?', in C. Hill (ed.), *The actors in Europe's foreign policy*. London; New York: Routledge, pp. 288-304.

Álvares, P. (1986). *Portugal na CEE: a indústria, a agricultura, a pesca, os trabalhadores, os investimentos, os fundos, o presente e futuro*. Mem-Martins: Publicações Europa-América.

Banco de Portugal (2000). *Evolução das Economias dos PALOP: 1999/2000*. Lisboa: Banco de Portugal - Departamento de Relações Internacionais.

Banco de Portugal (2011). *Evolução das Economias dos PALOP e de Timor-Leste: 2010/2011*. Lisboa: Banco de Portugal - Departamento de Relações Internacionais.

Barroso, J. M. D. (1990). *Política de Cooperação. Discursos, entrevistas e textos públicos do Secretário de Estado dos Negócios Estrangeiros e da Cooperação, 1987/1989*. Lisboa: Ministério dos Negócios Estrangeiros.

Cravinho, J. G. (2005). 'Les relations post-coloniales portugaises', *Pôle Sud,* 2005/1 (22), pp. 89-100.

Dinan, D. (2004). *Europe recast: a history of European Union*. Basingstoke: Palgrave Macmillan.

Elgström, O. (2000). 'Lomé and post-Lomé: asymmetric negotiations and the impact of norms', *European Foreign Affairs Review,* 5 (2), pp. 175-195.

Elgström, O. (2009). 'Trade and aid? The negotiated construction of EU policy on economic partnership agreements', *International Politics,* 46 (4), pp. 451-469.

European Commission (1978). *Opinion on Portuguese Application for Membership. Transmitted to the Council by the Commission on 19 May 1978.* COM (78) 220 final. Bulletin of the European Communities, Supplement 5/78.

European Commission (1997). *Guidelines for the Negotiation of New Cooperation Agreements with the African, Caribbean and Pacific (ACP) Countries.* COM (97) 537 final, 29 October 1997.

European Communities (1985). 'Documents concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities', Official Journal of the European Communities, L302, 15 November 1985.

Ferreira, J. M. (1999). *A Nova Era Europeia: de Genebra a Amesterdão*. Lisboa: Editorial Notícias.

Ferreira, M. E. (2005). 'O Império e as Relações Económicas com África', in P. Lains and Á. F. d. Silva (eds.), *História Económica de Portugal 1700-2000. Volume III. O Século XX*. Lisboa: Imprensa de Ciências Sociais - ICS-UL.

Ferreira, M. E. and Gonçalves, F. R. (2009). Diplomacia económica e empresas de bandeira: os casos da Galp e da Unicer em Angola. *Relações internacionais,* 24 (Dez 2009), pp. 115-134.

Forwood, G. (2001). The Road to Cotonou: Negotiating a Successor to Lomé. *Journal of Common Market Studies,* 39 (3), pp. 423-442.

Gama, J. (1985). *Política Externa portuguesa, 1983-1985. Selecção de discursos, conferências e entrevistas do Ministro dos Negócios Estrangeiros.* Lisboa: Ministério dos Negócios Estrangeiros.

Gama, J. (2001). *A Política Externa Portuguesa: 1995-1999. Colectânea de intervençoes, artigos e entrevistas do Ministro dos Negócios Estrangeiros.* Lisboa: Ministério dos Negócios Estrangeiros.

Gaspar, C. (1988). 'Portugal's policies toward Angola and Mozambique since independence', in R. J. Bloomfield (ed.), *Regional conflict and U.S. policy: Angola and Mozambique*. Algonac: Reference Publications, pp. 40-74.

Gaspar, C. (2000). 'Portugal e o alargamento da União Europeia', *Análise Social,* XXXV (154-155), pp. 327-372.

Graziano, P. and Vink, M. P. (2008). *Europeanization: new research agendas*. Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan.

Holland, M. (2002). *The European Union and the Third World*. Basingstoke: Palgrave.

IPS (2002). EU-ACP Meet Fails to Bridge Divide. Inter Press Service, 1 July.

Larsen, H. (2005). *Analysing the foreign policy of small states in the EU: the case of Denmark*. Basingstoke: Palgrave.

MacQueen, N. (1997). *The decolonization of Portuguese Africa: metropolitan revolution and the dissolution of empire*. New York: Longman.

Magone, J. (2000). 'Portugal', in I. Manners and R. Whitman (eds.), *The foreign policies of European Union member states*. Manchester: Manchester University Press, pp. 162-178.

Magone, J. (2004). *The developing place of Portugal in the European Union*. New Brunswick, N.J.: Transaction Publishers.

Manners, I. and Whitman, R. (2000). 'Conclusion', in I. Manners and R. Whitman (eds.), *The foreign policies of European Union member states*. Manchester: Manchester University Press, pp. 243-273.

Meunier, S. and Nicolaidis, K. (2011). 'The EU as a trade power', in C. Hill and M. Smith (eds.), *International relations and the European Union*. Oxford: Oxford University Press, 2nd ed, pp. 275-298.

Neves, M. S. (1996). 'Portugal: A Promoter for Sub-Saharan Africa', in F. Algieri and E. Regelsberger (eds.), *Synergy at work: Spain and Portugal in European foreign policy*. Bonn: Europa Union Verlag, pp. 137-163.

Newitt, M. (1981). *Portugal in Africa: the last hundred years*. London: Hurst.

Newitt, M. (2009). *Portugal in European and World History*. London: Reaktion Books.

Oliveira, R. S. d. (2005). 'Sobre as relações entre Portugal e Angola ao fim de trinta anos: um ensaio crítico', *Relações internacionais* (8), pp. 55-72.

Pinto, A. C. and Teixeira, N. S. (2004). 'From Atlantic past to European Destiny: Portugal', in W. Kaiser and J. Elvert (eds.), *European Union enlargement: a comparative history*. London: Routledge, pp. 112-130.

Portugal (1976a). *Apresentação do programa do governo. Diário da Assembleia da República,* I Série, n.º 17, de 3 de Agosto de 1976.

Portugal (1976b). 'Programa do I Governo Constitucional'. Available at: http://www.portugal.gov.pt/pt/GC01/Governo/ProgramaGoverno/Pages/ProgramaGoverno.aspx. Last accessed 30 June 2011.

Portugal (1997a). 'O futuro da Convenção de Lomé: um primeiro contributo da delegação portuguesa', Abril 1997. Ministério dos Negócios Estrangeiros - Representação Permanente em Bruxelas (REPER).

Portugal (1997b). *Portugal na União Europeia: décimo primeiro ano - 1996*. Lisboa: Ministério dos Negócios Estrangeiros (MNE).

Portugal (1997c). *Ratificação do Acordo de Alteração da IV Convenção ACP-CE de Lomé.* Diário da Assembleia da República, I Série, n.º 34, de 1 de Fevereiro de 1997.

Portugal (1998). *Portugal na União Europeia: décimo segundo ano - 1997*. Lisboa: Ministério dos Negócios Estrangeiros (MNE).

Portugal (1999). *Portugal na União Europeia: décimo terceiro ano - 1998*. Lisboa: Ministério dos Negócios Estrangeiros (MNE).

Portugal (2000). 'Europa-África: perspectivas de relacionamento', Seminário Internacional. Instituto de Defesa Nacional, 15 e 16 de Junho de 2000. Lisboa: Ministério dos Negócios Estrangeiros - Instituto Diplomático (IDI).

Portugal (2008a). *Portugal na União Europeia: vigésimo primeiro ano - 2006*. Lisboa: Ministério dos Negócios Estrangeiros (MNE).

Portugal (2008b). *Portugal na União Europeia: vigésimo segundo ano - 2007*. Lisboa: Ministério dos Negócios Estrangeiros (MNE).

Posthumus, B. (1998). 'Beyond Lomé IV: Preliminary Views of European Governments on Future EU-ACP Relations', *ECDPM Working Paper N.º 53.* Maastricht: ECDPM.

Rolo, J. M. (1986). *Redescobrir a África: a Cooperação Portuguesa no Contexto da Cooperação Internacional para o Desenvolvimento*. Lisboa: Imprensa de Ciências Sociais.

Seabra, P., and Gorjão, P. (2011). 'Intertwined Paths: Portugal and Rising Angola', *SAIIA Occasional Paper,* 89 (August).

Sicurelli, D. (2010). *The European Union's Africa policies: norms, interests and impact*. Aldershot: Ashgate.

Teixeira, N. S. (2003). 'Between Africa and Europe: Portuguese Foreign Policy, 1890-2000', in A. C. Pinto (ed.), *Contemporary Portugal. Politics, Society and Culture*. New York: SSM-Columbia University Press, pp. 85-118.

Tonra, B. (2001). *The Europeanisation of national foreign policy: Dutch, Danish and Irish foreign policy in the European Union*. Aldershot: Ashgate.

Vasconcelos, Á. d. (1996). 'Portugal: pressing for an open Europe', in C. Hill (ed.), *The actors in Europe's foreign policy*. London: Routledge, pp. 268-287.

Vasconcelos, Á. d. (2000). 'Portugal: The European Way', in Á. d. Vasconcelos and M. J. Seabra (eds.), *Portugal: a European story*. Cascais: Principia, pp. 11-38.

Venâncio, M. and Chan, S. (1996). *Portuguese Diplomacy in Southern Africa: 1974-1994*. Braamfontein: SAIIA.

Venâncio, M. and McMillan, C. (1993). 'Portuguese Mediation of the Angolan Conflict in 1990-1', in S. Chan and V. Jabri (eds.), *Mediation in Southern Africa*. London: Macmillan, pp. 100-116.

Wallace, H. (2005). 'Exercising Power and Influence in the European Union: The Roles of Member States', in S. Bulmer and C. Lequesne (eds.), *The member states of the European Union*. Oxford: Oxford University Press, pp. 25-44.

Wong, R. (2008). 'Foreign Policy', in P. Graziano and M. P. Vink (eds.), *Europeanization: new research agendas*. Basingstoke: Palgrave, pp. 321-334.

Wong, R. and Hill, C. (2011). *National and European foreign policies: Towards Europeanization*. London: Routledge.

Woolcock, S. (2010). 'Trade Policy: A Further Shift Towards Brussels', in H. Wallace, M. A. Pollack and A. R. Young (eds.), *Policy-making in the European Union*. Oxford: Oxford University Press, pp. 381-399.

Xinhua (1987). 'Spain, Portugal agree to enter Lomé Convention', 15 May.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Tackling Europe's Informal Economy: A Critical Evaluation of the Neo-liberal De-regulatory Perspective

Colin C Williams *University of Sheffield*

Citation

Williams, C.C. (2013). 'Tackling Europe's Informal Economy: A Critical Evaluation of the Neo-liberal De-regulatory Perspective'*, Journal of Contemporary European Research*. 9 (2), pp. 261-278.

First published at: www.jcer.net

Abstract

Since the turn of the millennium, there has been widespread recognition that the informal economy is a sizeable and growing feature in the global economy. To explain this, neo-liberals have contended that the informal economy is a direct result of over-regulation, high taxes and state interference in the free market. Their remedy, therefore, is de-regulation, tax reductions and minimal state intervention. This article evaluates critically this neo-liberal perspective towards the informal economy. Reviewing cross-national comparative data from the 27 member states of the European Union, the finding is that few people explain their own and others' participation in the informal economy using such rationales, that higher tax rates are not correlated with larger informal economies, and that lower levels of state intervention are correlated with larger (not smaller) informal economies. The article concludes by refuting the neo-liberal approach as a remedy and calling for more, rather than less, regulation of the economy.

Keywords

Shadow economy; hidden economy; informal sector; informal employment; Europe

---

For much of the twentieth century, the belief was that the informal economy was simply a residue from some past regime of accumulation and that it was gradually disappearing from view (Geertz 1963; Lewis 1959). In the new millennium, however, there has been recognition that the informal economy is an extensive and persistent feature of the global economic landscape (Williams and Nadin 2012a, 2012b). Indeed, of the global workforce of three billion, the OECD estimates that the majority (1.8 billion) works in the informal economy (Jütting and Laiglesia 2009). To explain this, neo-liberals have argued that its persistence and growth results from high taxes, over-regulation and state interference in the free market and that the solution is therefore to pursue tax reductions, de-regulation and to minimise state interference in the market (Nwabuzor 2005; Becker 2004; London and Hart 2004; De Soto 2001, 1989). The aim of this article is to evaluate critically this neo-liberal explanation of the informal economy as well as its resultant remedies.

To commence, therefore, the first section reviews the increasingly dominant neo-liberal explanation for the persistence and growth of the informal economy that views it to result from high taxes, over-regulation and too much state interference in the working of the market. To start to evaluate critically the validity of this neo-liberal explanation, attention turns in the second section to an evaluation of whether the cross-national variations in the size of informal economy in the 27 member states of the European Union can be explained in such terms. This evaluates not only whether participants explain their own and others' participation in the informal economy in such neo-liberal terms but also whether the size of the informal economy is smaller in member states in which there are lower taxes and less state interference. The concluding section then evaluates critically the validity of this neo-liberal perspective and calls for an alternative approach based on more, rather than less, regulation of the economy.

Before commencing, however, this sphere in which nearly two-thirds of all global jobs are found needs to be defined. Reviewing the extensive literature, it becomes quickly apparent that at least 45 different adjectives have been so far used to denote this endeavour, such as 'unregulated', 'non-visible', 'a-typical', 'irregular', 'hidden', 'shadow', 'informal', 'cash-in-hand' and 'undeclared'. Nearly all describe what is absent, insufficient or missing from work in the informal economy relative to work in the formal economy. Despite the array of terms used, there is a strong consensus regarding what is missing, insufficient or absent. The informal economy is widely taken to include remunerated

activity which is not declared to the state for tax, social security and labour law purposes when it should be declared, but is legal in all other respects (Williams 2010, 2007, 2004, 2001; European Commission 2007b, 1998; Sepulveda and Syrett 2007; Williams and Windebank 2006, 1998, 1994; Renooy et al. 2004). Consequently, if economic activity possesses other absences or insufficiencies, such as that the good and/or service traded is illegal, or that no money changes hands, then it is not part of the informal economy but instead part of the 'criminal' economy or unpaid economy respectively. However, there are of course blurred edges to this definition such as when gifts or in-kind labour are exchanged in lieu of money (White 2009). For the purposes of this article, nevertheless, only monetary transactions are here deemed as the informal economy.

LITERATURE REVIEW: EXPLAINING THE PERSISTENCE OF THE INFORMAL ECONOMY

For much of the twentieth century, a widespread belief was that the modern formal economy was colonising every nook and cranny of the economic landscape and that the informal economy was merely a residue or remnant from some past regime of accumulation that was gradually waning and disappearing (Geertz 1963; Lewis 1959; Boeke 1942). From this perspective, therefore, there was little reason to pay much attention to the informal economy. The belief was that it was wholly appropriate for the study of the economy to focus upon the apparently ever more dominant modern formal economy.

Over the past few decades, however, this has begun to be questioned with the recognition that the informal economy is widespread, persistent and even growing relative to the formal economy in many global regions (Buehn and Schneider 2012; Feld and Schneider 2010; Schneider et al. 2010; Jütting and Laiglesia 2009; Rodgers and Williams 2009; ILO 2002a, 2002b; OECD 2002). Indeed, given that the informal economy on a global level has been estimated to be equivalent to 33 per cent of global GDP (Schneider 2011) and some 60 per cent of all jobs worldwide are asserted to be in the informal economy (Jütting and Laiglesia 2009), it can no longer be depicted as some leftover, residue or remnant. The result is that new explanations for its persistence and growth have emerged.

At first, it was a structuralist view that tended to be the dominant explanation for the persistence and growth of the informal economy. This viewed the informal economy not as separate from, but an inherent component of, contemporary capitalism, providing businesses with a channel to attain flexible production, profit and cost reduction. The informal economy was thus seen as a key component of the new downsizing, sub-contracting and outsourcing arrangements emerging under de-regulated global capitalism, as well as a receptacle into which surplus labour is cast to eke out a survival in the absence of alternative means of livelihood (Slavnic 2010; Davis 2006; Gallin 2001; Sassen 1996; Castells and Portes 1989). Viewed through this structuralist lens, informal work was seen to be a result of under-regulation and composed almost entirely of 'sweatshop-like' dependent employment and/or 'false' self-employment, with informal workers viewed as unfortunate and unwilling pawns in an exploitative global system working in this realm out of necessity (Ghezzi 2010; Ahmad 2008; Geetz and O'Grady 2002).

Over the past few decades, however, it has been widely recognised that the vast majority of work in the informal economy is conducted on a self-employed basis and often as a matter of choice rather than due to a lack of choice (OECD 2012; Williams and Nadin 2012a, 2012b; Williams et al. 2012, 2011; Williams 2011, 2010, 2006, 2003;Neuwirth 2011; Williams and Round 2010, 2008; Venkatesh 2008; Cross and Morales 2007; Small Business Council 2004; Snyder 2004; ILO 2002b; De Soto 2001, 1989; Cross 2000). Based on this recognition, a neo-liberal explanation has come to the

fore that reads the informal economy to be a result of over-regulation rather than under-regulation (Nwabuzor 2005; Becker 2004; London and Hart 2004; Small Business Council 2004; De Soto 2001, 1989). Seen though this lens, informal workers have become widely depicted as micro-entrepreneurs voluntarily choosing to operate in the informal economy on a self-employed basis and heralded as heroes casting off the shackles of state over-regulation (e.g., De Soto 1989; Sauvy 1984). As Nwabuzor (2005: 126) asserts: 'Informality is a response to burdensome controls, and an attempt to circumvent them', or as Becker (2004: 10) puts it, 'informal work arrangements are a rational response by micro-entrepreneurs to over-regulation by government bureaucracies'. Informal workers are thus seen to be only breaking unfair rules and regulations imposed by an excessively intrusive state. The informal economy is consequently construed as a form of popular resistance to state over-regulation and informal workers viewed as a political movement that can generate both true democracy and a rational competitive market economy (De Soto 1989). For neo-liberals, the persistence and growth of the informal economy is therefore a direct result of high taxes, over-regulation and state interference in the free market. Their resultant policy approach is to pursue tax reductions, de-regulation and minimal state intervention.

However, although neo-liberals heap praise on informal entrepreneurs, their intention is not to promote such work. That is a popular misreading. Rather, their desire was and is to eradicate informal work as much as the structuralists discussed above. For neo-liberals, nevertheless, this is to be achieved by reducing taxes and state regulations so as to unshackle formal employment from the constraints that force up labour costs and prevent flexibility, and remove the constraints that act as a disincentive to those seeking formal jobs. With fewer regulations, the notion is that the distinction between formal and informal work will wither away so that the formal and informal spheres become inseparable since all activities would be performed in the manner now called 'informal work', although such activity would be 'formal' since it would not be breaking any rules.

The neo-liberal project, in consequence, is to de-regulate the formal economy and give the market free rein by preventing state interference in the working of the free market, and also to reduce state welfare provision. Neo-liberals view the welfare state and the economy as adversaries in that one is usually seen as the root cause of problems in the other. The difference is that whilst structuralists largely favour the welfare state and view free market capitalism as hindering social equality, neo-liberals support the free market and dislike any structure that constrains it. Structuralists therefore read intervention in the economy and social protection as necessary for the functioning of modern capitalism and indeed, a pre-requisite for efficiency and growth as well as individual self-realisation. Neo-liberals, in marked contrast, read state interference in the economy and state provision of social protection as interfering with individual freedoms and the ability of the market to optimise the efficient allocation of scarce resources. Although debates exist within neo-liberalism over the degree to which social protection should be provided (see Williams 2004), this should not mask the fact that neo-liberal commentators are largely negative about social protection and social transfers due to their deleterious influence on economic performance. For them, competitive self-regulatory markets are superior allocation mechanisms from the viewpoint of both efficiency and justice. Thus it follows that government interference in allocation processes (aside from marginal cases of imperfections, externalities or market failure) risks generating crowding-out effects, maldistribution and inefficiency with the inevitable end result that the economy will produce less aggregate wealth than if a laissez-faire approach were adopted (Lindbeck 1981; Okun 1975).

For neo-liberals, in sum, the persistence and growth of the informal economy is a direct result of high taxes, over-regulation and state interference in the free market. To evaluate critically the validity of this neo-liberal explanation, therefore, several hypotheses can be tested. These are:

- that people view themselves and others as engaging in the informal economy due to high tax rates and the burdensome bureaucracy/red tape involved in working formally;
- that countries with higher tax rates have larger informal economies;
- and that countries with greater levels of state interference in the workings of the free market have larger informal economies.

Here, the intention is to evaluate critically these hypotheses in relation to the 27 member states of the European Union (EU-27) so as to begin to explore the validity of the neo-liberal explanation.

METHODOLOGY: EXAMINING NEO-LIBERAL EXPLANATIONS FOR EUROPE'S INFORMAL ECONOMY

To evaluate whether people view themselves and others as working in the informal economy for the reasons neo-liberals assert, namely high tax rates and the over-burdensome bureaucracy/red tape involved in working in the formal economy, data is reported from the 2007 Eurobarometer survey of participation in the informal economy conducted in the 27 member states of the European Union (European Commission 2007a; TNS Infratest et al. 2006). This involved 26,659 face-to-face interviews, 500 in the smaller nations and 1,500 interviews in the larger EU countries, based on a multi-stage random (probability) sampling method with sampling points drawn with probability proportional to population size and population density according to the Eurostat's NUTS II (or equivalent) and the distribution of the resident population in terms of metropolitan, urban and rural areas. Further addresses (every nth address) were subsequently selected by standard 'random route' procedures from the initial address. Within each household surveyed, furthermore, the respondent was chosen using the 'closest birthday rule'. The interviews were conducted face-to-face in their homes and in the appropriate national language with adults aged 15 years and over. The interview schedule firstly asked respondents for their opinions regarding the informal economy and then moved onto questions regarding their purchase of goods and services from the informal economy, followed by their supply of work in the informal economy, including the type of work conducted, for whom and their reasons. Here, the focus is be upon the results regarding their opinions about why people engage in informal work and the reasons given by informal workers for doing so.

To analyse whether EU countries with higher tax rates have larger informal economies, meanwhile, the size of the informal economy is here derived from a European Commission-funded evaluation of the magnitude of the informal economy in the EU-27 using indirect measurement methods (GHK and Fondazione Brodolini 2009). Indirect measurement methods either seek statistical traces of such work in non-monetary indicators (e.g. discrepancies in labour supply figures, electricity demand), monetary indicators collected for other purposes (e.g. currency demand) or investigate the discrepancies between income and expenditure levels either at the aggregate or household level. Here, the mean estimate resulting from all the indirect measurement methods that have been used over the past decade in each country is used to estimate the size of informal economy. Although this is not a perfect measure, it does nevertheless avoid over-reliance on one method. Examining the measurement methods used over the past decade in the EU-27, the monetary currency demand method has been most frequently used (in 39 instances across 27 member states), followed by the income/expenditure discrepancy method (28 sources) and labour input variances (27

sources). The number of estimates produced also varies across countries, with the highest number in Spain (14), followed by Slovenia (10), Hungary and Croatia (9 each), and Netherlands, Poland and Turkey (8 sources in each country). For the UK, GHK and Fondazione Brodolini (2009) found no estimates, so the result produced by Schneider (2011) using a dynamic multiple variables method is here used. For Malta and Luxembourg no results are available so these countries are not included.

The varying tax rates across the EU-27, meanwhile, are taken from the official publications of the European Statistical Office (Eurostat 2011, 2007). Firstly, the implicit tax rates on employed labour in the EU-27 are evaluated, which is the sum of all direct and indirect taxes and employees' and employers' social contributions levied on employed labour income divided by the total compensation of employees working in the economic territory. Secondly, the total tax revenue (excluding social contributions) as a percentage of GDP in each member state is analysed. Total tax revenue here includes all taxes on production and imports (e.g. taxes enterprises incur such as for professional licences, taxes on land and building and payroll taxes), all current taxes on income and wealth (including both direct and indirect taxes) and all capital taxes (Eurostat 2007).

To evaluate the relationship between the size of the informal economy and levels of state interference in the workings of the free market, meanwhile, three indicators are used. Firstly, the level of spending on state labour market interventions as a proportion of GDP (Eurostat 2011), secondly, the level of state social protection expenditure (excluding old age benefits) as a proportion of GDP (European Commission 2011) and third and finally, the impact of state redistribution via social transfers (European Commission 2011), are analysed. Each is discussed in more detail below.

FINDINGS: EVALUATING CRITICALLY NEO-LIBERAL EXPLANATIONS FOR EUROPE'S INFORMAL ECONOMY

Hypothesis 1: People participate in the informal economy due to high tax rates and the burdensome bureaucracy/red tape involved in working legitimately

To evaluate this hypothesis, the 2007 Eurobarometer survey evaluates firstly, respondents' opinions of why people participate in the informal economy and secondly, the reasons informal workers themselves give for participating in the informal economy. According to neo-liberal thought, the reasons for engaging in such endeavours are less to do with economic necessity (e.g. the inability to find a regular job, the fact that customers insist on non-declaration) as structuralists argue, and more to do with voluntary choice such as to avoid paying high taxes, and due to the burdensome bureaucracy/red tape involved in working formally. As Table 1 displays, however, just 16.7 per cent of the 26,659 respondents are of the opinion that high taxes and/or social contributions are the primary reason for people working in the informal economy and just 7.8 per cent say that the primary reason is because the bureaucracy and red tape involved in carrying out legitimate work is too complicated. Instead, many respondents are of the opinion that structural issues are the primary reason for people operating in the informal economy, such as the low salaries in the formal economy, the lack of regular jobs and the lack of any alternative. As such, popular opinion does not provide any resounding support for the neo-liberal assertion that informal work is due to high taxes and a burdensome bureaucratic state; less than a quarter of the population believes these are the primary reasons for participating in the informal economy.

Table 1: What in your opinion is the reason for working in the informal economy?

Reason:	% of respondents
Salaries in the regular businesses are too low	26.1
Taxes and/or social contributions are too high	16.7
Lack of control by authorities	12.0
Lack of regular jobs on the labour market	10.4
In certain sectors or regions there is no alternative	7.4
Bureaucracy/red tape to carry out a regular economic activity is too complicated	7.4
Sanctions are too weak	5.3
The state does not do anything for people, so why should they pay taxes	3.3
Nobody would buy these goods or services at normal market prices	2.4
Don't know/refusal/other	9.0

Source: data from 2007 Eurobarometer survey No. 284 on undeclared work

These, however, are simply the opinions of the population about why people work in the informal economy. They are not the reasons informal workers give for why they do so. To evaluate informal workers' motives, Table 2 reports the results of asking informal workers whether they agreed or not with a range of statements about reasons for working in the informal economy. Respondents could tick all relevant reasons. The finding is that just 12.9 per cent of the informal workers surveyed state that one of their reasons is the high levels of tax and/or social contributions and 7.8 per cent that it is the bureaucracy and/or red tape involved in conducting work on a formal basis. As such, only a small minority of informal workers explain their work in the informal economy as being due to high taxes and social contributions, and a burdensome state apparatus.

Table 2: Among the following, what were your reasons for doing this activity in the informal economy?

Reason	% of informal workers
Both parties benefited from it	46.7
You could not find a regular job	22.7
Working undeclared is common practice in this region/sector so there is no real alternative	15.6
It is just seasonal work so not worth declaring it	15.5
Taxes and/or social contributions are too high	12.9
The person who acquired it insisted on its non-declaration	11.9
Bureaucracy/red tape to carry out a regular economic activity is too complicated	7.8
The state does not do anything for you, so why should you pay taxes	5.5
You were able to ask for a higher fee for your work	5.3

Source: data from 2007 Eurobarometer survey No. 284 on undeclared work

Instead, the reasons for informal workers engaging in the informal economy again often appear to involve structural explanations and to be borne out of necessity rather than choice. For example, many asserted that they could not find a regular job, that there was no alternative in their region/sector so there is no real alternative and that it was just seasonal work so not worth declaring it, or that the person acquiring it insisted on non-declaration.

The most common reason, namely that both parties benefited from it, moreover, is not even superficially part of any neo-liberal discourse so far promulgated. Yet it is the case that it could be interpreted as part of a neo-liberal perspective of entering the informal economy voluntarily. In many EU nations, a dual formal labour market exists where the insiders have strong protection whilst the outsiders have fewer rights and protection. For neoliberals, it is this that makes people work in the informal sector. While the insiders are highly regulated and protected by the state, the outsiders prefer working informally since this is often a better choice than working formally and paying taxes. When respondents assert that both parties benefit from informality, therefore, it could be interpreted that it is this trade-off between being temporary and having to pay taxes or being informal and not paying taxes which is being discussed. This, however, will require further qualitative research before this can be asserted with any certainty.

Nevertheless, although only a minority of informal workers explains their informal work as being because of high tax and social contribution levels, as well as burdensome bureaucracy, this neo-liberal explanation is more popular in some populations than others. As Table 3 reveals, the neo-liberal explanation that informal work is conducted because taxes and/or social contributions are too high, is statistically significantly more likely to be cited by informal workers in East-Central Europe and amongst men, middle-aged people, those with formal qualifications, on lower-incomes, employed in either very small businesses or the larger businesses, and managers, other white collar workers and the unemployed. Those statistically significantly more likely to undertake informal work because the bureaucracy/red tape involved in regular work is too complicated are those with more years in education or still studying, those working in their regular employment in larger businesses, and managers and students.

As such, the finding is that only a minority of people explain their own and others' participation in the informal economy in terms of such neo-liberal rationales. Consequently, the hypothesis that people participate in the informal economy in the EU-27 due to high tax rates and the burdensome bureaucracy/red tape involved in working legitimately is refuted. Instead, many explain their own and others' participation in terms of structural rationales.

> *Hypothesis 2: EU member states with higher tax rates have larger informal economies.*

Neo-liberals commonly assume that the informal economy is a direct result of high tax rates and that the remedy is therefore to reduce taxes so as to decrease the size of the informal economy. Here, and to evaluate the relationship between the size of the informal economy and tax rates, firstly, the implicit tax rates on employed labour in the EU-27 (Eurostat 2011) are analysed. As Eurostat (2007) explain, the implicit tax rate (ITR) on employed labour is the sum of all direct and indirect taxes and employees' and employers' social contributions levied on employed labour income divided by the total compensation of employees working in the economic territory. The ITR on labour is calculated for employed labour only (so excludes the tax burden falling on social transfers, including pensions). Direct taxes are the revenue from personal income tax that can be allocated to labour income, while indirect taxes on labour income are taxes such as payroll taxes paid by the employer. Employers' contributions to social security (including imputed social contributions), as well as to private pensions and related schemes, are also included. The compensation of employees is the total remuneration, in cash or in kind, payable by an employer to an employee in return for work done.

Table 3: Who cites neo-liberal reasons for participating in informal work? By population group

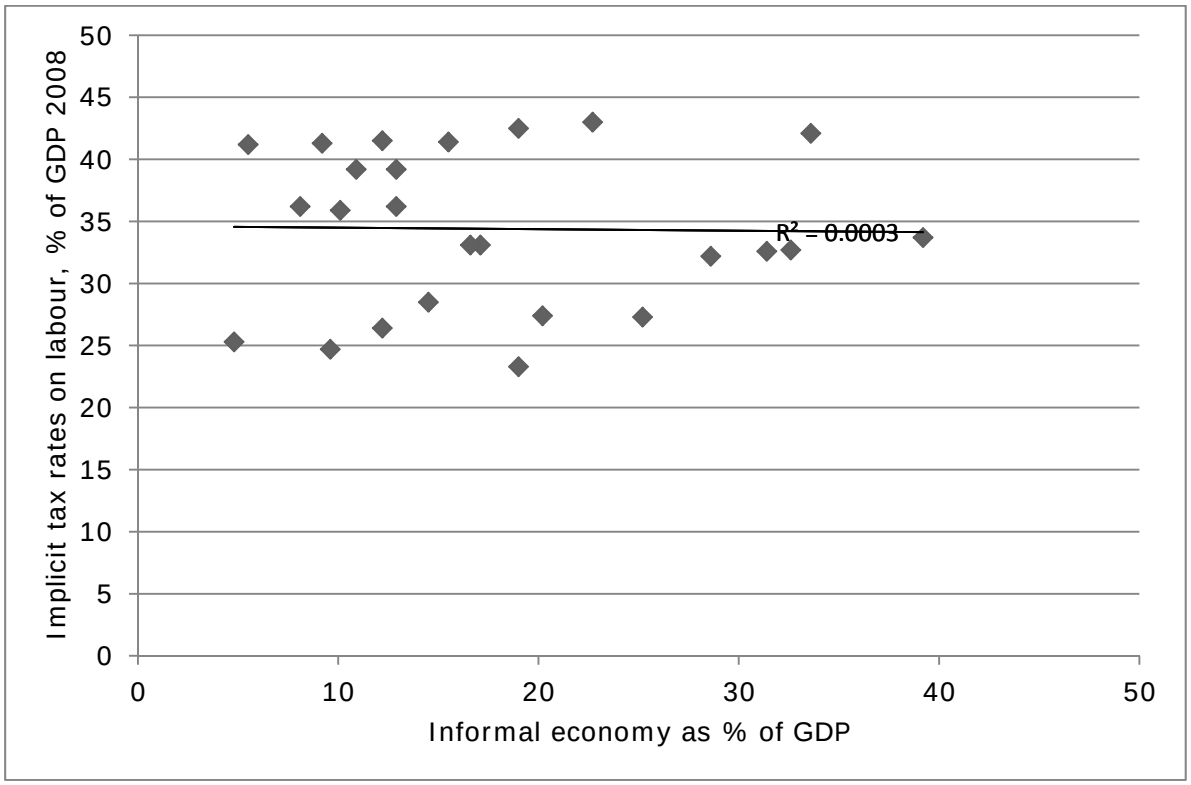
	Taxes and/or social contributions are too high (%)	Bureaucracy/red tape too complicated (%)
All	12.9	7.8
EU region:		
Nordic	10.3***	13.7
Western	10.3	6.9
East-Central	18.2	7.3
Southern	13.1	7.4
Gender:		
Men	14.8**	8.1
Women	9.6	7.2
Age:		
15-24	8.1***	7.8
25-39	16.3	9.5
40-54	15.0	7.5
55+	10.9	3.6
Education (end of):		
15	11.8***	3.6***
16–19	15.8	5.2
20+	13.3	11.6
Still studying	5.7	11.4
Gross formal job income/ month (€)		
<500	18.0***	7.0
500-1000	10.6	5.3
1001-2000	21.4	7.1
2001-3000	7.4	6.4
3001+	6.6	11.7
Size of business in which employed:		
1-20 people	17.4***	5.3***
21-50 people	5.5	5.6
51-100 people	5.9	2.0
101-500 people	22.2	7.8
501+ people	10.0	14.1
Employment status:		
Self-employed	10.8***	8.0***
Managers	19.0	16.7
Other white collar workers	16.3	7.8
Manual workers	13.0	5.3
House person	9.7	3.2
Unemployed	24.0	6.9
Retired	10.0	3.3
Students	5.6	11.4

Significant levels at: *** p<0.01, ** p<0.05, * p<0.1. Source: data from 2007 Eurobarometer survey No. 284 on undeclared work

It is thus the gross wage from employment before any charges are withheld. The resulting ITR on labour is therefore a summary measure of the average effective tax burden on labour income.

Figure 1 displays the relationship between the size of the informal economy and the implicit tax rates on labour (i.e. the average effective tax burden on labour income) across the 27 member states of the European Union. Contrary to the neo-liberal assertion that high tax rates result in the growth of informal economies, this displays that there is no significant correlation between the implicit tax rates on labour and the size of informal economies in the EU-27. Using Spearman's rank correlation coefficient (r_s), no statistically significant correlation is found between the size of the informal economy across the EU-27 and the implicit tax rates on labour (r_s=-0.011). Merely 0.03 per cent of the variance in the size of the informal economy is correlated with the variance in implicit tax rates (R^2=-0.0003). EU member states with higher average tax burdens on labour income do not have larger informal economies, thus refuting the neo-liberal assertion that the informal economy is a direct result of high taxes and that the solution is therefore to pursue tax reductions.

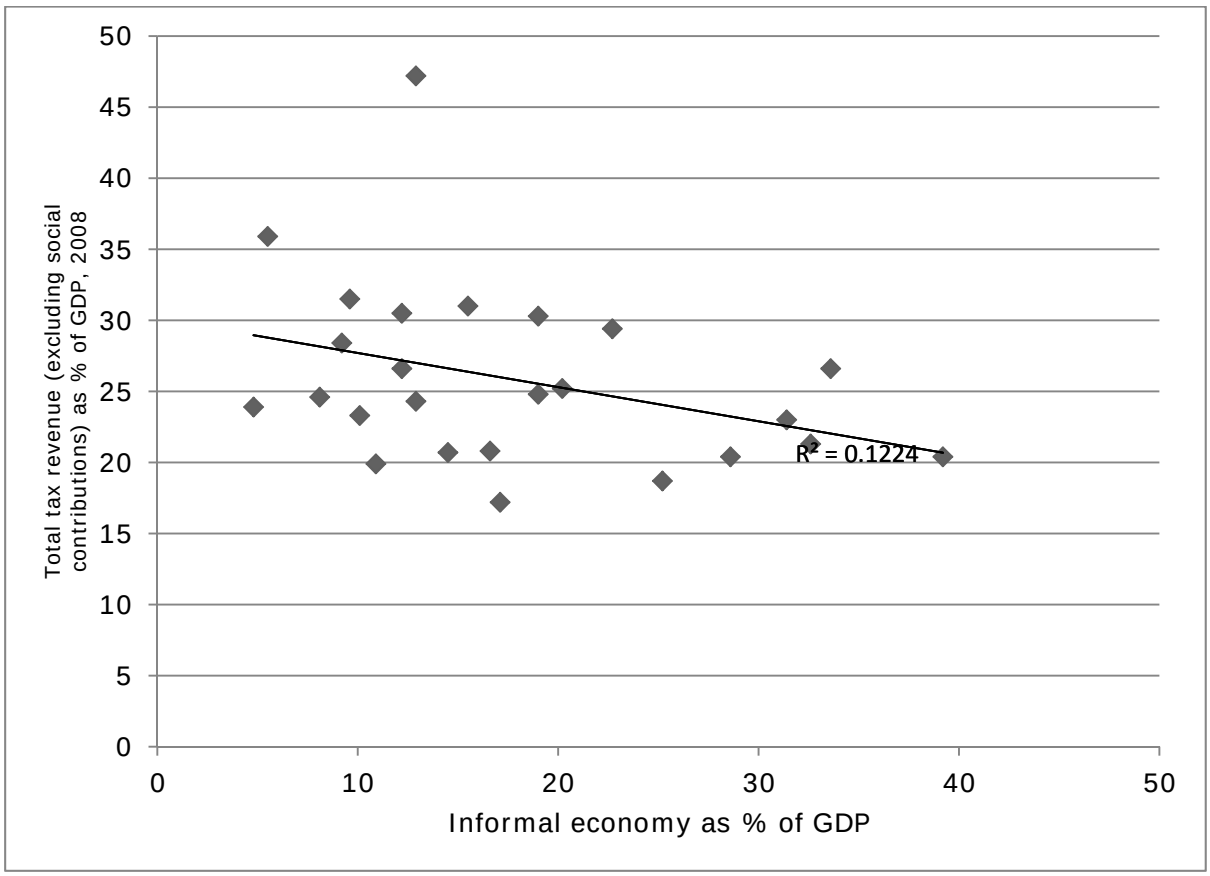
Figure 1: Relationship between magnitude of informal economy and implicit tax rates on labour



Given this, it is important to evaluate this finding a little further, especially given that the ITR on labour income does not take into account tax rates on self-employed income. Here, therefore, the relationship between the size of the informal economy and another indicator of taxation rates is used, namely total tax revenue (excluding social contributions) as a percentage of GDP. Total tax revenue here includes: all taxes on production and imports (e.g. taxes enterprises incur such as for professional licences, taxes on land and building and payroll taxes), all current taxes on income and wealth (including both direct and indirect taxes) and all capital taxes. At first glance, Figure 2

appears to support the neo-liberal assertion that higher tax rates are correlated with larger informal economies. It shows that EU member states where the total tax revenue is higher as a proportion of GDP have larger informal economies. However, this relationship is not statistically significant (r_s= -0.357; R^2=0.1224); higher total tax revenues as a proportion of GDP are not correlated with larger informal economies. In sum, whether one examines the implicit tax rates on labour (as a summary measure of the average effective tax burden on labour income) or the total tax revenue as a percentage of GDP, the hypothesis that EU member states with higher tax rates have larger informal economies is refuted. No significant statistical correlation is identified between tax rates and the size of the informal economy.

Figure 2: Relationship between magnitude of informal economy and total tax revenue, 2008



Hypothesis 3: EU member states with greater levels of state intervention have larger informal economies.

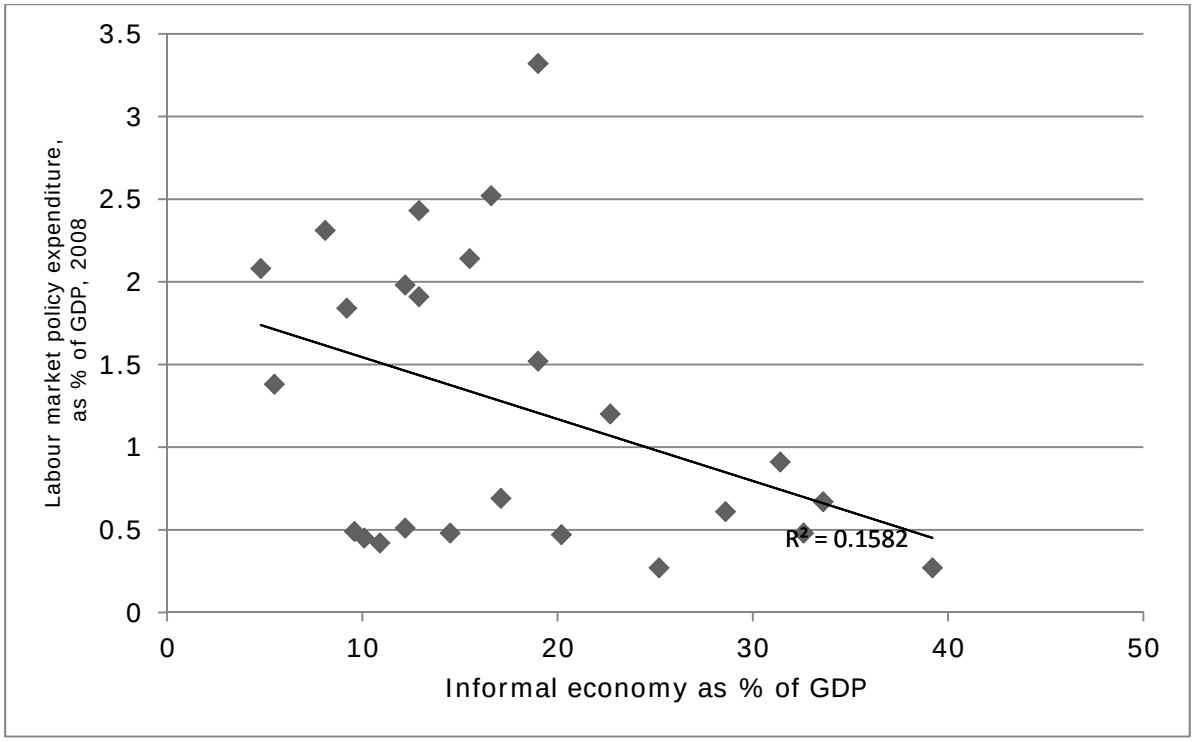
If there is no statistically significant relationship between tax rates and the informal economy, is it nevertheless the case that greater levels of state intervention are correlated with larger informal economies? To evaluate this, the correlation between the size of the informal economy and firstly, the extent of state labour market interventions as a proportion of GDP, secondly, the level of social protection expenditure as a proportion of GDP and third and finally, the impact of state redistribution, are analysed.

According to neo-liberal discourse, the size of the informal economy is a direct result of the level of state interference in the workings of the economy. As such, the greater the

level of state intervention in the labour market, the greater will be the size of the informal economy. To evaluate this, the extent of state labour market measures which can be described as public interventions in the labour market aimed at correcting disequilibria are evaluated. Public interventions refer to measures taken by general government which involve expenditure, either in the form of actual disbursements or of foregone revenue (reductions in taxes, social contributions or other charges normally payable), explicitly targeted at groups of people with difficulties in the labour market. In broad terms, this covers people who are unemployed, people in employment but at risk of involuntary job loss, and inactive persons who are currently not part of the labour force but who would like to enter the labour market and are disadvantaged in some way (Eurostat 2011).

As Figure 3 displays, there is a correlation between the proportion of GDP spent on labour market policy measures and the size of informal economies (r_s=-0.316), and 16 per cent of the variance in the size of the informal economy is correlated with the variance in the proportion spent on social protection (R^2=0.1582). However, the trend is not in the direction suggested by neo-liberals. The greater the level of state expenditure on labour market interventions, the smaller (not larger) is the informal economy. Nevertheless, this is not a statistically significant correlation. Once again, therefore, and akin to tax rates, there is no support for the neo-liberal thesis that greater state interference in the labour market is correlated with larger informal economies. There is no statistically significant relationship across the EU-27 between the level of state labour market policy expenditure and the size of informal economies.

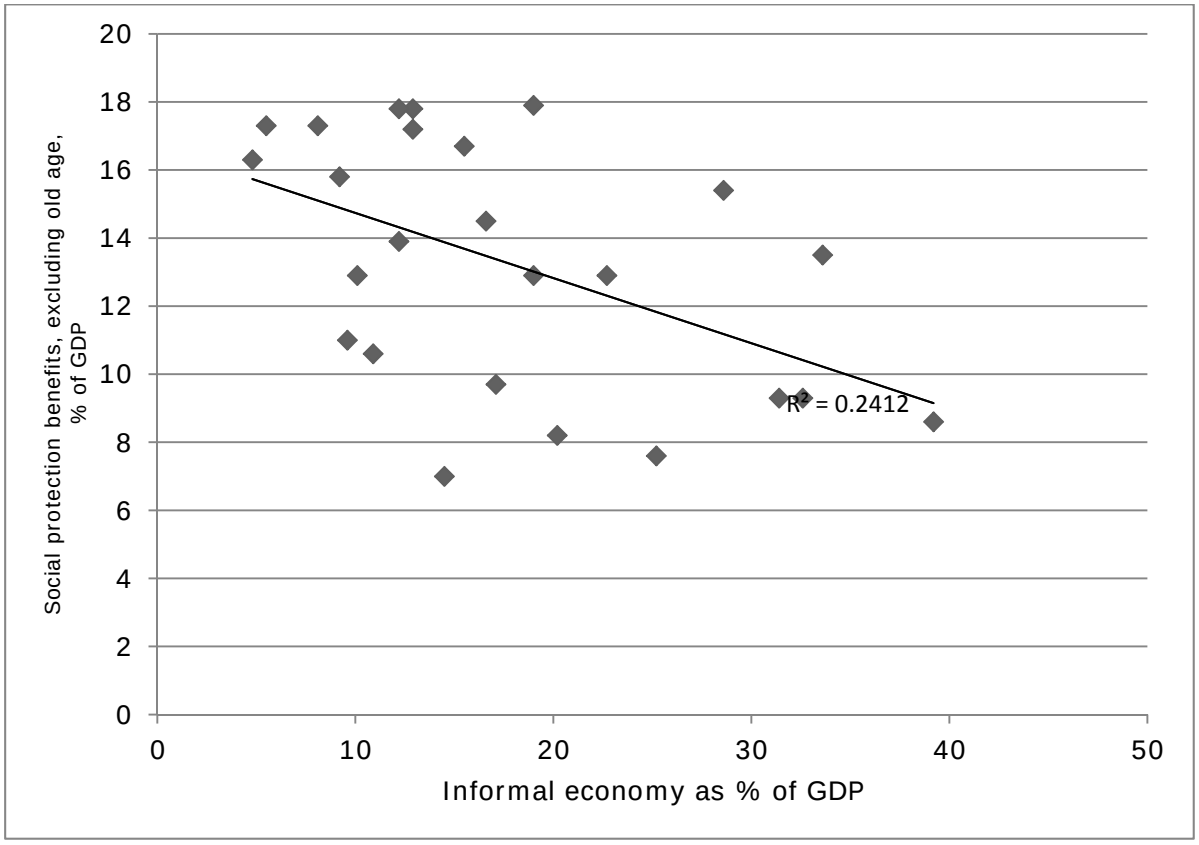
Figure 3: Relationship between magnitude of informal economy and labour market policy expenditure



If the size of the informal economy is not correlated with state intervention in the labour market, is it nevertheless the case that state interference in the realm of social provision leads to a growth of the informal economy? To evaluate this, here an evaluation is

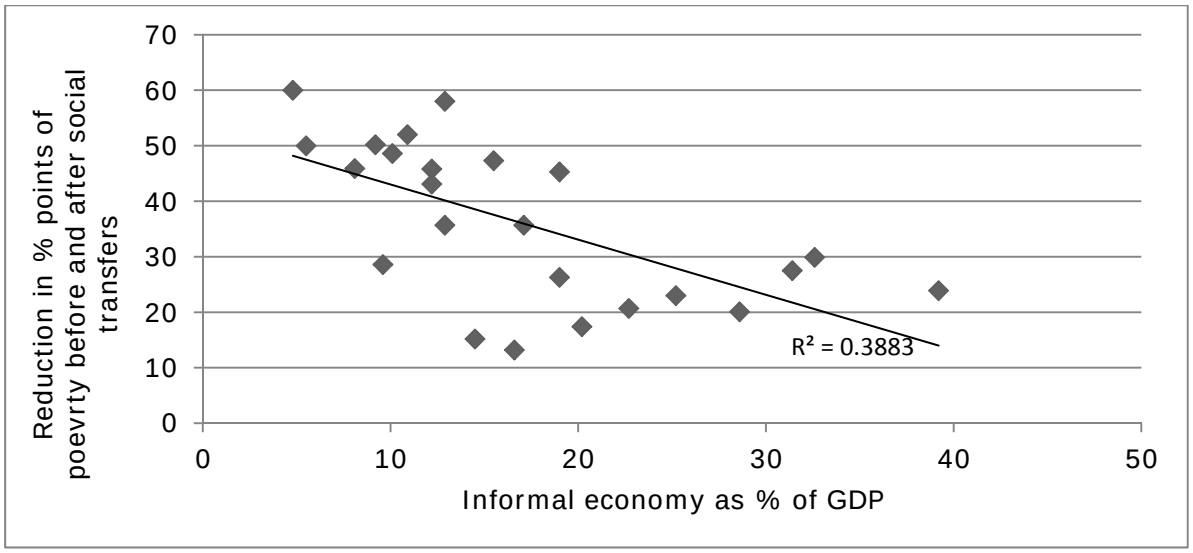
conducted of the relationship between the size of the informal economy and the proportion of GDP spent on social protection benefits, excluding old age benefits (European Commission 2011: Table 3). As Figure 4 displays, there is a statistically significant correlation between the proportion of GDP spent on social protection benefits (excluding old age benefits) and the size of informal economies (r_s=-0.480**), and 24 per cent of the variance in the size of the informal economy is correlated with the variance in the proportion spent on social protection (R^2=0.2412). Hence, a clear substitutive effect is apparent. However, it is not a substitutive effect in the direction suggested by neo-liberal discourse. Member states where a higher proportion of GDP is spent on social protection have smaller informal economies. Put another way, a higher level of state intervention in the form of social protection is correlated with a decrease in the magnitude of the informal economy, not an increase as suggested by neo-liberals.

Figure 4: Relationship between magnitude of informal economy and social protection benefits



This correlation between greater state intervention and smaller (rather than larger) informal economies is further reinforced when the redistributive impacts of state intervention are evaluated. Analysing the reduction in percentage points of poverty before and after social transfers, with poverty defined as the proportion of people with an income below 60 per cent of the national median income (European Commission 2011: Table 3), Figure 5 shows that member states where social transfers have a greater impact on reducing poverty have smaller informal economies, not larger informal economies as neo-liberals intimate. This is a strong statistically significant correlation (r_s= -.691**, R^2=0.3883).

Figure 5: Relationship between magnitude of informal economy and impacts of state redistribution



Consequently, evaluating the correlation between the size of the informal economy and firstly, state labour market interventions as a proportion of GDP, secondly, the level of social protection expenditure as a proportion of GDP and thirdly, the impact of state redistribution, the repeated finding is that the hypothesis that EU member states with greater levels of state intervention have larger informal economies is refuted.

CONCLUSIONS

This article has evaluated critically the neo-liberal explanation for the informal economy which asserts that high taxes, over-regulation and state interference, such as through labour market interventions, high levels of social protection and state redistribution via social transfers, lead to the growth of the informal economy, and therefore that the remedy is to pursue tax reductions, de-regulation and minimal state intervention (Nwabuzor 2005; Becker 2004; London and Hart 2004; De Soto 2001, 1989).

Evaluating critically this neo-liberal explanation in relation to the 27 member states of the European Union, this article has revealed firstly, that few people explain their own or others' participation in informal work to be a result of too high taxes and/or social protection levels or burdensome bureaucracy/red tape, although some population groups (e.g. East-Central Europeans, men) do cite such rationales to a greater extent than others. Secondly, it has evaluated critically the relationship between the size of informal economies and tax rates. Whether one examines the implicit tax rates on labour (as a summary measure of the average effective tax burden on labour income) or the total tax revenue as a percentage of GDP, no correlation is identified between tax rates and the size of the informal economy.

Thirdly, the relationship between the size of informal economies and the level of state intervention in the economy and welfare provision has been evaluated. This has revealed no statistically significant correlation across the EU-27 between the level of state labour market policy expenditure and the size of informal economies. Meanwhile, although a statistically significant correlation has been identified between the proportion of GDP spent on social protection benefits (excluding old age benefits) and the size of informal economies, it is not in the direction suggested by neo-liberal discourse. A higher level of

state intervention in the form of social protection is correlated with a decrease in the magnitude of the informal economy, not an increase as suggested by neo-liberals. Similarly, the greater the level of state redistribution via social transfers in member states, the smaller (not larger) is the informal economy.

In consequence, decreasing the degree of state intervention is not correlated with a reduction in the size of the informal economy. Instead, the informal economy tends to be largest in those European Union member states where the degree of intervention is lower and least effective in redistributing wealth. These findings thus raise grave doubts about whether de-regulation, tax reductions and minimal state intervention constitute the way forward if the intent is to reduce the size of informal economies in the EU-27. This does not appear to be a panacea to the ills of the informal economy, at least in the European Union.

Instead, these findings provide tentative support for the structuralist explanation which suggests that the informal economy is more a result of under-regulation in economies and that the problem is not one of over-regulation but, rather, under-regulation of economies. The finding is that the greater the proportion of GDP spent on social protection benefits (excluding old age benefits) and the greater the level of state redistribution via social transfers, the smaller is the size of the informal economy. Higher levels of state intervention, therefore, result in a decrease, rather than growth, in the size of the informal economy.

In future, nevertheless, further research is required on several issues before these conclusions can be anything but tentative. Firstly, there is a need to analyse how the variable strength of deterrence measures cross-nationally influences the extent of the informal economy, and how this influences the above findings. If it is correct that deterrence measures are indeed stronger in more regulated economies, then it may well be the case that it is deterrence measures rather than state intervention in the economy that is leading to lower levels of informal work in these countries. This needs further investigation in future research. Secondly, there is also a need to evaluate the relationship between salaries on the one hand and taxes and/or social contributions on the other hand. Taxation levels need to be seen in relation to wage levels and the cost of living in countries. It may well be the case that in countries where wages are relatively low but tax rates relatively high, more will engage in informal work. This requires further investigation.

In sum, this article, through a study of the 27 member states of the European Union, has begun to question the validity of the neo-liberal advocacy of tax reductions, de-regulation and minimal state intervention when tackling the informal economy. To take this further forward, it will now be necessary to evaluate whether this critique of the neo-liberal explanation is more widely valid. If this article therefore stimulates the wider evaluation of these neo-liberal assumptions in other global regions (see, for example, Kus 2010), then it will have fulfilled one of its intentions. If it also engenders a fuller evaluation in the EU-27 and other global regions of whether higher taxes, more labour market interventions, greater social protection and more effective state redistribution via social transfers might be the way forward in tackling the informal economy, then it will have fulfilled all of its objectives.

* * *

ACKNOWLEDGEMENTS

I would like to thank the editors and reviewers of a previous version of this article for their very useful and insightful comments. The usual disclaimers of course apply.

REFERENCES

Ahmad, A. N. (2008). 'Dead men working: time and space in London's ("illegal") migrant economy', *Work, Employment and Society*, 22 (2), pp. 301-18.

Becker, K. F. (2004). *The informal economy*. Stockholm: Swedish International Development Agency.

Boeke, J. H. (1942). *Economies and economic policy in dual societies*. Harlem: Tjeenk Willnik.

Buehn, A. and Schneider, F. (2012). 'Shadow economies around the world: novel insights, accepted knowledge and new estimates', *International Tax and Public Finance*, 19 (1), pp. 139-71.

Castells, M. and Portes, A. (1989). 'World underneath: the origins, dynamics and effects of the informal economy,' in A. Portes, M. Castells and L. Benton (eds), *The informal economy: studies in advanced and less developing countries*. Baltimore: John Hopkins University Press, pp. 11 -40.

Cross, J. C. (2000). 'Street vendors, modernity and postmodernity: conflict and compromise in the global economy, *International Journal of Sociology and Social Policy*, 20 (1): pp. 29-51.

Cross, J. and Morales, A. (2007). 'Introduction: locating street markets in the modern/postmodern world,' in J. Cross and A. Morales (eds), *Street entrepreneurs: people, place and politics in local and global perspective*. London: Routledge, pp. 1-14.

Davis, M. (2006). *Planet of slums*. London: Verso.

De Soto, H. (1989). *The other path.* London: Harper and Row.

De Soto, H. (2001). *The Mystery of Capital: why capitalism triumphs in the West and fails everywhere else*. London: Black Swan.

European Commission (2011). *Employment and Social Developments in Europe 2011*. Brussels: European Commission.

European Commission (2007a) *Special Eurobarometer 284: undeclared work in the European Union*. Brussels: European Commission.

European Commission (2007b). *Stepping up the fight against undeclared work COM (2007) 628 final.* Brussels: European Commission.

European Commission (1998) *Communication of the Commission on Undeclared Work*. http://europa.eu.int/comm/employment_social/empl_esf/docs/com98-219_en.pdf [Accessed 9 July 2010].

Eurostat (2011). *Taxation trends in the European Union: main results*. Brussels: Eurostat.

Eurostat (2007). *Taxation trends in the European Union: data for the EU member states and Norway*. Brussels: Eurostat.

Feld, L. and Schneider, F. (2010). 'Survey on the shadow economy and undeclared earnings in OECD Countries', *German Economic Review*, 11 (1), pp. 109-49.

Gallin, D. (2001). 'Propositions on trade unions and informal employment in time of globalization', *Antipode*, 19 (4), pp. 531-49.

Geertz, C. (1963). *Old Societies and New States: the quest for modernity in Asia and Africa*. Glencoe, IL: Free Press.

Geetz, S. and O'Grady, B. (2002). 'Making money: exploring the economy of young homeless workers', *Work, Employment and Society*, 16 (3), pp. 433-56.

Ghezzi, S. (2010). 'The fallacy of the formal and informal divide: lessons from a post-Fordist regional economy', in E. Marcelli, C.C. Williams and P. Joassart (eds), *Informal Work in Developed Nations*. London: Routledge, pp. 142-65.

GHK and Fondazione Brodolini (2009). *Study on indirect measurement methods for undeclared work in the EU*. Brussels: European Commission.

ILO (2002a). *Decent work and the informal economy*. Geneva: International Labour Office.

ILO (2002b). *Women and men in the informal economy: a statistical picture.* Geneva: International Labour Office.

Jütting, J.P. and Laiglesia, J.R. (2009). 'Employment, poverty reduction and development: what's new?', in J.P. Jütting and J.R. Laiglesia (eds), *Is Informal Normal? Towards more and better jobs in developing countries*. Paris: OECD, pp. 17-26.

Kus, B. (2010). 'Regulatory governance and the informal economy: cross-national comparisons', Socio-Economic Review, 8 (3), 487-510.

Lewis, A. (1959). *The Theory of Economic Growth*. London: Allen and Unwin.

Lindbeck, A. (1981). *Work Disincentives in the Welfare State*. Stockholm: Institute for International Economic Studies, University of Stockholm.

London, T. and Hart, S.L. (2004). 'Reinventing strategies for emerging markets: beyond the transnational model', *Journal of International Business Studies*, 35 (2), pp. 350-70.

Neuwirth, R. (2011). *Stealth of Nations: the global rise of the informal economy*. New York: Pantheon.

Nwabuzor, A. (2005). 'Corruption and development: new initiatives in economic openness and strengthened rule of law', *Journal of Business Ethics*, 59 (1), pp. 121-38.

OECD (2012). *Reducing opportunities for tax non-compliance in the underground economy*. Paris: OECD.

OECD (2002). *Measuring the non-observed economy*. Paris: OECD.

Okun, A. M. (1975). *Equality and Efficiency: the big trade-off*. Washington DC: Brookings Institute.

Renooy, P., Ivarsson, S., van der Wusten-Gritsai, O. and Meijer, R. (2004). *Undeclared work in an enlarged Union: an analysis of shadow work - an in-depth study of specific items*. Brussels: European Commission.

Rodgers, P. and Williams, C. C. (2009). 'The informal economy in the former Soviet Union and in Central and Eastern Europe', *International Journal of Sociology*, 39 (1), pp. 3-11.

Sassen, S. (1996). 'Service employment regimes and the new inequality', in E. Mingione (ed.), *Urban poverty and the underclass*. Oxford: Basil Blackwell, pp. 87-110.

Sauvy, A. (1984). *Le Travail Noir et l'Economie de Demain*. Paris: Calmann-Levy.

Schneider, F. (2011) (ed.), *Handbook on the Shadow Economy*. Cheltenham: Edward Elgar.

Schneider, F., Buehn, A. and Montenegro, A. (2010). 'New estimates for the shadow economies all over the world', *International Economic Journal*, 24 (3), pp. 443-61.

Sepulveda, L. and Syrett, S. (2007). 'Out of the shadows? formalisation approaches to informal economic activity', *Policy and Politics*, 35 (1), pp. 87-104.

Slavnic, Z. (2010). 'Political economy of informalization', *European Societies*, 12 (1), 3-23.

Small Business Council (2004). *Small Business in the Informal Economy: making the transition to the formal economy*. London: Small Business Council.

Snyder, K. A. (2004). 'Routes to the informal economy in New York's East village: crisis, economics and identity', *Sociological Perspectives*, 47 (2), pp. 215-40.

TNS Infratest, Rockwool Foundation and Regioplan (2006). *Feasibility study on a direct survey about undeclared work VC/2005/0276*. Brussels: European Commission.

Venkatesh, S. A. (2006). *Off the books: the underground economy of the urban poor*. Cambridge, MA: Harvard University Press.

White, R. (2009). 'Explaining why the non-commodified sphere of mutual aid is so pervasive in the advanced economies: some case study evidence from an English city', *International Journal of Sociology and Social Policy,* 29 (3/4), pp. 457-72.

Williams, C. C. (2011). 'A critical evaluation of competing representations of informal employment: some lessons from England', *Review of Social Economy*, 69 (2), pp. 211–37.

Williams, C. C. (2010). 'Spatial variations in the hidden enterprise culture: some lessons from England', *Entrepreneurship and Regional Development*, 22 (5), pp. 403–423.

Williams, C. C. (2007). 'Tackling undeclared work in Europe: lessons from a study of Ukraine', *European Journal of Industrial Relations*, 13 (2), pp. 219–37.

Williams, C. C. (2006). *The Hidden Enterprise Culture: entrepreneurship in the underground economy*. Cheltenham: Edward Elgar.

Williams, C. C. (2004). *Cash-in-Hand Work: the underground sector and the hidden economy of favours*. Basingstoke: Palgrave Macmillan.

Williams, C. C. (2003). 'Evaluating the penetration of the commodity economy', *Futures*, 35 (8), pp. 857-68.

Williams, C. C. (2001). 'Tackling the participation of the unemployed in paid informal work: a critical evaluation of the deterrence approach', *Environment and Planning C*, 19 (5), pp. 729-49.

Williams, C.C. and Nadin, S. (2012a). 'Tackling the hidden enterprise culture: government policies to support the formalization of informal entrepreneurship', *Entrepreneurship and Regional Development*, 24 (9-10), pp. 895–915.

Williams, C. C. and Nadin, S. (2012b). 'Work beyond employment: representations of informal economic activities', *Work, Employment and Society*, 26 (2), pp.1-10.

Williams, C. C. and Round, J. (2010). 'Explaining participation in undeclared work: a result of exit or exclusion', *European Societies*, 12 (3), pp. 391-418.

Williams, C. C. and Round, J. (2008). 'Re-theorising the nature of informal employment: some lessons from Ukraine', *International Sociology*, 23 (3), pp. 367-88.

Williams, C. C. and Windebank, J. (2006). 'Re-reading undeclared work: a gendered analysis', *Community, Work and Family*, 9 (2), pp.181-96.

Williams, C. C. and Windebank, J. (1998). *Informal Employment in the Advanced Economies: implications for work and welfare*. London: Routledge.

Williams, C. C. and Windebank, J. (1994). 'Spatial variations in the informal sector: a review of evidence from the European Union', *Regional Studies*, 28 (8), pp.819-25.

Williams, C. C., Nadin, S. and Rodgers, P. (2012). 'Evaluating competing theories of informal entrepreneurship: some lessons from Ukraine', *International Journal of Entrepreneurial Behaviour and Research*, 18 (5), pp. 528-43.

Williams, C. C., Rodgers, P. and Round, J. (2011). 'Explaining the normality of informal employment in Ukraine: a product of exit or exclusion?', *The American Journal of Economics and Sociology*, 70 (3), pp. 729–55.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

The Shifting Focus of Opposition to the European Union

Simon Usherwood *University of Surrey*

Citation

Usherwood, S. (2013). 'The Shifting Focus of Opposition to the European Union'*, Journal of Contemporary European Research*. 9 (2), pp. 279-296.

First published at: www.jcer.net

Abstract

Using France and the UK as case studies, this paper discusses how the focus of groups opposed to European integration has changed over time. Such groups often claim to have a generalised or ideological opposition to the European Union, but in practice it is apparent that particular issues arouse most attention. The article covers the period since the mid-1980s, to show how the relative importance of different elements has changed over time, both for anti-EU group formation and changes in groups' activities. Most notably, this change has been informed by two key factors. Firstly, an incomplete (or biased) view of the EU system repeatedly draws groups' attention to otherwise minor topics, often taking them to be symbolic of wider developments (e.g. harmonisation of standards). Secondly, groups' interest is highest in projects when they are not fully decided (e.g. membership of the Euro or the constitutionalisation process since Laeken). The overall picture that emerges is one of groups rationally concentrating their efforts on targets that offer the most unambiguous case for an alternative policy at the point of greatest leverage in the policy-making cycle. This underlines the dynamic nature of opposition to the EU and the fundamental link between that opposition and the EU itself.

Keywords

Euroscepticism; Political Parties; Pressure Groups

It is tempting to think of those opposed to the European integration process as an uninformed and undifferentiated group of people, a thought best summed up in the pejorative connotations in the overly reductive term 'eurosceptic'. However, such an approach is clearly an over-generalisation, something noted by most academics working in the field (see Taggart & Szczerbiak 2001; Kopecky & Mudde 2002; Flood 2002; Skinner 2010; Vasilopoulou 2011). Just as there is recognition that not all opponents of the European Union (EU) are the same, so too there needs to be a more careful appreciation of the evolutionary development and adaptation of those involved. At its most basic, this requires some sense of change over time, as individuals and groups move in and out of various taxonomical categories. But it also requires some understanding of how the objectives, strategies and tactics of anti-EU groups have changed in of themselves: this article is directed at making just such a contribution.

The article focuses its attention on those organised groups within civil society that express positions of active opposition to the EU. This definition has two parts. Firstly, it encompasses both political parties and non-party groups, considering both to be important parts of the mobilisation and conduct of public debate: the latter have been largely ignored by researchers to date (Koopmans 2007 and FitzGibbon 2013 are exceptions). Secondly, it sets a threshold for inclusion of active opposition, and so is tight enough to exclude more overtly opportunistic elements, those for whom scepticism is little more than a sideshow to their primary goals. In both these elements, the resultant sets of groups can justifiably be described as the effective anti-EU movement within their respective countries.

While such movements extend beyond party politics, it is important to draw a distinction from research on social movements (e.g. McCarthy and Zald 1977; Della Porta and Diani 2006; Tarrow 2011). While this does offer some insights – as are noted throughout the article – the anti-EU 'movement' is defined by a negative, rather than a common interest and so social movement literature needs to be handled with care. Tarrow (1998) does identify a europeanization of popular contention, but this is grounded in a sub-set of actors, namely trade unions, that raise a question of general applicability. Moreover, the inclusion in this paper for political parties sets it apart from other studies, which tend to consider these as operating in a different political space, a view which seems particularly

inappropriate in this context, given the deep interaction between party and non-party groups and the limited structure for opposition in the EU (Neunreither 1998; Usherwood 2002).

In order to produce a robust catalogue of all groups that fall under the scope of this work, a multi-stage process was followed. Working from an initial survey of existing directories of groups – more common in the UK (e.g. European Movement 2000) than France – a new catalogue was built up, since such catalogues are incomplete or out-of-date. Firstly, all links on groups' websites to other groups were followed and double-checked with general internet searches. Secondly, a systematic survey of academic literature on the two countries was examined for further group activity. Thirdly, there was a systematic survey of press media coverage, using the Lexis-Nexis database, for any and all references. This last element forms the basis for evaluating the active nature of a group's opposition, as opposed to a simple declaration.

In the first section of the paper, some theoretical approaches to the subject will be laid out. The starting point is the observation that most groups actively opposed to the EU do not have uniform interests across the range of Union activities. Instead, they almost all tend to focus on particular elements (be it institutions, policies or policy areas). This is most apparent in groups focused exclusively on one element (such as the anti-euro groups in the UK), but it also holds for those whose primary concern is withdrawal. This observation serves as a foundation for the construction of a framework that enables us to look at how the anti-EU movement has changed its focus, both in terms of the creation of new groups and shifts in the interests of existing ones.

This is followed by an analysis and discussion of groups' activities since the mid-1980s. France and the UK are used as illustrative case studies, reflecting as they do very different patterns of group formation and development. In France, most anti-EU activity has been found within political parties, while in the UK the focus has been much more on non-party groups; a difference that essentially reflects the differing institutional opportunity structures present in each national political system (c.f. Della Porta and Diani 2006). It is important to note the national specificities of the debate on the EU in the two countries do differ. This is most evident when looking at policy areas where national policy is divergent (e.g. the Euro), but for both the broad pattern of development and the more low-profile policy areas, there is much in common, and this is reflected in the formation and activity of groups: while they reflect national preoccupations, they are also fundamentally tied into the development of the Union itself, which cuts across national boundaries. The article therefore will draw attention to both similarities and divergences between the two cases. Indeed, in this analysis it will become apparent that anti-EU groups have been particularly interested in certain types of project, revealing themselves to be actors with clear awareness of their strengths and weaknesses and with a clear idea of the EU policy cycle.

THEORETICAL CONSIDERATIONS

'Opposition to the European Union' clearly covers a multitude of attitudes, interests and programmes of action. In order to access this variety, it is helpful to identify key elements that might shape the objects of opposition. This differs from the question of the strength of opposition, to which the article will return later and is discussed more fully elsewhere (e.g. Taggart & Szczerbiak 2001; Kopecky & Mudde 2002; Flood 2002; Skinner 2010; Vasilopoulou 2011).

The 'North Carolina School' (Hooghe 2007; Hooghe & Marks 2007, 2009 Mudde 2011) focus on ideology as the determinant of groups' positions on European integration, in order to differentiate potential underlying motivations. All groups have particular, localised concerns: every group dislikes the EU as it stands for some reason and that

reason will be reflected in particular points of friction. The reason can come from any number of quarters, but the effect is still the same. In practice, the main clusters of stated reasons tend to be located around individuals' political economy, or to the psychological impact on their lives, or to the inadequacies of existing opposition groups (see Hooghe & Marks 2005). This is evident in the focus around specific clusters of policy-based opposition. Firstly, there are policies that have a clear economic impact on individuals, such as the Common Fisheries Policy. Secondly, there are policies that have symbolic importance, such as the use of metric measures in the UK. EMU falls somewhere in-between these two, given both its obvious economic impact and its psychological dimension (e.g. Risse *et al.* 1999). This division between economic and symbolic matches the variety of explanations put forward for public opinion: as Gabel (1998) has shown, utilitarian models offer a robust explanation of the latter.

The left's critique of integration clearly centres on a fear of a threat to its constituency and the basis for its national organisation (Halikiopoulou *et al.* 2012). Indeed, this might explain the somewhat ambiguous stance of the PCF in the mid-1990s, when it was opposed to EMU, but was in favour of European monetary stability (Greffet 2001). In the UK, the Labour Euro-Safeguard Campaign's (n/d) opposition to EMU is founded on resultant cuts to public investment in the welfare state and the potential for increased unemployment in certain regions of the eurozone. But perhaps the most forceful example of the left's critique of the integration comes from the *Comité pour l'Abrogation du Traité de Maastricht* (1999):

> 'For seven years, the people of Europe have had the painful experience of the application of the Maastricht treaty. No area has been untouched: privatised public services; land put in fallow to prevent the farmers from producing; fishermen stopped from fishing; young people, to whom one gives skilled work, unemployed; workers laid off; a dismantled system of social protection; wage moderation imposed by the European Central Bank on both the active and the retired; pension plans threatened; the educational system called into question.'

If the left is preoccupied with the effects of the EU on workers and welfare systems, then the right is concerned primarily with the question of sovereignty. On the far right, this manifests itself as opposition to the development of European policies on immigration and security and, in the French case, voting rights for EU nationals in elections.[1] For the mainstream right, issues of national self-determination are prominent. For example, the *Union Populaire Républicaine* (2007) announces that 'Frenchmen & women of all ages and backgrounds have decided to found a Popular Republican Union (UPR) in order to re-establish France's independence, to give the French people back their liberty, and to restore our country's historic role as the spokesman for the liberty of people and of nations around the world'. Similarly, the Thatcherite Conservative Way Forward (n/d) holds as a principle that '[e]ach nation must be free to determine its policies to the benefit of its citizens', an echo of Margaret Thatcher's Bruges speech, where she held as her first guiding principle the idea that 'willing and active co-operation between independent sovereign states is the best way to build a successful European Community' (Thatcher 1998). Indeed, the four other principles that Thatcher outlined in her speech – practical Community policies, encouraging enterprise, avoiding protectionism and having a NATO-led defence – represent a checklist to which most right-wing groups in the UK – and, to a more limited extent, in France – could subscribe.

While left and right have developed distinctive critiques of the European integration process, the endpoint is very similar for both sides, as noted by Liesbet Hooghe & Gary Marks (2009) and Daphne Halikiopoulou *et al.* (2012). One of the key problems of building opposition groups has been the lack of common ground between actors, firstly in agreeing what the problems are and secondly on the solutions to those problems. However, this should not overshadow the fact that, in practical terms, both left and right are able to find common ground in disliking particular elements of the European Union. The best examples of these common elements are also, almost by definition, the largest:

the Maastricht treaty, the Euro and the Constitutional Treaty. Certainly, the very size of these elements requires at least some response from either side, given the potential impact on Europe's (and national) political economies.

The overlap of left and right also helps to understand a third category, that of ideologically "neutral/indeterminate" in both countries. These can be divided into two main types. Firstly, there are those groups that fall under the "neutral" heading. This is to say that they have never elaborated a position beyond that of opposing the European Union for reasons unspecified. This includes umbrella groups, those groups that are trying to distance themselves from political parties (e.g. *Alliance pour la Souveraineté de la France and Democracy Movement*) and sectoral opposition groups (e.g. the Bruges Group).

Secondly, there are those groups that are indeterminate in their position on a left-right spectrum, despite a more extensive elaboration of their position towards the European Union. These groups can be described as having a populist agenda, in the sense that they do not frame their programmes in anything more than a language of 'common sense', nor construct those programmes from first principles, as illustrated by the case of the UK Independence Party (UKIP 2010).

This section can be summarised in the form of Table 1 below. This table highlights the main points on the matter of groups' critiques, the objects of that critique and their form, on the basis of their position on a left-right spectrum. This emphasises that the main cleavage is not necessarily between left and right, but between those groups with clear ideological positions and those without. While left- and right-wing groups have different initial critiques, they share many of the same objects of those critiques and have very similar group form characteristics. By contrast, groups with a neutral or indeterminate position often lack fundamental critiques, have a more diverse set of EU elements that they oppose and almost entirely shun party forms.

Table 1: Characteristics of groups classified by ideological standpoint

	Left	Neutral / Indeterminate	Right
Critique	EU as threat to workers and to democratic system	Often unclear or imprecise	EU as threat to national sovereignty and independence
Objects of Critique	EMU, Maastricht, Constitutional Treaty, Internal Market	EMU, Maastricht, Constitutional Treaty, sectoral policies	EMU, Maastricht, Constitutional Treaty, immigration & asylum policy, defence policy
Group Form	Mainly party and intra-party	Mainly non-party	Mainly party and intra-party

The taxonomy highlights the particular interests and focuses that individual groups possess (see the Appendix for a full listing of relevant groups in the UK and France). Regardless of ideological position or of suggested remedy, all anti-EU groups point out specific elements for their consideration. As has already been mentioned, the EU as a whole is too complex and too far-reaching for a generalised (in the sense of being non-specific) opposition to be sustainable. This is true even in the case of the radical right, whose concerns usually centre on the primacy of EU law, human rights, immigration and Article 18 TFEU (non-discrimination on the basis of nationality) rights (e.g. British National Party n/d, *Mouvement National Républicain* n/d).

Moreover, there is also a separation of ideology and specific objects of opposition, as seen in Table 1. Groups have ideas about why they oppose the EU in its current form, often relating to wider ideologies or to specific economic concerns. This is important because if a specific object of opposition did not exist, then others would potentially take its place. This is not to suggest that groups will oppose the EU whatever it does, but rather that as the EU evolves, so different elements will change in importance for those groups. It must be questioned whether this holds true for all groups, especially those that have only narrow, sectoral concerns, since it may well be that prior to the development of that sectoral policy (and after its "successful" reform) that such groups are not mobilised at all.

Consequently, we would expect the focus of opposition to the European Union to change over time. This is due to two, interrelated factors. Firstly, the EU is a system in a state of expansionary flux. This has been true since the start of the integration process in the 1950s, but has become particularly marked in the period since the Single European Act, as exemplified by the succession of system-revising and –enlarging treaties. This is important because it has provided repeated new opportunities for anti-EU elements to become mobilised and work against those developments. This leads to the second factor, namely the separation between groups' wider interests (ideological or economic) and the specific objects of their opposition. In the case of those groups that espouse ideological positions (in the broadest sense), it would be expected that the changing EU system will provide new specific policies and events that will draw such groups' attention and activity. For those groups without such ideological positions, interest, mobilisation and activity will be driven by threats to economic well-being (for sectoral groups) or perceived resonance with wider constituencies (for populists).

Consequently, when we look at the development of anti-EU opposition in France and the UK in the following section, we would expect to see shifts in focus on the part of groups with ideologies, as well as populist groups, alongside which there should be the development of new sectoral groups, reflecting the changing EU system. This will be operationalised in the first instance by considering the timeline for the foundation of anti-EU groups, since this almost always reflects the point of maximum mobilisation of individuals and resources: the only notable example of a group that formed during the period which developing significantly beyond its original base is UKIP. It is then further enriched with other data on groups' activities.

THE DEVELOPMENT OF OPPOSITION TO THE EU

There is a clear evolution over time in the focus and practice of anti-EU activity. The concerns of the late 1980s differed from those of the early 1990s and both again from those of the present day. This is not to say that there is no continuity (witness the continuing struggle of *Chasse-Pêche-Nature-Traditions* (CPNT) over hunting directives, which span the entire time-frame), but rather that a significant proportion of anti-EU activity has moved in its focus over time. This is true for all of the different types of group outlined in the first section. As Figures 1 and 2 demonstrate, there has been a steady progression since the late 1980s, in terms of primary motivation for anti-EU group formation or commencement of anti-EU policy by pre-existing groups.

Figure 1: UK anti-EU groups by primary motivation for formation or commencement of anti-EU policy, 1989-2012

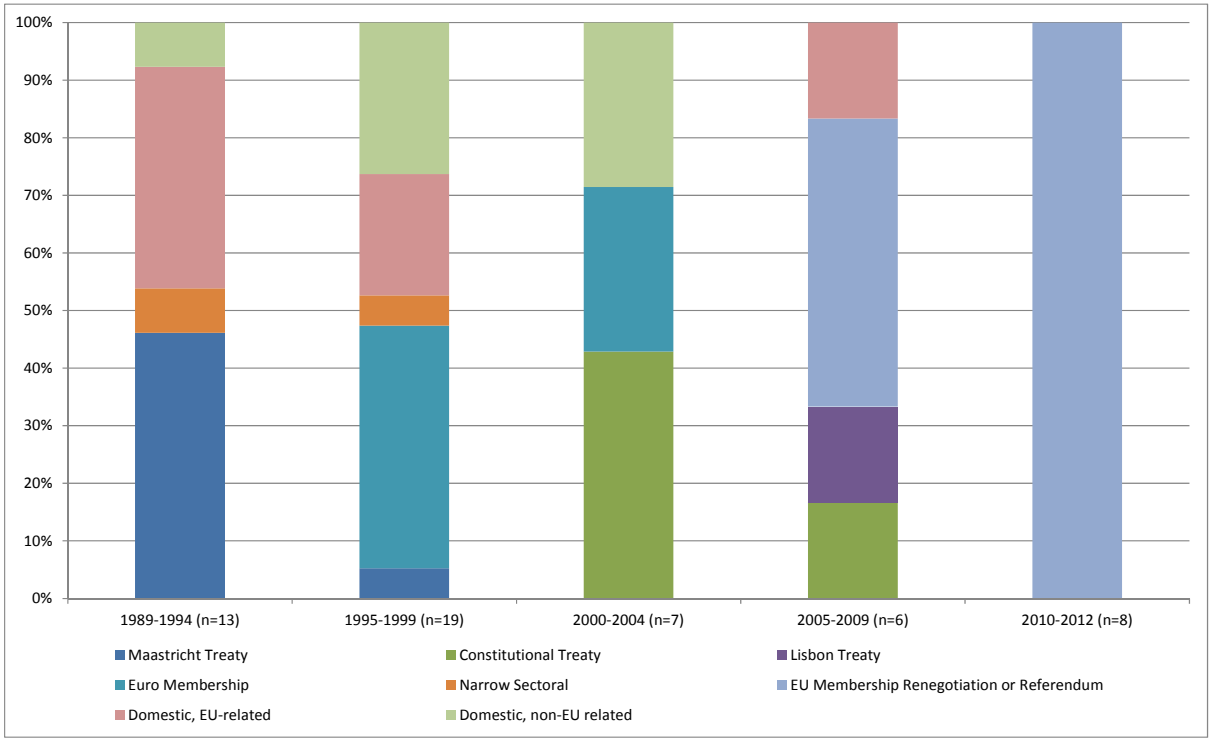
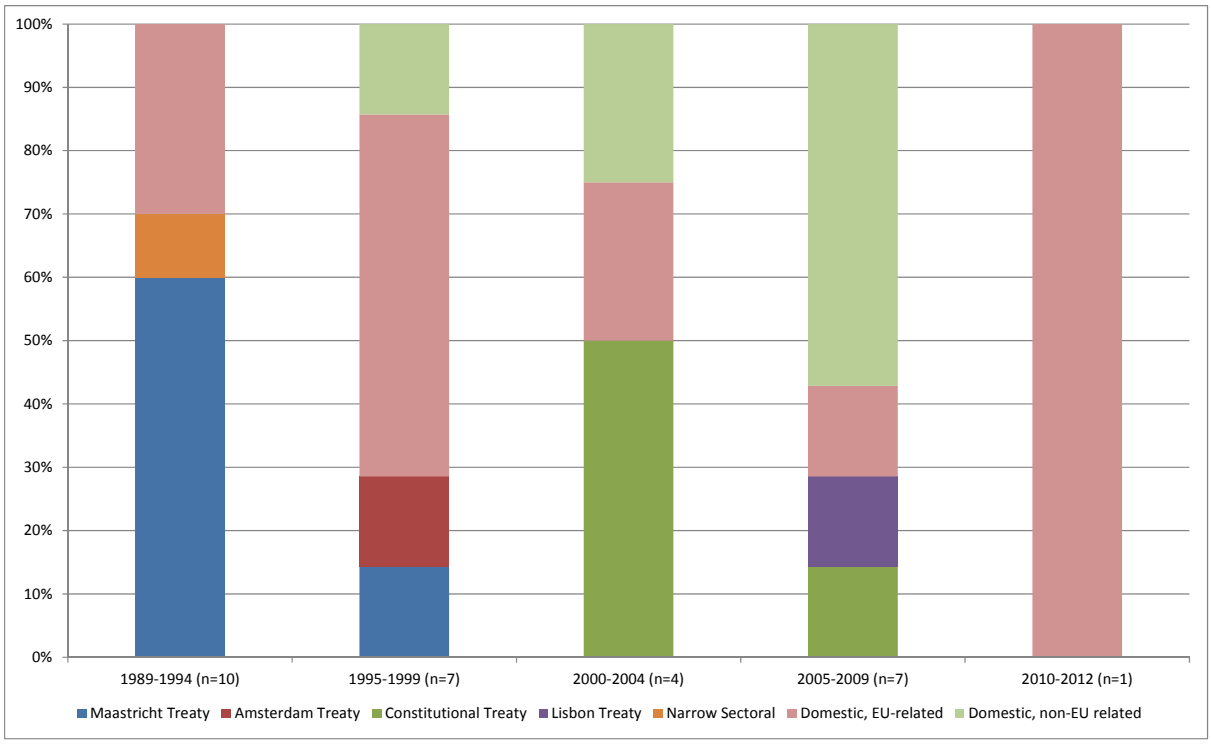


Figure 2: French anti-EU groups by primary motivation for formation or commencement of anti-EU policy, 1989-2012



The data in these Figures is based on the lists in the Appendix, excluding only those groups that formed anti-EU platforms prior to 1989.[2] It categorises groups on the basis of the primary motivation for their creation (for new groups) or commencement of an anti-EU platform (for pre-existing groups). Groups are only listed once, for simplicity: although this is somewhat reductionist, in practice it creates very few problems. The most obvious is the British Conservative Party, which is dated here at 1997 for commencing an anti-EU policy, since prior to this date there was no such official policy, notwithstanding Thatcher and Major's assorted pronouncements: it was only once in opposition that year that the party would integrate that policy more fully.

The overall pattern displayed in the data is one of a cyclical development of groups and their focus. The 1990s saw a large number of groups being mobilised in both countries, in response to the Maastricht Treaty and the ensuing project of EMU, followed by a slower pace of group activation. It is possible to link this changing volume to the parallel rise and fall in public interest in the EU as an issue that emerged through the 1990s (see Ipsos-Mori n/d for UK data), but just as evidently it can been seen that national debates on European integration have been the primary frame of reference. Thus, political ambivalence in the UK about first euro membership and then membership of the EU itself have provided fertile conditions for groups to develop as agents in the ensuing public debates, while in France the effective political space has focused much more around treaties and their ratification. As will be argued below, within this general understanding we can discern much specific patterns of activity within the policy-cycle, but it is important to note here that the topics (in the general sense) emerge from national contexts.

The Figures also hide the consistent increase in the number of individuals mobilised in both cases. Since the mid-1990s there has always been at least one group in each country with a significant membership of active participants: The Referendum Party, Democracy Movement and then UKIP in the UK; the RPF and FN in France (Usherwood 2004 provides data on this). Even as the organisational arrangements change, anti-EU groups appear to have been able to maintain the engagement of tens of thousands of people, thereby securing an important source of funding, labour and policy advocates.

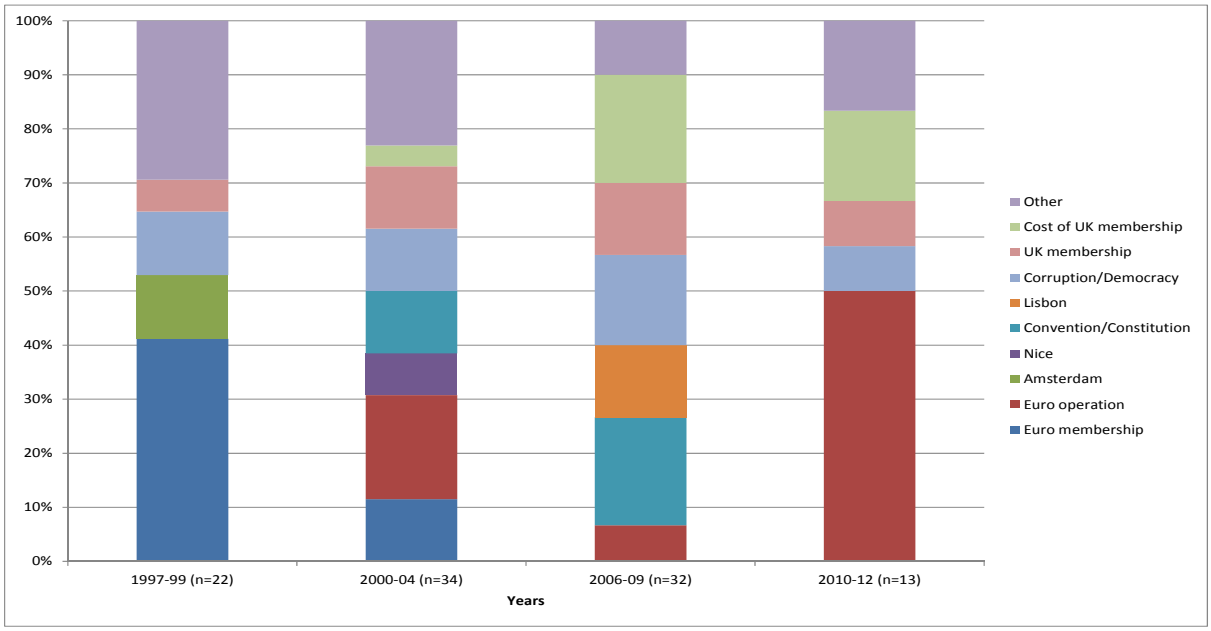
Beyond these general considerations, more specific comments can be made of a first set of groups – those with sectoral concerns - which are broken down into membership of the Euro and narrower policies in Figures 1 and 2. Here the shift in focus does not occur primarily within groups, but between them. Given that in no case has there been a reform of policy that satisfies any given sectoral group, over time there is an increasing number of relic organisations. Such groups still maintain a certain level of activities - especially if they represent an economically affected body of people - but in general terms such activities will not match the initial wave that follows a group's foundation (see also Snow & Benford 1992). This is due in part to increasing costs (both financial and temporal), but also to the general lack of success that confronts those first attempts. This tends to result either in a hunkering-down, i.e. waiting for a more propitious window of opportunity, or in a deflection into more systemic opposition (see Neunreither 1998). Consequently, interest lies primarily with the creation of new sectoral groups. In this, it is the blossoming of numerous anti-EMU groups that is most visible. Despite EMU having being publicly discussed for several decades, not to mention officially negotiated since 1988, it was only in 1997 that the first explicitly anti-EMU groups began to appear in the UK. The reason for this is clear enough: the election of the Labour government in that year suddenly brought the prospect of British membership much closer. However, in France it was to be 2001 before any group mobilised solely against the issue, despite French membership having been a political given from the outset. Nonetheless, the development of such groups in both countries does mark a clear change from the more parochial concerns of hunters, fishermen and supporters of imperial weights and measures, a development only underlined by the widespread mobilisation during the Constitutional Treaty process in the mid-2000s. In that case, there was a notable change

in approach, with anti-EU campaigners working alongside pro-EU groups to push for popular ratification of the Treaty, albeit with opposite outcomes in mind (e.g. Ivaldi 2006).

The second set of groups is that expressing identifiable positions on the ideological spectrum. As anticipated, these groups have shifted their focus of opposition during the study period, without noticeably shifting their ideological position. This is particularly apparent in France, where party-based groups have been most developed. The continuity of ideological position is evident in those groups created by, and centred on Philippe de Villiers. The aims of L'Autre Europe in the 1994 European elections (Gaullism and neo-nationalist positions) closely match those of today's MPF. However, the objects of opposition have shifted. In 1994, the focus lay rather narrowly on opposing the single currency, Community preference in trade and retaining exclusive national citizenship, while today's more comprehensive programme focuses on flexible cooperation, subsidiarity, migration and other home affairs matters (Benoit 1997: 59). Similarly, while Rassemblement Pour le Non was focused on foreigner's voting rights and reduced border controls during the 1992 referendum, its ultimate successor, the Rassemblement pour la France et pour l'indépendance de l'Europe (RPFIE), now campaigns on economic growth, employment and federalism, while still retaining the Gaullist ideology of national sovereignty (Grunberg 2008).

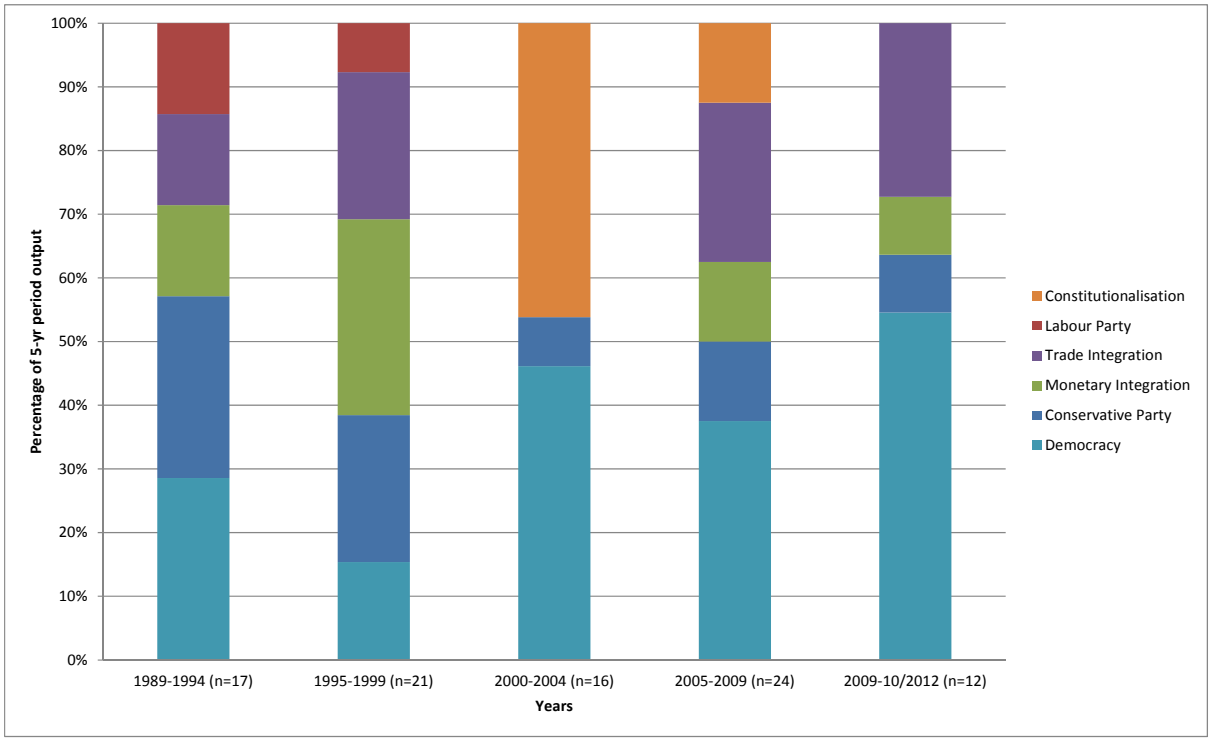
In the UK, the Labour Euro-Safeguards Campaign (LESC) dates back to the time of the first British application to join the European Economic Community in 1962. While no archival material exists back to this stage in the group's existence, it is still possible to mark shifts in its interests since the late 1990s, through its regular bulletins (LESC n/d). During this period, the group has maintained a consistent interest in issues of transparency, corruption and the impact of integration on workers, but there has been a shift from discussion of British membership of the euro to debate on the functioning of the Eurozone and its impact on the UK. Moreover, the repeated cycles of treaty reform have also been marked by LESC, typically with an approach that each new stage of integration is either problematic for the UK or unworkable. The persistence of challenging British membership therefore finds expression and motive through a succession of specific policy and conjunctural occasions, allowing for a continual refreshing of an underlying conceptualisation.

Figure 3: LESC Bulletin Topics, 1997-2012 (%)



The third and final set of groups that merits inspection here – groups with indeterminate ideological positions – presents similar characteristics to the previous set. Despite the lack of ideological cohesiveness, these groups still display a changing set of interests over time: indeed, these groups represent the only clear set of long-run data that is available, in terms of concrete outputs. This is illustrated by the examples of the Bruges Group and the European Foundation. In the case of the former, we can see a shift in the focus of the group's activities by looking at its publications. The group has been one of the more prolific and consistent producers of anti-EU material during the 1990s and covers a wide range of issues (Bruges Group n/d). In the early years of its existence (roughly 1988-1991), the main focus was on the domestic politics that had helped to shape the group's foundation, the Single Market, the Exchange Rate Mechanism and the Common Agricultural Policy. That focus has since shifted to economic governance, democratic legitimacy and trade policy. Indeed, as Figure 4 shows, it is possible to discern several waves over the past quarter-century, moving in time with the evolution of the Union itself.

Figure 4: Publications of Bruges Group, 1989-2012, by main topic (%)



Likewise, the European Foundation has published an in-house journal on a regular basis since the early 1990s (European Foundation, n/d). Early editions dealt with concerns about EU financing and avoiding British re-entry into the Exchange Rate Mechanism. At the turn of the millennium, there was a range of interests, from asylum policy to the role of the British parliament in EU decision-making and through to privacy legislation. By contrast, the most recent issues have included pieces covering the Eurozone crisis and fiscal union, energy taxation and border controls.

IMPLICATIONS OF THE SHIFT IN FOCUS

The evidence that is available clearly points towards changes over time. The nature and scope of this shift bears some further discussion, since it reveals some important aspects of the opposition movement. The first observation is that groups frequently appear to highlight issues that receive very little interest elsewhere at that time. From imperial weights and measures to Corpus Juris to regionalisation, anti-EU groups have been very active in picking up, and raising the public profile of, many seemingly technical points: the European Foundation (n/d) is the most recent proponent of this approach. This warrants several comments itself. Perhaps most importantly, it reveals a characteristic of many such groups, namely a tendency to catastrophise. What ties together these diverse points is their position as gateways into whole new fields of EU activity. Metrification is seen as the end of distinctive national cultures and practices, Corpus Juris opened the way to a single legal system and regionalisation the end of national governments. This highly teleological approach results from the strong sub-current in anti-EU thought – the creation of 'a country called Europe' – which is particularly prevalent in the UK (see Gowland *et al.* 2010). European integration is seen as a process with a clear end-point that will be achieved by hook or by crook. Hence, it is the duty of anti-EU groups to highlight when such developments occur, otherwise the door will have been opened and it will be too late.

This leads to a second comment, concerning levels of knowledge. In order for such a watchtower role to be effective, groups need to possess a clear sight of what is actually happening in the EU. One of the major developments within the movement since the 1990s has been precisely such an autonomous capacity to accumulate, evaluate and disseminate information. This is seen in the creation of umbrella groups, which create webs of contacts between individuals and groups, on both national and European levels and of specialised research driven groups, such as the European Foundation or Global Britain. In so doing, the anti-EU movement has been highly successful in optimising its resources, to its lasting benefit.

The second overall observation concerns the point of concentration of groups' activities during the policy cycle. This is most apparent with major policy developments, such as the Maastricht treaty, EMU or the Constitutional Treaty, which had long cycles of discussion, negotiation and implementation (see Figures 1 and 2). As was noted in the first section of this paper, such large projects tend to draw the attention of anti-EU groups, albeit for a wide variety of ideological and practical reasons, not least of which is a desire to remain relevant actors in the evolving (if generally weak) public debate. However, given the restraints on resources that most opposition groups face, it is necessary for them to focus their efforts where they are likely to have the greatest impact, rather than employing a scattergun approach.[3] In practical terms, this means that groups are most active in the policy-making cycle before decisions are completed (an observation that reinforces Rochon & Mazmanian's (1993) findings on the relative ease of inclusion into new policies, as compared to policy change; see also Meyer 2004).

More particularly, groups appear to be interested in pushing their preferences at two clear points in the cycle. The first has already been discussed above, namely when policy ideas are first floated: here it might be expected that policy preferences are relatively open and unfixed, giving opposition groups the opportunity to create a credible alternative pole to any incipient policy development. If this occurs right at the beginning of the policy-cycle, then the second main area comes significantly later. While the anti-EU movement is more convinced than most of the reality of a European superstate, as discussed before, then there is also a very realist approach to the role of national governments and parliaments. In both countries, groups focus much of their attention and efforts on influencing national politicians, as most vividly demonstrated in 1992-3 by the wave of opposition to Maastricht. Then, opposition was not directed at the IGCs that had preceded the final text, but rather at national ratification processes: This was also clearly the case with other member states (Denmark, Germany, etc.) and with other

treaty ratifications (e.g. Amsterdam in France, Nice and Lisbon in Ireland, etc.). The need for unanimous ratification opens up the EU system to political actors who are less likely to be socialised into that system or less concerned about the need for its development, especially if it comes at the perceived price of a reduced role for those national actors (see Hobolt 2007 and Glencross and Trechsel 2011).

This strategy reached its apotheosis with the defeat of the Constitutional Treaty in the 2005 referenda in France and the Netherlands. The Convention on the Future of Europe failed to generate much interest on the part of anti-EU groups, at least those not directly involved (see Usherwood 2007). It might appear strange that opposition groups push most where there was the best access to the decision-making process, especially given the Convention's approach, but it reflected the inevitable ratification that would have to follow the Convention, particularly given the pressure that resulted in a proliferation of national referenda (including France and the UK). By using arguments demanding more democracy, pro-referenda campaigners (both pro- and anti-EU) were able to side-step traditional barriers to their involvement (see Laursen 2008). Even if French voters were motivated as much as by concerns over domestic politics as the Treaty itself (Krouwel & Startin 2013), it still represented a major achievement for anti-EU elements, albeit one tempered by the re-emergence of the Treaty's substance in the Lisbon Treaty.

Similar issues and factors were also apparent when looking at anti-EMU opposition in the UK. During the Maastricht ratification, EMU played a relatively minor role in groups' critiques, largely because of the opt-out that had already been secured and instead broader issues of national sovereignty and the loss of parliamentary rights predominated (Baker *et al.* 1994). However, as the 1997 general election loomed – with its anticipated switch to an ostensibly pro-EMU Labour government – so anti-EMU groups began to crystallise. First there was the effort of the Referendum Party to monopolise the issue from the start. Its failure to secure a parliamentary majority (or indeed any seats) was balanced by its success in gaining assurances from all sides of a referendum on membership, which resulted in a slew of groups being formed from 1997 onwards to organise any 'no' campaign.

In France, the strong political commitment to EMU membership on both right and left (as seen in the 1997 *Assemblée* elections) essentially stifled anti-EU groups playing on the issue after Maastricht ratification had been secured (Stone 1993). Certainly, the anti-EMU groups that sprang up in 2001 were very small and had only a marginal public profile, lacking as they did the broader support of the anti-EU movement as a whole.[4] This reflects a more general perception across opponents of the Union that it is much easier to change policy that has yet to be implemented than it is policy that already exists as part of the status quo: certainly, in the UK it is not uncommon for the failure to win the 1975 referendum on continued British membership of the EEC to be attributed to this point. This relates back to the point made previously about limited resources, but also to how anti-EU groups perceive their opportunity structures.

CONCLUSIONS

This paper has tried to demonstrate that opposition to the European Union is a dynamic phenomenon, which requires a full understanding of the various interests and motivations of those involved. It has shown that there have been both macro- and micro-level shifts in focus by anti-EU groups, resulting from the interplay of the evolving EU system and the overarching ideologies that many groups hold. Together, these factors drive opposition groups to continually modify their activities, in order to maximise their influence.

As was noted in the previous section, opposition groups present certain features in common in this respect. They are much more alert to any potential structural expansion

of the European Union than either the general public or even elites (who have traditionally been seen as drivers of integration): the anti-EU information dissemination infrastructure across Europe is one of the most developed outside of government and academic circles. Moreover, anti-EU groups appear to have adopted a rational strategy of maximising their limited resources to focus on policies and points in the policy cycle when they have the best opportunity to exercise some leverage. In this, they resemble other instances of social movements engaged in 'contentious politics' (Tarrow 2011).

This is not only true for groups' focuses, but also from their strategies. One example will suffice to illustrate this point. UKIP has adapted itself since its foundation in 1992 to its changing circumstances, most notably in its electoral strategy. Initially, the party had a clear policy of not accepting any seats that it might win in the European Parliament, as a mark of its lack of constitutionality: Money normally paid to MEPs would be returned to the taxpayer. However, from 1997 onwards, following a change in leadership, party policy changed so as to accept seats in the Parliament, in order to gain a platform, expose fraud and mismanagement and report on the EU's activities: MEPs would only take minimum expenses and give the rest to help fund anti-EU activities. Since the party's successes from 1999 onwards, even this cautious policy has been pushed further aside, as new opportunities have presented themselves. This shift reflects a shift in the nature of what the party was trying to do: essentially, the failure of a fundamentalist approach helped to generate the shift to a more realistic strategy (see Usherwood 2006 and 2008 for an elaboration of this 'fundi/realo' dilemma).

In brief, our understanding of anti-EU groups needs to move away from pejorative models of opposition as a necessary residual part of the population that is impossible to accommodate within the Union system and to start recognising that such groups are not only a necessary consequence of integration, but that they can also shed light upon the process. By studying their actions and interests, it is possible to discern where the active boundaries of the integration process lie: groups tend to focus on those areas where the EU presents a credible and consequential policy. For instance, there are no groups opposed to a Union foreign policy, and are unlikely to be until such a policy develops further. By recognising this fundamental link between the Union and its opponents, we might improve our understanding of both.

* * *

1 Nicholas Startin (1997: 103) noted these three areas as the main focuses of the Front National during the 1990s. The British National Party discusses membership primarily as a block to political and economic freedom, but also implies a repatriation of immigration policies as a priority. The BNP's opposition to the EU is best seen as a strategic choice, designed to bolster public support, but which also allows the party to achieve other goals (Ford & Goodwin 2010).

2 These groups are: Anti Common Market League, British National Party, Conservative European Reform Group, Green Party and National Front, in the UK; *Ligue Communiste Révolutionnaire* and *Lutte Ouvrier* in France.

3 Resources in both France and the UK, in both financial and leadership terms, have tended to be concentrated in the hands of a relatively small number of people (e.g. Paul Sykes, James Goldsmith, Philippe de Villiers, Jean-Paul Bled, etc.). Other sources of funding (from the state for French parties, and from small private contributions in the UK) have proved irregular and unreliable for the most part, hence partly explaining the high level of coordination of anti-EU work in both countries.

4 Interviews with RPF and MPF officials in 2002 indicated that they saw the issue as come-and-gone and so did not merit their particular interest.

APPENDIX

Anti-EU groups in France and the UK classified by ideological position and group form.

Party

Left	UK	Communist Party of Britain (1988/(1991)-) Green Party (1974-) Respect (2004-)
	France	Front de gauche (2008-) Ligue Communiste Révolutionnaire (1974-) Lutte Ouvrier (1939-) Mouvement des Citoyens (1991-2002) Mouvement républicain et citoyen (2003-) Nouveau Parti anticapitaliste (2009-) Parti Communiste Française (1943/(1991)-) Parti de gauche (2008-) Parti ouvrier indépendant (2008-)
Neutral / Indeterminate	UK	Anti-Federalist League (1991-1992) Democratic Party (1998-2005) Freedom Democrats (2011-) Have Your Say (2012-) Referendum Party (1994-1997) UK Independence Party (1992-) Veritas (2002-)
	France	Libertas (2009-)
Right	UK	British National Party (1982-) Conservative Party (1834/(1997)-) National Democrats (1995-2011) National Front (1967-)
	France	Chasse-Pêche-Nature-Traditions (1989-) Demain la France (1996-1999) Front National (1974/(1988)-) L'Autre Europe (1994-1994) Mouvement National Républicain (1999-) Mouvement pour la France (1994-) Parti de la France (2009-) Rassemblement pour la France et l'Independence de l'Europe (1999-) Rassemblement pour l'indépendance de la France (2003-) Souveraineté, indépendance et libertés (2011-)

Note: Dates of operation for each group are as follows: year of establishment/(year of start of active EU policy, if later than establishment) – year of end of operations (if applicable). Source: groups' websites and literature.

Intra-party

Left	UK	Labour Against the Euro (2003-2004) Labour Euro Safeguards Campaign (1995-) People's Europe Campaign (1996-1997) Trade Unions Against the Single Currency (1997-2002)
	France	Comité national pour la Non à la Constitution européenne (2005-2005)
Neutral	UK & France	--
Right	UK	Anti Common Market League (1961-2009) Conservative European Reform Group (1980-1993) Conservative Way Forward (1991-) Conservatives Against a Federal Europe (1996-) Fresh Start Group (2012-) Get Britain Out (2009-)
	France	Combat pour les Valeurs (1991-1994) Debout la République (1999) Rassemblement pour le Non (1991)

Non-party

Left	UK	Campaign Against Euro-Federalism (1992-) No2EU – Yes to Democracy (2009-)
	France	Comité pour l'Abrogation du Traité de Maastricht (1997-1999)
Neutral / Indeterminate	UK	Anti Maastricht Alliance (1993-2003) Alliance against the European Constitution (2004-2005) British Weights and Measures Association (1995-) Bruges Group (1989-) Business for Sterling (1998-2000) Campaign for an Independent Britain (1989-) Congress for Democracy (1998-2008) Democracy Movement (1998-) EU Referendum Campaign (2009-2010) European Foundation (1993-) Federation of Small Businesses (1974/(1990)-) Global Britain (1998-) New Alliance (1997-2008) New Europe (1997-2000) No (1999-2001) Open Europe (2005-) People's No Campaign (2005-2005) People's Pledge (2011-) Save Britain's Fish (1990-2003) Vote No (2004-2005) Vote UK Out of EU (2010-) Youth Against the European Union (1995-1998) Youth For a Free Europe (1999-2005)
	France	Alliance pour la Souveraineté de la France (1998-2002) Etats Généraux de la Souveraineté Nationale (1998-1998)
Right	UK	Britain Out of Europe Campaign (2002-2002) European Research Group (1993-2001) The Freedom Association (1975/(1991)-)
	France	Action Française (1898/(1991)-) Combats souverainistes (2001-2002) Demain la France (1991-1996) Gardons le Franc (2001-2001)

REFERENCES

Baker D., Gamble, A. and Ludlam, S. (1994). 'The parliamentary siege of Maastricht 1993: Conservative divisions and British ratification', *Parliamentary Affairs*, 47 (1), pp. 37-60.

Benoit B., (1997). *Social-Nationalism: an anatomy of French euroscepticism*, Aldershot: Ashgate Publishing.

British National Party (not dated). 'Democracy' at http://www.bnp.org.uk/policies/democracy. Last accessed 4 June 2013.

Bruges Group (not dated). 'Media Centre' at http://www.brugesgroup.com/mediacentre/index.live. Last accessed 4 June 2013.

Comité pour l'Abrogation du Traité de Maastricht (1999). 'Appel', 16/17 January 1999, at http://membres.lycos.fr/comit/appel7.html. Last accessed 4 June 2013.

Conservative Way Forward (not dated). 'Nine Principles', at: http://www.conwayfor.org/about-us/9-principles.html. Last accessed 4 June 2013.

Della Porta, D. and Diani, M. (2006). *Social movements: an introduction*, Oxford: Wiley-Blackwell.

European Foundation (not dated). 'Publications', at http://europeanjournal.typepad.com/my_weblog/publications.html. Last accessed 4 June 2013.

European Movement (2000). *An A-Z of anti-EU and anti-EMU organisations in Britain*, London: European Movement.

FitzGibbon, J. (2013). 'Citizens against Europe: Civil society and eurosceptic protest in Denmark, Ireland and the UK', *Journal of Common Market Studies*, 51 (1), pp. 105-121.

Ford, R. and Goodwin, M. J. (2010). 'Angry white men: individual and contextual predictors of support for the British National Party', *Political Studies*, 58 (1), pp.1-25.

Flood C. (2002). 'Euroscepticism: A problematic concept (illustrated with particular reference to France)', Paper presented at the 32nd annual UACES conference, Belfast, 2-4 September, 2002.

Gabel M. (1998). 'Public support for European integration: An empirical test of five theories', *The Journal of Politics*, 60 (2), pp.333-354.

Glencross, A. & Trechsel, A. (2011). 'First or second order referendums? Understanding the votes on the EU Constitutional Treaty in four EU Member States', *West European Politics*, 34 (4), pp.755-772.

Gowland, D. Turner, A. and Wright A. (2010). *Britain & European Integration Since 1945: On the sidelines*, London: Routledge.

Greffet F. (2001). 'Le PCF: combattre le déclin par la mutation?' in P. Bréchon (ed) *Les parties politiques français*. Paris: La Documentation Française, pp. 105-126.

Grunberg, G. (2008). 'Euroscepticism in France, 1992-2002' in P. Taggart and A. Szczerbiak (eds) *Opposing Europe. The comparative party politics of Euroscepticism,* Vol. 2, Oxford: Oxford University Press, pp. 38-57.

Guyomarch A. and Machin, H. (1992). 'A history of hesitations on the road to Maastricht', *French Politics and Society*, 10 (4), pp. 60-80.

Halikiopoulou, D., Nanou, K., and Vasilopoulou, S. (2012). 'The paradox of nationalism: The common denominator of radical right and radical left euroscepticism', *European Journal of Political Research*, 51 (4), pp. 504-539.

Hobolt, S. (2006). 'Direct democracy and European integration', *Journal of European Public Policy*, 13 (1), pp. 153-166.

Hooghe, L. (ed) (2007). 'What drives Euroscepticism?', *European Union Politics*, 8 (5).

Hooghe, L. and Marks, G. (2005). 'Calculation, Community and Cues: Public Opinion on European Integration', *European Union Politics*, 6 (4), pp. 419-443.

Hooghe, L. and Marks, G. (eds.) (2007). 'Understanding Euroscepticism', *Acta Politica*, 42 (2-3).

Hooghe, L. and Marks, G. (2009). 'A postfunctionalist theory of European integration: from permissive consensus to constraining dissensus', *British Journal of Political Science*, 39 (1), pp. 1-23.

Ipsos-MORI (undated). website www.ipsos-mori.com. Last accessed 18 January 2013.

Ivaldi, G. (2006). 'Beyond France's 2005 referendum on the European constitutional treaty: Second-order model, anti-establishment attitudes and the end of the alternative European utopia', *West European Politics*, 29 (1), pp. 47-69.

Koopmans, R. (2007). 'Who inhabits the European public sphere? Winners and losers, supporters and opponents in Europeanised political debates', *European Journal of Political Research*, 46 (2), pp. 183-210.

Kopecky P. and Mudde, C. (2002). 'The two sides of euroscepticism: Party positions on European integration in East Central Europe', *European Union Politics*, 3 (3), pp. 297-326.

Krouwel, A. and Startin, N. (2013). 'Shortselling Europe: Are the French and Dutch electorates abandoning the European project in light of the 2005 referenda on the EU constitution?', *Journal of Common Market Studies*, 51 (1), pp. 65-84.

Labour Euro-Safeguards Campaign (not dated). 'Labour Euro-Safeguards Campaign', at http://www.lesc.org.uk. Last accessed 4 June 2013.

Laursen, F. (ed) (2008). *The Rise and Fall of the EU's Constitutional Treaty*. Rotterdam: Martinus Nijhoff Publishers.

McCarthy, J. and Zald, M. (1977). 'Resource mobilization and social movements: A partial theory', *American Journal of Sociology*, 82 (6), pp. 1212-1241.

Meyer, D. (2004). 'Protest and political opportunities', *Annual Review of Sociology*, Vol. 30, pp. 125-145.

Mouvement National Républicain (not dated). 'Programme: Pour que vive la France', at http://www.m-n-r.fr/programme2partiech4.php. Last accessed 4 June 2013.

Mouvement pour la France (2007). 'Cent ans pour remettre la France en ordre', at http://www.elections-presidentielles-2007.org/programme/100mesuresmpf.pdf. Last accessed 4 June 2013.

Mudde, C. (2011). 'Sussex v. North Carolina: The Comparative Study of Party-Based Euroscepticism', *Sussex European Institute Working Paper* No. 121.

Neunreither K. (1998). 'Governance without opposition: The case of the EU', *Government & Opposition*, 33 (4), pp. 419-441.

Risse, T., Engelmann-Martin, D., Knope, H. J., and Roscher, K. (1999). 'To Euro or not to Euro? The EMU and identity politics in the European Union', *European Journal of International Relations*, 5 (2), pp. 147-187.

Rochon, T. and Mazmanian, D. (1993). 'Social movements and the policy process', *The Annals of the American Academy of Political and Social Science*, pp. 75-87.

Skinner, M. (2010). 'Political Culture, Values and Economic Utility: A Different Perspective on Norwegian Party-based Euroscepticism', *Journal of Contemporary European Research*, 6 (3), pp. 299-315.

Snow, D. and Benford, R. (1992). 'Master frames and cycles of protest', in A. Morris and C. Mueller (eds.) *Frontiers in social movement theory*. New Haven: Yale University Press, pp. 133-155.

Startin N. (1997). *French political parties, Europe and the Maastricht treaty*, Unpublished MPhil thesis presented at the Department of French Studies, University of Birmingham.

Stone A. (1993). 'Ratifying Maastricht: France debates European Union', *French Politics and Society*, 11 (1), pp. 70-88.

Taggart P. and Szczerbiak, A. (2001). 'Crossing Europe: Patterns of contemporary party-based euroscepticism in EU member states and the candidate states of Central and Eastern Europe', Paper presented at American Political Science Association, San Francisco, 29 August - 2 September, 2001.

Tarrow, S. (1998). 'Building a composite polity: popular contention in the European Union', *CIAO working paper*, Cornell University.

Tarrow, S. (2011). *Power in movement: Social movements and contentious politics,* Cambridge University Press.

Thatcher, M. (1988). 'Speech to the College of Europe ("The Bruges Speech"), September 20', at http://www.margaretthatcher.org/document/107332. Last accessed 4 June 2013.

UK Independence Party (2010). 'Empowering the people: UKIP manifesto April 2010', at http://www.ukip.org/media/pdf/UKIPmanifesto1304a.pdf. Last accessed 4 June 2013.

Union Populaire Républicaine (2007). 'Charte Fondatrice', at http://www.u-p-r.fr/charte-fondatrice. Last accessed 4 June 2013.

Usherwood, S. (2002). 'Opposition to the European Union in the UK: The dilemma of public opinion and party management', *Government and Opposition*, 37 (2), pp. 211-230.

Usherwood, S. (2004). 'Beyond Party Politics: Opposition to the European Union in France and the UK, 1985-1999', PhD Thesis, London School of Economics, May 2004.

Usherwood, S. (2006). 'Proximate factors in the mobilisation of anti-EU groups in France and the UK: the European Union as first-order politics', *Journal of European Integration*, 29 (1), pp. 3-21.

Usherwood, S. (2007). 'Sceptical or Simply Opposed? Eurosceptics and the EU's Constitutional Treaty', in A. Cohen & A. Vauchez (eds) *La Constitution européenne: Elites, mobilisations, votes.* Brussels: Editions de l'Université de Bruxelles, pp.167-180.

Usherwood, S. (2008). 'The dilemmas of a single-issue party: The UK Independence Party', *Representation*, 44 (3), pp. 255-264.

Vasilopoulou, S. (2011) 'European Integration and the Radical Right: Three Patterns of Opposition', *Government and Opposition*, 46 (2), pp. 223-244.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Civil Procedure Harmonization in the EU: Unravelling the Policy Considerations

Zampia Vernadaki *University College London*

Citation

Vernadaki, Z. (2013). 'Civil Procedure Harmonization in the EU: Unravelling the Policy Considerations'*, Journal of Contemporary European Research*. 9 (2), pp. 297-312.

First published at: www.jcer.net

Abstract

This article examines the role and significance of the fundamental right of access to justice in the EU (Article 47 CFREU) in the context of the fragmentation of EU law, as evidenced in the area of civil procedure law. As member states' procedural regimes are considerably divergent, EU institutions intervene, more and more often, to ensure EU law is effectively enforced in an equivalent manner across the EU. This work thus addresses a preliminary question: when should EU institutions provide civil procedure rules that promote effective dispute resolution and enforcement of EU law? In other words, which are the policy parameters that render such a proactive stance on the part of the EU institutions both desirable and feasible? EU institutions will have to answer this question for every legislative proposal in the area of civil justice. Therefore, this article only offers the broad lines along which such *in concreto* justification for legislative action in civil justice will have to take place. It is argued that EU institutions should take into account the various cultural, economic, social, and historical implications of civil procedure law in order to achieve a coherent approach. Against this background, the fundamental right to effective remedy and fair trial should tie all policy parameters together.

Keywords

EU law; civil procedure; access to justice; harmonization; policy perspectives.

> Civil procedure […] challenges regulators. Its importance for the Internal Market may indicate the need for uniform rules and uniform approach, but its essence – the necessary balancing of different policy arguments […] – may require a more complex solution.[1]

Civil procedure rules are mixed-goods, concentrating at the same time features of both private and public goods. They can thus serve as means of private dispute resolution, only affecting the conflicting parties; equally, they contribute to the general implementation and enforcement of law and policies, fulfilling a public function.[2] In other words, on top of its conflict resolution character, civil procedure regulation has a law enforcement focus.[3] It is not only a matter for private parties to regulate the procedure, along the lines of a private justice model,[4] when individuals turn to the courts, they do not ask the court simply to resolve a dispute but, primarily, to enforce their entitlements according to EU law.

In the EU supranational legal order, the judicial system of dispute resolution and private enforcement of EU rights remains largely decentralised, taking place before member states' courts.[5] Article 19 TEU suggests that member states are responsible for the provision of remedies ensuring effective legal protection in the fields covered by Union

[1] M. Tulibacka, 'Europeanisation of Civil Procedures: In Search of a Coherent Approach' (2009) 46 *CMLR* 1555.
[2] S. Delabruyère, 'On 'Legal Choice' and legal competition in a federal system of justice. Lesson for European legal integration' in A Marciano and J M Josselin (eds), *From Economic to Legal Competition: New Perspective on Law and Institutions in Europe* (Edward Elgar 2003) p 22-23.
[3] A. A. S. Zuckerman, 'The principle of effective judicial protection in EU law' (Remedies for Breach of EU Law Revisited, King's College London, June 2010) 1-2.
[4] W. M. Landes and R. A. Posner, 'Private Enforcement of Law', (1975) 4 *J. Legal Stud*. 1-46. See also S. Shavell, 'The Fundamental Divergence between the Private and Social Motive to Use the Legal System' (1997) 26 *J. Legal Stud*. 575-612.
[5] Case 26/62 Van Gend en Loos v. Nederlandse Administratie der Belastigen [1963] ECR 1.

law.[6] As member states' procedural regimes are considerably divergent, EU institutions intervene, more and more often, in member states' national procedural regimes to secure EU law is effectively enforced in an equivalent manner across the EU.

The gradual and steady extension of EU competence in the area of civil justice, traditionally regarded as a bastion of state sovereignty, has met member states' hesitation and resentment as to the desirability and feasibility of EU institutions designating civil procedure rules. Closer examination of the overall approach demonstrates that intervention in member states' procedural systems has taken place in a rather fragmented and incoherent way, lacking systematic planning and clearly set objectives.[7] This approach results from the lack of a fundamental vision on the role and function of national procedural systems in the EU. There is scarce literature on this topic and this article aims to shed some light on the wider perspectives of procedural law for the functioning of the supranational legal order. It will be argued that civil procedure law constitutes a broad area, with cultural, economic, social, and historical overtones, which need to be given due regard in order to achieve a coherent approach. In this highly controversial environment, the fundamental right to effective remedy and fair trial should tie the range of policy parameters together.

Specifically, I explore the premises of EU intervention in national civil procedural regimes in three steps. At an initial level, I identify and analyse the ways in which effective dispute resolution and enforcement of law – as the primary functions of civil procedure law – are of particular interest to the EU, to justify the harmonization of national procedural regimes. To this end, I look at the traditional arguments put forward by scholars in favour of EU intervention in national legal systems, namely, the functioning of the internal market, economic benefits, and the limitations of forum shopping. At a second stage, I endeavour to detect countervailing considerations that may limit the scope of EU intervention into national procedural regimes. I thus revisit arguments stemming from the economic theory of regulatory competition, the particularities of national legal traditions, as well as public choice theory and political failures. I further examine and test these arguments in the final part of the analysis, offering an overview of the stakes involved in the process of civil procedure law convergence in the EU. In the last part of the article, I adopt a practical perspective, investigating the appropriate form of EU intervention into national procedural regimes, focusing on the need for coherence.

THE DESIRABILITY OF EU INTERVENTION INTO NATIONAL CIVIL PROCEDURAL REGIMES

Traditional justifications for the development of common EU private (substantive) rules focus on the achievement of a level playing field in the internal market, the increase of commercial activity due to greater legal certainty, and the limitation of the negative facets of forum shopping. It is submitted that any efforts to intervene in member states' national civil procedural regimes should be based on the learning outcomes achieved in the remit of private law approximation.[8] Therefore, this section examines whether the above arguments could yield some valid results in the area of civil procedure law harmonization. This will reveal the actual ramifications and limitations of these parameters in terms of effective dispute resolution and the enforcement of EU law, as well as of any future EU intervention in national procedural regimes.

[6] M. Claes, *The National Courts Mandate in the European Constitution* (Hart Publishing, Oxford and Portland, Oregon 2006) p 682-683; T. Tridimas, 'The European Court of Justice and the Draft Constitution: A Supreme Court for the Union?', in T. Tridimas and P. Nebbia (eds.): *European Union Law for the 21st Century: Rethinking the New Legal Order,* (Hart Publishing 2004) p 117; T. Tridimas, *The General Principles of EU Law* (2nd edn, OUP 2006).
[7] Tulibacka, (n 1) 1553-1565; E. Storskrubb, *Civil Procedure and EU law: a policy area uncovered* (OUP 2008) p 301-311.
[8] W Kennett, *Enforcement of Judgments in Europe* (OUP 2000) p 305.

A Level Playing Field in the Internal Market

National civil procedural rules on matters such as service of documents, time limits, commencement of proceedings and obtaining evidence that are differently regulated in each Member State can render in-court dispute resolution particularly complicated and lengthy,[9] hampering the smooth functioning of the internal market. The presence of judicial systems of considerably divergent quality levels may distort competition in the internal market. Cross-border or domestic operators competing in the internal market are on an unequal footing if one of them has access to efficient and effective procedures while the other does not. Imagine, for instance, two companies resorting to judicial avenues in order to enforce a commercial contract.[10] Company A does business in Italy, renowned for judicial delays, whereas Company B develops its commercial activity in the Netherlands, with its swift judicial proceedings.[11] In this scenario, there is no level-playing field between the companies economically active in the EU, with procedural delays leading to increased uncertainty and transaction costs within the Italian economy. These differences constitute serious procedural disincentives, affecting parties' willingness to go to court,[12] and rendering economic freedoms in the internal market deceptive and unenforceable. The creation of EU civil procedure rules could reduce substantial differences between the various procedural regimes, promoting a level playing field via businesses' equal access to justice.

The European Small Claims Procedure[13] can be seen as a step in this direction. By introducing a common European procedure, proportional to the value of the litigation, it has contributed to the creation of a level playing field for creditors and debtors throughout the European Union. This EU intervention into national procedural regimes has tackled the previous competitive distortions created by disparities in the functioning of those procedural means available to creditors to pursue low value claims in different member states.[14]

The Economic Benefits of Legal Certainty

In the international environment, largely divergent procedural systems can increase uncertainty about the benefits of cross-border commercial activity. Such legal uncertainty can lead to economic deceleration, because the information costs regarding the various procedural regimes might outweigh the benefits from cross-border trade.[15] This relates to the estimation of risks involved in opening up the activity to other national markets in the EU. Risk management requires consideration of litigiousness, the

[9] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure' [2005] COM (2005) 87 final, 3.
[10] *Doing Business 2011: Making A Difference for Entrepreneurs* (The International Bank for Reconstruction and Development / The World Bank 2010) 70, 75 <http://www.doingbusiness.org/~/media/fpdkm/doing%20business/documents/annual-reports/english/db11-fullreport.pdf> accessed 3 May 12; K. H. Bae and V. Goyal, 'Creditor Rights, Enforcement, and Bank Loans', (2009) 64 (2) *The Journal of Finance* 823.
[11] A. A. S. Zuckerman, *Justice in Crisis: Comparative Dimensions of Civil Procedure,* in S. Chiarloni, P. Gottwald and A. A. S. Zuckerman (eds), *Civil Justice in Crisis* (OUP 1999) p 9-10. In Italy, the average length of first instance proceedings is 3.3 years whereas the appeal process can stretch the final decision by several more years. In contrast, in Holland, local courts reach a final decision in an average of 133 days and district ones in 626 days. On appeal, two thirds of the cases are determined within two years.
[12] A. J. Duggan, 'Consumer access to justice in common law countries: a survey of the issues from a law and economics perspective' in C. E. F. Rickett and R. T. G. W. Telfer (eds), *International Perspectives on Consumers' Access to Justice* (CUP 1999) p 48-49.
[13] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure [2007] OJ L199/1.
[14] Commission, 'Green Paper on a European Order for Payment Procedure and on Measures to Simplify and Speed up Small Claims Litigation' COM (2002) 746 final.
[15] In the area of substantive contract law: Commission, 'Communication from the Commission to the Council and the European Parliament on European Contract Law' COM (2001) 398 final, paras. 30-32.

actual circumstances and costs of litigation in the various member states. Common EU procedural rules could thus bring about greater neutrality, limiting transaction costs in cross-border commerce in the internal market. [16]

Occasional litigants, such as individual consumers and small and medium sized companies, have a heavier burden when trying to assess the cost of resorting to cross-border civil litigation. This can be attributed to their limited familiarisation with litigation processes. It also relates to procedural diversity in the EU and the subsequent uncertainty as to the rules and outcomes of cross-border dispute resolution.[17] Consequently, citizens may avoid litigation across borders,[18] leaving their EU rights unenforced, making themselves easier prey for sellers and producers.[19] In the end, this will result in restrained cross-border commercial activity, limited investment, consumption, and income, and finally limited growth rates, hampering the smooth functioning of the internal market.[20]

The most recent affirmation of the interrelationship between unitary markets and civil procedure law convergence is that of Switzerland and the application since 1st January 2011 of a unified code of civil procedure.[21] The rationale behind this enormous reforming initiative was elimination of all artificial impediment-creating dividing lines cutting across the Swiss cantons.[22] Empirical evidence supports a correlation between economic growth and the procedural rules of those jurisdictions, which facilitate increased predictability of court decisions. For instance, researchers have found that the timeliness and the predominantly written character of procedures lead to more transactions and higher investment levels.[23]

Forum Shopping

Procedural diversity between EU member states can have another negative consequence, commonly referred to as forum shopping. In 'shopping' for a forum, the litigant chooses the civil procedural rules of that forum. This can have significant influence on the outcome of a judicial dispute, affecting fundamental issues such as the cost and length of the dispute, as well as the remedial means available to redress the injustice. Forum shopping is not a problem per se, to the extent that it offers litigants

[16] In the context of European Contract Law: G. Wagner, 'The Virtues of Diversity in European Private Law', in J. Smits (ed.), *The need for a European Contract Law* (Europa Law Publishing, Groningen 2005) p 16-17; European Commission, 'Communication from the Commission to the Council and the European Parliament on European Contract Law' COM (2001) 398 final, 9.

[17] See: M. Galanter, 'Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change', (1974) 9 *Law and Society Review* 497.

[18] European Commission, 'Special Eurobarometer 292: Civil justice in the European Union', April 2008 <http://ec.europa.eu/public_opinion/archives/ebs/ebs_292_en.pdf> accessed 10 June 2011.

[19] B Feldman, H von Freyhold, and E L Vial, *The Cost of Legal Obstacles to the Disadvantage of Consumers in the Single Market* (Report for the European Commission DG SANCO, 1998) 276-279 http://ec.europa.eu/dgs/health_consumer/library/pub/pub03.pdf accessed 16 March 2013.

[20] J. Smits, 'Diversity of Contract Law and the European Internal Market' in J Smits (ed.), *The Need for a European Contract Law. Empirical and Legal Perspectives* (Groningen: Europa Law Publishing 2005) p 170; H. Wagner, 'Economic Analysis of Cross-border Legal Uncertainty: the example of the European Union' in J. Smits (ed.), *The Need for a European Contract Law: Empirical and Legal Perspectives* (Europa Law Publishing 2005) p 51.

[21] SR 272 Schweizerische Zivilprozessordnung.

[22] T. Domej, 'Switzerland: Between Cosmopolitanism and Parochialism in Civil Litigation' in X. E. Kramer and C. H. van Rhee (eds), *Civil Litigation in A Globalising World* (T.M.C. ASSER PRESS 2012) p 247.

[23] B. Hayo and S. Voigt, 'The Relevance of Judicial Procedure for Economic Growth' (CESIFO Working Paper no. 2514 2008) 1-31 <http://www.cesifo-group.de/portal/pls/portal/docs/1/1186626.PDF> accessed 3 May 2012.

the possibility of choosing the most efficient and effective procedural system. However, when litigants abuse this possibility, the situation becomes complicated.[24]

For instance, forum shopping could potentially encourage companies to transfer all disputes from their commercial activities to member states with the least favourable procedural regimes for consumers (in terms of costs, duration, and complexity). This may considerably curtail effective enforcement of EU substantive rights, circumventing litigants' effective access to justice. The discourse on the race to the bottom is thus relevant since forum shopping can lead to a competition of jurisdictions whereby the one with the lowest enforcement standards survives.[25] This situation is often described as the 'Delaware Effect', named after the competition among corporate laws of different U.S. states leading to low quality corporate regulation in the state of Delaware.[26] Once again, intervention into member states' procedural regimes might address these problems.[27]

Striking a Balance?

Without nullifying the validity and importance of these arguments, one cannot fail but notice that certain efficiencies may be overemphasised. To begin with, what facilitates the realisation of a level playing field in the internal market is mainly the substantive EU law introduced to overcome obstacles and uncertainties in the realisation of the four constituent freedoms: free movement of goods, persons, capital, and services. Civil procedure law is auxiliary to substantive law and becomes significant primarily when the enforcement of substantive law is under discussion.[28] As already discussed, differing procedural rules across the member states can distort competition among businesses, also complicating risk management for cross-border trade. However, this is true only if the internal market functions as intended, giving rise to diverse rights and obligations.

An additional problem relates to the possibility of unintended costs. The limitation of transaction costs caused by the introduction of EU civil procedure rules in all member states will inevitably be accompanied by the creation of additional implementation and adaptation costs in all legal orders, as well as costs arising from the limitation of the variety of options and of the possibility for learning effects from different procedural paradigms.[29] For intervention to be economically rational, the balance between efficiencies caused by the reduction of transaction costs and the creation of an economy of scale on the one hand, and the extra costs of adaptation to newly imposed rules on the other will have to be positive. Currently, there is not extensive empirical data supporting this positive balance.[30]

---

[24] M. A. Lupoi, 'The Harmonization of Civil Procedural Law within the EU', in J. O. Frosini, M. A. Lupoi and M. Marchesiello (eds), *A European Space of Justice* (Ravenna: Longo, 2006) p 199-200.

[25] H. Sinn, 'The Selection Principle and Market Failure in Systems Competition (MS)' (1997) 66 *Journal of Public Economics* 247-274.

[26] R. J. Van den Bergh and L.T. Visscher, 'The Principles of European Tort Law: The Right Path to Harmonization?' (2006) 14 (4) *E.R.P.L.* 520; H. Søndergaard Birkmose, 'Regulatory Competition and the European Harmonisation Process' (2006) *EBLR* 1081-1082.

[27] P. H. Lindblom, 'Harmony of the legal spheres: A Swedish view on the construction of a unified European procedural law' (1997) 1 *E.R.P.L.* 23-24.

[28] J. I. H. Jacob, *The Fabric of English Civil Justice,* (The Hamlyn Trust, Stevens & Sons, London, 1987) p 63-67 <http://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/The_Fabric_of_English_Civil_Justice.pdf> accessed 16 September 2011.

[29] See however: J. M. Sun and J. Pelkmans, 'Regulatory Competition in the Single Market' (CEPS Working Document No. 84, 1994) 28-29.

[30] See however: Oxford Institute of European and Comparative Law and the Oxford Centre for Socio-Legal-Studies, 'Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law – A Business Survey – Final Results' (2008) < http://denning.law.ox.ac.uk/iecl/pdfs/Oxford%20Civil%20Justice%20Survey%20-%20Summary%20of%20Results,%20Final.pdf> accessed 8 May 2012.

Finally, in the area of civil procedural rules the race-to-the-bottom scenario seems less persuasive. The reason is that unlike substantive law, where people can choose in detail the rules applicable to a legal relationship, in procedural matters, parties can only choose the procedural rules of a distinct forum. As a result, a scenario where member states decrease the overall quality of their procedural systems to make them more appealing to foreign litigants does not sound particularly plausible. In the famous Delaware case, the introduction of lenient rules related to companies' incorporation rules only, and had potential to result in economic efficiencies for that state due to inward attraction of foreign companies and the subsequent incorporation fees. However, procedural regimes of low quality standards only generate further costs, for instance due to an increased need for appeal procedures, further impeding effective dispute resolution and the enforcement of rights and obligations.[31]

THE FEASIBILITY OF EU INTERVENTION INTO NATIONAL CIVIL PROCEDURAL LAW

Even if the desirability question in a specific case is answered in the affirmative, the decision to intervene into member states' procedural systems is not an easy and straightforward one. When considering national procedural systems from the perspective of legal judicial tradition, inter-jurisdictional competition, and political failures resulting from lobbyism, what comes to the fore are conflicting interests, which pose feasibility questions for the harmonization of civil procedure law. This feasibility question could offer some initial criteria for EU intervention into national procedural regimes for the facilitation of effective dispute resolution and the enforcement of EU law. These criteria should be further filtered through the prism of the fundamental right of access to justice in order that the final scope of harmonized rules can be established.

Legal Traditions

Member states' legal traditions have been shaped and reshaped over time, the result of varying historical, institutional, social, economic, and political influences.[32] National civil procedural rules form part of States' legal traditions, reflecting their convictions about proper organisation of the courts' judicial system in delivering timely and fair judgments.[33] Member States' national procedural regimes differ greatly and the differences can be fundamental.[34] Starting with the Civil – Common Law divide, the most crucial differences are threefold: the role of the judge; the function of appellate procedures; and the civil litigation trial.[35] Specifically, in civil law countries, professional judges play a primary role in the development of evidence and the legal characterisation

[31] A. Ogus, 'Competition between national legal systems: a contribution of economic analysis to comparative law', (1999) 48 *ICLQ* 415.
[32] M. Taruffo, 'Harmonisation in a Global Context: The ALI/UNIDROIT Principles' in X. E. Kramer and C. H. van Rhee (eds), *Civil Litigation in a Globalising World* (T. M. C. Asser Press 2012) p 209.
[33] K. D. Kerameus, 'Procedural Harmonization in Europe', (1995) 43 (3) *Am. J. Comp. L.* 404-405; H. Collins, 'European Private Law and the Cultural Diversity', (1995) 3 *E.R.P.L.* 364; S. Vogenauer, 'The Spectre of a European Contract law' in S. Vogenauer and S. Weatherill (eds), *The harmonisation of European contract law: Implications for European Private Laws, Business and Legal Practice* (Hart Publishing 2006) p 26.
[34] See *inter alia:* P. Legrand, 'On the Unbearable Localness of Law: Academic Fallacies and Unseasonable Observations', (2002) 1 *E.R.P.L.* 61; S. Goldstein, 'On comparing and unifying civil procedural systems' in R. Cotterrell (ed.), *Process and Substance* (Butterworths, London, Dublin, and Edinburgh 1995)3-28; A. Uzelac, 'Reforming Mediterranean Civil Procedure: is there a need for shock therapy?' in C. H. van Rhee and A. Uzelac (eds), *Civil Justice between Efficiency and Quality From Ius Commune to the CEPEJ* (Intersentia, Antwerp-Oxford-Portland, 2008) p 71.
[35] See M. Cappelletti and B. G. Garth, *Introduction – Policies, Trends, and Ideas in Civil Procedure* (International Encyclopedia of Comparative Law, J C B Mohr, Tübingen, and Maritnus Nijhoff Publishers, Dordrecht, Boston, Lancaster, 1987) p 5-13, 23-42.

of facts, as opposed to common law systems where this responsibility rests initially with the legal advocates. Broadly speaking, chances for a review of both the law and the facts of a case at second instance are higher in civil law regimes as opposed to common law. In the latter, private litigation usually takes place in two stages, namely a preliminary, pre-trial phase followed by the actual trial of the case, as opposed to a single trial in civil systems consisting of many, usually short, court sessions.[36]

Consequently, cultural sensitivities reflected in the choice of procedural regimes may be so great that EU intervention into member states' civil procedure law may be impossible, or so complicated, that its net results may not render it desirable for individual member states. What is more, it might disrupt member states' legal culture, depriving procedural systems of their richness and benefit. The end result may thus be the disruption of individual civil procedure regimes, compromising potential for effective private enforcement of both EU and domestic substantive rights and obligations.

The Economics of Procedural Diversity

Examining EU intervention into member states' procedural regimes from an economic perspective, legal diversity constitutes a fundamental principle. The theory of regulatory competition assumes that legal producers are rivals and compete just as producers of goods and services compete in usual markets.[37] Regulators offer favourable procedural regimes in order to increase domestic industries' competitiveness and attract foreign business activity.[38] As legal competition is a-territorial, both individuals and firms are authorised to choose the jurisdiction whose procedures and principles will apply to a transaction or business.[39]

Functional arbitrage can promote competition of legal procedures, allowing people to refer to many diverse and simultaneously existing legal orders. By 'voting with their feet',[40] litigants choose specific procedural systems over others, signalling their preference for civil procedure regulation and the private enforcement of EU rights and obligations. In other words, national governments have an incentive to promote better procedural rules in accordance with their citizens' expressed choices,[41] sensing and addressing new societal needs.[42]

EU intervention into member states' national procedural regimes reduces the spectrum of ex ante or ex post choice of the rules of civil procedure in the fora where parties could litigate their disputes. What is more, it is doubtful whether centrally-imposed procedural rules, even of exceptionally high quality, could remedy the limitation of learning effects associated with procedural diversity.[43] Procedural diversity promotes a communication process between different legal orders and regimes whereby convergence occurs gradually and in a balanced way. Local authorities have an information advantage

[36] G. C. Hazard, M. Taruffo, R. Stürner, and A. Gidi, 'Introduction to the Principles and Rules of Transnational Civil Procedure' (2000-2001) 33 *N.Y.U. J. Int'l Law & Pol.* 773-774.
[37] A. Marciano and J. M. Josselin, 'Introduction: Coordinating demand and supply of law: Market forces or state control?', in A. Marciano and J. M. Josselin (eds.), *From Economic to Legal Competition: New Perspective on Law and Institutions in Europe* (Edward Elgar, 2003) p 1.
[38] Adapted to regulatory competition in civil procedure: K. Gatsios & P. Holmes, *Palgrave Dictionary of Economics and the Law,* (1998) p 271.
[39] Ogus, (n 31) 408.
[40] C. M. Tiebout, 'A Pure Theory of Local Expenditures', (1956) 64 *Journal of Political Economy* 416-424.
[41] H. Siebert & M. J. Koop, 'Institutional Competition Versus Centralisation: Quo Vadis Europe ?' (1993) 9 (1) *Oxf Rev Econ Policy* 15-30.
[42] In EU contract law: G. Wagner, 'The Economics of Harmonization: The Case of Contract Law' (2002) 39 *CMLR*; W. Kerber, 'Inter-jurisdictional Competition within the European Union', (2008) 233 <http://ssrn.com/abstract=1392163> accessed 16 June 2011.
[43] L. Visscher, 'A Law and Economics View on Harmonisation of Procedural law' in X. E. Kramer and C. H. van Rhee (eds), *Civil Litigation in a Globalising World* (T.M.C. ASSER PRESS 2012) p 78.

regarding the specificities and actual needs of their procedural systems and can thus proceed to approximation of their procedural rules with those of other legal orders. At the supranational, EU level, the possibilities for such in-depth knowledge of the various procedural regimes and the possibilities for convergence are particularly limited. The approximating result might thus be less effective, creating more problems in the enforcement of EU rights and obligations before national courts than it purports to resolve.[44]

The Influence of Lobbyism

Public choice theory refers to the role pressure groups play in the creation and introduction of legislation. Interest or pressure groups operating in all member states engage in the legislative process, influencing the direction and content of rules, furthering their interests in a certain area.[45] These pressure groups only have dispersed powers when they operate in an environment of procedural diversity, solely influencing domestic procedural regimes. In the case of centrally developed civil procedure rules, at a supranational EU level, these interest groups might be able to exercise more imminent and widespread influence on regulators.[46] Instead of lobbying with 28 different regulators,[47] they would have to lobby with a central, EU authority, while affecting simultaneously all member states.[48] This could result in the promotion of the procedural interests of one pressure group to the detriment of other groups across all EU Member States, potentially sapping the enforcement of EU law and the effective legal protection of rights and obligations.

Countervailing Considerations

Although these feasibility criteria encapsulate serious considerations on the actual role and function of national procedural regimes in the EU, they nonetheless rest on some unrealistic assumptions. To begin with, not all rules of civil procedure form part of the member states' legal traditions. For example, rules on calculation of time frames and deadlines in civil litigation, on service of process and on initiation of proceedings by writ, mainly serve the objective of prompt trial administration, providing the infrastructure for organised systems of civil procedure.[49] Even if the EU alters these technical rules, member states will still have access to another form of juridical administration that might be more efficient and effective than their original one, without impacting negatively on their national legal tradition or the effectiveness of rights and obligations enforcement.

[44] Ogus, (n 31) 415-416; G. P. Miller, 'The Legal-Economic Analysis of Comparative Civil Procedure', (1997) 45 *Am.J.Comp.L.* 917-918.
[45] A. Geiger, 'Lobbyists — the Devil's Advocates?', (2003) 24 (11) *ECLR* 559; R. D. Tollison, 'Public Choice and Legislation', (1988) 74 (2) *Va. L. Rev* 339; Wagner, 'The Economics of Harmonization: The Case of Contract Law', (n 42) 1000; Kennett, *Enforcement of Judgments in Europe* (n 8) p 306.
[46] H. Søndergaard Birkmose , 'Regulatory Competition and the European Harmonisation Process', (2006) *EBLR* 1079; R. Van den Bergh, 'Towards an Institutional Legal Framework for Regulatory Competition in Europe', (2000) 53 (4) *KYKLOS* 448-449.
[47] Croatia will be the 28th EU Member State as of 1 July 2013. See, Treaty of Accession of Croatia [2012] OJ L122/10.
[48] W. Kerber, 'The Theory of Regulatory Competition and Competition Law', (2008) <http://ssrn.com/abstract=1392163> accessed 23 August 2010.
[49] Kerameus, 'Procedural Harmonisation in Europe', (n 33) 404-405; C. H. van Rhee, 'Harmonisation of Civil Procedure: An Historical and Comparative Perspective' in X. E. Kramer and C. H. van Rhee (eds), *Civil Litigation in a Globalising World* (T.M.C. ASSER PRESS 2012) p 49.

What is more, civil procedure rules are not always worth maintaining simply because they form part of a state's legal tradition.[50] By way of illustration, many civil law EU countries have traditionally been hostile to the introduction of collective compensatory relief in their judicial systems, for fear it could promote a culture of litigation. However, in the remit of the European Union, business practices breaching EU law provisions increasingly tend to inflict very small losses on a large number of people. Opting for individual private enforcement of these rights does not constitute a realistic and effective means of redress since the costs and general litigation exigencies are disproportionate to the actual harm caused, usually of only a few tens or hundreds of euros.[51] What is more, in the event that compensation for unlawful business practices affecting large numbers of harmed people could only be resolved via the filing of an equal number of individual lawsuits, member states' national courts would be faced with a backlog and come to a complete standstill, ultimately undermining any possibility of timely and fair justice. Considerations of effective access to judicial enforcement of EU rights and obligations may therefore outweigh concerns regarding member states' legal cultural identity, pointing towards further EU intervention into national procedural regimes.

Additionally, despite considerable divergences in member states' fundamental characteristics of civil procedural regimes, the civil/common law dichotomy becomes less striking over time.[52] In both English civil procedure and continental European jurisdictions, judges have become more and more active in the management of cases before them, effectively taking up the role of case-managers in civil proceedings.[53] Furthermore, the Woolf reforms limited and streamlined pre-trial disclosure in the English judicial system even while. Many continental European jurisdictions have investigated the prospects of introducing limited discovery provisions into their domestic procedural regimes.[54] As Andrews has put it: '…the Common Law or Civil Law tradition is not an immutable genetic stamp'.[55] Recent empirical data suggest there are no systematic differences between civil and common-law countries.[56] Further, for regulatory competition to be a successful option, prospective civil litigants should be able to profit from procedural diversity in the EU through the choice of the more efficient procedural system.[57] This suggestion presupposes that civil litigants are aware of the diverse systems of civil procedure available in the EU; it also presupposes that litigants have the actual capacity to understand fully the impact of the various procedural rules, making

[50] S. Weatherill, 'Why object to the Harmonisation of Private Law by the EC?', (2004) *E.R.P.L.*, 652; Kennett, (n 8) 311.

[51] European Commission, 'Commission Staff Working Document Public Consultation: Towards a Coherent European Approach to Collective Redress', 3. See, H W Micklitz and A Stadler, 'The Development of Collective Legal Actions in Europe, Especially in German Civil Procedure' (2006) *European Business Law Review* 1476-1477: The option of joining many individual claims against the same defendant before the same court is not effective either, since courts still treat these cases as a pool of individual lawsuits with procedural actions of each plaintiff leaving the rest of the plaintiffs unaffected. One possible advantage is the option for joint hearings and joint taking of evidence, which can reduce plaintiffs' individual legal costs.

[52] Lindblom, (n 27) 20; M. Van Hoecke, 'The Harmonisation of Private Law in Europe: Some Misunderstandings' in M. Van Hoecke and F Ost (eds), *The Harmonisation of European Private Law* (Hart Publishing, Oxford-Portland Oregon, 2000) p 7.

[53] Lord Woolf, *Access to Justice: Final Report* (1996) http://www.dca.gov.uk/civil/final/index.htm accessed 4 May 2012; C. H. Van Rhee, 'The Development of Civil Procedural Law in Twentieth-Century Europe: From Party Autonomy to Judicial Case Management and Efficiency' in Van Rhee (ed.), *Judicial Case Management and Efficiency in Civil Litigation* (Intersentia, Antwerp 2008) p 11-25.

[54] Lord Woolf, *Access to Justice: Final Report* (n 53); van Rhee, 'Harmonisation of Civil Procedure: An Historical and Comparative Perspective' (n 49) 40-41.

[55] N. Andrews, 'A modern procedural synthesis: the American Law Institute and UNIDROIT's 'Principles and rules of transnational civil procedure'', (2009) *TCR* 52–58.

[56] H. Spamann, 'Legal Origin, Civil Procedure, and the Quality of Contract Enforcement' (John M Olin Center for Law, Economics, and Business Fellows' Discussion Paper Series, Discussion Paper No. 31, 2009) 1-21 <http://140.247.200.140/programs/olin_center/fellows_papers/pdf/Spamann_31.pdf> accessed 9 May 2012.

[57] See *inter alia*: D. C. Esty and D. Geradin, 'Regulatory Co-opetition', (2000) 3 (2) *J Intl Econ L* 240-248.

informed decisions.[58] However, this is not an easy and straightforward possibility in the case of 28 competing systems of civil procedure.[59]

It is important to make a basic distinction here: large international companies, with the resources to engage legal teams on a permanent basis, can take advantage of the efficiencies of inter-jurisdictional competition. In the case of a dispute with a small business or with individual consumers, they would be able to find out the most beneficial procedural system of dispute resolution and enforcement of rights and obligations. In contrast, individual litigants and small and medium sized companies usually lack the money, time, or legal foundations to make an appropriate choice of procedural rules and thus profit from competition among jurisdictions.[60] They are not in a position to gain information about different legal systems, assess that information, and then impose their will on their counterparts, especially when these are the above-mentioned large, multinational companies.[61]

This last factor could have far-reaching consequences in terms of access to justice: regulatory competition might lead to inequality of arms and denial of access to justice for at least one of the parties to a dispute.[62] Indeed, in the example of a big company in dispute with a small one, if all the parameters of civil procedure are unregulated, the dispute might end up in the imposition of the least favourable procedural regime for the small company. It is true that this theoretical scenario might entail efficiencies for consumers and SMEs if lower judicial standards are combined with lower prices and lower costs. However, even if, as Ogus suggests, citizens might sometimes prefer lower standards at lower costs, this is not a viable route since low judicial standards violate established ideas of fundamental procedural human rights. In the field of civil procedure, the right to an effective remedy and a fair trial enshrines social policy reflections that are deep-rooted in the constitutions and legal cultures of all EU member states.[63] EU intervention into national procedural regimes could thus offer equality of arms in the enforcement of EU law rights and obligations.

Finally, depending on the pressure group and the procedural interests it promotes, member states' national civil procedural regimes could be influenced in a manner detrimental for the enforcement of EU law, the protection of individual rights, and the observance of obligations therein. One could imagine lawyers exerting pressure for a reform that would maintain, if not increase, the level of legal costs, despite resulting in an unnecessarily expensive judicial regime, depriving citizens of the possibility of enforcing their EU rights via the courts. The fact that the judicial avenue will be equally expensive for domestic rights enforcement cannot be used as an excuse for the introduction of procedural rules which render excessively difficult or practically impossible the legal protection of EU law based claims.[64]

---

[58] In the context of European Contract law: Commission, 'Communication from the Commission to the Council and the European Parliament on European Contract Law' COM (2001) 398 final, 9.
[59] 'Special Eurobarometer 292; K. D. Kerameus, 'Procedural Implications of Civil Law Unification', in A. Hartkamp et al. (eds), *Towards a European Civil Code* (4th edn, Kluwer Law International 2011) p 261.
[60] See further: F. K. Juenger, 'What's Wrong with Forum Shopping?', (1994) *Syd LR* 7-13; B. R. Opeskin, 'The Price of Forum Shopping: A Reply to professor Juenger', (1994) *Syd LR* 14-27.
[61] See: J. T. Johnsen,'Vulnerable groups at the legal services market' in A Uzelac and CH van Rhee (eds), *Access to Justice and the Judiciary. Towards New European Standards of Affordability, Quality, and Efficiency of Civil Adjudication* (Intersentia 2009) p 32-34.
[62] M. Storme, *Approximation of Judiciary Law in the European Union* (M Nijhoff 1994) 48.
[63] Ogus, (n 31) 408; M. Cohen, 'Commentary' in E. Eide and R. Van den Bergh (eds), *Law and Economics of the Environment* (Oslo, Juridisk Forlag 1996) p 170; S. Weatherill, 'Why object to the Harmonisation of Private Law by the EC?', (2004) *E.R.P.L.* 656.
[64] See for instance: Case 199/82 Amministrazione delle Finanze dello Stato v SpA San Giorgio [1983] ECR, 3595, paras 17-18. Italian national evidentiary rules, requiring negative written proof for the taxpayer to establish that an unlawfully (in breach of EU law) imposed charge had not been passed on, should be put aside. In spite of the applicability of the same evidentiary rule to taxpayers' claims arising from national tax law infringements as to those arising from EU rights (principle of equivalence), this

EU intervention into member states' national procedural regimes could thus secure increased access to justice for the more structurally disadvantaged groups. Compared to producers, consumers traditionally have less negotiating power, such that their interests are less likely to be upheld. The latter have better organisational structures and capacities at the domestic level, prevailing in the lobby challenge, potentially causing biased civil procedural rules at the expense of the losers (consumers).[65] Without EU intervention there is a risk of discrimination in favour of domestic producers.

IDENTIFYING THE APPROPRIATE DEGREE OF CIVIL PROCEDURE HARMONIZATION: A COHERENT APPROACH

The challenge for EU law is not to intervene into member states' national procedural regimes at any cost. The overarching aim is to guarantee the enforcement of EU law rights and obligations under realistic conditions. This suggestion has significant repercussions with respect to both the level of decision-making and the actual scope of the enacted rules. By looking at the three main possibilities for EU intervention into national procedural regimes for the promotion of effective dispute resolution and enforcement of EU law, I will identify whether and to what extent these modes of intervention can accommodate the feasibility concerns for the harmonization of civil procedure law, while also passing the access to justice test. This will put the discussion on the role of national procedural systems for the EU in more realistic and practical premises offering some initial indications as to the right way forward for the harmonization of civil procedure law.

Soft Law Approach

The first possibility, a soft law instrument, for instance in the form of a Recommendation or Opinion or alternatively, a best-practices publication on certain parts of civil procedural law, could hardly address the exigencies of effective enforcement of EU rights and obligations. The main reason is that it completely lacks binding force, having only a guiding, advisory role. Member states' national legislatures have little incentive to undertake reforms in national civil procedural rules in accordance with the mandates incorporated in the soft-law instrument. Even if they take reforming action, the result might differ considerably from one State to another, as each Member State would interpret and incorporate suggestions differently.

Another form of soft law approach could be the promotion of exchange of information and practices between member states' judicial authorities. The rationale is that greater familiarisation with the various procedural systems across the EU will allow for a bottom-up approximation of these systems.[66] One could even theorise that such an endeavour could respect member states' legal cultural identity, also allowing competition between the various civil procedural systems. However, this is rather misleading. The aim of such a soft law approach is the convergence of States' options on civil procedural law, rather than the maintenance of any divergences therein.[67] What is more, the respect of the fundamental right to an effective remedy and a fair trial contained in Article 47 of the

rule systematically places the burden of proof upon the taxpayer, rendering the reparation of charges levied contrary to EU law excessively difficult (principle of effectiveness).

[65] In the context of competition law see: O. Budzinski, *The Governance of Global Competition: Competence Allocation in International Competition Policy* (Edward Elgar Publishing, 2008) p 106; D. Geradin and J. A. McCahery, 'Regulatory Co-opetition: Transcending the Regulatory Competition Debate' (TILEC Discussion Paper 2005-020, 2005) 10.

[66] Tulibacka, (n 1) 1549.

[67] Storskrubb, (n 7) p 239; Max Planck Institute for Comparative and International Private Law, 'Policy Options for Progress Towards a European Contract Law: Comments on the issues raised in the Green Paper from the Commission of 1 July 2010, COM (2010) 348 final', 7.

Charter of Fundamental Rights of the European Union (CFREU)) cannot be entrusted to mere soft law. EU intervention into member states' national procedural regimes needs to consider the fundamental right of access to justice, striking a balance between the rights of the claimants and the defence. It is against this background that a soft law approach is deemed far from appropriate and legitimate to provide solution to the interests at stake. As becomes clear from the horizontal provision of Article 52 (1) CFREU, any limitations to fundamental rights can only be achieved through legislative action.[68]

A Minimum Standards Approach

Minimum standards do not abolish national procedural systems in their entirety, allowing for more protective and effective national procedural rules. Minimum harmonization is in line with considerations of maintaining member states' cultural identity, also permitting some competition between different jurisdictions. However, incorporation of these minimum standards in the national legal order might also compromise the overall quality of these systems, especially where minimum standards are isolated ad hoc provisions that disregard the interconnections and interdependencies between the various areas of the application of civil procedural law. Such a scenario could be detrimental for the effective enforcement of EU rights and obligations, rendering recourse to national courts even more problematic and complicated.

By way of illustration, although the Intellectual Property Rights Enforcement Directive (IPRED)[69] provided, inter alia, the reimbursement of litigants' actual legal costs, it practically delegated the matter to member states' national procedural regimes, without duly considering the right of access to courts. In the remit of intellectual property rights protection, legal costs are often very high, comprising costs for technical experts,[70] translation costs, and costs associated with 'test purchases'.[71] Overall, increased legal expenses are associated with the need to acquire proper and reliable evidence to initiate infringement proceedings,[72] and as such are of fundamental importance for access to the courts in intellectual property rights cases. That being said, and although this proviso aims at compensating winning litigants, it has nonetheless resulted in a severe drop in the number of I.P. cases in the Netherlands and other member states where under the previously existing system, parties' legal costs were compensated at a fixed rate.[73] The new rule rendered the estimation of the final costs of initiating a court procedure unpredictable.[74] As a result, risk-averse parties would hesitate to initiate court proceedings due to higher legal costs in case of defeat.

The final possibility to be investigated in the next subsection, namely the introduction of optional procedural EU rules, is free from the limitations of both the soft law and the minimum harmonization approaches. On the one hand, it creates binding rules that could gradually lead to the establishment of judicial systems of similar quality. On the other

[68] By analogy from the area of EU Administrative Law: O. M. Puigpelat, 'Arguments in favour of a general codification of the EU administrative procedure' (Note, European Parliament 2011) 17 http://www.europarl.europa.eu/RegData/etudes/note/juri/2011/432776/IPOL-JURI_NT(2011)432776(PAR00)_EN.pdf accessed 4 December 2012

[69] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (IPRED) [2004] OJ L195/16.

[70] For instance, patent agents or internet investigators.

[71] These are aimed at confirming an infringement of IP rights or at gathering evidence for the establishment of an infringement.

[72] European Commission, Commission Staff Working Document Analysis of the application of Directive 2004/48/EC on the enforcement of intellectual property rights in the Member States Accompanying document to the Report from the Commission to the Council, the European Parliament and the European Social Committee on the application of Directive 2004/48/EC [2010] SEC (2010) 1589 final, 24.

[73] Such as Poland.

[74] P. M. M. van der Grinten, 'Challenges for the Creation of a European Law of Civil Procedure', (2007) 3 *Tijdschrift voor Civiele Rechtspleging* [Civil Justice Review], 65 – 70.

hand, it creates optional rules, which exist in parallel with domestic provisions, and which apply only to cross-border disputes, thus hardly interfering with the internal coherence of national judicial systems.

A 29th Regime Approach

This approach consists of the adoption of an autonomous European procedural mechanism on specific subjects of civil procedure law, applicable to cross-border and/or domestic disputes, in parallel with member states' domestic civil procedural rules on that same subject. Such an approach guarantees that member states' legal cultural identity remains intact, constituting a conservative solution on a trial and error basis.[75] Regardless of the existence of the additional procedural mechanism, national civil procedural mechanisms and rules on the same subject would offer a simultaneous, alternative option[76] for litigants to choose, either ex ante or ex post. This approach also reinforces competition between national procedural regimes and the alternative European mechanism, allowing a variety of procedural options in accordance with litigants' expressed preferences.[77] Finally, it also considerably reduces possibilities for lobbyism, since it creates too many civil procedural fronts with which pressure groups will have difficulty liaising systematically and effectively to promote their interests.

However, the introduction of optional instruments as a means to intervene in member states' national procedural regimes creates an insurmountable difficulty. Switching between different procedural mechanisms, EU-based and domestic, on a daily basis, would lead to unnecessary complication and burden for the deciding judges.[78] More importantly, as analysed above, procedural law fulfils a fundamental function in parallel with conflict resolution, that is policy implementation via the enforcement of law. As a result, wasting limited judicial resources solely for the sake of procedural diversity and respect of legal judicial tradition, whatever that tradition maybe, does not conform to the overarching objective of procedural law, which is the effective enforcement of law, here, of EU law.[79] One should also consider that unlike substantive law, civil procedure law is not an end in itself. It gains value only to the extent that it can lead to the enforcement and protection of legal rights and interests, and through that, to the maintenance of the rule of law in civilised societies.[80]

CONCLUDING REMARKS

In the decentralised judicial system of the EU, national procedural regimes are of tremendous importance for the dispute resolution and enforcement of EU law rights and obligations. The EU is increasingly intervening in national procedural systems to facilitate further effective dispute resolution and EU law enforcement. This is particularly

[75] J. M. Smits, 'The Practical Importance of Harmonisation of Commercial Contract Law' (Modern Law for Global Commerce Congress to celebrate the fortieth annual session of UNICTRAL, Vienna, July 2007) 5 http://www.uncitral.org/pdf/english/congress/Smits.pdf accessed 20 June 2012; Visscher, 'A Law and Economics View on Harmonisation of Procedural law' (n 43) 86.
[76] X. E. Kramer, 'A Major Step in the Harmonisation of Procedural Law in Europe: the European Small Claims Procedure Accomplishments, New Features and Some Fundamental Question of European Harmonisation', in A. W. Jongbloed (ed.), *'The XIIIth World Congress of Procedural Law: The Belgian and Dutch Reports'* (Antwerpen: Intersentia 2008) p 281.
[77] Visscher, 'A Law and Economics View on Harmonisation of Procedural law' (n 43) p 86.
[78] J. J. Fawcett, J. M .Carruthers, and Sir P. North, *Private International Law* (14th edn, OUP 2008) p 79.
[79] G. Wagner, 'Harmonisation of Civil Procedure: Policy Perspectives' in X. E. Kramer and C. H. van Rhee (eds), *Civil Litigation in a Globalising World* (T.M.C. Asser Press 2012) p 100-101.
[80] See: J. Engström, *The Europeanisation of Remedies and Procedures through Judge-made Law: Can a Trojan Horse achieve Effectiveness? Experiences of the Swedish Judiciary* (PhD Thesis, European University Institute 2009) 34-35.

important in the European Union remit, seen as a supranational economic and political union of States.[81] EU intervention into member states' civil procedural rules could tackle the distortion of competition due to economic operators' access to judicial systems of diverging quality and efficiency. Additionally, it could increase businesses and consumers' commercial activities in the EU via greater visibility of litigation costs and overall certainty as to the procedural rules and expected litigation results. Finally, it could also minimise incentives for abuse of forum shopping and the subsequent race to the bottom.

However, divergences in member states' enforcement regimes do not constitute the sole source of distortion of competition in the internal market. Equally, though common procedural rules have been correlated with increased economic growth, the overall economic benefit when considering the costs of implementation of these common rules is yet to be empirically established. Finally, a race to the bottom because of the proliferation of forum shopping pursuant to national procedural divergences would most likely cause additional costs for the 'competing' judicial systems.

Despite the necessity for harmonization of civil procedure law, there are some further parameters to be considered for the final scope of EU intervention to be established. These feasibility criteria could considerably compromise the value of procedural law harmonization effort. Specifically, EU intervention in national procedural regimes could have a negative impact on member states' legal traditions, diminishing procedural diversity, competition among the various jurisdictional regimes, and potentials for regulatory innovation and experimentation.[82] Be that as it may, efficiencies from the competition of procedural systems presuppose considerable information and choice capacities, generally lacking in the case of individual consumers and SMEs. This could compromise equal access to justice for the resolution of disputes and the enforcement of EU law rights and obligations for such groups. Additionally, national rules on the administration of trials and general court infrastructure can easily be harmonized, whereas even fundamental procedural choices may have to be revised in light of the right of access to justice. This becomes more realistic as the civil/common law divide gradually fades. Finally, considerations on the power of lobbying groups could actually support EU intervention in national procedural systems to secure 'losing' interest groups' effective access to justice.

Against this backdrop, soft law approaches for the harmonization of civil procedure law lack the necessary binding force that would allow the establishment of enforcement systems of equitable performance levels. What is more, a minimum harmonization approach may lead to further fragmentation in national procedural systems and the EU in general. Finally, the duplication and maintenance of several procedural regimes, essentially promoting the same value, makes little sense, complicating the situation, furthering inequalities and discrimination, and compromising the timely, at reasonable costs, and accurate application of EU law to individual cases.[83]

The time has come for a more systematic and coherent approach to EU intervention into member states' civil procedural law. This involves primarily an understanding and acceptance at the political level of the fundamental functions of civil procedural law in society and in the European legal order in particular. A single request can encapsulate these functions: equal access to comparable judicial systems all over the EU, in

[81] H. C. Gutteridge, *Comparative law: an introduction to the comparative method of legal study and research* (CUP 1946) p 35; K. D. Kerameus, 'Some Reflections on Procedural Harmonisation: Reasons and Scope', (2003) 8 *Uniform Law Review [Revue de Droit Uniforme]* NS 447.
[82] W. Kerber, 'Inter-jurisdictional Competition within the European Union' (2000) *Fordham Int'l L.J.* 217, 221, 249; C. Barnard and S. Deakin, 'Market Access and Regulatory Competition', in C. Barnard and J. Scott (eds), *The Law of the Single European Market* (Oxford 2002, Ch.8); Goldstein, 'On comparing and unifying civil procedural systems' (n 34) p 43.
[83] See *inter alia*: Zuckerman, 'The principle of effective judicial protection in EU law' (n 3) 2; Wagner, 'Harmonisation of Civil Procedure: Policy Perspectives' (n 79) 101.

accordance with the procedural guarantees enshrined in Article 47 CFREU. In that sense, civil procedural law constitutes the means for the introduction and incorporation of fundamental notions of justice into the supranational legal order.[84] These fundamental notions of effective remedy and fair trial in the EU should underpin all policy parameters in the regulation of civil procedural law.

[84] H E Hartnell, 'EUstitia: Institutionalizing Justice in the European Union' (2002) 23 *Nw. J. Int'l L. & Bus.* 92.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

The EU, Russia and Models of International Society in a Wider Europe

Andrey Makarychev *University of Tartu*

Alexander Sergunin *St Petersburg State University*

Citation

Makarychev, A. and Sergunin, A. (2013). 'The EU, Russia and Models of International Society in a Wider Europe'*, Journal of Contemporary European Research*. 9 (2), pp. 313-329.

First published at: www.jcer.net

Abstract

The research objective of this article is two-fold: On the one hand, this study aims at analysing the multifaceted EU-Russia relations as seen from different theoretical/conceptual approaches. On the other hand, this article examines how the EU-Russia dialogue is organised in sectoral terms – economy, trade, visa regime liberalisation, and security cooperation. Both the promising and problematic areas in the EU-Russia bilateral relations are identified. The need for a more adequate conceptual framework applicable to the EU-Russia relations as well as a new, more efficient, EU-Russian joint strategy is explained.

Keywords

European Union; Russia; international society; inter-subjectivity; EU-Russia common spaces.

Both Russian discourse on Europe and European discourse on Russia are becoming increasingly polarised. In Moscow, pessimistic assessments of Europe's ability to play the role of the most important reference point for Russia's identity abound. Unsurprisingly, the Eurozone crisis made Russian discourse on the EU even more critical. Many Russian experts believe that Russia should wait until Europe recovers from the current economic troubles. They argue that the deep financial troubles within the EU will make it a doubtful partner for Russia and seriously damage prospects for Russia's European orientation. According to one Russian analyst,

> Russia no longer sees itself as part of modern Europe. The idea of creating a common European space from Vladivostok to Brest has failed. The on-going rapid change of the European model prompts Moscow to take any long-term projects involving Europe with a big pinch of salt (Shestakov 2011).

Even among Russia's liberals Europe is under the fire of sharp critique. According to one account, at the peak of its strength Europe had based its policies on private property, a minimal state, intra-European competition, and a feeling of cultural superiority. In recent times, as soon as those principles were substituted by social distribution, regulatory state powers , pan-European unity and multiculturalism, Europe's role in the world began to decline (Latynina 2011). Yet in the meantime, Russia usually perceived the EU as a more convenient partner as compared with the USA and NATO. This explains why the Director of the Moscow-based Institute for Europe Studies deems that Russia 'is interested in preventing the EU from falling apart. We don't need a patchwork Europe. It is easier to deal with it as a unique formation which already exists' (Shmeliov 2011). The new Russian foreign policy concept (February 2013) also gives an important priority to Moscow's relations with the EU (Putin 2013).

In Europe, discourse on Russia is also split along political lines. Liberal groups within policy communities in most European countries are critical of Putin's Russia as a country deviating from the European normative order and becoming increasingly nationalistic. They accuse the Kremlin of mismanaging the country domestically (with emigration and rampant corruption as the most visible evidence of this) and creating artificial impediments for developing professional and civil society-based contacts with European partners. To foster Russian democracy, liberals require a stronger pressure on Putin's regime. Yet this scepticism is counter-balanced by those European speakers who claim that the EU – and Germany in particular –:

> is aware that there is no alternative to dealing with dictators ... Who gives us the right to actively interfere in the domestic affairs of another state? It is as if the

> international law that we claim to revere, with its stated dictate of non-intervention, did not exist (Sandschneider 2013).

Both in the EU and Russia a kind of interdependency thinking still prevails. Brussels and Moscow understand that, economically, they are set to be interdependent and benefit significantly from a greater integration of trade, investment and technology exchange. Russia is the EU's third-largest supplier and fourth-largest client. The EU is Russia's most important trading partner by far, accounting for 50 per cent of its overall trade. The Union is also the biggest investor in Russia and 75 per cent of Russian FDI stocks come from the EU countries. As the President of the European Commission Jose Manuel Barroso underlined, the key question is not whether the EU and Russia are interdependent on a wide range of political and economical issues, but rather how that interdependence will be managed (Barroso 2011: 1).

This plurality of divergent voices requests a more politically neutral scrutiny of Russia–EU relations. This can be done through relating them to different theoretical/conceptual models of international society. The main research questions in this article are, firstly, what these models are and how they can be problematised, differentiated from each other and used as explanatory tools for the analysis of EU–Russia relations. Secondly, we examine whether Russia and the EU adhere to similar structural understandings of international society in their specific policies towards each other or, vice versa, the two actors come from different cognitive maps and corresponding models of interaction. Thirdly, we are going to identify those models that are the most contested, and explain the sources of these disagreements.

The article consists of two parts. The first presents both a matrix of international society models that are applicable for the analysis of EU–Russia inter-subjective relations and explanation of these models. In the second part, we explain the key institutional elements of the bilateral agenda from the viewpoint of these models. The most interesting and, at the same time, representative cases/sectors of the EU-Russian cooperation are analysed. In doing so we presume that the two parties may have different visions of those models that each specific policy should promote, which may foster conflicts of interpretation and misperceptions of each other's intentions.

METHODOLOGY AND DATA

Our analysis stems from an inter-subjective approach to EU–Russia relations. Inter-subjectivity connotes not only a possibility of achieving some practical effects in the altering of the policies of other actors, but of shaping their international roles and identities through a process of communicative exchanges. Political subjects are to a large extent constituted by their obligations and commitments to their partners. In light of this approach, Russia's foreign policy positioning is impossible without reference to European experiences and practices, and vice versa. Inter-subjectivity makes any subject position dependent on the outside and thus immanently fluid and unstable.

This is why inter-subjective relations are inevitably full of distortions, disconnections, asymmetries, ruptures and imbalances. The concept of 'the friction of ideas' (or 'ideational friction') makes the case for 'deep-seated cultural differences between Europe and Russia' (Engelbrekt & Nygren 2010: 3). While frequently using the same vocabulary (like multipolarity), European and Russian discourse- and identity-makers infuse different meanings in them. This study is based on an approach to inter-subjectivity as an active 'power to affect and a passive power to be affected' (Citton 2009: 122). Russia's ability to influence the EU is limited, which makes the EU–Russia inter-subjectivity apparently asymmetrical. The EU policy philosophy can be expressed as follows:

> 'If I act toward the other based upon principles I carry with me previous to and outside of my interaction with the other, then it is not really the other I am concerned with. I am imposing my ethical framework upon the other, rather than taking up the other in her own right' (May 2008: 149).

Nevertheless, even in its role as an object of EU's influence, Russia still can – perhaps indirectly – influence the state of debate within the EU and its choice(s) for future actions.

The variety of conceptualisations of EU–Russia inter-subjective relations sheds some light on the nature of multiple splits within both Russian and European subjectivities. The idea of divided subjects is no novelty for political philosophy, but it is important to avoid banal interpretations of Russia's identity split between the proverbial Westernisers and Slavophiles, and the EU identity fluctuating between values and interests. We take a more flexible approach: 'it is the encounter with otherness that divides' (Layton 2008: 61). It is our contention in this article that there are much deeper splits that reflect Russia's and the EU's differing orientation on a number of policy areas , each one an instrument adjustable to a certain type of international structures. In the discussion below we identify the key moments that have affected the state of EU–Russian relations in the last decade and try to see whether both parties perceive each of them in a similar manner, and if not, how strong the divergences between them are.

The data for this study was drawn from the following sources: EU and Russian official documents; interviews with and articles by EU and Russian leaders; research literature: monographs, analytical papers (produced by individual experts and think tanks), and articles; periodicals. As with any study of sensitive politico-ideological issues, it is difficult to compile a set of reliable data. Information is often contradictory, misleading or not fully reported. Research is also complicated by differences of opinion between scholars as regards methods of assessment and interpretation of sources. Moreover, research techniques and terminology vary. Therefore, the exercise of judgment and comparison of sources are important elements in compiling our database. Since the study does not just entail data collection but also data assessment, three main principles were implemented with regard to the selection and interpretation of sources. Firstly, validity, i.e. that data should represent the most important and typical trends rather than occasional or irregular developments in EU-Russian relations. Secondly, informativeness, sources that provide valuable and timely information are given priority. Finally, innovativeness, that is, sources that offer original data, fresh ideas and non-traditional approaches are preferable. These research techniques help to overcome the limitations of the sources and compile substantial and sufficient data for the study.

INTERNATIONAL SOCIETY MODELS AND EU-RUSSIA RELATIONS

We base our analysis on singling out several structural models of international society presented in the table below. It is formed on the basis of two kinds of distinction that appear to be crucial for our analysis, namely between a) interest-based and normative structures, and b) state-centric structures and those reaching beyond the state and thus involving a wider gamut of actors.

Table 1: Structural Models of International Society

	Interest-based structures	Normative structures
State-centred structures	1A: Balance of power 1B: Spheres of influence 1C: Great power management 1D: Technical approximation	2A: Normative unification 2B: Normative plurality
'State Plus' structures	3: Multi-regionalism	4: Multiplicity of civilisations

1A: Balance of power

This model exists as a Cold War inertia and proves unable to take institutional forms. The basic problem with the practical implementation of the power balancing approach is that the EU and Russia possess different types of power. Russia's is mostly 'compulsory power' which consists of the direct control over the policies of its 'junior partners', mainly including manipulation of energy prices and military force.[1] The EU, by contrast, relies on a combination of 'institutional power' (which rests upon decisional rules and a shared understanding of responsibility and interdependence), and 'productive power' (Barnett & Duvall 2006) (i.e. one which produces social transformations in target countries).

1B: Spheres of influence

Spheres of influence might be viewed as similar to a neo-imperialist approach, based on regional domination. In a realist vision, the EU and Russia are two power poles which compete with each other and struggle for their spheres of influence. Despite the Cold War connotations, spheres-of-influence policies are quite resilient, even if decried as allegedly obsolete. Of course, it is mainly Russia that de-facto proclaimed its sphere of vital interests, by and large embracing the post-Soviet countries (except the three Baltic republics). In blocking Ukraine's and Georgia's membership in NATO Russia has declared that there are 'red lines' that the Kremlin will not allow the West to cross in its attempts to incorporate Russia's neighbours.

Yet in some cases the EU as well is not far from pursuing policies of spheres of influence. This is, in particular, the case of the Eastern Partnership and especially its policies toward Ukraine, Moldova and Georgia that are considered the most probable candidates for economically and politically associating with the EU. Since, as we have noted above, Russia and the EU possess dissimilar types of power, the mechanisms of the competition for spheres of influence in the common neighbourhood are also different (Sergunin 2013). This not only narrows the space for positive interaction between Moscow and Brussels, but also represents a challenge for countries like Moldova or Ukraine which are the objects of two strikingly divergent sets of power instruments.

1C: Great power management

For the Kremlin, the political significance of the great power management (GPM) model is manifested in the prospect of Russia's acceptance as an equal power by the constitutive members of international society. In Russian eyes, GPM could serve as proof of Russia's rising importance for the Western countries. Yet for many EU member states,

GPM can be implemented only at the expense of small and middle-size countries, which is particularly unacceptable for Germany which builds its strategy on engaging its smaller partners in multilateral diplomacy.

Some modest attempts to implement the GPM model are observable at the bilateral level only, as exemplified by the German – Russian Meseberg initiative and the Medvedev – Sarkozy talks of August 2008, when Russia de facto officially recognised EU as a legitimate security actor in its 'near abroad'. But on a more structural level the experiences of GPM are even more modest. The ineffectiveness of the Minsk group is perhaps an illustration of great powers' inability to manage jointly a particular conflict in the absence of political will. In the G8, Russia's positions on key issues of international security differs from the West's, while in the G20 Russia is more concerned about coordinating its policies with its BRICS partners than with allying itself with the European powers.

1D: Technical approximation

Technical approximation is seen mostly from the procedural side, which fits within the neo-functionalist/neo-institutionalist approach to integration. This model is focused on the rather pragmatic goal of practically organising good-neighbourly relations and selecting the institutions, programmes, instruments, and procedures that better serve the bilateral agenda. The EU – Russia Four Common Spaces and the Partnership for Modernization concepts may be seen as a reflection of these kinds of largely administrative and managerial logics.

2A: Normative Unification

Normative unification is based on the presumption of Russia's acceptance of EU's values as guiding principles facilitating its inclusion into a wider Europe. In the EU reading, normative unification is a value-ridden model, grounded in a concept of the EU as a 'soft power' that ought to 'civilise', 'democratise', 'pacify', and 'discipline' its 'periphery' (Tocci 2008; Manners 2002: 235-258). Along these lines, the integration processes in Europe's new neighbourhood is viewed as an inevitable and natural result of 'spill-over' and 'ramification' effects. This model was more applicable to EU-Russia relations in the 1990s and is overtly challenged by the Putin regime.

2B: Normative Plurality

Many Russian policy makers argue that multipolarity can be successful only if based upon a normative background and deem that Russia is in possession of its own distinctive cultural profile in the world, quite dissimilar from the West (Lapkin and Pantin 2004: 39). According to this logic, each of the centres of power in the world can be viewed as a particular civilisation. Thus, belongingness to civilisation becomes one of the key criteria of sovereignty and a justification for Russia's expansion of its spheres of influence. In this reasoning, as distinct from Europe, civilisational status is regarded as a possibility for Russia to achieve equality with Europe, while the idea of Russia's belongingness to the common European civilisation is believed to be equivalent to the voluntary acceptance of Russia's backwardness vis-à-vis its more developed Western neighbours (Kuznetzova and Kublitzkaya 2005).

3: Multi-regionalism

Multi-regionalism is based on the presumed inability of one single power to tackle regional issues on the one hand, and on a plurality of 'regional orders', on the other (Mylonas and Yorulmazlar 2012). Yet there is a stark difference between the EU and Russian readings of the reorganisation of world politics along regional lines. In European discourses, regional organisations may contribute to a more peaceful world order because they prevent the concentration of power in the hands of superpowers, encourage small states to strengthen their potential through pooling resources; contribute to lowering the dangers of a sovereignty-based system by creating institutions beyond the states. Russia uses regionalist policies for a different purpose – to strengthen its exclusive sphere of influence in its 'near abroad' and to fend off extra-regional powers. Russia finds itself under the strong influence of EU policies and wishes to take some practical advantage from the EU-sponsored regional projects, yet in the meantime chooses to distance itself from those regional groupings that the Kremlin perceives as orchestrated by other great powers. Russia sees little opportunity for itself in adapting to the experiences of EU-sponsored regionalist initiatives.

The multi-regionality perspective divides the post-Soviet space into several regions that are not necessarily subdued under Russia's control. In particular, the Baltic Sea and the Black Sea regional architectures are rather the effects of EU enlargement and its neighbourhood policy. Hence, it is through the prism of multi-regionalism that the concept of an allegedly unified post-Soviet space can be deconstructed, and the policy gap between Russia and the EU identified. Indeed, the 'mental maps' of Europe's margins are seen quite differently in Moscow and Brussels. The EU deliberately invests its resources in region-building for the purpose both of pluralising Europe's regional scene and making it more adaptable to Europeanization.

4: Multiplicity of Civilisations

There are different modalities in which the idea of plurality of civilisations is actualised in Russia's political and academic discourses. On the one hand, Russia can be portrayed as a member of European civilisation. This articulation can be found even in Dmitry Medvedev's reference to the EU and Russia as two branches of the European civilisation destined to cooperate closely with each other (Pchelkin 2010). Therefore, from the structural perspective, both the unity of this wider European civilisation and the compatibility of its different territorial parts are almost taken for granted. Russia's strategy consists of neither developing policies for joining European institutions nor taking on commitments with Europeanization prospects in mind, but rather in making the West accept Russia's historical belonging to a presumably common European civilisation (Tzygankov 1996; Tzymbursky 2007).

On the other hand, Russia can be portrayed as the key to Eurasian civilisation, or as the pivot for Slavic civilisation (Pax Slavica or Pax Orthodoxa), with the concept of the 'Russian world' as part of both conceptualisations (Kobyakov and Averyanov 2008; Narochnitzkaya 2007; Shevchenko 2004). Yet the key paradox of Russia's civilisational discourses is not that of a division between pro-European and pro-Russian-specific versions, but of a certain mistrust towards the state. Russian civilisational identity is not necessarily state-bound, and the plurality of civilisations as a particular case of normative plurality does not any longer make reference to states indispensable. The civilisational resource is believed to be relatively independent of political elites and is viewed as compensation for Russia's weakness as a nation. In a wider sense, this reasoning is quite in tune with the anticipation of a gradual transformation in political subjectivity from nation states to a type of new multi-nodal composite actorness based upon durable communications between culturally, religiously and linguistically related communities (Narochnitzkaya 2007; Shevchenko 2004). Inter-civilisational

communications may take the practical forms of trade promotion, tourist exchanges, inter-urban cultural flows, the activities of NGOs, etc.

THE EU–RUSSIA POLICY AGENDA: CASE STUDIES

In this section we dwell upon a number of the most important policy moves and initiatives that are constitutive for the EU–Russia communicative framework. We include in our analysis EU policies toward Russia's neighbours (the European Neighborhood Policy (ENP) and Eastern Partnership (EaP)), Russia's institutional policies with implications for its relations with the EU (WTO accession), and joint policy frameworks (the Four Common Spaces, Partnership for Modernization and the on-going visa liberalisation process) because they represent priority areas where Brussels and Moscow, on the one hand, interact with each other, and where, on the other, miscommunication and conflict can happen.

The European Neighborhood Policy (ENP) and the Eastern Partnership (EaP)

The ENP[2] and EaP[3] reveal a deep gap in perceptions between Russia and the EU. Brussels's approach, being intrinsically contradictory, is split between normative unification and multi-regionalist models, and spheres of influence. Yet Moscow either denies or ignores the normative components in EU policies, and views them as an undue expansion into Russia's presumed sphere of interests. Meanwhile, the EU views Russia as a revisionist power trying to regain its former control over the post-Soviet space. Brussels interpreted the Russian-Georgian military conflict of 2008 and the 'gas wars' with Ukraine as evidence of Russian imperialist intentions. Yet, EU capabilities to effect serious changes in the six EaP countries and transform them into prosperous states sharing European values are quite limited. The EU might find it difficult to achieve the desired result (it has problems in 'digesting' even the so-called 'new' members of the Union), since the present generation of post-Soviet politicians is prepared only to pay lip service to democracy and liberalism rather than actually to put these values into practice (Sergunin 2013).

Against this backdrop, Russia wants to play its own game in the post-Soviet region by forging a 'community of unaccepted' to the Western institutions (Bliakher 2008: 15). On the one hand, Moscow claims that the EU plans to enlist EaP countries' support in constructing the Nabucco or White Stream gas pipelines without Russia's participation are doomed to failure. On the other hand, Russian diplomats remain either negative or sceptical about the EaP, which they see as an encroachment upon its 'near abroad' sphere of influence. Russian discourse is contaminated by a number of either highly judgmental or falsifiable hypotheses – like the belief in a 'common mentality of the majority of post-Soviet people' (Galkin 2007: 16). Russia's policies are not always in tune with its neighbours'. Moscow seems to be interested in a de-politicised form of regionalism, but its neighbours (like Ukraine) look for much more normative and value-based models of regional integration as a wider Europe. The key problem with Russia's policy of preventing its neighbours from more closely associating with the EU is that it questions the sincerity of the 'European choice' proclaimed by Russia itself.

Russia's WTO accession

Both Moscow and Brussels regard Russia's WTO accession in terms of technical/procedural integration. The EU policies on Russia's accession to the WTO were - from the very beginning - double-edged. On the one hand, Brussels tried to encourage Moscow to join this important global economic institution; but, on the other, it aimed at

protecting its member-states' trade interests in relations with Russia. Such a position has resulted in one of the lengthiest accession negotiations in the WTO's history (18 years). The two sides spent a lot of time and energy to solve numerous problems in areas such as agriculture, car- and aircraft-building industries, banking and phytosanitary control. The EU also urged Russia to adopt a stable and fair legal framework to regulate business activity properly. Moreover, Brussels insisted on the renunciation of protectionist measures taken within the framework of the Russia-Kazakhstan-Belarus Customs Union, which has led to higher consolidated tariffs. The EU was particularly worried about the alleged Russian pressure on Ukraine to join this Customs Union although Kiev has already joined the WTO and was about to sign a Free Trade Area agreement with Brussels.

Brussels claims that the success of the accession negotiations is the result of both its efficient normative policies and skilful diplomacy. Under EU pressure, Russia agreed to introduce international standards (WTO rules) in areas such as industry, agriculture, trade, customs procedures, banking, audit and accounting. According to one account, the main residual barrier to Moscow's WTO membership - Georgia's demands to put customs controls on Russia's borders with Abkhazia and South Ossetia - was removed by Gunnar Wiegand, Director for Eastern Europe, Southern Caucuses, Central Asia, European External Action Service, who visited Tbilisi in late October 2011 and managed to strike a compromise (Trushkina 2011).

However, the recently released EU document assessing the state of progress in EU – Russia relations (Commission of the European Communities 2013: 28-29) stated that despite Russia's accession to the WTO, Russian sanitary and phytosanitary measures remain non transparent, discriminatory, disproportionate and not in line with international standards. In 2012, Russia introduced a number of new restrictions in the veterinary sector, and imposed a ban on non-breeding pigs and ruminants for all EU Member States. The EU Report states that Russia continues to create problems when it comes to the inspection, and refuses to withdraw the establishment listing requirement for a number of commodities (live animals, dairy products, casings, feed of animal origin, composite products, gelatine), contrary to its WTO commitments. Russia threatens to impose restrictions on nursery products from the EU without a scientific justification, and resists EU-supported attempts to further reinforce the sustainability of fisheries in the Antarctic environment. It has resisted defining effective capacity management in exploratory fisheries as well as the proposal to establish Marine Protected Areas.

The Partnership for Modernization (P4M)

For Russia, P4M[4] is mostly about technical and procedural convergence, while for the EU the key element has to be viewed as that of normative convergence. Evidently, the EU strategic vision of P4M presupposes a certain degree of asymmetry and challenges to the mantras of Russian foreign policy – the concept of equality in relations with the West. While Russia is mostly interested in European investment and high-tech transfers under this programme, the EU side tried to develop a more normative vision of modernisation (including its legal and socio-political aspects). The EU insisted on the importance of ensuring an effective, independent functioning of the judiciary and stepping up the fight against corruption (including the signing by Russia of the OECD Convention on Combating Bribery of Foreign Public Officials). The EU encouraged Russia to develop further an appeals system for criminal and civil court cases. Brussels also believes that the active involvement of civil society institutions in the reformist process should be a part of the modernisation package.

Nonetheless Russia wants to avoid situations in which the EU could take the role of an example, a standard to be adapted. Russian diplomats propose to remove the issues of

democratisation and human rights as a precondition for modernisation partnership, and in its stead focus on Russia's acceptance of technical norms and rules that successfully work in the EU and can be projected onto Russia (energy efficiency, customs regulations, educational exchanges, environmental protection, etc.). However, Russia's obsession with equality in conditions of structural inequality only sustains the gap between political rhetoric and the practice of EU–Russia relations. According to the P4M progress report (Progress Report 2011), the programme has developed most dynamically in those areas where Russia pledged to adopt European rules and regulations, thus acknowledging their higher standards. Russia promised to ratify the Espoo and (similar) Aarhus conventions on the assessment of environmental impact in the trans-boundary context. The EU awarded grants for projects to non-state actors on education and awareness-raising for energy auditors, managers and engineers, and set up an EU–Russia laboratory on energy efficiency in Cannes. A project on energy efficiency in north-western Russia is being implemented within the Northern Dimension Environmental Partnership. In the area of transport, a Secretariat for the Northern Dimension Partnership on Transport and Logistics was established.

Despite the general progress in the P4M's implementation, this programme has also evoked some tensions between Brussels and Moscow. For example, in the energy sphere the main bone of contention is Moscow's unwillingness to ratify the European Energy Charter that Russia signed under President Boris Yeltsin but later interpreted as discriminatory. The main obstacle to Russia's ratification of the Charter is Moscow's unwillingness to separate production, reprocessing and transportation of gas from each other. In practice, the Charter's requirements mean the reorganisation of monopolist companies such as Gazprom, Rosneft, Transneft, etc., and better access by foreign companies to the Russian energy sector. To counter it, the Kremlin suggested an energy charter of its own in 2009. However, Brussels did not endorse the Russian initiative, and this part of the EU-Russia energy dialogue is so far frozen (Makarychev and Sergunin 2012).

Besides, the EU and Russia have a difference of opinion on the question of energy transportation. Given the permanent Russian-Ukrainian clashes on gas transit shipments via the Ukrainian territory, Moscow favours the development of alternative routes, such as Nord Stream and South Stream. The EU member states differ in their attitudes to these projects: while Germany and the Netherlands support Nord Stream, Italy, Bulgaria and some other South and South Eastern European countries opted for South Stream. At the same time, most EU member-states prefer to diversify their sources of energy supplies and, for this reason - to Russia's discontent - support the alternative Nabucco and White Stream projects (which bypass Russia) and further development of the 'old' (Ukraine-controlled) pipelines (Yamal-Europe) (Makarychev and Sergunin 2012). Moreover, Russia made it clear that it is eager to develop further atomic energy technologies and has expressed its keen interest in participating in developing atomic projects in Europe. This intention, however, runs against the dominant anti-nuclear attitudes that are especially vibrant in countries like Germany and Italy, which are among the key Russian partners in Europe. Russia's European neighbours are particularly frustrated by Moscow's plan to build a nuclear plant in the Kaliningrad *oblast* by 2016 (Joenniemi and Sergunin 2012).

External security cooperation

In the sphere of security, the rift between the EU and Russia looks quite substantial. The EU, being short of military power, basically approaches security issues from a normative unification perspective that prioritises the normative components of security community building (adherence to common values, accentuation of soft/human security dimensions, etc.). Russia, for its part, often displays its preference to talk security business with the major EU member states, which by and large corresponds to great power management

format, with a clear emphasis on spheres of influence as a structural precondition for Russian domination in post-Soviet Eurasia (Danilov 2000).

The 2005 Road Map envisages several areas of EU-Russia external security cooperation: coordination of their activities in the framework of international organisations; fighting international terrorism; arms control and non-proliferation of weapons of mass destruction; conflict management; civil defence (Commission of the European Communities 2005). In practical terms, along with the then Russian President Dmitry Medvedev, the then French President Nicolas Sarkozy, who chaired the European Council in the second half of 2008, was a key figure in the cease-fire and post-conflict settlement negotiations in August 2008. He also played a crucial role in launching the Geneva talks on security arrangements, including the issue of internally displaced persons, which began on 15 October 2008, with the participation of Russia, Georgia, the EU, the USA, OSCE, and UN.

Yet not everything went smoothly. For example, Brussels insisted that Moscow must fulfil all of the conditions under the Six-Point Ceasefire Agreement (2008) and immediately withdraw its troops from South Ossetia and Abkhazia. Moscow also had to guarantee the EU Monitoring Mission access to those territories. The Russian side, however, insisted that it fulfilled the ceasefire agreement and that with the proclamation of South Ossetia's and Abkhazia's independence, the security situation in the region has completely changed. The EU was also discontented with the Russian position on Transnistria, particularly with the lack of progress on the conflict resolution and called for a resumption of the official 5+2 negotiations. Although both the EU and Russia are positive about the resumption of those negotiations, they differ in their approaches to their format and content. The EU favours discussing the key political issues, such as the future status of Transnistria or changing the mandate for the peace-keeping forces in the conflict zone. In contrast with this 'grand policy' vision, Russia supports the 'step-by-step' or low politics approach which is based on the resumption of the Moldova-Transnistria dialogue on concrete issues, such transportation, customs procedures, education, mobility of people, etc. (Sergunin 2012).

Moscow had expectations that with the reinvigoration of the Eastern Partnership under the Polish Presidency (2011) there could be a progress in the Nagorny Karabakh conflict resolution. However, contrary to these expectations the Baku-Yerevan bilateral relations became even worse by the end of 2011, with multiple signals of Baku's readiness to a 'military solution' of the Karabakh conflict. The roots of these disagreements go back to the different understandings of the notion of security by the EU and Russia. While the EU supports a comprehensive/multidimensional view on security – not only in its 'hard' but also in its 'soft' version (and the road map on external security suggests this perspective), Moscow still prefers a traditional, military-based vision of the concept (Sergunin 2004 and 2005).

There was also a fundamental difference between the EU and Russia in understanding another area of the EU-Russia common space on external security, namely the fight against international terrorism. For example, while Europeans have viewed the Chechen rebels as 'freedom-fighters', Moscow has seen them as terrorists, and while for Moscow Hamas has been a radical organisation, yet still eligible for further political dialogue, the EU has basically perceived this Palestinian grouping as a terrorist movement. In contrast with the EU, which prefers multilateral diplomacy, Moscow emphasises state-to-state relations (such as 'special relationships' with France, Germany, Italy, etc.), displaying a certain mistrust of supranational institutions. The Kremlin believes that bilateral contacts are more efficient than multilateral politics. In practical terms, this means that from the very beginning Moscow has not perceived the EU as a reliable security provider.

Given the lack of a proper institutional basis for EU-Russian dialogue on external security, Germany and Russia tried at Meseberg in June 2010 to provide this dialogue with some institutional support by suggesting establishing a Committee on Foreign and

Security Policy at the ministerial level (see Medvedev and Merkel 2010). France and Poland eventually supported this idea. The suggested agenda for future discussions in the committee was Transnistrian conflict resolution and the creation of a European missile defence system. Similar committees already exist at the bilateral level (for example, in Russia's relations with France and Germany). Yet the Meseberg process betrayed a deep gap in perceptions between the EU states and Russia. While for Germany this was a part of its attempt to contrive a common security agenda with Russia, based on normative principles, for Russia it was another possibility to implement a 'concert of powers' approach in conflict management.

Germany is disappointed by the ineffectiveness of the Meseberg initiative. Nowadays, it is almost dead, basically due to two reasons – a) Russia's inability to streamline political developments in Tiraspol, and b) Russia's return to a spheres-of-influence rhetoric which became obvious with the appointment of Dmitry Rogozin as Presidential Representative on Transnistria. Russia is overtly unwilling to discuss the issue of troop withdrawal and sees it not as a pre-condition for effective negotiations, but as an outcome of conflict resolution. In parallel, the Russian rhetoric appears accusatory as regards the EU's role in the conflict: in Moscow's view, the anticipated Free Trade Agreement between the EU and Moldova may become an additional reason for Transnistrian independence – yet this might be the case only if Moscow views EU integration as a threat for itself, and if it encourages Tiraspol to position itself more deeply in an Eurasian context. What all this means is that Moscow is increasingly reluctant to see the Meseberg initiative as a test case for Russia's security relations with the EU, and one should not expect too much flexibility from Russia in the forthcoming years.

Liberalisation of the visa regime

This area of cooperation exemplifies joint initiatives that are similarly assessed both in Russia and the EU as an important move towards procedural unification. For Moscow, the signing (on 14 December 2011) of the Russian-Polish agreement on a visa-free regime for the residents of the Kaliningrad *oblast* and two Polish border regions (the Warmian-Masurian and Pomeranian *voivodeships*) is one of the most important and indisputably positive outcomes of the Polish EU Presidency that took place in the second half of 2011 (Makarychev and Sergunin 2012). Notably, the initial plan was to establish a visa-free regime only within a 30-kilometer area from both sides of the border, but Moscow and Warsaw managed to extend this practice to the entire Kaliningrad *oblast* and the two mentioned Polish *voivodeships*. This agreement is seen by Russian and European experts as a model to be replicated in other border regions.

Under the Polish Presidency, the EU and Russia finalised the document on 'Common Steps towards Visa-Free Short-Term Travel' and the relevant roadmap was launched at the Brussels summit of 15 December 2011. According to it, the EU and Russia have to coordinate their efforts in four specific areas: providing Russian citizens with biometrical passports; fighting illegal migration and developing a common approach to border control; fighting trans-border organised crime, including money-laundering, arms- and drug-trafficking; ensuring freedom of movement of people in the country of residence by abolishing or changing the existing administrative procedures of registration and work permits for foreigners (Makarychev and Sergunin 2012). The EU leaders emphasise that full implementation of the agreed common steps can lead to the opening of visa-waiver negotiations. Meanwhile, Brussels and Moscow plan to upgrade the Russia-EU Visa Facilitation Agreement of 2006 and the Local Border Traffic Regulation in accordance with recent EU-Russian agreements.

However, Moscow views the list of common steps for visa-free short-term travel and the Russian-Polish agreement on local border traffic as insignificant concessions on the part of Brussels. The Kremlin insists on the intensification of the EU-Russia dialogue in this

area with the aim of promptly signing a fully-fledged visa waiver agreement. To explain delays, the European side refers to the residual technical problems related to the implementation process. For example, the EU notes that it is difficult for Russia to provide its citizens quickly with new-generation biometrical passports. Brussels also underlines that its dialogue with Russia should be in tune with the visa facilitation process concerning Eastern Partnership countries (this is both incomprehensible to and irritating for Moscow). The EU also insists that Russia must cease issuing passports to residents of South Ossetia and Abkhazia, which are seen by the EU as occupied provinces of Georgia. It also emphasises the necessity of intensifying cooperation on illegal immigration, improved controls at cross-border checkpoints and information exchange on terrorism and organised crime. Contrary to Russian expectations, Brussels considers the introduction of the visa-free regime with Russia as a long-term rather than a short-term prospect.

CONCLUSION

In this article we have shown that bilateral relations between Russia and the EU are deeply inscribed in different frameworks of multilateral institutions and practices. Therefore, the explanations of deteriorating relations between Moscow and Brussels require structural analysis and can be done by unpacking a number of structural models as presented in this article. In communicating with each other, Russia and the EU often stem from different models of international society, and it is these conceptual cleavages that hinder their bilateral relationship and render them ineffective. Consequently, the most substantial problems arise when Russia and the EU stick to dissimilar visions of international society and, therefore, rely on different mechanisms of international socialisation.

Most of the empirical cases we have touched upon testify to the stark differences in attitudes to the structural underpinnings of international society of which the EU and Russia are inalienable parts. Russia presumes that in a wider Europe there is ample space for dividing spheres of interests and drawing ‘red lines’ that should not be crossed for the sake of stability. Russia deems that most of the security problems have to be decided by a ‘concert’ of major powers – if needed, at the expense of smaller states. This policy philosophy constitutes the gist of Russia’s understanding of multipolarity as a pluralist structure of different norms, sometimes referred to as a multiplicity of civilisations. But the multipolar world model advocated by the Kremlin is based on an overt indifference to each other’s domestic affairs and equal acceptance of each type of regime under the guise of valorisation of difference as such.

Against this background, the EU stems from a much more clearly articulated philosophy of international socialisation that does display its sensitivity to the principles constitutive for the political identities of its partners and particularly its neighbours. By the same token, the EU does wish to pluralise the area of the common neighbourhood by stimulating practices different from the dominating post-Soviet authoritarianism. Paradoxically, these attempts can be perceived as being close to reproducing Russia’s spheres-of-influence rhetoric, but this only confirms that even in pursuing different strategic goals, the EU and Russia remain in an inter-subjective mode of relationship.

* * *

ACKNOWLEDGMENTS

The authors are grateful to the Deutsche Gesellschaft für Auswärtige Politik, the Alexander von Humboldt Foundation and Central European University (Budapest) which sponsored this research.

* * *

[1] The Russian leaders and the new Russian Foreign Policy Concept (2013), however, position Russia as an increasingly 'soft power', particularly in the post-Soviet space (Kosachev 2012; Putin 2012a, 2012b, 2013).

[2] The ENP was launched in May 2004 to replace the EU's old neighbourhood policy after the Union's next round of enlargement. It suggested single standards for cooperation with neighbouring countries. Such a universalist approach has evoked a negative reaction from Russia that wanted special relationships with the EU. The EU-Russia Common Spaces concept (2005) was designed to replace the ENP doctrine and satisfy Moscow.

[3] The EaP was launched at the Prague summit (7 May 2009) and involved Belarus, Moldova, Ukraine, Armenia, Azerbaijan and Georgia. According to the Prague declaration: 'The main goal of the Eastern Partnership is to create the necessary conditions to accelerate political association and further economic integration between the European Union and interested partner countries … With this aim, the Eastern Partnership will seek to support political and socio-economic reforms of the partner countries, facilitating approximation towards the European Union' (Joint Declaration 2009).

[4] The P4M was initiated by the EU-Russia Rostov-on-Don summit (1 June 2010). A Work Plan was adopted in December 2010 and is regularly updated. The programme aims at modernisation of Russia's main public sectors such as industry, transport, communications, energy, public service, health care and environment protection systems, etc.

REFERENCES

Barnett, M. and Duvall, R. (2006). 'Power in International Politics,' *International Organisation*, 59 (1), pp. 39-75.

Barroso, J.M. (2011). 'Bringing EU-Russian Relations to a New Level,' *Baltic Rim Economies,* 21 December. Online http://www.tse.fi/pei. [Accessed 25 April 2013].

Bliakher, L. (2008). 'Vozmozhen li Post-imperskii Proekt: Ot Vzaimnykh Pretenziy k Obschemu Buduschemu [Is the Post-imperial Project Possible: From Mutual Claims to Common Future], *Politia,* 48 (1), pp. 6-16.

Citton, Y. (2009). 'Political Agency and the Ambivalence of the Sensible' in G. Rockhill and P. Watts (eds), *Jacques Ranciere: history, politics, aesthetics*. Durham, NC: Duke University Press, pp. 120-139.

Commission of the European Communities (2005). *Roadmaps to the EU-Russia Common Spaces.* Brussels: Commission of the European Communities. Available at http://europa.eu.int/comm/external_relations/russia. Last accessed 25 April 2013.

Commission of the European Communities (2013). *EU-Russia Common Spaces Progress Report 2012.* Online http://eeas.europa.eu/russia/docs/commonspaces_prog_report_2012_en.pdf. [Accessed 1 May 2013].

Danilov, D. (2000). *Rossiya v Bol'shoi Evrope: Strategiya Bezopasnosti* [Russia in a Wider Europe: Security Strategy]. Online http://www.ieras.ru/journal/journal2.2000/5.htm. [Accessed 25 April 2013].

Engelbrekt, K. and Nygren, B. (2010). 'A Reassertive Russia and an Expanded European Union,' in K. Engelbrekt and B. Nygren (eds), *Russia and Europe. Building Bridges, Digging Trenches*. London: Routledge, pp. 3-10.

Galkin, A. (2007). 'Rossiya kak Subyekt Mirovoi Politiki' [Russia as a World Policy Actor], *Politia,* 44 (1), pp. 5-29.

Joenniemi, P. and Sergunin, A. (2012). 'Kaliningrad: Less of an Outpost, More of a Bridge,' in B. Henningsen and T. Etzold (eds), *The Political State of the Region Report 2012*. Copenhagen: Baltic Development Fund, pp. 25-32.

(2009). *Joint Declaration of the Prague Eastern Partnership Summit*, 7 May 2009, Prague. Online http://www.consilium. europa.eu/uedocs/cms_data/docs/pressdata/en/er/10758.pdf. [Accessed 25 April 2013].

Kobyakov, A. and Averyanov, V. (eds) (2008). *Russkaya Doctrina* [Russian Doctrine] Moscow: Yauza-Press.

Kosachev, K. (2012). 'The Specifics of Russian Soft Power,' *Russia in Global Affairs,* 2012, 7 October. Online http://eng.globalaffairs.ru/number/The-Specifics-of-Russian-Soft-Power-15683. [Accessed 25 April 2013].

Kuznetzova, A. and Kublitzkaya, Y. (2005). *Grazhdansky Patriotizm – Osnova Formirovaniya Novoy Rossiyskoy Identichnosty* [Civic Patriotism is the Basis for Shaping of a New Russian Identity]. Moscow: Institute for Socio-political Studies, Russian Academy of Sciences.

Lapkin, V. and Pantin, V. (eds) (2004). *Poisk Natzionalno-tzivilizatzionnoy Identichnosti i Konztept 'Osobogo Puti' v Rossoiskom Massovom Soznanii v Kontekste Modernizatzii* [The Search for a National-Civilizational Identity and the Concept of 'Special Way' in the Russian Mass Conscience in the Context of Modernization]. Moscow: Institute of World Economy and International Relations, Russian Academy of Sciences.

Latynina, Y. (2011). 'Evropa, Ty Ofigela' [Europe, You Got Crazy], *Novaya Gazeta*, 16 August. Online http://www.novayagazeta.ru/politics/48064.html. [Accessed 25 April 2013].

Layton, L. (2008). 'What Divides the Subject?,' *Subjectivity,* 22 (1), pp. 60–72.

Makarychev, A., Sergunin, A. (2012). *The Polish EU Presidency and Russia: a Surprise Success Story or Time Coincidence?* Budapest: Central European University.

Manners, I. (2002). 'Normative Power Europe: a Contradiction in Terms?,' *Journal of Common Market Studies,* 40 (2), pp. 235-258.

May, T. (2008). *The Political Thought of Jacques Ranciere. Creating Equality*. Edinburgh: Edinburgh University Press.

Medvedev, D. and Merkel, A. (2010). *Memorandum Po Itogam Vstrechi Prezidenta Rossii D.A. Medvedeva i Federal'nogo Kantslera Germanii A. Merkel 4-5 Junya 2010 Goda, g. Mezeberg* [Memorandum on the Results of the Meeting of the Russian President D.A. Medvedev and German Chancellor A. Merkel, 4-5 June, 2010, town of Meseberg]. Online http://news.kremlin.ru/ref_notes/575. [Accessed 25 April 2013].

Mylonas, H. and Yorulmazlar, E. (2012). *Regional Multilateralism: the Next Paradigm in International Affairs.* Online http://globalpublicsquare.blogs.cnn.com/2012/01/14/regional-multilateralism-should-be-the-next-paradigm-in-global-affairs/ [Accessed 25 April 2013].

Narochnitzkaya, N. (2007). *Russkiy Mir* [Russain World]. Moscow: Aleteya.

Pchelkin, P. (2010). *Rossiya kak Chast Evropy – Itogy Visitov Presidenta Medvedeva v Brussel' i Varshavu* [Russia as Part of Europe – the Results of President Medvedev's Visit to Brussels and Warsaw]. Online http://www.1tv.ru/news/polit/166888. [Accessed 2 May 2013].

Putin, V. (2012a). 'Rossiya i Menyauschiysya Mir' [Russia and the Changing world], *Moscow News,* 27 February. Online http://www.mn.ru/politics/20120227/312306749.html. [Accessed 25 April 2013].

Putin, V. (2012b). *Vystuplenie na Soveschanii Poslov i Postoyannykh Predstavitelei Rossii,* 9 Iulya 2012 [Speech at the Meeting of Russian Ambassadors and Permanent Representatives]. Online http://www.kremlin.ru/news/15902. [Accessed 25 April 2013].

Putin, V. (2013). *The Foreign Policy Concept of the Russian Federation*. Approved by the President of the Russian Federation V.V. Putin on 12 February 2013. Online http://www.mid.ru/bdomp/Brp_4.nsf/arh/6D84DDEDEDBF7DA644257B160051BF7F?OpenDocument. [Accessed 25 April 2013].

Sandschneider, E. (2013). Leaving the Moral High Ground: Values and interests in the German foreign policy debate. 11 March. Available at https://dgap.org/en/think-tank/publications/further-publications/leaving-moral-high-ground. Last accessed 1 May 2013.

Sergunin, A. (2004). 'Discussions of International Relations in Post-Communism Russia,' *Communist and Post-Communist Studies,* 37 (1), pp. 19–35.

Sergunin, A. (2005). 'Mezdunarodnaya Bezopasnost: Novye Podkhody i Kontsepty [International Security: New Approaches and Concepts], *Polis,* (6), pp. 127-135.

Sergunin, A. (2012). *The EU-Russia Cooperation on the Transnistrian Conflict Resolution: Challenges and Opportunities*. Budapest: Central European University.

Sergunin, A. (2013). 'Bridging a (Mis)Perceptional Gap: the EU's Eastern Partnership and Russian Policies in the Trans-Caucasus,' *Bilge Strateji,* 5 (8), pp. 17-37.

Shestakov, Y. (2011). 'Why We Have Finally Fallen Out of Love with Europe. *Valdai Discussion Club,* 22 December. Online http://valdaiclub.com/europe/36480.html. [Accessed 25 April 2013].

Shevchenko, M. (2004). *Russkiy Mir – Kontury 'Obshei Sud'by'* [Russian World – the Contours of 'Common Destiny']. Online http://www.archipelag.ru/ru_mir/history/histori2004/shevchenko-kontur/. [Accessed 2 May 2013].

Shmeliov, N. (2011). 'Chto Nam Nuzhno ot Evropy' [What We Need from Europe], *Soyuznoe veche,* (59). Online http://www.souzveche.ru/articles/community/11550/?sphrase_id=1558. [Accessed 1 May 2013].

Slepnev, A. and Wiegand G. (2011). *Progress Report agreed by the Coordinators of the EU-Russia Partnership for Modernisation for information to the EU-Russia Summit of 15 December 2011*. Online http://eeas.europa.eu/delegations/russia/documents/eu_russia/p4m_progressreport_en.pdf [Accessed 25 April 2013].

Tocci, N. (2008). *Who is a Normative Foreign Policy Actor? The European Union and its Global Partners.* Brussels: Centre for European Policy Studies.

Trushkina, G. (2011). 'Rossii Vruchili Propusk v VTO' [Russia Has Got a Pass to the WTO], *Utro,* 10 November. Online http://www.utro.ru/articles/2011/11/10/1010018.shtml [Accessed 25 April 2013].

Tzygankov, P. (1996). 'Rossiyskaya Identichnost i Evropeisky Poryadok' [Russian Identity and the European Order], *Sotzial'no-Politichesky Zhurnal,* (6), pp. 35-64.

Tzymbursky, V. (2007). *Ostrov Rossiya: Geopoliticheskie i Khronopoliticheskie Raboty. 1993-2006* [Island of Russia: Geopolitical and Chronopolitical Works. 1993-1996]. Moscow: ROSSPEN.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

The Evolution of European Merger Regulations and the Power of Ideas: A Pan-institutional Interpretation

Eleonora Poli *City University London*

Citation

Poli, E. (2013). 'The Evolution of European Merger Regulations and the Power of Ideas: A Pan-institutional Interpretation'*, Journal of Contemporary European Research*. 9 (2), pp. 330-345.

First published at: www.jcer.net

Abstract

The aim of this paper is to generate an understanding of the evolution of European competition policy in the context of the globalising economy of the 20th and early 21st centuries by analysing the role of ideas in influencing merger policies. Normally competition policy is framed by legal and economic studies as the set of regulations leading market competition according to criteria of efficiency and/or economic welfare. By advancing this analysis, the paper investigates on how abstract economic concepts and theories on the one hand, and material interests such as welfare and efficiency on the other, by influencing political actors' understanding of reality, have shaped the decision-making process behind specific European competition policies. My analysis develops on the basis of what I call a pan-institutional methodology, a synthesis of an institutional understanding of competition policy and sociological theories of isomorphism. Pan-institutionalism reveals that the corpus of ideas, which favoured the neoliberal transformation that invested European institutions in the 20th and early 21st century, can be identified as German Ordoliberal and the Chicago paradigms of competition policy. To a degree, this latter US-originated approach has been internalised by Europe through formal and informal institutions, and adapted in light of the major oil crises of the 80's. At the same time however, the reliance of Europe on the traditional Ordoliberal understanding of market practices has prevented a total harmonisation of EU competition policies with the American ones.

Keywords

Antitrust; Institutions

European competition policy has normally been analysed from economic and juridical perspective as the body of theoretical models and regulations that had to settle the market according to specific economic and social interests, namely economic efficiency and social welfare. For instance, Gerber and others have outlined that the traditional meaning of European competition policy, inspired by Ordoliberal theories, laid in the necessity to primarily foster general economic welfare by enhancing the political and economic integration of Member States into the common market (Gormsen 2006: 6-25). Differently from US antitrust policies, where efficiency and immediate profits represents the key interest to be pursued, European competition law had, above all, to defend economic freedom of market players - even though their actions were not economically efficient per se, in order to allegedly provide for long-term efficient economic trends. This was considered a fundamental action to foster general welfare by avoiding the aggregation of big business that would affect the economic performances of smaller competitors and reduce market integration (Amato 1997: 69).

Still, although European competition policy had not only a slightly differentiated structure[1] but also very different goals from the US one, the political and economic instability caused by the oil crises of the 80's has given rise to an unprecedented neo-liberalisation of European merger practices inspired to the US model. Mergers, or a combination of two or more companies into one, have normally been adjudged by the European Commission has anti-competitive when they affects the level of prices and consequently reduce consumers' welfare. However, in the aftermath of the oil crises, the EU settled new regulations, which allowed mergers to be judged primarily on an efficiency basis. Scholars from an economic background would suggest that the neo-liberalisation of merger policies occurred in Europe is a mere consequence of the raise of new economic interests. However, an international political economic approach allows analysing this phenomenon not only as the result of political-economic needs but also as the consequence of ideas' influence over social understanding of reality. Starting from a similar perspective, scholars such as Hubert Buch-Hansen and Angela Wigger have recently examined the spread of neo-liberalism across Europe in the fields of state aid,

cartel prosecution and merger control (Buch-Hansen and Wigger 2011). However, they did not thoroughly explain the role played both by ideas and interests in leading Europe to institutionalise some of the Chicago principles.

In order to feel this gap, this paper analyses the internalisation process of neo-liberal ideas occurred in Europe through what I call a pan-institutional approach. In fact, by taking into account the contributions developed by traditional economic institutional scholars and theories of isomorphism, pan-institutionalism allows to explain the internalisation of several ideas coming from a traditional US theoretical school of antitrust: namely the Chicago School. Chicago principles were in fact adapted to the Ordoliberal European traditions because of specific economic interests. However, once enforced, they modified the perception of reality and the understanding of what was considered efficient or socially beneficial at a European level. Therefore the aim of this paper is to analyse the evolution of European competition policy towards mergers from an international political economic perspective to comprehend whether, how and why both ideas and economic interests played a fundamental role in changing traditional common market viewpoints and understanding of competition mechanisms.

IDEAS AND INSTITUTIONS

In order to explain the diffusion of neoliberal competition policy occurred in Europe by the end of the Oil Crises it is necessary to analyse the process that led to the internalisation of specific neo-liberal ideas and the consequent enforcement of ad hoc institutions. Among the several institutional scholars, Douglas North appears to be the one providing the most useful definition to explain the above-mentioned process. First of all North solved the dichotomies dividing institutional economics. In fact, while old institutionalists, such as Thorstein Veblen and John R. Commons, believed that institutions could control individuals; new institutionalists, on the contrary, theorise the power of each individual rationality to shape the institutional environment according to his interests. Instead, according to North, institutions are 'humanly devised constraints' that rule a society by shaping human interactions and the way those interactions have to evolve (North 1990: 3, North 1994b: 360). 'They are made up of formal constraints (e.g. rules, laws, constitutions), informal constraints (e.g. norms of behaviour, conventions, self-imposed codes of conduct), and their enforcement characteristics. Together they define the incentive structure of societies and specifically economies' (North 1994: 360). In North's perspective individual's actions are controlled within the institutional frame; however by simply acting, the individual can change the framework itself according to his necessities. 'Economic change is a ubiquitous, on-going, incremental process that is a consequence of the choices individual actors and entrepreneurs of organizations are making every day' (North 1994: 361). Indeed, while institutions are the rules of the game, organisations and their actors shape the institutional environment, the 'fundamental political, social, and legal ground rules that govern economic and political activities' (North 1970: 133). In this means, Douglas North's conceptualisation of institutions works in line with the old-institutionalism, Commons and the new institutionalism. Individual is constrained by the institutional structure but he can change it according to his necessities (North 1994: 362); the comprehensive outcome of his actions can create an efficient or inefficient institutional structure that can be comprehended only by understanding the ideologies and the historical specificity of that particular period (North 1994: 361). In other words, North maintains that institutions are the product of models used by actors to interpret the world around them. By not disposing of all the necessary information, human beings cannot acquire a perfect knowledge and elaborate it, thus it is clear that those models and the institutions that derive from them cannot be perfect, but they can perfectly represent the structural culture, knowledge and ideas that characterised a particular society (North 1970: 131-149). Although scholars have not paid much attention to study the process through which ideas affect policy-making and thus become powerful tools in themselves, North

has also the merit to introduce the concept of idea as a fundamental tool in influencing policy outcomes (Campbell 2002: 21-38).

From another perspective, a reflectivist one, scholars such as Alexander Wendt, have strongly insisted over the power of ideas in generating interests themselves. Specifically, reflectivists study how language, culture and beliefs can impose constraints on the individual ability to define and act in line with objective interests. Interests are not as exogenous to social actors but they are rather an endogenous part of individuals. This makes knowledge itself becoming the prior subject of analysis (Wendt 1992: 392). However, many academics have criticised those 'ideas-matter' enthusiasts for ignoring the important role of interests as determinants of change (Larsen and Andersen 2009: 240). For instance, according to Blyth, 'attributing a change in behaviour to a change in ideas is tenable only if it is counter factually demonstrated that the change could not have occurred without the ideas. The lack of such a methodological check is a weakness on two counts.' (Blyth 1997: 236)

As a result, the main critique to reflectivists scholars is that the role of ideas in influencing policy-making is largely epiphenomenal. Indeed, according to a functional approach, every time there is a situation of instability, actors modify the institutional framework in order to maximise their interests. In this context, behaviourism, especially the rational-choice versions, do not directly investigate the role of ideas in the process of institutionalisation. While ideas are taken as facts, in particular as a rational response to economic necessities, the concept that receives most attention is institution, as well as its effect on the market in terms of interest-seeking behaviour. In other words, there is no need to analyse ideas, because 'behaviour can be adjudged objectively to be optimally adapted to the situation' (Simon 1985: 293-304; Woods 1995: 161-180). As maintained by Judith Goldstein and Robert Keohane, the rational explanation of beliefs and policy outcomes questions the influence of ideas on policy-making (Goldstein and Keohane 1993: 4). Similarly, Sikkink argues that the prevalence of interest-based explanations of political decisions underestimated the role played by ideas and that 'much theoretical energy is expended demonstrating that it is not necessary to know what political actors think in order to explain how they will act' (Sikkink 1991: 1). Hence, ideas have a purely utilitarian role: individuals, specifically political actors, use them to build strategies, pursue specific utilities, and overcome problems. The capacity to enact reforms depends on the policymakers' capability to construct 'coordinative' and 'communicative' discourses and, in this process, the ideological frame of reference does not shape interests; these exist *per se,* as part of the individual free will (Goldstein and Keohane 1993: 4-5, Schmidt 2002: 168–193, Schmidt 2003: 127–146). However, according to Vivien Schmidt, discourses, as a set of ideas, serve to promote an 'interactive consensus for change', as they may be a 'reflection of the interests of key policy actors and an expression of institutional path dependencies'. They also 'exert a causal influence on policy change, serving to overcome entrenched interests and institutional obstacles to change by altering perceptions of interest and showing the way to new institutional paths' (Schmidt 2002: 168–193). Furthermore, in each historical period, ideas and discourses have been used to formulate strategies and to respond to specific social and economic necessities. However, at the same time, they have also defined actors' perceptions of the costs and benefits of particular political choices and influenced the way they identify achievable objectives (Sikkink 1991, Goldstein 1993).

Hence, both ideas and interests have a causal weight in the explanation of human actions; indeed, while each individual acts rationally to pursue his or her interests, their rationality is always influenced by the social beliefs of the time (Goldstein and Keohane 1993: 4). In the case of antitrust, it is evident that the interests pursed by competition regulation and reflected by theories revolve around the maintenance of an effective level of competitiveness in the interest of efficiency and welfare. Nonetheless, the way in which efficiency and welfare are perceived, and therefore institutionalised, are determined by ideas. The theoretical approach adopted in this paper will follow the one

outlined by Goldstein and Keohane. These scholars do not reject rational-choice theory and strongly believe that individuals are driven by the will to fulfil their needs; however, they do not underestimate the role of the ideological substratum. In their view, ideas and interests play an equal role in determining social actions and are never mutually exclusive (Goldstein and Keohane 1993). Thus, it is possible to maintain that the power of ideas stands in their ability to promote what philosopher Thomas Kuhn defines as paradigm shift or capacity to transform the way people live and understand social realm (Hall 1993: 275-296). This can happen because ideas become shared believes and because they are supported by specific elites. The choice of an ideological framework is not politically neutral but it is always interrelated with specific interests represented by actors involved in the decision making process. Ideas 'do not float freely'; on the contrary, they develop through individual interactions within the social environment and they can be theoretically organised by schools of thought. (Risse-Kappen 1994: 185-214). What makes the mechanism evolutionary is the fact that not all ideas survive; they are implemented into policy only if they are 'politically salient', in other words, only if they respond to specific and contingent necessities (Risse-Kappen 1994: 185-214, John 1999: 39-63). Therefore, although it is assumed that all political decisions are driven by specific interests, the definition of interests, such as the achievement of economic efficiency or welfare, is influenced by the cultural, theoretical, and ideological background of each specific social organisation. Still, the dilemma on how some economic beliefs influenced the EU needs further analysis.

INTERNATIONALISATION OF INSTITUTIONS

Having understood the process of institutional change, it is now essential to explain why European Union eventually adopted throughout the course of history similar antitrust approaches to the ones selected by the U.S., even though the former's ideological framework of reference was completely different from the American one. The internalisation process of antitrust institutions can in fact be understood through a pan-institutional interpretation of organisations' isomorphism theory. Isomorphism states that organisations tend to assume similar connotation or adopt equal structure. To date, organisations can be described as structures defining actors' goals orientations (Pfeffer *et al.* 1978: 23); thus it is possible to consider the state as an organisation itself or 'a bureaucratically organized administrative structure empowered to govern a geographically delimited territory' (Scott 1995: 94-95; Lindblom 1977: 21).

The theory of organisational isomorphism can be interpreted according to two different schools of thought. From a sociological perspective isomorphism is a mimetic or normative process in which organisations tend to copy each other. Mimetic isomorphism occurs as a response to uncertainty, for instance when organisational technologies are poorly comprehended, or when the goals are vague, or again, when the environment itself creates incertitude (March *et al* 1976). Normative isomorphism instead, originates primarily from professionalization (Larson 1977: 49-52, Collins 1979: 58-59). In other words, actors inside organisations tend to have similar ideas and analogous worldviews by sharing similar background. Those ideas are internationally spread also through the networking processes actors undergo inside professional and trade associations, which become 'the empirical arena' where ideas are widely disseminated. (Larson 1977: 49-52, Mizruchi *et al* 1999: 653-683) For instance, the creation of the International Competition Network in 1997 can be considered as an attempt to build an arena where antitrust practitioners can share information. Indeed, the set-up of the ICN and its study groups has allowed the development of normative isomorphism among states, thus favouring harmonisation between antitrust practices (Todino 2003: 283-302, Budzinski 2004: 223-242, Fox 2003: 911-32).[2]

Differently from the sociological perspective, scholars dealing with population ecology interpret isomorphism as a competitive phenomenon, which 'involves pressures toward

similarity resulting from market competition' (Mizruchi *et al.* 1999: 656-657). In fact, Michael Hannan and John Freeman outline how competitive pressure forces organisations to adopt similar behaviours and structure in order to be economically efficient (Durkheim 1984: 338, Hawley 1950: 201-203, Hannan *et al.* 1977: 929-964). Since the competitive explanation has failed to clarify why specific models are adopted even though they are not efficient, scholars as Rosabeth Moss Kanter, Paul DiMaggio and Walter Powell have tried to introduce other explanations based on coercion to implement the institutionalised interpretation of isomorphism (Kanter 1972: 152-156). According to them, coercive isomorphism occurs when an organisation is in a condition of dependency from another one because the latter can exert formal and informal pressure upon the former (Mizruchi *et al.* 1999: 656-657). Such pressure can have the form of persuasion or it can be a simple invitation to adopt a collusive arrangement. In this perspective, the most powerful organisation can exert pressure over the weaker to conform to its own cultural and ideological standards. In fact, as Geffrey Pfeffer and Gerald Salancik maintain, coercive isomorphism can be understood as a resource dependence model. Organisations are obliged to homogenise their features because they find themselves in a situation of dependency from those who can provide resources (Pfeffer *et al.* 1978: 46-47).

According to DiMaggio and Powell, mimic, normative and coercive mechanisms' effects over the social realm are not always easily identifiable because they can coexist and together they can impose isomorphism over organisations by operating though different trails (DiMaggio *et al.* 1983: 147-160). By advancing on the path of DiMaggio and Powell it is possible to maintain that the competitive mechanism is equally important and it can coexist with the sociological definition of isomorphism; states can adopt similar patterns also for competitive reasons. An example of combination of mimetic and competitive mechanisms can be detected in the promotion of Chicago-oriented antitrust policies in the UK and then in the European Union that traditionally had been following very different patterns. For instance, the enforcement of the 1990 Merger Regulation (MCR) was the first European step towards a neo-liberal efficiency-oriented competition policy. Even though the Ordoliberal cause of common market protection remained in the MCR, Hubert Buch-Hanse and Angela Wigger maintain that with the approbation of this regulation EU member states' interests started to be heavily excluded in the context of the competition evaluation process in favour of a sort of efficiency-oriented discourse (Buch-Hanse *et al.* 2010*:* 20-44).

Concluding, the adoption of competition policies in Europe that reflected US ideas can be explained through pan-institutional isomorphic mechanisms. Indeed, on the one hand the EU did not want to be less economically efficient than the U.S, thus it was influenced by the latter's ideas. On the other hand, after having adopted a similar ideological framework and institutions the EU started to share a common antitrust working language with Washington. This process facilitated the mimetic and especially the normative trends, creating also a path dependence circle that influenced antitrust policy-making. Additionally, as it will demonstrate in the following section, although the US could not materially force Europe towards the adoption of neo-liberal institutions, it still held enough influence to persuade the Commission to do so.

EUROPEAN INSTITUTIONAL CHANGES TOWARDS COMPETITION

The US is the country where all the major contributions to the theorisation of antitrust were first put forth and applied. The development of antitrust policy dates back to July 2, 1890 when President Benjamin Harrison signed Bill S. 1, which later became known as the Sherman Act, the first antitrust law applied in the American territory (Boork 1978: 19). Even though the Canadian antitrust law, namely the Canada's Combines Investigation Act, was promulgated before the Sherman Act, it was less rigorous and never quite received the same degree of public attention. American competition policy

has been studied and developed by several schools of thought such as Marginalist in the 30's, Harvard scholars in the 40's and the Chicago school thinkers in the 60s. By adopting a pure neo-liberal approach and privileging economic efficiency as a premotor of social welfare, this latter group is the one that contributed the most to the formulation of the current US antitrust policy.

Differently for the US, the history of European competition policy and its theoretical background dates back to the German Freiburg School and the Ordoliberal movement. Developed during the Weimar Republic in the 1920's, the Ordoliberal school proposed a rather innovative competition model, which underlined the necessity of national competition laws to direct the market without limiting individual freedom to invest. Thus, it is undeniable that the European competition policy has a very different background and a dissimilar approach from the American antitrust one; however, the first antitrust law introduced in the European Cool and Steel Community was drafted by Harvard School Professor Richard Bowie and, according to Jean Monnet, this was an adaptation of the Sherman Act principles to an European frame (Clifford 2006: 24, Acheson 1969, Dinan 1994). Since Roosevelt administration considered the creation of the European Coal and Steel Community anything but a bright excuse to conceal and protect a huge European cartel, the U.S. decided to influence it through a competition policy that, at the same time, reflected a European tradition of thoughts as the Ordoliberal one and was not in contrast within the American necessity to abolish the cartelisation of economy in Europe. This process can be defined as one driven by coercive isomorphism. Europe, destroyed by the World War II, did not have any other choice than to follow American directives over the reconstruction of its market, in order to obtain financial and economic aid.

The post-war American liberal institutional influence generated economic welfare in Western Europe; market economy started to regain prosperity and competition reacquired the allegiance it had lost during the Great Depression and the two World Wars (Gerber 1994: 25). This was the incipit for one of the longest economic booms in Europe, a "golden age" of capitalism (Monnet 1978: 352–3, Harding 2003: 95, Jones 2006: 26). However, since the beginning of the Oil Crisis until the late 1985 the EC experienced negative rate and its share of world trade in manufactured goods fell from 45 to 36 per cent (Price 1988). The economic downturn developed disparities among EC economies and the influence of the American liberal model of capitalism in Europe waned considerably. Since tariffs could not be raised within the EC's consumer-free zone, and the GATT and the OECD prohibited the adoption of proper protectionist policies, anticompetitive practices, such as improper state aid and national grants, became the optimal strategy to handle the recession (Lyons 2009: 16, Judt 2005: 460, Cini *et al.* 1998: 31, 135, Schroter 2005: 127). This trend lasted until the early 1980s, when EU members states, impressed by the initially positive outcomes of deregulation in the United States, feared an increasing competition and determined to face the 'industrial malaise' that had characterised Europe, finally decided to reinforce the common market by promoting a gradual liberalisation and a deeper integration in competition regulation through the Single Act (SEA) of 1986 (Buthe *et al.* 2007: 175).

While Reagan's administration apparently welcomed the SEA as a further development of European integration, it generally feared the development of a stronger European market that would combine liberalisation within the protection of smaller enterprises and labour (Lundestad 2003: 230). The European competition policy, in fact, seemed to grow as a sort of alternative to the U.S. system in the region. Following the fall of the Berlin Wall, Europe started to be very dynamic in exporting and influencing "competition regulation" in Eastern and Central European countries and competition policy became also one of the criteria to the accession to EU membership (Rouam *et al.* 1994: 7-11).[3] Moreover, because the EC Treaty did not provide any specific juridical tool to control mergers, the Commission persecuted concentrations that involved many American multinational corporations through Article 82's anti-dominant position provisions

(Aldcroft 1978: 240, Freyer 2006: 245). However, after controversial outcomes of the 1973 *Continental Can*[4] and the 1989 *British American Tobacco*[5] proceedings, a proper EC merger regulation became effective in September 1990 (Van Bael 2005: 730-731).[6]

The new regulation attempted to neo-liberalise European competition policy by preventing forms of state interventionism. It introduced a package of reforms that modified the division of jurisdiction in the case of large mergers and empowered the Commission (Morgan and Spring 2000: 153-194). The MCR made mandatory the notification to the Commission of any kind of concentration and it clarified that, in the case of mergers or acquisitions with a community dimension, only the Commission had the power to verify the compatibility of those activities within the "common market" (Morgan and Spring 2000: 153-194). Apart from the British Clause under article 21(3), which allowed member states to use their existing powers to protect certain "legitimate interests" not taken into account by the MCR competition test, the MCR blocked any national attempts to introduce, in merger evaluations, any consideration related to employment or industrial policy (Buch-Hanse and Wigger 2010: 20-44). According to Commissioner Leon Brittan this merger regulation 'beat back the supporters of an industrial policy' and gave 'clear primacy to the competition criterion, with only the smallest nod in the direction of anything else'. (Brittan 2000: 1–7).

Even though the Ordoliberal clause of common market protection remained in the MCR, Hubert Buch-Hanse and Angela Wigger maintained that this was the first step made by the European Competition General Directorate towards neoliberalism. This was fostered by a mimetic isomorphic process, through which the European competition policy was directly inspired by the same Chicago ideas that shaped antitrust in the US. For the first time, the interests of member states were heavily excluded in the competition evaluation and a sort of efficiency-oriented discourse that reflected business interests started to emerge (Buch-Hanse and Wigger 2010: 20-44). This process resulted from competition mechanisms too. Europe began to move its policy towards a more efficiency-oriented approach because of a rising tendency among the EU member states to consider the neo-liberal system applied in the US as the best model for the development of efficiency and welfare.

However, traditional European interpretations of competition were usually not as much oriented toward economic efficiency as the American one. On the contrary, in interpreting any violation of competition regulations, the Commission and the Court normally focused on the extent to which a particular economic behaviour in contrast with European laws was affecting the common market, rather than how profitable it was in terms of economic performance. Hence, the 1990 MCR did not alleviate American fears of an uncontrolled development of the European welfare oriented competition system; on the contrary, this regulation fostered the idea of a Communitarian policy that would have a deep effect on mergers involving not only European but also American corporations by not completely following an 'Americanised efficiency-seeking political economy' (Theffry 1990: 543-551). Consequently, since the US did not have the material power to coercively influence Europe, in 1991 it launched discussions with the European Commission. Those discussions were designed to promote a formal competition agreement, which could in turn foster cooperation among competition authorities and allocate jurisdiction in transnational merger cases (Griffin 1993-1993: 1051-1065). In other words, while the agreement was a normative instrument to reduce conflicting decisions, it was coercively promoted by the US into Europe to facilitate collaboration in a field where the Europeans had increasingly enforced their decisions over cases that involved US companies' interests. Indeed, although the US did not have enough material power over Europe as after World War II, it still detained the political and economic influence necessary to push Europe to ratify the Cooperation Agreement and start the institutionalisation of American-oriented antitrust ideas. Through the cooperation agreement, the US found the right institutional tool to indirectly promote the consensual adoption of its neo-liberal oriented antitrust approach over business conducts. In fact, in

the days after the agreement, the Commission began to move the intellectual foundations of European Competition toward a different approach: a Chicago one.

The above-mentioned modernisation process introduced neo-liberal practices and consolidated a more efficiency-oriented analysis of business activities and more importance started to be given to short-term consumer welfare considerations (Wigger *et al.* 2007: 498). Such a market-based approach was strongly sustained by many DG Competition Commissioners, especially Mario Monti, who regarded it as 'a silent process of convergence towards US competition law and practices' (Buch-Hanse 2010: 37, Monti 2001). The shift can be explained not only by the need for modernisation of merger regulation approved in 2004 by European Ministers that introduced the analysis of 'overall market context and efficiencies', but also by the approbation of many guidelines.[7] For instance, the Horizontal Mergers Guideline outlined the necessity to divert the attention from a simple revelation of an existent dominant position in the market to a more liberal understanding of whether the merger could negatively affect competition (Vickers 2004). In order to measure concentration levels, the Horizontal Mergers Guidelines formalised the use of the Herfindahl-Hirschman Index (HHI)[8], which reshaped the European test for concentration, the so-called "Dominance Test", towards a more Chicago-oriented approach. This allowed efficient mergers to be permitted even though they could generate economic concentration (Davidow 2002: 495).

From 2004 to June 2008, only two out of the 1466 notified mergers were prohibited by the Commission (Buch-Hanse 2010: 37). The enforcement of the reform, which effects were similar to the ones generated by the American 1982 Horizontal Merger Guidelines, not only emphasised a European will to achieve the same economic benefits of the U.S., but it also detected a growing European general consensual acceptance of the Chicago-inspired antitrust approach implemented by Washington two decades before (Levy 2005: 1).[9] According to the US Deputy Attorney General for Antitrust James Rill, European merger evaluation became 'as close at it could get to the US-style without copying the whole caboodle' (Rill 2003: 39, Wigger *et al*. 2007: 499). This process can be identified as a combination of mimetic normative, coercive and competitive isomorphism. One the one hand Europe wanted to overcome the crisis as soon as possible in order to handle competition generated by Japan and U.S., on the other, since the U.S. had the most powerful economy at the time, it was easier to copy its approach and reconverted it for a European framework. Moreover, the institutional legitimacy held by the US over Europe, allowed the creation of a cooperative agreement, which in turn favored a normative isomorphism and provided room for a constant exchange of opinion and information between US and EU antitrust practitioners.

Currently, while the EU is struggling to re-settle its economy, the effect of the recession has pushed the Commission to regulate once again mergers and the use of state aid. In order to manage a rising anticompetitive trend and a 'beggar your neighbour policy', European institutions have promoted a 'Temporary framework' in order to regulate the use of state aid and non-horizontal merger guidelines, covering vertical and conglomerate mergers in 2008(Quigley 2009: 352).[10] While the EU is trying to strongly regulate the common market, the U.S. seems not to be able to define a new antitrust approach. However, the neo-liberal path seems hard to be challenged.

CONCLUSION

Pan-institutionalism is a fundamental tool to understand the power of antitrust ideas and interests over the institutionalisation of competition policy in Europe. Indeed, on the one hand it allows studying the institutionalisation of merger policy by taking into consideration both the role of ideas and material interests in influencing policymakers. On the other it permits to comprehend the internalisation and diffusion of specific principles by the EU through the use of a broader interpretation of organisations'

isomorphic process. As it has been demonstrated, the dynamic succession of particular competition institutional frameworks adopted by the European Union after the oil crises of the 80's can be linked to the influence exerted by US antitrust ideas. Those ideas where adopted because of specific interests or necessity. However, once they became part of the European market understanding, they also became the only way to comprehend reality, modifying social perception of interests.

In fact, the internalisation of neo-liberal principles by Europe - made possible through the above-mentioned isomorphic mechanisms - happened because Europe had to face contingent necessities, such as mere economic interests or obligations. However, once institutionalised, those principled modified the European understanding of competition towards a more efficiency-based understanding of the market. In other words, the necessity to overcome the downturn and to reach economic interests pushed the European Commission to make competition policy to follow a more efficiency driven logic, then the general common market welfare. At the one and the same time, neoliberal ideas began to be the unique way to interpret reality and shaped the way interests were perceived. For this reasons, although the current crisis has underlined the necessity to restructure the institutional competition framework in order to generate adequate responses to the economic challenges, changes are hard to be implemented as neoliberalism has become so embedded in the EU understanding of competition that it seems the unique way to face the challenges. However, as William Kovacic maintains, the pendulum that characterises the antitrust changes is slow to implement, and it is probably too early to credibly predict the development trend of a new antitrust institutional framework (Kovacic 2003:377-478).

In conclusion, the paper makes two claims. First, institutional analysis, by allowing a balanced investigation of the role of both ideas and interests, is especially helpful to better understand the evolution of European competition institutions. Secondly, while the implementation of specific competition ideas has been caused by the need to reach specific objectives, the EU has modified the traditional way of perceiving reality and material needs, by applying particular theoretical conceptions. This is what I define 'the power of ideas'.

* * *

[1] European competition structure is based on a civil law system, while the US one is based on a common law one.
[2] For more information about the ICN, http://www.internationalcompetitionnetwork.org/about/history.aspx
[3] European Association Agreements were in fact signed with Poland, Hungary and Czech and Slovakian Federal Republic in December 1991, and with Romania and Bulgaria in February and March 1993.
[4] *Europemballage Corporation and Continental Can Company Inc. v Commission of the European Communities*, Case 6-72, 21 February 1973.
Avaiable at:
http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61972J0006&lg=en
[5] *British American Tobacco Ltd and RJ Reynolds Industries Inc v Commission,* 1987, ECR 4487.
Avaiable at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989TJ0064:EN:PDF
[6] Council Regulation (EEC) no 4064/89 of 21 December 1989 on the control of Concentrations between Undertakings, J 1990L257/14.
Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989R4064:EN:HTML
[7] Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, Section 9. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0802:EN:NOT
[8] European Commission, 'Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings', 05/02/2004.). Available at: http://europa.eu/legislation_summaries/competition/firms/l26107_en.htm. Last accessed 12 December 2012.

[9] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, issued 1992, revised 1997, *at* http://www.usdoj.gov/atr/public/guidelines/horiz_book/hmg1.html.
[10] *See* European Commission, Guidelines on the Assessment of Non-Horizontal Mergers Under the Council Regulation on The Control of Concentrations Between Undertakings, 2008 O.J. (C265). Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:0025:EN:PDF (adopted on Nov. 28, 2007 and published on Oct. 18, 2008) [hereinafter E.C. GUIDELINES]. Last accessed 12 December 2012.

REFERENCES

Acheson, D. (1969). *Present at the Creation: My years in the State Department*, New York: Norton.

Adams, W. Brock, J.W. (1988). 'Reaganomics and the transmogrification of merger policy', *The Antitrust Bulletin* 33(309), pp. 309-359.

Aldcroft, D. H. *(*1978). *The European Economy, 1914-1990*, London and New York: Croom Helm Ltd, 3rd ed.

Amato, G. (1997). *Antitrust and the Bounds of Power*, Oxford: Hart Publishing.

Ashley, R. and Walker, R. B. J. (1989). 'Speaking the Language of Exile: Dissident Thought in International Studies', *International Studies Quarterly*, 34 (3), pp. 259-268.

Baker, J. and Shapiro, C. (2007). 'Reinvigorating Horizontal Merger Enforcement', Competition Policy Center, Institute of Business and Economic Research, UC Berkeley, 1-40.

Blyth, M. (1997).'"Any More Bright Ideas?" The Ideational Turn of Comparative Political Economy', *Comparative Politics*, 29 (2), pp. 229–250.

Blyth, M. (2002). *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*, Cambridge: Cambridge University Press.

Boork, R.H. (1978). *The Antitrust Paradox, A Policy at War with Itself*, New York: The Free Press.

Brinkley, A. (1996). *The End of Reform, New Deal Liberalism in Recession and War*, New York: Vintage Books Edition.

Brittan, L. (2000). 'The Early Days of Merger Control', *EC Merger Control: Ten Years On*, in International Bar Association, London: International Bar Association, pp. 1–7.

Buch-Hansem, H. and Wigger, A. (2011). *The Politics of European Competition Regulation*, London: Routledge.

Buch-Hansem, H. and Wigger, A. (2010). 'Revisiting 50 years of market-making: The neoliberal transformation of European competition policy', *Review of International Political Economy,* 17 (1), pp. 20-44.

Budzinski, O. (2004). 'The International Competition Network: Prospect and Limits on the Road Towards International Competition Governance', *Competition and Change,* 8 (3), pp. 223-242.

Buthe, T. (2007). 'The Politics of Competition and Institutional Change' in S. Meunier and K. Mcnamara (eds) *Making History: European Integration and Institutional Change at Fifty (State of the European Union,* vol. 8*)*, Oxford: Oxford University Press, pp. 175-193.

Calvani, T. Sibarium, M. L. (1990). 'Antitrust today: Maturity or decline', *35 The Antitrust Bulletin,* 125, pp. 179-183.

Campbell, J. L. (2002). 'Ideas, Politics, and Public Policy', *Annual Review of Sociology*, 28, pp. 21-38.

Carroll, W.K. (2009). 'Tracking the Transnational capitalist class: the view from on high' in Yildiz Atasoy (ed) *Hegemonic Transitions, the State and Crisis in Neoliberal Capitalism*, London: Routledge.

Cini, M. and McGowan, L. (1998). *Competition Policy in the European Union.* Palgrave Macmillan.

Collins, R. (1979). *The Credential Society: an historical sociology of education and stratification,* New York: Academic Press.

Crane, D. (2009). 'Chicago, Post-Chicago, and Neo-Chicago', *University of Chicago Law Review*, 76, Cardozo Legal Studies Research Paper No. 259, pp. 1911-1933.

Crane, D. (2009). 'Obama's Antitrust Agenda', *University of Michigan Law School*, Working Paper No. 165; U of Michigan Law & Economics, Olin Working Paper No. 09-022.

Davidow, J. (2002). 'International Implications of US Antitrust in the George W. Bush Era', *World Competition,* 25 (4), pp. 493–507.

Davidow, J. (1990). 'Worldwide influence of U.S. antitrust' *The Antitrust Bulletin*, 35, pp. 603-630.

Davis M. (1985) 'Reaganomics Magical Mystery Tour', *New Left Review,* 149, pp. 45-65.

DeLaurell, R. M. and Rouse, R. W. (2010). 'Obama's New Antitrust Policy', *Journal of Corporate Accounting & Finance,* 21 (2), pp. 29-31.

DiMaggio, P. J. and Powell, W. W. (1983). 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields', *American Sociological Review*, 48 (2), pp. 147-160.

Dinan, D. (1994). *Ever closer union?: An introduction to the European Community*. Basingstoke: Macmillan Press.

Durkheim, E. (1984). *The Division of Labor in Society* translated by W. D. Halls. New York: Free Press.

Fitzpatrick, D. (2009). 'Three Banks Complete Deals*', Wall Street Journal*, 2 January.

Foster, S. E. (2009). 'Fire Sale: The Situational Ethics of Antitrust Law in an Economic Crisis', *Mississippi Law Journal*, 78 (4), pp. 777-790.

Fox, E. (2003). 'International Antitrust and the Doha Dome', *Virginia Journal of International Law*, 43(911), pp. 911-932.

Freyer, T. A. (2006). *Antitrust and Global Capitalism: 1930-2004*. Cambridge: Cambridge University Press.

Gerber, D. J. (1994). 'Constitutionalizing the economy: German Neo-liberalism, Competition Law and the "New" Europe', *American Journal of Comparative Law,* 42 (25), pp. 25-84.

Gill, S. R. (1993). 'Neo-liberalism and the shift towards a US-Centred Transnational Hegemony' in H. Overbeek (ed) *Restructuring Hegemony in the Global Political Economy: The rise of Transnational neo-liberalism in the 1980s*, London: Routledge, pp. 246-282.

Goldstein, J. (1993). *Ideas, Institutions and American Trade Policy.* Ithaca and London: Cornell University Press.

Goldstein, J. and Keohane, R. O. (1993). *Ideas and Foreign Policy, Beliefs, Institutions and Political Change*. Ithaca, NY: Cornell University Press.

Gormsen, L. L. (2006). 'Article 82 EC: Where are we coming from and where are we going to?' *The Competition Law Review,* 2 (2), pp. 6-25.

Griffin, J. P. (1992). 'EC/U.S. Antitrust Cooperation Agreement: Impact on Transnational Business', *Law & Pol'y Int'l Bus*, 24, pp. 1051-1065.

Hagerty, J. R. and Bauerlein, V. (2008). 'Credit Crunch: BofA Sets Closing Date for Countrywide Purchase'*, Wall Street Journal*, 20 June.

Hall, P. A. (1993). 'Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain', *Comparative Politics,* 25 (3), pp. 275-329.

Hall, P. A. (1989). *The Political Power of Economic Ideas: Keynesianism across Nations*, Princeton, NJ: Princeton University Press.

Hannan, M. T. and Freeman, J. (1977). 'The population ecology of organizations', *American Journal of Sociology*, 82 (5), pp. 929-964.

Harding, C. and Joshua, J. (2003). *Regulating Cartels in Europe: A Study of Legal Control of Corporate Delinquency*, Oxford: Oxford University Press.

Hawley, A. H. (1950). *Human Ecology: A Theory of Community Structure*, New York: The Ronal Press Company.

Hovenkamp, H. (2002).'The reckoning of Post Chicago antitrust', in A. Cucinotta, R. Pardolese, R. Van Den Bergh (eds) *Post-Chicago developments in antitrust law*. Cheltenham: Edward Elgar, pp. 1-32.

John, P. (1999). 'Ideas and interests; agendas and implementation: an evolutionary explanation of policy change in British local government finance', *British Journal of Politics & International Relations*, 1 (1), pp. 39- 63.

Jones, C. A. (2006). 'Foundations of competition policy in the EU and USA: conflict, convergence and beyond' in H. Ullrich (ed) *The Evolution of European Competition Law: Whose Regulation, Which Competition?*, Cheltenham: Edward Elgar, 2006, pp.17-37.

Jones, C. A. and Matsushita, M. (2002). *Competition Policy in the Global Trading System: Perspectives from the EU, Japan and the USA*. The Hague: Kluwer Law International, International Competition Law Series.

Judt, T. (2005). *Post-War: a History of Europe since,* New York: The Penguin Press.

Kanter. R. M. (1972). *Commitment and Community: communes and utopias in sociological perspective,* Cambridge, MA: Harvard University Press.

Karnitschnig, M., Mollenkamp, C. and Fitzpatrick, D. (2008). 'Bank of America to Buy Merrill', *Wall Street Journal*, 15 September.

Keohane, R. O. (1988). 'International Institutions: Two Approaches', *International Studies Quarterly*, 32, pp. 379-396.

Keynes, J. M. (1936). *The General Theory of Employment, Interests and Money*. Basingstoke: Macmillan.

Kovacic, W. E. (2009). 'Assessing the Quality of Competition Policy: The Case of Horizontal Merger Enforcement', *Competition Policy International*, pp. 129-150.

Kovacic, W. E. (2003). 'The Modern Evolution of U.S. Competition Policy Enforcement Norms', *Antitrust Law Journal*, 71, pp. 377-478.

Kovacic, W. E. (1989). 'Failed Expectations: The Troubled Past and Uncertain Future of the Sherman Act as a Tool for Deconcentration', *Iowa Law Review,* 74, pp. 1105-1150.

Labaton, S. (2007). 'Sirius Chief Talks of Ways to Get XM Deal Approved', *New York Times*, 1 March.

Larsen, C. A. and Andersen, J. G. (2009). 'How New Economic Ideas Changed the Danish Welfare State: The Case of Neoliberal Ideas and Highly Organized Social Democratic Interests', *Governance: An International Journal of Policy, Administration, and Institutions,* 22 (2), pp. 239–261.

Larson, M. S. (1977). *The Rise of Professionalism: A Sociological Analysis*, Ewing, NJ: University of California Press.

Layne, C. (2006). *The Peace of Illusions: American Grand Strategy from 1940 to the Present*, Ithaca, NY: Cornell University Press.

Levy, N. (2005). 'Mario Monti's Legacy in EC Merger Control', *Competition Policy International,* 1 (1), pp. 99-132.

Lindblom, C. E. (1977). *Politics and Markets: The World's Political Economic Systems*, New York: Basic Books.

Lundestad, G. (2003). *The United States and Western Europe since 1945: From "Empire" by Invitation to Transatlantic Drift,* Oxford: Oxford University Press.

Lyons, B. (2009). 'Competition Policy, Bailouts and the Economic Crisis', *Centre For Competition Policy,* Working Paper, available at http://competitionpolicy.ac.uk/documents/107435/107587/1.112187!CCP09-4.pdf. Last accessed 12 April 2013.

Lytle, T. (2009). 'Obama's New Antitrust Rules Have Big, Powerful Companies Sweating: the Monopoly Policy is a Reversal of a Bush Administration Rule', *U.S. News & World Rep.*, 20 May.

Mahoney, S. A. (2009). 'To Day 100 and Beyond: Antitrust Enforcement in the Obama Administration', American Bar Association, 1.

March, J. G. and Olsen, J. P. (1976*). Ambiguity and Choice in Organizations*, Bergen: Universitetsforlaget.

McNamara, K. R. (1998). *The Currency of Ideas: Monetary Politics in the European Union*, Ithaca, NY: Cornell University.

Mizruchi, M. S. and Fein, L. C. (1999). 'The Social Construction of Organizational Knowledge: A Study of the Uses of Coercive, Mimetic, and Normative Isomorphism', *Administrative Science Quarterly*, 44 (4), pp. 653-683.

Monti, M. (2001). 'Competition in a Social Market Economy', Speech at Freiburg University.

Morgan, E. J. (2000). 'Subsidiarity and the division of jurisdiction in EU merger control', *The Antitrust Bulletin,* 45 (153), pp. 153-194.

Nester, W. R. (1997). *American Industrial Policy: Free or Managed Markets,* Basingstoke: Palgrave.

North, D. C. (1994). 'Economic Performances through time'*, The American Economic Review*, 84 (3), pp. 359-368.

North, D. C. (1990). *Institutions, Institutional Change and Economic Performance.* Cambridge: Cambridge University Press.

North, D. C. (1970). 'Institutional Change and American Economic Growth: A First Step towards a Theory of Institutional Innovation', *The Journal of Economic History*, 30 (1), pp. 131-149.

Peritz, R. J. (1996). *Competition Policy in America: History, Rhetoric, Law*, Oxford: Oxford University Press.

Perrow, C. (1978) *Organizational Analysis: A Sociological Views*. Belmont, CA: Wadsworth.

Pfeffer, J. and Salancik, G. (1978). *The External Control of Organizations, A Resource Dependence Perspective*, Bel Air, CA: Harper and Row Publisher.

Price, V. C. (1998). 'Europe's Last Chance?', London: Institute of Economic Affairs Office for Official Publications of the European Communities*, Europe Without frontiers Completing the Internal market*, European Documentation, 2.89.

Quigley, C Q. C. (2009). *European State Aid Law and Policy,* Oxford: Hart Publishing, 2nd ed.

Rill, J. (2003). 'Monti Overhaul Merger Regime May Not Come Up Smelling Roses', *European Voice* 9 (39), available at http://www.europeanvoice.com/article/imported/monti-overhaul-of-merger-regime-may-not-come-up-smelling-of-roses/48701.aspx. Last accessed 12 April 2013.

Risse-Kappen, T. (1994). 'Ideas Do Not Float: Transnational Coalitions, Domestic Structures, and the End of the Cold War', *International Organization*, 48 (2), pp. 185-214.

Rouam, C., Jakob, T. Suni, L. (1994). 'La politique de concurrence de la Communauté à l'echelle mondiale: L'exportation des règles de concurrence communautaires', *EC Competition Policy Newsletter,* 1 (1), pp. 7-12.

Schmidt, V. (2003). 'How, Where and When Does Discourse Matter in Small States' Welfare State Adjustment?', *New Political Economy*, 8 (1), pp. 127–146.

Schmidt, V. (2002). 'Does Discourse Matter in the Politics of Welfare State Adjustment?', *Comparative Political Studies*, 35 (2), pp. 168–193.

Schroter, H. G. (2005). *Americanization of the European Economy: A compact survey of American economic influence in Europe since the 1880s*. Dordrecht: Springer.

Schwartz, N. D. and Creswell, J. (2008). 'What Created this Monster?', *New York Times,* 23 March.

Scott, W.R. (1995). *Institutions and Organisations*, London: Sage Publications.

Shapiro, C. (2010). 'The 2010 Horizontal Merger Guidelines: from Hedgehog to Fox in Forty Years', *Economic Analysis & Policy Group*, Berkeley, CA: University of California.

Sikkink, K. (1991). *Ideas and Institutions: Developmentalism in Brazil and Argentina*. Ithaca, NY: Cornell University Press.

Simon, H. A. (1985). 'Human Nature in Politics: The Dialogue of Psychology with Political Science', *American Political Science Review*, 79 (2), pp. 293-304.

Skocpol, T. (1985). 'Bringing the State Back In: Strategies of Analysis in Current Research' in D. Rueschemeyer and T. Skocpol (eds.) *Bringing the State Back In*, Cambridge: Cambridge University Press, pp. 3-40.

Skocpol, T. (1982). 'Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal', *Politics and Society,* 10 (2), pp. 151-201.

Strange, S. (1987). 'The Persistent Myth of Lost Hegemony', *International Organization*, 41 (4), pp. 566-574.

Taylor, R. E. and Crock, S. (1981). 'Reagan Team Believes Antitrust Legislation Hurts Big Business', *Wall Street Journal*, 1.

Theffry, P. (1990). 'The New EC Merger Control Regulation, *The International Lawyer*, 24 (543), pp. 543-551.

Todino, M. (2003). 'International Competition Network: The State of Play After Naples', *World Competition*, 26 (2), pp. 283-302.

Turner, D. F. (1982). 'Observations on the New Merger Guidelines and the 1968 Merger Guidelines', *Antitrust Law Journal*, 51 (305), pp. 305-315.

Van Bael, I. (2005). *Competition Law of the European Community.* The Hague: Kluwer Law International.

Vickers, J. (11 February 2004). 'Merger policy in Europe: retrospect and prospect', *UK Office of Fair Trading*, available at http://oft.gov.uk/shared_oft/speeches/spe0104.pdf. Last accessed 12 April 2013.

Wendt, A. (1992). 'Anarchy is What the State Make of It: The Social Construction of Power Politics', *International Organization,* 46 (2), pp. 391-425.

Wigger, A. and Nolke, A. (2007). 'Enhanced Roles of Private Actors in EU Business Regulation and the Erosion of Rhenish Capitalism. The Case of Antitrust Enforcement', *Journal of Common Market Studies*, 45 (2), pp. 487–513.

Woods, N. (1995). 'Economic Ideas and International Relations: Beyond Rational Neglect', *International Studies Quarterly,* 39 (2), pp. 161-180.

Journal of Contemporary European Research

Volume 9, Issue 2 (2013)

Commentary

Energy Relations between the European Union and North Africa?

Sarah Kilpeläinen *University of Tampere*

Citation

Kilpeläinen, S. (2013). 'Energy Relations between the European Union and North Africa?', *Journal of Contemporary European Research*. 9 (1), pp. 346-359.

First published at: www.jcer.net

Abstract

This article discusses European Union (EU)-North Africa energy relations with a special focus on renewables in North Africa, arguing that the research so far has not taken due account of North African perceptions of EU external energy policy. It is argued that current research on EU-North African relations has not taken sufficient note of the multidimensionality of energy or addressed the inconsistent nature of EU policy making. However, addressing these issues is vital in approaching EU-North Africa energy relations and EU policy towards North Africa in general. The study of perceptions is introduced as one way to develop research further, to give further impetus on understanding how EU-North African energy relations develop and to understand energy relations in their complexity.

Keywords

EU-North Africa relations; energy; EU external energy policy

The commentary begins with a brief overview of the EU's general energy policy, with a special focus on renewables. It moreover introduces EU energy policy targeted at North Africa with a focus on issues such as renewables and the aim of increasing the percentage of renewables in the energy mix, energy security and dependence, grid development and sustainability. The second section of the article introduces research on North African energy relations and also the EU's energy relations with the countries of North Africa. This includes key topics covered in the literature, such as resources and their availability, the role of renewables as well as import/export relationships. It also focuses on research into possible future scenarios for energy development in the North African countries, covering the literature analysing country specific renewable energy development plans. Here, the emphasis is on renewable energy development options, but the possibility of introducing nuclear energy and the energy-water nexus as important aspects of developing and implementing new approaches to energy policy in the North African countries are also contemplated. The third part introduces the main argument, that perceptions of North African countries have not so far been taken seriously in the literature. It is argued that insight into these would be able to shed light on several vital issues which the EU, and also initiatives like Desertec aimed at producing renewable energy in North Africa for export to the EU, are either dealing with or need to address if they are to establish a sustainable and equal relationship with the North African countries. This part also briefly considers methodological aspects in the study of EU-North African energy relations and the role external views play in this context, concluding that new methodological approaches are also needed to further the academic debate on EU-North Africa energy relations and their development.

EU POLICY TOWARDS NORTH AFRICA

The EU has long aimed at establishing a coherent set of foreign policies towards North African countries introducing several initiatives such as the Barcelona Process, the EU – Mediterranean Partnership, the European Neighbourhood Policy and the Mediterranean Union, covering a broad spectrum of topics such as the effects of colonialism (Joffe 2009), energy (Martinez 2008), democratization (Bicchi 2009; Pace et al. 2009, Youngs 2001), political Islam (Emerson and Youngs 2007), radicalization as well as security and migration (Martinez 2008; Bicchi 2007). After 9/11 particularly, an increase in studies on a securitisation and depoliticisation of relations was observable (Panebianco 2010: 7; Kausch and Youngs 2009; Balta 2000). At the same time, relations between these

countries and the EU are characterised by historical connections especially on the part of Southern EU Member States. Here particularly the experience of colonialism is a factor that is deemed to exert an important influence on the shape and development of relations. A plethora of policy initiatives has been created with varying aims and geographical scope. The countries that are the focus of this paper (Morocco, Algeria, Tunisia, Libya and Egypt), regarding their external relations with the European Union, are either grouped together with the other southern Mediterranean countries or taken together with the Middle Eastern countries, forming MENA (Middle East and North Africa); thus the geographical scope of policies can vary. The development of relations with the North African countries as a whole has been repeatedly criticised for the EU's seeming inability to develop a consistent approach (Bicchi 2007), let alone a coherent framework. While establishing a set of foreign policies towards the Mediterranean countries as well as the MENA countries has been a policy goal for several decades, the picture so far lacks consistency.

European policy towards the MENA countries is generally characterised by a succession of different policy initiatives. Bicchi (2007) observes long periods of inactivity on the part of the EU interrupted by only two phases of heightened activity. This first phase of activity for a more coherent approach to the Mediterranean was initiated through the Global Mediterranean Policy (1972), addressing the Mediterranean countries as a relatively homogenous region and aiming at the creation of a framework to develop EU-Mediterranean relations. Policies aimed at the Mediterranean countries were initially formulated on a bilateral basis through several agreements, mainly focusing on trade. These separate agreements were neither coordinated across countries nor policy fields, nor were there core principles guiding the content and establishment of relations. The Euro-Arab Dialogue that followed is seen as complementing the framework in the form of an initiative towards the Arab countries. However, little tangible progress resulted from these agreements and the subsequent phase is seen as another period of inactivity in relations (Bicchi 2007).

The next steps were only taken in 1991 after the end of the Cold War. The creation of the Renewed Mediterranean Policy (RMP) was followed by the European Mediterranean Policy (EMP) before policies with reference to the Mediterranean countries were included in the European Neighbourhood Policy (ENP). In 2008 the EMP was relaunched as the Union for the Mediterranean (UfM) (Panebianco 2010). None of these initiatives was characterised as a success, however, and often the picture emerges that initiatives aimed at resolving problems in earlier agreements did not succeed, and moreover failed to address new issues in the relations between the EU and the Mediterranean (see for example Johansson-Nogués 2011; Schlumberger 2011; Khakee et al. 2008; Bicchi 2007).

Academic attention has not only been paid to the creation and content of these EU policies, but also to their implementation and the results achieved – or the lack thereof (see for example IPEMED 2010; Kagiannas et al. 2003). It is argued that problems in implementing the succession of EU initiatives and policies do not only stem from a lack of resources or a lack of effort invested in the external policy towards the MENA countries. Additionally, and also more importantly, the general premises on which the EU bases its policies are neither seen to reflect the EU's self-proclaimed goals as a foreign policy actor in general and towards the region nor are these policies seen to be consonant with the main interests of North African and European citizens (Kausch and Youngs 2009). Each side identifies different problems and different approaches to solving these issues, which results in almost parallel policies instead of focusing on creating a policy framework that focuses on cooperation. Further criticism has been levelled at the perceived de-politicisation of the initiatives. Schlumberger argues that the Union for the Mediterranean is a depoliticised endeavour that caters well to the goals of authoritarian regimes and casts doubts on a possible role for the EU as a norm entrepreneur (Schlumberger 2011). Simultaneously, the increased securitization of policies and

initiatives, such as an increased focus on border security, has been observed (Panebianco 2010; Kausch and Youngs 2009; Balta 2000).

The wave of protests that started in the spring of 2011 was taken as a new point from which to improve relations. The High Representative of the Union for Foreign Affairs and Security issued a joint communication on March 8, 2011 entitled 'A Partnership for Democracy and Shared Prosperity in the Southern Mediterranean' describing the current upheavals as a starting point for a qualitative step forward. At the same time, it was acknowledged that the UfM did not achieve the intended results (Commission 2011b: 2). This overhaul of Union policies - that is the acknowledgement of shortcomings in the Union's own policy frameworks and proposals - in the face of the latest protests is also visible in the academic debate (de Vasconcelos 2011).

However, the question remains whether the EU will be able to formulate a coherent set of policies towards the Mediterranean as an improvement on earlier policy initiatives while emphasising the notion of partnership so often stressed in its documents but not yet translated into practical initiatives by the EU. Research should thus focus on investigating the development of relations from a wider angle, including not only the initiatives as such but also the reception and perception of these proposals in the Mediterranean countries in order to be able to address the performance of the EU in North Africa.

THE EU ENERGY SITUATION AND EXTERNAL ENERGY POLICY TOWARDS NORTH AFRICA

The European Union is a major energy consumer and the world's largest importer of energy with more than 80 per cent of oil consumed and 60 per cent of gas consumed being imported. The majority of this energy supply comes from countries in the neighbourhood of the EU, with Russia, Norway and Algeria supplying 85 per cent of natural gas and about 50 per cent of crude oil imports (European Commission 2011c). The importance of strengthening the external energy dimension of the EU's energy policy is inextricably linked to the further development of the internal market as well as partnerships, improved access to sustainable energy for developing countries and the enhanced promotion of EU policies beyond its borders. Here, the Mediterranean region is of importance not only for the supply of fossil fuels but also for its potential to deliver electricity from renewable sources, which the EU sees as a starting point for more active engagement in the development of the energy infrastructure. Thus a strengthening of relationships is also among the main goals of the EU's external energy policy (European Commission 2011a). The Commission also acknowledges the strategic importance of the Southern Mediterranean regarding both energy supply and energy transit through the region, while at the same time acknowledging the rising energy demand in the region and the EU's ambition to contribute to market reform. Pronounced policy goals include an 'EU-Southern Mediterranean Energy Partnership' and the promotion of renewable energies in the region through the 'Mediterranean Solar Plan' (European Commission 2011a; European Commission 2011b).

As suggested above, there is an apparent consensus that the EU's overall policies aimed at the North African countries are lacking in substance and understanding (see for example Schlumberger 2011; Bicchi 2007), with Ghilès (2010) pointing out that what the EU is addressing as part of its external energy policy towards the region does not necessarily in any way reflect the real problems and issues within the region. Simultaneously, and referring to energy relations, he asserts:

> For the development of a serious regional energy strategy the partners have to be of equal rank, have a clear idea about the future role of their country and trust

each other (ibid: 4).[1]

This, according to Ghilès, has not been achieved by previous policy initiatives and depends not only on the creation of transparent systems but also on the solution of border conflicts, in the present case the Western Sahara conflict. The role and possible influence of the Western Sahara conflict between Morocco and Tunisia is evaluated in different ways, pointing to a need to solve this prior to extending energy cooperation. Some assess Western Sahara as a topic impacting negatively on the development of intraregional cooperation (Mason and Kumetat 2011: 4408); while Lacher and Kumetat, in assessing the possibility of inter-state conflict threatening security of supply, refer to it as a 'stalemate rather than growing tensions' not threatening the security of possible common projects (Lacher and Kumetat 2011: 4470).

Here further research is needed to evaluate better whether the Western Sahara conflict has an impact on the future development of energy policy in the North African countries, and, if so, to what extent. Further research is also needed to ascertain how the conditions set out by Ghilès can be met and included in any new agreement between the European Union and the North African countries regarding energy policy. This makes it necessary to scrutinise more carefully how the current energy policy and the rank it assigns to each party concerned is perceived in North Africa. In the context of the EU's ambition to promote its own policies through the implementation of an external energy policy, a more thorough investigation of the partners' perceptions of their own roles and standing within this policy framework is needed.

Growing energy consumption due to population growth and rising consumption levels in North Africa is one of the main topics addressed when dealing with EU–North Africa energy relations (Trieb and Müller-Steinhagen 2007). Furthermore, Cherigui et al. (2009) identify a favourable combination for the promotion of a renewable energy partnership based on the North's know-how but also need for clean energy and the South's clean energy resources and their need to develop know-how. Yet the question remains whether the situation is really so clear cut. An exchange of know-how and a partnership beneficial to all sides would of course be welcome, but given the EU's track record of unsuccessful policy initiatives toward the region it is necessary to ask how to avoid being caught in old patterns and whether any efforts at all have been made to re-work these 'common policies'. However, the aim of creating a coherent foreign policy and the related internal struggle regarding the scope and organisation as well as the influence of other players and the content as well as the success of the EU's Mediterranean policy have been constantly questioned (Bindi 2010). Given the central role of Algeria especially in the EU's energy supply (Fiott 2012), this comes as no surprise. The region's possible role in supplying renewable energy to the EU also increases its importance to the EU's energy future. This makes it necessary to delve deeper into EU North Africa energy relations and the bottlenecks that have to be dealt with in order to actually move forward in cooperation in a manner that would be profitable in the widest sense for all parties.

ENERGY RESOURCES IN NORTH AFRICA

The North African countries represent different starting situations regarding the availability of energy sources and their energy relations with the European Union. This distinction is reflected, for example, in the availability of conventional energy sources such as oil and natural gas. At the same time, important similarities are discernible. These cover the role of the state in the national energy markets, the need for reforms in

[1] 'Pour le développement d'une stratégie énergétique régionale sérieuse, les partenaiires doivent être de rang égal, avoir une idée claire du rôle future de leur pays et se faire confiance.' (translated by author)

the energy sector, the availability and possible usage of renewable energy sources (here wind and sun especially) but also societal and developmental pressures making an updating of North African energy policy in the face of rising demand and consumption essential.

Algeria, Libya and Egypt are usually grouped together as major oil and gas producers in the region, with exports of oil and gas forming a main source of income for all three. In 2011, the proven oil reserves in Algeria were 12,200 TMB (thousand million barrels), in Libya 47,100 TMB and in Egypt 4,300 TMB (BP 2012). Regarding natural gas, Algerian reserves are estimated at 4,504 TCM (trillion cubic metres), Libyan reserves at 1,495 TCM and Egyptian reserves at 2,190 TCM (BP 2012). Algeria as a net exporter of oil and gas is the European Union's third largest gas supplier. This relationship, however, is highly interconnected as the majority of Algerian energy exports go to the European Union while Algerian oil and gas revenues make up 40 per cent of its GDP (Lacher and Kumetat 2011: 4468; Stambouli 2011: 4508). Egypt's oil production is declining, and according to some sources it is already a net importer of oil, while its production of natural gas is on the rise, making Egypt a net exporter of natural gas (Ibrahim 2011:218). Egypt as well as Libya could both play a more prominent role in the EU's energy supply with Libya being important for both gas and oil and Egypt for gas. At the same time, extended cooperation with both Egypt and Libya is seen as one possible way to mitigate the EU's dependence on oil and gas imports from Russia. Bahgat frames energy cooperation with North African states strongly around the issue of security of supply (Bahgat 2010).

Tunisia and Morocco are in a different situation regarding conventional energy sources. Tunisia is identified in the literature as in balance with regard to its energy needs, based on its small gas and oil reserves and its need to import about 25% of its energy (Ahmed 2011: 740; Marktanner and Salman 2011: 4480). Tunisian oil reserves amounted to 425 TMB in 2011 (BP 2012). Thus, given its limited reserves and the need to import energy, it does not seem to be of interest for the EU in the context of fossil fuels. Morocco as an energy deficient country imports 95 per cent of the energy it needs and has no notable reserves in oil or gas (Marktanner and Salman 2011: 4480). Morocco does have 15 per cent of the world reserves of oil shales, however, for economic reasons these have not been explored (Boubaker 2012: 365). Again, the lack of substantial reserves prevents Morocco from emerging as a possible supplier of conventional energy to the EU.

All the countries mentioned have national plans to develop renewable energy; however, there are differences in the frameworks used, options chosen and time-frames proposed. For Algeria, with 86 per cent of its area covered by the Sahara, solar energy is seen as one possible way to implement its target of supplying 40 per cent of domestic electricity consumption through renewable energy sources by 2030, according to the national plan drawn up by the Ministry of Energy and Mining. The target is to install 22,000 MW of renewable capacity for power generation by 2030 with 10,000 MW intended for export. The national plan also notes the potential for wind, biomass, geothermal and hydropower energy and the aim to develop these sources as well. However it is made clear that solar energy is the dominating renewable energy source. The programme started with a phase (2011-2013) devoted to pilot projects followed by the implementation of the programme in two phases (2014-2015 and 2016-2020), the latter being devoted to large-scale implementation. It is stressed repeatedly that Algeria does not merely aim at using the solar potential available but also at developing a genuine national solar industry using local know-how and generating jobs (MEM 2011).

Tunisia is one of the windiest Mediterranean countries and also has capabilities for the production of solar energy. Solar energy was included in the 'Tunisian Solar Plan' of 1999. This plan aims at installing 1000 MW of renewable capacity by 2016 and 4,700 MW by 2030, which would make up 40 per cent of the total capacity installed. The majority of this installed capacity is to be based on wind, followed by solar and other renewable energy sources spread over a variety of different projects. It is stressed that

the installation of capacities for renewable energies also reflects Tunisia's aim to strengthen its industrial and energy production and its position as an exporter of solar energy (STEG 2012a; STEG 2010). However, Boubaker identifies a lack of reform to liberalise the market and open up the renewable sector to competition – as opposed to Algeria, where private installation companies are involved in the field of solar energy – as inhibiting progress (2012: 364). Here, the creation of STEG Renewable Energies, a subsidiary of STEG, in 2010 might be significant as it specifically states the development of public-private partnerships as an objective (STEG 2012b).

Morocco has identified the multiplication of solar and wind plants as goals in developing renewable energy. It also has a 'Moroccan Solar Plan' to be implemented by the Moroccan Agency for Solar Energy concentrating mainly on CSP (concentrated solar power) and on smaller programmes for PV (photovoltaics). This Moroccan Solar Plan was presented in 2009 and aims at creating 2,000 MW capacity by 2020, representing 14 per cent of electric power production in 2020. Reduced reliance on energy imports and the creation of a national solar industry, the support of R&D and the creation of local know-how, alongside environmental benefits have been stressed (MASEN 2009).

In Egypt, the main sources of renewable energy are also in wind and solar power. Hydropower is of importance, too, and has been the focus of government attention. However the growth potential is deemed to be limited as most sources of hydropower have already been developed (Ibrahim 2011). Egypt's energy strategy of 2007 aims to increase the percentage of renewables to 20 per cent by 2020, with 12 per cent coming from wind power, 5.8 per cent coming from hydropower and 2.2 per cent coming from other renewable sources, notably solar energy (MOEE 2012).

Libya is characterised by favourable conditions for the production of both solar and wind energy. The Renewable Energy Authority of Libya (REAOL), created in 2007, established a target of 25 per cent of renewables by 2025, with steps of 6 per cent by 2015 and 10 per cent by 2020. These targets are to be met by solar and wind projects and are also to encourage the local manufacturing industry. However, despite approval by the Cabinet, these targets seem not to be widely agreed upon and are not based on a comprehensive analytical framework (RCREEE 2010). Furthermore, the recent violent conflicts in Libya will have a decisive impact on these plans as well as their implementation, the scale of which is currently difficult to estimate.

Thus, the starting points regarding energy supply and the type of energy relationship with the EU differ. One the one hand Algeria, Libya and, to a certain extent, Egypt, have the conventional energy resources, specifically oil and gas, that enable them to export energy to the European Union. On the other hand, Tunisia and Morocco lack this capacity in the field of conventional energy resources but do have potential to develop renewable energy resources. However, as stated earlier, similarities among the countries can be found that can also form the basis for a common approach. One resemblance regularly pointed out as being of great importance for both the future development of energy policies in these countries and their energy relationship with the European Union is the growing energy demand caused by population growth and economic development (Trieb and Müller-Steinhagen 2007). For the North African countries specifically, energy needs connected to desalination, energy security concerns – especially for Morocco and Tunisia as importers of conventional energy (Jewell 2011) – as well as the need to implement projects for rural electrification (Kagiannas et al. 2003) are a main concern calling for cooperation and knowledge exchange. Another common point is the availability of renewables and, so far, the low level of development of renewable energy. Here the focus is often put on the lack of investment and the substantial interest of the political elites in the power sector combined with a nationalised gas and oil industry (Brand and Zingerle 2011). Kost et al. (2011: 7137) identify factors including heavily subsidised fuels, increasing demand leading to selection of the option that is cheaper in the short term, a lack of information and limited trading possibilities due to lack of interconnections among the North African countries. The need for a reform of national

energy sectors towards a basis on a market economy and competition is also seen as a common challenge (Patlitzianas et al. 2006: 1914). Another issue of importance in the literature is the topic of interconnectivity among the Maghreb states and connectivity to the European Union (Kagiannas et al 2003: 2680) that also limit the trading possibilities as already introduced above.

RESEARCH ON RENEWABLE ENERGY SOURCES

Given the EU's aim to increase the percentage of renewables in its energy portfolio, the North African countries are often presented as the go-to-countries for relatively easily obtainable renewable energy. However, tied to this should be the question to what extent the energy plans of the Maghreb countries and their plans for future energy development are taken into account. The literature on the possible role of renewables in the energy future of the North African countries is centred on several main topics.

One focal area is the countries' plans to develop a capacity concerning renewable energy and evaluation of the likelihood of these plans reaching implementation (Brand and Zingerle 2011; Kost et al. 2011; Mason and Kumetat 2011; Trieb and Müller-Steinhagen 2007). These evaluations focus mainly on the political situation, the need for reforms in the energy sector (such as grid development) and the financing of these national projects. However, focusing solely on these issues is not enough to cover the whole spectrum of topics connected to energy and energy policy. Secondly, there is the question of whether renewable options are preferable to nuclear options. Here, Marktanner and Salman (2011: 4480) focus on the economic and geopolitical implications of each option. The general problem areas identified are the geo-regional element, i.e. the lack of intra-African cooperation as an impediment to exploiting the full potential of renewables, the interests of different lobby groups and national sentiment. However, the main points made refer to geopolitical and economic arguments thus sidelining national sentiment to a mention of the possibility of understanding initiatives such as Desertec as 'European solar colonialism' using North Africa as a testing ground for renewable technologies (Marktanner and Salman 2011: 4484). The analysis of the possibility of nuclear energy in North Africa also encompasses capability analyses centred on financial, institutional and political stability (Jewell 2011). Thirdly, an analysis of the risks to energy infrastructure in North Africa and questions pertaining to the security of supply are recurring themes in the literature (Komendantova et al. 2012; Komendantova et al. 2011; Lacher and Kumetat 2011). This debate mainly takes into account technical and financial issues.

Another key topic reflecting the multitude of sectors involved is the question of water scarcity and its influence on the water-energy nexus (Siddiqi and Anadon 2011), such as the study by Damerau et al. (2011) focusing on the water needs of CSP and the influence this has on the possible development of CSP capacity. This potential of renewable capacities is of importance for the development of energy partnership of any kind. Decisions on the type of renewables to be used influence factors such as capacity and cost, but also the sustainable production of renewable energies.

As this overview shows, the debate on the development of renewable energy in North Africa is framed mainly around technical and financial feasibility issues, which are obviously important but should not dominate the assessment of possible renewable infrastructure development in North Africa. Further aspects should be part of the analysis, such as environmental concerns, but this potential multitude is not actually covered by the research on the development of renewable energy in North Africa. Framing the issue around too few sectors and neglecting to address the picture in its full complexity will not sufficiently further our understanding of the difficulties inherent in the development of cooperation schemes between North Africa and the EU. Therefore, a widening of the sectors of analysis will also help to address under-researched issues

such as the perception of EU external energy policy in North Africa and the potential influence of this on the development of relations.

ADDRESSING THE LACK OF NORTH AFRICAN PERSPECTIVES

The lack of North African perspectives in research on EU-North Africa energy relations is evident when assessing the research so far. Much of the literature focuses solely on the political and economic features of the countries covered and their influence on the development of energy policy. However, energy policy is multi-dimensional and as such also includes other factors such as the perception of EU policies in these countries. Thus the scope of topics for investigation has to be widened if new sets of questions are to be dealt with. The failure to focus on external perceptions applies to both the region of North Africa and the study of energy in general. The study of the perception of the EU or its external image in differing parts of the world has so far tended to focus mainly on Asia (Portela 2010; Chaban et al. 2009;) or multilateral international negotiations (Elgström 2006). The inclusion of other regions and countries has progressed (Lucarelli 2007). Emerson and Youngs (2007) and also Johansson-Nogués (2011) address the need to include external perceptions of Europe, and more specifically European foreign policy, in the study of the Mediterranean. Bayoumi (2007) also takes Egypt as a case study when contemplating the external image of the European Union. However, little attention has been paid to the North African countries. An exception to this is the study on Moroccan perceptions of Western democracy promotion (Khakee et al. 2008). Thematically there is likewise no wide array of topics covered, as most studies focus, for example, on the exemplary function EU integration can have either for other regional groupings, such as ASEAN (Portela 2010), or specific countries such as Japan or South Korea (Chaban et al. 2009). Other focal areas include the fight against poverty, solidarity, conflict prevention, the promotion of democracy and human rights as well as trade (Lucarelli 2007). Thus, the issue of perceptions is not only in need of more systematic research but also demands a widening of policy areas and regions covered.

There are calls in the literature to focus on creating a joint framework which sees all partners involved in the creation of energy cooperation as equal (IPEMED 2010), but a large part of the literature focuses on technical or financial issues, which are important if any partnership is to be created, but which should not be the sole factors to be taken into account. Of course, the main debates in the literature introduced in the preceding sections raise the question of whether it is even possible to speak of an equal partnership or whether the focus on this term is merely a rhetorical tool distracting from much more pressing issues. Also, a reframing of the understanding of energy relations can be of assistance in opening new ways into a discussion that otherwise might only revolve around itself.

Connected to the inclusion of perceptions and a widening of the methodological approaches used to study EU-North Africa energy relations is the question of methods. A more diverse methodological approach to energy studies is needed if the questions raised here are to be studied. Repeating the same set of methods will do little to shed light on new ways of studying energy policy, nor will it do much to approach topics from different angles. However, this change of perspective is needed to introduce new ideas and input to the study of energy. Methodologically, the inclusion of expert views has already been applied in many studies. However, this is mainly achieved through the use of interviews in different forms, such as unstructured and telephone interviews (Komendantova et al. 2011). Quantitative research is likewise widely represented, especially in the modelling of future scenarios pertaining to a possible exploitation of new energy sources and in feasibility studies focusing on technical and financial issues. In these indicators such as conversion cost, transport loss ratios and investment needed are used. However, an analysis focusing on subjective articulations of views from North Africa on the EU's external energy policy is not part of the current research debate. Yet

this would have the capacity to shed light on issues such as mistrust between partners or issues that must be addressed on the part of the EU if successful cooperation is to be initiated.

CONCLUSION

The aim of this commentary was to give an overview of the literature on EU-North Africa relations in the field of energy and show that there are topics that have to be addressed to account for the multidimensionality of energy. The main argument that emerged from this review is that so far the literature does not take sufficient account of North African perspectives. This article first introduced EU policy initiatives towards North Africa suggesting that a plethora of initiatives has not so far resulted in a coherent approach to the region. The EU's energy situation, with special reference to its position as the world's largest importer of energy, its aim to increase the share of renewables in its energy mix and its energy interdependence with its neighbourhood was also introduced. Special attention was paid to the possible role of the Mediterranean as a supplier of renewable energy to the EU. Following from this, the energy situations of the North African countries were introduced, with two groups distinguished. On the one hand, Algeria, Egypt and Libya have reserves of conventional energy sources (oil and/or natural gas) making them attractive to the EU due to their ability to supply energy immediately. On the other hand, Morocco and Tunisia lack exportable hydrocarbons and are compelled to satisfy their energy needs to varying extents through imports. Thus their energy relations with the European Union in the field of hydrocarbons are bound to be less developed. All the countries considered here have national renewable energy targets, mainly based on solar, wind and hydropower in differing configurations. They are also part of plans for developing renewables in North Africa and then exporting electricity to the EU. Initiatives for this on the part of the EU include, for example, the Mediterranean Solar Plan aimed at creating a framework for the development and usage of solar energy between the EU and the Mediterranean countries.

Energy in the past decade has been a topic with a consistently high profile in EU policymaking, both in its internal dimension and its external dimension. However, discussions on external energy policy often focus on the same topics that fail to take adequate account of the multidimensional nature of energy policy. It is indeed necessary to step beyond merely dealing with technical, financial, feasibility or security issues. These are undeniably vital and important to any discussion of energy, but focusing exclusively on these bypasses many other issues in the field of energy, such as environmental and social issues, or the influence of energy policy on the perception of the other party and hence on the prospects for further cooperation or partnership development.

At the same time, the EU's interest in the Mediterranean region/North Africa/MENA has not been an area of consistent policymaking. Instead, policy choices as well as instruments and levels of activity have alternated between intensity and benign neglect. Additionally, it has to be said that even the phases of intensive discussions and development of policy programmes aimed at the region have achieved few or no results at all in transforming complex relations between the parties concerned into a partnership, let alone an equal one. The uprisings in many MENA countries have been used by the EU as a point from which to argue for a new impetus in the development of relations, including not only monetary support but also support for the development of democratic structures and the development (or redevelopment?) of a true partnership between the regional blocs.

More attention has been paid to the North African countries since the Arab Spring, but the question remains whether it is again only one phase of paying more intense attention to the region without actually challenging established patterns of interaction that have

not achieved the type of relations so often stated as a goal in EU communications. In light of this overview of energy policy in the EU and in North Africa, with special reference to the development and role of renewables in EU-North Africa relations, it was shown that a focus on only a few sectors and exclusion of North African perspectives has failed to take into account the whole complexity of energy relations. It was argued that this can be resolved by widening the scope of topics to include perceptions of the EU among the North African countries, a topic that in itself is in need of more extensive research. This would help to shed light on issues such as possible mistrust between the parties concerned that may be one reason for a slow implementation or even hinder the development of new cooperation initiatives. A focus on perceptions could also help to shed light on how the creation of these policies is viewed and how this, in turn, can influence the willingness of partners to participate actively.

***

ACKNOWLEDGEMENTS

Funding for the work presented in this submission has been provided by the project 'Energy Policy in European Integration (Academy of Finland/Aalto 2011-14, no. 139686)'.

***

REFERENCES

Ahmed, S. (2011). 'Electricity sector in Tunisia: Current status and challenges — An example for a developing country'; *Renewable and Sustainable Energy Reviews*, 15 (1), pp. 737-744.

Bahgat, G. (2010). 'The geopolitics of energy: Europe and North Africa', *The Journal of North African Studies*, 15 (1), pp. 39-49.

Balta, P. (2000). 'Dialogue culturel et société civile dans la processus de Barcelone,' in J-R Henry and G. Groc (eds), *Politiques Méditerranéennes entre logiques étatiques et espace civil. Une reflexion franco-allemande.* Paris and Aix-en-Provence: Éditions Karthala et IREMAM.

Bayoumi, S. (2007). 'Country Reports – Egypt,' in S. Lucarelli (ed.) *The external image of the European Union.* Garnet Working Paper No. 17/07, 180-196. Available at http://www.garnet-eu.org/fileadmin/documents/working_papers/1707.pdf (accessed 5 October 2012).

Bicchi, F. (2009). 'Democracy Assistance in the Mediterranean: An Overview.', *Mediterranean Politics*, 14 (1), pp. 61–78.

Bicchi, F. (2007). *European Foreign Policy Making towards the Mediterranean*. New York: Palgrave Macmillan.

Bindi, F. (ed) (2010). *The Foreign Policy of the European Union – Assessing Europe's Role in the World.* Washington DC: Brookings Institution Press.

Boubaker, K. (2012). 'Renewable energy in upper North Africa: Present versus 2025-horizon perspectives optimization using a Data Envelopment Analysis (DEA) framework', *Renewable Energy*, 43, pp.364-369.

BP (2012) *Statistical Review of World Energy 2012*, available at http://www.bp.com/sectionbodycopy.do?categoryId=7500&contentId=7068481 (accessed 24 October 2012).

Brand, B., & Zingerle, J. (2011). 'The renewable energy targets of the Maghreb countries: Impact on electricity supply and conventional power markets', *Energy Policy*, 39 (8), pp. 4411-4419.

Chaban, N., Schneider, C. E., and Malthus, R. (2009). 'Visibility, Framing and Importance : Images of the EU in Japan and South Korea'. *The Copenhagen Journal of Asian Studies*, 27 (1), pp. 88–125.

Cherigui, A.-N., Mahmah, B., Harouadi, F., Belhamel, M., Chader, S., M'Raoui, A., and Etievant, C. (2009). 'Solar hydrogen energy: The European–Maghreb connection. A new way of excellence for a sustainable energy development', *International Journal of Hydrogen Energy*, 34 (11), pp.4934-4940.

Damerau, K., Williges, K., Patt, A. G., and Gauché, P. (2011). 'Costs of reducing water use of concentrating solar power to sustainable levels: Scenarios for North Africa', *Energy Policy*, 39 (7), pp. 4391-4398.

De Vasconcelos, Á. (ed.) (2011). *The Arab Democratic Wave – How the EU can seize the moment*. Report 9, March 2011, Institute for Security Studies, European Union, Paris. Available at http://www.iss.europa.eu/uploads/media/The_Arab_Democratic_Wave_-_how_the_EU_can_seize_the_moment.pdf (accessed 12 June 2012).

Elgström, O. (2006). *Leader or Foot-Dragger? Perceptions of the European Union in Multilateral International Negotiations.* Stockholm: Swedish Institute for European Policy Studies. Available at http://www.sieps.se/sites/default/files/31-20061.pdf (accessed 12 June 2012).

Emerson, M. and Youngs, R. (eds) (2007). *Political Islam and European Foreign Policy – Perspectives from Muslim Democrats of the Mediterranean*. Brussels: CEPS.

European Commission (2011a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – On security of energy supply and international cooperation – "The EU Energy Policy: Engaging with Partners beyond Our Borders".* Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0539:FIN:EN:PDF, (accessed 1 March 2012).

European Commission (2011b). *Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – A*

Partnership for Democracy and Shared Prosperity with the Southern Mediterranean. Available at http://www.eeas.europa.eu/euromed/docs/com2011_200_en.pdf (accessed 25 March 2011).

European Commission (2011c) *Commission Staff Working Paper. Key facts and figures on the external dimension of the EU energy policy.* Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1022:FIN:EN:PDF (accessed 2 September 2012).

Fiott, D. (2012). '"Resource-Full Revolutions" The European Union, Natural Resources and the Southern Neighbourhood' S. Biscop, R. Balfour and M. Emerson (eds) *An Arab Springboard for EU Foreign Policy?* Egmont Paper 54, Egmont Royal Institute for International Relations. Available at http://www.egmontinstitute.be/paperegm/ep54.pdf (accessed 5 March 2012).

Ghilès, F. (2010). *Le Défi énergétique en Méditerranée.* Les Notes IPEMED - Études & Analyses, Paris: IPEMED. Available at http://www.ipemed.coop/adminIpemed/media/fich_article/1315775090_LesnotesIPEMED_9_Defi-energetique-en-Mediterranee_avril2010.pdf (accessed 8 June 2012).

Ibrahim, A. (2011). 'Renewable energy sources in the Egyptian electricity market: A review', *Renewable and Sustainable Energy Reviews*, 16 (1), pp. 216-230.

IPEMED. (2010). Make energy the first Mediterranean policy. Projects for the Mediterranean, Paris: IPEMED. Available at http://www.ipemed.coop/adminIpemed/media/fich_article/1317804197_IPEMED_PFM_Energy.pdf (accessed 5 October 2012).

Jewell, J. (2011). 'A nuclear-powered North Africa: Just a desert mirage or is there something on the horizon?', *Energy Policy*, 39 (8), pp. 4445-4457.

Joffe, G. (2009). 'Political dynamics in North Africa', *International Affairs*, 85 (5), pp. 931–949.

Johansson-Nogués, E. (2011). *The decline of the EU's 'magnetic attraction'? The European Union in the eyes of neighbouring Arab countries and Russia*. European Foreign Policy Unit Working Paper, 2011/1. Available at http://www2.lse.ac.uk/internationalRelations/centresandunits/EFPU/EFPUpdfs/EFPUworkinpaper2011-1.pdf (accessed 5 October 2012).

Kagiannas, A. G., Askounis, D. T., Anagnostopoulos, K., and Psarras, J. (2003). 'Energy policy assessment of the Euro-Mediterranean cooperation', *Energy Conversion and Management*, 44 (16), pp. 2665-2686.

Kausch, K. and Youngs, R. (2009). 'The End of the 'Euro-Mediterranean vision', *International Affairs*, 85 (5), pp. 963-975.

Khakee, A., Afoukane, J., Ammor, F. M. and Lutterbeck, D (2008). *Pragmatism Rather than Backlash: Moroccan Perceptions of Western Democracy Promotion.* EuroMeSCo Paper 73. Available at http://www.euromesco.net/images/paper73eng.pdf (accessed 5 October 2012).

Komendantova, N., Patt, A., and Williges, K. (2011). 'Solar power investment in North Africa: Reducing perceived risks', *Renewable and Sustainable Energy Reviews*, 15 (9), pp. 4829-4835.

Komendantova, N., Patt, A., Barras, L., and Battaglini, A. (2012). 'Perception of risks in renewable energy projects: The case of concentrated solar power in North Africa', *Energy Policy*, 40, pp.103-109.

Kost, C., Pfluger, B., Eichhammer, W., and Ragwitz, M. (2011). Fruitful symbiosis: Why an export bundled with wind energy is the most feasible option for North African concentrated solar power', *Energy Policy*, 39 (11), pp. 7136-7145.

Lacher, W., and Kumetat, D. (2011). 'The security of energy infrastructure and supply in North Africa: Hydrocarbons and renewable energies in comparative perspective', *Energy Policy*, 39 (8), pp. 4466-4478.

Lucarelli, S. (ed). (2007). *The External Image of the European Union*. Garnet Working Paper No. 17/07. Available at http://www.garnet-eu.org/fileadmin/documents/working_papers/1707.pdf (accessed 5 October 2012).

Marktanner, M., and Salman, L. (2011). 'Economic and geopolitical dimensions of renewable vs. nuclear energy in North Africa', *Energy Policy*, 39 (8), pp. 4479-4489.

Martinez, L. (2008), 'European Union's exportation of democratic norms. The case of North Africa,' in Z. Laidi (ed.) *EU Foreign Policy in a Globalized World. Normative Power and Social Preferences*. London: Routledge: 118-133.

MASEN (2009). *Moroccan Solar Plan - Presentation*. Available at http://www.masen.org.ma/index.php?Id=42&lang=en#/_ (accessed 27 October 2012).

Mason, M., and Kumetat, D. (2011). 'At the crossroads: Energy futures for North Africa', *Energy Policy*, 39 (8), pp. 4407-4410.

MEM (2011). *Renewable Energy and Energy Efficiency Programme.* Available at http://www.mem-algeria.org/francais/uploads/enr/Programme_ENR_et_efficacite_energetique_en.pdf (accessed 27 October 2012).

MOEE (2012). *Egyptian Electricity Holding Company - Annual Report 2010/2011.* Available at http://www.moee.gov.eg/english/Takareer/2010-2011.pdf (accessed 27 October 2012).

Pace, M., Seeberg, P. and Cavatortac, F. (2009). 'The EU's Democratization

Agenda in the Mediterranean: A Critical Inside-out Approach', *Democratization*, 16 (1), pp. 3–19.

Panebianco, S. (2010). 'The EU and the Middle East,' in F. Bindi (ed.), *The Foreign Policy of the European Union. Assessing Europe's Role in the World*. Washington DC: Brookings Institution Press: 183-196.

Patlitzianas, K. D., Doukas, H., Kagiannas, A. G., and Askounis, D. T. (2006). 'A reform strategy of the energy sector of the 12 countries of North Africa and the Eastern Mediterranean', *Energy Conversion and Management*, 47 (13-14), pp. 1913-1926.

Portela, C. (2010). 'The Perception of the European Union in South East Asia. Low priority statuses and selectivity', *Asia Europe Journal*, 8 (2), pp. 149-160.

RCREEE (2010). *Provision of Technical Support/services for an Economical, Technological and Environmental Impact Assessment of National Regulations and Incentives for Renewable Energy and Energy Efficiency. Country Report Libya.* Available at http://www.rcreee.org/Studies/Danida_Country_Studies/Libya.pdf (accessed 27 October 2012).

Schlumberger, O. (2011). 'The Ties that do not Bind: The Union for the Mediterranean and the Future of Euro-Arab Relations', *Mediterranean Politics*, 16 (1), pp.135-153.

Siddiqi, A., and Anadon, L. D. (2011). 'The water–energy nexus in Middle East and North Africa', *Energy Policy*, 39 (8), pp. 4529-4540.

Stambouli, A. B. (2011). 'Promotion of renewable energies in Algeria: Strategies and perspectives', *Renewable and Sustainable Energy Reviews*, 15 (2), pp.1169-1181.

STEG (2012a). *STEG Renewable Energy - Vision.* Available at http://www.steg.com.tn/en/ser/vision.html (accessed 27 October 2012).

STEG (2012b). *STEG Renewable Energy - Presentation.* Available at http://www.steg.com.tn/en/ser/presentation.html (accessed 27 October 2012).

STEG (2010). *Tunisian Solar Plan, STEG Renewable energy. Presentation at the Economic Forum Japan-World arab.* Available at http://www.jccme.or.jp/english/jaef2_overview/meeting/session3/workshop1/13_w1.pdf (accessed 27 October 2012).

Trieb, F., and Müller-Steinhagen, H. (2007). 'Europe–Middle East–North Africa cooperation for sustainable electricity and water', *Sustainability Science*, 2 (2), pp.205-219.

Youngs, R. (2001). *The European Union and the Promotion of Democracy – Europe's*

Mediterranean and Asian Policies. Oxford: Oxford University Press.

Book Review

Miguel Haubrich-Seco[1] *Charles University, Prague*

The European Union and South East Europe: The Dynamics of Europeanization and Multilevel Governance

by Andrew Taylor, Andrew Geddes and Charles Lees

Routledge, ISBN: 9780415669061 (hb)

The branch of Europeanization that studies the EU's impact on the transformation of domestic politics (see, for example, Héritier et al. 2001; Schimmelfennig and Sedelmeier (eds) 2005) has regularly been confronted with the criticism of concept stretching (see, for example, Radaelli and Pasquier 2006). Despite this, Europeanization-based research has only moved further in both geographic and substantive terms, for example reaching out to study the EU's impact on other world regions (Börzel and Risse 2012).

Cautious readers may recall such criticism when having a first look at the subject of this volume. It studies the impact of engagement with the EU on four South-East European states – Greece, Slovenia, Croatia and Macedonia –, covering the period from 1995 to 2010 and different accession modalities. It does not just focus on the top-tier of national administrations; instead, Taylor, Geddes and Lees dig deeper and analyse how the 'multilevel-ness' of modes of governance (their dependent variable) changes as a result of EU engagement (their independent variable). They are interested in discovering how and to what extent capacity, competence and power have shifted between the different layers of administration as the countries adapt to the EU. In doing this, they cover not only the different levels of domestic policy-making and the supranational EU level but also cross-border interactions. After reviewing the different national state-building processes and the character of governance in the four countries, Taylor et al. focus their analysis on three policy fields: cohesion policy, migration and border security, and environment policy; all potentially under strong adaptational pressure from the EU. Despite this breadth, fears of concept stretching are unfounded. In fact, the opposite is true.

Using Social Network Analysis (SNA), the authors add specificity and clarity to the often under-specified concept of Multi-Level Governance (MLG). SNA does not simply identify the different layers of administration and actors theoretically involved in policy-making but also unveils their relative power and the intensity of the interactions between each actor. As a result, we see which actors are the relevant ones in the three policy fields. This already shows us two remarkable results. Firstly, while the EU promotes wider participation and subsidiarity in the decision-making and implementation of these policy-fields (most notably in cohesion policy), this adaptation to EU requirements results instead in more centralised decision-making at the national level. MLG has grown in all cases and countries studied and the networks have become more and more complex over time, but the power to take decisions and to mobilise resources is concentrated at the core of the network (pp. 109, 206, 214), possibly as a result of that growing complexity. Secondly, while the EU emphasises regional cooperation in South-East Europe as central to the accession of the involved states, the networks show that the regional actors play a role, but not such a vital one (with the exception of migration and border security), perhaps because of a lack of capacity to mobilise resources (pp. 136, 170, 203). Although some of the differences may arise from the different modalities of accession (i.e. Macedonia is subject to stronger surveillance and conditionality than

Greece was at the time of its accession), both results point to the persistence of traditional governance structures in historically rather centralised polities, which are sticky and only change gradually over time.

Up to this point, the volume of Taylor et al. is descriptive in the best sense of the word; guided by analytical concepts it depicts the evolution of policy fields and their different actors and tiers of governance as they become more multi-levelled over time. It adds clarity and sound empirical testing to often fuzzy concepts such as Europeanization and MLG. The authors achieve this through extensive interview material and questionnaires gathered with the help of local researchers in each of the four countries. In their explanatory analysis, Taylor et al. survey the reasons behind the specific development of the networks. Their central explanatory device is the so-called capacity bargain. Derived from Mattli's (2002) concept of a sovereignty bargain, the capacity bargain represents an exchange in which the candidate or member states trade in decision-making power for EU-provided norms, resources and broad administrative templates (i.e. capacity) to tackle policy challenges. The specific capacity bargains differ from policy sector to policy sector (for example as a result of the amount of involved funding or the perceived urgency) and are also determined by the local governance structure and history. Unfortunately, the hypothesised nature and role of the capacity bargains only becomes evident in the policy chapters of the book. The theoretical chapter, probably as a result of space constraints, devotes more emphasis to enumerating the individual theoretical pieces of the model than to putting them into a clear relationship with each other. Notwithstanding this, the different capacity bargains do explain the diverging nature of MLG in the countries and across the sectors. Although the specific nature of the networks varies, Taylor et al. find that they function in similar ways (e.g. managed from a strong central government institution) across countries and across policy fields. This comparative finding confirms the effect of the EU in shaping and transforming the modes of governance of the countries, while still showing that their specific appearance is dependent on the legacy of the respective state.

Taylor et al.'s volume will be appealing to readers interested both in the specific policy fields that they tackle as well as in the Europeanisation of South-East Europe more generally. The detailed governance networks derived by them through intensive empirical research can also serve as a useful background for researchers who want to study one of the specific policy fields in more depth. Furthermore, Taylor Geddes and Lees's fine-grained empirical analysis makes an important contribution to specifying the nature of concepts such as Europeanization and MLG and dispels any criticisms of concept stretching.

[1] PhD fellow in the framework of the EXACT project on EU external action

REFERENCES

Börzel, Tanja A. and Risse, Thomas (2012). 'When Europeanisation meets Diffusion. Exploring New Territory', *West European Politics*, 35:1, pp. 192-207.

Héritier, Adrienne, Kerwer, Dieter, Knill, Christoph, Lehmkuhl, Dirk, Teutsch, Michael, Douillet, Anne-Cécile (2001). *Differential Europe: The European Union Impact on National Policymaking*, Lanham, MD: Rowman & Littlefield.

Mattli, Walter (2002). 'Sovereignty Bargains in Regional Integration', *International Studies Review* 2:2, pp. 149-180.

Radaelli, Claudio and Pasquier, Romain (2006). 'Conceptual issues', in Paolo Graziano, and Maarten P. Vink (eds) *Europeanization: New Research Agendas,* Basingstoke: Palgrave, pp. 35-45.

Schimmelfennig, Frank and Sedelmeier, Ulrich (eds) (2005). *The Europeanization of Central and Eastern Europe,* Ithaca, NY: Cornell University Press.